

Decision and Order No. 359
THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Joanna J. [REDACTED] by the Milwaukee Public School District Board of Education	DECISION AND ORDER 97/98 EX-19
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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 February 12, 1998 order of the Independent Hearing Panel of the Milwaukee Board of School Directors and affirmed by the Milwaukee Board of School Directors on February 25, 1998 to expel the above named pupil from the Milwaukee Public School District until June 11, 1998. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on March 23, 1998.

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 February 5, 1998 from Carolyn Diaz-Parker, Student Services Coordinator for Milwaukee Public Schools. The letter advised that a hearing would be held on February 12, 1998 which could result in the pupil's expulsion from the Milwaukee Public Schools. The letter was sent separately to the pupil and her parents. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health or safety of others. The letter specifically alleged that Joanna committed battery to a student on January 20, 1998 at Sarah Scott Middle School. A transcript of the hearing are also part of the record.

The hearing was held in open session on February 12, 1998. The pupil and her mother appeared at the hearing, represented by Attorney Tristan Pettit. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and her mother were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations.

After the hearing, the Independent Hearing Panel deliberated in closed session. The panel found the pupil 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 panel 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 February 12, 1998, affirmed by the Milwaukee Board of School Directors on February 25, 1998, was mailed separately to the pupil and her mother. The order stated the pupil was expelled until June 11, 1998.

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) and 119.25, 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 alleges multiple violations of the pupil's "substantive and due rights". First, the pupil alleges that the Assistant City Attorney and Division of Parent Student Services withheld a report written by a school security officer. The pupil's attorney alleges that

he made repeated demands for "any and all documents related to the incidents" to the Assistant City Attorney and the Division of Parent Student Services. He alleges, and the district agrees, that the reports of Safety Assistant, Brian McLee were not provided to the pupil before the hearing. The pupil's attorney claims this document was intentionally withheld from the pupil because it was exculpatory. The City Attorney indicates that neither she nor Student Services knew of the existence of this report at the time of the hearing.

While the pupil alleges that this procedure denied her due process, she has not provided any case law to support a theory that she is entitled, as a statutory or constitutional right, to these reports. The procedural due process due a student facing expulsion or long term suspension is identified in *Goss v. Lopez*, 419 U. S. 565, 573-76, 95 S. Ct. 729, 735-737, 42 L.Ed. 2d 725 (1975). Due process in a student expulsion hearing need not take the form of a judicial or quasi-judicial trial and the proceedings cannot be equated to a criminal trial or juvenile delinquency proceeding. *Linwood v. Board of Education*, 463 F.2d 763, 770 (7th Cir. 1972). There is no statutory right to disclosure of "exculpatory evidence" in an expulsion hearing. To the extent the issue raises possible constitutional matters, the State Superintendent will defer to the circuit court for further possible review.

Incorporated into the above argument, the pupil alleges that if the board knew of this other report, there would be insufficient evidence to expel. 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).

According to Assistant Principal John Kincaid, his investigation revealed Joanna and her relatives, Shileka and Shiesha, attacked the victim (Student A) on the third floor of Sarah Scott Middle School at the beginning of the school day on January 20, 1998. Mr. Kincaid spoke to Student A who reported that the problems with Joanna and Shileka began the Friday before on the bus. Student A reports that Joanna told Shileka to get on the bus that Student A was on and that Joanna made derogatory comments towards Student A. This was apparently an attempt to intimidate or otherwise frighten Student A. When school resumed on January 20 (January 19 was a school holiday), Shileka, Joanna and Shiesha were waiting by Student A's unit on the third floor. Student A states that she and Joanna started fighting and then Shileka and Shiesha jumped in to the fight. In the course of the fight, Student A states she was hit, punched and kicked.

Mr. Harris, Safety Assistant, also testified that he observed the fight. He first saw Shiesha on the third floor, which was not her usual classroom location. Then he saw Joanna and Shileka appear to be waiting for Student A. He then saw Shiesha give a suspicious look toward Student A that made Mr. Harris believe something was going to happen. Shileka and Joanna were about 15 feet away from Student A. He reports a fight erupted with the girls, Shileka, Shiesha and Joanna, hitting Student A. He attempted to break up the fight and the girls continued to strike

Student A. Mr. Harris reported that eventually Mr. McLee came out and assisted him in breaking up the fight. As a result, Joanna was taken to the office for discipline. Once in the office, she began to rant and rave, spewing profanities. She also made approximately three attempts to leave the office.

