

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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| <p>In the Matter of the Expulsion of</p> <p>D S</p> <p>by Nicolet Union High School District Board of Education</p> | <p>DECISION AND ORDER</p> <p>Appeal No.: 12-EX-11</p> |
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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 Nicolet Union High School District Board of Education to expel the above-named pupil from the Nicolet Union High School District. This appeal was filed by the pupil's attorney and received by the Department of Public Instruction on November 23, 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 § 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 October 10, 2012¹, from the district administrator of the Nicolet Union High School District. The letter advised that a hearing would be held on October 23, 2012 that could result in the pupil's expulsion from the Nicolet Union High 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 and that the pupil repeatedly refused or neglected to obey school rules. The letter specifically alleged that on December 6, 2011, the pupil: violated his April 13, 2011 Expulsion Hearing Abeyance Agreement by engaging in a suspendable offense and failing coursework, he left school grounds without permission which resulted in truancy from school (hour 5), he contributed to the truancy of three other Nicolet male students by meeting with them in back of his home during school hours when they should have been at school, he violated Nicolet's Electronic Device Policy, then refused Dr. Snowden's directive to give her his cell phone; on December 7, 2011, the pupil was insubordinate to a supervisory aide when he refused to obey the Nicolet Policy for Dress Code and the posted rules of the In School Suspension room; and, on or about September 18-21, 2012, the pupil was found to have played a role in the vandalism, theft and destruction of Nicolet school property resulting in a cost of \$2,000.

¹The district mailed a Notice of Expulsion Hearing on October 10, 2012 following the statutory procedural requirements of Wis. Stat. 120.13(1)(c). Then, on October 23, 2012, the district provided an updated Notice revising the October 10 version by eliminating one of allegations of misconduct against the pupil. This October 23 Notice was given to the pupil, his parent and his attorney at the expulsion hearing. With the exception of the description of misconduct, the October 10 and October 23 Notices are exactly the same. The pupil's appeal does not dispute sufficient notice of the October 23, 2012 expulsion hearing.

The hearing was held in closed session on October 23, 2012. The pupil, his mother and his attorney appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil, his mother and his attorney 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 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 25, 2012, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through August 26, 2016. A transcript of the proceeding 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 one issue which requires consideration. The appeal, filed by the pupil's attorney, claims that the school district had insufficient evidence to expel the pupil. The record in this case includes a Notice of Expulsion Hearing dated October 10, 2012 and was modified on October 23rd. The Notice alleged the pupil committed acts of misconduct taking place on December 6, 2011, December 7, 2011 and between the dates of September 18-21, 2012.

In regards to the December 6th and 7th incidents, the pupil's attorney alleges that evidence introduced at the October 23, 2012 hearing didn't support a finding that the pupil engaged in the alleged conduct. Included in the record is a complete transcript of the October 23rd hearing. In regards to the December 6th incident, on page 20 of the transcript, the Assistant Principal of the School testified that the pupil "engaged in a suspendible offense. [The pupil] and approximately four to five other students, male students, left grounds, was truant; they were in the school, left school without permission, without follow up, without notification, were caught on the south side of the building and apprehended by [the] school resource officer . . . and the director of safety

and security. It was during the lunch period, near the end of the lunch period. The boys were spotted, they were apprehended, brought back into the school.” As a result of the December 6th incident, the pupil was given in-school suspension. The Assistant Principal additionally testified that during the in-school suspension on December 7th, the pupil “was just being insubordinate and rude once again to Ms. Fritz. He had on a coat; it was a violation of the dress code. Ms. Fritz made multiple requests for him to remove the coat. He wouldn’t” (transcript of the October 23, 2012 hearing, page 22). Exhibits introduced at the hearing in regards to both the December 6 and December 7th incidents were referenced throughout testimony.

The pupil’s attorney argues that evidence introduced at the October 23, 2012 hearing didn’t address the supportive of a finding that the pupil engaged in the alleged conduct that occurred on December 6th and 7th. There is nothing in the record to support this allegation. Testimony was provided by the Assistant Principal and exhibits introduced by the school district were referenced for both the December 6th and December 7th incidents. The State Superintendent has repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his or her investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

Finally, in regards to the alleged act of misconduct that occurred between September 18-21, 2012, the pupil's attorney claims that the school board inappropriately relied entirely upon hearsay statements given to the board through the testimony of a school official. However, hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomiah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985); *X. L. v. Clayton School District Board of Education*, Decision & Order No. 600 (June 29, 2007); *C. M. v. Kenosha School District Board of Education*, Decision & Order No. 616 (April 17, 2008).

Furthermore, in all of the alleged acts of misconduct against the pupil, 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, 111 N.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).

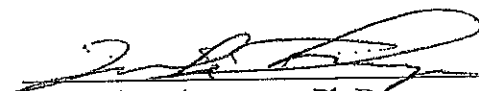
CONCLUSIONS OF LAW

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 D S by the Nicolet
Union High School District Board of Education is affirmed. *rw*

Dated this 18 day of January, 2013



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