Decision and Order No.: 490

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Donald K. by Little Chute Area School District Board of Education	DECISION AND ORDER Appeal No.: 03-EX 06

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 Little Chute Area School District Board of Education to expel the above-named pupil from the Little Chute Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 21, 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 6, 2003, from the district administrator of the Little Chute Area School District. The letter advised

a hearing would be held on January 14, 2003 that could result in the pupil's expulsion from the Little Chute Area School District through the pupil's 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. An administrative recommendation accompanied the notice of expulsion hearing detailing the alleged misconduct. The administration alleged that on December 19, 2002 in the men's bathroom at the high school, Don provided a small amount of marijuana to another student in exchange for a lunch ticket.

The hearing was held in closed session on January 14, 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 15, 2003, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through June 5, 2004 with an opportunity for conditional readmission on September 2, 2003. An audiotape of the expulsion 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 appellant's brief case raises four issues. First, he claims that the board failed to provide an audible record of the expulsion hearing. While the audiotape is not professional quality, it is sufficient to allow for a meaningful review of the record. The questions and responses were intelligible. Second, the pupil claims that because the board failed to supply a

written transcript of the hearing tape or written minutes of the hearing, the board has violated § 120.13(1)(c)3. and 4.f. Wis. Stats. § 120.13(1)(c)3 which requires the school board to keep written minutes of the hearing. The board did not submit written minutes with the hearing record. This could be grounds for reversal. However, the board did submit an audiotape of the hearing as part of the record. Because the audiotape was of satisfactory quality to enable a meaningful review of the hearing I will not overturn the expulsion. I caution school districts against relying on such audiotapes, because they are frequently so garbled or inaudible as to be useless for review purposes. See *John L. v. Greenfield School District Board of Education*, Decision and Order No. 418 (June 26, 2000); *Dustin F. v. Altoona School District Board of Education*, Decision and Order No. 432 (April 11, 2001).

Thirdly, the pupil alleges that there was insufficient evidence to find that he engaged in the conduct as alleged. 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 pupil argues that he denied the allegations and that the student to whom he allegedly gave the marijuana lied when he accused Don of trading the marijuana for a lunch ticket. The other student made a statement to the administration that this occurred and he testified at the expulsion hearing that this occurred. The board was in the best position to resolve this conflict in testimony. In all of these circumstances, 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).

Finally, the pupil alleges that the board's decision was not reasonably justified. As stated above, the board heard the testimony, determined each witness' credibility, considered the seriousness of the offense and considered Don's prior discipline history. It should be noted that expulsions based upon mere possession of marijuana have routinely been upheld by the state superintendent. *Brian M. v. Lodi School District*, Decision and Order No. 425 (October 23, 2000); *Andrew C. v. Milwaukee Public School District,* Decision and Order No. 386 (June 11, 1999; *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); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994). 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). 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.

In reviewing the record in this case, I find the school district did comply 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 did comply with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Donald K by the Little Chute Area School District Board of Education is affirmed.

Dated this 22nd day of April, 2003.

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