

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of  Damis M [REDACTED]  by the Cadott School District Board of Education</p>	<p>DECISION AND ORDER 98/99-EX-27</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 June 8, 1999, order of the Cadott School District Board of Education to expel the above-named pupil, an eighth grader, from the Cadott School District through the 2000-01 school year. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on June 23, 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 17, 1999, from the district administrator of the Cadott School District. The letter advised that a hearing would be held on June 2, 1999 that could result in the pupil's expulsion from the Cadott 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 Damis threatened the well being, health, and safety of students, school staff, and school board members with a "kill list" that was discovered on May 10 and 11. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are also part of the record.

The hearing was held in closed session on June 2, 1999. The pupil and his parents appeared at the hearing represented by Attorney Steven Gibbs. 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 June 8, 1999, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2000-

01 school year. The order also provided for early readmission at the beginning of the 2000-01 school year if certain counseling conditions were met.

## 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 two issues that require consideration. First, the pupil alleges that the findings of fact do not constitute conduct that actually endangered the property, health, or safety of others as required by sec. 120.13(1)(c), Stats. The board found, based upon testimony presented at the hearing, that:

1. At approximately 1:00 p.m. on May 11, 1999, two eighth grade students came to the principal's office and reported to the principal, Mr. Schultz, that Damis, another eighth grade student, was threatening to kill other students.
2. According to one of the students, Damis showed him a list at about 11:45 that morning. Damis told the student he intended to kill the people whose names appeared on the list. This student also stated his name was originally on the list but had been subsequently removed.
3. These two students told a third student about the list. The third student asked to see the list. The student took the list from Damis and turned it over to Mr. Schultz.
4. Mr. Schultz interviewed Damis. At first, Damis denied writing the list but ultimately admitted that he wrote it.
5. Even though Damis told Mr. Schultz he did not intend to harm anyone, Mr. Schultz felt compelled to alert all of the people listed on the kill list.
6. At the hearing, Damis told the school board he did not intend to harm anyone and the list was a way of expressing anger.

In addition to these findings of fact, Mr. Schultz testified that because of the temperament in the nation he needed to take the situation seriously. Testimony referred to the several high profile school violence incidents that occurred in the weeks before Damis made the list. The school administration testified that, due to this situation, students and others were fearful when they

found out about the kill list. There was also information provided that at least one parent removed his child from school after learning the child was on the kill list. Damis admitted that the people he put on his list were people who have teased him or made him mad.

The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages, 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 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,<sup>1</sup> school districts across the nation were faced with many copycat behaviors. While nearly all threats were empty or pranks, a few 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 Damis may not have intended to carry out the threats, the mere threat endangered the safety, property, and health of others.

Furthermore, I have upheld other expulsions when only the threat of harm is present. *Nathan B. v. Delavan-Darien School District Board of Education*, Decision and Order No. 391 (July 23, 1999); *Matthew R. v. Burlington Area School District Board of Education*, Decision

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<sup>1</sup> On April 20, 1999, two students entered Columbine High School in Littleton, Colorado, and killed 12 other students and one teacher. This case received extensive national attention.

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).

The pupil also argues that he was denied equal protection because other pupils who have made threats have not been expelled. Because it is presumed that each pupil's situation is different, the disciplinary treatment of other students 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). Furthermore, it has repeatedly been held that the decision to expel a pupil and 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 reviewing the record in this case, I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

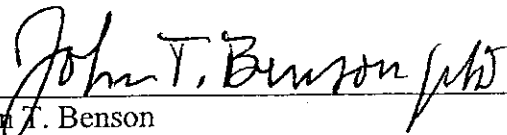
### CONCLUSIONS OF LAW

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 Damis M [REDACTED] by the Cadott School District Board of Education is affirmed.

Dated this 20th day of August, 1999.

  
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John T. Benson  
State Superintendent of Public Instruction