

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Mysti P [REDACTED] by the Adams Friendship Area School District Board of Education</p>	<p>DECISION AND ORDER 97/98 EX-30</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 May 29, 1998 order of the Adams Friendship Area School District Board of Education to expel the above named pupil from the Adams Friendship Area School District for the 1998-99 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on June 9, 1998.

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 entitled "Notice of Expulsion Hearing" dated May 4, 1998 from the district administrator of the Adams Friendship Area School District. The letter advised that a hearing would be held on May 19, 1998 which could result in the pupil's expulsion from the Adams Friendship Area School District. The letter was sent separately to the pupil and her parents by certified mail. The letter alleged that the pupil knowingly conveyed or caused to be conveyed a threat or false information concerning an attempt or alleged attempt being made or to be made to destroy school property by means of explosives. The letter specifically alleged that she wrote a note which stated that an explosive device was located in the Junior High School. The junior high had to be evacuated as a result of the note. Minutes of the school board expulsion hearing and an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on May 19, 1998. The pupil and her parents appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Evidence presented by the district administration included the testimony of another pupil, Becky, who admitted to daring Mysti to write the note and actually observed her write the bomb threat which stated "There's a bomb in this school", while in the library. She stated that Mysti left the library with the note and returned a short time later without the note. Mysti admitted to this pupil that she posted the note in the school. She stated that approximately five minutes after Mysti returned, a staff member came into the library and ordered everyone to evacuate. Another student, Tina, testified about the same events that Becky testified. Both Becky and Tina testified that before Mysti wrote the note, Mysti told them she was going to do it. Mr. Beaversdorf, Junior High Principal, also testified regarding

the actions the school took to evacuate the building and search for the bomb after the note was found posted outside the library. His investigation also included interviews with Mysti, Becky and Tina. The district also produced evidence of Mysti's behavioral and academic record. Mysti also testified on her own behalf. She admitted that she wrote the note, but denied posting it on the wall in the hallway. The pupil and her parents were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found the pupil did knowingly conveyed or caused to be conveyed a threat or false information concerning an attempt or alleged attempt being made or to be made to destroy school property by means of explosives. The school board further found that the interests of the school demand the student's expulsion. The order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated May 29, 1998, was mailed separately to the pupil and her parents. The order stated the pupil was expelled the 1998-99 school year.

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.L.*, 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 in this case raises one issue which requires consideration. The parents allege that the punishment of expulsion for one year was too severe. It has repeatedly been held that the decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at sec. 120.13(1)(c) Wis. Stats. *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Troy Y v. Burlington School District Board of Education*, Decision and Order No. 309 (January 21, 1997).

In the "brief" filed by the parents, they challenge the record submitted by the school district. While there are minor errors in the minutes kept by the board, they are insignificant. For example, the order in which witnesses were called is irrelevant.¹ Many of the other inconsistencies cited by the parent are actually disagreements with the credibility assessments of witnesses and the sufficiency of the evidence. The school board is in the best position to judge credibility. *Nicholas K. v. Hudson School District Board of Education*, Decision and Order No. 305 (December 5, 1996); *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); *William S. v. Tri-County Area School District Board of Education*, Decision and Order No. 132 (June 21, 1985). It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996), *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994), and *Taiwan O. W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). Thus, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *Daniel A. v. Mauston School District Board of Education*, Decision and Order No. 324 (May 8, 1997); *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). A reasonable view of the evidence, supports the board's findings.

¹ The tape submitted by the district was missing portions of the testimony. It did not include the testimony of Mr. Beaversdorf or Mr. LaVallee. However, it did include the testimony of Tina, Becky and Mysti. This "missing testimony" appears to be the result of the copying process of the tape as the attorney for the school board has indicated that he reviewed the master copy and it was complete. Furthermore, a tape is not required. While it is helpful and preferred, the statute only requires that minutes of the meeting be held.

In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

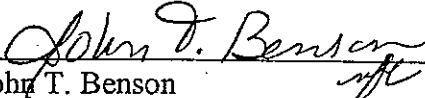
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Mysti P [REDACTED] by the Adams Friendship Area School District Board of Education is affirmed.

Dated this 7th day of August, 1998.



John T. Benson
State Superintendent of Public Instruction