Decision and Order No.: 537

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Collin M. F. by Beloit Turner School District Board of Education	DECISION AND ORDER Appeal No.: 05-EX 04

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 Beloit Turner School District Board of Education to expel the above-named pupil from the Beloit Turner School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 18, 2005.

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 31, 2005, from the district administrator of the Beloit Turner School District. The letter advised a

hearing would be held on February 8, 2005 that could result in the pupil's expulsion from the Beloit Turner School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by certified and regular 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 23, 2005, while at the school, the pupil possessed marijuana, drug paraphernalia, and a multi-tool with a 2.25 inch blade.

The hearing was held in closed session on February 8, 2005. 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 10, 2005, 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 and an audiotape of the 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 asked that the pupil's expulsion be modified to allow him to return to school. The pupil is expelled until his 21st birthday. The board considered and rejected an option to allow the pupil to return earlier, under specific conditions. 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. 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 a subsequent letter, the parent alleges that the school policy indicates that the school would work with first time drug offenders and that this was not done. First, the pupil was charged not only with drug and drug paraphernalia possession, but also weapon possession. Secondly, whether or not the school district had or followed an AODA policy is irrelevant to my review. See *John J. D. v. Whitehall School District Board. of Education,* Decision and Order No. 406 (February 15, 2000); *Justin S. v. Marshfield School District Board. of Education,* Decision and Order No. 361 (May 27, 1998); *Joshua R. v. Edgerton School District Board of Education*, Decision and Order No. 330 (July 29, 1997); *Donald P. v. Westby Area School District Board of Education*, Decision and Order No. 299, (August 9, 1996). Thus, the school district's policy is not determinative or controlling.

Finally, the parent alleges that the hearing minutes are not complete. The record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No.

296 (July 10, 1996). The minutes in this case do precisely that. Furthermore, the board submitted a copy of the audiotape made at the expulsion hearing.

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 Collin M. E by the Beloit Turner School District Board of Education is affirmed.

Dated this 13th day of April, 2005.

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