THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
DANIELE S[redacted]

by the Kenosha Area School
District Board of Education

DECISION
AND
ORDER
93-EX-09

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the July 13, 1993, order of the Kenosha Area School District Board of Education to expel Daniele S[redacted] a 14 year old eighth grade student, from the Kenosha Area Lincoln Junior High School until June, 1994, with conditional early readmission at the second semester of the '93-'94 school year. This appeal was filed by Daniele's parents and was received by the Department of Public Instruction on September 3, 1993.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, 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 sec. 120.13(1)(c), Wis. Stats. 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 interests of the school district demand that the student be expelled.

FINDINGS OF FACT

The record contains affidavits of personal service upon Daniele and her father Dennis S[redacted] and an affidavit of substitute service served upon Daniele's mother Kathleen S[redacted] through her husband Dennis, all properly, timely and separately server, of a notice of hearing regarding possible expulsion from school of Daniele. Additionally, an affidavit of mailing by Eleane Wokwicz states she mailed copies, separately, to the same above three referenced individuals, at their address in Kenosha, of the same notice. Exhibit A to both sets of notices is a one page statement alleging Daniele endangered the health and safety of others while at school on May 24, 1993, by bringing up to 25 white cross pills to a park across from the school, disposing of some there by sale, delivering 3 such pills to a another student in study hall, that she told others the pills were "speed"; that the administration believed the pills were caffeine-like in nature and recommending Daniele be expelled.

The hearing took place as scheduled, July 12. The[redacted]s appeared without counsel. A lengthy introductory statement, modeled largely on a departmental information sheet for use in unrepresented cases of this nature, was read by board chairperson James Metallo. There were no questions. Attorney Paul Wokwicz presented the administration's case. His only witness was principal Joseph Gassert. Mrs. S[redacted] did minor cross examination and made statements. Daniele testified of her own behalf. The facts were essentially uncontested.

Daniele and a friend were each given 25 pills, in a bag, by Daniele's older sister. Daniele did not know what they were but was told they would make her hyper. She had

not taken any before but she said this is what her new friends were into. She sold some to students in the park across from the school, in the school and gave some away and allowed another student to take some from her purse in the school. When caught, she had 12 to 15 of the original 25 pills still in her possession. The friend had only 2 of her 25 when caught. Daniele cooperated with the investigation.

Mr. Gassert cited a Kenosha County Health Department report from forensic chemist Arthur E. Shait identifying the pills as Rephedrine. An investigating police officer to whom Mr. Gassert spoke told him he thought the pills also contained caffeine.

On the issue of dangerousness, Mr. Gassert stated he believed that the whole concept of taking pills to become hyper was dangerous in the sense that it was destructive to the educational process in terms of ability to pay attention and function. He stated it was dangerous to accept and distribute unidentified pills of any kind as no one could know what terrible effects might flow from taking them; that having pills available in this fashion cheaply or freely may lure children into a false sense of security in that even were there to be no severe effects from children experimenting with these, the next time with a different pill could be disastrous. He further cited the danger of an unknown pill causing a severe reaction in a child with either a known or unknown medical condition. He also indicated that taking such a pill in combination with something else, authorized or unauthorized, could be dangerous. By way of example he referred to a statement the investigating officer had made about a case in Illinois of which he was aware that these pills, taken with alcohol, resulted in a death.

Mrs. S[redacted], a registered nurse, stated it was accurate to compare these pills to diet pills but it was unlikely they could or would be taken with alcohol at school. She later introduced letters of support for Daniele from persons for whom she had worked, referred to Daniele's idolization of her older sister who could be a better role model, that this was an isolated incident, Daniele was not a bad child, would submit to voluntary drug testing, was presently in counseling and her concern with how a child of such promise and intelligence could exercise such poor judgment.

Mr. Gassert recommended an expulsion for not more than one year. Mr. Wokwicz did not recommend a specific amount of time. Mrs. S[redacted] argued Daniele was not then a danger and would not be in the future. She stated this was a first time episode, in educational, disciplinary or behavioral areas. She said speed should not be confused with caffeine. She indicated Daniele was changing peer groups, had been grounded and would need to deal with the stigma and reputation problems associated with her misconduct. She argued that expulsion was not the answer here but that something with an educational component was called for.

