

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>N K</p> <p>by Marshall School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-12</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 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 March 18, 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 February 28, 2008,¹ from the district administrator of the Marshall School District. The letter advised a hearing would be held on March 6, 2008 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 January 3, 2008, the pupil distributed the prescription drug Concerta to a student for whom the prescription was not written while at Marshall Middle school during the school day.

The hearing was held in closed session on March 6, 2008. 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 March 12, 2008, was sent separately to the pupil and her parents by certified mail. The order stated the pupil was expelled

¹The pupil was originally expelled by the board on January 31, 2008. When the pupil appealed to the State Superintendent, the board acknowledged making a procedural error in the timing of its notice of hearing. That order was reversed by the department. This proceeding was conducted to correct that error.

through the end of the first semester of the 2008-2009 school year. A recording of the expulsion hearing is part of the record.²

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

²Wis. Stats. § 120.13(1)(c)3 requires the school board to keep written minutes of the hearing. The board did not submit written minutes with the hearing record. This could be grounds for reversal. However, the board did submit an audiotape of the hearing as part of the record. In this case, the audiotape was of satisfactory quality to enable a meaningful review of the hearing, thus I will not overturn the expulsion. I caution school districts against relying on such audiotapes, because they are frequently so garbled or inaudible as to be useless for review purposes. See *John L. v. Greenfield School District Board of Education*, Decision and Order No. 418 (June 26, 2000); *Dustin F. v. Altoona School District Board of Education*, Decision and Order No. 432 (April 11, 2001).

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 which require consideration. First, the pupil alleges that there is insufficient evidence to support the board's decision to expel. The pupil claims that the principal falsely testified and later admitted to it in an investigative letter and she alleges that statements made by the principal unfairly prejudiced the school board. 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 told a student teacher that she had provided another student with a tablet of Concerta and that the student had taken it before the school day while on school property. The pupil expressed concern to the student teacher that the prescription medication would cause harm in that student. Furthermore, the record reflects that the pupil admitted to the principal that she provided a Concerta pill to another student before school and

that it was a planned event. Therefore, a reasonable view of the evidence supports the board's findings.

Second, the pupil alleges that her conduct did not endanger the property, health, or safety of others. Providing a controlled substance to others at school has been repeatedly upheld as the basis for expulsion as it endangers the health, safety and welfare of others. *B. C. v. Sheboygan Area School District Board of Education*, Decision and Order No. 158 (September 9, 1988); *J. Q. v. Hartford Union High School District Board of Education*, Decision and Order No. 272 (February 9, 1996); *M.C. v. Lake Geneva-Genoa City School District Board of Education*, Decision and Order No. 277 (March 12, 1996). Possession of drugs at school, even prescription medication without a proper prescription is the basis for expulsion as it endangers the health, safety and welfare of others. *M. C. v. Lake Geneva-Genoa City School District Board of Education*, Decision and Order No. 277 (March 12, 1996); *L. D. v. Milwaukee Public School District Board of School Directors*, Decision and Order No. 335 (September 15, 1997); *J. B. v. Barron School District Board of Education*, Decision and Order No. 358 (May 14, 1998); *A. B. v. Edgerton School District Board of Education*, Decision and Order No. 558 (September 27, 2005). Therefore, it was reasonable to conclude the pupil's conduct endangered the property, health, or safety of others at school.

Third, the pupil claims that the principal violated her personal rights by viewing text messages on her cell phone without her permission and by holding her in the office without reasonable suspicion. Even if the principal acted inappropriately, it is not a basis for the state superintendent to overturn an expulsion order. This principle has been consistently applied in expulsion hearings. *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order No. 395 (August 16, 1999); *Leo P. v. Whitewater Unified School District Board of*

Education, Decision and Order No. 351 (March 31, 1998); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994); and, *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

Fourth, the pupil alleges that the district violated procedural requirements by holding her expulsion hearing in closed session even though she requested that it be open to the public. The procedures used by the board comply with sec. 19.85(1)(f), Stats. and are consistent with previous holdings of the state superintendent. The state superintendent is authorized to address the open or closed nature of the proceeding only if the pupil or the pupil's parent demands a closed meeting and that demand is denied. *C. R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); *B. L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 28, 1993); *M. G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993); *A. P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997).

In addition, the pupil claims that the district violated procedural requirements by denying her request for a copy of an exhibit that would be used during the hearing that she requested prior to the hearing. There is no requirement that the district provide copies of hearing exhibits to the pupil and her parents prior to the hearing. The district is only required to provide copies of all documents presented to the board to the pupil and parents as well. In this case, the pupil and her parents received a copy of the hearing exhibits. Therefore, there was no error.

Fifth, the pupil alleges that she is a student with a disability and that her behavior was a manifestation of her disability. The parents also complain generally about special education services in the district. The pupil was not identified as a child with a disability. 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-spededtopics.html>. Or, the pupil or her parents may call the special education team at the Department of Public Instruction to get more information.

Finally, the pupil claims that the school board did not follow their own policies and procedures when deciding upon expulsion for her conduct. The school board's policies in this situation are irrelevant to my determination. 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. The decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at § 120.13(1)(c). *Joshua R. v. Edgerton School District*, Decision and Order No. 330 (July 29, 1997); *Troy Y. v. Burlington School District Board of Education*, Decision and Order No 309 (January 21, 1997); *Jason M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order

No. 294 (June 24, 1996); and *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

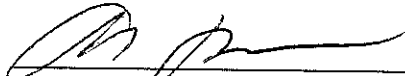
CONCLUSIONS OF LAW

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 N K by the Marshall School District Board of Education is affirmed.

Dated this 15th day of May, 2008.



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