

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>T M</p> <p>by New Richmond School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 05-EX25</p>
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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 New Richmond School District Board of Education to expel the above-named pupil from the New Richmond School District. This appeal was filed by the pupil and received by the Department of Public Instruction on July 28, 2005.

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 May 3, 2005, from the district administrator of the New Richmond School District. The letter advised a

hearing would be held on May 18, 2005 that could result in the pupil's expulsion from the New Richmond School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents. 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 or that the pupil knowingly conveyed or caused to be conveyed a threat or false information concerning and 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 March 30, 2005, the pupil wrote a bomb threat at the middle school.

The hearing was held in closed session on May 18, 2005. The pupil and his parents appeared at the hearing represented by an attorney. 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 and or that the pupil knowingly conveyed or caused to be conveyed a threat or false information concerning and 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 May 31, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2006-07 school year with an opportunity for early

readmission at the start of the 2006-07 school year. An audiotape of the expulsion hearing is part of the record.

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.

The appeal letter in this case raises one issue for consideration. The pupil, through his attorney, claims that he was denied due process because there was false testimony presented at the expulsion hearing. Specifically, the pupil alleges that the public officer falsely testified about handwriting examples. After review of the hearing of the tape, it is apparent that the issue of the reliability of the handwriting analysis that was used to determine that the pupil wrote the bomb threat was raised and addressed by both parties and considered by the school board. The pupil, through his attorney, attacked the credibility of the handwriting analysis. However, the board, in its findings, chose to believe that the testimony proved the pupil wrote the bomb threat. Now the pupil makes an unsubstantiated claim that the testimony was actually false, not just unreliable.

There is no cause to upset the board's findings based on this claim. 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 board is in the best position to resolve any conflicts in testimony. Similarly, it is within the board's discretion to give weight to the evidence and arguments, as it deems appropriate and to judge the credibility of witnesses. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111N.W. 2d 198 (1961). See also *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395 (August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of*

Education, Decision and Order No. 130 (May 10, 1985). It was reasonable for the board to conclude that the pupil wrote the bomb threat.¹

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 T M by the New Richmond School District Board of Education is affirmed.

Dated this 26th day of September, 2005.



Anthony S. Evers, Ph.D.
Deputy State Superintendent of Public Instruction

¹ If the pupil has actual evidence that the handwriting analysis was falsified, he may petition the board to reconsider its decision. The board may chose to reconsider the case. There is no statutory authority, however, to require the board to reconsider. Nor is there statutory authority to appeal the board's decision whether to reconsider to the State Superintendent.

