

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of DANIEL A [REDACTED] by the Mauston School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-20</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 March 3, 1997 order of the Mauston School District Board of Education to expel the above named twelfth grade pupil from the Mauston School District until May 30, 1997. This appeal was filed by Daniel M. Berkos the pupil's attorney and was received by the Department of Public Instruction on March 14, 1997.

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 February 18, 1997 from the district administrator of the Mauston School District. The letter advised that a hearing would be held on February 27, 1997 which could result in the pupil's expulsion from the Mauston School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that the pupil violated school rules on February 17, 1997 when he carried alcohol onto school property and by consumption of an alcoholic beverage. A current copy of sec. 120.13(1)(c), Wis. Stats., accompanied the letter. Minutes of the school board expulsion hearing, and police reports surrounding the incident are part of the record.

The hearing was held in closed session on February 27, 1997. The pupil and his mother appeared at the hearing with attorney Daniel M. Berkos. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil was 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 the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others when he drove his vehicle on school property while under the influence of alcohol, carried alcohol onto school property and consumed alcohol on school property. 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 March 3, 1997, was mailed separately to the pupil and his parent. The order stated the pupil was expelled until May 30, 1997.

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 filed a brief in this case and raises several issues which require consideration. First, the pupil argues that there was no evidence to support a finding that the pupil operated a vehicle on school property. This argument challenges the sufficiency of the evidence. 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).

In this case there is no transcript of the hearing and the minutes do not reflect everything that occurred at the hearing. However, the record indicates that a police officer testified at the hearing and his police report, which is also part of the record, states the pupil admitted driving his vehicle back to the high school. I conclude the board could reasonably have found what it did based on the evidence offered.

Next, the pupil argues that even if he did drive his vehicle onto school property, he 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)

I note that the pupil admits he consumed alcohol and brought alcohol onto school grounds in his car. I find it was reasonable for the board to conclude that the pupil's conduct endangered the health or safety of others.

Lastly, the pupil argues that while possession of alcohol is an expellable offense according to the Student Handbook, sec. 120.13, Wis. Stats. does not permit the expulsion of a student solely for possession of alcohol. However, expulsions 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), *Thomas P. v. Necedah Area School District Board of Education*, Decision and Order No. 289 (May 23, 1996), and *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (November 25, 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 Daniel A [REDACTED] by the Mauston School District Board of Education is affirmed.

Dated this 8th day of May, 1997.

John T. Benson

John T. Benson
State Superintendent of Public Instruction