Decision and Order No.: 511

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Tyler M by Silver Lake Jt 1 School District Board of Education	DECISION AND ORDER Appeal No.: 04-EX05

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 Silver Lake Jt 1 School District Board of Education to expel the above-named pupil from the Silver Lake Jt 1 School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 24, 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 30, 2004, from the principal of the Silver Lake Jt 1 School District. The letter advised a hearing

would be held on February 9, 2004 that could result in the pupil's expulsion from the Silver Lake Jt 1 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 13, 2004 the pupil attempted to start a fire in the boy's restroom in the Junior High.

The hearing was held in closed session on February 9, 2004 . 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 February 9, 2004, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2004-05 school year. Minutes of the school board expulsion hearing[1] and an audiotape of the expulsion hearing are also part of the record.

[1] Wis. Stats. § 120.13(1)(c)3 requires the school board to keep written minutes of the hearing. The board did not submit written minutes with the hearing record. The minutes submitted appear to be a sanitized version that is appropriate for publication. These minutes do not reveal who testified, whether the pupil had the opportunity to question witnesses or call witnesses on his own behalf, or even what written documents were submitted to the board. Included with the record, submitted by the district, are several witness statements and police reports. However, the minutes do not reflect whether these are the same documents used at the hearing or whether these are all of the documents used at the hearing. This could be grounds for reversal. However, the board did submit an audiotape of the hearing as part of the record. In this case, the audiotape was of satisfactory quality to enable a meaningful review of the hearing, thus I will not overturn the expulsion. I caution school districts against relying on such

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.

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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). If there is no audible tape or meeting minutes, the superintendent has reversed expulsions. See *Derek P. v. Holmen School District Board of Education*, Decision and Order No.399 (August 20, 1999); *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996).

The appeal letter in this case alleges that there is new evidence that suggests the pupil's innocence. It is apparent from the record and submissions by the school district that this new evidence has been given to the school board. The school board considered it and decided it did not change the previous findings.

First, matters not raised before the board cannot be raised for the first time on appeal. *Travis J.M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Tony R. v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995) and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995). Secondly, the hearing tape clearly indicates that who tried to start a fire in the bathroom was the main issue of the hearing. The parents cross-examined witnesses and were given the opportunity to present evidence.

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 was in the best position to resolve any conflicts, 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).

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.

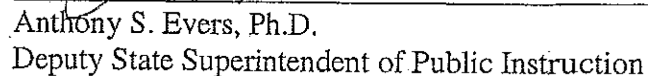
CONCLUSIONS OF LAW

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 M by the Silver Lake Jt 1 School District Board of Education is affirmed.

Dated this 26th day of April, 2004.



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