

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Richard G. by Superior School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 03-EX17</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 Superior School District Board of Education to expel the above-named pupil from the Superior School District. This appeal was filed by the pupil and received by the Department of Public Instruction on July 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 May 5, 2003, from the district administrator of the Superior School District. The letter advised a hearing

would be held on May 21, 2003 that could result in the pupil's expulsion from the Superior 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 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 May 1, 2003 he sexually assaulted another student.

The hearing was held in closed session on May 21, 2003. The pupil and his parents appeared at the hearing represented by an attorney. 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 May 21, 2003, was mailed separately to the pupil and his parents. The order stated the pupil was permanently expelled. Minutes of the school board expulsion hearing and a partial 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 in this case raises one issue which requires consideration. In their letter, the pupil and his mother basically allege that expulsion was unfair because the school board went into the hearing with closed minds.

Richard, an 18 year old senior at Superior High School, was accused of sexually assaulting a 13 year old student on the school bus. The thirteen year old girl reported the assault to the guidance counselor. The allegations were investigated by the school and the police. A videotape taken of the bus ride was reviewed; however, it showed only the upper body of Richard and the victim. This videotape was similarly described at the hearing. Richard was charged with felony sexual assault as the result of the allegations and investigation. An

expulsion hearing was held before the board on May 21, 2003. The hearing was presided over by a hearing officer but the board made the final decision. The board heard evidence from the school personnel who received the report of sexual assault from the victim, the administrators who investigated and interviewed the witnesses and the law enforcement officer who conducted the investigation. The district presented evidence that immediately after the incident Richard admitted to another student on the bus that he had stuck his finger in the victim's vagina. The board also heard that there was a videotape of the bus and that it did not show the sexual assault. The board deliberated and found that the conduct occurred as alleged and that interests of the school demanded expulsion.

Now, the pupil alleges the board was biased. Prior to now, the pupil never alleged that the board was biased. There are no factual allegations concerning bias; only a conclusion that the board had closed minds. 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). In this case, I find the pupil's assertion of bias insufficient to overcome this presumption. The record contains no evidence of actual bias or conflict, nor does it reflect circumstances that would lead to a high probability of bias or conflict. See *Nicholas E. v. Lodi School District Board of Education*, Decision and Order No. 303 (October 17, 1996); *Kathleen W. v. Tri-County Area School Board of Education*, Decision and Order No. 130 (May 10, 1985).

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). A reasonable view of the evidence supports the board's decision.

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.

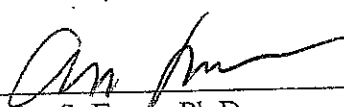
CONCLUSIONS OF LAW

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 Richard G. by the Superior School District Board of Education is affirmed.

Dated this 16th day of September, 2003.



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