

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Aaron St</p> <p>by Tri-County Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 04-EX18</p>
---	--

**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 Tri-County Area School District Board of Education to expel the above-named pupil from the Tri-County Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 3, 2004.

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 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 May 6, 2004, from the district administrator of the Tri-County Area School District. The letter advised a

hearing would be held on May 13, 2004 that could result in the pupil's expulsion from the Tri-County Area 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 May 4, 2004 he possessed marijuana on school grounds.

The hearing was held in closed session on May 13, 2004. The pupil and his parents appeared at the hearing represented by 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 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 May 13, 2004, was mailed separately to the pupil and his parents. The order stated the pupil was expelled for the remainder of 2003-2004 school year. Minutes of the school board expulsion hearing and an audiotape of the expulsion 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 two issues. First, the appellant claims the notice was insufficient in that it did not provide the particulars of the alleged misconduct. A student facing expulsion is entitled to timely and adequate notice of the charges against him or her so as to allow a meaningful opportunity to be heard, even where the student unequivocally admits the conduct charged. *Keller v. Fochs*, 385 F. Supp. 262, 265 (E.D. Wis. 1974). Furthermore, § 120.13(1)(c)4, clearly requires notice of the specific grounds for expulsion and the particulars of the alleged misconduct. Expulsions have been repeatedly overturned for failure to include this in the notice. *Bradley Scott P. v. Menasha Joint School District Board of Education*, Decision and

Order No. 197, (August 21, 1992); *Christopher K. v. West Allis School District Board of Education*, Decision and Order No. 166 (April 18, 1990); *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 144 (July 2, 1986).

*Particulars* [of misconduct] are not defined in the statute. However, it is not an ambiguous or unknown term. When interpreting a statute, we must give effect to the ordinary and accepted meaning of the language chosen by the legislature. Wis. Stat. §990.01(1) (1999-2000); *Seider v. O'Connell*, 2000 WI 76, ¶32, 236 Wis.2d 211, 612 N.W.2d 659. The definition of *particulars* requires items or details of information, not generalizations. See *The American Heritage*<sup>®</sup> *Dictionary of the English Language*: Fourth Edition. 2000.<sup>1</sup>

Proper notice must inform the pupil of the time frame during which the misconduct occurred, where the misconduct occurred, and a description of the conduct to be considered. *Ulysses R. v. South Milwaukee School District Board of Education*, Decision and Order No. 509 (April 17, 2004); *Ryan S. v. Pewaukee School District Board of Education*, Decision and Order No. 445 (September 25, 2001); *Ryan K. v. Pewaukee School District Board of Education*, Decision and Order No. 439 (July 24, 2001). The notice in this case was adequate. It advised the pupil what he was accused of, when it allegedly occurred, and where it allegedly occurred.

The appellant also claims the notice was insufficient because it advised the pupil that the hearing would be closed, rather than giving the pupil and his parents the option to close the hearing. However, a pupil does not have a statutory right to an open hearing if the board has determined that a closed hearing is warranted pursuant to Wis. Statutes §§19.85(1)(a) and (f). *Nicole G. v. Ashland School District Board of Education*, Decision and Order No. 390 (July 1, 1999); *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and

---

<sup>1</sup> Particular, n. 1. An individual item, fact, or detail: *correct in every particular*. See synonyms at item. 2. An item or detail of information or news. Often used in the plural: *The police refused to divulge the particulars of the case*. 3. A separate case or an individual thing or instance, especially one that can be distinguished from a larger category or class. Often used in the plural: "*What particulars were ambushed behind these generalizations?*" (Aldous Huxley).

Order No. 341 (December 17, 1997); *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996).

Finally, the appellant claims there is insufficient evidence to support the board's finding that the pupil possessed marijuana at school. The marijuana was found in the glove compartment of the pupil's car that was parked in the school's parking lot. The appellant claims that any possession was not knowing, therefore it could not be the basis for expulsion. This same argument was made to the board at the hearing.

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).

The board heard testimony about the circumstances of the search of the pupil's vehicle and the subsequent discovery of marijuana. The board also heard the pupil's explanation concerning how or why marijuana was found in his vehicle. After hearing all of the testimony, the board determined that the pupil possessed marijuana on school grounds. Had they found the

pupil credible, they would have been free to reject the request to expel him, however, they determined expulsion was appropriate.

The board was in the best position to resolve this conflict in testimony. It is within the board's discretion to give weight to the evidence and arguments, as it deems 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, 111N.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). A reasonable view of the evidence supports the board's conclusions.

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

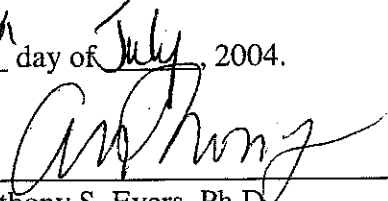
### CONCLUSIONS OF LAW

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

### ORDER

IT IS THEREFORE ORDERED that the expulsion of Aaron S \_\_\_\_\_ by the Tri-County Area School District Board of Education is affirmed.

Dated this 26<sup>th</sup> day of July, 2004.

  
\_\_\_\_\_  
Anthony S. Evers, Ph.D.  
Deputy State Superintendent of Public Instruction