Decision and Order No.: 538

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of I V by Kenosha Unified School District Board of Education	DECISION AND ORDER Appeal No.: 05-EX 05

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 Kenosha Unified School District Board of Education to expel the above-named pupil from the Kenosha Unified School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 24, 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 12, 2005, from the district administrator of the Kenosha Unified School District. The letter advised a hearing would be held on January 12, 2005 that could result in the pupil's expulsion from the Kenosha

Unified School District. The letter was sent separately to the pupil and his parents by mail. The letter alleged that the pupil engaged in conduct while at school which endangered the health and safety of others. The letter specifically alleged that on December 17, 2004 the pupil brought a fixed blade knife to school and threatened another student with it.

The hearing was held in closed session before a duly appointed hearing officer on January 12, 2005. The pupil's parents appeared at the hearing without counsel. The pupil did not appear for 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 hearing officer found the pupil did engage in conduct while at school which endangered the health and safety of others. The hearing officer 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 hearing officer dated January 14, 2005 was mailed separately to the pupil and his parents. The order stated the pupil was expelled until the end of the 2005-06 school year, with the opportunity to participate in the BRIDGES program at the school district through the expulsion period as long as he exhibits good behavior. The school board issued an order, dated February 4, 2005, that adopted the hearing officer's findings and conclusions with the exception of the length of the expulsion. The board extended the length of expulsion to the end of the first semester of the 2006-07 school year. A copy of the board's order was mailed separately to the pupil and his parents. Minutes of the 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 filed by the pupil's parents alleges that the pupil should be given an opportunity to provide his story to the school board. The record clearly states that the parents were given an opportunity at the beginning of the hearing to adjourn the hearing so that the pupil could attend. The parents indicated that they did not think his attendance was necessary as the pupil was going to be living with a relative in Illinois. Thus, this argument fails.

The parents also challenge the sufficiency of the 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, the 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).

During the investigation, the pupil admitted he brought a kitchen knife to school and threatened another student with it. There were also numerous witnesses to the incident. However, a knife was never found. It was reasonable to conclude, based on the pupil's confession and other witness accounts that the pupil brought a knife to school and threatened another student with it.

Finally, the parent complains that the decision to expel the pupil was too harsh and unfair. 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 or conditions 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. Furthermore, the parents' complaint that the pupil will now go with out schooling

is inaccurate. The pupil has been afforded the opportunity to attend an alternative school run by the school district, the BRIDGES program at Hillcrest school.

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 I V . by the Kenosha Unified School District Board of Education is affirmed.

Dated this 21st day of April, 2005.

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