

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>TIMOTHY W [REDACTED]</p> <p>by the Greenfield School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-11</p>
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NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the January 6, 1997 order of the Greenfield School District Board of Education to expel Timothy, a seventh grade pupil, from the Greenfield School District until August 28, 1997. This appeal was filed by the pupil's father, who is also an attorney and was received by the Department of Public Instruction on January 21, 1997.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, this Decision and Order is confined to a review of the record of the school board hearing. The State Superintendent's review authority is specified in sec. 120.13(1)(c), Wis. Stats. The State Superintendent's role is to ensure that the required statutory procedures were followed, that the school board's decision was based upon one or more of the established statutory grounds, and that the school board was satisfied that the interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record contains a letter dated December 20, 1996 from the assistant district administrator of the Greenfield School District. The letter advised that a hearing would be held on January 6, 1997 which could result in the pupil's expulsion from the Greenfield Middle School. The letter was sent separately to the pupil and his father by regular mail. The letter alleged that on December 13, 1996, the pupil "engaged in conduct which endangered the health or safety of others. Specifically, this deals with [the pupil] making threats of violence towards a Greenfield Middle School student and pulling a knife on this student after departing the school bus at its regularly scheduled stop". (emphasis added) The rights outlined in sec. 120.13(1)(c), Wis. Stats., were included with the letter. Minutes of the school board expulsion hearing, an audio tape of the expulsion hearing and documents presented at the hearing are also part of the record.

The hearing was held in closed session on January 6, 1997. The pupil and his parents appeared at the hearing. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The evidence presented included handwritten statements by the pupil, the student he allegedly threatened and three other students who saw the pupil pull a knife from his jacket. The administration obtained these statements while investigating the incident.

The pupil and his parents were given the opportunity to present evidence, to cross-examine administration witnesses and to respond to the allegations. Upon questioning by the pupil's father, the administration confirmed that this was the first and only incident in which the pupil had acted in a physically threatening manner. The pupil and his parents explained that he had been a victim of "fat jokes" and "bullying" since kindergarten and that this was the first and

only time he had made a choice to "fight back". The pupil acknowledged that his conduct was serious, dangerous and wrong. He admitted that he did have a knife in his pocket, but he did not intend to hurt anyone. He further admitted that he "had the knife for about two weeks" and that "he did not take it to school most days". He explained that after getting off the bus and walking down the block he was taunted by a group of fellow students and felt threatened. He pulled out the knife to "scare" them. The other students allegedly followed him home after the knife incident and rang his doorbell to further taunt him.

The record contains no evidence that the knife incident occurred "while under the supervision of a school authority". For example, there is no suggestion that the school bus and bus driver were still present at the time of the incident. Rather, the record indicates that the incident occurred while the children were walking home after exiting the bus. The exact time and location of the incident is not clear.

After the hearing, the school board deliberated in closed session. The board found the pupil engaged in conduct "while at school or under the supervision of a school authority which endangered the health or safety of others" when he "made violent threats to a Greenfield Middle School student and pulled a knife on this same student at a regularly scheduled bus stop". The school board further found that the interests of the school demand the student's expulsion. The Resolution for Expulsion and Order containing these findings of the school board, dated January 6, 1997, was mailed separately to the pupil and his father. The order stated the pupil was expelled until August 28, 1997.

DISCUSSION

School districts are limited purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. *Iverson v. Union Free High School District.*, 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from sec. 120.13(1)(c), Wis. Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which must be followed in the expulsion process.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated that the scope of the State Superintendent's review is limited to that set out in sec. 120.13(1)(c), Wis. Stats. In *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 667, 321 N.W. 2d 334 (1982), the court of appeals *in dicta* stated: "The superintendent's review, then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc." *Id.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). It is therefore incumbent upon the State Superintendent in reviewing an expulsion decision to ensure that the required statutory procedures were followed, that the school board's decision is based upon one of the established statutory grounds, and that the school board is satisfied that the interests of the school district demand the pupil's expulsion.

