Decision and Order No.: 436

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Joseph H. A by Milwaukee Public School District Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX 10

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 Milwaukee Public School District Board of Education to expel the above-named tenth-grade pupil from the Milwaukee Public School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 2, 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 27, 2001, from the district administrator of the Milwaukee Public School District. The letter advised

a hearing would be held March 8, 2001 that could result in the pupil's expulsion from the Milwaukee Public School District. The letter was sent separately to the pupil and his parents by messenger service. 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 he possessed a controlled substance (marijuana) at Riverside University High School on February 20, 2001. A transcript of the hearing is part of the record.

The hearing was held before an independent hearing panel in open session on March 8, 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 panel deliberated in closed session. All three members of 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 panel further found the interests of the school demanded the student's expulsion. A recommended order for expulsion containing the findings of fact and conclusions of law of the hearing panel, dated March 8, 2001, was mailed separately to the pupil and his parents and forwarded to the school board for action. On March 28, 2001, the school board adopted the recommended order. The parents and pupil were provided separate written notification of the board's action. The order stated the pupil was expelled through June 8, 2001.

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 appellant raises four issues for consideration. First, the pupil and his parent allege that the "preliminary expulsion hearing" was unfair. The preliminary expulsion hearing is an investigative interview utilized by Milwaukee Public Schools. It is not an expulsion hearing under §119.25 or 120.13(1)(c). After the preliminary expulsion hearing, the pupil is given an expulsion hearing under §119.25 to determine whether he committed an expellable offense and the appropriate discipline. Because the preliminary hearing is not an expulsion hearing under

§119.25, the state superintendent does not have authority to review it. See *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

The pupil and parent also allege that the independent hearing panel was not an impartial hearing panel. This issue was not raised before the hearing panel or any time prior to this appeal. Matters not raised before the board cannot be raised for the first time on appeal. *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). The hearing panel consisted of Mr. Mosley, MPS human resources personnel; Mr. Brewer, MPS leadership academy coordinator; and, Mr. Davis, community representative. The parents allege that because Mr. Jude, the deputy superintendent, made the written recommendation for expulsion, other MPS employees are beholden to him and unable to vote against his recommendation. This is nothing more than conjecture. There is no evidence that either employee reports to Mr. Jude, or that they are otherwise biased. Further, the law presumes that public officials will discharge their legal duties in accordance with the authority conferred upon them, and that they will act fairly, impartially, and in good faith. See *Heine v. Chiropractic Examining Board*, 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied*, 370 U.S. 720 (1962).

The parents also argue there was no evidence Joe's conduct endangered anyone. The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages, the chance of loss or injury, or the capability of producing death or great bodily harm.

These terms embrace the notion of harmful acts or actions that are detrimental or involve loss or damages. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (November 25, 1996); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (December 5, 1995); and *Kirsten J. v. Mukwonago School District Board of Education,* Decision and Order No. 185 (February 21, 1992).

The state superintendent has routinely upheld expulsions based upon possession of marijuana on school grounds as conduct that endangers another at school. *Brian M. v. Lodi School District*, Decision and Order No. 425 (October 23, 2000); *Andrew C. v. Milwaukee Public School District,* Decision and Order No. 386 (June 11, 1999); *Julian H. v. Milwaukee Public School,* Decision and Order No. 379 (April 20, 1999); *Shannon T. v. Milwaukee Public School District,* Decision and Order No. 354 (April 16, 1998); *Joshua S. v. Beloit-Turner School District,* Decision and Order No. 307 (January 14, 1997); *Donald P. v. Westby Area School District,* Decision and Order No. 299 (August 9, 1996); *Robin L. v. East Troy Community School District,* Decision and Order No. 253 (June 21, 1995); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994).

Finally, the parents argue the decision to expel was harsh or unfair. The parents feel that an ill-advised zero-tolerance policy made the hearing panel, and subsequently the board, decide to expel. They also feel the board ignored their plight, because the board members did not comment on a letter the parents had sent each of them prior to the board's consideration of the hearing panel's recommendation. Additionally, they feel the board's decision did not take into account their son's lack of prior disciplinary record. Finally, they do not agree with the district's decision to assign Joe to a different school. 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.

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.

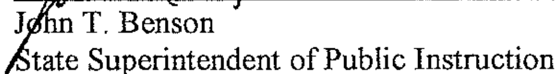
CONCLUSIONS OF LAW

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 Joseph H. A   a by the Milwaukee Public Schools School District Board of Education is affirmed.

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



John T. Benson
State Superintendent of Public Instruction