THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Nicole G[redacted] by the Ashland School District Board of Education	DECISION AND ORDER 98/99 EX-18

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 March 23, 1999 order of the Ashland School District Board of Education to expel the above-named pupil from the Ashland School District through the 1998-99 school year. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on May 6, 1999.[1]

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 hearing. The State Superintendent's review authority is specified in sec. 120.13(1)(c), Wis. 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

[1] The pupil is being represented by Mark P[redacted]. Mr. P[redacted] filed an appeal on behalf of his child as well as Nicole and another student on April 14, 1999. However, Mr. P[redacted] did not file an authorization to represent Nicole until May 6, 1999. Thus, May 6, 1999 is considered to be the date of the appeal.

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 March 5, 1999, from the district administrator of the Ashland School District. The letter advised that a hearing would be held on March 22, 1999 that could result in the pupil's expulsion from the Ashland School District. The letter was sent separately to the pupil and her parents by regular and 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 Nicole was involved in the delivery of marijuana while on a DECA field trip on February 24, 25, and 26, 1999. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on March 16, 1999.[2] The pupil and her parents appeared at the hearing. According to the minutes of the expulsion hearing, Mark P[redacted] spoke on behalf of all seven students facing expulsion at that hearing. 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.

[2] There is no explanation in the record for the discrepancy in the hearing date. It can be inferred that Nicole's hearing was consolidated with 6 other students on this date. There was no objection in the record to proceeding on March 16, 1999 rather than March 22, 1999.

After the hearing, the school board deliberated in closed session. The board found 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 March 23, 1999, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the 1998-99 school year. The order also stated that if Nicole met certain conditions she could re-enroll in school, effective March 17, 1999. Furthermore, if Nicole's behavior met certain conditions through the remainder of the school year, the expulsion would be expunged from her record. There is no indication in the record that Nicole met the conditions for the expulsion to be expunged from her 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 Distric.,* 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from sec. 120.13(1)(c), Wis. Stats., 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 sec. 120.13(1)(c), Wis. Stats. 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 pupil's representative raises three issues that require consideration.[3] First, it is alleged that it was error for the school board to hear the expulsion hearing in closed session despite the pupil's request for an open hearing. This argument was raised at the expulsion hearing. After receiving the request for an open hearing, the school board decided to conduct the expulsion hearing in closed session. The board reasoned that students, other than those facing expulsion, may be discussed at the hearing and therefore the hearing should be closed. The procedures used by the board comply with sec. 19.85(1)(f), Stats., and are consistent with previous holdings of the state superintendent. The state superintendent is authorized to address the open or closed nature of the proceeding only if the pupil or the pupil's parent demands a closed meeting and that demand is denied. *Courtney R. v. Germantown School District Board of Education,* Decision and Order No. 278 (March 21, 1996); *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 28, 1993); *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993).

[3] Mr. P[redacted] raises an issue concerning sufficiency of service of the notice of hearing but confines that issue to his child's appeal. It is not argued in the context of Nicole's appeal.

Secondly, the pupil alleges that the failure of a board member to recuse herself from the entire expulsion hearing was improper and tainted the hearing. At the expulsion hearing, Mr. P[redacted] requested Board Member Beth Oujiri to excuse herself from the hearing. The basis for this request was that Ms. Oujiri's son was on the same DECA field trip where the misconduct occurred. After consultation with the board's attorney, Ms. Oujiri decided to participate in the hearing while testimony was being taken but not participate in any vote to expel students.[4] While Ms. Oujiri apparently participated in the hearing during the evidentiary portion, she did not participate in the board's expulsion decision. Furthermore, the law presumes that school board members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board,* 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors,* 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied,* 370 U.S. 720 (1962). In this case, I find the pupil's assertion of bias or conflict insufficient to overcome this presumption. The record contains no evidence of actual bias or conflict, nor does it reflect circumstances that would lead to a high probability of bias or conflict. *See Nicholas E. v. Lodi School District Board of Education*, Decision and Order No. 303, October 17, 1996; *Kathleen W. v. Tri-County Area School Board of Education*, Decision and Order No. 130, May 10, 1985.

