

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>JASON A [REDACTED]</p> <p>by the DeForest Area School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-25</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 April 3, 1997, order of the DeForest Area School District Board of Education to expel the above named pupil from the DeForest Area School District until January 20, 1998. This appeal was filed by Nancy Wettersten, the pupil's attorney and was received by the Department of Public Instruction on May 6, 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 "Amended Notice of Expulsion Hearing" dated March 21, 1997 from the district administrator of the DeForest Area School District. The letter advised that a hearing would be held on April 2, 1997 which could result in the pupil's expulsion from the DeForest Area School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that the pupil engaged in conduct while on school grounds that endangered the property, health or safety of others. The letter specifically alleged that on March 7, 1997, the pupil was in possession of a controlled substance analog (LSD look-a-like) on the premises of DeForest Middle School. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of 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 April 2, 1996. The pupil and his parents appeared at the hearing with counsel, Nancy Wettersten. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil 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 that Jason Accola 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 April 3, 1997, was mailed separately to the pupil and his parents. The order stated Jason Accola was expelled

until January 20, 1998 but that he may return to school on August 25, 1997 provided that he has a drug assessment and follows through on the recommendation.

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 raising one issue. The pupil argues that the school district did not provide sufficient evidence to find that Jason's conduct endangered the property, health or safety of others. It has been repeatedly 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. *Daniel A. v. Mauston School District Board of Education*, Decision and Order No. 324 (May 8, 1997) *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).

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. The term embraces the notion of harmful acts or actions which are detrimental or involve loss or damage. *Joshua S. v. Beloit Turner School District Board of Education*, Decision and Order No. 307 (January 14, 1997), *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (November 25, 1996), *Kristin J. V. Mukwanago School District Board of Education*, Decision and Order No. 185 (February 21, 1992). Moreover, expulsions based upon possession of look-a-like controlled substances have been upheld. *Miranda V. v. Howard-Suamico School District Board of Education*, Decision and Order No. 224, March 22, 1994; *Dale C. v. Central Westosha School District Board of Education*,

Decision and Order No. 137, May 15, 1986. In this case, I find it was reasonable to conclude that Joshua's conduct endangered the health and safety of others.

The school began its investigation of Jason upon a report that he was attempting to sell blotters of LSD to students. Specifically, a student reported that on March 5, 1997, Jason offered to sell him one "blotter" for \$7.00. This student also reported seeing four white pieces of paper in the photo sleeve of Jason's wallet. Two "blotters" consistent in appearance and packaging with LSD were found in Jason's possession. Upon drug analysis, the blotters tested negative for LSD.

The school district presented testimony from Mike McHugh, the DeForest Middle School Assistant Principal for three years. He testified that Jason's conduct threatened the safety of unknowing or innocent students, that possession of even look-a-like substances creates the idea that it is permissible to have drugs in school and that Jason's possession in particular caused a "rumor mill" problem. He indicated this behavior could also result in problems stemming from students exchanging money. The school district also presented testimony from School Superintendent Bette Lang. She testified that a danger of Jason's behavior was that use of a look-a-like substance can give a student a false sense of security, thus posing a future danger. Detective Tomlin of the DeForest Police Department also testified as to the dangers of possession of look-a-like substances.

Thus, it was reasonable to conclude that Jason's possession of a look-a-like substance endangered the property, 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.

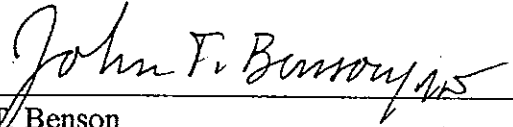
CONCLUSIONS OF LAW

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 Jason A [REDACTED] by the DeForest Area School District Board of Education is affirmed.

Dated this 26th day of June, 1997.



John F. Benson
State Superintendent of Public Instruction