Decision and Order No.: 532

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Nathan H. by Drummond Area School District Board of Education	DECISION AND ORDER Appeal No.: 04-EX27

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 Drummond Area School District Board of Education to expel the above-named pupil from the Drummond Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 16, 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 November 9, 2004, from the district administrator of the Drummond Area School District. The letter advised

a hearing would be held on November 16, 2004 that could result in the pupil's expulsion from the Drummond Area 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. A supplemental letter, hand delivered on November 11, 2004, contained the specific allegation that on November 5, 2004, the pupil delivered Nyquil to another student for his consumption and that the other student got ill from the Nyquil.

The hearing was held in closed session on November 16, 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 November 19, 2004, was mailed separately to the pupil and his parents. The order stated the pupil was expelled for five days and that during those five days he was allowed to be at school in the in-school suspension room with full access to coursework and school assignments. 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 filed by the mother alleges that the pupil's conduct did not endanger another pupil, that it was unfair to punish the pupil with an expulsion, and that the process did not comply with due process. Upon a review of the record I find that the school board complied with all procedural requirements. The notice was timely and the supplemental letter provided

sufficient notice of the charges. The hearing was properly convened and the parties were given an opportunity to provide evidence, hear the evidence, and respond to the charges. The board kept minutes of the meeting so that upon review it is clear who attended, who spoke, and the general content of the testimony. See *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996). The board based its decision upon the evidence presented. Finally, the expulsion order contained findings of fact and conclusions of law and was promptly mailed to both the pupil and his mother. That is the extent of due process required in an expulsion hearing. *Goss v. Lopez*, 419 U.S. 565 (1975); *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 321 N.W. 2d 334 (1982).

The allegation that the punishment was excessive or unfair is also denied. 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 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). 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.

Nathan asked another pupil to bring Nyquil to school for the purpose of drinking at school to get high. When the other pupil brought the Nyquil to school, Nathan took it and shared it with another pupil. Both drank from the Nyquil and the other pupil got quite sick from it.

Nathan admitted to his conduct. As a result, the board exercised discretion and restraint by expelling Nathan for only five days. The board also ordered that he be allowed to attend school during his expulsion by going to the in school suspension room and have full access to his coursework and assignments. The board recommended, but did not order, counseling for Nathan. There is no reason, extraordinary circumstance, or procedural violation that causes me to modify the pupil's expulsion period.

Finally, the board's determination that Nathan's conduct endangered the property, health, or safety of others at school is reasonable. 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).

As discussed above, Nathan drank Nyquil at school for the purpose of getting high. Further aggravating the situation, he shared the Nyquil with another student who became quite sick as a result. The term "endanger" means to bring into danger or peril. The concept of

"danger" involves harm, damages, the chance of loss or injury, or the capability of producing death or great bodily harm. These terms embrace the notion of harmful acts or actions that are detrimental or involve loss or damages. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (Nov. 25, 1996); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995); and *Kirsten J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (Feb. 21, 1992). Clearly, Nathan's conduct endangered not only his safety but also the safety of the pupil who got sick. Thus, the board's determination is based upon a reasonable review of the evidence.

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 Nathan H by the Drummond Area School District Board of Education is affirmed.

Dated this 9th day of February, 2005.

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