Decision and Order No.: 435

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Raymond K by Phillips School District Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX 09

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 Phillips School District Board of Education to expel the above-named ninth-grade pupil from the Phillips School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 1, 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 February 23, 2001, from the district administrator of the Phillips School District. The letter advised a hearing

would be held on March 12, 2001 that could result in the pupil's expulsion from the Phillips School District. Two copies of the letter were sent in one envelope, by certified mail, to the pupil's parents. The letter alleged 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 stated the misconduct was detailed in "the attachments"; the letter itself did not contain specific allegations of misconduct. The attachments consisted of a one-page attendance report that did not disclose any unexcused absences; his academic record; a summary of pupil and parent rights concerning student expulsions; a school discipline referral and detention form containing the allegation that Ray admitted he sold a controlled substance to another student on school property on or about January 17, 2001; and Ray's statement to the police admitting this conduct. Minutes of the school board expulsion hearing are part of the record.

The hearing was held in closed session on March 12, 2001. 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. A letter informing the parents of the

expulsion for the remainder of the 2000-2001 school year was mailed on or about March 13, 2001.[1]

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.

[1] According to the minutes of the expulsion hearing, the family appeared before the board to hear the board's decision. The board announced that Ray engaged in conduct while at school or under the supervision of a school authority which endangered the property, health, or safety of others and that the interests of the school necessitated expulsion. The board announced that he was expelled until the last student day of the 2000-2001 school year.

The pupil and his parents raise three issues for consideration. They allege the board minutes are insufficient, the punishment was too harsh, and there was insufficient evidence to support the expulsion. First, while the board minutes are sparse, they are sufficient for a meaningful review of the hearing. While there is no statutory explanation of how detailed hearing minutes must be, previous decisions by the state superintendent have outlined minimum requirements. The record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. If there is a reasonable view of the evidence submitted that supports the board's findings, those findings will be upheld. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996). The minutes do indicate who was present, what evidence was presented and the conclusions and actions of the board. Therefore, this is not grounds for reversal.

Second, the parents allege expulsion was too extreme. They allege other pupils who were guilty of similar conduct were not expelled. With respect to the fairness and unevenness of disciplinary measures imposed by schools, I am without authority to address those issues. *Nathaniel S. v. Wausau School District,* Decision and Order No. 350 (March 25, 1998); *Danielle W. v. Barron Area School District Board of Education*, Decision and Order No. 310 (January 1997); *Douglas S. v. Neenah School District Board of Education,* Decision and Order No. 162 (May 23, 1989); *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988). There may be explanations for the different treatment of each individual and each circumstance. It is well within the province of the school board to consider these individuals and circumstances to determine the appropriate punishment. Furthermore, 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, to second-guess the appropriateness of a school board's determination. This is not an extraordinary circumstance.

Third, the parents allege because there was no physical evidence, Ray's confession was insufficient to support the expulsion. 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).

Ray admitted to the police that he sold drugs to other students while at school. There is no requirement to have physical evidence, such as the drugs or pictures of the transaction, to corroborate the statement. The board can judge the credibility of the witnesses to determine the facts. 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, 111 N.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).

However, this expulsion was not free of procedural error. The district erred when it mailed two copies of the notice of expulsion hearing in one envelope addressed to the parent. Section 120.13(1)(c)4. requires the school district to send notice of the expulsion hearing to the pupil and his or her guardian. The district also erred when it failed to mail a copy of the expulsion order to the pupil and his parents. When the word "and" is used in a statute, it means both of the stated requirements must be met. *Trojan v. U.W. Board of Regents*, 128 Wis. 2d 270, 273 (1985). Also, when the legislature amended the statute in 1973, it specifically extended to individual pupils the right to prior notice of the hearing. Laws of 1973, ch. 94. Before the 1973 amendment, these individual pupil rights did not exist in the law. The state superintendent has routinely held the notice requirements in §120.13(1)(c) are mandatory in nature, and failure to comply with the statute requires reversal of the expulsion order, even if both the pupil and the parent appear at the expulsion hearing. See *Michelle R. v. Suring Public Schools Board of Education*, Decision and Order No. 126 (March 7, 1985), citing *Muskego-Norway Consolidated Schools v. WERB*, 32 Wis. 2d 478, 83 (1967); *Paul K. v. Flambeau School District Board of*

Education, Decision and Order No. 171 (July 17, 1990); *Russell B. v. Muskego-Norway School District, Decision and Order No. 175 (February 29, 1991); Robert K. v. Manitowoc Public School District Board of Education*, Decision and Order No. 230 (May 3, 1994); *Phillip C. v. Wausaukee School District Board of Education*, Decision and Order No. 280 (March 22, 1996); and *Tyrell D. v. Racine Unified School District Board of Education*, Decision and Order No. 288 (May 14, 1996).

Placing two notices in one envelope does not meet these requirements. The state superintendent has previously overturned expulsions where both the pupil's and parent's notice were provided to the pupil. *John K. v. Wisconsin Rapids School District,* Decision and Order No. 178 (May 17, 1991). Providing two notices in one envelope addressed to the parents is not distinguishable. Furthermore, I previously cautioned districts that mailing two copies of a notice addressed to parents in one envelope raises a serious question as to compliance with the requirement of separate notices. *Shawn F. v. Slinger School District*, Decision and Order No 231 (June 9, 1994). It has also been determined that mailing the student's copy of the notice of hearing to the father's work address does not comply with the statute. *Issac S. v. Milwaukee Public School District*, Decision and Order No. 187 (April 21, 1992). "To find otherwise would eviscerate the legislature's clear directive that pupil and parental rights are to be treated as distinct and separate in these matters. Although pupil and parental interests may frequently coincide, that is not always the case and the legislature has clearly directed school districts not to assume these interests to be one in the same." *Issac S. v. Milwaukee Public School District*, Decision and Order No. 187 (April 21, 1992). Finally, there are strong public policy reasons for the requirement of separate notices. Most expulsions involve teenage students. It is common knowledge among educators and parents that privacy is an important teenage right. In many

households, the parents do not open the teenager's mail, and the teenager does not open the parents' mail. Thus, when two notices are placed in one envelope addressed only to the parent or the student, there is no assurance that the mandatory procedural requirement of sending separate notices has been met.

If the district chooses, it may remedy this error by providing proper notice of the expulsion hearing, rehearing the expulsion, and providing proper notice of the expulsion decision. See *Joshua D. v. Tomorrow River School District*, Decision and Order No. 415 (May 24, 2000); *Nick N. v. Elcho School District Board of Education,* Decision and Order No. 373 (December 4, 1998); *Adam S. v. East Troy Community School District Board of Education,* Decision and Order No. 300 (August 9, 1996); *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992); and *Nichole P. v. Crandon School District Board of Education,* Decision and Order No. 193 (May 29, 1992).

In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. I, therefore, overturn this expulsion. This decision does not condone the pupil's behavior, nor does it suggest the expulsion ordered by the board is inappropriate. However, I must uphold the requirements contained in the statute.

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 not comply with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Raymond K /by the Phillips School District Board of Education is overturned.

Dated at Madison, Wisconsin, on June 25, 2001.

John T. Benson

John T. Benson
State Superintendent of Public Instruction

Parties to this appeal are:

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