

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

J ■■■ S ■■■

by School District of Monroe
Board of Education

DECISION AND ORDER

Appeal No.: 15-EX-02

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 School District of Monroe Board of Education (school board) to expel the above-named pupil from the School District of Monroe. The pupil and his parents (appellants) filed this appeal. The Department of Public Instruction received the appeal on February 12, 2015.

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 school board followed the required statutory procedures, that the school board based its decision 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 "Notice of Expulsion Hearing," (Notice) dated December 23, 2014 from the district administrator of the school district. The letter advised that a hearing would be held on January 12, 2015 that could result in the pupil's expulsion from the school district until the pupil's 21st birthday.

The school district personally, and separately, served the Notice upon the pupil on December 23, 2014, upon the pupil's mother on December 23, 2014, and upon the pupil's father on December 30, 2014. The Notice alleged the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. More specifically, the Notice alleged that on Thursday, December 18, 2014, at Monroe Middle School, the pupil was in possession of a weapon, namely a nine-inch kitchen knife with a four-inch serrated blade. The Notice additionally or alternatively alleged that the pupil threatened another pupil with the knife.

The hearing was held in closed session on January 12, 2015. The pupil, his father, and his mother appeared at the hearing with counsel, Attorney Peter J. Kind. Cory Hirsbrunner, the District Administrator of the school district served as the administration's representative for presenting the administration's case. The School Board's Attorney, Todd Schluesche, (hearing officer) served as the hearing officer. Eight of the nine school board members attended the hearing.

The hearing officer opened the hearing and explained the process that would follow. At the conclusion of the explanation, the hearing officer asked Attorney Kind if he had any questions. Attorney Kind indicated he had no questions. Ms. Hirsbrunner called two witnesses on behalf of the school district administration: Brian Boehm and Matt Brown. Both testified about

what had happened on December 18, 2014, their conversations with the pupil after the incident, and their review of other evidence such as witness statements. Attorney Kind had no questions of Msrs. Boehm and Brown.

At the conclusion of the testimony of Msrs. Boehm and Brown, the hearing officer referred to a "packet" of materials and witness statements Ms. Hirsbrunner had sent to School Board members and Attorney Kind in advance of the hearing. Attorney Kind acknowledged receipt of the documents. These documents were marked as Hearing Exhibits 000030-000037.

The hearing officer also referred to documents from the Sheboygan School District, the pupil's prior school district. These documents were marked as Hearing Exhibits 000040-000085. Attorney Kind again acknowledged he received these documents prior to the hearing. Ms. Hirsbrunner stated she had not yet provided these documents to school board members. Copies were made for the board members. The school district had no additional witnesses.

Attorney Kind then presented his case. He did this largely by testifying, himself, about the incident at issue, the pupil's background and school history, etc. Attorney Kind also presented Hearing Exhibits Nos. 000086-000089 and commented on other evidence including an incident report from Brian Boehm Attorney Kind had received from the school district prior to the hearing.

Attorney Kind turned to talking about the school district's written recommendations that the district provided to him prior to the hearing. Ms. Hirsbrunner stated that the school district had not yet provided the recommendations to the school board. She asked Attorney Kind if he could delay talking about the recommendations until the school board had them. The hearing officer indicated that all parties should wait until the school board had copies of the

recommendations before referring to it. Attorney Kind did not object to waiting, but rather, resumed his earlier presentation.

At the conclusion of Attorney Kind's presentation, the pupil read a statement. He admitted that he had a knife that he showed to another pupil and described the reasons for his conduct. The hearing officer asked if the school district administration or board members had any questions for the pupil and his parents. Board members, the pupil, and the pupil's parents then engaged in a sort of colloquy that included questions and answers among the parties and witnesses. At what appeared to be the conclusion of the colloquy, the hearing officer again asked everyone if there were other questions of the pupil, his parents or Attorney Kind. There were none, and the hearing officer asked Attorney Kind if he had any other witnesses or testimony. Attorney Kind indicated he did not.

District Administrator Hirsbrunner then handed out copies of the school district's recommendation regarding expulsion and summarized its contents. The school district recommended that the pupil be expelled until his 21st birthday without services.

At the conclusion of District Administrator Hirsbrunner's presentation, the hearing officer said, "Attorney Kind?". Attorney Kind then gave his closing argument and recommendation. The hearing then concluded. Neither Attorney Kind nor District Administrator Hirsbrunner made any objections during the hearing. The hearing officer then asked everyone to leave and the school board convened in closed session. The only persons present in closed session were the school board members and the hearing officer.

The record of proceedings provided by the school district administration for this appeal do not contain any minutes of discussions held in closed session, but do contain the motions

made and votes taken in closed session. Five of the eight school board members voted in favor of the school district's recommendation.

