THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of COURTNEY R[redacted] by the Germantown School District Board of Education	DECISION AND ORDER 95/96-EX-16

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 December 21, 1995 order of the Germantown School District Board of Education to expel Courtney R[redacted] from the Germantown School District until the first day of the 1996-97 school year. This appeal, dated January 9, 1996, was filed by Courtney, his parents, and Clarence P. Nicholas, Education Committee Chair, NAACP, and was received by the Department of Public Instruction on January 23, 1996.

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), 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 interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record contains a letter entitled "Expulsion Hearing of Courtney R[redacted]" dated November 20, 1995 from the District Administrator of the Germantown School District. The letter advised that a hearing would be held on December 11, 1995 concerning the expulsion of Courtney from the Germantown School District. The letter was sent separately to Courtney and his parents. The letter alleged that Courtney engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. The letter specifically alleged that Courtney engaged in repeated acts of indecently touching female students as well as harassment on school grounds. The letter also indicated that if the misconduct was proven in considering whether to expel Courtney and, if so, for how long, the board may consider Courtney's complete academic, attendance and discipline record. These documents were made available prior to the hearing. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The record contains a copy of the student handbook, numerous student statements and various other exhibits. Minutes of the school board expulsion hearing and a transcript of the expulsion hearing are also part of the record.

On December 11, 1995, the hearing was convened in closed session. Clarence Nicholas of the NAACP represented Courtney and requested that the hearing be held in open session. Accordingly, the hearing was adjourned to December 14, 1995, at which time Courtney and his parents appeared at the hearing. They were again represented by Clarence Nicholas. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Numerous statements from students were offered as exhibits. These student

statements outlined the alleged misconduct, including Courtney's alleged sexual harassment and repeated indecent touching of female students. No students were called as witnesses to testify at the hearing. The witnesses were not identified by name but rather by number.

Courtney and his parents as well as Mr. Nicholas were given the opportunity to present evidence, to cross examine all witnesses and to respond to the allegations. Courtney did not testify. However, his parents and Mr. Nicholas made statements on his behalf.

After the hearing, the school board deliberated in closed session. The board found Courtney 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 board also found that Courtney violated school rules. 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 December 21, 1995, was mailed separately to Courtney and his parents. The order stated Courtney was expelled until the first day 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 District.*, 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 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.*, No. 94-0199, Dist. IV, Dec. 28, 1995, Slip Op., p. 14. 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 raises numerous issues which require consideration.

First, Courtney argues that the school district's investigation was biased because the assistant principal who conducted the investigation and presented evidence to the board at the expulsion hearing acted as a witness and brought forth "false investigative facts" in the hearing. I find nothing in the record to support this allegation.

Next, Courtney argues that Wis. Stats., sec. 120.13(1)(2)(b) [sic] prohibits administrators who conduct investigations from participating in expulsion hearings. I believe Courtney is making reference to Wis. Stats., sec. 120.13(1)(b), which relates to pupil suspensions and specifies the pupil's right to have a conference

> "[W]ithin 5 days of the commencement of the suspension with the school district administrator or his or her designee who shall be

someone other than the principal, administrator or teacher in the suspended pupil's school."

This subsection relates to pupil suspensions and does not apply in the context of an expulsion hearing. I am aware of no authority that prevents an administrator who conducted or participated in an investigation of student misconduct from presenting evidence at an expulsion hearing.

Courtney further argues that two of the students whose statements were presented to the board at the expulsion hearing had a motive to lie about Courtney's alleged misconduct. The record indicates that written statements were introduced from numerous students including five who were alleged victims of Courtney's conduct. The record also indicates that approximately half of the other student statements introduced into evidence corroborated the statements of the five complaining students.

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 (1976). The State Superintendent has repeatedly held that school board findings will be upheld if any reasonable view of the evidence sustains them. *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). Moreover, school boards may rely on hearsay evidence in making a determination to expel a student from school. *Racine Unified School District v.* Thompson, 107 Wis. 2d 657, 664 (Ct. App. 1982); *Kathleen W. v. Tri-County Area School District Board of Education,* Decision and Order No. 130 (May 10, 1985);

and *Joshua S. v. D.C. Everest School District Board of* Education, Decision and Order No. 170 (June 22, 1990). Considerations of motive to lie are for the board. I find no error here.

Courtney also argues that the school board did not provide an open hearing as requested. As previously stated, the hearing was held in open session on December 14, 1995, at Courtney's request.

Sec. 19.85(1)(f), Wis. Stats., provides in part that a meeting may be conducted in closed session if the board is considering "personal histories or disciplinary data of specific persons...which if discussed in public would be likely to have substantial adverse effect on the reputation of any person referred to in such histories or data...."

Sec. 120.13(1)(c), Wis. Stats., provides in part that "upon request of the pupil...and the pupil's parents..., the hearing shall be closed." Courtney argues that he had a right to require the hearing be held in *open* session. However, the language on its face gives the pupil and the parent the right only to insist on a closed session. If the board proceeded in open session contrary to the request of the pupil and parent, the procedural requirements of sec. 120.13(1)(c), Wis. Stats., might compel reversal. The State Superintendent is authorized to address the open or closed nature of the proceeding only if the pupil or the pupil's parent demands a closed meeting and that demand is denied. See *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993) and *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 28, 1993). I find no error here.

Next, Courtney argues that his rights were violated when the district entered into evidence numerous written statements from students who were not identified by name but rather by

number. Courtney alleges that his constitutional right to confront his accusers was violated when the identity of the students making accusations against him was not disclosed.

There is no authority for the proposition that a student has a right to confront the witness against him or her in an expulsion hearing. *William S. v. Tri-County Area School District Board of Education*, Decision and Order No. 173 (June 21, 1985). Additionally, as the district correctly points out, my predecessor has previously held that students do not have a right to confront witnesses in an expulsion hearing, and that school boards can rely on hearsay evidence in such proceedings. See, e.g., *Linwood v. Board of Education*, 463 F. 2d 763, 770 (7th Cir. 1972), citing federal law finding that due process in a student expulsion hearing need not take the form of a judicial or quasi judicial trial and that the proceedings cannot be equated to a criminal trial or juvenile delinquency proceeding.

One final issue is worthy of discussion, although it was not raised by either party. I note the district expelled Courtney based on conduct that endangered the property, health and safety of others at school and also based on the alternative ground that he violated school rules. Because the record fails to recite the necessary findings that Courtney *repeatedly* violated school rules, I find it was error to base Courtney's expulsion on repeated rule violations. I do not find this omission to constitute reversible error, however, since the ground based on indecently touching and harassing female students as endangering the health and safety of others was adequately proven.

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. I therefore affirm this expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Courtney R[redacted] by the Germantown School District Board of Education is affirmed.

Dated this 21st day of March, 1996.

John T. Benson
State Superintendent of Public Instruction