

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Tyler R. by Rib Lake School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 02-EX16</p>
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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 Rib Lake School District Board of Education to expel the above-named pupil from the Rib Lake School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 22, 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 April 18, 2002, from the district administrator of the Rib Lake School District. The letter advised a hearing

would be held on April 29, 2002 that could result in the pupil's expulsion from the Rib Lake 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 repeatedly refused or neglected to obey school rules. A listing of the rule violations was attached to the notice. There were 15 rule violations included on the attachment including disruptive behavior in class, use of profanity, "mooning" other students and threatening those he suspected of turning him in, fighting with other students and theft from the school.

The hearing was held in closed session on April 29, 2002. 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 repeatedly refuse or neglect to follow 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 May 2, 2002, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the remainder of 2001-2002 school year. Minutes of the school board 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 letter in this case raises three issues which require consideration. First, the mother complains that Tyler was suspended for 12 days before the expulsion hearing. This is not a statutory violation. §120.13(1)(b) allows a district to expel a student for up to 15 days pending expulsion.

Secondly, the parent complains that Tyler should be identified as needing special education or alternatively as "gifted". There is no requirement that a pupil be evaluated for "giftedness" prior to expulsion. As to the allegation concerning special education, 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 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 her son requires special education services or a Section 504 plan to accommodate a disability, 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.

Third, the mother also complained about the hearing process itself. She alleges that the conduct that Tyler's conduct was not disruptive, contrary to the school district's opinion; that the school superintendent incorrectly brought up an incident from the prior school year; that the school superintendent was rude during the hearing because he was "flicking his bic"; that the board improperly asked her how Tyler behaved at home; and that there were no teachers or other witnesses for her to cross-examine.

Whether Tyler's conduct was disruptive is a factual issue to be determined by the school board. 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).

The school board was in the best position to resolve any conflicts in testimony or interpretation of the facts. It is within the school 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).

A reasonable view of the evidence supports the board's conclusion that Tyler repeatedly refused or neglected to follow the rules. He was repeatedly disciplined for his conduct at school yet he continued to engage in similar conduct.

The mother's allegations that the superintendent was rude are not cause to overturn an expulsion. Furthermore, there is no evidence in the record to support the mother's allegation. The allegation that the board was presented with conduct from the prior school is not supported

by the record. Even if it was brought up, there is no evidence to suggest the board considered it or relied upon it. Therefore, it is not a basis to overturn the expulsion.

Similarly, there is no evidence in the record to support the allegation that board asked the mother and father how Tyler behaved at home. Furthermore, the mother has not explained why it is inappropriate for the board to inquire about his overall behavior. It may be a factor the board would consider in determining the length of expulsion. Finally, the mother's complaint that there were no teacher's to cross-examine must fail. If the mother wanted to question the teachers, she could have called them as witnesses. The administration presented its case, it was not required to present the parents case as well.

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 Tyler R by the Rib Lake School District Board of Education is affirmed.

Dated this 22nd day of July, 2002



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