Decision and Order No.: 555

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Bi R by Hamilton School District Board of Education	DECISION AND ORDER Appeal No.: 05-EX 22

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 Hamilton School District Board of Education to expel the above-named pupil from the Hamilton School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 6, 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 March 11, 2005, from the district administrator of the Hamilton School District. The letter advised a

hearing would be held on March 24, 2005 that could result in the pupil's expulsion from the Hamilton School District through the pupil's 21st birthday. 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, or while not at school or under the supervision of school authority which endangered the property, health, or safety of others at school, or repeatedly refused to follow school rules. The letter specifically alleged eleven different days between October 2004 and March 2005 on which the pupil engaged in misconduct including sexual harassment, threats against students, violence against students and raising the middle finger.

The hearing was held in closed session on March 24, 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 April 5, 2005, was given in separate envelopes to the pupil and his parents. The order stated the pupil was expelled through the 2005-06 school year, with an opportunity for early readmission at the beginning of the second semester of the 2005-06 school year. A transcript of the hearing is 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 alleges that the pupil's due process rights were violated. The procedural due process due a student facing expulsion or long term suspension is identified in *Goss v. Lopez*, 419 U. S. 565, 573-76, 95 S. Ct. 729, 735-737, 42 L.Ed. 2d 725 (1975). Due process in a student expulsion hearing need not take the form of a judicial or quasi-judicial trial

and the proceedings cannot be equated to a criminal trial or juvenile delinquency proceeding. Linwood v. Board of Education, 463 F.2d 763, 770 (7th Cir. 1972). Compliance with the statutory procedures contained in §120.13, ensures that the requirements of procedural due process as defined in *Goss* has been met.

In addition, the pupil claims that the findings were based on hearsay; that the findings of the board were not supported by evidence; that he was not given advance notice of who the witnesses would be or allowed to cross-examine the witnesses; that he was not advised of the particulars of misconduct; that the school district is biased against him; and that the suspension exceeded the statutory limit.

Upon review of the entire record, there is no cause to overturn the expulsion. First, 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). The board heard about the

allegations from the school administrator who investigated the various allegations and who the parents conceded in their testimony is an honest, reliable person. The board also heard about the allegations from the pupil himself. Therefore, it was permissible for the board to base its decision upon the record as it was developed.

Second, the pupil basically alleges that there was insufficient evidence to support the board's findings. 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). The matters testified to by the district's witness, along with the pupil's own testimony and the parent's testimony provide ample support for the board's findings.

Third, the record belies the argument that the pupil was not allowed to cross-examine the district's witness and that the pupil was not aware of whom the witnesses to his alleged misconduct were. Page 29 of the expulsion hearing transcript refutes the allegation that the pupil was not allowed to cross-examine the district's witness. The pupil and his parents were asked if

they wanted to ask the district's witness any questions, they responded with one question and a follow-up question. The pupil and his parents were also advised that if they had other questions later, they could ask them. Also, there is no evidence in the record that the parent or pupil asked for the names of people involved in the allegations concerning the pupil. In fact, the record demonstrates that the parents and pupil knew the names of the students and teachers who had made allegations about the pupil. Furthermore, matters not raised before the board cannot be raised for the first time on appeal. *Travis J.M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Tony R. v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995) and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995).

Fourth, the pupil alleges that he was not advised of the particulars of his misconduct. Proper notice must inform the pupil of the time frame during which the misconduct occurred, where the misconduct occurred, and a description of the conduct to be considered. *Ulysses R. v. South Milwaukee School District Board of Education*, Decision and Order No. 509 (April 17, 2004); *Ryan S. v. Pewaukee School District Board of Education*, Decision and Order No. 445 (September 25, 2001); *Ryan K. v. Pewaukee School District Board of Education*, Decision and Order No. 439 (July 24, 2001). The notice of expulsion hearing did provide the particulars of misconduct. It is clear upon reading the notice of expulsion hearing the nature of the alleged misconduct, as well as when and where it occurred.

Fifth, there is no evidence in the record of bias, by the board, against the pupil. The law presumes that school board members, as public officials, will discharge their legal duties in

accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board,* 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors,* 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied*, 370 U.S. 720 (1962). The record contains no evidence of actual bias or conflict, nor does it reflect circumstances that would lead to a high probability of bias or conflict. *See Nicholas E. v. Lodi School District Board of Education*, Decision and Order No. 303 (October 17, 1996); *Kathleen W. v. Tri-County Area School Board of Education*, Decision and Order No. 130 (May 10, 1985). Neither is there support in the record that the administration was biased against the pupil. The pupil was charged with numerous allegations of misconduct over a relatively short period of time. His behavioral record and his testimony reveal that the pattern of misconduct was not an aberration, but rather was consistent with his behavior for quite some time.

Finally, the state superintendent lacks authority to review the term of the pupil's suspension. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

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[illegible] R by the Hamilton School District Board of Education is affirmed.

Dated this 5 day of August, 2005.

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