Decision and Order No.: 422

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Rachel M. by the School District of Wabeno Area Board of Education	DECISION AND ORDER Appeal No.: 99/00 EX 19

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the School District of Wabeno Area Board of Education to expel the above-named sixth-grade pupil from the School District of Wabeno Area. This appeal was filed by the pupil's attorney and received by the Department of Public Instruction on June 8, 2000.

In accordance with the provisions of Wis. Adm. Code § PI 1.04(5), 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 § 120.13(1)(c). 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 March 24, 2000, from the district administrator of the School District of Wabeno Area. The letter advised that a hearing would be held on April 6, 2000 that could result in the pupil's expulsion from the School District of Wabeno Area through her 21st birthday. The letter was sent separately to the pupil and her parents by certified mail. The letter alleged that the pupil knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives. The letter specifically alleged that on or about March 20, 2000, Rachel placed, caused to be placed, or participated in the placement of, a bomb threat in one of the girls' bathrooms in the Wabeno Elementary School. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are part of the record.

On March 31, 2000, the school district administrator sent a revised notice of expulsion hearing to the pupil and her parents. This notice advised the pupil that the expulsion hearing was rescheduled to April 10, 2000. A copy of the original notice was attached.

The hearing was held in closed session on April 10, 2000. The pupil and her mother appeared at the hearing with counsel. 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 school board deliberated in closed session. The board found the pupil knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property be 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, dated April 6, 2000[1], was mailed separately to the pupil and her parents. The order stated the pupil was expelled through remainder of 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 § 120.13(1)(c), 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 § 120.13(1)(c). 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

[1] On July 5, 2000, the board reissued the expulsion order with a corrected date, April 10, 2000. The school board attributed this to a scrivener's error.

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 one issue. Rachel alleges her conduct did not meet the statutory ground for expulsion that was alleged in the notice and found in the expulsion order. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *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. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *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).

On March 20, 2000, Rachel and another student (Student A) were found locked in adjoining stalls in the girls' bathroom by Laura Klescewski, a CESA 8 special education teacher. Ms. Klescewski had gone looking for Rachel because of some pens in Rachel's possession that belonged to a third student. Ms. Klescewski tried, unsuccessfully, to get the girls out of the bathroom. Deb Krueger, a homeroom teacher who had been working with Rachel, also attempted, unsuccessfully, to get Rachel to exit the restroom. Principal Cumberland also attempted to get the girls to exit the restroom. Mr. Cumberland stood outside the bathroom door

while the other staff tried to contact the girls' families. While he stood outside the bathroom, he overheard the girls talking about a bomb threat written on the wall of one of the bathroom stalls. Both girls continued to refuse to come out of the bathroom stalls. It was only after Student A's mother came to school that Student A left the stall. At approximately 1:45 p.m., after Student A left the bathroom, Mr. Cumberland saw Rachel in the hallway getting a drink of water.

At this time, Mr. Cumberland was able to get into the bathroom to view the bomb threat referred to by the girls while locked in the bathroom stalls. He saw a bomb threat written, in pencil, on the wall of the stall in which Rachel had locked herself. The threat indicated a bomb would go off at 2:00 p.m. While Mr. Cumberland was trying to evacuate the building, Rachel was again found in the bathroom stall. This time she was showing the bomb threat to another student. Mr. Cumberland had difficulty getting Rachel and the other student to leave the building so it could be evacuated. The evacuation caused fear among the other students and the potential for students to be injured during the process. At no time during the evacuation process did Rachel express her knowledge or belief that the threat was not real.

Soon after the written bomb threat was discovered, Police Officer Tallier interviewed Rachel and Student A. Rachel denied writing the note. Student A admitted to Officer Tallier that she wrote the bomb threat. The next day, Student A told Officer Tallier that Rachel told her to write the note. Officer Tallier charged Student A with making the bomb threat and Rachel with party to the crime of making the bomb threat.

Rachel alleges, that as a private citizen, she does not have any affirmative duty to inform the authorities of any crime she may have witnessed or heard about from another party. She argues that her silence is a passive action and cannot be construed as conveying a threat or causing one to be conveyed. Rachel testified she did ask a school employee, Debbie Krueger, to

come and look at the threat. However, Ms. Krueger did not remember such a conversation. Rachel explains her inaction by arguing that she did not report the threat because she did not believe the other student could carry it off or that it wasn't true.

In this case, the board had to decide who and what to believe. The board is in the best position to resolve conflict in testimony. It is within the board's discretion to give weight to the evidence and arguments 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); and *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111N.W. 2d 198 (1961). See also *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395 (August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985).

Contrary to the implication made by Rachel, this is not a case of an innocent bystander having knowledge of a crime and refusing to tell authorities. Based upon the evidence presented, the board reasonably concluded that Rachel was not an innocent bystander but was complicit with Student A. She locked herself into the stall in which the bomb threat was written, refusing to come out even after she knew of the bomb threat. She spoke with Student A about the bomb threat. Despite her denial, the board could conclude she told Student A to write the bomb threat. She showed another student the bomb threat. Additionally, her demeanor during questioning by Officer Tallier was appropriately considered.

It is reasonable for the board to conclude that Rachel had personal knowledge of the bomb threat. It was reasonable for the board to conclude that her actions caused the bomb threat to be conveyed.

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 § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Rachel M by the School District of Wabeno Area Board of Education is affirmed.

Dated at Madison, Wisconsin, on August 4, 2000.

John T. Benson
State Superintendent of Public Instruction