

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

James A

by Milwaukee Public School District
Board of Education

DECISION AND ORDER

Appeal No.: 99/00 EX 24

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. §119.25(2)(b) from the order of the Milwaukee Public School District Board of Education to expel the above-named 17-year-old pupil from the Milwaukee Public School District. This appeal was filed by the pupil and received by the Department of Public Instruction on September 18, 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 § 119.25(2)(b). 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 August 25, 2000, from the student services coordinator of the Milwaukee Public School District. The letter advised that a hearing would be held on August 31, 2000 that could result in the pupil's expulsion from the Milwaukee Public School District. The letter was sent to the pupil and his mother. The letter alleged the pupil engaged in conduct while at school or under the supervision of school authority that endangered the property, health, or safety of others. The letter specifically alleged James possessed a .22 caliber pistol at Marshall High School on May 26, 2000. A transcript of the hearing is part of the record.

The hearing was held by an independent hearing panel in open session on August 31, 2000. The pupil and his mother 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 hearing panel deliberated in closed session. The panel found the pupil engaged 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 panel recommended to the board that the pupil be expelled until August 31, 2001. A recommended order for expulsion containing the findings of fact and conclusions of law of the panel, dated August 31, 2000, was mailed to the pupil and his mother. On September 26, 2000, the Milwaukee Public School Board met and accepted the recommendation of the independent hearing panel. The board expelled James

through August 31, 2001. A copy of the board's decision was also mailed to James and his mother.

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) and 119.25(2)(b). 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 mother's appeal letter does not raise any issues that are within the authority of the state superintendent. In general, James' mother asks the state superintendent to reverse the expulsion order to give James a second chance.

Evidence was presented to the hearing panel that another student handed James a .22 caliber pistol from a school bus window while the bus was parked at Marshall High School. James took the gun, put it under his car seat, and later hid it in a heating vent at his home. Wisconsin statutes require a school district to expel a student who possesses a firearm on school grounds for at least one year. §119.25(2)(a)2.¹ The school board determined that one year was the appropriate period of expulsion for this misconduct. Since the authority to "approve, reverse or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has consistently declined to modify the length of expulsions. *Troy Y. v. Burlington School District Board of Education*, Decision and Order No. 309 (January 21, 1997); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993). The school board is in the best position to judge the demeanor of witnesses as well as to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In reviewing this case, I do not see the extraordinary circumstance or procedural violation that cause me to modify the pupil's expulsion period.

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 This requirement may be modified by the school board on a case-by-case basis.


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 James A. [redacted] by the Milwaukee Public Schools School District Board of Education is affirmed.

Dated at Madison, Wisconsin, on November 6, 2000.


John T. Benson
State Superintendent of Public Instruction

Parties to this appeal are:

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