

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

M. B.

by Lake Holcombe School District
Board of Education

DECISION AND ORDER

Appeal No.: 10-EX-03

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(c) from the order of the Lake Holcombe School District Board of Education to expel the above-named pupil from the Lake Holcombe School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 11, 2010.

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 Pupil Expulsion Hearing," dated January 26, 2010, from the district administrator of the Lake Holcombe School District. The letter

advised a hearing would be held on February 3, 2010 that could result in the pupil's expulsion from the Lake Holcombe School District through his 21st birthday. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil 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 on January 18, 2010, the pupil wrote the word "bomb" and the date "1-18-10" on the bathroom stall in the high school boys' bathroom.

The hearing was held in closed session on February 3, 2010. 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 school board deliberated in closed session. The board found that the pupil 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 February 3, 2010, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the first semester of the 2010-11 school year. Minutes of the school board 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 several issues which require consideration. The pupil alleges the school administration failed to present the pupil's academic information at the hearing. The document titled "Expulsion Hearing Procedure" given by the school to the pupil and his parent states that "only student school information evidence can be entered into the case.

This may include all student history or any legal information related to the case.” However, this is not a statutory requirement. Therefore, it is the school administration’s discretion as to what is presented to the school board. In addition, the pupil or the pupil’s parent could have presented the pupil’s academic history but chose not to do so.

The pupil also alleges that the district failed to comply with requirements to conduct a manifestation determination review and a special education evaluation. At the time of the incident, the pupil had a Section 504 plan due to a disability but had not been found eligible for special education. Since the expulsion, the district has agreed to conduct a special education evaluation.

The district did not conduct a manifestation determination review, as required, prior to expelling the pupil. However, this error was corrected by the district while this appeal was pending. On March 17, 2010, a team was convened to determine if his behavior was a manifestation of his disability. The team determined that it was not. The pupil disagrees with this determination. Section 504 is a shorthand reference to Section 504 of the Rehabilitation Act of 1973. It is administered by the U. S. Department of Education, Office for Civil Rights. The Wisconsin Department of Public Instruction has no enforcement authority for issues arising under Section 504, including interpretation of requirements related to Section 504 plans, services provided under Section 504, or due process procedures about Section 504 issues. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing. For further information, the pupil may contact the school district regarding the procedures set for an impartial hearing or he may contact the U.S. Department of Education/Office for Civil rights in

the Chicago office (Telephone (312) 730-1560). For further information about sec. 504, please review the FAQ produced by the Office of Civil Rights found at <http://www2.ed.gov/about/offices/list/ocr/504faq.html#safeguards>.

Finally, the pupil requests that the expulsion be overturned so he can attend an alternative school. 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.

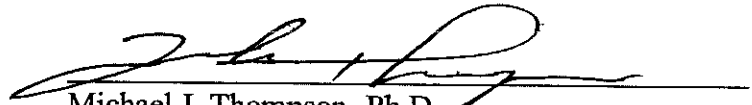
CONCLUSIONS OF LAW

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 M B by the Lake
Holcombe School District Board of Education is upheld.

Dated this 9th day of April, 2010



Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction