

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Todd M. G .

by the Wonewoc-Union Center School  
District Board of Education

DECISION AND ORDER

Appeal No.: 99/00 EX 13

**NATURE OF THE APPEAL**

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the Wonewoc-Union Center School District Board of Education to expel the above-named tenth-grade pupil from the Wonewoc-Union Center School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 14, 2000.

In accordance with the provisions of Wis. Adm. Code § PI 1.04(5), 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 § 120.13(1)(c). 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 March 2, 2000, from the superintendent of the Wonewoc-Union Center School District. The letter advised that a hearing would be held on March 7, 2000 that could result in the pupil's expulsion through the pupil's 21<sup>st</sup> birthday. The letter was sent separately to the pupil and his parents by certified mail. The letter specifically alleged that on February 27, 2000, the pupil "sent an e-mail to Mrs. Jane Robinson, a Teacher in the Wonewoc-Union Center School District which threatened her life." The minutes of the school board expulsion hearing, a copy of the March 2, 2000 Notice of Expulsion Hearing, a copy of the March 7, 2000 letter correcting a typographical error in the March 2 letter, and an unsigned, undated copy of the Findings and Order of Pupil Expulsion are part of the record

The hearing was held in closed session on March 9, 2000. The pupil and his parents appeared at the hearing without counsel. At the hearing, the school principal, Mike Donnelly, presented evidence concerning the grounds for expulsion. The pupil and his parents were given the opportunity to present evidence, cross-examine witnesses, and respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found that 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, and the pupil endangered the property, health, or safety of an employee of the school district in which the pupil is enrolled. The school board further found that the interests of the school demand the student's expulsion. The order stated that the pupil was expelled through the remainder of the 1999-2000 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 § 120.13(1)(c), 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 § 120.13(1)(c). 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.

Because the board did not comply with the notice requirements of §120.13(1)(c)4., I am compelled to overturn the expulsion. It has long been precedent in these cases that the notice requirements of the statute are mandatory in nature, and failure to comply with the statutory requirement renders the expulsion void. See *Telsea M. v. East Troy Community School District*

*Board of Education*, Decision and Order No. 408 (February 24, 2000); *Ryan G. v. Sparta Area School District Board of Education*, Decision and Order No. 325 (May 19, 1997); *Christopher K. v. West Allis School District Board of Education*, Decision and Order No. 166 (April 18, 1990); and *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 143 (July 2, 1986).

Section 120.13(1)(c)4. requires that not less than five days written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The **notice shall state all** of the following:

... The specific grounds, under subd. 1., 2., or 2m., and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based...

While the notice advised the pupil what specific conduct it considered to be a violation of school policy, it did not identify the specific grounds under subd. 1., 2., or 2m. that was violated. In *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214, (December 21, 1993), my predecessor stated in a case involving the bringing of marijuana and alcohol to school:

Further, **the statutory basis for the expulsion must be reflected in the notice of expulsion hearing**, must be supported by evidence in the record, and must be reflected in the ultimate findings of the board. Citing *John K. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 178 (May 17, 1991).

Thus, the failure to include the statutory basis for the expulsion requires me to overturn the expulsion.

The appeal letter in this case raises two issues. The pupil challenges the timeliness of the hearing notice and the sufficiency of the evidence. However, because the expulsion is overturned due to an error in the notice, it is not necessary to address these issues.

The reversal of this expulsion does not condone the pupil's conduct. Threats are considered very serious conduct that endangers the health and safety of others. See

§ 120.13(1)(c)1. (Conduct that endangers a person includes making a threat to the health or safety of others.) See also *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). The board may cure the error by providing proper notice of the expulsion hearing, re-hearing the expulsion, and providing proper notice of the expulsion decision.

In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. I, therefore, overturn this expulsion.

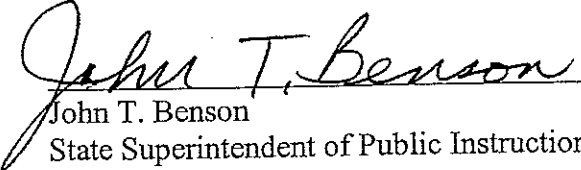
#### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of § 120.13(1)(c).

#### ORDER

IT IS THEREFORE ORDERED that the expulsion of Todd M. G by the Wonewoc and Union Center School District Board of Education is overturned.

Dated at Madison, Wisconsin on June 13, 2000.

  
John T. Benson  
State Superintendent of Public Instruction

### **APPEAL RIGHTS**

Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.