Decision and Order No.: 448

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Scott M by Mercer School District Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX 22

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 Mercer School District Board of Education to expel the above-named pupil from the Mercer School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 9, 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 September 25, 2001, from the district administrator of the Mercer School District. The letter advised a hearing

would be held on October 3, 2001 that could result in the pupil's expulsion from the Mercer School District until his 21st birthday. The letter was sent separately to the pupil and his parents. The letter alleged that the pupil repeatedly refused or neglected to obey school rules during the past calendar year. The letter included a list of detentions and reasons for the detentions for the 2000-01 and 2001-02 school year. These detentions were for a variety of offenses including insubordination, causing disruptions, not following noon-hour rules, engaging in horseplay, harassing and assaulting peers, and leaving campus grounds. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are part of the record.

The hearing was held in closed session on October 3, 2001. The pupil and his parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parent 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 repeatedly refused or neglected to obey school rules. 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 October 9, 2001, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through October 3, 2002.

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 raises two issues. First, the parent alleges that the decision to expel is too harsh. Secondly, the parent alleges the board was biased against her son.

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 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. While Scott is a thirteen-year old and expulsion is a serious consequence, this is not an extraordinary circumstance nor is there a procedural violation that cause me to modify the pupil's expulsion period.

The parent alleges that the board was biased. She states that two of the five board members excused themselves because of a conflict of interest and that of the remaining three board members, two had a conflict. She alleges that one board member gave Scott a detention and another board member volunteered time in the detention classes where Scott was sent. The record indicates that the board president excused himself due to a potential conflict. The board president, after informing the board that he would excuse himself from the hearing, asked each board member if they could hear the case and remain unbiased. Each board member answered "yes". When the decision to expel came to a vote, a second board member abstained from the vote. The remaining three members voted to expel. In her appeal letter, the mother does not specify which of the remaining members had previous contact with her son. The detention report included with the notice of expulsion hearing lists the last name of the school personnel involved in the detention. I can find a reference to one detention of 15 minutes for throwing food from a teacher named Gransee and one detention of 30 minutes for tardiness from a teacher named Weinkauf.[1] These are the only possible connections to board members, and the record is not clear that these are the board members. Regardless, Scott received 42 detentions between September 14, 2000 and September 24, 2000, for a total of 5 days of in-school suspension and 14 hours of detention. Much of the conduct leading to these other detentions was more egregious

than throwing food and tardiness. Any conflict that possibly existed was insignificant, when viewing the totality of the circumstances. Furthermore, the law presumes that school board members, as 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). In this case, I find the pupil's assertion of bias or conflict insufficient to overcome this presumption. When asked, each board member attested that he or she could hear the case without bias or prejudice. The record contains no evidence of actual bias or conflict, nor does it reflect circumstances that would lead to a high probability of bias or conflict. *See Nicholas E. v. Lodi School District Board of Education,* Decision and Order No. 303 (October 17, 1996); *Kathleen W. v. Tri-County Area School Board of Education,* Decision and Order No. 130 (May 10, 1985).

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).

[1] There were board members with the last name of Gransee, Weinkauf and Johnson.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Scott M. by the Mercer School District Board of Education is affirmed.

Dated this 18th day of December, 2001

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