

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Robert M. S [REDACTED] by the Milton School District Board of Education.	DECISION AND ORDER 98/99 EX-09
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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 25, 1999 order of the Milton School District Board of Education to permanently expel the above-named pupil from the Milton School District. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on March 22, 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 29, 1998, from the district administrator of the Milton School District. The letter advised that a hearing would be held on January 13, 1999 that could result in the pupil's expulsion from the Milton School District. The letter was sent separately to the pupil and his parents by personal service. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority that endangered the property, health, or safety of others. The letter alleged that Robert did, while at school, plan and conspire to obtain a pistol for the purpose of killing another Milton High School student and/or collect debts. A transcript of the expulsion hearing is part of the record.

The hearing was held in open session on January 13, 1999. The pupil and his parents appeared at the hearing represented by 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 25, 1999, was mailed separately to the pupil and his parents. The order stated the pupil was permanently expelled from the Milton School District.

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 in this case raises three issues that require consideration. The pupil alleges that he was not given adequate notice of the allegations, that there was insufficient evidence to support the school board's findings, and that the expulsion period was unduly harsh.

The pupil was given adequate notice of the allegations. The notice of expulsion hearing complied with all statutory requirements contained in sec. 120.13(1)(c), Stats. The pupil argues that the facts alleged in the notice of expulsion hearing were different than those presented to the board at the expulsion hearing. The school board argues that while the factual findings in the expulsion order do not *verbatim* track the allegations in the notice of hearing, the notice did provide a basic description as to the purpose of the expulsion hearing. The notice requirement in a due process proceeding is intended to ensure that the parties are sufficiently apprised of the charges so as to be able to defend against them. See *Keller v. Fochs*, 385 F. Supp. 262 (E.D. Wis. 1974); *Bradley B. v. Spooner School District Board of Education*, Decision and Order No. 107 (February 15, 1983); *Michaelene J. v. Washington Island School District Board of Education*, Decision and Order No. 165 (August 1, 1989); *Jennifer P. v. Waukesha School District Board of Education*, Decision and Order No. 226 (April 18, 1994). The charges contained in the notice of expulsion hearing gave notice to the pupil that his conduct between December 14, 1998 and December 16, 1998, as it related to conversations and actions with another student (Student A) involving procurement of a gun, as well as the motive for procuring the gun, would be the issue before the board. At the hearing, the testimony was limited to this topic.¹ The school board made its factual findings after hearing testimony from Student A, the police liaison officer involved in the investigation, the principal of the high school, Student A's

¹ The police report generated by the Milton Police Department in the course of investigating this offense was included in the hearing record submitted by the school district. Included in that police report is a copy of an "evidence inventory" tag that was used to catalog the property retrieved from the pupil's home during the course of a search warrant. Included on the list of property were several items related to drug paraphernalia. There is no indication in the hearing transcript, nor is it argued by the pupil, that this information was considered by the administration or the school board.

father, the pupil, and one of the pupil's coaches. Those factual findings, while not a *verbatim* recitation of the facts alleged in the notice of hearing, were confined to issues addressed in the notice. Thus, I find that adequate notice was given, and the board properly confined its factual findings to the issues contained in the notice of hearing.

The pupil also alleges that there was insufficient evidence to support the board's findings. Credibility and sufficiency of the evidence are beyond the scope of review of the State Superintendent. *Nancy Z. v. Janesville School District Board of Education*, Decision and Order No. 139 (May 23, 1986); *Taiwan O. W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992); *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); and, *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996). 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 pupil was alleged to have engaged in conduct, while at school, that endangered the health, welfare, and safety of students. 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).

There were many conflicts in the testimony presented. However, the board, as the fact finder, is in the best position to make credibility determinations. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111 N.W. 2d 198 (1961). See also *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985); *Nicole K. v. Janesville School District Board of Education*, Decision and Order No. 238 (September 16, 1994); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995).

Through the testimony of the witness, evidence was presented that Student A and Robert S. had discussions at school on December 14 and 16 concerning the procurement of a gun from Student A. There was also evidence presented that Robert S. wanted the gun to harm another student and/or to collect debts. Finally, there was evidence that an agreement was reached, while at school, between Robert S. and Student A to take the gun from Student A's father and that this was accomplished. Thus, there was evidence produced that support the school board's findings.

Finally, the pupil alleges that the expulsion period was unduly harsh. In support of his argument, he alleges that Student A was not expelled. The treatment of Student A is not relevant to my review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998).

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). Therefore, the length of the expulsion will not be addressed by the State Superintendent.

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

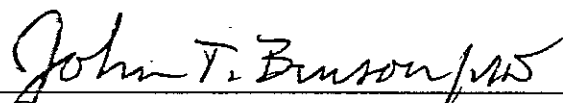
CONCLUSIONS OF LAW

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 Robert M. S [REDACTED] by the Milton School District School District Board of Education is affirmed.

Dated this 12th day of May, 1999.



John T. Benson
State Superintendent of Public Instruction