

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>Nickenia Sj</p> <p>by Milwaukee Public School District<br/>Board of Education</p> | <p>DECISION AND ORDER</p> <p>Appeal No.: 04-EX 23</p> |
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**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 Milwaukee Public School District Board of Education to expel the above-named pupil from the Milwaukee Public School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 12, 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 October 14, 2004, from the student services coordinator of the Milwaukee Public School District. The letter

advised a hearing would be held on October 26, 2004 that could result in the pupil's expulsion from the Milwaukee Public School District. The letter was sent separately to the pupil and her parent by messenger service. 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 she possessed and used a weapon (padlock) and caused injury to another person while at Custer High School on October 7, 2004.

The hearing was held before an independent hearing panel on October 26, 2004. The pupil and her parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parent were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the panel deliberated in closed session. The panel 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 panel 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 panel, dated October 26, 2004, was mailed separately to the pupil and her parent. The order stated the pupil was expelled through October 26, 2005 with an opportunity for early readmission if the pupil completed 120 hours of community service through the Responsible Investigative Talent Zone program. The Milwaukee School Board met on November 7, 2004 and adopted the panel's order. The board's decision was sent to the pupil and her parent by separate mail. A transcript of the hearing is 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.

In her appeal letter, the mother indicates that she believes expulsion for one year was too harsh. Since the authority to "approve, reverse or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has consistently declined to modify the length of expulsions. *David D. v. Central High School District of Westosha Board*

*of Education*, Decision and Order No. 429 (January 25, 2001); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993). The school board or independent hearing panel is in the best position to judge the demeanor of witnesses as well as to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of this determination. In reviewing this case, I do not see the extraordinary circumstance or procedural violation that causes me to modify the pupil's expulsion period.

The mother claims that Mr. Gray's report was not presented to the panel. In this circumstance, this is not a basis for overturning the expulsion. A review of the transcript shows that Mr. Gray was the teacher responsible for the classroom where the altercation occurred. It is unclear whether he wrote a report. It is clear; however, that he tried to restrain one of the students involved in the altercation and was injured in the process. There is no indication that if Mr. Gray had written a report that it would have contained any information that was not presented to the board through the testimony of Nickenia and the other administrators.

The mother also suggests that the evidence does not support the expulsion finding. 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).

A review of the transcript supports the panel and board's conclusion that the pupil endangered the health and safety of others at school when she hit another student in the mouth with a padlock, causing injuries to that student. The pupil testified that there were previous problems between her and the other student. On the way to class, another student gave Nickenia a padlock, telling her she would need it. When she entered the classroom, the other student stared at Nickenia. Apparently the two students approached each other. The other student may have pushed Nickenia. Nickenia responded by hitting the other student with a padlock. Eventually, the police and paramedics responded. The police determined that both Nickenia and the other student were guilty of assault. The evidence supports the panel and board's findings.

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.

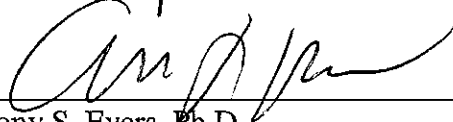
#### **CONCLUSIONS OF LAW**

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 Nickenia Sr by the Milwaukee Public School District Board of Education is affirmed.

Dated this 11<sup>th</sup> day of January, 2005.



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