

THE STATE OF WISCONSIN  
BEFORE  
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of  Joshua R. [REDACTED] by the Edgerton School District Board of Education	DECISION AND ORDER 96/97-EX- 27
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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 May 12, 1997 order of the Edgerton School District Board of Education to expel the above named pupil from the Edgerton School District for the remainder of the 1996-97 school year and the 1997-98 school year. This appeal was filed by Marie Cross, the pupil's parent and was received by the Department of Public Instruction on June 11, 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 April 28, 1997 from the district administrator of the Edgerton School District. The letter advised that a hearing would be held on May 12, 1997 which could result in the pupil's expulsion from the Edgerton School District. The letter was sent separately to the pupil and his parent by regular and certified mail. The letter alleged that the pupil engaged in conduct while on school grounds that endangered his safety or the well-being of other students. The letter specifically alleged that on April 25, 1997, while on the grounds of Edgerton Senior High School, Joshua possessed marijuana and a marijuana pipe. A current copy of sec. 120.13(1)(c), Wis. Stats., was included with the letter. Minutes of the school board expulsion hearing and a transcript of the hearing are also part of the record.

The hearing was held in closed session on May 12, 1997. The pupil and his parents appeared at the hearing without counsel. 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 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 May 12, 1997, was mailed separately to the pupil and his parents. The order stated Joshua was expelled for the remainder of

the 1996-97 school year and the 1997-98 school year with the opportunity of early readmission after the 1st semester 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.

The appeal letter in this case raises several issues which require consideration. Ms. Cross first states that the expulsion was contrary to the school's AODA policy regarding discipline as stated in the student handbook. She also asserts that because Joshua has fulfilled all of the school board's recommendations that he should be readmitted at the beginning of the school year rather than at second semester as indicated in the school board's expulsion order.

Whether or not the school district had or followed an AODA policy is irrelevant to my review. . See *Donald P. v. Westby Area School District Board of Education*, Decision and Order No. 299, August 9, 1996; *Kimberly K. v. Oak Creek-Franklin School District Board of Education*, Decision and Order No. 268, January 8, 1996. Thus, the school district's policy is not determinative or controlling. Joshua's possession of marijuana was a violation of law that endangered the property, safety and health of other students and the school district's interests demanded expulsion. Expulsions based upon possession of marijuana have been repeatedly upheld. See *Joshua S. v. Beloit -Turner School District Board of Education*, Decision and Order no. 307, January 14, 1997; *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. Thus, it was reasonable to conclude Joshua's conduct endangered the health or safety of others.

While I commend Joshua and his mother for diligently pursuing alcohol education classes and I commend Joshua for remaining drug and alcohol free, the decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at 120.13(1)(c), Wis. Stats.

*Tony R v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995); *Jason M v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 294 (June 24, 1996; *Troy Y. v. Burlington School District Board of Education*, Decision and Order No 309 (January 21, 1997).

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 R [REDACTED] by the Edgerton High School District Board of Education is affirmed.

Dated this 29th day of July, 1997.

  
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John T. Benson  
State Superintendent of Public Instruction