

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Nathaniel S [REDACTED]</p> <p>by the Wausau School District Board of Education</p>	<p>DECISION AND ORDER 97/98-EX-11</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 December 23, 1997 order of the Wausau School District Board of Education to expel the above named pupil from the Wausau School District until the beginning of the 2nd semester of the 1998--99 school year, with the opportunity for early conditional re-admission no earlier than the beginning of the 1st semester of the 1998-99 school year. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on January 26, 1998.

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 December 4, 1997 from the Wausau School District. The letter advised that a hearing would be held on December 16, 1997 which could result in the pupil's expulsion from the Wausau School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of a school authority which endangered the property, health or safety of others. The letter specifically alleged that 1) on November 25, 1997, Nathaniel possessed marijuana while on the premises of Wausau East High School and 2) he had sold marijuana to another East High School student approximately three weeks earlier while on the premises of Wausau East High School. Minutes of the school board expulsion hearing, an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on December 16, 1997. The pupil appeared, represented by Attorney Richard Lawson, and the pupil's parents appeared at the hearing. 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 the pupil 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 December 23, 1997, was mailed separately to the pupil and his parents. The order stated Nathaniel was expelled until the beginning of the 2nd semester of the 1998-99 school year, with the opportunity for early conditional re-admission no earlier than the beginning of the 1st semester of the 1998-99 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.

Generally, the appeal letter challenges the school board's exercise of discretion. First, the pupil alleges that the district violated its own discipline policy. The school district's policy, however, is not a part of this expulsion record. My review is limited to the actual hearing record and generally matters not submitted to the board at the expulsion hearing will not be considered by the State Superintendent on appeal. *Omar C. v. Whitewater School District Board of Education*, Decision and Order No. 258 (August 11, 1995; *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995; *Jason K. v. Franklin School District Board of Education*, Decision and Order No. 314 (March 21, 1997).

Furthermore, even if the board's policy did not *require* the expulsion of a student in this circumstance, the board has discretion to expel because Nathaniel's conduct violated state law. Nathaniel was found to have both possessed marijuana at school and to have sold marijuana at school. On November 25, 1997, in the course of investigating the sale of drugs by several students at Wausau East High School, the Dean of Students received information that Nathaniel was in possession of marijuana. Upon questioning, Nathaniel revealed a bag of marijuana that was hidden in his sock. A search of Nathaniel's gym locker revealed a pipe that smelled of burnt marijuana. As the investigation continued, another student admitted that he gave Nathaniel a bag of marijuana while at school so that Nathaniel could sell the marijuana to another person. Upon questioning, Nathaniel admitted that approximately three weeks earlier he received this marijuana and then sold it to another student at East High School for \$20.

Nathaniel's possession of marijuana and delivery of marijuana were violations 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). Given the evidence considered by the board, it was reasonable to conclude Nathaniel's conduct endangered the health or safety of others. The school board's decision was based upon the evidence presented and was not an abuse of discretion.

Second, the pupil alleges that the expulsion should be reversed because he was given different, more severe, treatment than other students in similar circumstances. It has repeatedly been held that 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 sec. 120.13(1)(c) Wis. Stats. *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993); *Tony R. v. Lake Geneva Joint No. 1 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). With respect to the fairness and unevenness of disciplinary measures imposed by schools, I am without authority to address those issues. *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988); *Douglas S. v. Neenah School*

District Board of Education, Decision and Order No. 162 (May 23, 1989) and Danielle W. v. Barron Area School District Board of Education, Decision and Order No. 310 (January 1997).

Finally, the pupil alleges that because no other school within commuting distance will accept him, the expulsion decision should be reversed. School districts have authority to refuse to accept any student during the term of his expulsion from another school district. Sec. 120.13(1)(f), Stats. Thus, while Nathaniel may have difficulty enrolling in another school, it is not a basis for reversing this expulsion.

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

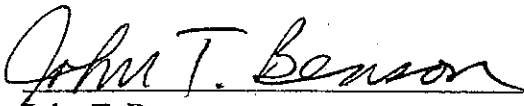
CONCLUSIONS OF LAW

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 Nathaniel S [REDACTED] by the Wausau School District Board of Education is affirmed.

Dated this 25th day of March, 1998.



John T. Benson
State Superintendent of Public Instruction