

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>S. B.</p> <p>by Gilmanon School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 06-EX-06</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 Gilmanon School District Board of Education to expel the above-named pupil from the Gilmanon School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 6, 2006.

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 January 9, 2006, from the district administrator of the Gilmanon School District. The letter advised a

hearing would be held on January 16, 2006 that could result in the pupil's expulsion from the Gilmanton School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in conduct while not at school or not under the supervision of school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority. The letter specifically alleged that on December 28, 2005, the pupil made a statement from his home computer threatening to bring a gun to school and kill a specific student and others at school.

The hearing was held in closed session on January 16, 2006. 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 not at school or not while under the supervision of a school authority which endangered the property, health, or safety of others at school or under the supervision of school authorities. 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 January 19, 2006, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil's 21st birthday, with an opportunity for early readmission at the beginning of the 2007-08 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.L.*, 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 alleges that the school board had no basis to expel the pupil because the conduct did not occur at school. The school board acted within its authority to expel the pupil for his behavior. From his home computer, the pupil threatened to bring a gun to school and kill students. While his behavior did not occur at school, it clearly endangered the property, health

or safety of pupils at school. That is precisely what the Wisconsin law allows. Wis. Stats.

§120.13(1)(c)1. states that:

“The school board may expel a pupil from school whenever it ...finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority....In this subdivision, conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property.”

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.

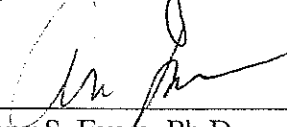
CONCLUSIONS OF LAW

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 S B by the Gilmanton School District Board of Education is affirmed.

Dated this 1st day of May, 2006.



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