Decision and Order No.: 432

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Dustin L. F by Altoona School District Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX 05

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 Altoona School District Board of Education to expel the above-named pupil from the Altoona School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 15, 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 interests of the school district demand that the student be expelled.

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated November 21, 2000, from the district administrator of the Altoona School District. The letter advised that a

hearing would be held on December 6, 2000, that could result in the pupil's expulsion from the Altoona School District through the 2001-02 school year. The letter was sent separately to the pupil and his 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 the pupil should be expelled for his role in sending an email to other students on November 2, 2000, threatening to kill them. A copy of the printout of the threatening email and the "disciplinary office referral" form were attached to and incorporated in the Notice of Pupil Expulsion Hearing. An audiotape of the expulsion hearing is part of the record.[1]

The hearing was held in closed session on December 6, 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 the board, dated December 13, 2000, was mailed

[1] Wis. Stats. § 120.13(1)(c)3 requires the school board to keep written minutes of the hearing. The board did not submit written minutes with the hearing record. This could be grounds for reversal. However, the board did submit an audiotape of the hearing as part of the record. In this case, the audiotape was of satisfactory quality to enable a meaningful review of the hearing, thus I will not overturn the expulsion. I caution school districts against relying on such audiotapes, because they are frequently so garbled or inaudible as to be useless for review purposes.

separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 2001-02 school year and included provisions for early readmission.

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 letter alleges the expulsion was based upon an incomplete police report and without waiting for the results of Dustin's proposed polygraph test.[2] 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).

The board heard evidence about several pupils at the Altoona school receiving a death threat via the school's email system. The investigation by the police and school authorities indicated the threat was sent from a school computer by someone using Dustin's password. When questioned by school authorities, Dustin denied any involvement or knowledge of the message. The school authorities soon determined that Dustin and another pupil, J.A. (who is a friend of Dustin's and who was later implicated in sending the message), were both in the computer lab during the critical period of time. Despite numerous opportunities to tell the truth

[2] Dustin's father did send me a copy of the polygraph results. However, because the test results are not part of the expulsion hearing record, I will not consider them. The appropriate venue is for Dustin's father to petition the **school board** for a review of the expulsion order.

about what had occurred, Dustin maintained his innocence. Eventually, during questioning by the police, Dustin stated J.A. had written and sent the death threat. Dustin claims when he realized what J.A. had written, he told J.A. not to send it, because he (Dustin) would get into trouble. Dustin said he tried unsuccessfully to delete the message before the recipients could open it. Dustin told the board his reason for lying was because his friend had told him they would not get into trouble if they each maintained the same story, and because he did not want to get his friend into trouble. Ultimately, Dustin and J.A. each accused the other of being the person responsible for writing and sending the death threat. The board also heard that J.A. failed a polygraph test, and that Dustin did not initially take a polygraph test. Dustin also explained why he did not initially agree to a polygraph test. During the hearing, Dustin's father asked the board to wait until Dustin's polygraph was done before making its decision. The board rejected that request. The board found that, even though they could not determine Dustin's exact involvement, he was an active participant, he had repeatedly lied to school authorities during the investigation, and he obstructed the investigation. The board concluded the interests of the school demanded his expulsion.

The board was in the best position to resolve this conflict in testimony. 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). There is sufficient evidence on the record to support the board's findings and conclusions.

The board declined to grant Dustin's father's request for time to complete Dustin's polygraph. School boards are not required to postpone an expulsion hearing pending the outcome of court proceedings or police or other outside investigations. See *Joseph S. v. Oak Creek-Franklin Joint School District Board of Education,* Decision and Order No. 403 (October 1, 1999); *Earl N. v. Milwaukee School District Board of Education,* Decision and Order No. 111 (March 3, 1983); *John B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (Oct. 31, 1983); *Carlos M. v. West Allis –West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994). Dustin's father was informed at the hearing that he could petition the board for a review of the expulsion if Dustin's polygraph proved favorable to Dustin. As has been stated many times before, the state superintendent's review is limited to evidence presented on the record. *Travis J.M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Tony R. v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995); and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995).

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 Dustin L. F by the Altoona School District Board of Education is affirmed.

Dated at Madison, Wisconsin, on April 11, 2001.

John T. Benson
John T. Benson
State Superintendent of Public Instruction