THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of ARON E. P[redacted] by the Sturgeon Bay School District Board of Education	DECISION AND ORDER 97/98-EX-02

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 October 20, 1997 order of the Sturgeon Bay School District Board of Education to expel the above named pupil from the Sturgeon Bay School District for the remainder of the first quarter of the 1997-98 school year, specifically through November 5, 1997. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on October 27, 1997.

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 "Notice of Expulsion Hearing" dated October 10, 1997 from the district administrator of the Sturgeon Bay School District. The letter advised that a hearing would be held on October 20th, 1997 which could result in the pupil's expulsion from the Sturgeon Bay School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in conduct that endangered the property, health, or safety of any employee or school board member of the school district in which the pupil is enrolled. The letter specifically alleged that the pupil participated in the causing of substantial damage to the residence of teacher Donna Harvey. Minutes of the school board expulsion hearing and an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on October 20, 1997. The pupil and his parents appeared at the hearing represented by Attorney Ebbeson. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents were given the 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 that endangered the property, health, or safety of any employee or school board member of the school district in which the pupil is enrolled. 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 October 23, 1997, was mailed separately to the pupil and his parents. The order stated the pupil

was expelled for the remainder of the first quarter of the 1997-98 school year, that is through November 5, 1997.

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.*, 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 raised numerous issues which require consideration. In his brief, the pupil discusses and enumerates five areas of appeal. I will address all issues raised by the letter and by the brief.

First, the pupil challenged the procedure surrounding his suspension from school. The state superintendent has repeated held that he has no authority to review suspensions. *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994); *Joshua K. v.. Clinton Community School District Board of Education*, Decision and Order No *Jessie K. v. School Board of Joint District No. 2*, Decision and Order No. 131 (June 17, 1985). Secondly, the pupil alleged that his right to an open hearing was violated because the school board heard his case in a closed hearing and then convened into a closed session to deliberate despite the pupil's request for an open hearing. The procedures used by the board comply with sec. 19.85(1)(f), Stats. and are consistent with previous holdings of the state superintendent. 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. *Courtney R. v. Germantown School District Board of Education,* Decision and Order No. 278 (March 21, 1996*); Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 28, 1993); *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993). The pupil also complains that the hearing was scheduled to begin at 8:20 but did not begin on time. According to the minutes, the hearing began at approximately 9:35 pm and ended with the board's decision at approximately 11:25 pm. The pupil does not explain how he was prejudiced by the late start. It has been agreed upon by all

the parties that there were five expulsion hearings scheduled that evening. A delay in starting time is not unreasonable, given the ambitious schedule of the board.

The pupil alleges that he was denied his right to present legal arguments and evidence throughout the hearing. After reviewing the entire tape of nearly one and a half hours, this claim is baseless. The pupil's attorney, Mr. Ebbeson, was given sufficient opportunity to state his numerous jurisdictional objections, question the School District's witness, Mr. Grimmer, provide anecdotal information of his own suspension as a high school student and argue the finer points of law such as how much damage is substantial damage. At times the board requested Mr. Ebbeson to be brief, however, this did not infringe upon the pupil's right to present and argue his case.

The pupil alleges that he was denied *fundamental due process* because the five perpetrators of the vandalism were given separate, closed expulsion hearings and that insufficient time was allotted to each hearing. This issue is not briefed and no legal support has been provided for his contention that this process denied him due process. The pupil argues that because any criminal charges arising from these facts could be filed jointly and the five perpetrators would be held jointly and severally liable, that there should have been a joint expulsion hearing to include all five students. However, a joint hearing is not required, is unprecedented and may have violated the pupil's confidentiality. The fact that each hearing was initially scheduled to last 20 minutes is irrelevant given the fact that the pupil's hearing lasted nearly two hours and he was given a full opportunity to question witness, present witnesses and argue his points.

