

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Lyle S. [REDACTED]

by the Whitewater School District
Board of Education

DECISION AND ORDER
98/99 EX-07

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 5, 1999 order of the Whitewater School District Board of Education to expel the above-named pupil from the Whitewater School District through the 1998-99 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on February 15, 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 School District. The letter advised that a hearing would be held on January 5, 1999, which could result in the pupil's expulsion from the Whitewater School District. The letter was sent separately to the pupil and his parents by regular mail. 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 (1) he possessed a dangerous weapon (knife) on school grounds on December 14, 1998, which was then transferred to another student who proceeded to physically confront another student while possessing the knife, and (2) he lied to school administration about the incident. Minutes of the school board expulsion hearing and exhibits used at the 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 without counsel. 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, 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 engage in conduct while at school or while under the supervision of a school authority that 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 mailed separately to the pupil and his parents. The order stated the pupil was expelled through 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 that may be the basis for an expulsion and sets out specific procedures that 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 subsequent "reply brief" by the parents raise several issues that require consideration. The parent alleges that the school district expelled Lyle based upon a zero-tolerance policy that was not enacted at the time of the incident or expulsion hearing. In this case, it is irrelevant whether the school board had instituted a "zero-tolerance" policy. 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). If a school board finds that the pupil engaged in conduct as alleged in the notice of expulsion; that conduct occurred while at school or while under the supervision of a school authority and it endangered the property, health, or safety of others; and that the interests of the school demand expulsion, the board may expel the pupil. In this case, the board made the requisite findings and followed the procedural mandates of sec. 120.13(1)(c), Stats. Therefore, the expulsion must be affirmed.

The parent also alleges that there was insufficient evidence to support the expulsion. 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). Expulsions based upon possession of a knife have previously been affirmed. See *Vadim S. v. Madison Metropolitan School District Board of Education*, Decision and Order No. 368 (July 29, 1998); *Jeffrey D. v. Greenfield School District Board of Education*, Decision and Order No. 352 (April 1, 1998); *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997). The evidence indicates that Lyle brought a knife to school. Mr. Cipriano, Assistant Principal, stated that after seeing the knife, the administration considered the knife to be a dangerous weapon due to the length of the blade, size of the handle, and blade locking mechanism. He also demonstrated the locking blade of the knife. The board also heard evidence that, while at school, the knife was eventually given to another student. The second student held the knife in his hand during a confrontation with a third student at school. I find it was reasonable to conclude that Lyle's conduct endangered the property, health, and safety of others.

The pupil also alleged that his right to an open hearing was violated because the school board heard his case in a closed hearing and then convened into a closed session to deliberate despite the pupil's request for an open hearing. The procedures used by the board comply with sec. 19.85(1)(f), Stats., and are consistent with previous holdings of the state superintendent. The state superintendent is authorized to address the open or closed nature of the proceeding only if the pupil or the pupil's parent demands a closed meeting and that demand is denied. *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 28, 1993); *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993).

The pupil also alleges that he was not given an opportunity to "explain our side." This is contrary to the minutes of the school board expulsion hearing. Lyle, his mother, and his father were allowed to address the board and ask questions. Several witnesses were allowed to testify to Lyle's character, and one witness presented a letter signed by Whitewater High School staff members requesting leniency for Lyle. While the character witnesses were limited to two minutes each, there is no indication in the record that Lyle was not given an opportunity to question witnesses and present whatever evidence he had.

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

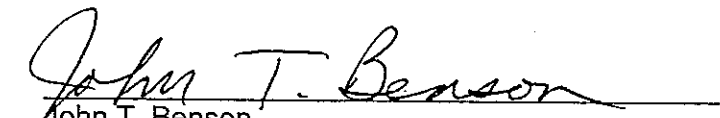
CONCLUSIONS OF LAW

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 Lyle S [REDACTED] by the Whitewater School District Board of Education is affirmed.

Dated this 15th day of April, 1999.


John T. Benson
State Superintendent of Public Instruction