Officer Dawson, Milwaukee Police Officer, testified he was called in to the school. Upon arrival, he saw Joanna, Joanna's mother, Shiesha, Shileka and Student A in the office. Upon arriving at the office, Officer Dawson observed Joanna, Joanna's mother, Shiesha, and Shileka to be disruptive, swearing and inciting disruption. Due to this behavior, he was unable to interview Joanna or her mother. Because he could not interview them, Officer Dawson asked Joanna's mother to take Joanna, Shiesha and Shileka home. Pursuant to his investigation, he issued disorderly conduct citations to all four girls, including Student A. As Officer Dawson was interviewing Student A, he was advised by school security of another incident that had just occurred in the building. The second incident involved Joanna, Shiesha, Shileka another student (Student B). Student B reported to Officer Dawson that as Joanna, Shiesha, Shileka and Joanna's mother walked by her in the stairwell, Joanna made a statement to the effect "there that bitch goes, she was in it too. Student B reported that she was approached by Joanna and Shileka and that each of them struck her with closed fists to her face. Officer Dawson observed swelling to both sides of Student B's cheeks.

Mr. Kincaid also testified about a fight which occurred on January 24, 1998 at another school's basketball game involving Joanna, Shiesha, Shileka, among others. This fight was apparently a continuation of the January 20 incidents.¹

¹ There was some evidence that Joanna was prohibited, due to her suspension, from going to any Milwaukee Public School. Whether or not she knew of this prohibition is irrelevant. While she was not charged in the notice

Joanna testified at both the expulsion hearing and the pre-expulsion meeting that was held in the Central Office. At the expulsion hearing, Joanna stated that she was attacked by Student A while Joanna was hugging another student. She stated that after being hit, she and Student A started fighting. Joanna admitted to "throwing punches" at and hitting Student A approximately 3-4 times. She denied swearing while in the office but does admit to walking around the room. She further admitted to running down the stairs toward Student B, but denied that she was "running after" Student B. Joanna also testified that she did go to the basketball game on January 24, 1998 and that she engaged in fight while she was there. Joanna admitted that after her suspension she tried to leave her house and go back to Sarah Scott Middle School to fight. According to Carolyn Diaz-Parker, the Student Services Coordinator that conducted the pre-expulsion hearing at the central office, Joanna admitted during that hearing that she chased after Student B and caught but did not hit her. She stated that Shileka is the one who hit Student B. This effort was thwarted by Joanna's mother.

There was also evidence presented to the panel that it is MPS policy that all participants in a fight at school are subject to a range of discipline, including expulsion, regardless of who initiated the fight. Based upon all of the testimony and exhibits presented at the hearing, the panel had ample evidence to conclude that Joanna engaged in battery to another student at Sarah Scott Middle School and that her conduct endangered the property, health or safety of others. There was also ample evidence to find that the interests of the school demand the student's expulsion.

Secondly, the pupil alleges that because one of the independent hearing panel members left prior to the conclusion of the hearing that she was denied her right to present her case to a

of expulsion hearing with this conduct, the evidence is relevant to the determination of appropriate punishment. The panel did not make any findings of facts as it related to the basketball game incident.

“properly constituted and maintained panel.” When the hearing began, the panel consisted of two MPS employees and one community ombudsman. At the close of the Administration’s case but prior to the beginning of the pupil’s case, the community representative left the hearing. (Page 141-142, Expulsion Hearing Transcript). The pupil, on appeal, objects to this procedure.² State statute does not dictate the size or composition of a hearing panel used pursuant to sec. 119.25, Stats. The only statutory requirement is that the panel be independent. There is no evidence in the record that the panel used in this case was not independent, therefore, even if there had not been a waiver by the pupil of this argument, the absence of the third panel member is not error.³

Third, the pupil alleges that the administration did not follow its internal procedures regarding the suspension. The state superintendent has no authority to review suspensions. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995); *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).

Finally, the pupil alleges that because her “punishment” was not the same as others involved in the altercations, her due process rights were violated. 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

² This issue is first raised on appeal. Despite the opportunity to object at the hearing, the pupil did not object or seek a continuance. Rather, the pupil continued to present her case. This issue is therefore waived.

³ The pupil alludes to an MPS publication Guideposts, to support her allegation of procedural error. However, Guideposts was not submitted as part of the appeal. The City Attorney addresses the MPS procedure in an affidavit and exhibit which indicates that for the 1997-98 school year the Milwaukee Board of School Directors approved a two member panel if the community or non-MPS member was unable or neglected to attend. Thus, there is no violation of the district’s policy.

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).

In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

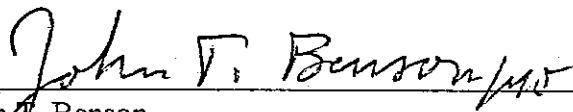
CONCLUSIONS OF LAW

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 Joanna J. [REDACTED] by the Milwaukee Public School District Board of Education is affirmed.

Dated this 22nd day of May, 1998.



John T. Benson
State Superintendent of Public Instruction