

# REVIEW BOARD RULES ON OFF-SCHOOL CONDUCT

In a decision released on April 20, 2009, the Child and Family Services Review Board addressed the issue of whether the Kawartha Pine Ridge District School Board had the authority to expel a student who was engaged in off-school property drug use. The question at issue concerned whether, under the provisions of the *Education Act*, there was sufficient evidence to establish that the student's activities would have an impact on the school climate.

Q.W. was a Grade 12 student with a communications disability. He had difficulty processing complex questions and required them to be broken down into smaller segments in order to respond properly.

In November 2008, the vice-principal of the school interviewed Q.W. The vice-principal asked Q.W. whether he bought and sold drugs for J., another student. Q.W. responded "yes." Q.W. also acknowledged smoking marijuana and sharing marijuana with friends, including students of the school.

Shortly thereafter, Q.W. was suspended from the school pending a possible expulsion. Subsection 310(1) obliges a principal to suspend a student if the student commits one of the enumerated activities at school, at a school-related activity or "any other circumstances where engaging in the activity will have an impact on the school climate." In this case, the principal's argument was that Q.W. was trafficking in an illegal drug, marijuana and asserted that the alleged marijuana trafficking would have an impact on the school climate.

The principal conducted an investigation under subsection 311.1(1) of the *Education Act*. Subsequent to the investigation, the principal recommended to the expulsion committee of the board that Q.W. be expelled. The expulsion committee hearing took place in December 2008 and Q.W. was expelled from his school. No reasons were provided by the school board for its decision.

The student requested that the school board's decision be reviewed by the Child and Family Services Review Board. The review board held that in order to expel a student, the activity must take place at school, at a school-related activity or in other circumstances where engaging in the activity would have an impact on the school climate. If the prohibited activity did not take place under one or more of these preconditions, there is no authority for the board to expel a student.

The school board did not contend that Q.W. had engaged in the activities at school or at a school-related activity. Therefore, the issue before the board was whether Q.W.'s engagement in the prohibited activity, alleged trafficking of marijuana, would have an impact on the school climate and not simply that it might impact the school climate. The review board asserted that this is a statutory precondition to expulsion. The onus was on the school board, on the balance of probabilities, to show a direct and causal link between the pupil's behaviours and a definitive impact on the school climate.

The review board determined that Q.W. may have been confused by the vice-principal's questioning, in which Q.W. responded "yes" to an inquiry of whether he bought and sold drugs for a student named J. The question should have been split into two questions because of Q.W.'s learning disability. While Q.W. admitted that every two or three weeks, over a six-week period, he would buy an ounce from J. He would use most of it himself. He

occasionally shared a small amount with others. The review board accepted Q.W.'s evidence that he did not sell drugs for J.

Nevertheless, Q.W. acknowledged that he had received a small amount of money in exchange for marijuana from at least one student at a party. The student, R., smoked the marijuana at the party. As well, the vice-principal testified that three students identified Q.W. as having bought and sold drugs. However, on this point, the review board held that the information was unreliable and not relevant since there was no evidence from the three students, no evidence as to who they were, no evidence that the three students implicated Q.W. as carrying out his activities at school or any information linking Q.W.'s activities to the school climate.

The review board found that without evidence, the school board could not simply assume that students who engage in an activity off-school property, such as drinking or sharing marijuana, will necessarily import aspects of that activity into the school setting. Nor can the school board assume that such off-site activities, by their very existence, will automatically worsen a school culture in which drug use is prevalent. The review board ruled that the fact that two named students were involved with Q.W.'s off-school activities does not, in the circumstances, lead to a conclusion that the climate will be impacted.

