Decision and Order No.: 630

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of P A by Janesville School District Board of Education	DECISION AND ORDER Appeal No.: 08-EX-22

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 Janesville School District Board of Education to expel the above-named pupil from the Janesville School District. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on July 9, 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 dated May 20, 2008, from the district administrator of the Janesville School District. The letter advised a hearing would be held on June 3, 2008 that could

result in the pupil's expulsion from the Janesville School District through the pupil's 21st birthday.[1] The letter was sent separately to the pupil, his parent and his group home director by certified and regular 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 May 16, 2008, the pupil committed robbery during the school day at Craig High School.

The hearing was held in closed session before an independent hearing officer on June 3, 2008, and adjourned until June 10, 2008, where it was held in closed session in its entirety. The pupil and his parents did not appear at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

After the hearing, the independent hearing officer found that 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 hearing 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 hearing officer, dated June 10, 2008, was mailed separately to the pupil and his parent. The order stated the pupil was expelled through his 21st birthday. On June 24, 2008, the Janesville School District Board of Education reviewed the hearing officer's order and approved it. The pupil and his parent were advised by letter dated June 27, 2008 of the board's decision. Minutes and an audiotape of the expulsion hearing, and exhibits introduced at the hearing are part of the record.

[1]The expulsion hearing was adjourned on June 3, 2008, until June 10, 2008, at the request of the pupil's mother. The pupil and his mother were informed of the rescheduled date by letter dated June 4, 2008.

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 pupil's mother alleges the pupil was denied legal representation because the hearing was rescheduled on a date that her attorney was not available. The record includes a letter dated May 20, 2008, notifying the pupil and his mother of the expulsion hearing scheduled for June 3, 2008. This letter also notifies the

pupil of his rights, including his right to obtain legal representation at his own expense. On the day of the June 3, 2008 hearing, the hearing officer received a message from the pupil's mother asking to reschedule the hearing because of scheduling conflicts with the pupil's attorney. Although not required to do so, to accommodate the pupil's mother's request, the hearing officer recessed the original hearing date until June 10, 2008 at 8:00 am. The pupil and his mother were notified of the rescheduled hearing date via a June 4, 2008 letter. On June 10, 2008, at 7:30 a.m., the pupil's mother called the district administrator's office to say that she and her son would not be coming to the expulsion hearing. She indicated she spoke with her attorney but he was unable to attend and because he could not make it, neither she nor her son would attend the hearing. She also indicated that the hearing could proceed as "it won't make a bit of difference whether we're there or not – the outcome is going to be the same."

While the pupil has a statutory right to be represented by an attorney at the expulsion hearing, there is no established right to a particular attorney or to a hearing on a particular day as long as sufficient notice has been provided. The pupil or his parents made two requests for adjournments. Neither request was based on the pupil's physical inability to attend the hearing based on infirmity or incarceration. The first was graciously granted, the second was not. The board's decision to proceed was not unreasonable and does not constitute a procedural violation. See *A.T. v. Oregon School District Board of Education*, Decision and Order No. 545 (May 26, 2005).

Secondly, the pupil's mother alleges that the pupil was advised by his attorney not to discuss the case because of pending charges and therefore should not have been expelled. It is the pupil's choice not to attend the expulsion hearing and not to discuss or testify. This decision by the pupil, however, does not create a procedural violation.

Third, the pupil's mother alleges that she e-mailed the superintendent of the district requesting to voluntarily withdraw the pupil and received no response, creating a violation. There is no law requiring a district to dismiss or hold in abeyance an expulsion proceeding based upon the pupil's withdrawal from school. See *A. M. v. Racine Unified School District Board of Education*, Decision and Order No. 533 (February 15, 2005). "[I]t is the policy of the State of Wisconsin that students cannot drop-out and re-enroll in school at whim." *Bradley B. v. Spooner School District*, Decision and Order No. 107 (February 15, 1983). In fact, the state superintendent has previously cautioned districts about the use of voluntary withdrawal agreements to avoid expulsion proceedings. See *T. N. v. Elmbrook School District Board of Education*, Decision and Order No. 477 (August 22, 2002); *A.P. v. Oak Creek School Franklin School District Board of Education*, Decision and Order No. 372 (November 23, 1998). Therefore, it was not a procedural error to not respond to or grant the mother's request to withdraw the pupil from school.

Fourth, the pupil's mother complains that even though the school liaison allegedly told the pupil's group home director that there would not be any charges filed against the pupil, charges were later filed. There is no explanation as to why the parent believes this is a procedural violation or had any impact upon the expulsion proceeding. There is no procedural violation. See e.g. *D. L. F. v. Altoona School District Board of Education,* Decision and Order No. 432 (April 12, 2001); *J. S. v. Oak Creek-Franklin Joint School District Board of Education,* Decision and Order No. 403 (October 1, 1999).

Fifth, the pupil's mother alleges the pupil's actions did not endanger the safety of others. The pupil confronted and robbed another student in the hallway at school. Then, to avoid being identified, the pupil changed his clothing. There were student witnesses who identified the pupil

to school authorities as the person who committed the confrontation and robbery. The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages, the chance of loss or injury, or the capability of producing death or great bodily harm. In this case, the pupil confronted anther student in the hallway at school and demanded the student's IPOD. When the student informed the pupil that he didn't have an IPOD, the pupil again demanded the student's IPOD. The pupil then emptied his pockets to show he didn't have an IPOD, and his wallet fell out. The pupil then demanded the student's money. These terms embrace the notion of harmful acts or actions that are detrimental or involve loss or damages. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (Nov. 25, 1996); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995); and *Kirsten J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (Feb. 21, 1992). I have repeatedly upheld expulsions when only the threat of harm is present. *Jacob B. v. Greenfield School District Board of Education*, Decision and Order No. 404 (January 3, 2000); *Nathan B. v. Delavan-Darien School District Board of Education*, Decision and Order No. 391 (July 23, 1999); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Robert S. v. Milton School District Board of Education*, Decision and Order No. 380, (May 12, 1999). After reviewing the record in this case, I find sufficient evidence to conclude that the pupil did endanger the safety of others.

The pupil's mother also complains about the harshness of the pupil's punishment and claims that students involved in gangs at the school go unpunished. However, because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. 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). Furthermore, 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 period.

Finally, the pupil's mother makes several allegations regarding the pupil's special education services, including that the student's misconduct was a manifestation of his disability. I note that the record indicates that a manifestation determination meeting was held and that it was determined that his misconduct was not a manifestation of his disability. 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).[2] *Ryan S. v.*

[2]In order to challenge a finding by the manifestation determination team, the pupil must avail himself of the due process appeal procedures provided under subchapter V of Chapter 115, Wisconsin Statutes, and PI Chapter 11,

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.

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 P A by the Janesville School District Board of Education is affirmed.

Dated this 4th day of September, 2008.

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

Wisconsin Administrative Code. See *Matthew C. M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996); *Jessie M. K. v. Tri County Area School District Board of Education*, Decision and Order No. 266 (January 2, 1996); and *John Michael N. v. Random Lake School District Board of Education*, Decision and Order No. 331 (August 5, 1997); *L. F. v. Mauston School District Board of Education*, Decision and Order No. 583 (January 18, 2007). Information regarding this procedure can be obtained from the school district.