

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>B J</p> <p>by Nicolet UHS School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 09-EX-13</p>
--	---

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 Nicolet UHS School District Board of Education to expel the above-named pupil from the Nicolet UHS School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 19, 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 April 29, 2009, from the district administrator of the Nicolet UHS School District. The letter advised that a

hearing would be held on May 5, 2009 that could result in the pupil's expulsion from the Nicolet UHS 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 is guilty of repeated refusal or neglect to obey school rules and that the pupil engaged in conduct while at school or under the supervision of a school authority which endangered the property, health, or safety of others. The letter specifically alleged that on or about April 2, 2009, immediately outside the main entrance to Nicolet High School, the pupil physically assaulted one girl, by pushing shoving and punching her and throwing and pinning her to the ground and that on or about December 17, 2008, while at Nicolet High School, the pupil was involved in a verbal argument with another student, used profanity and was insubordinate when she refused to stop as directed.

The hearing was held in closed session on May 5, 2009. 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 that the pupil did repeatedly refuse or neglect to obey school rules and 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 May 8, 2009, was mailed separately to the pupil and her parent. The order stated that the pupil was expelled through February 5, 2014. A transcript of the 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 several issues which require consideration. The pupil's attorney alleges that the school district did not comply with the five day notice requirement outlined in section 120.13(1)(c) of the Wisconsin Statutes because section

801.15(1)(b) of the Wisconsin Statutes states that “when a period of time is less than 11 days, Saturdays, Sundays and holidays shall be excluded in computation.” Specifically, appellant’s attorney argues that the school district erroneously included Saturday and Sunday within the five day count and that the pupil and her parent were not notified in a timely manner of the pupil’s expulsion hearing. Wis. Stat. sec. 801.15(1)(b) applies to civil procedure. Pupil expulsions are administrative proceedings and not subject to civil procedure found in Wis. Stat. Ch. 801-847. See *Brian C. v. Sheboygan Area School District Board of Education*, Decision and Order No. 158 (September 9, 1988); *Lori P. v. School District of Cudahy Board of Education*, Decision and Order No. 169 (May 21, 1990); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994); and, *J. G v. Oshkosh Area School District Board of Education*, Decision and Order No. 574 (June 22, 2006). The Notice of Expulsion Hearing was sent on April 29, 2009, notifying the pupil and her parent of the May 5, 2009 expulsion hearing date. The pupil and her parent were given six days notice of the expulsion hearing. Therefore, the school district did timely notify the pupil and her parent of the expulsion hearing.

The pupil’s attorney also alleges that the Notice of Expulsion Hearing failed to specify the particulars of the pupil’s conduct. The Notice of Expulsion Hearing alleges that on or about April 2, 2009, immediately outside the main entrance to Nicolet High School, the pupil physically assaulted one girl, by pushing, shoving and punching her and throwing and pinning her to the ground and that on or about December 17, 2008, while at Nicolet High School, the pupil was involved in a verbal argument with another student, used profanity and was insubordinate when she refused to stop as directed by a school staff member.

Particulars of misconduct are not defined in the statute. However, it is not an ambiguous or unknown term. When interpreting a statute, we must give effect to the ordinary and accepted meaning of the language chosen by the legislature. Wis. Stat. § 990.01(1) (1999-2000); *Seider v. O'Connell*, 2000 WI 76, ¶ 32, 236 Wis. 2d 211, 612 N.W.2d 659. The definition of *particulars* requires items or details of information, not generalizations. The Notice of Expulsion Hearing in this case included the day, location and description of both alleged acts of misconduct. Therefore, after reviewing the record, I find that the school district did comply with this procedural requirement.

The pupil's attorney also challenges the sufficiency of the evidence because the school district relied on a cell phone video recording that doesn't include the pupil. The pupil's attorney claims that the actual student in the video is not the pupil because the pupil was wearing different colored clothing than that of the student within the video on the day of the fight. She also alleges that the pupil was not involved in the fight, but instead tried to break it up.

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 hearing record in this case includes a transcript of the May 5, 2009 expulsion hearing. The transcript reveals that a video of the fight that the pupil was allegedly involved in was shown at the hearing. The pupil and her parent argued at the hearing that the video does not prove that the pupil in question was involved. 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 and evidence. 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, 111 N.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). After reviewing the record, I find that a reasonable view of the evidence supports the board's decision.

The pupil's attorney claims that the school district relied on the pupil's past misconduct to support the decision to expel on the grounds that the pupil repeatedly refused or neglected to obey school rules. The Notice of Expulsion Hearing gave the pupil notice that prior, resolved acts of misconduct were allowed to show that the pupil repeatedly refused or neglected to obey school rules. Nothing in the Wisconsin Statutes prohibits this. In fact, it is common procedure for school districts to rely on this type of evidence when expulsion is concerned. See *Jolene M. v. Webster School District Board of Education*, Decision and Order No. 112 (May 9, 1983); *Robert M. v. Kiel School District Board of Education*, Decision and Order No. 149 (April 30,

1987); *Matt H. v. Tomorrow River School District Board of Education*, Decision and Order No. 349 (March 23, 1998); *Daniel C. v. Whitewater School District Board of Education*, Decision and Order No. 503 (December 19, 2003); and, *D. R. v. Flambeau School District Board of Education*, Decision and Order No. 623 (May 21, 2008). Therefore, I find that the school district did not violate any procedural requirement regarding this allegation.

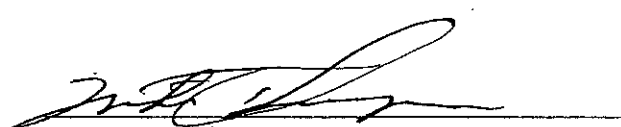
CONCLUSIONS OF LAW

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 Wis. Stat. § 120.13(1)(c).

ORDER

~~IT IS THEREFORE ORDERED that the expulsion of B~~ by the Nicolet
UHS School District Board of Education is affirmed.

Dated this 17th day of July, 2009


Michael J. Thompson
Deputy State Superintendent