

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>T S</p> <p>by West Allis-West Milwaukee School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 11-EX-07</p>
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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 West Allis-West Milwaukee School District Board of Education to expel the above-named pupil from the West Allis-West Milwaukee School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 23, 2011.

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 February 11, 2011, from a principal of the West Allis-West Milwaukee School District. The letter advised a hearing would be held on February 21, 2011 that could result in the pupil's expulsion from the West Allis-West Milwaukee School District for a period of time to be determined by the school board. The letter was sent separately to the pupil and his parent. 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 January 31, 2011, the pupil, while at school and while on school grounds and while under school authority initiated and was involved in a flagrant fight.

The hearing was held in closed session on February 21, 2011. The pupil and his parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parent 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 February 24, 2011, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2012-2013 school year, with the opportunity for early reinstatement. 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. In the appeal, the pupil's mother complains about evidence presented by the district during the hearing.

She alleges the principal exaggerated the truth and that the board was inaccurately led to believe the assault was due to a dispute over drugs. 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). In this case, the record includes exhibits submitted at the hearing, minutes of the hearing and an audio recording of the hearing. At the hearing, the high school principal, assistant principal and investigating police officer testified. The record reflects that the board was provided a detailed description of the pupil's misconduct. The pupil physically attacked two students by throwing an apple at one student and striking him in the back. He then kicked the other student in the face and punched him in the face more than 20 times during the incident. The pupil admitted to the assault. There is no indication that the motivation for the assault was determined or that it affected the decision regarding whether to expel the student. Clearly the

conduct, regardless of motivation, is grounds to expel a pupil from school. After reviewing the evidence, I find a reasonable view of the evidence supports the board's decision to expel.

The appeal also claims that character references submitted by the pupil were not considered by the school board during the hearing. The character references submitted on the pupil's behalf were admitted as exhibits and provided to the school board for consideration. 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). There is nothing in the record to support the pupil's allegation that the school board did not take the character references into consideration.

The appeal claims that the pupil is not a threat or danger to any of the students or staff at school. 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).

After reviewing the record, it is not unreasonable for the board to determine that the pupil's behavior endangers students and staff at school.

The appeal also alleges that the pupil's expulsion is not in the best interest of the school district. The board has wide discretion in determining whether the interests of the school demand expulsion. Conduct that endangers the health, safety or property of others is more than sufficient to establish that the interests of the school demand expulsion. *Brad M. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); *Kristin P. v. Mukwonago Area School District Board of Education*, Decision and Order No. 185 (February 21, 1992); *John B. V. Milwaukee Public School District Board of Education*, Decision and Order no. 115 (October 31, 1983). In this case, the pupil physically assaulted two other students in the lunchroom and admitted he punched one student in the face "more than 20 times" while at school. Thus, it is not unreasonable for the board to determine that the pupil's behavior is dangerous and that the interests of the school demand expulsion.

Finally, the appeal alleges that expulsion was an extreme form of punishment and states that the pupil should have been offered a pre-expulsion contract to give him a second chance prior to expulsion. 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.

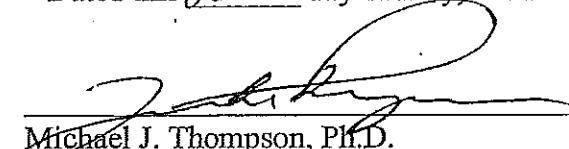
CONCLUSIONS OF LAW

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 T. S. by the West Allis-West Milwaukee School District Board of Education is affirmed.

Dated this 20th day of May, 2011



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