The pupil also alleges that there was insufficient evidence to sustain his expulsion. First, he argues that there was no evidence because the district's witness, Mr. Grimmer, was not placed

under oath when he testified. While the preferred method is to place each witness under oath, the oath is not required. The application of due process in school disciplinary hearings requires flexibility. *Goss v. Lopez*, 419 U.S. 565 (1975). Basic fairness and integrity of the fact finding process are the most important considerations. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657 (Ct. App. 1982); *Raymond H. v. Menomonie Indian School District Board of Education*, Decision and Order No. 279 (March 22, 1996). I have previously held that a hearing where the witness was not placed under oath and the exhibits were not admitted in strict accordance with the rules of evidence, did not violate the pupil's due process right or diminish the integrity of the hearing. *Chad S. v. Hartford Union School District Board of Education*, Decision and Order No. 273 (February 9, 1996). In this case, Mr. Grimmer testified or related the facts as he knew them and he was subjected to extensive questioning by the pupil's attorney. The pupil was afforded every opportunity to confront Mr. Grimmer's testimony, just as if he were placed under oath. Furthermore, the pupil did not object to Mr. Grimmer's "testimony" without being placed under oath. Any objections to Mr. Grimmer's testimony were related to the hearsay nature of his statement, not to the issue of oath or affirmation. Thus, I find no procedural violation.

Secondly, the pupil argues that all the evidence against him was hearsay and therefore could not be the basis for the factual findings made. I have repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No.

170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983) The testimony presented in the case consisted of Mr. Grimmer relating the facts of his investigation. He testified that he spoke with the teacher, Mrs. Harvey who was the target of this vandalism. Mrs. Harvey related the nature of the vandalism and the estimated cost and labor necessary to repair it. Specifically, the vandalism included, among other things, damage to the family's pool and landscaping and as rocks placed on the driveway, blocking it so that Mrs. Harvey could not leave the driveway the next morning. Mr. Grimmer also indicated that he spoke with Aron Peterson who admitted being involved in the vandalism at Mrs. Harvey's residence. While Mr. Grimmer's testimony of what Mrs. Harvey told him are hearsay, the statement made by Aron is an admission by a party opponent and therefore it is not hearsay, see sec. 908.01(4)(b)1., Stats. Thus, the board did not rely wholly on hearsay evidence. Thirdly, the pupil argues that there was insufficient evidence produced to support the board's finding that he endangered the property, health or safety of any employee or school board member of the school district in which he is enrolled.

It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *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. *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 term "endanger" means to bring into danger or peril. The concept of "danger involves harm, damage or the chance of loss or injury or the capability of producing death or great bodily harm. The term embraces the notion of harmful acts or actions which are detrimental or involve loss or damage. *Joshua S. v. Beloit Turner School District Board of Education*, Decision and Order No. 307 (January 14, 1997); *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (November 25, 1996), *Kristin J. V. Mukwanago School District Board of Education*, Decision and Order No. 185 (February 21, 1992). In this case, I find it was reasonable to conclude that Aron's conduct endangered the property, health and safety of others. Mr. Grimmer testified that there was damage to the Harvey residence that included slashing the swimming pool and trampoline, threw rocks and rice into the swimming pool damaging the pool and filter, sprayed shaving cream on the pool deck and trampoline cover, piled rocks on the driveway thus blocking the path, destroyed a clothesline and a backyard fire pit, dug up a section of the yard with a shovel, tore down a fence by breaking fence posts and pushed plastic forks into the lawn, leaving part of the plastic in the ground. This damage meets the definition of endangering the property of the teacher. Piling rocks in the driveway so that Mrs. Harvey could not get out of the driveway meets the definition of endangering the safety of the teacher. Mrs. Harvey related to Mr. Grimmer this caused her emotional trauma, thus endangering the health of the teacher. Because the record supports the board's conclusions, the superintendent will not overturn the board's findings.

The pupil also alleges that his expulsion was not fair because other students who committed a different kind of vandalism were not expelled. Specifically, he complains that two students caused damage to the school tennis courts but were merely suspended from school and athletic activities. This other act of vandalism is irrelevant to Aron's expulsion. The issue of the evenness and fairness of disciplinary measures imposed by schools is an issue the State Superintendent is without authority to address. *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988); *Douglas S v. Neenah School District Board of Education*, Decision and Order No. 162 (May 23, 1989). and *Danielle W. v. Barron Area School District Board of Education*, Decision and Order No. 310 (January 1997).

Finally, the pupil alleges that because the district did not include a current copy of the expulsion statute with its notice of expulsion hearing, there was procedural error. There is no requirement in sec. 120.13(1)(c), Stats. that a copy of the statute be included. This section of the statute was changed by 1995 Wisconsin Act 235, thereby deleting this requirement. If the board complies with the elements listed in sec. 120.13(1)(c), an expulsion will be affirmed.

In reviewing the record in this case I find the school district complied 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 complied with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Aron P[redacted] by the Sturgeon Bay School District Board of Education is affirmed.

Dated this 17th day of December, 1997.

John T. Benson
State Superintendent of Public Instruction