

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
KIMBERLY K [REDACTED]
by the Oak Creek-Franklin School District
Board of Education

DECISION AND ORDER
95/96-EX-9

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 7, 1995 order of the Oak Creek-Franklin School District Board of Education to expel Kimberly K [REDACTED] a 17 year old senior, from the Oak Creek-Franklin School District for the remainder of the 1995-96 school year. This appeal, dated November 28, 1995, was filed by Kimberly's attorney, S. Todd Farris, and was received by the Department of Public Instruction on November 29, 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 interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record contains a letter entitled letter dated November 15, 1995 from the Principal of the Oak Creek High School. The letter advised a hearing would be held on November 27, 1995 which could result in Kimberly's expulsion from school. The letter was sent separately to Kimberly and her father. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The letter indicated Kimberly violated school board policy by possessing an illegal substance (marijuana) and gross misconduct as referred to in the student-parent handbook. Relevant portions of the handbook were also attached to the letter. The record also contains a copy of a suspension letter dated November 14, 1995 sent to Kimberly's father and various violation reports filed by school officials involved in the incident. The record contains Kimberly's complete academic and disciplinary record. A transcript of the expulsion hearing was prepared and is also part of the record.

The hearing was held in closed session on November 27, 1995. Kimberly appeared at the hearing through her father and her attorney, S. Todd Farris. At the hearing the school administration presented evidence on the grounds for expulsion contained in the letter of November 15, 1995. Kimberly's father and her attorney were given the opportunity to cross examine witnesses, to present testimony and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found Kimberly possessed marijuana while under the supervision of a school authority which endangered the property, health or safety of others and that the interests of the school demanded her expulsion. The order of expulsion containing the Findings of Fact and Conclusions of the Board, dated December 7, 1995, was mailed separately to Kimberly and her father. The order

recited that Kimberly was expelled for the remainder of the 1995-96 school year. The board further indicated Kimberly could be readmitted at the start of the second semester of the 1995-96 school year if she completed certain conditions. The board order indicated she could be readmitted if she completed an AODA screening, and did not commit a "suspendable" offense. During the term of her expulsion the board would permit Kimberly to continue to make up assignments at home. The board's order further stated her student record would be expunged of all references to an expulsion if she successfully completed the terms of the 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.

Both parties have submitted briefs in this case. Kimberly raises several issues in this appeal. First, Kimberly argues the Notice of Expulsion Hearing did not give her any explanation why the school district was recommending expulsion and not suspension as referred to in the student-parent handbook. Kimberly did concede the Notice of Expulsion Hearing provided reasonable notice that her possession of marijuana was the conduct at issue.

Portions of the student-parent handbook were attached to the Notice of Expulsion Hearing. The policy on possession of controlled substances while at school or while under the supervision of a school authority provides:

Violation of any of the following rules may result in an assignment to the discipline room, require a parent conference and could lead to possible suspension, referral to local civil authorities, or referral to the Board of Education for expulsion.

The policy continues:

...students who sell, distribute, give, use, possess or ingest any drugs or intoxicants while on school premises or while engaging in a school sponsored activity will be subject to disciplinary action.

Violation of these rules may result in loss of extra-curricular and athletic privileges, suspension and possible expulsion.

These portions of the school board policy clearly notify students and parents that expulsion is a possible form of discipline for a single act of possession of drugs. In this case, the school board complied with the statutory notice requirements in sec. 120.13(1)(c), Wis. Stats. Kimberly's argument that the school board should have considered a lesser form of discipline is beyond the scope of my review. Prior decisions of the State Superintendent indicate the decision

to expel a pupil and the determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with sec. 120.13(1)(c), Wis. Stats. *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995); *Nikkole K. v. Janesville School District Board of Education*, Decision and Order No. 238 (September 16, 1994).

Kimberly next argues the school board had no jurisdiction to expel her because she did not repeatedly violate school rules and did not commit a violation which endangered the property, safety or welfare of other students. The evidence before the school board indicated Kimberly possessed marijuana on a school bus that was transporting athletes to a state athletic competition. The evidence indicated this was a school sponsored and supervised activity. The board made a finding that this conduct constituted an expellable offense pursuant to the student handbook and concluded this misconduct endangered the property, health and safety of others. The school board made no finding that Kimberly repeatedly violated school rules and it is not necessary to comment further on that issue. As counsel for the school board has pointed out, past decisions of the State Superintendent have upheld expulsions based on the act of possession of a controlled substance while at school or while under the supervision of a school authority. *Brian C. v. Sheboygan Area School District Board of Education*, Decision and Order No. 158 (September 9, 1988); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (December 5, 1995).¹ Moreover, arguments as to the sufficiency of credible

¹In the early years of departmental review of pupil expulsions, the State Superintendent did reverse or modify some expulsions for a single act of possession of marijuana: *Annie M.V. v. Racine Unified School District No. 1*, Decision and Order No. 2 (April 18, 1975); *James G. v. Racine Unified School District*, Decision and Order No. 22 (January 12, 1979); *Daryl L. v. Racine Unified School District*, Decision and Order No. 25 (July 6, 1979); and *Janet D. v. Racine Unified School District*, Decision and Order No. 29 (January 9, 1980). Since *Racine v. Thompson, supra*, the department has restricted its review to procedural error, *Kelley B. v. School District of Three Lakes*, Decision and Order No. 100 (August 23, 1982). I believe I should respect the evolution of these precedents.

evidence to support the school board's findings have been held to be beyond the scope of the State Superintendent's review. *Brad A.M. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); *Taiwan O.W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992).

Finally, Kimberly argues expulsion is not an appropriate penalty because she was not previously disciplined in the 1995-96 school year and had sufficient credits to graduate in January, 1996. These issues were before the school board. Rather than ignoring Kimberly's individual situation, the administration recommended and the board accepted an educational plan for this student. Kimberly is permitted to complete her assignments for the first semester of the 1995-96 school year at home and to receive credit for them. Further, she can return to school for the second semester if she completes an AODA assessment and violates no further school rules. Finally, a successful completion of the school board order will result in an expungement of the expulsion from her student record. I applaud the school administration and the school board for recognizing and addressing Kimberly's educational situation while striving to maintain appropriate student discipline.

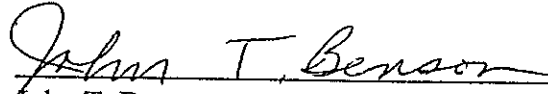
CONCLUSIONS OF LAW

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 Kimberly K [REDACTED] by the Oak Creek-Franklin School District Board of Education is affirmed.

Dated this 8th day of January, 1996.



John T. Benson
State Superintendent of Public Instruction