THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Will F. by Lake Holcombe School District Board of Education	DECISION AND ORDER Appeal No.: 99/00 EX 04

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Stats., from the order of the Lake Holcombe School District Board of Education to expel the above-named pupil from the Lake Holcombe School District. This appeal was filed by the pupil and was received by the Department of Public Instruction on December 27, 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), 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 October 1, 1999, from the district administrator of the Lake Holcombe School District. The letter advised that a hearing would be held on October 13, 1999 that could result in the pupil's expulsion until his 21st birthday from the Lake Holcombe School District. The letter was sent separately to the pupil and his parents by certified 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 September 29, 1999, when he cast his vote for Homecoming King and Queen he wrote a threatening remark to kill other students on the ballot. Minutes of the school board expulsion hearing and an audiotape[1] of the expulsion hearing are also part of the record.

The hearing was held in closed session on October 13, 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 engaged 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

[1] The pupil's attorney complains about the adequacy of the audiotape. While the audiotape or transcript is very helpful in my review, it is not required. The statute only requires that the board keep minutes. While there is no statutory explanation of how detailed hearing minutes must be, previous decisions by the State Superintendent have outlined minimum requirements. The record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996). Because the board took adequate minutes, the quality of the audiotape is not relevant.

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 October 15, 1999, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through 2000/2001 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), 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), 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 three issues requiring consideration. The pupil's attorney alleges that there was insufficient evidence to prove the pupil endangered the property, health or safety of others; that the punishment was too severe; and, that if the expulsion is affirmed, that the state superintendent must order the district to provide alternative education for the pupil at the district's expense.

First, the pupil's attorney alleges that there is no evidence in the record that the pupil's conduct met the criteria set forth in sec.120.13(c), Stats.[2] 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 findings state the facts of this case, as found by the board. On September 29, 1999 the students cast ballots for the Homecoming King and Queen. The ballots were collected and

[2] He also argues that the findings contained an irrelevant statement concerning the pupil's state of mind. The pupil's argument is without merit. The board found that "whatever Will F... true intentions may have been at the time of this incident, the specter of a would-be killer in their midst created..." The Board was simply pointing out that they were not using the pupil's state of mind in judging this matter.

were tallied by the guidance counselor that evening when she discovered that one ballot had no candidate indicated. Instead someone had written diagonally across the ballot "None, I kill them all." The next day she reported the death threat to Mr. Lapp.[3] As a result of the threat, Mr. Lapp cancelled the Homecoming activities, called the police and began an internal investigation to find the perpetrator. Through his investigation, Mr. Lapp suspected Will. The handwriting on the ballot was compared to the Will's handwriting on a written assignment. When summoned into the principal's office, Will admitted that he wrote the death threat. The pupil further stated that he had no intention of carrying out the threat. However, this threat caused great fear and apprehension in the minds of many of the other students. School operations were disrupted and the learning environment of the school was adversely affected.

It is not error for the board to conclude that his implied threat to "kill them all" endangered the safety of students. I have repeatedly upheld expulsions when only the threat of harm is present. *Jacob B. v. Greenfield School District Board of Education*, Decision and Order No. 404 (January 3, 2000); *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); *Robert S. v. Milton School District Board of Education*, Decision and Order No. 380, (May 12, 1999).

Second, the pupil's attorney alleges that the punishment is excessive. Since the authority to "approve, reverse or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, sec.3, the state superintendent has consistently declined to modify the length

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[3] There is apparently a scrivener's error in the findings. The findings state that the students' ballots were cast, collected and counted on Wednesday, September 29, 1999 and in paragraph 4, the findings state that at the start of school on Thursday September 23, 1999, Ms. VanDoorn reported the death message. It is apparent from reading the findings that the actions are listed chronologically, in the order of occurrence. Neither of the parties reported this discrepancy in their briefs. The date in paragraph 1 is consistent with the date in the Notice of Expulsion Hearing so this error is not significant to my review.

of expulsions. *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). The school board is in the best position to judge the demeanor of witnesses as well as to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In reviewing this case, I do not see the extraordinary circumstance or procedural violation that cause me to modify the pupil's expulsion period.

Third, the pupil's attorney alleges that if the state superintendent affirms the expulsion order, that he must order to school district to provide alternative education for the pupil, at the district's expense. The pupil's attorney claims that by not providing an "alternative education" for a pupil who is expelled that the pupil is being denied a right to an education under the Wisconsin Constitution. He also argues that the district has an obligation under sec.118.15, Stats., to educate all students within its district.

During the period of expulsion from a Wisconsin public school under sec. 120.13(1)(c) or 119.25, the pupil's **right** to a public education pursuant to the Wisconsin Constitution is suspended. For example, school districts have authority to refuse to accept any student during the term of an expulsion from another school district. Sec. 120.13(1)(f), Stats.

A school district has the discretion to offer alternative education. While the Department of Public Instruction encourages districts to provide alternative education to expelled students, such a program is not required. *Matt L. v. Merrill Area Public School District Board of*

Education, Decision and Order No. 381 (May 19, 1999); *Barry W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 220 (March 7, 1994); *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989); *Richard S. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 145 (September 5, 1986); *Dale C. v. Central/Westosha School District Board of Education*, Decision and Order No. 137 (May 15, 1986). Therefore, I do not have the authority to grant the pupil's request.

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

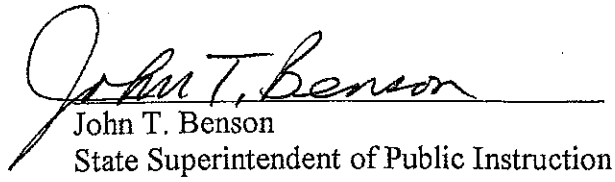
CONCLUSIONS OF LAW

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), Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of the pupil by the Lake Holcombe School District Board of Education is affirmed.

Dated at Madison, Wisconsin on February 21, 2000.



John T. Benson
State Superintendent of Public Instruction