

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>R. N.</p> <p>by Kiel Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 07 EX 16</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 Kiel Area School District Board of Education to expel the above-named pupil from the Kiel Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 29, 2007.

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 17, 2007, from the district administrator of the Kiel Area School District. The letter advised a hearing would be held on May 29, 2007 that could result in the pupil's expulsion from the Kiel Area School District

through the pupil's 21st birthday. The letter was sent separately to the pupil and her 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 May 14, 2007, the pupil wrote a bomb threat and placed it in the bathroom in the high school.

The hearing was held on May 29, 2007. The pupil and her parents appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parents were given an 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. 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 June 4, 2007, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the 2010-2011 school year. In addition, the school board ordered the school administration to provide her the support services needed to complete the fourth quarter of the 2006-07 school year and make academic services available to her through the eSchool to enable her to fulfill her graduation requirements. The board also provided a process for the pupil to obtain a diploma from the school district. Minutes of the expulsion hearing are 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 seems to allege that the pupil's educational records are not complete. It appears that the parent believes additional or different documentation should be in the pupil's file. The state superintendent does not have authority to resolve this dispute. The parent may, under the Family Educational Rights and Privacy Act, 20 USC 1232(g) and 34 CFR 99, have an option to request the school district to amend the pupil's educational records. This request must be made to the school district, not the state superintendent. See 34 CFR 99.20 -99.22.

If, on the other hand, the parent is alleging that the board did not receive the correct information at the hearing, then it is an argument concerning sufficiency of the evidence. 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 pupil was given an opportunity to provide her version of what occurred; including any motivations that she believed mitigated her conduct. She was also given an opportunity to cross examine witnesses, present her own witnesses, and testify. The board was in the best position to resolve any conflict in testimony and evidence. 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, 111 N.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).

The parent also appears to allege that there were insufficient facts to support the finding that the pupil's misconduct endangered the property, health, or safety of others. The pupil admitted to writing part of a bomb threat and leaving it in the bathroom at school. The bomb threat said "There is a bomb on May 14-07. Starting at 12. This skool is burning down." The law specifically states that making a threat to the health or safety of a person or making a threat to damage property is conduct that endangers a person or property. See Wis. Stats. 120.13(1)(c)1. Therefore, there a reasonable view of the evidence supports the board's finding.

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 R: _____ N: _____ by the Kiel Area School District Board of Education is affirmed.

Dated this 28th day of August 2007.



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