Decision and Order No.: 696

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of D B by Clintonville School District Board of Education	DECISION AND ORDER Appeal No.: 12-EX-04

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(c) from the order of the Clintonville School District Board of Education to expel the above-named pupil from the Clintonville School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 20, 2012.

In accordance with the provisions of Wis. Admin. Code Ch. 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 Wis. Stat. § 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 regarding a "Notice of Expulsion Hearing," dated January 17, 2012, from the district administrator of the Clintonville School District. The letter advised that a hearing would be held on January 23, 2012 that could result in the pupil's expulsion from the Clintonville 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 on December 6, 2011, the pupil admitted to school officials that he possessed a 3 ½ - 4 inch knife on school premises at Clintonville High School on December 6, 2011, and also admitted on December 6, 2011 that he had possessed the same knife on school premises at Clintonville High School on December 2, 2011, which violates the Clintonville School District's weapons policy #5131.7. The pupil also admitted to school administrators on December 6, 2011 that he had threatened to kill another student at school on December 6, 2011.

The hearing was held in closed session on January 23, 2012. 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 February 2, 2012, was mailed separately to the pupil and his parents. The order stated that the pupil was expelled through the conclusion 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 Wis. Stat. § 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 Wis. Stat. § 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 student interview document presented to the Board of Education at the expulsion hearing was different than the interview document presented to the parents and the IEP members and should not have been relied upon by the school board. In essence, the appeal challenges the sufficiency of the evidence. 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). Included in the record at issue is a document titled "Official Minutes of the Expulsion Hearing of Student." This document describes exhibits presented during the expulsion hearing; one of which is the student interview document at issue in this paragraph and is labeled Exhibit 3: Student Interview, conducted by School Psychologist. This document was presented to the school board for consideration in support of the district's recommendation to expel. The pupil's parent is now claiming on appeal that the Student Interview document that was presented to board members at the hearing is different than what was presented to the

parents and the IEP members. The pupil and his parents had the opportunity to challenge this document during the hearing. However, there is nothing in the record that reflects they chose to do so. Matters not raised before the board cannot be raised for the first time on appeal. *Travis J.M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Tony R. v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995) and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995); *M. B. v. Hudson School District Board of Education*, Decision & Order No. 614 (March 31, 2008); *A. B. v. Milwaukee Public School District Board of Education*, Decision & Order No. 657 (March 4, 2010). After reviewing the evidence, I find a reasonable view of the evidence supports the board's decision to expel.

In addition, the pupil's parent also states that her son has been the victim of bullying and that his action of bringing a knife to school was because he felt he needed to protect himself. 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.

The pupil's parent also raises the issue of confidentiality. Specifically, the pupil's parent claims she was talked to about her son's incident in public places by school staff. While this may be an inappropriate action on behalf of the school, it is not a violation of a procedural requirement related to student expulsion.

Finally, the appeal also raises several questions regarding the district's handling of the pupil's parent's concerns regarding special education meetings. Specifically, the pupil's parent states that she asked that an IEP meeting to be reconvened; the pupil's parent claims she was unaware that a topic of a meeting would be in regards to the pupil's manifestation determination; the pupil's parent raises concerns regarding IEP documentation; and, the parent raises concerns about the actual manifestation determination. 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. Stat. § 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 Wis. Stat. § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of D B by the Clintonville School District Board of Education is affirmed.

Dated this 16th day of May, 2012

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