Decision and Order No.: 667

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of K G by Chippewa Falls School District Board of Education	DECISION AND ORDER Appeal No.: 10-EX-12

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 28, 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 12, 2010, from the principal of the Chippewa Falls Middle School. The letter advised a hearing would be

held on May 26, 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 her 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 on May 7, 2010, a note authored by the pupil was turned in to school officials that listed the "Top ten People I am Going to Murder."

The hearing was held in closed session on May 26, 2010. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 June 2, 2010, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the end of the 2011-2012 school year. 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 pupil claims that she and her parents were not allowed to review the pupil's journal that contained the alleged threats prior to the hearing. She alleges this prevented her counselor from reviewing and commenting on them. First, school districts are not required to provide copies of records or other evidence to the pupil or her parents prior to the expulsion hearing; school districts are only required to provide access to the pupil and her parents to all information considered by the board during the hearing. *See N. K. v. Marshall School District Board of Education*, Decision and Order No. 620 (May 15, 2008) and *B. S. v. Marshall School District Board of Education*,

Decision and Order No. 626 (July 11, 2008). Second, nothing in the record reflects a request to review this information was denied. Finally, the pupil was given notice of this conduct and presumably the pupil knew what was in the journal. Nothing the school did prevented the pupil from providing that information to her counselor prior to the hearing.

The pupil also alleges that during the hearing the administration presented a document from the district psychologist stating that the pupil did not exhibit any signs of behavioral or learning disabilities even though the psychologist has never met with, talked to, tested or observed the pupil. The document referred to is actually an opinion concerning whether or not the district was "deemed to know" that the pupil was a child with a disability before this alleged incident. Based upon many factors, the district determined it was not "deemed to know."

The pupil also challenges the sufficiency of the evidence claiming that her personal journal was only used to reflect her thoughts and prevent her from getting angry and emotional. The pupil also states that she has no history of violence or fighting and has never been disciplined for such. The record includes a school incident report dated May 7, 2010 which indicates three students approached a school official with a note they found written by the pupil at issue labeled "my top 5 friends" and "my top 10 people I'm going to murder." The school official searched the pupil's locker and found a notebook where the pupil wrote about wanting to kill "preppy" people and stated that "preppy girls make us bleed so why don't we make it there turn to bleed so me & Hollywood cut all the preppy girls." The pupil's notebook also contained a piece of writing that referenced specific details as to how the pupil would murder another 8th grade girl at school by beating her to death or running her over. The pupil wrote specific details about the planned murder including that she would use rubber gloves so she would not leave prints and that she would wear winter gloves over the rubber gloves to avoid leaving prints. The

pupil also wrote that she would wear another student's shoes and stash the evidence in that student's locker in order to frame said student for the crime. The pupil also explained in her notebook how she would cover the security cameras. She indicated that she knows someone who might help her kill that student and stated that she has "the perfect plan" and "if you think I'm fukkin kidding than try me." Upon interviewing the pupil, she admitted that the notebook belonged to her and that she did write about killing "preppy" people and the other 8th grade female student. However, the pupil did state that she would not actually go through with it explaining that these are just her thoughts, things she thinks about when mad.

The board was in the best position to resolve this conflict in testimony. In this circumstance, it was within the board's discretion to give weight to the evidence and arguments, as it deemed appropriate and to judge the credibility of witnesses. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111N.W. 2d 198 (1961). See also *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395 (August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). In addition, Wisconsin Statute 120.13(c)1. specifically states that "conduct that endangers a person or property includes making a threat to the health or safety of a person . . ." The material included in the pupil's journal submitted as evidence at the hearing satisfies this element.

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

The pupil also alleges that school board members have made public comments about the mishandling of the expulsion process and references a newspaper article that she included with her appeal. However, the article discusses a school board member's frustration with the high number of expulsions in that district, not the mishandling of the expulsion process.

Finally, the pupil claims that she has been diagnosed with ADHD and bi-polar disorder and complains about the school district's lack of response to her request for an evaluation to determine if she has EBD. 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). *Ryan S. v. 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 K G by the Chippewa Falls School District Board of Education is affirmed.

Dated this 27th day of August, 2010

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