

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

JUSTIN M. [REDACTED]

by the Fort Atkinson School District
Board of Education

DECISION AND ORDER
95/96-EX-2

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 October 12, 1995 order of the Fort Atkinson School District Board of Education to expel Justin M. [REDACTED] from the Fort Atkinson School District until the end of the 1995-96 school year. This appeal, dated October 17, 1995, was filed by Justin's attorney, E. Scott Scheibel, and was received by the Department of Public Instruction on October 19, 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 entitled "Notice of Pupil Expulsion Hearing" dated September 22, 1995 from the Superintendent of Schools of the Fort Atkinson School District. The letter advised that a hearing would be held on October 4, 1995 concerning the expulsion of Justin from the Fort Atkinson School District. The letter was sent separately to Justin and his father by regular and certified mail. The letter alleged that Justin 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 Justin possessed a controlled substance on school premises on or about September 20, 1995. A current copy of sec. 120.13(1)(c), Stats., was printed on the back of the letter. The record also contains a copy of the school district code of conduct. 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 October 4, 1995. Justin and his father appeared at the hearing. They were represented by Attorney E. Scott Scheibel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Justin and his father were given the opportunity to present evidence, to cross examine all witnesses and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found Justin 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 October 12, 1995, was

mailed separately to Justin and his father. The order stated Justin was expelled until the end of the 1995-96 school year.

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.

The appeal letter in this case raises one issue for consideration. Justin argues that the school district did not meet its burden by failing to prove that his conduct of possessing

marijuana on school grounds endangered the property, health or safety of others. Justin asserts that there must be evidence that his conduct impacted on other students.

The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damage or the chance of loss or injury. These terms embrace the notion of harmful acts or actions which are detrimental or involve loss or damage. *Kirstin J. v. Mukwonago Area School District Board of Education*, Decision and Order No. 185 (February 21, 1992) and *Micheline J. v. Washington Island School District Board of Education*, Decision and Order No. 165 (August 1, 1989).

I find that it was reasonable for the district to conclude that Justin's conduct of possessing marijuana on school property endangered the health and safety of pupils. Moreover, I have repeatedly upheld expulsions based on possession of marijuana. See *William S. v. Suring School District Board of Education*, Decision and Order No. 98 (June 17, 1982), *Brian C. v. Sheboygan Area School District Board of Education*, Decision and Order No. 158 (September 9, 1988) and *Brad S. v. Germantown School District Board of Education*, Decision and Order No. 221 (March 7, 1994).

In reviewing the record in this case and the findings set out above, I conclude that the district complied with all the procedural requirements of sec. 120.13(1)(c), Wis. Stats. I am therefore compelled to affirm the expulsion.

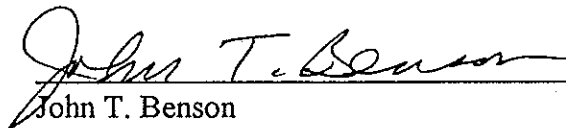
CONCLUSIONS OF LAW

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.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Justin M. [REDACTED] by the Fort Atkinson School District Board of Education is affirmed.

Dated this 5th day of December, 1995.



John T. Benson
State Superintendent of Public Instruction