

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Michael J. by Nicolet Union High School District Board of Education	DECISION AND ORDER Appeal No.: 02-EX 01
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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 Nicolet Union High School District Board of Education to expel the above-named pupil from the Nicolet Union High School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 3, 2002.

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 7, 2001, from the district administrator of the Nicolet Union High School District. The letter advised a hearing would be held on September 24, 2001 that could result in the pupil's expulsion from the Nicolet Union High School District through his 21st birthday. The letter was sent separately to the pupil and his parents.

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 at school on September 6, 2001, he was involved in a verbal confrontation that resulted in a physical fight with another student.

The hearing was held in closed session on September 24, 2001. The pupil and his parents appeared at the hearing without counsel but assisted by an NAACP representative Mr. Clarence Nicholas. 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 September 28, 2001, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the first semester of the 2001-02 school year. A transcript of the hearing and copies of exhibits used at the 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 appellant raises several issues in his appeal.¹ First, he raises issues concerning the sufficiency of the evidence. Both in the appeal and at the expulsion hearing, the pupil pointed out and argued about discrepancies in statements from those involved or who witnessed the incident. 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).

In this case, the board heard evidence that Michael was involved in a verbal and somewhat physical confrontation with another pupil. Michael attempted to place the blame on the other pupil. He

¹ The pupil alleges that the district discriminated against him in matters unrelated to the expulsion. The pupil and his parents were advised by a separate letter that he must use the school district pupil discrimination complaint procedure before filing a discrimination complaint at the Department of Public Instruction.

pointed out portions of witness statements that bolstered his argument. He also suggested that some witness statements were coerced or otherwise not accurate. The administration presented the testimony of the assistant principal who investigated the incident and the teacher who witnessed a large portion of the incident. The board was in the best position to resolve any conflicts in testimony or witness credibility. It was within the board's discretion to give weight to the evidence and arguments, as it deemed appropriate and to judge the credibility of witnesses. 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. 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).

Next, Michael alleges that the other student involved in the confrontation should have been expelled. First, I do not know what discipline, if any was given to the other pupil involved. Secondly, there are many reasons why one student is expelled while another student is not. It could be related to issues of proof or the pupil's prior history or personal factors. Therefore, with respect to the fairness and unevenness of disciplinary measures imposed by schools, I am without authority to address those issues. *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988); *Douglas S. v. Neenah School District Board of Education*, Decision and Order No. 162 (May 23, 1989) and *Danielle W. v. Barron Area School District Board of Education*, Decision and Order No. 310 (January 1997).

Thirdly, the pupil alleges that it was error for the board to hold the expulsion hearing in closed session. A school board may close an expulsion hearing to the public under the state's open meetings law without approval of the pupil. A pupil is only entitled to a closed hearing if he requests, not an open hearing. *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993); *Rebecca S. v. Janesville School District Board of Education*, Decision and Order No. 248 (May 8, 1995); *Aron E. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341

(December 17, 1997); *Matt H. v. Tomorrow River School District Board of Education*, Decision and Order No. 349 (March 23, 1998); *Lyle S. v. Whitewater School District Board of Education*, Decision and Order No. 378 (April 15, 1999).

Fourthly, the pupil alleges that the board did not abide by §115.38(b) and 115.792 (1)(a), (2) and 3.b. As noted by the school board, §115.38(b) does not exist. I presume the pupil meant §115.38(1)(b). However, this statute does not contain any requirements concerning expulsion hearing procedure. §115.38 requires school districts to provide certain data to the Department of Public Instruction as part of the school performance report. It has no relevance to an expulsion hearing. Similarly, §115.792 does not apply to expulsion hearings. §115.792 contains procedures used to challenge some special education decisions. It has no relevance to this expulsion hearing.

The pupil also alleges that the expulsion order was in error because it found that the conduct occurred on September 24, 2001, the day of the expulsion hearing. The notice and the testimony at the expulsion hearing addressed conduct that occurred on September 6, 2001. The reference to September 24, 2001 in the expulsion order appears to be a scrivener's error. The board should correct this error; however, it is not a basis to reverse the order.

Finally, the pupil alleges that the administration and the attorney representing the administration acted unethically. There is nothing in the record to support this allegation. The attorney acted within his role as an advocate for the administration. Furthermore, this is not the forum to air ethical grievances regarding attorneys. While the pupil disagrees with the conclusions drawn by administration witnesses and the decision to recommend expulsion, there is nothing to suggest the administration acted contrary to commonly accepted moral or ethical standards that endangered the health, education, welfare or safety of a pupil. See §115.31(1)(c).

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

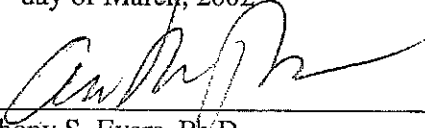
CONCLUSIONS OF LAW

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 Michael J _____ by the Nicolet Union High School District Board of Education is affirmed.

Dated this 4th day of March, 2002



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