

## THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

NIKKOLE K [REDACTED]

Janesville School District  
Board of EducationDECISION  
AND  
ORDER94-EX-20

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## NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the June 13, 1994, order of the Janesville School District Board of Education expelling Nikkole K [REDACTED] from that school district until July 1, 1995. This appeal, dated July 19, 1994, was filed by Nikkole's mother, Chris K [REDACTED], and was received by the Department of Public Instruction on July 21, 1994.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, this Decision and Order is confined to a review of the record of the school board proceeding. The State Superintendent's review authority is specified in sec. 120.13(1)(c), Stats. 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 interests of the school district demand that the student be expelled.

## FINDINGS OF FACT

The record contains a letter dated May 18, 1994, from the Superintendent of the Janesville School District. This letter advised that a hearing would be held on May 31, 1994, concerning the expulsion of Nikkole K██████ from the Janesville School District. This letter was sent separately to Nikkole and her parents. The letter alleged that Nikkole engaged in conduct while at school which endangered the property, health or safety of others. Specifically, the letter alleged that Nikkole pushed a teacher, causing injury, and shut her in a closet. The letter included a copy of the school board policy on expulsion and a current copy of sec. 120.13(1)(c), Stats. The letter further indicated that Nikkole's complete disciplinary, attendance and academic records may be considered by the board. The letter indicated a set of materials to be used at the expulsion hearing would be sent to the parents. Copies of these records are part of the record. A copy of these records was sent to Nikkole's parents on May 25, 1994. The record also contains a written recommendation for expulsion from the school principal dated May 13, 1994, and a written recommendation from the school diagnostic prescriptive team dated May 13, 1994. The record also contains the minutes of the hearings held on May 31, 1994, and June 6, 1994.

The hearing was held in open session at the request of the pupil's parents on May 31, 1994. Nikkole and her parents appeared at the hearing. They were not represented by counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. A written report from the teacher involved in the incident was read to the board. The teacher was out of

town and could not attend the hearing. This written report is included in the record. Nikkole's discipline and behavior record was also presented to the board. At this time, the pupil's parents made statements and presented evidence to the board. Nikkole's parents called witnesses to rebut certain events from Nikkole's disciplinary record. Nikkole's parents also called witnesses who observed the incident of May 11, 1994. Nikkole also made a statement to the board.

After the hearing, the board deliberated in closed session. The board decided to continue the hearing until the teacher directly involved in the incident could be present to testify in person. The hearing was adjourned to June 6, 1994. Written notice of the new hearing date was sent separately to Nikkole and her parents.

The hearing continued on June 6, 1994. The teacher testified about the incident of May 11, 1994. The pupil's mother and various board members questioned the teacher about the specifics of the incident. Nikkole made another statement to the board concerning the pushing of the teacher on May 11, 1994. Another teacher also testified to her knowledge of the incident. The pupil's mother then called another student to testify about her observations of the incident in question. Finally, there was considerable discussion concerning Nikkole's disciplinary record.

After the hearing, the board deliberated in closed session. The board decided to expel Nikkole from the school district with the opportunity to reapply by July 1, 1995, for readmission for the 1995-96 school year.

On June 7, 1994, the board notified Nikkole and her parents of its decision

by letter. The letter was sent separately to Nikkole and her parents. A document entitled "Findings and Order" dated June 13, 1994, and signed by the board president, is also part of the record.

The board found that Nikkole endangered the health and safety of the teacher and violated a board policy. The board policy provided that the board will expel a student if statutory grounds are proven and the board is satisfied that the interest of the school demands the student's expulsion.

### 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 Dist., 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from sec. 120.13(1)(c), Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which 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 sec. 120.13(1)(c), Stats. In Racine Unified School Dist. 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.* 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. First, Nikkole makes several arguments concerning a lack of sufficient credible evidence to support the board's findings concerning her conduct. She notes that various witnesses gave different accounts of the incident in question. She further states the teacher herself gave different versions of the incident to school officials, the police and Nikkole's family members. Therefore, she argues, the board's findings have no basis in the record. Arguments as to the sufficiency of the evidence in an expulsion hearing have been held to be beyond the scope of the superintendent's review. Brad M. v. Boyceville Community School District Board of Education, Decision and Order No. 233, June 29, 1994; Kaiwan O. W. v. Kenosha Unified School District Board of Education, Decision and Order No. 186, April 7, 1992. The credibility of the witnesses is judged by the school board. It is the province of the board to evaluate the evidence and to determine whom they believe. William S. v. Tri-County Area School Board, Decision and Order No. 132, June 21, 1985, citing State ex rel De Luca v. Common Council, 72 Wis. 2d 672, 695, 224 NW 2d 689 (1976).

