Decision and Order No.: 631

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of R W by Kenosha School District Board of Education	DECISION AND ORDER Appeal No.: 08-EX-23

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 July 28, 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 April 23, 2008, from the Chairman of Administrative Review Committee of the Kenosha School District. The

letter advised a hearing would be held on April 30, 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 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 April 16, 2008, the pupil, while at school, possessed a knife approximately 6 inches long with a 2 ½ inch blade. He brought the knife to school for 'protection' and 'thought about' using the knife against another student who had previously reported him for being in possession of marijuana.

The hearing was held before an independent hearing officer in closed session on April 30, 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 the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the independent hearing officer found that on April 16, 2008, 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 April 30, 2008, was mailed separately to the pupil and his parents. The order stated that the pupil was expelled through the 2009-10 school year. The school board reviewed the independent hearing officer's order on May 13, 2008, and approved it. A copy of the school board's order was sent separately to the pupil and his parents on May 27, 2008. Minutes of the expulsion hearing, an audiotape of the expulsion hearing and exhibits introduced at the 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 three issues which require consideration. First, the pupil alleges that there are insufficient facts to support the board's decision to expel. 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); and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). In this case, the record indicates that on April 16, 2008, shortly before school began, the pupil was seen leaving school and that upon returning to school late, the dean of students asked the pupil to empty his pockets because of another student's report that the pupil was threatening him. As the pupil emptied his pockets, he pulled out a lock-blade pocket knife. The dean of students then asked the pupil to write a statement regarding the knife. In the pupil's statement, he admits that he thought about using the pocket-knife against another student at school who had previously reported him for being in possession of marijuana. Also included in the record are exhibits that were introduced and testimony that was given at the expulsion hearing reflecting students' statements that the pupil threatened another student at school. After reviewing the record, I find that the school board had sufficient evidence to expel the pupil.

Next, the appeal claims that the school administration violated a procedural requirement because neither the pupil nor his parents were notified of the school board's meeting to review the independent hearing officer's April 30, 2008 expulsion order. Included in the record is an

audio-tape of the expulsion hearing and the independent hearing officer's April 30, 2008 Findings of Fact and Expulsion Order. Both items reveal that the pupil and his parents were informed that the school board would be meeting to review the hearing officer's order. Regardless, the school administration is only required to notify the pupil and his parents that the expulsion would remain in effect while the order was reviewed by the school board; they are not required to notify the pupil or his parents of the date, time or place of the school board meeting. Therefore, the administration did not violate any procedural requirement regarding notification.

Finally, the appeal complains that a two-year expulsion period is excessive. However, since the authority to "approve, reverse or modify the decision" was conferred upon by 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 cause me to modify the pupil's expulsion period.

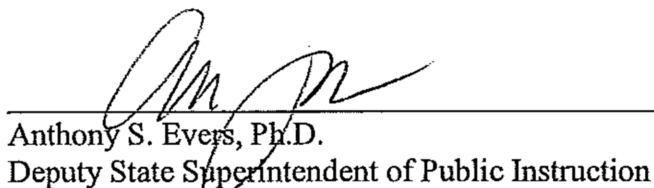
CONCLUSIONS OF LAW

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 R W by the Kenosha School District Board of Education is affirmed.

Dated this 25th day of September, 2008.



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Deputy State Superintendent of Public Instruction