Decision and Order No.: 419

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Jamie L. W by Hudson School District Board of Education	DECISION AND ORDER Appeal No.: 99/00 EX 15

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 Hudson School District Board of Education to expel the above-named tenth-grade pupil from the Hudson School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 21, 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 February 18, 2000, from the district administrator of the Hudson School District. The letter advised that a hearing would be held on February 23, 2000 that could result in the pupil's expulsion from the Hudson School District through her 21st birthday. On February 18, 2000, the district sent the letter separately to the pupil and her parents by certified mail. The letter was also hand-delivered to Jamie on February 18, 2000. 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 also alleged that she "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." The letter specifically alleged that on February 15, 2000 she assisted another student in placing a bomb threat in the girls' restroom at school and that on February 16, 2000 she threatened to harm another student who Jamie suspected of being a witness to the bomb threat.

Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are part of the record. The hearing was held in closed session on February 23, 2000. The pupil and her sister[1] appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her sister were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

[1] Jamie's sister appeared in place of her parent because Jamie's father granted her power of attorney for Jamie's school related issues.

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 that she "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." 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 February 24, 2000, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the 2002-2003 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 § 120.13(1)(c), 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 § 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.

The appeal letter in this case raises three issues. The pupil challenges the adequacy of the notice of expulsion hearing and the adequacy of the findings of the board. She also alleges that she was told that she did not need an attorney at the expulsion hearing.[2] In a brief subsequently filed by the pupil, she raises several other issues that will be addressed below.

The pupil alleges that the school district failed to present proof of timely mailing of the notice to the board at the expulsion hearing on February 23, 2000. While the school board must submit evidence that the notice of hearing was timely mailed when an expulsion is appealed to the state superintendent, there is no requirement that the school district provide specific proof of mailing at the expulsion hearing. It is clear, from the information provided by the school board, that notices were mailed to Jamie and both of her parents on February 18, 2000. Additionally, the district administrator testified that the notice of expulsion hearing was hand delivered to Jamie on February 18 and mailed to Jamie, her father and her mother. Jamie also alleges that the notice to her mother was mailed to the wrong address. The district administrator testified that the notice was mailed to the mother's last known address. That is sufficient. *Kyle W. v. Viroqua Area School District Board of Education*, Decision and Order No. 413 (April 27, 2000)

---

[2] This argument was raised only in the appeal letter and never again mentioned by the pupil's attorney in the subsequent brief and reply brief. Whether or not the principal told Jamie that she did not need a lawyer cannot be determined from the hearing record. The notice of expulsion hearing advised Jamie of her right to counsel. Furthermore, Jamie did not complain of this at the expulsion hearing, nor did she request an adjournment to get an attorney after she saw that the school had an attorney. This undeveloped argument does not require reversal of the expulsion order.

The pupil also alleges that there was no proof submitted to the board that Jamie received the school handbook prior to her actions in February. Neither the state superintendent nor the courts have ever required a school district to provide proof that the pupil was advised of the school policy or rules when the expulsion was based on a bomb threat or conduct endangering the property, health or safety of others. The only time the district has been required to prove the pupil's receipt of the school policy is when the pupil was charged with repeated violation of school rules. See e.g. *Jesse M. K. v. Tri County Area School District Board of Education*, Decision and Order No. 266 (January 2, 1996); *Hope B. v. Randolph School District Board of Education*, Decision and Order No. 225 (April 12, 1994); *Antonio M. v. Kenosha Unified School District Board of Education*, Decision and Order No. 176 (April 18, 1991).

The pupil also attacks the sufficiency of the evidence to support her expulsion. 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).

During the investigation, Jamie gave a written statement. She stated that on February 15, 2000, while she and another student were in the girls' bathroom at the high school, the other student asked her for a writing utensil. Jamie gave her a permanent black marker. The other student then went into the bathroom stall and told Jamie she was writing a bomb threat. The other student wrote:

12:45
2/15/00
bomb

on the inside of the bathroom stall. The school was evacuated due to the bomb threat. The district also presented evidence that the following day Jamie threatened a student who Jamie believed had reported them. A reasonable view of the evidence supports the board's determination that this conduct constituted grounds for expulsion under the two grounds included in the notice and the order.

The pupil complains that this evidence was based upon hearsay because the victim of the threats did not testify. 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). The information concerning the threats was related by the investigating police officer and school officials, based upon interviews with the victim of the threats and others. It was proper for the board to consider this information.

Finally, the pupil argues that her expulsion should be overturned because the expulsion order incorrectly states that her parents were present at the expulsion hearing. It is clear that the reference to the parents being present was erroneous. However, the pupil provides no support for her suggestion that this error requires the state superintendent to overturn the expulsion. This error has no significance to the statutory requirements contained in §120.13(1)(c). I recommend that the board correct this error in its order.

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

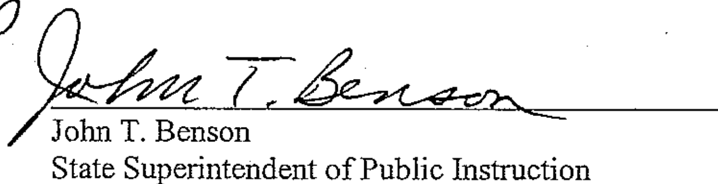
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did comply with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jamie L. W by the Hudson School District Board of Education is affirmed.

Dated at Madison, Wisconsin on June 15, 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.