THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Alec J. [redacted] by Hartford Jt. #1 School District Board of Education	DECISION AND ORDER Appeal No.: 99/00 EX 02

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 order of the Hartford Jt. #1 School District Board of Education to expel the above-named pupil from the Hartford Jt. #1 School District. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on November 10, 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 district administrator of the Hartford Jt. #1 School District. The letter advised that a hearing would be held on June 1, 1999 that could result in the pupil's expulsion from the Hartford Jt. #1 School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority that endangered the health and safety of students and staff and that he repeatedly violated school rules. Specifically, the notice alleged that on Thursday, May 13, 1999 the pupil placed a list and live ammunition in the school that threatened the lives of five teachers and four students. A list of rule violations that the district alleged Alec had engaged in was attached to the notice of hearing. The minutes of the school board expulsion hearing and a transcript of the hearing are also part of the record.

The hearing was held in closed session on June 1, 1999. The pupil and his parents appeared at the hearing without 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 board also found that Alec repeatedly violated school rules. 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 9, 1999, was mailed separately to the pupil

and his parents. The order stated the pupil was permanently expelled, however he could apply for readmission after August 1, 2001.

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 two issues that require consideration. First, the pupil alleges that the length of the expulsion is excessive. The State Superintendent has repeatedly held that harshness and severity of discipline are matters that lie within the discretion of the school board as long as all the procedural requirements of sec. 120.13(1)(c), Wis. Stats., are complied with. *Jesse P. v. Hustaford School District Board of Education*, Decision and Order No. 293 (June 10, 1996), *Travis M v. Tri County School District Board of Education*, Decision and Order No. 241 (December 8, 1994) and *Kristin J.P. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (February 21, 1992).

Secondly, the pupil alleges that no alternative source of education has been offered by the school district. While the Department of Public Instruction encourages districts to provide alternative education to expelled students, such a program is not required. *Dale C. v. Central/Westosha School District Board of Education,* Decision and Order No. 137 (May 15, 1986); *Richard S. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 145 (September 5, 1986); *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989); *Barry W. v. Kenosha Unified School District Board of Education,* Decision and Order No. 220 (March 7, 1994).

In his letter brief, the pupil alleges that there was "scant" evidence to support the findings of the board. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of 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), 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. *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 administration presented evidence that administration found a handwritten note stating "All the f------- at Central are going to die". The note also listed several teachers and students by name. The note was found on May 13 on the school's book drop. There was live ammunition duct-taped to the note. The administration summarized the police investigation for the board. The police investigation included fingerprints on the note that matched Alec and a handwriting analysis of the note that matched Alec. Duct tape that was similar to the kind used to attach the ammunition to the note was found in Alec's bedroom. Next to the tape, a pair of scissors was found. The tape that was used on the note had been cut, not torn. The board also read the witness statements of people who had seen Alec near the book drop during the time the note was left there as well as the statement of a person who heard Alec say he "I did it". Alec testified at the hearing and denied placing the note at school. He admitted, however, that the paper, the duct tape and the ammunition were his. The board was left with the job of sorting through the evidence.

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). Contrary to the pupil's assertion, there was more than "scant" evidence of his guilt. The board's findings are reasonable.

The pupil also points out that no witnesses were called to "enable any questioning as to the preparation of and content of such reports." However, 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). Furthermore, I have repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education,* Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education,* Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

Finally, the pupil alleges that there was predetermination of guilt. He references a comment by the board's attorney during the introductory phase of the hearing to substantiate this allegation. The comment is taken out of context, however. When the entire introduction is read, it is clear that the board's attorney apprised both the pupil and the administration of the procedure that would be followed during the hearing. She spent considerable time explaining that each side can present his case and use closing arguments. There is no evidence that the members of the school board had prejudged the case. The pupil also points out that much of the transcript is concerned with Alec's prior misconduct. Because the administration charged Alec with repeated

violations of school rules and provided adequate notice that they would be considered, it was appropriate for the administration to reference them during the presentation of the case.

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 Alec J. [redacted] by the Hartford Jt. #1 School District Board of Education is affirmed.

Dated at Madison, Wisconsin on the 2nd day of January, 2000.

John T. Benson

John T. Benson
State Superintendent of Public Instruction