

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

B #

by Elmbrook School District
Board of Education

DECISION AND ORDER

Appeal No.: 03-EX04

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 Elmbrook School District Board of Education to expel the above-named pupil from the Elmbrook School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 23, 2003.

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 dated December 23, 2002, from the district administrator of the Elmbrook School District. The letter advised a hearing would be held on January 15, 2003

that could result in the pupil's expulsion from the Elmbrook School District. The letter was sent separately to the pupil and his foster 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 on December 17, 2002 Bobby possessed and intended to deliver marijuana on school grounds.

The hearing was held in closed session on January 15, 2003. 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 January 22, 2003, was mailed separately to the pupil and his foster parents. The order stated the pupil was expelled through first semester of the 2003-04 school year with an opportunity for early readmission at the beginning of the 2003-04 school year. A transcript of the hearing is 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 foster parent's appeal raises several issues. First, she alleges that expulsion was too harsh. 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). Bobby was found at school with two baggies of marijuana. He admitted they were given to him by another student at school. He also admitted he was going to pass them along to a different

student at school. His foster mother claims it is not fair to punish him with expulsion because she found the marijuana on Bobby and turned it over to the school officials. The school board is in the best position to judge the demeanor of witnesses as well as 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. In reviewing this case, I do not see the extraordinary circumstance or procedural violations that cause me to modify the pupil's expulsion period.

In one of her briefs, the foster parent also alleges that it was wrong to rely on Bobby's statement because he had not been read his constitutional rights. Expulsion hearings are not criminal proceedings. The exclusionary rule, which in criminal cases may demand the exclusion of illegally obtained evidence, does not apply to administrative expulsion hearings. *See e.g. In the Interest of Thomas J.W.*, 213 Wis. 2d 264, 276 (Ct. App. 1997); *State v. Carpenter*, 197 Wis. 2d 252, 541, N.W. 2d 05 (1995); *State ex re. Struzik v. DHSS*, 77 Wis. 2d 216, 221 (1977). This principle has been consistently applied in expulsion hearings. *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order No. 395 (August 16, 1999); *Leo P. v. Whitewater Unified School District Board of Education*, Decision and Order No. 351 (March 31, 1998); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983). Furthermore, there is no evidence that the statement was taken illegally. The board was free to determine whether the admission was reliable. This is a credibility determination that is solely within the discretion of the board.

The foster parent also complains that she was not aware that she had the option of withdrawing Bobby from the school district to avoid expulsion. First, she was notified of this option in the notice of expulsion hearing mailed to her on December 23, 2002. Second, she would only have the option to withdraw Bobby from public school if he were enrolled in another public school, a private school or home school. Finally, while the state superintendent has previously suggested that for a number of reasons “withdraw or expel deals” such as this should not be used¹, 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. However, the district is not required to make this offer and failure to do so would not be a basis to overturn the expulsion on appeal.

Finally, the foster parent raises questions about the adequacy of the district’s evaluation of Bobby to determine special education needs. 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).² *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). Therefore, any challenges to the district’s special education evaluation procedures may be addressed using special education appeal procedures. The department maintains an extensive

¹ *Alexander P. v. Oak Creek-Franklin School District Board of Education*, Decision and Order No. 372 (November 23, 1998.)

² If Bobby does not agree with the decision that he is not disabled, he must use the administrative remedies available under subchapter V of Chapter 115, Wisconsin Statutes, and PI Chapter 11, Wisconsin Administrative Code. See *Matthew C. M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996); *Jessie M. K. v. Tri County Area School District Board of Education*, Decision and Order No. 266 (January 2, 1996);

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/dlse/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.

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

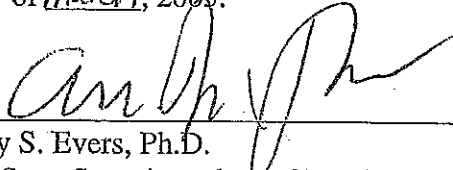
CONCLUSIONS OF LAW

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 **B H** by the Elmbrook School District Board of Education is affirmed.

Dated this 21st day of March, 2003.



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