Decision and Order No. 616

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of C M by Kenosha School District Board of Education	DECISION AND ORDER Appeal No.: 08-EX-08

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 Kenosha School District Board of Education to expel the above-named pupil from the Kenosha School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 21, 2008.

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 8, 2008, from the Minority Academic Affairs Specialist of the Kenosha School District. The letter

advised a hearing would be held on January 17, 2008 that could result in the pupil's expulsion from the Kenosha 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 2, 2008 the pupil was in possession of two plastic baggies of marijuana while at school for the purpose of selling it to other students and that on the same day, the pupil sold marijuana to another student.

The hearing was held before an independent hearing officer on January 17, 2008. The pupil and his parent appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil, his parent and his attorney were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the independent hearing officer 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 officer 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 officer, dated January 21, 2008, was mailed separately to the pupil and his parents. The order stated that the pupil was expelled through the end of the 2009-2010 school year. The school board reviewed the independent hearing officer's order on January 22, 2008 and approved it. The pupil and his parent were advised by letter dated January 28, 2008 of the board's decision. Minutes and audiotapes 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 appeal letter in this case raises four issues which require consideration. First, the pupil claims that his behavior did not endanger anyone. However, previous expulsions based upon possession of marijuana at school have consistently been upheld by the state superintendent as conduct that endangers the property, health, or safety of others. *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); *Joshua S. v. Beloit-Turner School District*, Decision and Order No. 307 (January 14, 1997); *Donald P. v. Westby Area School District*, Decision and Order No. 299 (August 9, 1996); *Robin L. v. East Troy Community School District*, Decision and Order No. 253 (June 21, 1995); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994).

Second, the pupil alleges that he did not receive adequate notice of the suspension.[1] However, the state superintendent lacks the authority to review a suspension under § 120.13(1)(b). *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

Third, the pupil challenges the sufficiency of the evidence. 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);

[1] The pupil's attorney alleges that the record the district created reflecting the expulsion hearing includes Exhibit 13, but that Exhibit 13 isn't included in the Expulsion Hearing Minutes. However, on page two of the Expulsion Hearing Minutes, Exhibits 1 through 17 are in fact included.

and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994).

The pupil claims that there was no testimony taken from the students who alleged that he possessed marijuana with the intent to deliver, nor was there testimony that the pupil delivered a controlled substance to another person on school property. The record not only reflects that the pupil was found in possession of marijuana, but also that he admitted he was in possession of marijuana because he needed the money. In addition, school officials testified that two students provided additional information that supported the appellant's admission that he possessed the marijuana at school and that he did so because he needed the money. One student told the school official that earlier on January 2, 2008 when two security officers came into gym class, the appellant told her that they were probably there to get him because he had weed on him. Another student admitted that he bought marijuana from the appellant at school on January 2, 2008.

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). Furthermore, 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). It is within the board's discretion to give weight to the evidence and arguments, as it deems 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). A reasonable view of the evidence sustains the board's findings.

Finally, the pupil complains that alternative education was denied to him by the school district. During the period of expulsion from a Wisconsin public school under § 120.13(1)(c) or 119.25, the pupil's **right** to a public education pursuant to the Wisconsin Constitution is suspended. A school district has the discretion to offer alternative education. While the Department of Public Instruction encourages districts to provide alternative education to expelled students, such a program is not required. *Matt L. v. Merrill Area Public School District Board of Education*, Decision and Order No. 381 (May 19, 1999); *Barry W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 220 (March 7, 1994); *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989); *Richard S. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 145 (September 5, 1986); *Dale C. v. Central/Westosha School District Board of Education*, Decision and Order No. 137 (May 15, 1986). School districts have authority to refuse to accept any student during the term of an expulsion from another school district, § 120.13(1)(f). Thus, while

a pupil may have difficulty enrolling in another school, it is not a basis for reversing 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 M by the Kenosha School District Board of Education is affirmed.

Dated this 17th day of April, 2008.

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