

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
BRAD S [REDACTED]
by the Germantown School
District Board of Education

DECISION
AND
ORDER
94-EX-02

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 order of the Germantown School District Board of Education expelling Brad S [REDACTED] from that school district effective October 20, 1993, through the remainder of the 1993-1994 school year. This appeal was filed by Brad's father, Peter L. S [REDACTED], and was received by the Department of Public Instruction on January 18, 1994.

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 a Notice of Expulsion Hearing dated October 12, 1993, which was properly sent to the pupil and to his parents. The Notice advised that a hearing would be held on October 20, 1993, which could result in Brad's expulsion. The Notice also set forth the allegations upon which the proposed expulsion was based. Specifically, the notice alleged that Brad possessed and used a controlled substance on school grounds which endangered the health and safety of others. The hearing was accordingly conducted in closed session on October 20, 1993. Brad and his parents appeared without counsel.

At the hearing the school district administration presented testimony supporting the alleged misconduct by the pupil. The record indicates that Brad admitted that he possessed and smoked marijuana in class at school and that several other students had witnessed that conduct. The record also indicates that several students interviewed by the administration had witnessed some aspects of the pupil's possession and smoking of marijuana in class. The administration also testified that the pupil's misconduct endangered the health and safety of both the teacher and the other pupils present in the class.

Brad and his parents were given an opportunity to question and to respond to, the administration's evidence. Brad did not deny that he had possessed and smoked marijuana in class. Brad's

father discussed his concerns about other educational opportunities for Brad should he be expelled and his hope that Brad not lose a year of education.

After the hearing, the school board deliberated in closed session and decided to expel Brad for the remainder of the 1993-1994 school year. The Findings and Order of Expulsion was subsequently entered on October 25, 1993, and was properly sent to Brad and to his parents. In reaching its decision, the school board found that Brad had endangered the health and safety of others at school by possessing and smoking marijuana in class. The board also found that the interests of the school district demanded expulsion.

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 reviewing the record in this case I find that the school district complied with all of the procedural requisites in this matter. I am, therefore compelled to affirm the expulsion decision as entered.

In his appeal, Brad's father expresses his frustration at his inability to enroll Brad in a VTAE program directly rather than through a contract with a school district. I am not authorized to review or to overrule the laws governing admission into VTAE programs in the context of this expulsion appeal. Further, as the district pointed out during the course of the expulsion hearing, they are permitted but not obligated to provide education to the pupil during the period of 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.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Brad S [REDACTED]
by the Germantown School District Board of Education is affirmed.

Dated this 7th day of March, 1994.



John T. Benson, State Superintendent of
Public Instruction