The minutes of the session reflect two motions of the board which passed unanimously: that the conduct of the pupil while at school endangered the health or safety of others and that the district's interests demanded the pupil's expulsion; and that the pupil be expelled for the period and with the condition mentioned above.

The record shows two sets of affidavits of mailing of notices of expulsion individually mailed to the pupil and each of her parents.

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 Dist., 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from sec. 120.13(1)(c), Wis. Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which 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 sec. 120.13(1)(c), Wis. Stats. In Racine Unified School Dist. 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. 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.

In her initial appeal letter, Mrs. S[redacted]argues that Daniele is being punished too severely in contrast to other students caught in various other types of drug related offenses at school but who have not been expelled. She also argues that among those children expelled in the months prior to Daniele's expulsion, all received a one year expulsion and that this shows a failure of the board to account for individual differences

of the students - in Daniele's case she suggests that Daniele's cooperation in the investigation, volunteering for the Student Assistance Program, seeking and obtaining counseling, personally testifying and admitting misconduct before the board and personally apologizing were all for naught and that it appears the same result would have occurred had she taken none of these actions. In a subsequent letter Mrs. S[redacted], for cites examples of other junior high students found with illegal drugs who were not expelled and others with controlled substances like marijuana and "paraphernalia of the type used in crack cocaine" who were not expelled. She asks whether there is discrimination being practiced by the district based on who the student's parents are, who they know, or their financial income.[1]

Recently in Eric P. by the Tomah Area School District Board of Education, 93-Ex-08, Aug. 12, 1993, pp. 14 and 15 in reliance upon a long line of department precedent I stated:

> Generally the Department has found that the proper duration of expulsion is a matter left to the discretion of the board. Ricardo S. by the School District of Wisconsin Rapids Board of Education, No. 145, September 5, 1986, and Jesse K.

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[1] The discrimination charge is a serious one if it can be factually substantiated and is based on a protected classification. The pupil non-discrimination law, sec. 118.13 Stats. provides in part: "No person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race,...sexual orientation..." Every school district is required to have a written policy in place for investigating and processing complaints and making determinations ensuring compliance with this law. An appeal of such determinations to this department is also provided for. If the S[redacted]s believe Daniele is a member of a listed protected class and has been discriminated against because of membership in that class, they may pursue remedies under this provision.

by the School Board of Joint District No. 2 of Sun Prairie, et al., No. 131, June 17, 1985.

...

Assuming the State Superintendent has discretion to review and modify the length of an expulsion, I would not exercise that discretion on this record. In light of the fact that as a general rule this agency has not reviewed the lengths of expulsions but has left that issue to the sound discretion of local school boards, every inference in favor of the length of expulsion should be indulged. The full hearing record in B.L.N. and K.W.R. are not before me thus an exact comparison is not possible. (Compare Ocanas v. State, 70 Wis.2d 179, 233 N.W.2d 457 (1975), in which two brothers jointly committed a crime for which one judges sentenced the brother arguably more culpable to three years and another judge sentenced the other brother to 20 years, where the records of both cases were before the trial and supreme courts and no error was found.)

For these same reasons here, I find no error.

Lastly, Mrs. S[redacted] provides the name and phone number of Daniele's counselor and asks me to call her with respect to confirming certain of her character traits and test results tending to show "her normal compliance, as well as other positive qualities." The department is willing to assume the truth of this suggestion but leaves the use of this information properly to the district. The expulsion decision permits the school superintendent to make a recommendation of early readmission to the board, after one semester of expulsion where this and other information may be presented. This agency has long commended the use of conditional early readmission and encourages cooperation of the parties in that endeavor here.

In reviewing the record in this case I find that the Kenosha School District complied with all of the applicable procedural requisites and I am therefore compelled to affirm the 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 complied with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats., with regard to Daniele's expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Daniele S[redacted] by the Kenosha School District Board of Education is affirmed.

Dated this 2nd day of November, 1993.

John T. Benson
Superintendent of Public Instruction