Decision and Order No.: 542

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of B W by Black River Falls School District Board of Education	DECISION AND ORDER Appeal No.: 05-EX 09

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 Black River Falls School District Board of Education to expel the above-named pupil from the Black River Falls School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 28, 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 February 18, 2005, from the middle school principal of the Black River Falls School District. The letter

advised a hearing would be held on February 24, 2005 that could result in the pupil's expulsion from the Black River Falls 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 the pupil possessed marijuana with the intent to deliver it while on the premises of the middle school during the school day on February 14, 2005.

The hearing was held in closed session on February 24, 2005. Neither the pupil nor his parents appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

After the hearing, the school board deliberated. 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 25, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil's 18th birthday. 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 raises two issues. First, that the punishment was excessive as the board did not consider alternatives such as treatment or counseling. Second, that there was insufficient evidence because the substance was not tested.

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 this case, the eighth grade pupil, B.W., admitted that he sold marijuana to another pupil (B.D.) at school. When questioned, B.D. stated that B.W typically brings marijuana to school a couple times a week and sells it to three other students. B.D. also reported that B.W. planned on bringing more marijuana to school the next day. It is not unreasonable for a board to determine that this conduct is a serious danger to the pupils of the school and therefore warrants the lengthy expulsion.

Furthermore, the school board is not required to offer or consider alternative to expulsion. During the period of expulsion from a Wisconsin public school under § 120.13(1)(c) or 119.25, the pupil's **right** to a public education pursuant to the Wisconsin Constitution is suspended. A school district has the discretion to offer alternative education. While the Department of Public Instruction encourages districts to provide alternative education to expelled students, such a program is not required. *Matt L. v. Merrill Area Public School District Board of Education*, Decision and Order No. 381 (May 19, 1999); *Barry W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 220 (March 7, 1994); *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989); *Richard S. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 145 (September 5, 1986); *Dale C. v. Central/Westosha School District Board of Education*, Decision and Order No. 137 (May 15, 1986). Furthermore, nothing prevents the pupil from attempting to enroll in a private school or another public school at his own expense or he can be home schooled.

The pupil claims that there is insufficient evidence that he possessed marijuana at school because no substance was tested. While no substance was found, B.W. confessed to selling real marijuana and possessing a look-a-like. Thus, there was evidence that he possessed marijuana. Furthermore, expulsions based on look-a-like drugs have been upheld as endangering the property, health, or safety of others. *Jason A. v. DeForest Area School District Board of Education*, Decision and Order No. 327, (June 26, 1997); *Miranda V. v. Howard-Suamico School District Board of Education*, Decision and Order No. 224, (March 22, 1994); and *Dale C. v. Central Westosha School District Board of Education*, Decision and Order No. 137, (May 15, 1986).

In his brief, the pupil raises two new arguments. First, hearsay was impermissibly relied upon by the board. Second, the hearing should have been adjourned to a time when the pupil and his mother could attend.

Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). The State Superintendent has repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education,* Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District*

Board of Education, Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983). In this case, the board heard that B.W. confessed, a statement that is not hearsay. Wis. Stats. .§908.01(4)(b). The statements made by B.D. and others were corroborated by some of B.W.'s statement and were taken by the school administrator during the course of his investigation. Therefore, it was not impermissible for the board to rely upon these statements.

Finally, the pupil did not attend the expulsion hearing. On February 23, the day before the hearing, the pupil's mother told the school administration that she had an appointment with Sylvan Learning in Eau Claire the day of the expulsion hearing. The school administration explained to the mother, before the hearing, that it would be difficult to reschedule the expulsion hearing and suggested she reschedule her meeting with Sylvan Learning. The mother did not request an adjournment of the expulsion hearing and told the administration that they would not attend the hearing. It was never alleged that B.W. was physically unable to attend the hearing. He and his parent chose to attend a different meeting instead. There was no obligation to postpone the hearing, especially where a postponement was not requested.

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 B. W. by the Black River Falls School District Board of Education is affirmed.

Dated this 26th day of May, 2005.

Anthony S. Evers

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

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