Decision and Order No.: 498

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Tyler H. by Milton School District Board of Education	DECISION AND ORDER Appeal No.: 03-EX 14

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 Milton School District Board of Education to expel the above-named pupil from the Milton School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 28, 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 February 26, 2003, from the district administrator of the Milton School District. The letter advised a hearing

would be held on March 12, 2003 that could result in the pupil's expulsion from the Milton School District. The letter was served on the pupil and his parents on March 2, 2003. 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 February 10 and 17, 2003, the pupil gave generic Ritalin to another student and that he did not follow the proper procedures for having prescription medication at school.

The hearing was held in closed session on March 12, 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 March 18, 2003, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until January 2005 with an opportunity for conditional early readmission beginning in the summer of 2003. 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 appeal letter in this case raises five numbered issues. The first two issues concern the suspension period imposed on the pupil prior to the expulsion hearing. The parents claim it exceeded 15 days and that homework was denied during the suspension period. The state superintendent is not authorized to review the circumstances of the suspension period. See *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

The last three issues concern special education issues. The parent alleges that there was evidence to support that the pupil's conduct was a manifestation of his inability to make good

decisions and that a Child Study Team was not engaged on two occasions. According to the record, the pupil was not identified as a child with a disability. 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 special education evaluation procedures may be addressed using special education appeal 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 parents may call the special education team at the Department of Public Instruction to get more information.

In a subsequent brief, the parents also allege that one witness, Principal Duncan, was not "sworn-in" when he provided testimony. While testimony under oath is preferable, there is not statutory or constitutional obligation to do so. I have previously held that a hearing where the witness was not placed under oath and the exhibits were not admitted in strict accordance with the rules of evidence, did not violate the pupil's due process right or diminish the integrity of the hearing. *Michael K. v. Burlington School District Board of Education,* Decision and Order No. 449 (February 13, 2002); *Aron E. v. Sturgeon Bay School District Board of Education,* Decision and Order No. 341 (December 17, 1997); *Chad S. v. Hartford Union School District Board of Education,* Decision and Order No. 273 (February 9, 1996). Furthermore, Mr. Duncan only

spoke to the issue of whether the pupil was provided homework during his suspension period. As indicated above, that is not an issue which the state superintendent has authority to review.

The parent also alleges that the "official expulsion order" was not received until May 22, 2003. The record indicates that it was mailed, separately to the pupil and his parents. Furthermore, even if the parents had not received it prior to May 22, the expulsion would not be overturned as the alleged defect has already been corrected. See *Adam C. v. Evansville Community School District Board of Education,* Decision and Order, No. 340 (November 26, 1997).

Finally, the parent alleges that the school board did not listen attentively and the pupil was "lynched" by zealous personnel. The law presumes that school board members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board,* 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors,* 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied,* 370 U.S. 720 (1962). There is no evidence in the record to support an allegation that the board did not act in accordance with their legal duties.

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 Tyler H[illegible] by the Milton School District Board of Education is affirmed.

Dated this 23rd day of June, 2003.

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