

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

CHRISTOPHER W [REDACTED]

by the Tomah Area School District
Board of Education

AMENDED
DECISION AND ORDER
94/95-EX-8

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 action of the Tomah Area School District Board of Education to expel Christopher W [REDACTED] from that school district through the first semester of the 1996-97 school year. This appeal was filed on behalf of the pupil by his attorney, Daniel M. Berkos, and was received by the Department of Public Instruction on February 21, 1995.

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 proceeding. 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 dated January 10, 1995 from Mr. David A. Shudlick, the attorney for the District, addressed to the pupil's parents and sent by certified mail. A copy of the letter was also sent to the pupil by certified mail. The January 10 letter was accompanied by a separate document entitled Notice of Pupil Expulsion Hearing which advised that a hearing would be held on January 25, 1995 which could result in the pupil's expulsion. The Notice included a current copy of sec. 120.13, Wis. Stats. As the basis for the proposed expulsion, the Notice alleged that the pupil had "while not at school or while not under the supervision of a school authority engaged in conduct that endangered the property, health or safety of others at school or under the supervision of a school authority." Attached to the Notice was "Exhibit A," which contained a detailed chronological summary of the two incidents that formed the basis for the expulsion hearing. Specifically, "Exhibit A" alleged that on or about February 9, 1994, the pupil unplugged all of the school buses at the Tomah bus garage which resulted in numerous buses not starting, thus endangering the property, health and safety of others at the school or under the supervision of school authority. Additionally, "Exhibit A" alleged that on or about December 15 or 16, 1994 the pupil caused damage to 20 school buses at the Tomah bus garage including tearing out master cylinder wires, throwing out master cylinder caps, power steering caps and dip sticks, which resulted in school being cancelled for the entire day which damaged school property and endangered the health and safety of others.

The board accordingly met on January 25, 1995 and convened in closed session to consider the proposed expulsion. The pupil appeared with his parents and with legal counsel. The record also contains minutes of the hearing as well as three cassette tapes which recorded the hearing.

The District presented testimony from witness Gary Sartorius and introduced Exhibits 1 through 4 into the record which detailed the costs incurred by the District for personnel and also listed safety concerns as a result of the school bus damage. Mr Berkos, attorney for the pupil, cross examined Mr. Sartorius.

The District next presented testimony from Office Ron Waddell of the City of Tomah Police Department. Officer Waddell testified that he investigated the February 9, 1994 incident. Attorney Berkos stipulated that Christopher W [REDACTED] was involved in the February 9, 1994 incident.

Officer Waddell testified that he also investigated the December 16, 1994 incident. During his investigation he interviewed citizen-witnesses and eventually located and interviewed Christopher W [REDACTED] concerning his involvement whereby Christopher W [REDACTED] made an admission to the effect of, "Yeah, I did it."

Officer Waddell testified about a statement he was given by a citizen-witness where the witness had been asked by Christopher W [REDACTED] to help participated in unplugging the school buses on or about December 15. Additionally, the District presented testimony from Officer Migala who stated he was advised by another citizen-witness that Christopher W [REDACTED] had attempted to enlist his help to do something to the school buses so that school would be called off.

Attorney Berkos objected to the receipt of both statements on hearsay grounds since the citizen-witnesses were not present to testify. Both officers were cross-examined by Mr. Berkos.

The District's last witness was Assistant Principal Sandra Murray who testified that on February 9, 1994 classes were delayed one hour as a result of the unplugged buses. She further stated that the temperature on that day was -9° Fahrenheit with wind chills of approximately -25° to -30° Fahrenheit. She stated that parents sent students to school without knowing there would be a delay, and, as a result, students were outside in cold weather without the benefit of crossing guards.

Exhibits 5, 6 and 7 were also received into the record. Exhibit 5 detailed the cost to the District, loss of pay to hourly employees and factors affecting student health as a result of the February 9 incident. Exhibit 6 consisted of a newspaper article indicating that Christopher W [REDACTED] was waived into adult court and charged with 20 felony counts of criminal damage for the December incident. Exhibit 7 was a copy of the criminal complaint filed in Monroe County against Christopher W [REDACTED].

The pupil testified and admitted his involvement in the February 9 incident but denied involvement in the December 15 or 16 incident. The pupil's father also testified. The pupil and his father were cross examined by the District.

