

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>B H.</p> <p>by Boyceville School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 09-EX-17</p>
------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(c) from the order of the Boyceville School District Board of Education to expel the above-named pupil from the Boyceville School District. This appeal was filed by the pupil and received by the Department of Public Instruction on July 8, 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 Pupil Expulsion Hearing," dated April 20, 2009, from the district administrator of the Boyceville School District. The letter advised that a

hearing would be held on April 27, 2009 that could result in the pupil's expulsion from the Boyceville 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 April 13, 2009, before school, the pupil delivered 15 Methylin (Ritalin generic) pills to another student, while at school.

The hearing was held in closed session on April 27, 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 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 4, 2009, was mailed separately to the pupil and her parent. The order stated the pupil was expelled through the end of the 2009-10 school year. Minutes of the school board expulsion hearing, an audiotape 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 filed by the pupil's mother in this case raises several issues which require consideration. The pupil's mother challenges the sufficiency of the evidence. Specifically, she alleges that the pills confiscated from another student at school are not the same as those prescribed to the pupil in question because the two sets of pills do not match in shape and quantity of dosage per pill. In addition, the pupil's mother claims that the principal switched the white, oval pills he originally showed her with the white round pills that were given to the liaison officer and submitted as evidence. At the hearing, the principal testified regarding the investigation conducted by the school administration. In addition to his testimony, the principal

included incident reports and the school liaison's reports. On April 13, 2009, a student was found in possession of prescription pills (generic form of Ritalin) at school. He said he received the pills from the pupil in question earlier that morning at school before classes began. The principal interviewed the pupil notifying her of the other student's allegations and she denied involvement. The principal then compared the confiscated pills to the pupil's prescribed medication that is kept at school. Both sets of pills were identical in size, shape and color. The liaison officer's incident report detailing his investigation indicates that after he was notified of the situation, he examined the pupil's prescribed medication that is kept at school. The liaison officer verified that the pupil's bottle of prescription contained 20 milligram tablets; the same dosage of pills that were confiscated from the other student at school.

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 this case, another student admitted that he received the prescription medication from the pupil in question

and the pupil's prescribed medication kept at school exactly matched the pills taken from the student. After reviewing the record, I find a reasonable view of the evidence supports the board's decision to expel.

The pupil's mother also alleges that school board was biased against the pupil because the pupil has ADHD and because while the school board was debating the outcome of the hearing, the school board president stated that "[the pupil] lies like a second grader; you can't believe a word she says." The law presumes that school board members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board*, 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied*, 370 U.S. 720 (1962). In this case, I find the pupil's assertion of bias or conflict insufficient to overcome this presumption. The record contains no evidence of actual bias or conflict, nor does it reflect circumstances that would lead to a high probability of bias or conflict. See *Nicholas E. v. Lodi School District Board of Education*, Decision and Order No. 303 (October 17, 1996); *Kathleen W. v. Tri-County Area School Board of Education*, Decision and Order No. 130 (May 10, 1985). Furthermore, 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. 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). Therefore, if the board member made that statement during the course of the hearing, it appears she was merely stating her credibility finding, not showing any bias.

Finally, the pupil's mother complains about the quality of the record of the expulsion hearing. The audiotapes the district submitted as the record of the hearing are inaudible. However, the district did include minutes of the hearing within the record. While there is no statutory explanation of how detailed hearing minutes must be, previous decisions by the state superintendent have outlined minimum requirements. The record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996). In this case, the minutes included in the record reflect all of the above details. Therefore, I find that the minutes included in the hearing record are sufficient to gain an adequate understanding of what happened during the hearing.

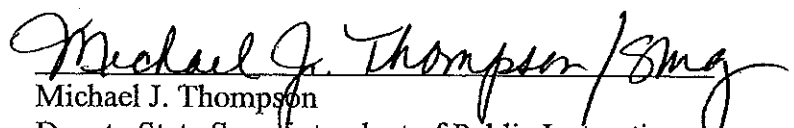
CONCLUSIONS OF LAW

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 H by the Boyceville School District Board of Education is affirmed.

Dated this 2nd day of September, 2009


Michael J. Thompson
Deputy State Superintendent of Public Instruction