The school board also relied on the specific problems with drugs at the school, such as

younger students using drugs, students coming to school “high,” the presence of marijuana at school and the smoking area, community drug dealers and the risks of drug use generally. The principal, Ms. D.S., testified that marijuana has a pervasive presence at school. Its odour can be detected in the hallways and on students, students wear clothing depicting it and there is graffiti visible everywhere that also depicts marijuana use. She further testified that more students and younger students appear to be under the influence of marijuana at school. She indicated a concern about the links between marijuana and other drugs, the general health risks of drug use and the influence of drug dealers in the school community. The problem was so pervasive that the school was referred to in the community as *drug high*. In the principal’s view, smoking marijuana reflected on the climate and culture of the school and negatively affected it. She testified that drug use attracted the criminal element to the school.

The review board held that in order for there to be a finding of a nexus between Q.W.’s activities at friends’ houses/parties and the future school climate, there would need to be evidence of an intersection between the activities and the school. Certain types of evidence could have supported an inference by the school board that the activities will impact on the school climate. This would include evidence that the students involved with Q.W.’s activities: brought the marijuana to school; used the marijuana at the school; tried to involve young students while at school; or discussed the exchange of marijuana while at school.

No such evidence was led before the review board. The review board heard evidence that small quantities of marijuana were shared and used off-school property. There was no evidence that all youth involved with Q.W. were school students. There was no evidence that younger students attended the parties. The school board learned the name of only one student who bought and smoked a small quantity of marijuana from Q.W. at a party on one occasion. There was no evidence that the student to whom Q.W. admitted selling a *pinch* of marijuana took the marijuana to school.

The review board heard evidence to suggest strongly that the buying, smoking and selling that Q.W. engaged in over a six-week period at friends’ houses and at parties is insignificant compared to the pervasive, pre-existing drug-related culture at the school as testified by the principal. The review board stated:

*There was no evidence linking Q.W. or the others involved with him to the “criminal element” or to drug dealers from the community who may have attended at the school in the past. The evidence was about general concerns (some of which were speculative beliefs) about the impact of drug use on the school and not about the circumstances surrounding Q.W.’s activities.*

The review board also noted that Q.W. has never been in trouble at his school before. He had no disciplinary history and was engaged in his programming. His drama teacher, who testified very favourably about Q.W., said Q.W. never appeared to be under the influence of drugs at school. Q.W. was not aware that this activity could constitute “trafficking.” In any case, Q.W. stopped his activities. Q.W. cooperated with the investigation and admitted his involvement. The review board found that the history of this particular student was not suggestive of behavioural issues that would lead to a future impact on the school climate.

The review board ruled that there was insufficient evidence to conclude that Q.W.’s activities had an impact on the pre-existing, drug-related climate at school. In this regard, the expulsion decision of the school board was quashed and Q.W. was ordered to be reinstated in his school.

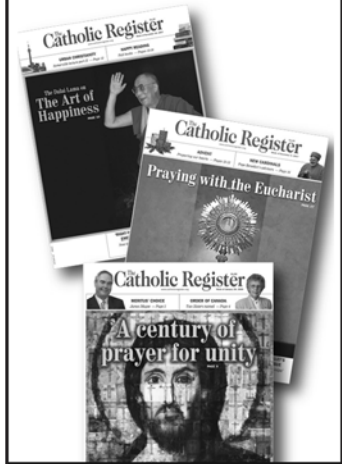
This decision describes the legal test that a school board must satisfy when it decides to expel a student for engaging in a prohibited activity that will have an impact on a school’s climate. School boards must establish, on a balance of probabilities, that there is a direct and causal link between the student’s activity and the school climate. Speculation and general assertions, without specific evidence showing how the student’s activity will negatively impact the school climate, will not be sufficient to satisfy this test.

With respect to drug use cases, unsupported assertions of an overall school drug culture and details of general problems of drug use at a certain school, will not satisfy this test. On the other hand, the review board ruled that in order to have a direct and causal link, there should be specific evidence linking the student’s activity and the school climate. This might include evidence that the student brought illegal drugs to school, used the drugs at the school, tried to involve young students while at school and/or discussed the exchange of drugs while at school.

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