Decision and Order No.: 440

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Raymond I. C. by Mineral Point School District Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX 14

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 Mineral Point School District Board of Education to expel the above-named 18-year old pupil from the Mineral Point School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 31, 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 March 1, 2001, from the district administrator of the Mineral Point School District. The letter advised a hearing

would be held on March 13, 2001 that could result in the pupil's expulsion from the Mineral Point School District through his 21st birthday. The letter was sent to the pupil, an adult, 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 that on February 28, 2001, Raymond was in possession of a switchblade knife at school. Minutes of the expulsion hearing and a transcript of the hearing are part of the record.

The hearing was held in closed session on March 13, 2001. The pupil appeared at the hearing represented by counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil was 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 March 20, 2001, was mailed separately to the pupil. The order stated the pupil was expelled through 2001-02 school year but did allow early readmission on April 2, 2001, provided specific conditions were met. Raymond met those conditions and returned to school, graduating from Mineral Point High School at the conclusion of the 2000-2001 school year.

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 in this case does not raise any procedural issues but does allege that the punishment was too severe. The board filed a brief in response to the pupil's appeal letter and initial brief. In that brief, the board alleged that the appeal is moot because Raymond has graduated from Mineral Point High School.

First, the appeal is not moot. While Raymond was allowed back to school and allowed to graduate, there is no evidence that the expulsion has been removed from his school records. "An issue is moot when its resolution will have no practical effect on the underlying controversy."

State ex rel. Olson v. Litscher, 2000 WI App 61, ¶3, 233 Wis.2d 685, 608 N.W.2d 425. As long as the expulsion remains on his school records, it could potentially harm the pupil. Therefore, this case is not moot.

Secondly, the pupil argues that the punishment is too severe. He argues that the interests of the school did not demand expulsion. In support of his argument, he references the decision of the board to allow early readmission, under conditions, 13 days after the expulsion order. 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 this case, the police were at school investigating a complaint. As part of this investigation, Raymond was arrested at school. During the search incident to arrest a knife was found in Raymond's pocket. The administration and board described it as a switchblade. The pupil objects to that characterization. Regardless of the name used to describe the knife, a picture of it was shown to the board. It had a three and a half inch blade that was stored in a four inch handle.

The superintendent has routinely upheld expulsions based upon the possession of a knife on school grounds. *Jesse M. K. v. Tri-county Area School District,* Decision and Order No. 266 (January 2, 1996); *Brent S. v. Mondovi School District*, Decision and Order No. 290 (May 23, 1996); *Jesse P. v. Hustiford School District,* Decision and Order No. 293 (June 10, 1996); *Michael L. v. New Richmond School District*, Decision and Order No. 326 (June 2, 1997); *James D. v. Greenfield School District,* Decision and Order No. 352A (April 7, 1998); *Stacey R. v. Milwaukee School District,* Decision and Order No. 362 (June 1, 1998). Therefore, it is not unreasonable for the board to be satisfied that the interests of the school demanded expulsion.

In reviewing this case, I do not see the extraordinary circumstance or procedural violation that cause me to modify or reverse the pupil's expulsion. 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 Raymond I. Crespo, Jr. by the Mineral Point School District Board of Education is affirmed.

Dated this 27th day of July, 2001.

Anthony S. Evers, Ph.D.
Deputy State Superintendent of Public Instruction

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.

Parties to this appeal are:

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