Decision and Order No.: 579

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of S[illegible] E. S by Hayward Community School District Board of Education	DECISION AND ORDER Appeal No.: 06-EX-12

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 Hayward Community School District Board of Education to expel the above-named pupil from the Hayward Community School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 22, 2006.

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 June 6, 2006, from the district administrator of the Hayward Community School District. The letter advised a

hearing would be held on June 12, 2006 that could result in the pupil's expulsion from the Hayward Community 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 repeatedly refused or neglected to obey school rules. The letter specifically alleged twelve instances of school rule violations between October 2004 and May 26, 2006, nine of which occurred during the 2005-06 school year. The misconduct included multiple incidents of disrespect and profanity toward school administration, intimidation of other students, racial harassment of other students, gang affiliation, possession of tobacco products, and misuse of school technology.

The hearing was held in closed session on June 12, 2006. 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 repeatedly refuse or neglect to follow school rules. 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 June 29, 2006, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2007-08 school year with an opportunity for early readmission at the beginning f the 2007-08 school year. 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 parents raise several issues in the appeal. First, they allege that the district administration conspired against their son, with the intent of denying him a fair hearing, by having law enforcement personnel present at the expulsion hearing. They also allege that the presence of law enforcement officers should have caused two board members to recuse

themselves because they were also police officers. First, there is no indication in the record that law enforcement officers were present with the intent to intimidate the board or otherwise affect the result of the hearing. Secondly, 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). In this case, I find the pupil's assertion of bias or conflict insufficient to overcome this presumption. 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).

Next, the parents allege that the expulsion order does not accurately reflect the actions of the board at the meeting. The original minutes of the board indicate that the administration's recommendation for expulsion of two years was rejected. The minutes indicate that later a motion was made and carried 4-0, but it does not indicate what the motion was. The expulsion order states that the board voted to expel the pupil through the 2007-08 school year, but allowed an opportunity for early readmission at the beginning of the 2007-08 school year. While this appeal was pending, the school board amended the record of the hearing with an affidavit of the board's clerk. This affidavit clarifies the various votes of the board to explain that after rejecting the administration's recommendation for outright expulsion of two years, the board voted to expel as described in the expulsion order. There is no reason to doubt the veracity of this

amendment. Therefore, with the amended record, it is clear that the board's action is accurately described in the expulsion order.

Thirdly, the parents allege that their son was discriminated against because of his size. As size is not recognized as class protected from discrimination, this is construed as an argument that there is insufficient evidence to support the finding of repeated rule violations. 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).

There was considerable discussion and testimony at the expulsion hearing concerning the pupil's misconduct. The board was in the best position to resolve any conflict in testimony and to judge the credibility of witnesses. It is within the board's discretion to give weight to the evidence and arguments, as it deemed appropriate. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111N.W. 2d 198 (1961). See also *Jeremy B. v. Waukesha School*

District Board of Education, Decision and Order 395 (August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). A reasonable review of the evidence supports the board's findings.

Finally, the parents allege that the board's decision was unduly harsh. 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. 4_9 (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. Evidence of repeated rule violations was provided to the board. The pupil and his family submitted evidence of his character and reasons why expulsion should not be granted. 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 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 S\ n E. S : by the Hayward Community School District Board of Education is affirmed.

Dated this 17th day of August, 2006.

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