

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>W. J. T.</p> <p>by Beloit Turner School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 07 EX 04</p>
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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 Beloit Turner School District Board of Education to expel the above-named pupil from the Beloit Turner School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 7, 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 February 2, 2007, from the district administrator of the Beloit Turner School District. The letter advised a

hearing would be held on February 15, 2007 that could result in the pupil's expulsion from the Beloit Turner 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 and that he engaged in conduct while not at school or under the supervision of school authority which endangered the property, health, or safety of any employee or school board member of the school district in which the pupil is enrolled. The letter specifically alleged that on January 26, 2007, while at school, made verbal threats of violence to a teacher and while not at school he was overheard by a teacher threatening violence against another teacher. When confronted by the teacher, the pupil then threatened violence against him as well.

The hearing was held in closed session on February 15, 2007. 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 February 20, 2007, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through

the pupil's 21st birthday. Minutes of the school board expulsion hearing, an audiotape of the expulsion hearing and a transcript of the 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 appeal alleges that the expulsion and the length of it are unfair because the school board did not consider the best interests of the expelled pupil. The best interests of the pupil are not an element that must be considered by the school board. The school is required by Wis. Stat. §120.13(1)(c)2. to determine whether the interests of the school demands the pupil's expulsion. The board did that. Beyond that, the board may consider the pupil's conduct and prior behaviors. The appeal alleges that the board did not consider the pupil's prior good behaviors (which occurred in 1995-96 while in kindergarten and 1998-99 while in third grade). However, 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 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.

The appeal letter also alleges that the board did not consider that the pupil's behavior could have been caused by a disability. There is no evidence in the record that the pupil is disabled or that he was identified as a student with a disability. Therefore, there was no

requirement to consider that the behavior was the result of his disability. Likewise, the board was not required to accept an offer made by the parents to engage in counseling or therapy for an alleged disability before expelling the pupil. If the parents believe a special education evaluation is needed, they should contact the district to request one. Further information about the special education process can be found at the department's website at <http://dpi.wi.gov/sped/tm-specedtopics.html>.

The parents also allege that the pupil was discriminated against. However, they provide no basis for the discrimination. Instead, they appear to argue he was treated differently than others. They allege that they wanted to withdraw the pupil before his expulsion, but the board rejected that even though they have allegedly accepted withdrawal of other students facing expulsion. First, the board is not required to abandon the expulsion process when a pupil withdraws from school. Therefore, even if the pupil had withdrawn, the board could have pursued the expulsion. Secondly, whether the board has allowed others to withdraw and not pursued expulsion is not relevant to this review because expulsions are considered on a case-by-case basis. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998).

The parents also allege discrimination or bias on the part of the board because the administration did not present the surveillance tape of the incident that occurred on school grounds or statements or comments from the pupil's teachers; because the pupil was allegedly verbally and physically assaulted by the teacher who was involved; and because the pupil was not charged by the police with assault for the two incidents. 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 pupil's mere assertion of bias or conflict is 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).

This argument could also be construed to be the sufficiency of the evidence to support the board's finding that the pupil engaged in the misconduct alleged and that it warranted expulsion until his 21st birthday. 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).

It was within the board's discretion to give weight to the evidence and arguments, as it deemed appropriate and to judge the credibility of witnesses. 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). There is sufficient information in the record to support the board's findings and therefore the board's order will not be modified.

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.

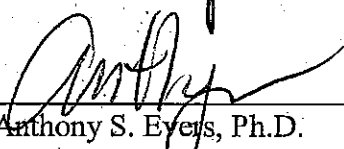
CONCLUSIONS OF LAW

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 W. Turner by the Beloit Turner School District Board of Education is affirmed.

Dated this 4th day of May, 2007.



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