

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

BRAD A. [REDACTED]

by the Boyceville Community School
District Board of Education

DECISION
AND
ORDER

94-EX-14

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 March 24, 1994 Order of the Boyceville Community School District Board of Education to expel Brad A. [REDACTED] from the Boyceville Senior High School until May 2, 1994. This appeal, dated May 2, 1994 was filed by Brad's Attorney, John E. Joyce, and was received by the Department of Public Instruction on May 3, 1994.

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 school board hearing. The State Superintendent's review authority is specified in sec. 120.13(1)(c), 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 Notice of Pupil Expulsion Hearing dated March 8, 1994. This Notice advised that a hearing would be held on March 16, 1994, which could result in Brad's expulsion from school, until his 21st birthday. The Notice of Pupil Expulsion Hearing was sent separately to Brad and his parents. This Notice alleged two grounds for the expulsion request. First, the school administration alleged Brad engaged in conduct while at school which endangered the property, health, or safety of others. The school administration alleged Brad brought fireworks into the school building on February 24, 1994 and, during school hours, passed them to another student who lit and dropped them into the path of other students. Second, the school administration alleged Brad was guilty of repeated refusal and neglect to obey rules because he had accumulated several detentions and suspensions in a three year period. A copy of sec. 120.13(1)(c) was printed on the back of the Notice. The record also contained the minutes of the closed session on the expulsion hearing. An audiotape of the expulsion hearing was made and is a part of the record.

The hearing was held in closed session on March 16, 1994. Brad and his parents appeared at the hearing and were represented by Attorney John E. Joyce. At the hearing, the school administration presented evidence on the two grounds for expulsion contained in the Notice. Brad, his parents, and their attorney were given the opportunity to cross-exam witnesses, present witnesses, and respond to the allegations.

After the hearing, the board deliberated in closed session. The board found that Brad engaged in conduct while at school which endangered the property, health, or safety of others and the interests of the school demand that he be expelled. The Order of Expulsion containing the Findings of Fact and Conclusion of the School Board dated

March 24, 1994 was mailed separately to Brad and his parents. This order recited that Brad was expelled from school through the end of 1993-94 academic year. A letter correcting that Order was also mailed separately to Brad and his parents. This letter corrected the expulsion order to read that the Board of Education voted to expel Brad until May 2, 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.

Both parties have submitted briefs in this case. Brad raises several issues in this appeal. First, Brad makes several arguments concerning a lack of sufficient credible

evidence to support the board's findings concerning his conduct. In reviewing the findings of an administrative board sitting as the trier of fact, the Wisconsin Supreme Court has held that the findings of such a body "are conclusive if any reasonable view of the evidence sustains them..." State ex Rel DeLuca v. Common Council 72 Wis 2d. 672, 695, 242 NW2d 689 (1976). The State Superintendent has consistently held that the school board's findings will be upheld if any reasonable view of the evidence sustains them. Kathleen W. v. Tri-County Area School Board, Decision and Order No. 130 (May 10, 1985). Michael Ryan H. v. Clinton Community School District Board of Education, Decision and Order 222 (March 10, 1994). Further, arguments as to the sufficiency of the evidence in an expulsion hearing have been held to be beyond the scope of the state superintendent's review. Nancy Z. v. Janesville School District Board of Education, Decision and Order No. 139 (May 23, 1986). Taiwan O. W. v. Kenosha Unified School District, Decision and Order No. 186 (April 7, 1992).

In this case, a student testified he saw Brad pass a small package to a fellow student in a school hallway. Seconds later, the fellow student tossed the package behind his back and the package exploded. This occurred in a school hallway between class periods with several other students in the immediate vicinity. Brad admitted bringing fireworks to school on the day the incident occurred. This testimony clearly provides a "reasonable view of the evidence" to support the school board's findings that Brad engaged in conduct which endangered the property, health, or safety of others. Therefore, the school boards findings on this issue will not be disturbed. My predecessor has previously held that a pupil who participated in the discharge of approximately one-hundred (100) firecrackers inside the school, during school hours and in the presence of other students endangered the property, health, and safety of others while at school.

David v. Hortonville School District Board of Education, Decision and Order No. 119
(March 28, 1984).

Brad's further argues there was no credible evidence to support the school board's finding that the interest of the school demanded his expulsion. Previous decisions of the department have held that conduct which endangers the health or safety of another student, in the absence of mitigating circumstances, is more than sufficient to establish that the interest of the school demands the pupil's expulsion. Kristin J. P. v. Mukwonago Area School District Board of Education, Decision and Order No. 185 (February 21, 1992). This record contains no mitigating factors. I therefore uphold the school board's findings on this issue.

Brad next argues there was no evidence in the record to support the school board's finding that he was not a student with exception educational needs. He argues that an EEN evaluation is required before a finding can be made that a pupil is not a student with EEN. Wis. Stat. 115.80(2) requires a school board to screen a child if there is reasonable cause to believe the child is a child with EEN. There is no evidence in this record to indicate Brad or his parents raised the EEN issue before or during the expulsion hearing. With regard to a pupil with an identified EEN, the State Superintendent has reversed expulsions based on the board's failure to consider whether the pupil's handicapping condition was related to the misconduct. Anita P. v. Janesville School District Board of Education, Decision and Order No. 124 (February 5, 1985). Joe M. v. Milton School District Board of Education, Decision and Order No. 125 (February 22, 1985). These decisions are based on the particular requisites and protections under both federal and state law relating to pupils with identified EEN. With regard to all other aspects of special education law an expulsion appeal is not the appropriate context in

which to challenge the district's application of special education provisions to a particular pupil. Benjamin L. v. Maple School District Board of Education, Decision and Order No. 214 (December 28, 1993). If Brad or his parents believe he should be referred for an M-team evaluation, they should contact the school district and make such a request.

Brad next argues that he was denied his right to an impartial hearing officer, because the school district attorney handling this appeal also served as the hearing officer at the expulsion hearing. The minutes of the expulsion hearing indicate the attorney for the school district would be acting as hearing officer ex officio. The minutes further indicate his role was to monitor the meeting, ensure proper decorum, and ensure that all are heard who wish to be heard. The hearing officer did not present the case for the school district administration. Another attorney represented the school district administration at the expulsion hearing. He did not call witnesses or make legal arguments on behalf of the school district administration at the expulsion hearing. The decision to expel Brad was made by the school board, not the hearing officer. There is no evidence in this record to indicate the hearing officer had a bias in favor of either party in this case.

Finally, Brad argues there was no credible evidence to support the school board's finding that he had repeatedly violated school rules. The school board made no finding that Brad repeatedly refused or neglected to obey school rules. Although the Notice of Pupil Expulsion hearing alleged this ground and there was testimony in the record concerning school rule violations, the school board declined to make a finding that Brad repeatedly refused or neglected to obey school rules. In the absence of any school board finding, it is not necessary to discuss this issue further.

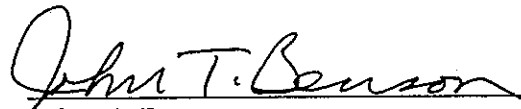
CONCLUSIONS OF LAW

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

ORDER

IT IS THEREFORE ORDERED that the expulsion of Brad A. [REDACTED] by the Boyceville Community School District Board of Education is affirmed.

Dated this 29 day of June, 1994.



John T. Benson
State Superintendent of Public Instruction