

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
Katie Nichole W [REDACTED]
by the Kenosha Unified School
District No. 1 Board of Education

DECISION
AND
ORDER
94-EX-04

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 December 10, 1993, order of the Kenosha Unified School District No. Board of Education to expel Katie Nichole W [REDACTED] from the Kenosha Unified School District No. 1 from December 9, 1993, until the end of the 1994-95 school year. This appeal dated January 10, 1994, was filed by Katie's father, Nicholas J. W [REDACTED], and was received by the Department of Public Instruction on January 12, 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 Hearing dated November 24, 1993, from the Kenosha Unified School District No. 1. This Notice of Hearing was sent separately to Katie and her parents. The record also contains Affidavits of Service indicating personal service of the Notice of Hearing on Katie and her mother, and substitute service of Notice of Hearing on her father. The Notice of Hearing advised that the hearing would be held on December 9, 1993, which could result in Katie's expulsion from school. The Notice also contained an allegation that Katie did, on November 12, 1993, sell and deliver a controlled substance to other students. The Notice indicated this conduct was in violation of school board rules, rules of good conduct, and endangered the health and safety of students while at school.

The hearing was conducted in closed session on December 9, 1993. Katie and her parents appeared in person, unrepresented by legal counsel. At the hearing, the school district administration presented testimony supporting the alleged misconduct by the pupil. Katie, her parents, and others were given an opportunity to question and to respond to the assertions.

After the hearing the school board deliberated in closed session and returned with its decision to expel Katie until the end of the 1994-1995 school year. An Order of Expulsion was subsequently entered on December 10, 1993. A copy of the Order of Expulsion was sent to Katie and to her parents. The school board found that Katie did, while at school, sell and deliver LSD, a controlled substance, to other students, and that

this conduct endangered the health and safety of other students. The school board also found that the interests of the school district demanded the pupil's 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.

The appeal letter raises two arguments that require examination. First, the appeal letter argues there was evidence at the hearing that Katie would not present a "future

C
danger" to the health and safety of other students. Evidence of "future danger" is not required at an expulsion hearing. Section 120.13(1)(c), Wis. Stats., requires the school board to prove that "the pupil engaged in conduct while at school . . . which endangered the property, health or safety of others." (Emphasis added.) It is not necessary to prove a student will present a "future danger" to others. The delivery or sale of a controlled substance has been found to constitute conduct which endangers the health or safety of others. David G. v. Westosha School District, Decision and Order No. 109 (February 25, 1983).

The second issue raised in the appeal letter is a characterization that the conduct in this case was a "one time mistake" and would never happen again. Where the primary ground relied upon for expulsion is that the pupil "endangered" the property, health, or safety of others, it is not necessary to prove a pattern of misconduct, sec. 120.13(1)(c), Wis. Stats. In Brian C. v. Sheboygan Area School District, Decision and Order No. 158 (September 9, 1988), the State Superintendent took administrative notice that selling drugs to other students is conduct which endangered the health and safety of other students. The presence or absence of other misconduct, when properly noticed, may be considered by the school board in exercising its discretion in determining whether the interests of the school district demand the pupil's expulsion, Jarrett N. v. Baraboo School District, Decision and Order No. 183 (December 23, 1991). The decision to expel a student is left to the discretion of the school board. My review is limited to whether the school board complied with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

In reviewing the record in this case I find that the Kenosha Unified School District No. 1 complied with all of the applicable procedural requisites. I therefore affirm the expulsion decision as entered.

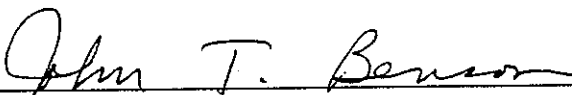
CONCLUSIONS OF LAW

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 Katie's expulsion.

ORDER

HEREFORE ORDERED that the expulsion of Katie Nichole W [REDACTED] by the Kenosha Unified School District No. 1 Board of Education is affirmed.

Dated this 10th day of March, 1994.



John T. Benson
Superintendent of Public Instruction