

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Danielle C. by Cedarburg School District Board of Education	DECISION AND ORDER Appeal No.: 04-EX 24
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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 Cedarburg School District Board of Education to expel the above-named pupil from the Cedarburg School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 1, 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 October 27, 2004, from the district administrator of the Cedarburg School District. The letter advised a

hearing would be held on November 9, 2004 that could result in the pupil's expulsion from the Cedarburg School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her parents. 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 and that she repeatedly refused and neglected to obey school rules. The letter specifically alleged that on October 19, 2004 the pupil initiated a fight with another student, causing bodily injury to the other student. It also alleged that on eight dates in the 2003-2004 school year, as well as on October 19, 2004, she violated school rules concerning inappropriate behavior.

The hearing was held in closed session on November 9, 2004. The pupil and her 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 her 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 and that she repeatedly refused and neglected to obey school rules. 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 November 9, 2004, was mailed separately to the pupil and her parents. The order stated the pupil was expelled until the beginning of the 2007-2008 school year, however she is allowed to obtain a diploma from the high school, after graduation in June 2005 if certain conditions are met. Minutes of the school board expulsion hearing and a 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 alleges that extenuating circumstances should be considered and that the pupil was discriminated against in the expulsion because she attends the school through the open enrollment program rather than through residency. The extenuating circumstance refers to the fact that the pupil was in a serious car accident in October 2003 and

that as a result, her personality has changed and she should not be expelled for her behaviors. In subsequent filings, the parents include confidential medical records concerning their now 18 year old daughter in support of their allegations. My review is limited to the record before the board. *Barrett S. v. Fox Point J2 School District Board of Education*, Decision and Order No. 424, (October 6, 2000); *Chadwynn N. v. Random Lake School District Board of Education*, Decision and Order No. 345 (January 26, 1998); *Jeffrey L. v. New Lisbon School District Board of Education*, Decision and Order No. 319 (April 8, 1997); *Matthew M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996).

It is also insinuated that Danielle should have been treated differently because of a disability or special education need. With regard to a pupil with an *identified* special education need, the state superintendent has reversed an expulsion based on a school board's failure to consider whether a pupil's handicapping condition was related to the misconduct. See *Anita P. v. Janesville School District Board of Education*, Decision and Order No. 124 (February 5, 1985) and *Joe M. v. Milton School District Board of Education*, Decision and Order No. 125 (February 22, 1985). These decisions were based on the particular requisites and protections under both state and federal law relating to pupils identified as a child with a disability.

With regard to all other aspects of special education law, however, the state superintendent has determined that an expulsion appeal is not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is beyond the scope of § 120.13(1)(c). *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). There is no evidence in the record that Danielle was identified as a child with a disability

Thus, this issue is beyond the scope of this review.¹

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 that she was treated differently because she attended the district through the open enrollment program is 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).

Furthermore, because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998). 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*

¹ For more information about the parameters of special education and the appeal process, the pupil may contact the Special Education Team at the Department of Public Instruction or consult the department's website at <http://www.dpi.state.wi.us/dpi/dlseaeen/index.html>.

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).

Finally, the pupil generally disagrees with the conclusions the board made regarding her culpability in this fight, the lack of weight given to her changed behavior after her car accident and the conclusion that the interests of the school demand expulsion. This case involved a pupil who had several behavior referrals in the 2003-04 and 2004-05 school years. It also involved a physical confrontation between the expelled pupil and another student. The other student suffered visible injuries. There was no evidence provided at the hearing that the victim did anything physical to provoke this fight or that the victim responded to the expelled pupil's aggression in a physical manner. 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 violation that causes me to modify the pupil's expulsion period.

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.

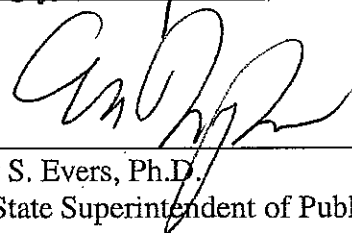
CONCLUSIONS OF LAW

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 Danielle C. by the Cedarburg School District Board of Education is affirmed.

Dated this 28th day of January, 2005.



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