Decision and Order No. 395

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Jeremy B[redacted] by the Waukesha School District Board of Education	DECISION AND ORDER 98/99 EX-23

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 May 25,1999 order of the Waukesha School District Board of Education Panel and approved by the School Board on June 9, 1999, to expel the above-named pupil from the Waukesha School District through the 1998-99 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on June 18, 1999.

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 May 14, 1999, from the Executive Director of Student Services and Special Education of the Waukesha School District. The letter advised that a hearing would be held on May 19, 1999 that could result in the pupil's expulsion from the Waukesha School District. On May 14, 1999, Mr. Haessly, Executive Director of Student Services and Special Education, and delivered the letter to the pupil and his parents. The letter alleged that the pupil conveyed a threat or false information concerning an attempt to destroy school property by means of explosives. The letter specifically alleged that he conveyed a threat or false information concerning an attempt to destroy school property by means of explosives on May 7, 1999 at school. Minutes of the school board panel expulsion hearing and audiotape of the expulsion hearing are also part of the record.

The hearing was held in closed session on May 19, 1999. The pupil and his parents appeared at the hearing without counsel. 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 panel, consisting of three school board members, deliberated in closed session. The board found that the pupil conveyed a threat or false information concerning an attempt to destroy school property by means of explosives. 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 panel, dated May 25, 1999, affirmed by the School Board on June 9, 1999, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 1998-99 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 that 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 school board heard evidence that on May 7, 1999, during Science class, the Science teacher, Mr. Nettesheim, overheard Jeremy tell two other students that there was a bomb in school.[1] Mr. Nettesheim also reported that he observed other behaviors in Jeremy that made him believe the comment made should be taken seriously. Those other behaviors included the fact that three times during that same class period he heard Jeremy state that someone had called him a "bastard" and that he was going to have to hit that person in the face a few times. Frequently during that class period, he heard Jeremy make expressions about his dislike of school. Mr. Nettesheim also observed that other students identified him as a "folk"[2]; that he had seen extensive "tagging" and graffiti in his notebooks in the recent few weeks; that he sometimes makes odd noises out of the blue; and, that he had a "general detached and troubled personality."

At the end of that class period, Mr. Nettesheim reported the comment to the school administrators. Because law enforcement officers were already in the building investigating rumors of a hit list, the investigation of Jeremy's statement was immediate. Detective Wall of the Waukesha Police Department conducted the investigation by interviewing Jeremy and the two students to whom Jeremy was talking. As a result of the investigation, Jeremy was charged with a municipal charge of disorderly conduct.

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[1] Mr. Nettesheim did not testify at the expulsion hearing, but his written statement was submitted at the hearing. Furthermore, representatives of the Administration, who had spoken to Mr. Nettesheim and to Jeremy, did appear before the school board panel and presented information about Mr. Nettesheim's observations and their own observations.

[2] "Folk" is a gang affiliation.

The school district administrator who conducted an administrative review of Jeremy's conduct also interviewed Jeremy.[3] He testified that Jeremy admitted that Mr. Nettesheim's description of his comment "There is a bomb in the school" was accurate. The administration recommended that Jeremy be expelled until the beginning of second semester of the 1999-2000 school year.

During the hearing, there was discussion by the administration, pupil, parents and school board panel of the atmosphere in the school on May 7, 1999. Everyone was aware of the tragedy in Littleton, Colorado on April 20, 1999.[4] There was also discussion about other threats and hit lists that were made, as well as rumors of such. There seemed to be general agreement among everyone at the hearing that tensions were high among students and staff due to these safety concerns.

In addition to the evidence presented by the administration, the parent and pupil were allowed to ask questions and present evidence. The parents questioned the administration witnesses, including Detective Wall. Letters and testimony of support were submitted on behalf of Jeremy. The parents and Jeremy were given ample time to present their case.

After hearing the evidence, the panel voted to expel Jeremy until the end of the 1998-99 school year. It also recommended that Jeremy be provided tutorial assistance during the expulsion to complete the classes that he had the potential to pass for the semester or year. On June 9, 1999, at its regularly scheduled meeting, the full school board considered the panel's recommended order and approved it.

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[3] The name of this administrator is not clear in the record. However, based upon the tape recording of the hearing, it is clear that that administrator who interviewed Jeremy testified at the expulsion hearing about the conversation.

[4] On April 20, 1999, two students entered Columbine High School in Littleton, Colorado, and killed 12 other students and one teacher.

