

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of JOSHUA S [REDACTED] by the Beloit-Turner School District Board of Education	DECISION AND ORDER 96/97-EX-04
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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 October 30, 1996 order of the Beloit-Turner School District Board of Education to expel Joshua S [REDACTED], a tenth grade student, from the Beloit-Turner School District until his eighteenth birthday. This appeal was filed by the pupil's attorney, Jack Hoag, and was received by the Department of Public Instruction on November 14, 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 Expulsion Hearing" dated October 9, 1996 from the district administrator of the Beloit-Turner School District. The letter advised that a hearing would be held on October 29, 1996 which could result in the pupil's expulsion from the Beloit-Turner School District. The letter was sent separately to Joshua and his parents by regular and certified mail. The letter alleged that Joshua engaged in conduct while at school that endangered his safety or the well-being of other students. The letter specifically alleged that on October 4, 1996, Joshua was in possession of marijuana at school. A written summary of the rights pupils and parents possess in the expulsion hearing process was incorporated in the letter. Minutes of the school board expulsion hearing and audio tapes of the expulsion hearing are also part of the record.

The hearing was held in closed session on October 29, 1996. Joshua and his parents appeared at the hearing with counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Joshua and his parents were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found Joshua 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. 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 October 30, 1996, was mailed separately to Joshua and his parents. The order stated Joshua was expelled until his eighteenth birthday.

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 submitted briefs in this case. Joshua raises several issues for consideration.

First, Joshua argues that the expulsion hearing notice failed to allege the specific particulars of the offense as required by statute. I note that the hearing notice alleged that Joshua was in possession of marijuana at school on October 4, 1996. I find no procedural error in the notice concerning specifying the particulars of the offense.

Joshua also argues that there was insufficient evidence for the Board to conclude he had knowingly possessed marijuana at school on October 4, 1996. Joshua challenges the sufficiency of the evidence claiming that the material that was produced from his pocket was of so small a quantity that he could not have known it was in his pocket on that day.

The record reveals that on October 4, 1996, Joshua was requested by the school principal to empty his coat pockets. Joshua's pockets produced a small amount of a leafy substance which tested positive for the presence of marijuana. Joshua admitted that he probably had used marijuana sometime in the past, but denied knowing his pocket contained marijuana on that day.

It has repeatedly been held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996), *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994), and *Taiwan O.W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). Further, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996) and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). I conclude the board could reasonable have found what it did based on the evidence offered.

Lastly, Joshua argues that his conduct did not endanger anyone.

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. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (November 25, 1996), *Kirstin J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (February 21, 1992) and *Justin M. v. Ft. Atkinson School District Board of Education*, Decision and Order No. 263 (December 5, 1995). Moreover, expulsions based on possession of marijuana have been repeatedly upheld. See *Matthew K. v. Hartford Union High School District Board of Education*, Decision and Order No. 276 (March 11, 1996), *Brian C. v. Sheboygan Area School District Board of Education*, Decision and Order No. 158 (September 9, 1988) and *William S. v. Suring School District Board of Education*, Decision and Order No. 98 (June 17, 1982). In this case, I find it was reasonable to conclude Joshua’s conduct endangered the health or safety of others.

In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

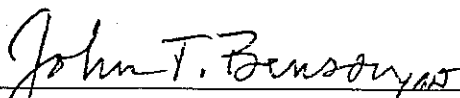
CONCLUSIONS OF LAW

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 Joshua S. [REDACTED] by the Beloit-Turner School District Board of Education is affirmed.

Dated this 14th day of January, 1997.



John T. Benson
State Superintendent of Public Instruction