

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Kevin R. [REDACTED]</p> <p>by the Beaver Dam Unified School District Board of Education</p>	<p>DECISION AND ORDER 98/99 EX 29</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 4, 1999 order of the Beaver Dam Unified School District Board of Education to expel the above-named pupil from the Beaver Dam Unified School District through the 1999-2000 school year. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on July 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 May 25, 1999, from the district administrator of the Beaver Dam Unified School District. The letter advised that a hearing would be held on June 3, 1999 that could result in the pupil's expulsion from the Beaver Dam Unified School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil knowingly conveyed a threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives. The letter specifically alleges that Kevin knowingly conveyed false information concerning an explosive by writing a bomb threat on a cafeteria table. Minutes of the school board expulsion hearing, an audiotape of the expulsion hearing, and a transcript of the hearing are also part of the record.

The hearing was held in closed session on June 3, 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, his parents, and his attorney 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 knowingly convey a threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives. 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 4, 1999, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 1999-2000 school year. The order allowed the pupil to complete his

1998-99 school year and the first quarter of the 1999-2000 school year through homebound instruction. It also allowed Kevin to request early readmission at the conclusion of the first quarter 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's attorney alleges that the facts do not support a finding that Kevin made a bomb threat that threatened to destroy property. 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).

The evidence presented to the board showed that on May 24, 1999, Kevin wrote a message on a school cafeteria table during his first hour study hall. He admitted that he wrote, "There is a bomb in Mr. Anderson's room and it will go off during 6th hour." As he wrote this, he said the words aloud to two other students sitting at the table. Kevin then erased the "'s room" but left the remainder of the message. The teacher in the cafeteria had the three students move so that she could see them. Kevin did not erase the message. Another teacher found the message later in the morning. Administration was notified and Mr. Anderson's sixth hour class was moved to another location while a search of the room was conducted. No bomb was found. In

the course of investigating the threat, Kevin was interviewed. At first he denied writing the statement, but eventually he admitted his conduct. The board was also informed that there had been several bomb threats in the school district between May 14 and May 24. Even though Kevin stated, after he was caught, that the threat was a joke, the school was reasonable in concluding that it should take the threat seriously.

The pupil's attorney argues that because the message found by the teacher, "There is a bomb in Mr. Anderson...it will go off during 6th hour," does not threaten the property of another, it does not meet the statutory requirement for expulsion purposes. Sec. 120.13(1)(c)1., Stats., allows a school board to expel a pupil if it finds that a pupil knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives. A reasonable view of the evidence supports the school board's finding that Kevin's conduct met these criteria. Kevin's threat conveyed false information about an alleged attempt to be made to destroy school property. Kevin's statement filled in the blanks that he had erased. There is no doubt that the original statement said a bomb was in Mr. Anderson's room. Even if the school board was left with only the "redacted" message left by Kevin, it was reasonable to conclude that if someone put a bomb in Mr. Anderson (such as slipping it in his pocket) and if the bomb detonated, it would cause damage to school property.

In his brief, the pupil's attorney raises two other issues. First, he claims that the school board expelled Kevin pursuant to a board policy enacted on May 25, 1999.¹ There is no evidence in the record, however, that the board's decision to expel Kevin was prompted by the May 25,

¹ The board's policy adopted on May 25, 1999 informs pupils that in the future, all bomb threats will result in expulsion. Prior to this policy it is assumed that the board *may* expel in a case involving a bomb threat.

1999 policy. Rather, the board proceeded to expel Kevin based upon the state law that allows expulsions in such circumstances. Sec. 120.13(1)(c)1., Stats.

The second issue raised in the pupil's brief alleges that the expulsion was unduly harsh. 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.

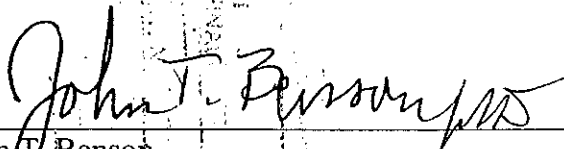
CONCLUSIONS OF LAW

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 Kevin R. by the Beaver Dam Unified School District Board of Education is affirmed.

Dated this 13th day of September, 1999.



John I. Benson
State Superintendent of Public Instruction