THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of MATTHEW K[redacted] by the Hartford Union High School District Board of Education	DECISION AND ORDER 95/96-EX-14

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 18, 1995 order of the Hartford Union High School District Board of Education to permanently expel Matthew K[redacted], an 18 year old pupil, from the school district. This appeal, dated January 8, 1996, was filed by Matthew's attorney, Eric L. Becker, and was received by the Department of Public Instruction on January 9, 1996.

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 "Notice of Pupil Expulsion Hearing" dated December 5, 1995 from the District Administrator of the Hartford Union High School District. The letter advised that a hearing would be held on December 12, 1995 which could result in Matthew's expulsion from school. The letter was sent separately to Matthew and his parents by certified mail. The letter alleged Matthew engaged in conduct which endangered the property, health or safety of others at school by possessing an illegal controlled substance on school grounds. The letter specifically alleged marijuana was found in Matthew's car while it was parked on school grounds. A 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 and the student's complete discipline and academic record. 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 December 12, 1995. Matthew and his parents appeared at the hearing without counsel. At the hearing the school district administration presented evidence on the grounds for expulsion alleged in the notice. Matthew and his parents were given the opportunity to present evidence, to cross examine witnesses and to respond to the allegations,

After the hearing, the board deliberated in closed session. The board found that Matthew endangered the health and safety of others at school by possessing an illegal controlled substance on school grounds and that the best interests of the school demand the student's expulsion. The board permanently expelled Matthew from school. The order for expulsion containing the

Findings and Decision of the board was dated December 18, 1995. It was mailed separately to Matthew and his parents 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 (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 interests of the school district demand the pupil's expulsion.

Both parties have submitted briefs in this case. Matthew raises three issues for consideration. First, he argues his due process rights were violated because the school board admitted testimony from administrators after "closing" the testimony. I have reviewed the minutes of the hearing and the audio tape. I do not find that the procedures used by the school board were unfair to Matthew or his parents. As the school district correctly points out, basic fairness and integrity in the fact finding process are the important considerations. *Chad S. v. Hartford Union High School District Board of Education*, Decision and Order No. 273 (February 9, 1996). This is not a case where the child or the parents were prevented from presenting evidence or making comments. From the record it appears all parties had the opportunity to present all sides of the issues.

Second, Matthew argues the decision should be reversed because there are no facts in the record to support the board's decision. The record indicates that the school administration and the multi-jurisdictional drug unit from Washington County conducted a random search of vehicles parked in the school parking lot. Matthew's vehicle was selected at random but a positive reaction from a trained police dog caused the matter to be further investigated. Officers searched the car and found marijuana seeds and stems in the console and the carpeting. Matthew stated he only purchased the car days earlier and denied any knowledge of the marijuana. The administration indicated to the board the seeds and stems had tested positive for marijuana. This evidence was all before the school board. It is the province of the school board to evaluate the credibility of the witnesses and decide whom to believe. *Nikkole P. v. Janesville School District Board of Education*, Decision and Order No. 238 (September 16, 1994). The State Superintendent has consistently ruled that the school board's findings will be upheld if any

reasonable view of the evidence sustains them. *Clifton V. v. Eau Claire Area School District Board of Education*, Decision and Order No 267 (January 5, 1996). In this case there is evidence from which the school board could conclude that a ground for expulsion had been established. Therefore, I must uphold the board's findings on this issue.

Third, Matthew argues the expulsion should be reversed because the school board failed to attach a current copy of sec. 120.13(1)(c), Wis. Stats. to the expulsion notice. Sec. 120.13(1)(c) provides, in part, "This paragraph shall be printed in full on the face or back of the notice." The notice of expulsion hearing was dated December 5, 1995. The Wisconsin legislature had amended sec. 120.13(1)(c) by 1995 Wisconsin Act 75 which was enacted November 17, 1995. The amendment to sec. 120.13(1)(c) created a separate ground for expulsion for a pupil who "while at school or while under the supervision of a school authority, possessed a firearm...." Wisconsin Act 75 became effective December 5, 1995, the same day the school district sent out the notice of expulsion hearing. The school district did not attach a current copy of sec. 120.13(1)(c) to the notice of expulsion hearing. Prior decisions of the State Superintendent involving expulsion appeals have found reversible error if the expulsion notice failed to contain the full, *current* version of sec. 120.13(1)(c). *Jared L. v. Northland Pines School District Board of Education*, Decision and Order No. 271 (January 19, 1996), and prior cases back to 1984.

This issue is currently receiving legislative scrutiny. AB 811, currently pending in the legislature, would amend sec. 120.13(1)(c)3. by deleting the requirement that the statute be printed in full on the face or back of the notice. Rather, the notice of expulsion hearing is to contain a *summary* of the rights provided for by the statute. I have reconsidered the department's

position in the light of this legislative action. The prior interpretations of this section have treated the current statute requirement as a type of jurisdictional prerequisite. The legislature's activity indicates a desire to have the statutory notice content treated in a less absolute fashion. In this case, the language of Act 75 was not related in any way to Matthew's expulsion hearing. His case did not involve a firearm nor did the new language in any way diminish his or his parents' rights at the hearing. Because the language of the amendment was not related in any way to this hearing I will uphold the action of the school board. I believe this approach is consistent with the action of the legislature and allows district more leeway in their application of the statute.

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 Matthew K[redacted] by the Hartford Union High School District Board of Education is affirmed.

Dated this 11th day of March, 1996.

John T. Benson
State Superintendent of Public Instruction