Decision and Order No.: 510

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Michael M by Rib Lake School District Board of Education	DECISION AND ORDER Appeal No.: 04-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 Rib Lake School District Board of Education to expel the above-named pupil from the Rib Lake School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 19, 2004.

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 26, 2004, from the district administrator of the Rib Lake School District. The letter advised a hearing would be held on February 5, 2004 that could result in the pupil's expulsion from the Rib Lake 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. The letter specifically alleged that on January 15, 2004 the pupil possessed a marijuana pipe with marijuana residue in it, plastic bags, and a scale while at school.

The hearing was held in closed session on February 5, 2004. The pupil's parents appeared at the hearing without counsel. The pupil did not attend the hearing. 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 February 10, 2004, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil's 21st birthday. Minutes of the school board expulsion 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 several issue, none of which require reversal of the expulsion order. The parents filed several letters and brief's outlining their complaints. Even though the record shows that the district complied with all procedural requisites, I will attempt to summarize and address the arguments raised by the parents.

The parents complain about the record of the hearing. They allege that the school board's tape of the hearing is not accurate. First, school boards are not required to tape the hearing. The law requires that written minutes be kept and this was done. Wis. Stats. § 120.13(1)(c)3 . In fact, districts have been cautioned not to rely on audiotapes because there can be equipment malfunctions. 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). Second, the tapes have not been sent to the department as part of this review, apparently because the parents filed a complaint with law enforcement and the tapes have been turned over to either the police or district attorney. The parents also claim the district was required to provide a transcript of the hearing, ostensibly because a hearing officer was used. The record reflects that a hearing officer was used to ensure that the hearing followed procedural requirements but not to make

any factual findings. The school board was present for the hearing and made all factual and legal findings. Thus, there was not a hearing officer covered under Wis. Stat. § 120.13(1)(e)1.b.

The parents also allege that they were not given an opportunity to lodge their defenses. The record belies this allegation. First, the parents chose to keep their child from attending the hearing. Thus, they forfeited any right he had to tell his side of the story to the school board. Second, there is no evidence in the record that any witnesses were prohibited from testifying or that the parents were not allowed to argue their case. While they may not have been allowed to argue through the night into the next morning, there is no evidence that there were arguments they wanted to make that were not made.

The parents also make several allegations related to the sufficiency of the evidence. They complain that hearsay was allowed to be used against their child. Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). The State Superintendent has repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

They claim there was another explanation for circumstances surrounding the discovery of the marijuana and paraphernalia. 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 board is in the best position to resolve conflict in testimony, to give weight to the evidence and arguments, 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).

They also claim that the investigation techniques used by the district violated the pupil's constitutional rights – specifically his "Miranda 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). The board was free to determine whether any statement was reliable. This is a credibility determination that is solely within the discretion of the board.

Finally, the parents complain that the pupil was not evaluated for special education needs prior to the expulsion. There is no indication in the record that the pupil was identified as needing special education at the time of the misconduct. 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 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 reviewing the record in this case, I find the school district did comply with all of the procedural requisites. I, therefore, affirm this expulsion.

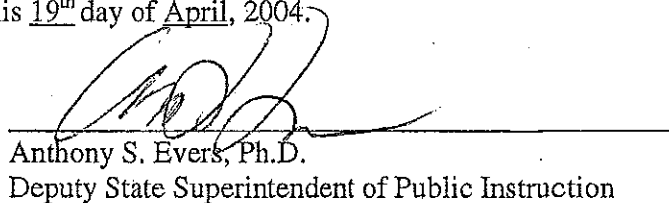
CONCLUSIONS OF LAW

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 Michael M by the Rib Lake School District Board of Education is affirmed.

Dated this 19th day of April, 2004.



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Deputy State Superintendent of Public Instruction