The school board issued Findings of Fact and Order dated February 12, 2015. The School Board President and Clerk signed the Findings of Fact and Order. The Finding of Facts stated the pupil had engaged in while at school or while under the supervision of a school authority that endangered the property, health, or safety of others. The school board further stated it, "has weighed the interests of the pupil and the pupil's fellow students, faculty, and staff and has found that the appropriate remedy is expulsion, and that the interests of the school do demand the pupil's expulsion." The Findings of Fact and Order adopt the recommendations of the school district recommendation and expel the pupil until the pupil's 21st birthday without services.

The school district separately mailed the Findings of Fact and Order to the pupil, his mother, and his father on January 19, 2015.

Minutes of the school board expulsion hearing, except for school board deliberations in closed session, and an audio recording of the expulsion hearing are part of the record.

The pupil has appealed the expulsion order to the State Superintendent.

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 expulsion decision, the state superintendent must ensure, among other things, 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. *Madison Metropolitan School District v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

The appeal letter sent to the Superintendent raises a number of issues for consideration, none of which requires reversal of the expulsion. All issues raised relate to the pupil's claim that the pupil did not receive a "fundamentally fair" hearing prior to expulsion and that as a result, the pupil was denied due process.

First, the pupil alleges that he did not have the right to question all witnesses presenting evidence against him, though he does not state specifically the witness(es) to whom this allegation applies.

Second, the pupil alleges he was denied due process because the District Administrator, Cory Hirsbrunner, was never called as a witness.¹

Third, the pupil alleges a denial of due process because Ms. Hirsbrunner presented incorrect testimony unfavorable to the pupil and the pupil was not given the opportunity to question her about her allegedly incorrect testimony.

As a related, fourth issue, the pupil claims that because he was denied the opportunity to question Ms. Hirsbrunner on her allegedly incorrect information, the school board was unfavorably disposed toward the pupil.²

Fifth, the pupil claims that his hearing was fundamentally unfair because Ms. Hirsbrunner gave "selective evidence" to the School Board prior to the hearing.

¹ Given other arguments in the pupil's briefs, I assume that Ms. Hirsbrunner is the witness the pupil alleges he was not permitted to question.

² In his brief, the pupil specifically states that he is not alleging that the school board was biased. The pupil does not make any effort to distinguish, "not biased against" from "unfavorably disposed toward the pupil." For purposes of this appeal, I accept the pupil's clear and unequivocal statement that he is not alleging the school board was biased, rather than the less clear, "unfavorably disposed" toward the pupil.

In the pupil's brief dated March 16, 2015, filed after the school district filed its initial brief dated March 6, 2015,³ the pupil makes additional allegations regarding his overall claim that his hearing was fundamentally unfair and that therefore, he was denied due process. The pupil first alleges that the school district provided two separate packets of "selected" evidence to school board members without notifying the pupil that he could do likewise. The pupil alleges that this failure constitutes a denial of due process. If the pupil is alleging that the school district had an affirmative duty to tell him he could provide evidence to the school board prior to the hearing, he cites no authority supporting that allegation.

The pupil next alleges that the school district provided written exhibits to school board members without permitting the pupil the right to object. The exhibits to which the pupil refers are denominated as hearing exhibits 000016-000029.⁴ These documents are:

1. Hearing Exhibit 000016 - A data sheet containing the names, addresses, and phone numbers of the pupil's parents and information about the grade, date of birth, and school the pupil attended.
2. Hearing Exhibit 000017 - A document entitled "Student Demographic Information", containing some of the same information as well as information such as date of birth, race, place of birth, etc.
3. Hearing Exhibit 000018 - A copy of a letter from Principal Brian Boehm to the pupil's mother dated December 19, 2015 notifying the mother that the pupil was suspended for a

³ When the pupil appealed the decision of the school board, he not only articulated the issues on appeal, but also argued how the issues showed he was denied due process. The school district was given the opportunity to respond to those arguments, the pupil was given the opportunity to reply, and the school district was given the further opportunity to reply. In sum, each party had two opportunities to submit briefs.

⁴ It is not possible to discern whether the pupil is alleging an evidentiary error or a due process error or that an evidentiary error constituted a due process error. On the one hand he states he was denied due process because he didn't have a chance to object to the school district sending these exhibits to the school board prior to the hearing. On the other hand, the pupil states if he had known these exhibits were being used by the administration, he would have cross-examined about them. For the reasons discussed below, neither interpretation has merit.

- minimum of 5 days, the precise dates of suspension, the reason for the suspension, and other miscellaneous information including rights the pupil had regarding the suspension.
4. Hearing Exhibit 000019 – The incident report prepared by Principal Boehm to which he testified at the expulsion hearing.
 5. Hearing Exhibit 000020 – A picture of the knife the pupil had and a ruler and pen for reference.
 6. Hearing Exhibit 000021 – The school board agenda for the January 12, 2015 expulsion hearing.
 7. Hearing Exhibits 000022-000024 – Notice of Expulsion Hearing dated December 23, 2014.
 8. Hearing Exhibits 000025-000027 – Certificates of Service for Notice of Expulsion Hearing.
 9. Hearing Exhibit 000028 – School Incident Report prepared by Brian Boehm dated December 18, 2014.
 10. Hearing Exhibit 000029 - Another picture of the knife the pupil had and a ruler and pen for reference.

