

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Dustin P. [REDACTED]

by the Flambeau School District
Board of Education

DECISION AND ORDER
98/99 EX-25

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 17, 1999 order of the Flambeau School District Board of Education to expel the above-named pupil, an eighth grader, from the Flambeau School District through the 1999-2000 school year. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on June 21, 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 6, 1999, from the K-12 Principal of the Flambeau School District. The letter advised that a hearing would be held on May 17, 1999 that could result in the pupil's expulsion from the Flambeau School District. The letter was hand delivered to his parents and was mailed separately to the pupil and his 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 and that he repeatedly refused or neglected to obey school rules. The letter specifically alleged that Dustin received 74 discipline referrals during the 1997-98 and 1998-99 school years. The conduct included insubordination, pushing or otherwise harming other students, sexual harassment, and disruptive behavior in class and at recess. Copies of each discipline referral were specifically referred to in the hearing notice and attached to the Notice of Hearing. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are also part of the record.

The hearing was held in closed session on May 17, 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 deliberated in closed session. The board found that the pupil repeatedly refused or neglected to obey 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 May 17,

1999, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 1999-2000 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 that 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 initial brief of the parents raises several issues that require consideration. First, the parent challenges the sufficiency of the record. The board complied with statutory requirements by keeping written minutes of the hearing. While there is no statutory explanation of how detailed hearing minutes must be, previous decisions by the State Superintendent have outlined minimum requirements. The record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. If there is a reasonable view of the evidence submitted that supports the board's findings, those findings will be upheld. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996). In this case, the minutes do detail who was present, what evidence was presented, and what action the board took. In addition, the minutes are supplemented by an audiotape of the hearing. The pupil's parent complains that the tape is of poor quality and not understandable at some points. Upon review of the entire tape, the tape is decipherable and does assist in issuing this decision.

The parent next alleges that the evidence relied upon was unreliable. The administration presented its case through Mr. VanderHeyden, the K-12 Principal. Mr. VanderHeyden read and explained the numerous disciplinary referrals. He also explained that he discussed the individual referrals with the teacher who wrote them. Mr. VanderHeyden also stated that, in an effort to reduce the number of referrals and assist students on the verge of expulsion, he met with several students who had extensive disciplinary referrals. Dustin was one of those students. Mr. VanderHeyden stated he told Dustin and the others that if they could avoid other referrals, he would hold onto the referrals and the pupil would not have to serve a detention. Dustin did receive additional disciplinary referrals that were also submitted to the board for consideration. Mr. VanderHeyden also entered into evidence a copy of the Student Handbook that describes the

student rules. The pupil's parents were given ample opportunity to question Mr. VanderHeyden about the referrals.

On appeal, the parents state that they believe Mr. VanderHeyden fabricated some of the discipline referrals in retaliation for other actions the family has brought against the school district. They made these same arguments to the board, including the reasons why they did not believe the referrals were reliable. In addition, the parents and Dustin gave explanations to the board for the disciplinary referrals that they did not agree with. The parents challenge one specific referral on the basis of mitigating circumstances. Dustin was involved in a fight with another student. The parents allege Dustin hit the other student because the other student was taunting Dustin's brother, a child with a disability.

The school board is in the best position to judge the credibility of the witnesses. 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). A reasonable view of the evidence supports the board's findings. Therefore, they will be upheld.

Finally, the parents suggest that other pupils with extensive disciplinary referrals were not expelled and that Dustin's expulsion is too long. Because it is presumed that each pupil's situation is different, the disciplinary treatment of other students is not relevant to my review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998). Furthermore, it has repeatedly been held that the decision to expel a pupil and determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at sec. 120.13(1)(c) Wis. Stats. *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Troy Y. v. Burlington School District Board of Education*, Decision and Order No. 309 (January 21, 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.

¹ I also note that the board declined to expel Dustin based upon "endangering the property, health or safety of others, while at school or under the supervision of a school authority." It is not clear whether this ground was rejected due to the mitigating circumstances or for some other reason.

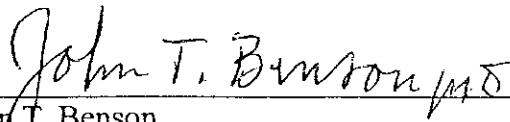
CONCLUSIONS OF LAW

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 Dustin P. [REDACTED] by the Flambeau School District Board of Education is affirmed.

Dated this 20th day of August, 1999.



John T. Benson
State Superintendent of Public Instruction