Decision and Order No.: 454

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Andrew T. by Waupaca School District Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX28

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 Waupaca School District Board of Education to expel the above-named pupil from the Waupaca School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 10, 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 November 7, 2001, from the district administrator of the Waupaca School District. The letter advised a

hearing would be held November 13, 2001 that could result in the pupil's expulsion from the Waupaca School District. Copies of the letter were hand delivered to the pupil's step-mother who agreed, in writing, to deliver a copy of the letter to the pupil and his father. 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 and that the pupil endangered the property, health, or safety of a school authority or endangered the property, health, or safety of any employee or school board member of the school district. The letter specifically alleged that the pupil was under the influence of alcohol on October 29, 2001 while on school property.

A hearing was held in closed session on November 13, 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. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated November 19, 2001, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2002-03 school year, with an opportunity for probationary readmission at the beginning of the second semester of the 2001-02 school year. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are part of the record.

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 in this case raises three issues.[1] The parent alleges that there was insufficient evidence to expel Andrew from school. She also alleges that the school improperly offered her a

[1] The parent also complains about the educational assistance or lack of assistance provided to the family during the suspension and expulsion. As districts are not required to provide educational services during the period of

stipulation to withdraw Andrew from school to avoid expulsion. The parent also suggests that Andrew has a disability and therefore should not have been expelled.

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).

On October 29, 2001 at 9:04 a.m. Andrew attended school under the influence of alcohol. He admitted to consuming alcohol before coming to school. His use was discovered after he left his classroom because he felt ill. The parent argues that the board should not have expelled Andrew because his conduct was reported to the police only because the parent reported it. She also argues that nothing about Andrew's conduct endangered anyone's safety.

It is within the board's discretion to give weight to the evidence and arguments, as it deems appropriate. 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.

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expulsion (except in some circumstances involving pupils identified as a child with a disability), the state superintendent has no authority to order a district to provide services in this case.

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). Furthermore, expulsions based upon alcohol use have been routinely upheld by the state superintendent. *Michelle R. v. Suring Public School District Board of Education*, Decision and Order No. 126 (March 7, 1985); *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989); *Thomas P. v. Necedah Area School District Board of Education*, Decision and Order No. 289 (May 23, 1996); *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 300(Aug. 9, 1996); *Troy Y. v. Burlington Area School District Board of Education*, Decision and Order No. 309 (Jan. 21, 1997); *Daniel A. v. Mauston School District Board of Education*, Decision and Order No. 324 (May 8, 1997); *James S. v. Waupun School District Board of Education*, Decision and Order No. 452 (January 25, 2002). The board's decision is supported by a reasonable view of the evidence.

Apparently, the board offered Andrew an opportunity to withdraw from school rather than face expulsion. While the state superintendent has previously suggested that for a number of reasons "withdraw or expel deals" such as this should not be used[2], the board does have authority to allow a child to withdraw from school as long as he is complying with compulsory attendance laws. See Wis. Stats. §118.15. Therefore, the offer of withdrawal is not a basis for an appeal or to overturn the expulsion on appeal.

Finally, the parent suggests that Andrew is a child with a disability and therefore cannot be expelled. First, under certain circumstances, pupils identified as a child with a disability may

[2] *Alexander P. v. Oak Creek-Franklin School District Board of Education*, Decision and Order No. 372 (November 23, 1998.)

be expelled. Moreover, there is no evidence in this matter that Andrew has been identified as a child with a disability pursuant to chapter 115. The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of

§ 120.13(1)(c). *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); Michael *P. v. Kenosha Unified School District Board of Education,* Decision and Order No. 172 (October 8, 1990). Therefore, there is no basis to overturn the board's expulsion hearing.

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 Andrew T by the Waupaca School District Board of Education is affirmed.

Dated this 8th day of February 2002

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