After the hearing the board deliberated in closed session and found that Christopher W [REDACTED] engaged in the February 9, 1994 incident which resulted in school being delayed, which endangered students and that Christopher W [REDACTED] engaged in the damaging of 20 school buses on or about December 15 or 16, 1994 which damaged the property of the school and endangered students. The school board also found that the interests of the school demand the pupil's expulsion. The Findings and Order of Expulsion containing the Findings and Order of the board,

dated February 2, 1995 was mailed separately to the pupil and his parents. The order stated that Christopher W [REDACTED] was expelled for the February incident for one year, until the commencement of the second semester of the 1995-96 school year and for one year consecutive to the previous year for the December 15 or 16 incident until the commencement of the second semester of the 1996-97 school year.

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. The pupil raises several issues in this appeal. First, the pupil argues that the expulsion proceeding was unfair because of the hearsay statements from police officers or witnesses that were not called to testify. As the District correctly points out, hearsay evidence is admissible in an expulsion hearing. *Michael E. v. Oconomowoc Area School District Board of Education*, Decision and Order No. 212, (December 12, 1993). The State Superintendent has previously held that an expulsion can be based on the hearsay testimony of school officials. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994), and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). I see no reason in this case to distinguish between the hearsay testimony of school personnel who conduct an investigation and that of police officers who conduct an investigation.

The pupil next challenges the sufficiency of the evidence on several points, including the reliability of the shoe imprint and the witness identification of Christopher W [REDACTED] at the scene of the December 15 or 16 incident. The Department has repeatedly held that arguments of the sufficiency of the evidence are beyond the scope of my review. See *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995) and *Taiwan O.W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). I point out that the pupil testified at the hearing and denied that he was involved in the December 15 or 16 incident. However, the pupil also testified that he admitted his involvement to Officer Waddell during the police investigation. The credibility of witnesses is judged by the school board. It is within the province of the board to evaluate the evidence and determine whom they believe. *William S. v. Tri-County Area School District Board of Education*, Decision and

Order No. 173 (June 21, 1985), citing *state ex rel DeLuca v. Common Council*, 72 Wis. 2d 672, 695, 224 N.W. 2d 689 (1976).

Next the pupil argues that although he admits involvement in the February 9, 1994 bus unplugging incident, his conduct did not result in actual endangerment to any pupils nor damage to school property. The pupil alleges that his conduct amounted only to a prank which resulted in a short delay in the start of school, an event that is not uncommon during stormy winter months. The pupil also argues that the testimony from Sandra Murray, a district employee, cited only possible sources of danger to students, with no actual endangerment proven. The term "endanger" means to bring into danger or peril. The concept of "danger," involves harm, damage or the chance of loss or injury. These terms embrace the notion of wrongful acts or actions which are detrimental or involve loss or damage. *Kirstin J. v. Mukwonago Area School District Board of Education*, Decision and Order No. 185 (February 21, 1992) and *Micheline J. v. Washington Island School District*, Decision and Order No. 165 (August 1, 1989).

In this case I find that it was reasonable for the district to conclude that the pupil's conduct of February 9, 1994 endangered the health and safety of pupils. The record illustrates that the temperature on February 9, 1994 was approximately -9° Fahrenheit with wind chills of approximately -25° to -30° Fahrenheit. The record also demonstrates that the school district was not able to notify parents that school would be delayed one hour because the school buses did not start, thus resulting in pupils waiting outside in the cold weather for the bus as well as arriving at school early without benefit of crossing guards, not to mention the significant monetary cost to the district as a result of Christopher W [REDACTED]'s conduct.

Finally, the pupil objects to the duration of the expulsion as unduly harsh. The district has correctly pointed out that as a general rule the Department does not review that issue in the

context of an appeal. See e.g., *Lavell A. v. Kenosha Unified School District Board of Education*, Decision and Order No. 147 (January 27, 1987) and *Susan Marie H. v. Kenosha Unified School District Board of Education*, Decision and Order No. 157 (June 18, 1988). The local school board is usually in the best position to evaluate the evidence to make the decision on appropriate discipline. *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988) and *Eric P. v. Tomah Area School District Board of Education*, Decision and Order No. 210 (August 12, 1993).

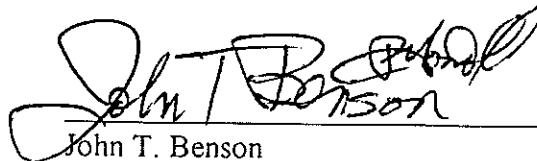
Conclusions of Law

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

Order

IT IS THEREFORE ORDERED that the expulsion of Christopher W [REDACTED] by the Tomah Area School District Board of Education is affirmed.

Dated this 21st day of April, 1995.



John T. Benson
State Superintendent of Public Instruction