The pupil also alleges that he was never given the opportunity to cross-examine Ms. Hirsbrunner on her “testamentary comments”.

Finally, the pupil alleges that Ms. Hirsbrunner provided testamentary evidence, both orally and in writing, to school board members in her “closing argument” which was not presented in the school district’s case-in-chief. As a result, the pupil contends, he was denied an opportunity to cross-examine Ms. Hirsbrunner as required by due process and that she presented

new evidence that was not part of the school district's case in chief. The pupil claims these alleged errors violate "fundamental due process."

"It is well-established that a student is entitled to due process at an expulsion hearing," *Racine Unified School District v. Thompson*, 107 Wis. 2d. 657, 321 N.W.2d 334 (Ct. App. 1982). The issues in this case go to the question of what process is due. Due process in student a student expulsion hearing does not have to take the form of a judicial or quasi-judicial trial, and expulsion hearings cannot be equated to a criminal trial or juvenile delinquency hearing. *Linwood v. Board of Education*, 463 F.2d 763 (7th Cir. 1972). The fundamental requirement of due process is the opportunity to be heard in a meaningful manner at a meaningful time. *Bunker v. Labor & Indus. Review Comm'n*, 257 Wis.2d 255, 266, 650 N.W.2d 864 (Ct. App. 2002). Strict requirements of due process are not required in a pupil administrative proceeding. Pupil expulsions are administrative proceedings. *B.J. by the Nicolet Union High School District*, Decision and Order No. 647, July 17, 2009; *Michaelene J. by the Washington School District*, Decision and Order No. 161, May 17, 1989. Compliance with the provisions of Wis. Stat. § 120.13 is sufficient to meet due process requirements. *B.R. by the Hamilton School District* Decision and Order No. 555, August 5, 2005.

It is also well-established that the rules of evidence as set forth in Wis. Stats. chs. 901-911 do not apply to expulsion hearings. *Sean H. by the Milwaukee School District*, Decision and Order No. 106, February 10, 1983; *Kristen J.P. by the Mukwonago School District*, Decision and Order No. 185, February 21, 1992; *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 321 N.W.2d 334 (Ct. App. 1982).

While a pupil is entitled to due process during expulsion hearings, the pupil must first raise any due process objections at the expulsion hearing to provide an opportunity for the trier

of fact, to wit, the school board, to take any needed corrective action at that time. The State Superintendent has repeatedly held that matters not raised before the school board cannot be raised for the first time on appeal. B.R. by the Hamilton School District, (555) August 5, 2005 *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).

In the instant case, the pupil made no formal objections or indicated a concern about any of the matters he now raises on appeal. Therefore, the pupil cannot raise them now. *Tony R. by the Lake Geneva J1 School District*, Decision and Order No. 259, August 11, 1995.

There is one matter that needs separate discussion. As set forth previously, the pupil claims, “there is no record of the District submitting [Hearing Exhibits] 000016 – 000029 to the school board as exhibits. The hearing exhibits to which the pupil refers are described above.

As stated previously, strict due process requirements do not apply to expulsion proceedings. Moreover, the documents the pupil alleges were not placed into evidence are not necessary for the school board to have reached the decision it made. Most are documents containing demographic information about the pupil or procedural documents prior to the hearing and following hearing.

The pupil made no objection at the hearing alleging that the procedural requirements of Wis. Stat. § 120.13(1)(c) were not met. Mr. Boehm, the school principal, read Hearing Exhibit No. 000019 at the hearing. Among other things, that statement contained the allegation that, “At the end of school on Thursday 12/18/2014, on the north side of MMS, [the pupil] (7th grade)

pulled a serrated kitchen knife, with a 4” blade, out of his backpack. He brandished it at [another pupil] (7th grade).”

Given this testimony, any failure to formally move Hearing Exhibits Nos. 000016-000029 into evidence at the hearing and to have them received is harmless. The pupil heard Mr. Boehm’s testimony and could have cross-examined him about the knife or anything else in Mr. Boehm’s statement, but he chose not to. Moreover, there is no due process violation because the pupil heard the testimony from Mr. Boehm and chose not to cross-examine him, and because the other specified exhibits do not prejudice the pupil.

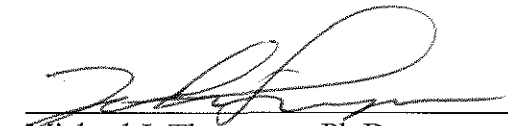
CONCLUSION OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with the procedural requirements of Wis. Stat. §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of J [REDACTED] S [REDACTED] by the School District of Monroe Board of Education is affirmed.

Dated this 9th day of April, 2015



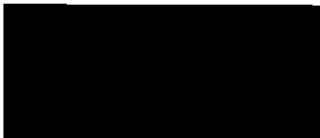
Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction

APPEAL RIGHTS

Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict

compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

Parties to this appeal are:



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