Decision and Order No.: 472

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Aaron R. by DC Everest School District Board of Education	DECISION AND ORDER Appeal No.: 02-EX17

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 DC Everest School District Board of Education to expel the above-named pupil from the DC Everest School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 21, 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 March 20, 2002, from the principal of the DC Everest Junior High School. The letter advised a hearing

would be held, before a hearing examiner, on April 2, 2002 that could result in the pupil's expulsion from the DC Everest School District through his 21st birthday. The letter was sent separately to the pupil and his parents 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 between September 2001 and February 14, 2002, the pupil inappropriately touched a female pupil while riding the school bus transporting her to and from school. The notice contained a list of specific alleged acts including: grabbing the female student's buttocks and squeezing/pinching them, putting his hand up her shirt and trying to unsnap her bra, touching her breast area outside her clothing, putting his hand underneath her bra and touching her breast, laying on top of her and rubbing his genitals on her leg area, placing the female student's jacket or hat down the front of his pants and requiring her to retrieve the item.

The hearing was held in closed session on April 2, 2002. The pupil and his parents appeared at the hearing represented by an attorney. 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 hearing officer submitted written recommended findings of facts and conclusions of law. In essence, the hearing officer concluded, based upon the evidence presented at the hearing that between September 2001 and February 14, 2002, Aaron did the following to a female student while she was transported on a school bus from school: grabbed her buttocks and squeezed/pinched them, touched her in the breast area on the outside of her clothing, leaned behind her and made her uncomfortable, held her legs while others struck her

buttocks, placed her jacket or hat down the front of his pants and required her to retrieve the item. The hearing officer concluded that 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. He also found that the interests of the school demanded the student's expulsion. The recommended order for expulsion containing the findings of fact and conclusions of law of the hearing officer, dated April 2, 2002, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the remainder of the 2001-02 school year and was suspended from the school bus until the end of the first semester of 2002-03 school year. Minutes of the expulsion hearing and an audiotape of the expulsion hearing are part of the record.

On April 23, 2002, the DC Everest School Board met in Executive Session and approved the hearing officer's recommendation to expel the pupil. Notice of this decision was mailed to the pupil and his parents by certified mail.

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 several issues that will be addressed in the order they were raised. First, the parents complain that the pupil was suspended for more than 10 days prior to the expulsion hearing and that this violated special education laws. They also complain that the hearing officer recommended, contrary to special education laws, Aaron be allowed to take classes at the UW Extension during his short expulsion, despite the recommendation to the contrary by the school guidance counselor. An expulsion appeal is not the appropriate venue to raise special education complaints. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c). *Ryan S. v. Barron Area School District Board of Education*, Decision and Order No. 417 (June 9, 2000); *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); and *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). If the parent believes that the special education laws were improperly applied, he or she must contact the school district. Additionally, the department maintains an extensive library of materials to explain procedures

related to special education complaints or appeals. These materials are easily accessible at the department's website at http://www.dpi.state.wi.us/dpi/dlsea/een/index.html. Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.

The parents also allege that the evidence did not support the hearing officer's findings. They specify several instances where they believe the testimony was inconsistent with other testimony or written statements. 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, the 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).

The hearing officer was in the best position to resolve any conflicts in testimony or interpretation of the facts. It is within the hearing officer's discretion to give weight to the evidence and arguments, as he 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). The discrepancies pointed out by the parents in their brief were also raised at the expulsion hearing and in a presentation to the school board before the board decided to adopt the hearing officer's proposed order. The hearing officer listened to all of the testimony and believed the administration had adequately proven the facts to support the finding that Aaron's conduct endangered the health and safety of the female student. The school board heard the same arguments and decided to defer to the hearing officer's opinion.

A reasonable view of the evidence supports the hearing officer's conclusion that Aaron engaged in a course of conduct that physically and sexually assaulted and harassed the female student. Furthermore, his conclusion that this conduct satisfies the grounds for expulsion and that the interests of the school demands expulsion is also supported.

Finally, the parents allege that the administration acted improperly by being in the room with the school board when it considered whether or not to adopt the hearing officer's recommendation. There is no evidence provided to suggest that the Superintendent and Assistant Superintendent who remained in the room said or did anything to influence the board. Therefore, this is not a reason to overturn the expulsion. See *Joseph S. v. Oak Creek-Franklin School District Board of Education*, Decision and Order No. 403 (October 1, 1999), *overturned* by Milwaukee County Circuit Court which found that the presence of the administrator at the hearing is not improper.

In subsequent briefs, the parents allege that they did not receive a transcript of the expulsion hearing, contrary to §120.13(1)(e)4.f. However, there is no evidence in the record to

suggest the parents requested a transcript. A transcript is required only *upon request.* See §120.13(1)(e)4.f. Furthermore, the parents hired a court reporter to transcribe the hearing. Thus, even if they had requested and not received a transcript from the school board, there is no evidence they were prejudiced.

In addition to appealing the expulsion, the parents want the state superintendent to censure and discipline the district administrator and the principal of the junior high school. First, an expulsion appeal is not the appropriate venue to make this complaint. Secondly, the state superintendent has only the authority to revoke a professional license, she has no authority to censure or discipline any school district employee. Third, the parents have provided no information to support a censure or discipline, even if the state superintendent had such authority.

In this case, the school was faced with allegations made by a teenage girl that, for several months, she had been repeatedly physically and sexually harassed and assaulted by at least four different boys while on the school bus. The school investigated the claims, found them to be credible and recommended expulsion. An expulsion hearing was held before a hearing officer. The expulsion hearing lasted several hours and gave the pupil a full opportunity to defend himself. He was represented not only by his parents, but also an attorney. His accuser testified against him and was available for cross-examination. The hearing officer heard all of the testimony, including attempts by the pupil's representatives to discredit and denigrate the victim. After hearing all of the testimony and arguments concerning inconsistencies and inaccuracies, the hearing officer concluded the conduct occurred. The hearing officer recommended a relatively short expulsion period – approximately two and half months. There is no evidence that the pupil was treated unfairly or too harshly. There is no evidence of procedural irregularity. 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 Aaron R by the DC Everest School District Board of Education is affirmed.

Dated this 18th day of July, 2002

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