The appeal letter in this case raises several issues that require consideration. First, the parent complains that Mr. Nettesheim was not present, by order of the board, for cross-examination. There is no evidence in the record that Mr. Nettesheim was ordered not to appear at the expulsion hearing. Nor is there evidence that the pupil requested his appearance. While Mr. Nettesheim's report was hearsay, his report is admissible at the expulsion hearing. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997). Given the testimony of the investigating school official and the recitation of the pupil's own statement, there was sufficient, reliable information presented to the board to support its decision.

Next, the parents raise several other "facts" or arguments about the sufficiency of the evidence and witness credibility. Credibility and sufficiency of the evidence are beyond the scope of review of the State Superintendent. *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 Board of Education*, Decision and Order No. 186 (April 7, 1992); *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); and, *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996). 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).

Specifically, the parents allege that because Mr. Nettesheim waited until the end of the class period to report Jeremy's statement there is no evidence that Nettesheim took the statement seriously. The parents also allege that Mr. Nettesheim's reasoning that led him to believe that Jeremy's statements should be taken seriously was unfounded. Both of these arguments were made and discussed, at length, at the expulsion hearing. The parents also contend that witness statements were ignored and letters were overlooked. There is no evidence in the record that witness statements and letters were not considered. Finally, the parents complain that Detective Wall did not answer all of the questions during cross-examination and that he "stormed out of the room." According to the tape of the hearing, Detective Wall appeared to try to answer questions. However, he did not have his police report with him as he testified. While this was perceived by the parents as refusing to answer, the panel was in the best position to judge the detective's credibility. The record, as submitted, does not support the contention that the detective "stormed" out of the proceeding. If the detective did leave before the conclusion of the hearing, again, the panel was in the best position to determine whether this impacted his credibility. Finally, the parents allege that reports of Jeremy's interview were "twisted", alleging that Jeremy had admitted he said "there could be a bomb in the school" instead of "there is a bomb in the school". Both Jeremy and the person who heard the admission spoke to the panel. The panel was in the best position to resolve this conflict in testimony. In all of these circumstances, it was within the panel's discretion to give weight to the evidence and arguments as it deemed appropriate and to judge the credibility of witnesses. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board*

of School Directors, 14 Wis. 2d 243, 111N.W. 2d 198 (1961). See *also Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985); *Nicole K. v. Janesville School District Board of Education*, Decision and Order No. 238 (September 16, 1994); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995).

Thirdly, the parents allege that the police questioning of Jeremy violated his rights because Jeremy's parents and lawyer were not present. The parents raised this at the expulsion hearing. The parents do not provide any legal authority for the contention that Jeremy had any statutory or constitutional right to have his parents and lawyer present during the police interview. It was not improper for the school board to rely on the evidence that resulted from the interview. Expulsion hearings are not criminal proceedings. The exclusionary rule, which in criminal cases may demand the exclusion of illegally obtained evidence does not apply to administrative expulsion hearings. *See e.g. In the Interest of Thomas J.W.*, 213 Wis. 2d 264, 276 (Ct. App. 1997); *State v. Carpenter*, 197 Wis. 2d 252, 541, N.W. 2d 05 (1995); *State ex re. Struzik v. DHSS*, 77 Wis. 2d 216, 221 (1977). No evidence was produced at the hearing to suggest that the procedures used were contrary to the any constitutional or statutory provisions. Furthermore, there is no evidence that Jeremy was subject to "custodial interrogation" when he was questioned by Detective Wall. When the subject is not "in custody", there is no need for "Miranda" warnings. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966); *Oregon v. Mathiason*, 429 U.S. 492, 495(1977); *State v. Clappes*, 117 Wis. 2d 277, 287 (1984); *State v. Pheil*, 152 Wis. 2d 523, 531 (Ct. App. 1989). Therefore, the panel properly considered the statements made by Jeremy to Detective Wall.

Finally, the parents insinuate that the hearing panel was not impartial. This argument is without merit. The parents make no specific allegations of impartiality. Furthermore, at the beginning of the expulsion hearing, each panel member was asked if he or she could be impartial. Each member agreed that they were impartial. The law presumes that school board members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board,* 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors,* 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied*, 370 U.S. 720 (1962). There is no evidence that the panel was biased or acted unfairly.

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 Jeremy B[redacted] by the Waukesha School District Board of Education is affirmed.

Dated this 16th day of August, 1999.

John T. Benson
State Superintendent of Public Instruction