

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

---

In the Matter of the Expulsion of

AMANDA L. [REDACTED]

by the Hartford UHS School District  
Board of Education

DECISION AND ORDER  
94/95-EX-18

---

**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 March 30, 1995 order of the Hartford UHS School District Board of Education to expel Amanda L. [REDACTED] from the Hartford UHS School District permanently. This appeal, dated June 2, 1995, was filed by Amanda's attorney, Gary McGregor, and was received by the Department of Public Instruction on June 5, 1995.

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 letter dated March 16, 1995 from the District Administrator of the Hartford UHS School District advising that a hearing would be held on March 17, 1995 concerning the expulsion of Amanda from the Hartford UHS School District. The letter was sent separately to Amanda and her parents by certified mail. The letter alleged that Amanda, a sixteen (16) year old high school sophomore, engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. The letter specifically alleged that Amanda delivered marijuana to another student on the school bus on March 9, 1995 and that she was in possession of drug paraphernalia at school on March 13, 1995. A current copy of sec. 120.13(1)(c), Wis. Stats., accompanied the letter. The record also contains Amanda's complete academic and disciplinary records. Minutes of the school board expulsion hearing and an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on March 27, 1995. Amanda and her parents appeared at the hearing. They were not represented by counsel. At the hearing the school district administration introduced the written reports documenting the grounds for expulsion, including the results of the police investigation and the written statement of another student. Amanda and her parents were given the opportunity to present evidence, to cross examine all witnesses and to respond to the allegations. Amanda testified and offered an exhibit and called two witnesses to testify as to her character and school performance.

After the hearing, the school board deliberated in closed session. The board found Amanda 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 30, 1995, was mailed separately to Amanda and her parents. The order stated Amanda was expelled permanently but offered to provide home-bound instruction for Amanda at her or her parents' request. Additionally, the order stated Amanda could apply for early readmission provided she comply with the following conditions:

1. Abide by all the conditions of homebound instruction;
2. Undergo an AODA assessment and successfully conclude any recommended treatment;
3. Sign releases to permit the school administration to obtain information concerning Amanda's treatment progress;
4. Agree to random urine screens, the cost to be paid by Amanda or her parents; and
5. Failure to pass random drug screens or random searches of her locker or person shall be grounds for immediate reinstatement of the permanent expulsion order.

### 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 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 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.* 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.

Amanda raises several issues which require consideration on appeal.

First Amanda argues that the Hartford Union High School and the Hartford Police Department conducted an incomplete and haphazard investigation. Amanda states that the police should have examined the marijuana pipe for evidence of fingerprints other than Amanda's and confirmed that the alleged substance was, in fact, marijuana. Furthermore, Amanda argues there was no evidence presented at the hearing that Amanda was close friends with the pupil to whom she allegedly sold the marijuana.

As the district correctly points out, arguments concerning the sufficiency of the evidence are beyond the scope of review. *Tracy M. v. Random lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); *Brad M. v. Boyceville Community School District*, Decision and Order No. 233 (June 29, 1994); and *Taiwan O.W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 183 (April 7, 1992).

Second, Amanda argues that she did not receive a fair hearing since the board relied on the hearsay testimony of the administration and were not given the opportunity to assess the credibility of the student to whom Amanda allegedly sold marijuana. I have previously held that

an expulsion can be based on the hearsay testimony of school officials. See *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994) and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985).

Next Amanda argues that the hearing was unfair and prejudicial because the district introduced evidence of other acts that occurred off school grounds that were not relevant to the expulsion hearing. The audiotape of the hearing reveals that the administration explicitly stated that the other acts introduced were not to be considered by the board in determining whether expulsion was appropriate and appear to have been offered solely for impeachment purposes of Amanda.

Amanda also challenges the length of the expulsion as being unduly harsh. However, the district correctly notes that I have repeatedly held that the length of an expulsion is within the discretion of the board so long as the board complies with all the procedural requirements of sec. 120.13(1)(c), Wis. Stats. See *Brandon H. v. DeSoto Area School District*, Decision and Order No. 206 (May 3, 1993); *Lavell A. v. Kenosha Unified School District*, Decision and Order No. 147 (January 12, 1987); and *Susan Marie H. v. Kenosha Unified School District*, Decision and Order No. 157 (June 18, 1988).

Finally, Amanda argues that the administration advised that they would issue a written statement of intent, to be available two (2) days prior to the hearing, indicating what position they would be taking concerning discipline. Because the administration failed to issue a statement of intent, Amanda and her parents assumed that the district would not recommend expulsion and accordingly they did not have legal counsel at the hearing. Had the administration provided the statement of intent, Amanda states she would have retained counsel for the hearing.

The record shows that the administration did send a letter dated March 16, 1995 stating that a hearing had been scheduled to consider a recommendation for expulsion. There is no procedural requirement in sec. 120.13(1)(c), Wis. Stats., that mandates the issuance of a statement of intent by the district. Rather, the procedural requirement is that the notice advise that the hearing may result in the pupil's expulsion. I find that the district complied with this procedural requirement.

I make one final note in this case. Two of the conditions for Amanda's early readmission (submitting to urine screens and failure to pass screens or searches) appear to require Amanda to comply with such conditions even after her readmission. However, as I have held in previous decisions, conditions leading to early readmission are acceptable prior to readmission. After the student is readmitted, full, unconditional state statutory and constitutional rights to an education are reinstated. See *Paul O. v. Florence County School District Board of Education*, Decision and Order No. 232 (June 28, 1994).<sup>1</sup> See also *Miranda V. v. Howard-Suamico School District Board of Education*, Decision and Order No. 224 (March 24, 1994).

If the school administration wishes to discipline Amanda for a violation of a school rule or rules after readmission, it should follow the requirements of sec. 120.13(1)(b) and (c), Wis. Stats., and follow the school board policies on discipline.

I commend the district for offering homebound instruction to Amanda and for providing her the opportunity for early readmission. I encourage all parties to work together in this regard.

---

<sup>1</sup>This case is on appeal in the Circuit Court for Florence County, Case No. 94-CV-41.

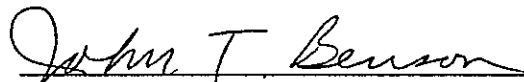
**CONCLUSIONS OF LAW**

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. Accordingly, I must affirm the order of expulsion.

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of Amanda L. [REDACTED] by the Hartford UHS School District Board of Education is affirmed.

Dated this 3rd day of August, 1995.

  
\_\_\_\_\_  
John T. Benson  
State Superintendent of Public Instruction