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Decision and Order # 304

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of ADAM S. [REDACTED] by the East Troy Community School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-01</p>
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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 September 3, 1996 order of the East Troy Community School District Board of Education to expel Adam S. [REDACTED] from the East Troy Community School District for the remainder of the 1995-96 school year. This appeal was filed by Steven Watson, the pupil's attorney and was received by the Department of Public Instruction on September 24, 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 August 23, 1996 from the district administrator of the East Troy Community School District. The letter advised that a hearing would be held on September 3, 1996 which could result in Adam's expulsion from the East Troy Community School District. The letter was sent separately to Adam and his parents by regular and certified mail. The letter alleged that Adam engaged in conduct while under the supervision of a school authority which endangered the property, health or safety of other students. The letter specifically alleged Adam was in possession of alcohol and provided alcohol to another student on a school related activity on March 31, 1996. A written summary of all the rights pupils and parents possess in the expulsion hearing process accompanied the letter. Minutes of the school board expulsion hearing are part of the record.

The hearing was held in open session on September 3, 1996, at the request of Adam's mother. Adam and his parents appeared at the hearing without counsel. At the hearing the school board adopted the findings from Adam's previous expulsion hearing, held on May 13, 1996.¹

After the September 3, 1996 hearing, the board found Adam 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 and that the interests of the school demand Adam's expulsion. The order for expulsion and the resolution that was adopted with Findings of Fact and Conclusions of

¹ Adam had previously been expelled by the East Troy Community School District following a hearing on May 13, 1996. The State Superintendent reversed the expulsion for procedural errors. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 300 (August 9, 1996).

Law of the school board, dated September 5, 1996, were mailed separately to Adam and his parents. The order stated Adam was expelled for the remainder 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.* 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.*, 199 Wis. 2d 1, 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. Adams raises several issues for consideration. First, Adam argues that the district failed to return him to school within fifteen days since he was suspended on April 1, 1996 but the expulsion hearing was not held until May 13, 1996.

The record reveals that the expulsion hearing was originally scheduled for April 15, 1996. Counsel for Adam requested that the hearing be postponed to May 13, 1996 to explore settlement possibilities. The record contains two letters from Adam's attorney to the district that reference the pupil-initiated waiver of his right to have the expulsion hearing within fifteen days. One letter stated the attorney was authorized by the client to waive the time limits.

Adam argues that the attorney was not authorized to waive the time limits on his behalf. However, I see nothing in the record to support his claim. Therefore, I find no error with respect to Adam's knowing and intelligent waiver of the time limits.

Next, Adams argues that no reasonable view of the evidence supports a finding that his conduct endangered the health or safety of others or that the interests of the school demands his expulsion.

The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damage or the chance of loss or injury or the capability of producing death or great bodily harm. These terms embrace the notion of harmful acts or actions which are detrimental or involve loss or damage. *Kirstin J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (February 21, 1992) and *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (December 5, 1995).

I note that Adam testified at the first hearing and admitted bringing beer with him on the school-sponsored field trip, drinking the beer and providing beer to another student. Adam also admitted that he knew bringing beer, consuming beer and providing beer to another violated the East Troy High School Band Washington, D.C. Trip 1996 Rules of Student Behavior and also East Troy's drug and alcohol policy, violations of which can result in expulsion. Therefore, I find it was reasonable for the board to conclude that Adam's conduct of consuming alcohol and providing alcohol to another student endangered the health or safety of others. Moreover, expulsion have been repeatedly upheld based on pupils' possession or consumption of alcohol. See *Michelle R. v. Suring Public School District Board of Education*, Decision and Order No. 126 (March 7, 1985), *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989), and *Thomas P. v. Necedah Area School District Board of Education*, Decision and Order No. 289 (May 23, 1996).

Next, Adam argues that no reasonable view of the evidence supports a finding that Adam was "under the supervision of a school authority" when he and another student each drank beer late at night in their hotel room. Adam was on a school-sponsored and school-supervised field trip. I find it was reasonable for the school board to conclude that Adam was under the supervision of a school authority in this case.

Finally, Adam argues I exceeded my authority when I reviewed Adam's previous expulsion (which I reversed because of procedural errors) and suggested that the board might be able to correct its omissions without completely rehearing the case, thus giving counsel to and advocating for the board. Adam further alleges I revealed a bias for the school district when I applauded the district's actions and expressed a reluctance to reverse his prior expulsion.

Adam was previously expelled by the East Troy Community School District Board of Education on May 13, 1996 for endangering the health, safety or welfare of himself and others while under the supervision of a school authority. Adam's attorney appealed that decision to the State Superintendent of Public Instruction. I reversed the expulsion because the record failed to indicate that the board made a finding that the interests of the school demands the pupil's expulsion. The record also failed to indicate a copy of the expulsion order was mailed separately to Adam's parents as required by sec. 120.13(1)(c), Wis. Stats. *Adam S. v. East Troy Community School District of Education*, Decision and Order No. 300 (August 9, 1996). In that decision I stated:

"It may be possible for the board without completely rehearing this case to correct its omissions. See decisions in *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992), and *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

I am most reluctant to reverse this expulsion decision. However, compliance with the statutory procedure is essential. This decision does not in any way condone Adam's conduct in this case. I believe the school district was very fair in its review of this case and I applaud them for offering Adam the opportunity to enroll during summer school to permit him to continued [sic] academic progress."

On September 3, 1996, the board held another hearing to correct the procedural errors made following the May 13, 1996 hearing. The board adopted the evidentiary findings from the May 13, 1996 hearing at the September 3rd hearing.

When I reviewed Adam's original expulsion from May 13, 1996, I found that the Notice of Hearing and the hearing complied with the procedural requirements. However, I reversed the expulsion because procedural errors were made following the hearing when the board failed to make a necessary finding and failed to mail a copy of the expulsion order separately to Adam's parents.

Since there were no procedural defects with the May 13, 1996 hearing, I find no procedural error in the board adopting those findings at the September 3, 1996 hearing. See *Paul R. v. East Troy Community School District Board of Education*, Decision and Order No. 254 (June 21, 1995) and *Paul R. v. East Troy Community School District Board of Education*, Decision and Order No. 262 (October 9, 1995). Furthermore, when I stated the board might be able to correct its omissions without completely rehearing the case, I was not giving advice nor was I advocating for one party or another. I simply cited prior decisions of the State Superintendent that dealt with similar issues.

Lastly, my comment "applauding the school district's actions" was taken out of context by Adam. I was not biased or predicting the outcome of future proceedings. Rather, I was applauding the district for offering the pupil the opportunity for continued academic progress, as I often do.

In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this 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 Adam S. [REDACTED] by the East Troy Community School District Board of Education is affirmed.

Dated this 25th day of November, 1996.

John T. Benson, /s/
John T. Benson
State Superintendent of Public Instruction