

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of  STEVEN S [REDACTED]  by the Merrill Area School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-07</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 October 8, 1996 order of the Merrill Area School District Board of Education to expel Steven S [REDACTED] from the Merrill Area School District until the end of the 1997-98 school year. This appeal was filed by the pupil's attorney, Wright C. Laufenberg, and was received by the Department of Public Instruction on December 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 dated September 27, 1996 from the district administrator of the Merrill Area School District. The letter advised that a hearing would be held on October 8, 1996 which could result in the pupil's expulsion from the Merrill Area School District. The letter was sent separately to Steven and his parents by regular and certified mail. The letter alleged that Steven engaged in conduct while on school grounds that endangered the property, health or safety of others. The letter specifically alleged that on September 23, 1996, Steven was in possession of marijuana which he was smoking while on school property. A summary of the rights pupils and parents possess relative to the expulsion process was contained in the letter. Minutes of the school board expulsion hearing, an audio tape of the expulsion hearing and a transcript of the hearing are also part of the record.

The hearing was held in closed session on October 8, 1996. Steven and his father appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Steven and his father 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 Steven did engage in conduct while at school which endangered the property, health or safety of others and 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 8, 1996, was mailed separately to Steven and his parents. The order stated Steven was expelled until the end of the 1997-98 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 submitted briefs in this case. Steven raises several issues for consideration.

First, Steven argues that his conduct of smoking marijuana, by himself, outside the school did not endanger anyone. He alleges that second-hand smoke, which could hypothetically be construed as presenting a danger to others, was not present in an outdoor environment.

The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages 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 damages. *Kirsten J. v. Mukwanago School District Board of Education*, Decision and Order No. 185 (Feb. 21, 1992), *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995), and *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (Nov. 25, 1996). In this case I find it was reasonable for the board to conclude that Steven's conduct of smoking marijuana during school hours, on school property endangered the health or safety of others. Moreover, expulsions based on possession of marijuana have been repeatedly upheld. See *William S. v. Suring School District Board of Education*, Decision and Order No. 98 (June 17, 1982), *Brad S. v. Germantown School District Board of Education*, Decision and Order No. 221 (March 7, 1994), and *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995).

Next, Steven argues that a two year expulsion is too severe since it is disproportionate to the conduct and will have lifelong adverse effects on him.

As the district correctly points out, with regard to the length of the expulsion, I have repeatedly held that the length of an expulsion is within the discretion of the board as long as all the procedural requirements of sec. 120.13(1)(c), Wis. Stats., are complied with. *Brandon H. v.*

*DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993), *Amanda L. v. Hartford Union High School District Board of Education*, Decision and Order No. 257 (Aug. 3, 1995), and *Nicholè R. v. Granton Area School District Board of Education*, Decision and Order No. 301 (Sep. 19, 1996).

Steven also argues that since he has been charged under the recently revised juvenile code, and will be facing punishment in juvenile court, the school board's action of expelling him for two years is unnecessarily punitive and contravenes the legislative intent of the new juvenile code.

While I am not aware of any prohibition against a school board expelling a student for conduct that is also being addressed in juvenile court, this argument is simply not relevant to the considerations I must apply in this review.

Lastly, Steven argues that the school board violated his right to equal protection in expelling him for two years since another student who committed more dangerous behavior was only expelled for one year.

The district submits that if another student was expelled for a shorter duration for similar conduct, there may have been other factors that influenced the board's decision. For example, the prior disciplinary and academic record of a student or the degree of remorse demonstrated at an expulsion hearing could result in different periods of expulsion being assessed for different students.

I note that with respect to the length of the expulsion period, school boards can properly consider the prior disciplinary and academic records of the student. See *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No. 170 (May 22, 1990) and *Kevin M. v. Oak Creek-Franklin School District Board of Education*, Decision and Order

No. 181 (Sep 13, 1991). Moreover, as the district correctly states, I am not authorized to review whether the period assessed by a school board for expulsion is excessive or unduly harsh. *Kelly B. v. School District of Three Lakes*, Decision and Order No. 100 (Aug. 23, 1982), *Dustin L.M. v. Cedarburg School District Board of Education*, Decision and Order No. 202 (Feb. 9, 1993) and *Matthew M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (Feb. 14, 1996).

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

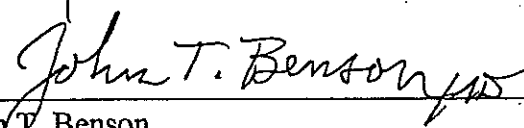
#### CONCLUSIONS OF LAW

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 Steven S [REDACTED] by the Merrill Area School District Board of Education is affirmed.

Dated this 7<sup>th</sup> day of February, 1997.

  
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John T. Benson  
State Superintendent of Public Instruction