Decision and Order No.: 623

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of D[redacted] R[redacted] by Flambeau School District Board of Education	DECISION AND ORDER Appeal No.: 08-EX-15

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 Flambeau School District Board of Education to expel the above-named pupil from the Flambeau School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 25, 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 December 27, 2007, from the principal of the Flambeau schools. The letter advised a hearing would be held on

January 9, 2008 that could result in the pupil's expulsion from the Flambeau 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 repeatedly refused or neglected to obey school rules and knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives. The letter specifically alleged that the pupil engaged in numerous school rule violations listed within the disciplinary record including misconduct while riding on the bus, refusal to listen to teachers' directions, fighting, and an unexcused absence. In addition, the letter also alleges that on December 18, 2007, in the school commons, the pupil told an administrator that "[i]f I get expelled, I will blow this place apart. I will have no reason not to."

The hearing was held in closed session on January 9, 2008. 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 an 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 repeatedly refuse or neglect to obey school rules and knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives. 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 14, 2008, was sent separately to the pupil and his parents by certified mail. The order stated that the

pupil was expelled through his 21st birthday. 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 several issues which require consideration. The pupil argues that the expulsion should be reversed because the ticket issued by the police for disorderly

conduct pertaining to his threat to bomb the school was dismissed. In essence, the pupil challenges the sufficiency of evidence. The pupil claims that, because there wasn't enough evidence in court to support the bomb threat allegation, there isn't enough evidence to support the school's determination to expel him from school for the bomb threat. 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). The record indicates that on December 18, 2007, at about 10 a.m. while in the commons, the pupil told a teacher that "[i]f I get expelled, I will blow this place apart. I will have no reason not to." The record also reflects that when the teacher reported this to the office she appeared to be visibly shaken and upset. At the hearing, the pupil argued that there was insufficient evidence. 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). A reasonable view of the evidence supports the board's findings.

The appeal also alleges that the student's parents were never notified about any referral, which is part of the basis for the expulsion. However, not only does the record include various

log entries indicating that the parents were notified of the pupil's behavior at the time of the misconduct, it also reflects that the principal sent home an expulsion hearing packet with the pupil, which included copies of the referrals.

The pupil also alleges that he qualified as a student with disabilities and therefore should not have been expelled. However, there is no documentation in the record that the pupil has been identified as a child with a disability. Further, 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). *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, the pupil requests that the expulsion be overturned and that permission be given to the pupil to attend school. The pupil also requests that, in the event the prior requests are not granted, the allegation of the bomb threat be taken off the student's record. 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 an extraordinary circumstance or a procedural violation that would cause me to modify the pupil's expulsion period or the grounds for expulsion.

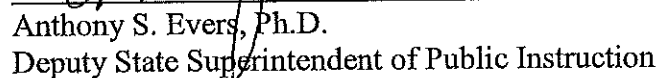
CONCLUSIONS OF LAW

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

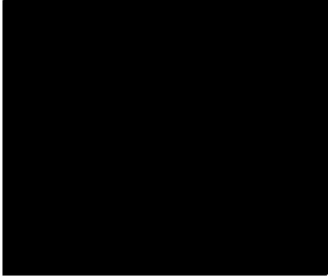
IT IS THEREFORE ORDERED that the expulsion of D R by the Flambeau School District Board of Education is affirmed.

Dated this 21st day of May, 2008.



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

Parties to this appeal are:



William Pfalzgraf, District Administrator
Flambeau School District
N4540 County I
Tony, WI 54563

APPEAL RIGHTS

Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

COPIES MAILED TO:

Douglas Roth
N5069 Hwy 73
Glen Flora, WI 54526

Emil and Audrey Roth
N5069 Hwy 73
Glen Flora, WI 54526

William Pfalzgraf, District Administrator
Flambeau School District
N4540 County I
Tony, WI 54563

Attorney James Ward
Weld, Riley, Prenn & Ricci, S.C.
3624 Oakwood Hills Parkway
Eau Claire, WI 54702-1030

Elizabeth Burmaster
State Superintendent

Tony Evers, Ph.D.
Deputy State Superintendent

Sheri Pollock, Attorney
Office of Legal Services