

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of C C by Parkview School District Board of Education	DECISION AND ORDER Appeal No.: 09-EX-06
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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 Parkview School District Board of Education to expel the above-named pupil from the Parkview School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 13, 2009.

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 January 29, 2009, from the district administrator of the Parkview School District. The letter advised a

hearing would be held on February 5, 2009 that could result in the pupil's expulsion from the Parkview School District through her 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 the pupil was in the possession of marijuana and was in possession of and distributed other medication to at least two students during school hours on January 23, 2009, at Parkview High School.

The hearing was held in closed session on February 5, 2009. 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 and found that 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 February 16, 2009, was mailed separately to the pupil and her parents. The order stated that the pupil was expelled through her 21st birthday. Minutes and audiotapes of the expulsion hearing and exhibits introduced at the 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 in this case raises two issues which require consideration. The appeal claims that one of the charges for which the pupil was brought up for expulsion was not proven during the hearing. In essence, the appeal challenges the sufficiency of evidence. The principal testified at the expulsion hearing, detailing her investigation. The principal testified that after a

staff member was notified that the pupil was in the possession of marijuana at school, the pupil's locker was searched and two bags of marijuana were found hidden in a glove within her duffel bag. In addition, other students at the school, including one who came to the office visibly flushed and shaken because she ingested an unidentified pill, informed staff that the pupil also brought and distributed at least two other types of pills at school. When interviewed, the pupil denied possessing and distributing the pills, but did not deny possessing the marijuana.

The pupil is alleging that there are insufficient facts to support the board's decision to expel based on evidence in support of the allegation that she possessed and distributed pills. 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). In this case, although the pupil was not found in the possession of pills, other students at school informed school staff that the pupil provided them with pills. Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). The State Superintendent has repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of

his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

The pupil was found in the possession of marijuana. Expulsions based merely 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). A reasonable view of the evidence supports the board's findings.

The appeal also claims that another student at school who was found in possession of marijuana only received a five day suspension and was not expelled. 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. 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.

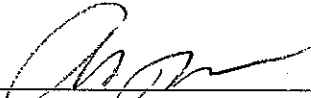
CONCLUSIONS OF LAW

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 C C by the
Parkview School District Board of Education is affirmed.

Dated this 13th day of April, 2009



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