The appeal letter and appellant's briefs in this case raise several issues. Most significantly, the appellant correctly points out that the conduct charged and found to have occurred did not take place at school or under the supervision of a school authority. The conduct occurred after

the pupils had exited the school bus and had begun to walk home. As outlined above, the State Superintendent in this review must ensure that the school board's decision was based upon one or more of the established statutory grounds. Where conduct such as this occurs away from school and outside the supervision of a school authority, it must affect those at school or under the supervision of a school authority. See e.g. *Patrick Lee Y. by the Kenosha Unified School District*, Decision and Order #182, (October 9, 1991). Because the decision is not based upon an established statutory ground, I am compelled to reverse this decision.

This is a highly unfortunate case. The pupil admitted that he had taken the knife to school on more than one occasion. While there was no direct inquiry on this point, one could assume he possessed the knife at school and on the school bus on December 13, 1996 because he pulled the knife from his jacket after exiting the bus on that date. However, the district did not provide notice that they intended to expel based on possession at school or on the school bus, nor did the board's order include that basis. Failure to provide notice of the basis for expulsion requires reversal even when the pupil admits the misconduct. See e.g. *Bradley Scott P. by the Menasha Joint School District* Decision and Order #197 (August 21, 1992). Recognizing the seriousness of the conduct in this case, the board may well choose to initiate another expulsion proceeding relying upon the conduct which does constitute a statutory basis for expulsion. See e.g. *Nicole P. v. Crandon School District*, Decision and Order #193 (May 29, 1992).

Because this case must be reversed for the reason discussed above, I will only briefly address other issues raised. The appellant argues that he was deprived of due process rights because he was not given an "explanation" of the evidence against him prior to the expulsion hearing. Section 120.13(1)(c) Wis. Stats requires that the pupil and parent receive prior notice of

the specific grounds and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based. Such a notice was provided in this case, although it failed as discussed above to cite a proper statutory ground for expulsion. The appellant misconstrues *Goss v. Lopez*, 95 S. Ct. 729 (1975) in arguing that an "explanation" of the evidence is required prior to hearing. *Goss v. Lopez* involved a situation in which students were summarily suspended for up to 10 days with no opportunity at any time to hear and respond to charges against them. The U.S. Supreme Court in that case held that in cases of suspension of 10 days or less, a student must be given "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story ... There need be no delay between the time 'notice' is given and the time of hearing". (emphasis added) *Id.* at p. 739. *Goss v. Lopez* does not support the proposition that more formal pre-hearing discovery type procedures must be used in expulsion cases.

Appellant also argues he was denied the right to confront student witnesses against him. However, the board is authorized at an expulsion hearing to use hearsay statements gathered from pupils in the course of its investigation. *Racine Unified School District v. Thompson*, *supra*. In this case, the student witnesses were identified in their written statements. In some expulsion situations, it may even be permissible to refuse to reveal the identity of student witnesses. See e.g. *Newsome v. Batavia Local School District*, 842 F. 2d 920, 92 S (6th Cir 1988).

Appellant objects to the manner in which the school administration had the pupil retrieve a knife from his home. The district correctly points out that witness statements regarding the knife, as well as the pupil's own admissions, are sufficient. The actual knife is not required to permit a board finding regarding the incident. The district also correctly notes that there is no requirement

to provide prior notice of a school rule prohibiting conduct which endangers the property, health or safety of others. *William S. v. Tri-County Area School Board*, Decision and Order #132 (June 21, 1985).

Finally, while alternative education after expulsion is certainly desirable, the law does not require the district to offer such services. See e. g. *Dusty S. v. Mukwonago School District*, Decision and Order # 237 (August 26, 1994)

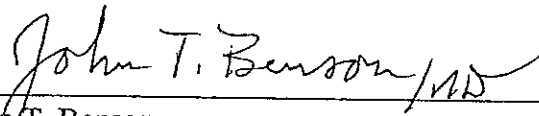
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Timothy W [REDACTED] by the Greenfield School District Board of Education is reversed.

Dated this 21st day of March, 1997.



John T. Benson
State Superintendent of Public Instruction