

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Jacob ██████████ by the Greenfield School District Board of Education</p>	<p>DECISION AND ORDER 99/00-EX-01</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 May 25, 1999 order of the Greenfield School District Board of Education to expel the above-named pupil from the Greenfield School District through June 9, 1999. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on October 11, 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 20, 1999, from the assistant district administrator of the Greenfield School District. The letter advised that a hearing would be held on May 25, 1999 that could result in the pupil's expulsion from the Greenfield School District until his 21st birthday. 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 on Friday, May 7, 1999, and on previous occasions, Jacob stated that he had access to guns and could and would use those weapons to kill another student. 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.¹

The hearing was held in closed session on May 25, 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 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 25, 1999, was

¹ The transcript was actually prepared on behalf of the pupil.

mailed separately to the pupil and his parents. The order stated the pupil was expelled through June 9, 1999.

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.

Both parties submitted briefs on this appeal. In his brief, the pupil raised two issues that require consideration. First, the pupil alleges that the board improperly relied solely on hearsay evidence. Secondly, the pupil alleges that there is insufficient evidence to support a finding that his conduct endangered the property, health or safety of others.

At the hearing, the school district presented its case through the use of statements written by students who had witnessed Jacob's comments and behaviors. None of these students testified. These statements are hearsay. Hearsay is permitted at expulsion hearings. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985).

Additionally, Jacob testified at the expulsion hearing. His testimony corroborated certain parts of the student witness statements. His testimony was not hearsay. He admitted that a conversation took place with four other students, at school. He admitted that one of the other students, a girl, was getting irritated with him. As she got more irritated with him, she became angry and told him "I could beat you up right now and , you know, make you move to a different table." Jacob admitted that he told her "Not until she lifts my gun from my cold dead body." He also admitted to telling the other four students that if a robber broke into his house, he would shoot the robber, even if it were one of the four students. The board could use Jacob's own statements when evaluating the evidence. Therefore, the board did not rely solely on hearsay.

Whether or not there is sufficient evidence to support the board's finding that Jacob's conduct endangered the health, safety or property of other is generally beyond the scope 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); *Taiwan O. W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992); and, *Nancy Z. v. Janesville School District Board of Education*, Decision and Order No. 139 (May 23, 1986). 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).

Jacob threatened the girl in the conversation referenced above. His comment, "Not until she lifts my gun from my cold dead body," implies that if the girl were to attempt to make him move or use force to make him move that he would use a gun to stop her. It is not error for the board to conclude that his implied threat of harm with a gun endangered the safety of students. 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 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). While this threat may not have been as ominous as that which other school boards have faced, it is apparent that the Greenfield School Board realized this. The board judiciously exercised its discretion by expelling Jacob for a short period of time - May 25 to June 9.

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

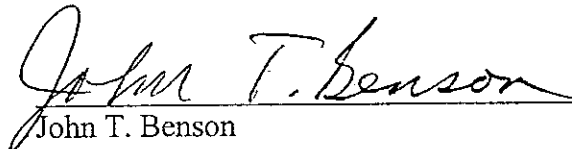
CONCLUSIONS OF LAW

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 Jacob [REDACTED] by the Greenfield School District Board of Education is affirmed.

Dated this 3rd day of January, 2000.



John T. Benson
State Superintendent of Public Instruction