Decision and Order No.: 676

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of R H by St. Francis School District Board of Education	DECISION AND ORDER Appeal No.: 10-EX-21

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 St. Francis School District Board of Education to expel the above-named pupil from the St. Francis School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 24, 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 September 9, 2010, from the district administrator of the St. Francis School District. The letter advised a

hearing would be held on September 20, 2010 that could result in the pupil's expulsion from the St. Francis School District until the pupil's 21st birthday. [1] Both letters were sent separately to the pupil and his parents by certified mail. The letters alleged that the pupil engaged in conduct while/ while not at school or while/ while not under the supervision of school authority which endangered the property, health, or safety of others (including threats to the health and safety of a person or to damage property); and repeated refusal or neglect to obey school rules. The letters referenced an attached summary alleging that on April 30, 2010, the pupil was in a possession of a controlled substance and on September 1, 2010, the pupil brought a knife to school.

The hearing was held in closed session on September 20, 2010 and at the request of the pupil's attorney, the hearing was adjourned until and completed on September 30, 2010. The pupil and his parents appeared at both hearings with counsel. At the hearings, the school district administration presented evidence concerning the grounds for expulsion. The pupil, his parents and his attorney were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the September 30, 2010 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 and that the pupil repeatedly refused or neglected to obey school rules. 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 October 4, 2010, was mailed separately to the pupil and his parents. The order stated that the pupil was

[1] At the September 20, 2010 hearing, the pupil's attorney requested that the hearing be adjourned and continued on September 30, 2010. The district complied with the request and sent out another Notice of Hearing dated September 22, 2010.

expelled through his 21st birthday. Minutes of the school board expulsion hearings, and exhibits introduced at the hearings 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 states that the pupil has been diagnosed with ADHD since 2005 and attributes the pupil's

misconduct to his diagnosis. Also, the appeal raises questions about the adequacy of the district's IEP process, and claims that the school district is not providing remedial services or an alternative educational setting for the pupil. 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.

The appeal also claims that the pupil was only in possession of a knife and that he did not physically carry-out any act that endangered or threatened anyone's health or safety. In essence, the pupil is alleging 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).

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. 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). In this case, the pupil is accused of bringing a knife to school. Upon being interviewed, the pupil admitted to the misconduct. After reviewing the record, I find a reasonable view of the evidence supports the board's decision possessing a knife at school endangers the health and safety of staff and students at school. *Daniel C. v. Whitewater School District Board of Education*, Decision and Order No. 503 (December 19, 2003); *D. H. v. New Richmond School District Board of Education*, Decision and Order No. 549 (June 30, 2005); *Michael L. v. New Richmond School District*, Decision and Order No. 326 (June 2, 1997); *James D. v. Greenfield School District,* Decision and Order No. 352A (April 7, 1998); and, *Stacey R. v. Milwaukee School District,* Decision and Order No. 362 (June 1, 1998).

Finally, the appeal claims that the length of expulsion is unreasonable. 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 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 H by the St. Francis School District Board of Education is affirmed.

Dated this 21st day of January, 2011

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