Finally, the pupil raises "substantive issues" which can be summarized as alleging that there was insufficient evidence to support the board's findings. It has been repeatedly held that

[4] Mr. P[redacted] alleges that Ms. Oujiri actively participated in the hearing by questioning several witnesses. However, there is no transcript of the hearing and the meeting minutes do not contain detail such as who asked which questions. Therefore, I cannot make any findings regarding the extent of any questioning

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).

The administration presented evidence that 16 Ashland High School students participated in a field trip to Chicago, via Madison, from February 24 to 27, 1999. The field trip was part of the DECA group's activities, sponsored by the school and supervised by Brian Seguin, the DECA advisor. When the students arrived in Madison for the overnight stop-over, some of the students got together and decided to pool their money and purchase marijuana. A source for the marijuana was found, and two students took a taxi from the hotel to campus and purchased $120 worth of marijuana. When the students returned with the marijuana, some of the students smoke the marijuana. Other students, who had not initially contributed money to the purchase, joined in

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done by Ms. Oujiri. However, the extent of her participation in the questioning of witnesses is not relevant to the issue raised by the pupil.

by contributing money and smoking the marijuana. When the group arrived in Chicago, some of the students smoked the marijuana there as well.

Chaperones and advisors first became aware of the students' activities on February 26 at about 5:30 p.m. when a chaperone from another school walked by a hotel room belonging to the Ashland students. That chaperone smelled marijuana and alerted Mr. Seguin. As Mr. Seguin approached the hotel room, several students quickly exited the room. Mr. Seguin obtained access to the room by obtaining a key from the housekeeper. Once inside, he found the remnants of a marijuana joint. Mr. Seguin investigated the activities that night and the next morning. He obtained admissions from several students as well as additional information implicating others. Nicole admitted that she contributed to the purchase of the marijuana and that she smoked it once in Chicago. In total, it was determined that ten students were involved in obtaining, sharing, and smoking the marijuana during the field trip.

The board heard testimony from Officer Johnson of the Ashland County Sheriff's Department regarding marijuana laws, marijuana use, and the procedures by the Sheriff's Department. The board found, based upon all the evidence, that Nicole's participation constituted delivery of marijuana by virtue of her initial decision to purchase marijuana and then by subsequently sharing it with other students not involved in the initial purchase of the marijuana.

Mr. P[redacted] argues that there was no evidence that this conduct endangered the property, health, or safety of others. The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages, or 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. *Kirsten J. v. Mukwanago School District Board*

of Education, Decision and Order No. 185 (Feb. 21, 1992); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995); and *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (Nov. 25, 1996). In this case, I find it was reasonable for the board to conclude that Nicole's involvement in the delivery of marijuana while on a school-sponsored field trip endangered the health or safety of others. Moreover, expulsions based on simple possession of marijuana have been repeatedly upheld. See *Joshua R. v. Edgerton School District,* Decision and Order No. 330 (July 29, 1997); *Joshua S. v. Beloit -Turner School District Board of Education,* Decision and Order no. 307, January 14, 1997; *Matthew K. v. Hartford Union High School District Board of Education*, Decision and Order No. 276, March 11, 1996; *Brian C. v. Sheboygan Area School District Board of Education*, Decision and Order No. 158, September 9, 1988; and *William S. v. Suring School District Board of Education*, Decision and Order No. 98, June 17, 1982.

Mr. Perrine also argues that there is no evidence to support the board's interpretation of "delivery." "Deliver" means to "take and hand over to or leave for another." (Merriam Webster's Ninth New Collegiate Dictionary, p. 336, 1987). Nicole and the others purchased marijuana, which was then made available to others. While there is no evidence that any of the students profited from this transaction, the definition does not require a profit. While Nicole's involvement appears to be at the outer limits of the definition of "delivery," I do not find the board's determination to be unreasonable.[5]

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

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 of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Nicole G[redacted] by the Ashland School District Board of Education is affirmed.

Dated this 1st day of July, 1999.

John T. Benson /ds

John T. Benson
State Superintendent of Public Instruction

[5] I would also note that she clearly possessed and used marijuana. According to Ashland School District Board policy 443.4, a student who possesses or uses a controlled substance will be suspended for up to five days and is subject to a review for possible expulsion.