Decision and Order No.: 489

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Curtis O. by St. Croix Central School District Board of Education	DECISION AND ORDER Appeal No.: 03-EX 05

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 St. Croix Central School District Board of Education to expel the above-named pupil from the St. Croix Central School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 14, 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 entitled "Notice of Expulsion Hearing," dated January 10, 2003, from the district administrator of the St. Croix Central School District. The letter advised

a hearing would be held on January 15, 2003 that could result in the pupil's expulsion from the St. Croix Central School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his guardians. 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 January 8, 2003 Curtis was found smoking marijuana in a car on school property.

The hearing was held in closed session on January 15, 2003. The pupil and his guardians appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his guardians 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 20, 2003, was mailed separately to the pupil and his guardians. The order stated the pupil was expelled through to the end of 2002-03 school year. Minutes of the school board expulsion hearing and an abridged transcript of 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 appeal letter[1] in this case raises three issues. First, the appellant argues that the notice of expulsion hearing did not contain a reference to §120.13(1) as required by §§ 120.13(1)(b), (c) 4., (e)3. and (e)4. The notice of expulsion hearing does contain the error as alleged by the pupil.

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[1] The pupil's attorney did not file an initial brief; therefore, his allegations are limited to those raised in his appeal letter. The pupil's attorney filed a reply brief to the district's brief. This reply brief is only considered as it relates to the allegations raised in the appeal letter and the district's response brief. I note that in the reply brief, the pupil's attorney suggests that the superintendent has the power to do order the parties to engage in mediation. The state superintendent does not have a mechanism or authority for mediation of expulsion decisions. The state superintendent's authority is limited to that contained in §120.13(1)(c)3. to either approve, reverse or modify the board's decision. Therefore, the request for mediation is denied. The pupil's attorney also complains in the reply brief that the hearing tape was not completely transcribed. The board is required to take minutes of the meeting, see §120.13 (1)(c)4.f., and has provided them. Thus, this complaint would not warrant reversal, even if it had been included in the letter of appeal or an initial brief. Finally, the reply brief also alleges that it was a conflict of interest for the board's attorney to act as impartial mediator. The board's attorney did not act as mediator; he was the

However, this error was noted at the expulsion hearing and the school board offered to reschedule the expulsion hearing after a proper notice was issued. The pupil and his guardians declined this offer and elected to proceed with the hearing. Generally, an error such as this would require the state superintendent to overturn the expulsion order. *Alex H. v. Eleva Strum School District Board of Education*, Decision and Order No. 438 (July 20, 2001). However, in this case the pupil was offered the opportunity to reschedule the hearing after proper notice was issued and he declined. In this particular circumstance, he waived the issue for appeal. Thus, the expulsion will not be overturned.

Next, the pupil alleges that the decision to expel was inconsistent with prior board policy, thus it was arbitrary and capricious. The school board's policies in this situation are irrelevant to my determination. I am not authorized to review, approve or disapprove of school policy, I am only authorized to review expulsion decisions to ensure that the pupil has been provided adequate procedural due process. The decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at § 120.13(1)(c). *Joshua R. v. Edgerton School District,* Decision and Order No. 330 (July 29, 1997); *Troy Y. v. Burlington School District Board of Education,* Decision and Order No 309 (January 21, 1997); *Jason M. v. West Allis-West Milwaukee School District Board of Education,* Decision and Order No. 294 (June 24, 1996); and *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education,* Decision and Order No. 259 (August 11, 1995). Furthermore, expulsions based upon possession of marijuana have routinely been upheld by the state superintendent as conduct that endangers the property, health, or safety of others. *Brian M. v. Lodi School District*, Decision and Order No. 425 (October 23,

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board's hearing officer. His role was limited to conducting the hearing. The board retained the power and duty to determine whether to expel.

2000); *Andrew C. v. Milwaukee Public School District,* Decision and Order No. 386 (June 11, 1999); *Julian H. v. Milwaukee Public School,* Decision and Order No. 379 (April 20, 1999); *Shannon T. v. Milwaukee Public School District,* Decision and Order No. 354 (April 16, 1998); *Joshua S. v. Beloit-Turner School District,* Decision and Order No. 307 (January 14, 1997); *Donald P. v. Westby Area School District,* Decision and Order No. 299 (August 9, 1996); *Robin L. v. East Troy Community School District,* Decision and Order No. 253 (June 21, 1995); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994).

The pupil also alleges he was treated differently than others accused of similar conduct. Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998). Furthermore, 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). Finally, the record submitted by the school board happens to contain the minutes of four other expulsion hearings that occurred that evening. The four other pupils were apparently accused of smoking marijuana in the parking lot. The four other pupils were given the same punishment as Curtis. 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 violation that causes me to modify the pupil's expulsion period.

Finally, the pupil argues that his special education needs have not been met. The expulsion order indicates that Curtis is identified as a child with a disability and that the district intended to provide services to him during the period of expulsion. 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). Therefore, any challenges to the district's provision of special education services must be addressed using special education appeal and complaint procedures. 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 guardians 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 Curtis O. by the St. Croix Central School District Board of Education is affirmed.

Dated this 17th day of April, 2003.

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