Decision and Order No.: 608

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of B M by Marshall School District Board of Education	DECISION AND ORDER Appeal No.: 07-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 Marshall School District Board of Education to expel the above-named pupil from the Marshall School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 7, 2007.

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 30, 2007, from the district administrator of the Marshall School District. The letter advised a

hearing would be held on November 5, 2007 that could result in the pupil's expulsion from the Marshall School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her 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 October 16, 2007, the pupil possessed marijuana and smoked a marijuana cigarette on school grounds during the school day at Marshall Middle School.

The hearing was held in closed session on November 5, 2007. The pupil and her parents appeared at the hearing without counsel. 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.

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 November 13, 2007, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the end of the 2008-09 school year. However, the pupil is eligible for early reinstatement at the beginning of the third quarter of the 2007-08 school year, if certain conditions which are outlined in the expulsion order are met. Minutes of the school board expulsion 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.

The appeal letter in this case raises several issues. First, the appeal letter alleges that the expulsion of the pupil was too severe. 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. 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 would cause me to modify the pupil's expulsion period.

Secondly, the appeal letter complains that the punishment was unfair because others were treated more favorably. The appellant claims that another student involved and expelled is receiving help from the school by going to the library to keep up with his schooling. 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).

Thirdly, the appeal letter alleges that the interests of the school did not demand expulsion. The board has wide discretion in determining whether the interests of the school demand expulsion. In addition, expulsions based upon possession of marijuana have routinely been upheld by the state superintendent. *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); *Donald P. v. Westby Area School District,* Decision and Order No. 299 (August 9, 1996); *Robin L. v. East Troy Community School District,* Decision and Order No. 253 (June 21, 1995); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994). 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). (Expulsions based upon possession of marijuana have routinely been upheld by the state superintendent. *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); *Donald P. v. Westby Area School District,* Decision and Order No. 299 (August 9, 1996); *Robin L. v. East Troy Community School District,* Decision and Order No. 253 (June 21, 1995); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994).)

Fourthly, the appeal letter questions the sufficiency of evidence. 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 record indicates that the pupil admitted she smoked and possessed marijuana at school. It also reveals that the investigation corroborated this confession. Thus, a reasonable view of the evidence supports the board's findings.

Finally, the appeal letter questions whether or not the school board followed the district's AODA policy and student interview policy. I am not authorized to review, approve or disapprove of school policy; I am only authorized to review expulsion decisions to ensure that the pupil has been provided adequate procedural due process.

Thus, whether or not the school district had or followed an AODA policy is irrelevant to my review. See *John J. D. v. Whitehall School District Board. of Education,* Decision and Order No. 406 (February 15, 2000); *Justin S. v. Marshfield School District Board. of Education,* Decision and Order No. 361 (May 27, 1998); *Joshua R. v. Edgerton School District Board of Education*, Decision and Order No. 330 (July 29, 1997); *Donald P. v. Westby Area School District Board of Education*, Decision and Order No. 299, (August 9, 1996). Similarly, whether or not the school district followed a student interview policy is not relevant to my review. Courts

have approved interviews of students at school without prior notification to a parent or guardian, regardless of the district's written policy. See *Burreson v. Barneveld School District*, 434 F. Supp. 588 (Western District Wis. 2006) and *Yates v. Brown Deer School District*, (Eastern District Wis. slip opinion 2007 WL 2874944, Sept. 28, 2007). Thus, the school district's policy is not determinative or controlling.

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 B M by the Marshall School District Board of Education is affirmed.

Dated this 31 day of Oct, 2008.

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

Parties to this appeal are:

B M

E and K M

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