Decision and Order No.: 628

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of G. M by Monona School District Board of Education	DECISION AND ORDER Appeal No.: 08-EX-20

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 Monona School District Board of Education to expel the above-named pupil from the Monona School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 20, 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 February 5, 2008, from the district administrator of the Monona School District. The letter advised a hearing

would be held on February 13, 2008 that could result in the pupil's expulsion from the Monona 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 not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school. The letter specifically alleged that the pupil was found to have racially harassed other students throughout the first semester of the 2007-08 school year culminating in an incident on the evening of January 17, 2008 where the carcass of a deer was disposed of on the property of one of the students he had been continually harassing. The next day the student on whose property the deer carcass was left confronted the pupil at school about the incident and an altercation ensued that disrupted the orderly activity of the school. The pupil knew or must have known that leaving the deer carcass on the property of a student who he had been harassing at school would cause a disturbance at school.

The hearing was held in closed session on February 13, 2008 before an independent hearing officer. The pupil's parents appeared at the hearing without counsel. The pupil did not appear. At the hearing, the parents stipulated to the facts alleged in the notice of expulsion hearing, the finding that his conduct endangered the property, health, or safety of others at school, and that the interests of the school demand the student's expulsion. They also agreed that the recommended expulsion period and conditions were a fair and reasonable outcome of the pupil's expulsion hearing. In addition to the stipulation of facts, the school district administration presented exhibits, agreed to by the parents as well, 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 hearing officer adopted the stipulations and the recommended expulsion period. He found that the pupil did engage in conduct while not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school. He 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 hearing officer, dated February 21, 2008, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2008-09 school year with an opportunity for conditional readmission in September 2008. A transcript of the hearing, including the exhibits, is part of the record.

On March 12, 2008, the school board met and adopted the finding of facts and conclusions of law made by the hearing officer. A copy of that decision, dated March 14, 2008 was mailed to the pupil and his parents.

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. The parent complains about the suspension process. The state superintendent does not have authority to review suspension procedures in an expulsion appeal. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). The parent also complains that the expulsion hearing notice contained a different students name in the last paragraph. This error does not require reversal as the hearing notice is clear that it applies to the pupil at issue.

The parent also complains that the hearing was confusing. At the hearing, the parents stipulated to the factual allegations, the conclusions of law and the expulsion period. The parent now alleges that she did not know what it meant. She refers to conversations that were made off the record. There is no reference to the substance of these off the record conversations in the transcript. The transcript indicates that the conversations were between the parties, not the hearing officer. Furthermore, the parents were given every opportunity to ask questions of the hearing officer and the administration and to decline to stipulate to the factual findings and

conclusions made by the hearing officer. It is not uncommon for parents or pupils to complain after an expulsion hearing or after they enter into an agreement that they were confused, however, the state superintendent's review is limited to the hearing record. In this case, there is nothing in the record to suggest that the hearing violated any statutory procedures or that the parents did not understand the proceedings.

The parent also alleges that there was insufficient evidence of the prior harassing incidents to which they stipulated. Again, the parents stipulated to the findings, therefore the administration did not present additional evidence. Based upon the parents' stipulation, there is clearly sufficient evidence to support the findings made by the hearing officer and adopted by the board.

The parent alleges that the school should have responded differently to the earlier harassment. This is not within the review authority granted the state superintendent in Wis. Stats. § 120.13(1)(c). Similarly, the parent's complaint about inconsistencies between what was in a newspaper report about the incident and what actually happened is beyond the scope of review.

Finally, the parent requests that the expulsion term be modified. 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 understand what its community requires as a response to

misconduct that endangers the property, health, or safety of others at school. 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.

In reviewing the record in this case, I find that the school district complied 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 complied with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of G. M by the Monona School District Board of Education is affirmed.

Dated this 18th day of July, 2008.

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