Decision and Order No.: 683

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of G J by Medford Area School District Board of Education	DECISION AND ORDER Appeal No.: 11-EX-06

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 Medford Area School District Board of Education to expel the above-named pupil from the Medford Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 21, 2011.

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 March 3, 2011, from the district administrator of the Medford Area School District. The letter advised a hearing

would be held on March 10, 2011 that could result in the pupil's expulsion from the Medford Area 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 March 1, 2011, the pupil admitted to purchasing and being in possession of a controlled substance, Oxycodone, during the last month at Medford Area Senior High.

The hearing was held in closed session on March 10, 2011. The pupil and her parents appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil, her parents and her attorney 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 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 10, 2011, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through June 30, 2014, with the opportunity for early reinstatement. Minutes of the school board expulsion hearing, a recording 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 several issues which require consideration. The pupil's attorney challenges the sufficiency of the evidence claiming that while the pupil admitted to purchasing and being in possession of a substance, no evidence was presented that the

substance was Oxycodone. The pupil objects to any finding that she purchased or possessed Oxycodone because that would be based upon hearsay.

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).

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 school principal testified that the pupil admitted she bought Oxycodone from another student during homeroom. The pupil explained she did it because she knew others were taking Oxycodone so she wanted to try it. In addition to the principal's testimony, a written report of her investigation is part of the record. This statement by the pupil to the principal is not hearsay as it is in a statement against her interest. See § 908.01(4)(b). See *Michael S. v. South Milwaukee School District Board of Education*, Decision and Order 428 (December 26, 2000). In addition, the principal testified that Student A admitted he sold the pupil a pill and confirmed that the pill was Oxycodone. Finally, the police liaison officer testified and confirmed the principal's testimony. He also testified that in the course of the investigation, police officers went to Student A's residence where they recovered a bottle of Oxycodone pills that were stolen, thus confirming Student A's statement. After reviewing the evidence, I find a reasonable view of the evidence supports the board's decision to expel.

The pupil's attorney also claims that there was no evidence presented at the expulsion hearing that the pupil engaged in conduct which endangered the property, health or safety of others at school or while under the supervision of a school authority. The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages, the chance of loss or injury, or the capability of producing death or great bodily harm. These terms embrace the notion of harmful acts or actions that are detrimental or involve loss or damages. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304

(Nov. 25, 1996); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995); and *Kirsten J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (Feb. 21, 1992). In this case the pupil purchased and possessed Oxycodone while on school grounds. I find it was reasonable to conclude that the pupil's conduct endangered the health and safety of others.

Finally, the pupil's attorney alleges that the school board exceeded its powers and authority by expelling the pupil because the pupil's expulsion is not in the best interest of the school district. The board has wide discretion in determining whether the interests of the school demand expulsion. Conduct that endangers the health, safety or property of others is more than sufficient to establish that the interests of the school demand expulsion. *Brad M. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); *Kristin P. v. Mukwonago Area School District Board of Education*, Decision and Order No. 185)(February 21, 1992); *John B. V. Milwaukee Public School District Board of Education*, Decision and Order no. 115 (October 31, 1983). The pupil purchased and possessed Oxycodone while at school. Thus, it is not unreasonable for the board to determine that the behavior is dangerous and that the interests of the school demand expulsion.

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 G J . . by the Medford Area School District Board of Education is affirmed.

Dated this 17th day of May, 2011

Michael J. Thompson/SMG

Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction