

## THE STATE OF WISCONSIN

BEFORE

## THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of  Nathan B. [REDACTED]  by the Delavan-Darien School District Board of Education	DECISION AND ORDER 98/99 EX 20
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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 18, 1999 order of the Delavan-Darien School District Board of Education to expel the above-named pupil through 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 May 26, 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 May 7, 1999, from the district administrator of the Delavan-Darien School District. The letter advised that a hearing would be held on May 17, 1999 that could result in the pupil's expulsion from the Delavan-Darien School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil, an eleventh-grade student at Delavan-Darien High School, 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 Nathan knowingly conveyed or caused to be conveyed a threat of false information concerning an attempt or alleged attempt which endangered the property, health, or safety of others at school on Tuesday, May 4, 1999. 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 17, 1999. The pupil and his parents appeared at the hearing represented by Attorney John Olson. 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 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 May 18, 1999, was

mailed separately to the pupil and his parents. The order stated the pupil was expelled through 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 one issue that requires consideration. The pupil argues that his acts did not constitute grounds for expulsion, as provided in sec. 120.13, Stats. In

essence, the pupil is alleging that there are insufficient facts to support the board's decision to expel. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *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. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *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).

At the expulsion hearing, the administration presented evidence that on Friday, April 30, 1999, a student found a note on the floor in the high school hallway between the study areas. The note was handwritten and was headed "People to Kill (May 4, 1999)." Underneath the heading, there were 14 names listed, including students and staff members of Delavan-Darien High School. The pupil's name was also included on the list as number nine. The pupil who found the note turned it over to a teacher. The teacher immediately brought the note to the administration. In conjunction with the School Liaison Officer and the Delavan Police Department, the administration began investigating the note to determine if it was a hoax. The investigation continued over the weekend and included interviews with students and handwriting comparisons. At noon on Monday, the administration decided that they could not

determine that the note was a hoax, so they proceeded to try to contact the people listed under "People to Kill." On Tuesday, because of the threat, the school intensified security by locking doors and increasing police patrol in the building and the parking lot. At least 358 students were absent on Tuesday because of concern that something was going to happen at school.<sup>1</sup>

On Tuesday, May 4, 1999, the police liaison officer was able to identify one of the writers of the list, and that person identified Nathan as a co-author of the list. Nathan was interviewed and admitted that he and three others wrote the note. He admitted that he intended that the note be found. He also admitted that he intended for the note to cause a disturbance in the school that would result in the school being closed.

The administration also presented a letter from Ms. Combs, a teacher listed on the "People to Kill" list. Attorney Olson objected to the letter. However, the board ruled that it would be considered. The letter outlined the trauma Ms. Combs suffered as a result of the incident. It was also revealed, through Nathan's testimony, that Ms. Combs was his Intermediate Composition teacher who had recently assigned a composition. Nathan chose, on April 24, 1999, to write about school violence. The administration also testified that several teachers, students, and parents had strong emotional reactions as a result of this incident.

The pupil argues this conduct did not endanger the health, property, or safety of others. The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages, or the chance of loss or injury or the capability of producing death or great bodily harm. These terms embrace the notion of harmful acts or actions that are detrimental or involve loss or damages. *Kirsten J. v. Mukwonago School District Board of Education*, Decision

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<sup>1</sup> The record makes mention of the "incident in Colorado". It should be noted that on April 20, 1999, two students entered Columbine High School in Littleton, Colorado, and killed 12 other students and one teacher.

and Order No. 185 (Feb. 21, 1992); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995); and *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (Nov. 25, 1996).

There is ample evidence to support the board's finding. The impact of this type of copycat incident cannot be ignored. In the weeks after the Columbine High School incident, school districts across the nation were faced with many copycat behaviors. While nearly all threats were empty or pranks, there were a few that were not. Much like the boy who cried "wolf", any time a school district ignores a threat to its staff, pupils, or school, there is a risk that it is not a prank. While Nathan may not have intended to carry out the threats, the mere threat endangered the safety, property, and health of others.

The anxiety and trauma felt by people on the list, as described by Ms. Combs in her letter, show how the health and safety of others was endangered. She was informed on Monday afternoon that she was on the list. She spent a sleepless night frightened by the idea that the list was not a prank. She worried about the safety of herself and her family. She mustered the courage to return to work on Tuesday morning. She had to kiss her husband and children good-bye, not knowing if she was going to be the target of someone's violence or not. While at school, she was constantly on guard, jumping at every loud noise. It was not until noon, when she learned that the people who wrote the note had been found, that she was able to feel safe. The incident continued to impact her life and work performance.

In addition to affecting the people on the hit list, the actions of Nathan and his cohorts endangered the health and safety of every student at Delavan-Darien High School. Many students did not attend school on the Tuesday following discovery of the hit list. Their safety was endangered. The law enforcement resources devoted to the high school after discovery of

the hit list undoubtedly reduced the resources available to respond to other health and safety matters in the community.

Furthermore, I have upheld other expulsions when only the threat of harm is present. *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383, (May 27, 1999), and *Robert S. v. Milton School District Board of Education*, Decision and Order No. 380, (May 12, 1999).

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

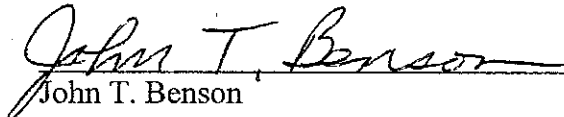
#### CONCLUSIONS OF LAW

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 Nathan B [REDACTED] by the Delavan-Darien School District Board of Education is affirmed.

Dated this 23rd day of July, 1999.

  
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John T. Benson  
State Superintendent of Public Instruction

Parties to this appeal are:

Nathan B. [REDACTED]  
[REDACTED]  
[REDACTED]

Mr. and Mrs. [REDACTED] B. [REDACTED]  
[REDACTED]  
[REDACTED]

John O. Olson  
716 Wisconsin Street  
Lake Geneva, WI 53147

William Reis, District Administrator  
Delavan-Darien School District  
324 Beloit Street  
Delavan, WI 53115

Edward Thompson  
617 East Walworth Avenue  
Delavan, WI 53115



## **APPEAL RIGHTS**

Section 120.13(1)(c), Wis. Stats., specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of sec. 227.53, Wis. Stats., is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

COPIES MAILED TO:

Nathan B [REDACTED]  
[REDACTED]  
[REDACTED]

Mr. and Mrs. [REDACTED] B [REDACTED]  
[REDACTED]  
[REDACTED]

John O. Olson  
716 Wisconsin Street  
Lake Geneva, WI 53147

William Reis, District Administrator  
Delavan-Darien School District  
324 Beloit Street  
Delavan, WI 53115

Edward Thompson  
617 East Walworth Avenue  
Delavan, WI 53115

John T. Benson  
State Superintendent

Steven B. Dold  
Deputy State Superintendent

Robert J. Paul, Chief Legal Counsel  
Office of Legal Services

Sheri Berkani, Attorney  
Office of Legal Services