Decision and Order No.: 583

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of L .F by Mauston School District Board of Education	DECISION AND ORDER Appeal No.: 06-EX 16

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 Mauston School District Board of Education to expel the above-named pupil from the Mauston School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 20, 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 October 4, 2006, from the district administrator of the Mauston School District. The letter advised a hearing

would be held on October 11, 2006 that could result in the pupil's expulsion from the Mauston 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 that on or about September 26, 2006 the pupil threatened a teacher with bodily harm and inhaled or feigned inhalation of AXE body spray.

The hearing was held in closed session on October 11, 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 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 October 25, 2006, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until the beginning of the 2007-08 school year. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing.[1]

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[1] The pupil, in his brief, alleges that the hearing record is incomplete because there is no transcript and that the tapes do not contain the conclusion of the proceedings. The school board is only required to take minutes of the hearing. §120.13(1)(c)3. There is no requirement that the board transcribe the hearing. The minutes or other record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996). The minutes and audiotape in this file are sufficient.

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 which require consideration. First, the pupil alleges there were insufficient facts to support the board's findings. Specifically, the pupil denies that he engaged in the alleged misconduct and challenges the board findings. He also argues that there were no observations of the pupil that could lead to the conclusion that he

endangered anyone even if he did inhale the gasses from the aerosol can. In addition he argues that if any threat was made to staff, the school did not follow the pupil's Behavioral Intervention Plan (BIP), therefore he could not be expelled. He also alleges that his conduct was a manifestation of his disability and therefore could not be expelled for it. Finally, he alleges that the order of expulsion was untimely.[2]

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).

[2] In the pupil's brief, he attempts to supplement the hearing record with certain documents. The state superintendent's review is limited to the record of the expulsion hearing. The appeal is not an opportunity to present new evidence or previously unused defenses. See *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); *Chadwynn N. v. Random Lake School District,* Decision and Order No. 319 (April 8, 1997) and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995). While those documents submitted by the pupil will be retained, they may not be considered by the state superintendent in this appeal.

The board heard testimony concerning the facts from both the administration and the pupil. Mr. West, an English teacher at the school, testified that on September 26, 2006 he walked into the bathroom and observed the pupil engaged in what appeared to be the act of deliberately inhaling fumes from the aerosol can and that other students were present. Ms. Oswald, a special education teacher's assistant, testified that on the same day she heard the pupil make a verbal threat of bodily harm against Mr. West. The principal testified he took the threat seriously due to the pupil's prior violent behavior. The pupil testified and denied that he inhaled from the aerosol can and threatening the teacher. He did admit to throwing the aerosol can in the garbage when Mr. West walked into the bathroom. He also admitted that in the past he engaged in violent behavior. The board specifically found the administration's version to be more credible. The board was in the best position to resolve any conflicts in testimony and to judge credibility. Furthermore, it is within the board's discretion to give weight to the evidence and arguments as it deems 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 view of the evidence sustains the board's findings that the pupil engaged in the alleged misconduct.

The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages, the chance of loss or injury, or the capability of producing death or great bodily harm. These terms embrace the notion of harmful acts or actions that are

detrimental or involve loss or damages. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (Nov. 25, 1996); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995); and *Kirsten J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (Feb. 21, 1992). Pupil expulsion based on use or possession of alcohol or drugs at school have routinely been upheld by the state superintendent as conduct that endangers the property, health, or safety of others. *Hannah W. v River Falls School District*, Decision and Order No. 502 (December 12, 2003); *Brian M. v. Lodi School District*, Decision and Order No. 425 (October 23, 2000); *Andrew C. v. Milwaukee Public School District,* Decision and Order No. 386 (June 11, 1999); *Julian H. v. Milwaukee Public School,* Decision and Order No. 379 (April 20, 1999); *Shannon T. v. Milwaukee Public School District,* Decision and Order No. 354 (April 16, 1998.) In addition, pupil expulsions based on potential harm, such as possession of look-a-like drugs. have been repeatedly upheld. *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). Finally, expulsions based upon threats made to staff or students have been repeatedly upheld. *Jacob B. v. Greenfield School District Board of Education*, Decision and Order No. 404 (January 3, 2000); *Nathan B. v. Delavan-Darien School District Board of Education*, Decision and Order No. 391 (July 23, 1999); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Robert S. v. Milton School District Board of Education*, Decision and Order No. 380, (May 12, 1999). Therefore, the board's decision that pupil's conduct endangered the health, safety or property of others is reasonable and will be upheld.

The next two allegations, that the BIP was not followed and that the conduct was a manifestation of his disability, concern the pupil's status as a child with a disability. I note that the record indicates that a manifestation determination meeting was held and that it was determined that his misconduct was not a manifestation of his disability. 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 provisions to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c).[3] *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). Therefore, any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures. The department maintains an extensive library of materials to explain procedures related to special education complaints or appeals. These materials are easily accessible at the department's website at http://dpi.wi.gov/sped/tm-specedtopics.html. Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.

Finally, there is no merit to the pupil's allegation that the expulsion order was untimely. First, the State Superintendent has no authority to review the length of the suspension. See

[3] 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 this procedure can be obtained from the school district.

Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I., 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). If the pupil believes the special education provisions concerning out of school placement has been violated, he must use the special education appeal procedures discussed above. Secondly, there is no statutory requirement dictating when the expulsion order must be issued. The record indicates that the board made the decision, verbally on October 11 but that the actual order was not prepared and signed until October 25. The pupil argues that this two week delay caused his appeal to be delayed by one month. However, I also note that the pupil waited one month to appeal the board's decision. The delay on the part of the board was not unreasonable.

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.

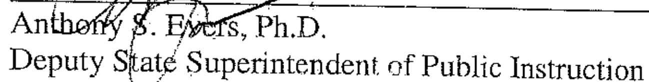
CONCLUSIONS OF LAW

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 L   F   by the Mauston School District Board of Education is affirmed.

Dated this 18th day of January, 2007.



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