THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of SHANNON T[redacted] by the Milwaukee Public School District Board of Education	DECISION AND ORDER 97/98-EX-15

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 January 28, 1998 order of the Milwaukee Public School District Board of Education to expel the above named pupil from the Milwaukee Public School District until June 11, 1998. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on February 16, 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. 119.25(2)(b), 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 January 7, 1998 from the Student Services coordinator of the Milwaukee Public School District. The letter advised that a hearing would be held on January 15, 1998 which could result in the pupil's expulsion from the Milwaukee Public School District. The letter was sent separately to the pupil and his parents. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health, and safety of others. The letter specifically alleged Shannon possessed marijuana on December 3, 1997 at the Kosciuszko Middle School. A transcript of the hearing before the independent hearing panel is also part of the record.

The hearing was held in closed session on January 15, 1998. 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 hearing panel deliberated in closed session. The panel 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 hearing panel further found that the interests of the school demand the student's expulsion. The recommended order for expulsion containing the Findings of Fact and Conclusions of Law, dated January 15, 1998, was mailed separately to the pupil and his parents. The order stated Shannon was expelled until June 11, 1998. On January 28, 1998, the Milwaukee Public School Board of School Directors approved the independent hearing panel's 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 appeal letter in this case raises three issues which require consideration. The parent asserts that Shannon was entitled to be assigned an advocate at the expulsion hearing, that the

evidence was insufficient to support the panel's findings and that the punishment was harsh and excessive.

The parent alleges that because Shannon was not represented by an attorney or other kind of advocate, the hearing violated due process. The State Superintendent is generally limited to reviewing *procedural due process. Racine Unified School District v. Thompson*, supra; *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I,* supra. While a student is entitled to due process before being expelled, see *Goss v. Lopez,* 419 U. S. 565, 573-76, 95 S. Ct. 729, 735-737, 42 L.Ed. 2d 725 (1975), due process is not to be equated with that essential to a criminal trial or a juvenile court delinquency proceeding. *Keller v.* Fochs, 385 F. Supp. 262, 265 (ED Wis. 1074), citing *Linwood v. Board of Education City of Peoria, School District No.* 150, 463 F.2d 763, 770 (7th Cir. 1972). Sec. 119.25(2)(b), Stats., provides that a pupil, and his parents, *may* be represented by counsel, however, it does not require an attorney to be appointed at public expense to represent the pupil. Shannon was advised of this statutory right as it was included with the notice of expulsion hearing, Thus, Shannon was afforded the required procedural due process.

Next, the parent challenges the sufficiency of the evidence used to find Shannon guilty of engaging in conduct that 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).

Evidence produced at the hearing included the eyewitness testimony of Assistant Principal Borchardt who observed Shannon and another student involved in a struggle over something. He spoke to both Shannon and the other student about he struggle. Shannon admitted the substance, which was recovered, was in his possession. Mr. Borchardt relayed that Shannon claimed he found it on the floor, however, the other student reported that Shannon told him he had it in his pocket. Later, at a pre-expulsion meeting, Shannon then reported that the substance was planted in his pocket by a cousin. Mr. Borchardt testified that that he believed beyond a reasonable doubt that Shannon knew he had the substance in his pocket and that he talked to the other student about it. Mr. Borchardt testified that he referred the matter to the police. He reported that the police performed a test of the substance and it was marijuana.

I have repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Aron E. P. v. Sturgeon Bay School District Board of Education,* Decision and Order No. 341 (December 17, 1997); *Carlos M. v. West Allis-West Milwaukee School District Board of Education,* Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education,* Decision and Order No. 170 (June 22, 1990); *John*

C. B. v. Milwaukee School District Board of Education, Decision and Order No. 116 (October 31, 1983). Thus, the independent hearing panel could rely upon Mr. Borchardt's testimony.

Expulsions based upon possession of marijuana have repeatedly been 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 panel, it was reasonable to conclude Shannon'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.

Finally, the parent alleges that the punishment, expulsion through June 11, 1998, was too harsh and excessive. 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. *Nathaniel S. v. Wausau School District,* Decision and Order No. 350 (March 25, 1998); *Troy Y v. Burlington School District Board of Education,* Decision and Order No. 309 (January 21, 1997); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education,* Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education,* Decision and Order No. 206 (May 3, 1993). With respect to the fairness and unevenness of disciplinary measures imposed by schools, I am without authority to address those issues. *Nathaniel S. v. Wausau School District,* Decision and Order No. 350 (March 25, 1998);

Danielle W. v. Barron Area School District Board of Education, Decision and Order No. 310 (January 1997); *Douglas S. v. Neenah School District Board of Education*, Decision and Order No. 162 (May 23, 1989); *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988).

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 Shannon T[redacted] by the Milwaukee Public School District Board of Education is affirmed.

Dated this 16th day of April, 1998.

John T. Benson
State Superintendent of Public Instruction