Second, Nikkole argues the length of the expulsion is too harsh a penalty for the conduct involved. Nikkole was expelled until July 1, 1995. Issues such as harshness or duration of the expulsion decision have not generally been reviewed

by the State Superintendent. A review of an expulsion decision by the State Superintendent has been limited to determining whether the statutory requirements of sec. 120.13(1)(c), Wis. Stats., have been met. Rhiannon V. v. Muskego-Norway School District Board of Education, Decision and Order No. 188, April 21, 1992. Dusty S. v. Mukwonago School District Board of Education, Decision and Order No. 237, August 26, 1994. I see nothing in this record that would convince me to depart from that decision. However, the school board may, if it chooses, reconsider the length of the expulsion.

Third, Nikkole argues the school board made two decisions concerning the procedure of the expulsion hearing that were unfair to her. On May 31, the first day of the expulsion hearing, several students appeared to testify on Nikkole's behalf. The minutes of the expulsion hearing indicate these students were asked to remain out of the hearing room until called to testify. Nikkole's parents agreed to this procedure and the students left the room. During the hearing, Nikkole's mother asked one of the students, Sarah S., to testify. The minutes indicate Sarah S. had been seen in the hallway talking to the students who had already testified before the board. Therefore, the board declined to let Sarah S. testify. Later in the hearing on May 31, the board expressed the desire to hear from the teacher who was actually involved in the incident. She was not present at the expulsion hearing because she was accompanying a field trip out of state. The board decided to continue the expulsion hearing until June 6, 1994. At that time the teacher was present and testified. Nikkole and her parents were given an opportunity to cross-examine the teacher. Other witnesses were called to testify

before the board at that time. All parties were given an opportunity to cross-examine these witnesses and to present further testimony.

At the June 6 hearing Nikkole's mother told the board what Sarah S. told her about the pushing incident on May 11, 1994. Essentially, Sarah S.'s testimony contradicted the testimony of the teacher with respect to whether Nikkole pushed the teacher from behind. The teacher testified Nikkole shoved her from in front, not from behind. Nikkole argues the board should have permitted Sarah S. to testify and the board should not have continued the hearing to June 6, 1994. As I indicated earlier, the superintendent's review is limited by statute and designed to insure that the school board follows the procedural mandates of sec. 120.13(1)(c), Stats. The school board exercised its discretion in not permitting one witness to testify and in continuing the hearing to permit a teacher to testify. These matters are within the sound discretion of the school board. Given all of the circumstances here, these discretionary decisions will not be disturbed. Nikkole was able to convey to the school board the substance of the testimony that Sarah S. would have produced. The minutes of the June 6 hearing indicate the statements of Nikkole's mother concerning Sarah S.'s testimony were offered to the school board.

Further, the school board's adjournment of the hearing to permit a teacher to testify could only have advanced the fact finding function of the school board. Nikkole was able to cross-examine the teacher and point out the inconsistencies in various statements she made.

Finally, I make one other point in this case. The expulsion order issued by the school board indicated that Nikkole's conduct endangered the health and

safety of a teacher in violation of sec. 120.13, Stats., and Board Policy 5350. Board Policy 5350 was included as part of the record of this case. This policy indicated the board can expel a student if it is satisfied that the interests of the school demand the student's expulsion. The finding that the board is satisfied that the interests of the school demand the student's expulsion is a required finding. Failure of the school board to make this finding is reversible error. Mark P. v. Marinette School District Board of Education, Decision and Order No. 236, August 26, 1994. While the finding was implicitly included as part of the record here by virtue of the order's reference to the policy which explicitly includes it, it is better practice to make an explicit finding and include it in the expulsion order. Russell B. v. Muskego-Norway School District Board of Education, Decision and Order No. 175, February 28, 1991.

### 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 complied with all the of the procedural requirements of sec. 120.13(1)(c), Stats.



**ORDER**

IT IS THEREFORE ORDERED that the expulsion of Nikkole K [REDACTED] by the  
Janesville School District Board of Education is affirmed.

Dated this 16th day of September, 1994.

  
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John T. Benson  
State Superintendent of Public Instruction