Decision and Order No.: 690

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Z Y by Wauwatosa School District Board of Education	DECISION AND ORDER Appeal No.: 11-EX-13

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 Wauwatosa School District Board of Education to expel the above-named pupil from the Wauwatosa School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 14, 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 November 1, 2011, from the district administrator of the Wauwatosa School District. The letter advised a

hearing would be held on November 7, 2011 that could result in the pupil's expulsion from the Wauwatosa 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 October 20, 2011, the pupil was in possession, had consumed and distributed non-prescription medication for the purpose of abuse on school grounds.

The hearing was held in closed session on November 7, 2011. 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. There is no indication in the record if the order for expulsion containing the findings of fact and conclusions of law of the school board, dated November 14, 2011, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the pupil's 21st birthday with the opportunity for early reinstatement. Minutes of the school board expulsion hearing, exhibits introduced at the hearing and a transcript of 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 pupil was impaired when she admitted to previously using THC. The pupil eventually not only admitted to previously using THC but she also admitted to possessing, consuming and distributing non-prescription medication for the purpose of abuse on school

grounds on October 20, 2011. While the pupil's previous use of THC was not the basis for expulsion because the pupil admitted to prior use, the board could consider this admission in determining whether the interests of the school demand expulsion. This is not a procedural violation on the district's part.

The appeal also alleges that it is not illegal to possess the medication the pupil was accused of possessing and distributing while at school. Furthermore, the pupil claims that she was not distributing the drug at school; she only gave it to a friend who requested it. In this case, the record includes an Administrative Review-Incident Summary dated October 25, 2011. The document indicates that a teacher reported that the pupil at issue and another student appeared to be under the influence of a substance. Upon interviewing the other student, she was found in possession of two, eight-count blister packs of Coricidin HBP and that student admitted that she was given the pills by the pupil at issue. When the pupil was taken to be interviewed, she appeared to have problems walking and her speech was slurred. On October 20, 2011, during the interview she was found in possession of forty-five Coricidin HBP Cold & Cough tablets and said that she thought of selling the pills for the money, but had not yet done so and denied taking any of the pills. However, during the interview on October 21, 2011, the pupil revealed that she had consumed, to the best of her knowledge, between 12 and 17 of the Coricidin tablets during the course of the day on the 20th. 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); *G. J. v. Medford Area School District Board of Education*, Decision & Order No. 683 (May 17, 2011); *T. S. v. West Allis-West Milwaukee School District Board of Education*, Decision & Order No. 684 (May 20, 2011). 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.

Finally, the appeal alleges that expulsion is too severe of a punishment and asks that the expulsion be reversed. 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.

However, in reviewing the record in this case, I find that the school district did not comply with all of the procedural requirements. Wisconsin Statute Section 120.13(1)(c)4

requires the notice of expulsion hearing to state that the statutes related to pupil expulsion are 119.25 and 120.13(1). The notice of expulsion hearing in this case did not include that information. This element is required to be included in the notice of expulsion. Failure to include this information requires reversal. *Alex H. v. Eleva-Strum School District Board of Education*, Decision and Order No. 438 (July 20, 2001).

In addition, there is no evidence in the record that the final expulsion order was mailed, much less that it was mailed separately to the pupil and her parents. Section 120.13(1)(c)4 requires the school district to mail a copy of the expulsion order separately to the pupil and her parents. In this case, there is nothing in the record to support that the district complied with this requirement. *Phoua X. v. Saint Francis School District Board of Education*, Decision and Order No. 465 (April 28, 2002); *James R. v. West Bend School District Board of* Education, Decision and Order No. 396 (August 17, 1999); *Tyrell D. v. Racine Unified School District Board of Education*, Decision and Order No. 288 (May 14, 1996); *Robert K. v. Manitowoc Public School District Board of Education*, Decision and Order No. 230 (May 3, 1994).

If the district chooses, it may remedy these errors by providing proper notice of the expulsion hearing, rehearing the expulsion, and providing proper notice of the expulsion decision. See *Joshua D. v. Tomorrow River School District*, Decision and Order No. 415(May 24, 2000); *Nick N. v. Elcho School District Board of Education,* Decision and Order No. 373 (December 4, 1998); *Adam S. v. East Troy Community School District Board of Education,* Decision and Order No. 300 (August 9, 1996); *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992); and *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

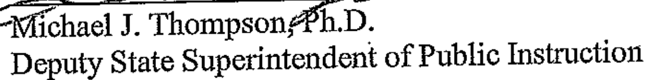
CONCLUSIONS OF LAW

In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. I, therefore, reverse this expulsion. This decision does not condone the pupil's conduct, nor does it suggest the expulsion ordered by the board is inappropriate. However, I must uphold the requirements contained in the statutes.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Z. Y. by the Wauwatosa School District Board of Education is reversed.

Dated this 11th day of January, 2012



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