

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>KENNETH J. S [REDACTED]</p> <p>by the Sheboygan Area School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-03</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 June 4, 1996 order of the Sheboygan Area School District Board of Education to expel Kenneth J. S [REDACTED] (hereinafter "pupil") from the Sheboygan Area School District from May 23, 1996 through the end of the second semester of the 1996-97 school year. This appeal was filed by the pupil's mother and was received by the Department of Public Instruction on October 10, 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 May 13, 1996 from the Superintendent of Schools of the Sheboygan Area School District. The letter advised that a hearing would be held on May 23, 1996 which could result in the pupil's expulsion from the Sheboygan Area School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in conduct while at school which endangered the health and safety of others. The letter specifically alleged that the pupil sold marijuana to another student at a North High School Expo event on Saturday evening, May 4, 1996. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The record also contains the hearing exhibits, expulsion order, proof of separate mailing of the notice of hearing and Expulsion Order to the pupil and his parents and the minutes of the hearing.

The hearing was held in closed session on May 23, 1996. The pupil and his parents appeared at the hearing. They were also represented by counsel at the hearing, but not in this appeal. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The evidence presented by the administration included written statements taken from two students in the course of the administration's investigation of the matter. Those two students' statements indicated that the pupil had sold them marijuana at North High as alleged. Specifically, one student gave money to the other student to buy the marijuana. The latter gave the money to the pupil and received marijuana in exchange. The pupil and his parents were given the opportunity to present evidence, to call witnesses, to question all witnesses and to

respond to the allegations. The school board policies concerning sale of marijuana were also admitted into the record.

After the hearing, the school board deliberated in closed session. The board found the pupil did sell marijuana to another student at school as alleged, which conduct endangered the health and safety of others. The school board further found that the interests of the school demand the student's expulsion. The order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated June 4, 1996, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the second semester of the 1996-97 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.

The pupil's mother in this appeal argues that there was insufficient evidence to support the board's findings of guilt and that the written statements of the other two students were not credible. She also argues that because the two students refused to answer any questions at the hearing regarding the marijuana sale, her son was denied a fair opportunity to cross examine his accusers.

The school officials had an obligation to investigate the matter and could properly present at the hearing written as well as oral statements taken from students in the course of that investigation. *Racine Unified School District v. Thompson*, 107 Wis.2d 657, 321 N.W.2d 334 (Ct. App 1982). The written statements from the two students in this case could certainly be viewed by the board as reliable in that the statements were self-incriminating. Although the students refused to answer additional questions at the hearing regarding the incident, their identities were revealed to the pupil and they were present at the hearing. The pupil was not unfairly denied an opportunity to rebut their statements. The credibility of witnesses is a matter for the board to determine. Because there is a reasonable view of the evidence in this case which supports the board's findings, those findings must be upheld. *Kathleen W. v. Tri-County Area*

*School District Board of Education*, Decision and Order No. 130 (May 10, 1985); *Nathan W. v. Wilmot Union High School Board of Education*, Decision and Order No. 296 (July 10, 1996).

Further, the pupil's mother argues that the district attorney "dropped all charges relating to this incident" and that the district offered insufficient academic assistance during the pupil's suspension prior to the expulsion hearing. Both of these arguments refer to matters not included in the record. In addition, neither argument is relevant to the considerations I must apply in this review.

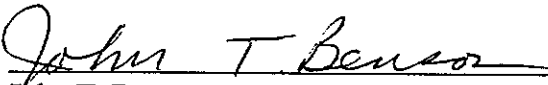
### CONCLUSIONS OF LAW

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 Kenneth J. S. [REDACTED] by the Sheboygan Area School District Board of Education is affirmed.

Dated this 9th day of December, 1996.

  
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John T. Benson  
State Superintendent of Public Instruction