

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
AKIDA B [REDACTED]
by the Board of School Directors of the
City of Milwaukee

DECISION
AND
ORDER
93-EX-06

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the order of the Board of School Directors of the City of Milwaukee to expel Akida B [REDACTED] from the Milwaukee Public School system until January 31, 1994. Akida was an 8th grade pupil at Burroughs Middle School. This appeal was filed by Akida's father, Jerry L. B [REDACTED], and was received by the Department of Public Instruction on May 11, 1993.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, this Decision and Order is confined to a review of the record of the hearing panel and school board determination. The State Superintendent's review authority is specified in sec. 120.13(1)(c), Wis. Stats. 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 interests of the school district demand that the student be expelled.

FINDINGS OF FACT

The record contains a letter from Dorlee Rohlfing, Student Services Coordinator of Milwaukee Public Schools, dated March 11, 1993, to Akida's father which indicated that an expulsion hearing was to be held on March 17, 1993. The letter notes copies sent to several school officials and to Akida. That letter properly advised that Akida was charged with engaging in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others in that he had possessed a .25 cal. semi-automatic handgun - unloaded - at the school on February 25, 1993. The letter further properly advised that Akida was facing a period of expulsion, that an Independent Hearing Panel would hear the matter, that the administration intended to present witnesses at the hearing with knowledge of the underlying incident, that he and his parents each had the right to be represented by counsel of their choice, and that the parties each had the right to present witnesses and evidence and to cross-examine. The letter further advised that the panel might consider the student's complete disciplinary and academic records and that these were available for review. Accompanying the notice were copies of current provisions of the expulsion statutes as required. The notice further made appropriate reference to the opportunity for closed hearing and provided a telephone number where any questions regarding the procedures might be directed.

Prior to hearing, upon agreement, on March 9, 1993, the district conducted a preliminary "investigative review" meeting which included Ms. Rohlfing, Assistant

Principal Ms. Deborah Wheeler, Akida, his father, and Attorney Ronald Hendree who spoke for Akida. The purpose of the meeting, according to hearing exhibit 2 and Ms. Rohlfig's and Ms. Wheeler's hearing testimony was to "afford both the school and the student the opportunity to present the information and perceptions that each had about the case." At the meeting, according to Ms. Rohlfig's hearing testimony, neither Akida nor Attorney Hendree admitted or denied that Akida possessed the handgun on the bus or at school as alleged.

The hearing was accordingly held before the panel in closed session on March 17, 1993. The hearing panel consisted of three district administrators. Akida and his father were present, unrepresented by counsel. The district's case was presented by Assistant Milwaukee City Attorney Roxane Crawford. As minutes the district provided a complete transcript of the hearing. The district called six witnesses, including four school children, and had 15 paper exhibits admitted, including four written statements from the four pupils who testified. Exhibit 3, is an "Expulsion Calendar" showing how the district (correctly) calculated the 15 school days between suspension and expulsion hearing under sec. 120.13(1)(b), Wis. Stats. The hearing and panel decision must be rendered with this 15 day period, or the child is entitled to return to school until the decision is rendered. The hearing and panel decision in this matter were accomplished on the 14th school day of suspension. Akida's father cross examined the district's witnesses, testified, and gave a closing argument. Akida engaged in brief cross examination but did not testify.

The district presented evidence that Akida possessed the gun at the bus stop before embarking, on the bus, and on school property. The pupils who testified stated they either saw Akida with the gun (Tr. pp. 67, 79, 90, 101) or felt it in Akida's coat pocket on the bus (Tr. p. 105). Ms. Wheeler testified that based on a statement from one of the four children to a teacher aide, she and others conducted a search of the locker officially assigned to Akida (there was evidence he was using a second locker, searched earlier that morning by another administrator, which had been assigned to a student who had left school) and found in it a pair of blue gym shorts and the .25 cal. handgun. Akida was brought to the office and questioned by Ms. Wheeler. Akida denied to Ms. Wheeler that he owned the gun, completely denied any involvement with the gun (Tr. p. 14), and at one point denied the locker was his (Tr. p. 12). He admitted he had borrowed the shorts about two months earlier from one of the other pupils who testified he saw and felt the gun on Akida that day.

The police were called. Several pupils were interviewed as was Akida. Akida was arrested and taken into custody.

Other testimony was received about there having been a fight or two fights on the bus on February 24, 1993, as a result of which Akida was bleeding and was said to have come out the worst; that Akida made threats to kill the other boy; that Akida confessed to the police he indeed possessed the gun at school but that his confession was coerced by the police; and that the gun may have been inoperable.

In his closing, Akida's father pleaded that if his son were found to have possessed the gun, contrary to established school policy, he should somehow be allowed to obtain an education. Akida's father also pointed out that IF Akida had possessed the gun in question here, and if it were defective and another student with a gun deemed Akida's possession of the gun to be of sufficient threat, Ms. Wheeler's action may have saved Akida's life (Tr. p. 128).

The panel convened into executive session, reconvened in open session, and adopted the disposition described above. The panel further directed the administration to take whatever steps were necessary upon Akida's readmission in January 1994 for the development of Akida's skills to the degree that would facilitate his completion of 8th grade and enable him to enter high school in the fall of 1994. The expulsion order was prepared, signed by the panel members, and dated that day. It made the necessary findings required by law, including the finding that the interests of the district demand the expulsion. The record contains a letter from Ms. Rohlfing to Akida's father, which was copied to certain school officials and to Akida, and which attached a copy of the panel's expulsion order, advised that the Milwaukee Public School's Board of School Directors convened on Wednesday, March 30, 1993, and approved the panel's action, confirmed the recommended period of expulsion, and suggested that Akida be assessed at a particular location when readmitted in January 1994.

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 Dist., 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from sec. 120.13(1)(c), Wis. Stats., which establishes certain categories of offenses which 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 sec. 120.13(1)(c), Wis. Stats. In Racine Unified School Dist. 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. 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 of Akida's father contained no express ground for appeal and neither party provided briefing.

In reviewing the record in this case I find that the Milwaukee School District complied with all of the applicable procedural requisites. I am therefore compelled to affirm the expulsion decision. I further find that the evidence presented was sufficient upon which the panel could make a finding that indeed Akida did possess the gun contrary to school policy.

The Department has previously held that student possession of a handgun, even a BB gun or starter pistol, while at school or under school supervision, if determined by the board based on the evidence presented, is dangerous to the health, property or safety of others and may be sufficient grounds for expulsion. Christopher F. by the Milwaukee School District, July 2, 1986, No. 143, Leslie F. by the Milwaukee School District, May 1, 1986, No. 136, Demetris S. by the Milwaukee School District, June 8, 1992, No. 194. I find the record sufficient to support that finding here.

The Department has also found that generally the proper duration of expulsion is a matter left to the discretion of the board. Ricardo S. by the School District of Wisconsin Rapids, September 5, 1986, No. 145, Jesse K. by the School Bd. of Joint Dist. No. 2 of Sun Prairie, June 17, 1985, No. 131. There is no cause here to modify that rule.

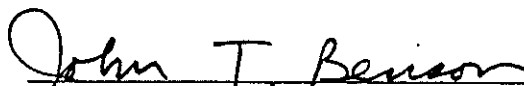
CONCLUSION OF LAW

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

ORDER

IT IS THEREFORE ORDERED that the expulsion of Akida B. [REDACTED] by the Board of School Directors of the Milwaukee School District is affirmed.

Dated this 8th day of July, 1993.



John T. Benson
State Superintendent of Public Instruction