

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
Lucas M. S [REDACTED]
by the Whitewater Unified School District
Board of Education

DECISION AND ORDER
98/99 EX 06

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 order of the Whitewater Unified School District Board of Education to expel the above named pupil from the Whitewater Unified School District until the end of the first semester of the 1999-2000 school year. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on January 20, 1999.

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 December 28, 1998 from the district administrator of the Whitewater Unified School District. The letter advised that a hearing would be held on January 5, 1999 that could result in the pupil's expulsion from the Whitewater Unified School District. The letter was sent separately to the pupil and his parents by regular mail.¹ The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health or safety of others. The letter specifically alleged that Lucas possessed a dangerous weapon (knife) on school grounds and, while possessing the knife, physically confronted another student in a High School classroom on December 14, 1998. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on January 5, 1999. The pupil and his parents appeared at the hearing represented by Attorney Jennifer Weston. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents were given the opportunity to present evidence, present and 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 engage in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. 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 January 5, 1999, was

¹ The pupil argues for the first time in his reply brief that the notice was not timely. The notice was timely. See *Lori P. v. Cudahy School District*, Decision and Order No. 169, (May 21, 1990), citing sec. 990.001, Stats.

mailed separately to the pupil and his parents. The order stated the pupil was expelled until the end of the first semester of the 1999-2000 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 that 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 in this case raises several issues that require consideration. First, the pupil alleges that the evidence does not support the findings of the board. Secondly, the pupil alleges that the board did not make a necessary finding that the interests of the school

demanded expulsion. Third, in the form of a complaint, the pupil alleges that the board did not follow its policy regarding "Discipline Procedures".

At the expulsion hearing, the administration presented information to the school board that on December 14, 1998, Lucas possessed a folding knife while in a Whitewater High School classroom. The administration also presented evidence that Lucas was involved in a physical confrontation with another student in the same classroom. Lucas admitted that he was involved in the confrontation and that he was holding the opened knife during the confrontation. The School Board found that Lucas engaged in conduct, while at school or under the supervision of a school authority, that endangered the property, health or safety of others.

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). Further, 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) and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994).

The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damage or the chance of loss or injury or the capability of producing death or great bodily harm. The term embraces the notion of harmful acts or actions that are detrimental or involve loss or damage. *Joshua S. v. Beloit Turner School District Board of Education*, Decision and Order No. 307 (January 14, 1997), *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (November 25, 1996), *Kristin J. V.*

Mukwanago School District Board of Education, Decision and Order No. 185 (February 21, 1992). Lucas not only engaged in a physical confrontation with another student, but also did so while possessing a knife. Thus, it was reasonable to conclude that Lucas' conduct endangered the property, health and safety of others.

The second issue raised by the pupil concerns the finding that the interests of the school demand expulsion. At the time the appeal was filed, the pupil's attorney had not received the expulsion order. However, both the expulsion order and the minutes of the hearing confirm that the board did find that the interests of the school demanded expulsion.

The third issue raised by the pupil concerns the application of the school board policy.² The pupil argues that in his case the school board expelled him solely to make an example of him. He argues that this is inconsistent with the board's policy regarding discipline. The record, however, does not support this argument. The Whitewater Student Handbook states:

"Our objective in disciplining students is not to punish but to help you to understand you must accept responsibility for your choices. We believe that penalties should be appropriate to the particular violation and repeated discipline problems are more serious and receive harsher penalties" (p. 10)

The student handbook also provides a list of student responsibilities organized by "action" and "consequence". On page 7 of the handbook, the consequence for physically attacking another student and for possessing a weapon are clearly stated. If a pupil engages in that conduct, he or she would be suspended, the incident would be reported to law enforcement and the pupil may be referred for expulsion.

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.*

² This issue was raised in the form of a complaint. By separate letter dated February 11, 1999, the complainant was informed that the state superintendent did not have jurisdiction over the "complaint".

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

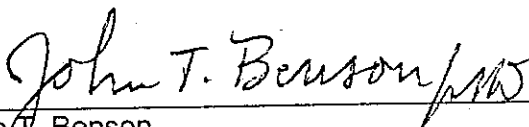
CONCLUSIONS OF LAW

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 Lucas M. S. [REDACTED] by the Whitewater Unified School District Board of Education is affirmed.

Dated this 16th day of March, 1999.



John T. Benson
State Superintendent of Public Instruction