Decision and Order No.: 547

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of N C by Kenosha Unified School District Board of Education	DECISION AND ORDER Appeal No.: 05-EX 14

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 April 22, 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 28, 2005, from the district administrator of the Kenosha Unified School District. The letter advised

a hearing would be held on February 8, 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. 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 December 22, 2004, the pupil possessed a firearm while at Bradford High School.

The hearing was held in closed session before a duly appointed independent hearing officer on February 8, 2005. The pupil and his 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 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 school board, dated February 12, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 2005-2006 school year with an opporutnity for educational services through the Bridges program during the expulsion. On February 22, 2005, the school board affirmed the hearing officer's findings. Notice of this decision was also 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 in this case raises several issues. First, the pupil challenges 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).

The notice alleged that the pupil brought a firearm to the high school. While the firearm was not found at the high school, the pupil admitted that he had it at school, in his locker, and that he showed it to another student. A reasonable view of the evidence, specifically the student's confession, supports the finding that he possessed a firearm at school.

Secondly, the pupil challenges the finding that a manifestation determination had been made prior to expelling him. It is clear that on January 25, 2005, the pupil's section 504 plan was reviewed by the Section 504 committee and that it was determined that the pupil's conduct was not a manifestation of his disability. It also shows that the pupil's parent was invited to attend the hearing but that she declined the invitation.

The pupil also seems to argue that it was inappropriate for this information to be brought up during the expulsion hearing. If a child is identified with a disability, the district is required to determine whether or not his conduct is a manifestation of his disability. When a child with a disability is facing expulsion, it is appropriate for the expulsion fact finder to make a finding as to whether the manifestation determination was made and what that determination was. It is not the responsibility of the fact finder to delve into the appropriateness of the findings.

Finally, the pupil appears to argue that there never was a finding that the pupil had an ADEP program. The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education,

or in this instance, Section 504 provisions, to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c).[1] *Ryan S. v. Barron Area School District Board of Education*, Decision and Order No. 417 (June 9, 2000); *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).

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 N. C. by the Kenosha Unified School District Board of Education is affirmed.

Dated this 17th day of June, 2005.

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

[1] If the pupil does not agree with whatever decision is made regarding whether he is disabled under § 504, he must use the administrative remedies available through the United States Department of Education, Office of Civil Rights. In order to challenge a finding by the manifestation determination team, the pupil must avail himself of the due process appeal procedures provided under subchapter V of Chapter 115, Wisconsin Statutes, and PI Chapter 11, Wisconsin Administrative Code. See *Matthew C. M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996); *Jessie M. K. v. Tri County Area School District Board of Education*, Decision and Order No. 266 (January 2, 1996); and *John Michael N. v. Random Lake School District Board of Education*, Decision and Order No. 331 (August 5, 1997). Information regarding these two procedures can be obtained from the school district.