Decision and Order No.: 430

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Jessica H by School District of Janesville Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX 04

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 Janesville Board of Education to expel the above-named ninth-grade pupil from the School District of Janesville. This appeal was filed by the pupil and received by the Department of Public Instruction on January 26, 2001.

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 December 20, 2000, from the district administrator of the School District of Janesville. The letter advised a

hearing would be held on January 11, 2001 that could result in the pupil's expulsion from the School District of Janesville through her 21st birthday. The letter was sent separately to the pupil and her parents by certified mail. 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. The letter specifically alleged on December 14, 2000, Jessica wrote a bomb threat at Parker High School for December 21, 2000. Minutes of the school board expulsion hearing are part of the record.

The hearing was held in closed session on January 11, 2001. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 the school board, dated January 15, 2001, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through her 21st birthday.

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 appeal in this case raises several issues requiring consideration. First, Jessica's parents allege their daughter's case was not given individual consideration and that material included in the evidence presented by the school authorities at the hearing concerned other pupils accused of similar conduct and was not relevant to their daughter. There is nothing in the record to indicate these concerns were presented to the board at the hearing. Therefore, I will not consider this material as part of the record. See *Matthew F. v. East Troy Community School District Board of Education*, Decision and Order No. 420 (June 26, 2000); *Michael M. v. Appleton Area School District Board of Education*, Decision and Order No. 411 (April 25,

2000); and *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999). Furthermore, it is not improper for the board to consider the fact there had been several bomb threats within a short period of time when determining whether the interests of the school demanded Jessica's expulsion.

Second, Jessica's parents allege there is insufficient evidence to prove Jessica's conduct endangered anyone, and there was no intent to commit any harm. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Travis J. M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); 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. *Travis J. M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *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 the record, Jessica admitted she had written the threat and said it was done on a dare. Jessica stated she tried to cross out the words so no one would be able to read them. She further stated she had not come forward before the bomb threat was found because she believed it was not readable. She thought the school would view the threat as a "joke." Yet, Jessica knew about other bomb threats at the school that resulted in the school building being evacuated, classes being disrupted, etc., and on the day she was picked up by the police, she had not come to school

because of her own fears resulting from another person's bomb threat. The board was in the best position to resolve this conflict in testimony and to determine whether her conduct endangered the safety of others. It is 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 *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395 (August 16, 1999); *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 *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).

Next, Jessica's parents allege that expulsion until her 21st birthday is too severe a punishment. They also allege §§ 120.13 and 120.44 require that the board exhaust all reasonable and available resources. These statutes do not require the board to do this. 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. *David D. v. Central High School District of Westosha Board of Education*, Decision and Order No. 429 (January 25, 2001); *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.

Finally, Jessica's parents allege the board did not consider other, less severe alternatives before deciding on expulsion in violation of the board's own policy number 5350. Whether or not the school district had or followed a policy is irrelevant to my review. See *Justin S. v. Marshfield School District Board of Education*, Decision and Order No. 361 (May 27 1998); *Joshua R. v. Edgerton School District,* Decision and Order No. 330 (July 29, 1997); *Donald P. v. Westby Area School District Board of Education*, Decision and Order No. 299 (August 9, 1996); *Kimberly K. v. Oak Creek-Franklin School District Board of Education*, Decision and Order No. 268 (January 8, 1996). The school district's policy is not determinative or controlling. The board found that Jessica endangered the property, safety, and health of other students, and the school district's interests demanded expulsion. Thus, the board had statutory authority to expel Jessica. The decision to expel a pupil and a 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 120.13(1)(c),

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 Jessica H y the School District of Janesville Board of Education is affirmed.

Dated at Madison, Wisconsin, on March 29, 2001

John T. Benson
State Superintendent of Public Instruction

Parties to this appeal are:

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APPEAL RIGHTS

Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.