Decision and Order No.: 428

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Michael S by South Milwaukee School District Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX 02

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 South Milwaukee School District Board of Education to expel the above-named 11th-grade pupil from the South Milwaukee School District. This appeal was filed by the pupil's attorney and received by the Department of Public Instruction on October 27, 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 September 22, 2000, from the district administrator of the South Milwaukee School District. The letter advised a hearing would be held on October 4, 2000 that could result in the pupil's expulsion from the South Milwaukee School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in which endangered the property, health, or safety of others. The letter specifically alleged that Michael possessed tobacco and drug paraphernalia. A transcript of the hearing is part of the record.

The hearing was held in closed session on October 4, 2000. 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 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 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 October 18, 2000, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2000-2001 school year. However, the board also provided for probationary readmission beginning on October 21, 2000.

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 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 pupil's attorney filed an appeal letter that failed to raise any issues. However, the attorney subsequently filed a memorandum that claims that the pupil's constitutional rights were violated in "a multitude of ways" and that the pupil's misconduct did not endanger the property, health or safety of others.

First, the pupil alleges that the school district relied completely upon hearsay in finding that Michael possessed drug paraphernalia and tobacco while on school property. This is not true. The board heard testimony from Mr. Blaha, assistant high school principal. Mr. Blaha testified the pupil admitted he possessed a marijuana pipe on school grounds. The pupil's statement against interest is not hearsay. See § 908.01(4)(b). This admission by the pupil was supplemented by Mr. Blaha's reference to the police reports and statements made by police officers relating the results of the investigation. Thus, contrary to the pupil's assertion, the case was not based solely on hearsay.

Furthermore, hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). I have repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education,* Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education,* Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

Secondly, the pupil alleges that his *Miranda* rights were violated. 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). This principle has been consistently applied in expulsion hearings. *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order No. 395 (August 16, 1999); *Leo P. v. Whitewater Unified School District Board of Education*, Decision and Order No. 351 (March 31, 1998); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983). The board was free to determine whether the admission was reliable. This is a credibility determination that is solely within the discretion of the board.

Finally[1], the pupil alleges that his conduct – possession of a marijuana pipe on school grounds – did not endanger the property, health, or safety of others. Entwined in this argument, he alleges that because the pipe was not presented to the board as evidence, the board could not conclude that it was a marijuana pipe. This argument ignores the fact that the pupil admitted he possessed a marijuana pipe. Generally, arguments concerning the sufficiency of the evidence are beyond the scope of the state superintendent's 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

[1] The pupil also alleges by conjecture that the board imposed a presumption of guilt upon Michael and placed the burden on Michael to prove his innocence. The pupil provides no evidence from the record to support this hypothesis, therefore I have not addressed it.

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).

In this case, the board heard that the pupil confessed to possessing the marijuana pipe on school grounds. It also heard evidence that the pupil left school grounds, during the school day, with the marijuana pipe and several other students. It was within the board'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 *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). The state superintendent has previously upheld expulsions involving the mere possession of a marijuana pipe, *Muranda P. v. Winneconne Community School District Board of Education,* Decision and Order No. 393, August 2, 1999, or marijuana, *Joshua R. v. Edgerton School District,* Decision and Order No. 330 (July 29, 1997); *Joshua S. v. Beloit-Turner School District Board of Education,* Decision and Order no. 307, January 14, 1997; *Matthew K. v. Hartford Union High School District Board of Education*, Decision and Order No. 276, March 11, 1996; *Brian C. v. Sheboygan Area School District Board of Education*, Decision and Order No. 158, September 9,

1988; and *William S. v. Suring School District Board of Education*, Decision and Order No. 98, June 17, 1982. A reasonable view of the evidence supports the board's conclusion that Michael's possession of a marijuana pipe on school grounds endangered the heath and safety of others.

In reviewing the record in this case, I find the school district did comply with all of the procedural requisites. I, therefore, affirmed 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 did comply with all of the procedural requirements of § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Michael S y the South Milwaukee School District Board of Education is affirmed.

Dated at Madison, Wisconsin, on December 26, 2000.

John T. Benson
State Superintendent of Public Instruction