Decision and Order No.: 666

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of J P by Chippewa Falls School District Board of Education	DECISION AND ORDER Appeal No.: 10-EX-11

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 Chippewa Falls School District Board of Education to expel the above-named pupil from the Chippewa Falls School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 16, 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 Expulsion Hearing," dated May 3, 2010, from the assistant principal of the Chippewa Falls Middle School. The letter advised a hearing

would be held on May 17, 2010 that could result in the pupil's expulsion from the Chippewa Falls 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 at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that the pupil violated the school district's board policy on Thursday, April 29, 2010, when he admitted to being part of a plan that included bringing guns to school and harming others.

The hearing was held in closed session on May 17, 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 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 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 May 26, 2010, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday. Minutes of the school board 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 appeal claims that the school district committed a procedural violation because the pupil's parent was not notified of the pupil's arrest until three hours after the fact and by that time, the pupil had waived his rights and was allowed to do so even though he is a minor. Expulsion hearings

are not criminal proceedings; therefore the standards or rules applied in criminal cases are generally not applicable. This principle has been consistently applied in expulsion hearings. *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order No. 395 (August 16, 1999); *Leo P. v. Whitewater Unified School District Board of Education*, Decision and Order No. 351 (March 31, 1998); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994); and, *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983). Therefore, the school district did not commit a procedural violation concerning this allegation.

Also, the pupil challenges the sufficiency of the evidence. He alleges he alerted school officials that another student mentioned a Columbine type shooting but that he was charged with the misconduct. According to the record and the board's factual findings, J told one of his teachers that Student A thinks that he (J) wants to go "all Columbine on the school" and that the two of them should skip school and get guns from Student A's house to do the shooting. Then, the guidance counselor spoke to J . He told her he declined Student A's invitation and decided he should come forward and report it to the teacher. The following day, the assistant principal and school liaison officer interviewed J . During the interview, J said that planning the school shooting was Student A's idea and that he told Student A that he would "pass on carrying out the act." The pupil admitted to the liaison officer and assistant principal that he had been to Student A's house and saw guns. J also stated that he was not holding any more grudges and was not mad at anybody right now, so there was no reason to participate in a school shooting right now. Shortly after saying this, however, J told the principal that he told Student A he would probably wait until he was in high school and then may be interested in participating in a school shooting if he received any failing grades.

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). After reviewing the record, I find a reasonable view of the evidence supports the board's decision to expel.

The pupil also alleges that expulsion until the age of 21 is excessively harsh. He refers to personal research citing other students' instances of misconduct where one student brought a knife to school and was only expelled for one year and where a UW Stout student wrote a bomb threat and only received a fine. The pupil asks if some sort of compromise could be made.

However, because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *Aaron 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.

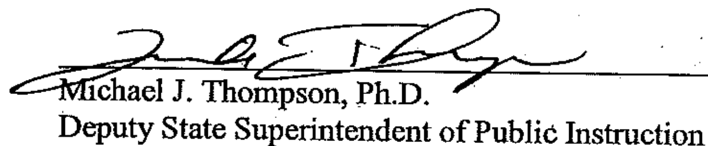
CONCLUSIONS OF LAW

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 J. P. by the Chippewa Falls School District Board of Education is affirmed.

Dated this 10th day of August, 2010



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