Decision and Order No.: 554

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of D. P. by Burlington Area School District Board of Education	DECISION AND ORDER Appeal No.: 05-EX 21

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 Burlington Area School District Board of Education to expel the above-named pupil from the Burlington Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 31, 2005.

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 April 25, 2005, from the district administrator of the Burlington Area School District. The letter advised a

hearing would be held on May 2, 2005 that could result in the pupil's expulsion from the Burlington Area School District. The letter was sent separately to the pupil and his father by certified mail. The letter was also sent to a woman, Cindy Jahns, who the school had in their records as the pupil's mother. The pupil's mother, Susan Deschler, was not sent notice of the hearing by the school. 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 April 22, 2005, the pupil smoked marijuana on school grounds.

The hearing was held in closed session on May 2, 2005. The pupil and his parents (Susan Deschler and Raymond Pope) appeared at the hearing. 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 9, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2005-2006 school year, with an opportunity for early readmission at the beginning of the 2005-06 school year. Minutes of the school board expulsion hearing and a recording 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 was filed by the student's mother, Susan Deschler. Ms. Deschler claims that she was not sent notice of the expulsion hearing by the school and therefore the expulsion should be overturned. The school concedes that it did not send her notice because she was not listed in school records as the pupil's parent nor did the pupil's record contain Ms. Deschler's

address. Ms. Deschler appeared at the expulsion hearing. When the Superintendent learned that she was the pupil's mother and had not been mailed notice, he asked her if she wanted to adjourn the hearing. She declined and consented to proceeding. First, I find that the district is obligated to send a notice of the expulsion hearing to the pupil and parents. However, in this case, the pupil's record did not contain the mother's name and address, rather it contained someone else's name and address as the mother. The district cannot guess who a pupil's parent is. It is reasonable for the district to rely upon its pupil record and registration information to determine the parent or guardian. My predecessor has previously found that when a pupil lives with a foster parent, the school may send the notice of expulsion hearing and order to the foster parent, rather than the parent. See *Derek D. v. Flambeau School District*, Decision and Order No. 451 (January 28, 2002); *Jaime B. v. Barron School District Board of Education*, Decision and Order No. 358 (May 14, 1998), citing *Nathan N. v. Hudson School District Board of Education*, Decision and Order No. 163 (June 5, 1989) *and Randy H. v. Central/Westosha UHS Board of Education*, Decision and Order 204(April 6, 1993). In this case, the mother claims she called the school approximately one month before the incident that resulted in the expulsion and, by voice mail to an assistant principal, provided her name and address, requesting further contacts about her son's issues at school. She also claims to have had primary physical placement. However, the specifics of this allegation are contained solely in the mother's appeal letter, not in the hearing record. According to the record, the school provided notice of the hearing to Derek and the parents of who they were aware. Furthermore, clearly the district believed the pupil to be a resident of Burlington as the pupil's notice was mailed to his father's home in Burlington and it

was signed by the pupil, contrary to the mother's assertion of primary physical placement.[1] See also *Kyle W. v. Viroqua School District Board of Education*, Decision and Order 413 (April 27, 2000). Thus, there is no basis in the record to conclude that the school failed to provide notice of the hearing. Secondly, even if this were an error to not send it to the unknown mother, the error was harmless. The pupil and his father received notice. The pupil and both of his parents appeared at the hearing. The district offered to delay the hearing to allow the mother to prepare, however she, the pupil and his father agreed to waive any procedural notice error and proceed to the hearing.

The second issue raised by the appeal letter alleges that there was insufficient evidence to find that the pupil engaged in conduct on school grounds or that his conduct endangered the health or safety of any other individual. 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*

[1] I also note that the recording of the hearing reveals that the mother stated at the hearing that Derek lived with his father. The mother claims a review of the family court file would reveal her identity as the mother and placement orders. It is not reasonable to expect the school district to review family court files to determine the court ordered placement, parentage or guardianship of a pupil. It is reasonable to rely upon the person registering the pupil for 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 mother alleges that because the pupil denied, in his testimony at the expulsion hearing, he smoked marijuana in the school parking lot, the board could not find that he possessed marijuana at school. The pupil admitted, at the time of the incident and during the course of the district's investigation that he smoked, and therefore possessed, marijuana in the school parking lot.

