

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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

DECISION AND ORDER  
95/96-EX-22

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 4, 1995 order of the Oak Creek-Franklin School District Board of Education to expel Sarah C [REDACTED] from school for the remainder of the first semester of the 1995-96 school year. This appeal, dated February 14, 1996, was filed by Sarah's attorney, Peter M. Donohue, and was received by the Department of Public Instruction on February 16, 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 dated November 10, 1995 from the Principal of the Oak Creek High School. The letter advised a hearing would be held on November 20, 1995 which could result in Sarah's expulsion from school. The letter was sent separately to Sarah and her mother. The letter alleged Sarah violated school board policy by "gross misconduct" set forth in the student-parent handbook, pages 17 and 25, alcohol/drugs. Attached to the letter were copies of pages 17 and 25 of the handbook and a copy of a previously issued notice of suspension. Sarah had been suspended from school from November 6 until November 9 for "being present in a school-sponsored hotel room, where there are drugs and alcohol present. This happened at the state volleyball tournament on November 3, 1995." A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The record also contains a summary of the evidence presented to the school board and other documents presented to the board during the hearing. A copy of Sarah's academic and disciplinary record was in the record. A transcript of the expulsion hearing was prepared and is also part of the record.

The hearing was held on November 20, 1995. Sarah and her mother appeared at the hearing and were represented by Attorney Peter M. Donohue. At the hearing the school administration presented evidence on the grounds for expulsion contained in the letter. Sarah, her mother and their attorney were given the opportunity to cross examine witnesses, present witnesses and evidence and respond to the allegations.

The school board found Sarah refused or neglected to obey school district rules and did engage in conduct while under the supervision of a school authority which endangered the property, health and safety of others. The board further found that the interests of the school

demand the pupil's expulsion. The order of expulsion containing the Findings of Fact and Conclusions of the board, dated December 4, 1995, was mailed separately to Sarah and her mother. The order indicated Sarah was expelled for the remainder of the first semester of the 1995-96 school year. According to the order Sarah would be eligible for readmission as of December 4, 1995 if she completed an AODA screening. In the event she returned to school on December 4, 1995 she was not to commit a "suspendable" offense during the second quarter of the 1995-96 school year. All references to this expulsion would be expunged if she otherwise complied with the order. During the term of the expulsion the school board ordered she be permitted to continue to make up assignments at home.

### 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.*, 543 N.W. 2d 843 (1995). 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. Sarah raises several issues in this appeal. First, Sarah argues the school board cannot expel her because to do so is to violate her protection against double jeopardy. Second, she argues the school board's finding of gross misconduct was unsupported by the evidence. Third, Sarah argues she received no written notice of what conduct the school administration considered "gross misconduct of an aggravated nature."

Factually, the record in this case indicates the Oak Creek High School girls volleyball qualified to participate in the WIAA state volleyball tournament in Neenah. Sarah rode the spectator bus, attended some events and stopped at the hotel where the team was staying to meet friends. Sarah indicated she was planning on returning home that evening because she had to work the next day. The volleyball team coach had become suspicious because of activity near a certain hotel room which was to be occupied by team members. She and other coaches went to investigate and demanded entry to the room. A person on the inside of the room opened the door briefly and then closed it stating it was "stuck." The coaches detected the odor of marijuana coming from the room. Within a few minutes the coaches entered the room. The coaches found bottles and cans of various types of liquor and beer. They also found marijuana and drug

paraphernalia. Sarah and several other students were present in the room when the coaches demanded entry. Sarah testified she and other students were on their way to the pool area to meet friends when they stopped by the room because one of their group had to use the bathroom. Sarah denied possessing or consuming any drug or alcohol. She was not a registered guest at the hotel. There was no proof she personally possessed or consumed drugs or alcohol.

Sarah was suspended from school on November 6 for three days. On her return to school she was advised the school administration planned to recommend expulsion and her suspension would be continued pending the expulsion hearing on November 20, 1995.

The notice of expulsion hearing indicated Sarah was guilty of "gross misconduct" as set forth in the student-parent handbook. The handbook specifically prohibits the sale, distribution, use, possession or ingestion of any drugs or intoxicants. The handbook also indicated the following:

Other grounds for expulsion....(2) gross misconduct of an aggravated nature, which, in the estimation of the administration, calls for an immediate recommendation of expulsion.

The hearing notice did not particularize the conduct Sarah was involved in which constituted "gross misconduct." There was evidence at the expulsion hearing that Sarah, as well as the other people in the hotel room, did not immediately open the door when the coaches demanded entry. This conduct, however, was not particularized in the notice of expulsion hearing. Whether a district chooses to "define" certain behavior as "gross misconduct" to serve as a legitimate basis for expulsion the conduct must still meet one of the express statutory grounds in sec. 120.13(1)(c), Wis. Stats.

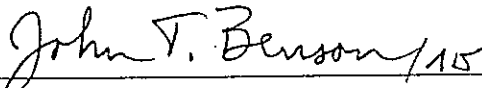
The school board in its order of expulsion, found Sarah "refused or neglected to obey the rules of the school district." The statutory standard in sec. 120.13(1)(c) is "...repeated refusal or neglect to obey the rules..." [Emphasis added.] The school board further found Sarah engaged in conduct which endangered the property, health or safety of others. I have serious concerns about whether the evidence in this case satisfies the statutory grounds for expulsion.

However, as the school district points out, and Sarah does not contest, the record of the suspension and the expulsion have been expunged from her student record. Sarah complied with the orders of the school board and was readmitted. The school board permitted expungement of this particular incident from her record. This is a credit to both Sarah and the school board. I seriously doubt that any action I might take would have any impact on the status of the parties. I believe the appeal is moot. A moot case is one in which "a judgment upon some matter which when rendered for any cause cannot have any practical legal effect upon the existing controversy." *In the Matter of K.H.*, 98 Wis. 295, 300, 296 N.W. 2d 746 (1980), citing *State ex rel. Ellenburg v. Gagnon*, 76 Wis. 2d 532, 535, 251 N.W. 2d 773 (1976). Therefore I am compelled to dismiss the appeal.

#### ORDER

IT IS THEREFORE ORDERED that the appeal of Sarah C. [REDACTED] is dismissed.

Dated this 16th day of April, 1996.

  
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John T. Benson  
State Superintendent of Public Instruction