Decision and Order No.: 599

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of C. L. by Clayton School District Board of Education	DECISION AND ORDER Appeal No.: 07 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 Clayton School District Board of Education to expel the above-named pupil from the Clayton School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 14, 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 January 11, 2007, from the district administrator of the Clayton School District. The letter advised a hearing

would be held on January 23, 2007 that could result in the pupil's expulsion from the Clayton 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 January 4, 2007 the pupil sexually assaulted a middle school female student in the parking lot of the school after attending open library that evening.

The hearing was held in closed session on January 23, 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 January 30, 2007, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the first semester of the 2007-08 school year, with an opportunity for early readmission at the start of the fourth quarter of the 2006-07 school year. An audiotape of the expulsion 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 challenges the expulsion order on several grounds. The parent alleges that the school did not comply with statutory requirements, that they improperly relied upon hearsay and other information, and that they were not allowed to review the pupil's records prior

to the hearing. They also allege that there was no evidence anyone was harmed by the alleged misconduct.

In the course of addressing the pupil's appeal, the entire record is reviewed, including the audiotape of the expulsion hearing. Based upon this complete review, I conclude that the school board complied with all statutory requirements. The pupil was given adequate notice, an opportunity to be heard and cross examine witnesses, and the order was based upon statutorily authorized grounds for expulsion. The parent makes a vague reference to a requirement that the school board must provide three points for expulsion and make secondary findings. None of these are required by law.

One of the allegations of the parent is that they did not attend the expulsion hearing. The tape contradicts this assertion. The expulsion hearing was to begin at 6:00 pm. At 6:26 pm, the school board began the expulsion hearing even though the pupil was not present. Shortly after 7:00 pm, the pupil and his family appeared. The school board provided a recap of what had already occurred, offered the pupil an opportunity to ask questions and submit additional evidence. Nearly two hours later, the expulsion hearing concluded. Therefore, the pupil's allegation is without merit.

Another complaint raised by the parent is that the school improperly relied upon hearsay evidence. The school administration used a combination of hearsay evidence and non-hearsay evidence. The non-hearsay evidence was statements made by the pupil. See Wis. Stats. §908.01(4)(b). The hearsay statements used were made by the victim and other witnesses to school administrators as part of the investigation. 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 record clearly shows that the board considered the reliability of the hearsay statements. Thus, it was proper for the board to rely upon the statements.

The parent also alleges that they were not given an opportunity to review the pupil's record prior to the hearing. This is also contradicted by the hearing tape. At the hearing, administration indicated that a parent came to school prior to the expulsion hearing and reviewed the records.

Finally, contrary to the parent's arguments, the conduct met the requirements of 120.13(1)(c). The pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others. While school was not in session at the time, the misconduct clearly occurred on school grounds, thus meeting the plain language of the statute "while at school". Furthermore, the misconduct clearly endangered the property, health, or safety of others. The pupil and his brother restrained a female student and he thrust his pelvis area in the girls' face. The board found he did this while his penis was

exposed, but even if his penis were not exposed, it clearly endangered the health and safety of the victim. Finally, contrary to the parent's assertion, this conduct did not need to be proven beyond a reasonable doubt, a standard only applied in the criminal court context. While courts have not definitively declared the burden of proof in expulsion cases, the argument focuses on much lower standards such as more likely than not, preponderance of the evidence, and clear and convincing. See *Butler v. Oak Creek-Franklin School District*, 172 F.Supp.2d 1102 (E.D.Wis.,2001).

Upon review, 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 board is in the best position to determine credibility and resolve conflicts in testimony. 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). In this case a reasonable view of the evidence supports the board's findings.

Parties to this appeal are:

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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 C , I by the Clayton School District Board of Education is affirmed.

Dated this 29th day of June, 2007.

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