

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of JASON Q [REDACTED] by the Hartford Union High School District Board of Education	DECISION AND ORDER 95/96-EX-10
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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 November 22, 1995 order of the Hartford Union High School District Board of Education to permanently expel Jason Q [REDACTED], a 17 year old pupil, from the school district. This appeal, dated December 8, 1995, was filed by Jason's attorney, Patrick Cavanaugh Brennan, and was received by the Department of Public Instruction on December 11, 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 dated November 1, 1995 from the District Administrator of the Hartford Union High School District. The letter advised that a hearing would be held on November 14, 1995 which could result in Jason's expulsion from school. This letter was sent separately to Jason and his parent by certified mail. The letter alleged Jason engaged in conduct while-not at school which endangered the health or safety of others at school. The letter specifically alleged Jason sold an "illegal controlled substance to another student not on the school grounds." The notice further alleged this other student subsequently sold that substance to another student in the school building, an act which endangers the health or safety of others at school. A current copy of sec. 120.13(1)(c), Wis. Stats., was attached to the notice. The record also contains documents relating to the particular conduct alleged in the notice of expulsion hearing, the student's complete discipline and academic record, the written recommendation for expulsion from the district administrator and various other exhibits offered at the hearing. The minutes of the board of education meeting and an audio tape of the hearing are also part of the record.

The hearing was held in closed session on November 14, 1995. Jason and his parents appeared at the hearing and were represented by Attorney Patrick Cavanaugh Brennan. At the hearing the school administration presented evidence on the grounds for expulsion alleged in the notice. Jason, his parents and their attorney were given the opportunity to cross examine witnesses, to present witnesses and to respond to the allegations.

After the hearing, the board deliberated in closed session. The board found that Jason engaged in conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others at school or under the supervision of a

school authority. The board further found that the interest of the school demands Jason's expulsion. The board permanently expelled Jason from school. The order of expulsion containing the Findings and Decision of the board was dated November 22, 1995. It was mailed separately to Jason and his parent by certified mail.

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 (Ct. App., 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.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, No. 94-0199, Dist. IV, Dec. 28, 1995, Slip Op., p. 14. 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 interest of the school district demands the pupil's expulsion.

Both parties have submitted briefs in this case. The facts of this case are not disputed. On Sunday, October 22, 1995, a Hartford Unified High School student went to the home of Jason Q [REDACTED] and asked Jason to sell him three "hits" of LSD. Jason did so. According to the testimony, this was not a pre-arranged meeting and Jason did not expect the other student to come to his home. Jason resides approximately 25 miles from the high school. On Monday, October 23, 1995, the buyer of the LSD took the LSD to the high school and sold it to another student. According to the testimony, Jason told school officials the purchaser who came to his home on October 22 must have known he had LSD for sale "through rumors around school." Jason further told school officials he did not know the other student would take the LSD to school or sell it in school.

The school board expelled Jason because he

...while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority....

It is not in dispute that the conduct of dealing the LSD to the other student occurred "while not at school or while not under the supervision of a school authority." The conduct occurred on a Sunday at a location clearly off school grounds.

Jason argues there was no evidence his conduct "...endangered the property, health or safety of others *at school*...." (Emphasis added.) Jason argues because there was no evidence that *his* conduct endangered others at school, the school board could not legally conclude the grounds for expulsion had been established.

The school board argues that Jason knew LSD was a controlled substance, he knew that there were “rumors” around school he had LSD for sale, he knew the buyer was a student at the high school, and made the sale of LSD anyway. Therefore, the board argues, there was evidence from which it could conclude a ground for expulsion had been established.

The issue presented here is one of first impression. Neither party has cited precedents nor have I found an expulsion case in which this issue was squarely presented. In reviewing the findings of an administrative board sitting as the trier of fact, the Wisconsin Supreme Court has held that the findings of such a body “are conclusive if any reasonable evidence sustains them...” *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 695, 242 NW 2d 689 (1976). The State Superintendent has consistently held that the school board’s findings will be upheld if any reasonable view of the evidence sustains them. *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and order No. 130 (May 10, 1985); *Brad A.M. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994). In this case there was evidence from which the school board could conclude that a ground for expulsion had been established. Therefore, I must uphold the school board’s findings on this issue.

Jason further argues that his permanent expulsion was unfair because other students involved in the same incident received different forms of discipline. The State Superintendent has consistently held that the length of the expulsion is within the sound 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 I School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

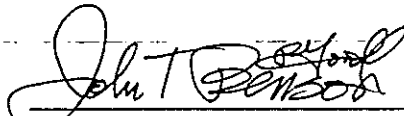
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board has complied with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jason Q [REDACTED] by the Hartford Union High School District Board of Education is affirmed.

Dated this 9th day of February, 1996.



John T. Benson
State Superintendent of Public Instruction