Decision and Order No.: 609

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of S V by Gresham School District Board of Education	DECISION AND ORDER Appeal No.: 08-EX-01

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 Gresham School District Board of Education to expel the above-named pupil from the Gresham School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 3, 2008.

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 31, 2007, from the district administrator of the Gresham School District. The letter advised that a

hearing would be held on November 5, 2007 that could result in the pupil's expulsion from the Gresham School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her parent 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 24, 2007, the pupil provided, possessed and consumed alcohol in the Gresham School building and classrooms.

The hearing was held in closed session on November 5, 2007. 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 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 5, 2007, was mailed separately to the pupil and her parent. The order stated the pupil was expelled through the end of the 2007-08 school year. 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 raises concerns about the school board meeting in closed session after the expulsion hearing. School boards are allowed to deliberate on issues in closed session pursuant to Wis. Stats. § 19.85. *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993); *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 28, 1993), and *Rebecca S. v. Janesville School District Board of Education*, Decision and Order No. 248 (May 8, 1995).

Next, the pupil's parent alleges a letter outlining the pupil's diagnosis of ADD was not shared with the school board at the expulsion hearing. At the expulsion hearing, the pupil and her parent were given the opportunity to speak and present evidence regarding the expulsion. However, the letter the parent refers to was not submitted as evidence during the hearing. The superintendent's review is limited to the record of the expulsion hearing. *Jeffrey L. v. New Lisbon School District Board of Education*, Decision and Order No. 319 (April 8, 1997), *Matthew C. M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996), and *K. K. v. Oconomowoc Area School District Board of Education*, Decision and Order No. 585 (January 26, 2007). Furthermore, matters not raised before the board cannot be raised for the first time on appeal. *Travis J.M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Tony R. v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995) and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995).

Also, in the initial appeal letter, the pupil's mother alleges that the pupil should have been referred to special education rather than being expelled. 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://dpi.wi.gov/sped/tm-specedtopics.html. Or, the pupil or her parent may call the special education team at the Department of Public Instruction to get more information.

In addition, the pupil's mother also alleges the policies used to expel the pupil are outdated and do not reference alcohol. 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. 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). Thus, the school district's policy is not determinative or controlling.

The appeal letter also questions the sufficiency of evidence and claims the pupil did not endanger others with her actions. 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).

In support of her argument, the pupil's mother refers to a police report that identifies the pupil's breathalyzer test result as zero. The police report does confirm that the pupil's breathalyzer test result was zero, however the pupil admitted to consuming alcohol at school and was found in possession with it at school. Furthermore, other students indicated that the pupil initially provided the alcohol by stealing it, pouring it into a water bottle and giving it to another student to keep until school the next day. The other student brought it to school the next day, returned in to the pupil who then carried it around school, offered it to others and drank it herself. Therefore, a reasonable view of the evidence supports the school board finding that the pupil provided, possessed, and consumed alcohol at school.

Expulsions concerning alcohol consumption at school or at school sponsored events have previously been upheld as conduct that endangers the health, safety or welfare of others at school. *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). Therefore, a

reasonable view of the evidence also supports the finding that this conduct endangered the property, health, or safety of others.

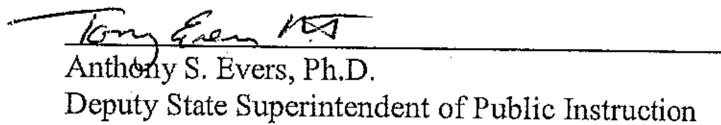
CONCLUSIONS OF LAW

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 S V by the Gresham School District Board of Education is affirmed.

Dated this 29th day of February, 2008.



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Deputy State Superintendent of Public Instruction