Decision and Order No.: 588

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of T P. G by Franklin Public School District Board of Education	DECISION AND ORDER Appeal No.: 07 EX 01

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 Franklin Public School District Board of Education to expel the above-named pupil from the Franklin Public School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 3, 2007.

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 May 23, 2006, from the district administrator of the Franklin Public School District. The letter advised a

hearing would be held on June 1, 2006 that could result in the pupil's expulsion from the Franklin Public School District. 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 and that he repeatedly refused to follow and obey school rules. The letter specifically alleged that the pupil was in possession of a controlled substance while at the middle school and that he had violated a behavior contract.[1]

The hearing was held in closed session on June 1, 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 and that he repeatedly refused or neglected to obey 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 14, 2006, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2008-09 school year. A transcript of the hearing is part of the record.

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[1] The notice of expulsion hearing must contain the particulars of misconduct. Ordinarily, the specifics contained in this notice of expulsion would be insufficient as it does not identify the date of the violations or the particulars of the "repeated" acts of rule violations. However, in this case, the notice of expulsion hearing specifically referenced a pre-expulsion meeting which addressed the same misconduct. The record contains documentation of what was discussed at the pre-expulsion meeting. Therefore, based on the totality of the record and absent any complaint regarding this from the pupil or parent, it will be found to be sufficient. I caution boards; however, that reliance on this method is not recommended and could result in the finding of a procedural violation.

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 parents were not afforded an opportunity to present witnesses on behalf of the student. In the appeal, the parents allege that the witnesses they wanted to call, school district employees, were told by the school's administration that they

were not allowed to testify at the expulsion hearing. After careful review of the record, there is no evidence in the record of the expulsion hearing that the pupil or his parents subpoenaed these witnesses. Nor is there any evidence that this allegation was raised before the school board at or before the expulsion hearing. Matters not raised before the board cannot be raised for the first time on appeal. *T. J.M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *M. R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *T. R. v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995) and *J. C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995). Therefore, the parent's allegation is not a reason to overturn the board's findings.

The parent also alleges that the board incorrectly relied upon a school psychologist's opinion because the opinion was based on a review of the records rather than an interview or personal interaction with the pupil. These arguments were presented to the board and rejected. A school board's findings will be upheld if any reasonable view of the evidence sustains them. *L. P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *D. A. v. Mauston School District Board of Education,* Decision and Order No. 324 (May 8, 1997); *C. R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); and *M. R. H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). Furthermore, the board is in the best position to resolve conflicts in testimony, judge credibility of witnesses and 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 *J. B. v. Waukesha School District Board of Education*,

Decision and Order 395 (August 16, 1999); *T.M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *K. W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). A reasonable view of the evidence supports the board's decision.

The parent also alleges that a report issued after the expulsion hearing concerning the pupil should have been considered by the board. However, as the parent states in the appeal letter, this report was not available at the time of the hearing, thus there was no error by not considering it.

Finally, in a subsequent filing by the parent, she alleges that other pupils involved in the same drug transaction were not given the same punishment.[2] Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *A. P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *N. S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *L. P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998). Furthermore, 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

[2] Based on the record, it is clear that there were many issues, in addition to the possession of a controlled substance, concerning the pupil's behavior. Therefore, it would not be surprising if everyone involved was not treated the same.

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 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 T P. G. by the Franklin Public School District Board of Education is affirmed.

Dated this 5th day of March, 2007.

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