The board was in the best position to resolve this conflict in testimony. It was within the board's discretion to give weight to the evidence and arguments, as it deemed 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). The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages, 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. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (Nov. 25, 1996); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995); and *Kirsten J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (Feb. 21, 1992).

Expulsions involving being at school after ingesting alcohol or other drugs have been routinely upheld by the state superintendent. *Evan D. v. Burlington Area School District Board of Education*, Decision and Order No. 484 (February 18, 2003); *Jessica G. v. Chippewa Falls Area Unified School District Board of Education*, Decision & Order No. 409 (March 15, 2000); *Troy Y. v. Burlington Area School District Board of Education,* Decision & Order No. 309 (Jan. 21, 1997); *Daniel A. v. Mauston School District Board of Education*, Decision & Order No. 324 (May 8, 1997); *Thomas P. v. Necedah Area School District Board of Education*, Decision & Order No. 289 (May 23, 1996). Furthermore, use or possession of marijuana on school grounds has repeatedly been upheld as conduct that endangers the health, safety, or property of others. *Brian M. v. Lodi School District*, Decision and Order No. 425 (October 23, 2000); *Andrew C. v. Milwaukee Public School District,* Decision and Order No. 386 (June 11, 1999); *Julian H. v. Milwaukee Public School,* Decision and Order No. 379 (April 20, 1999); *Shannon T. v. Milwaukee Public School District,* Decision and Order No. 354 (April 16, 1998); *Joshua S. v. Beloit-Turner School District,* Decision and Order No. 307 (January 14, 1997).

Therefore, it was reasonable for the board to conclude that the conduct occurred on school grounds and that it endangered the health, safety or property of others.

In her appeal, the mother also complains that the punishment was unfair or unduly harsh. She claims that the other student involved actually drove a vehicle after ingesting marijuana and therefore his conduct was more serious and should have been dealt with more harshly than her son's. She also alleges that the interests of the school did not demand expulsion. Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997*); Nathaniel S. v. Wausau School District Board of*

Education, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998). Furthermore, 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 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. The board has wide discretion in determining whether the interests of the school demand expulsion. Conduct that endangers the health, safety or property of others is more than sufficient to establish that the interests of the school demand expulsion. *Brad M. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); *Kristin P. v. Mukwonago Area School District Board of Education*, Decision and Order No. 185)(February 21, 1992); *John B. V. Milwaukee Public School District Board of Education*, Decision and Order no. 115 (October 31, 1983). One time possession of drugs has repeatedly been upheld as conduct warranting expulsion. *Brian M. v. Lodi School District*, Decision and Order No. 425 (October 23, 2000); *Andrew C. v. Milwaukee Public School District,* Decision and Order No. 386 (June 11, 1999); *Julian H. v. Milwaukee Public School,* Decision and Order No. 379 (April 20, 1999); *Shannon T. v. Milwaukee Public School District,* Decision and Order No. 354 (April 16, 1998); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (December 5,

1995); *Raymond M. v. Siren School District Board of Education*, Decision and Order No. 156 (April 19, 1998).

It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's 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.

Finally, in a subsequent brief, the parent alleges that the school failed to develop an Individual Education Plan (IEP) for the pupil. She alleges that after the expulsion hearing, an evaluation determined that the pupil had ADHD. The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c). *Ryan S. v. Barron Area School District Board of Education*, Decision and Order No. 417 (June 9, 2000); *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); and *Michael P. v. Kenosha Unified School District Board of Education,* Decision and Order No. 172 (October 8, 1990). Therefore, any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures. The department maintains an extensive library of materials to explain procedures related to special education complaints or appeals. These materials are easily accessible at the department's website at: http://www.dpi.state.wi.us/dpi/dlsea/een/index.html. Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.

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 D.. .. P. by the Burlington Area School District Board of Education is affirmed.

Dated this 29th day of July, 2005.

Anthony S. Evers /SMy

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