

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Charles E. [REDACTED]</p> <p>by the Elkhart Lake-Glenbeulah School District Board of Education</p>	<p>DECISION AND ORDER 97/98-EX-16</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 November 10, 1997 order of the Elkhart Lake-Glenbeulah School District Board of Education to expel the above named pupil from the Elkhart Lake-Glenbeulah School District for the 1997-98 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on February 27, 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 from the district administrator of the Elkhart Lake-Glenbeulah School District. The letter advised that a hearing would be held on November 6, 1998 which could result in the pupil's expulsion from the Elkhart Lake-Glenbeulah 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 at school or under school supervision which endangered the property, health or safety of others. The letter specifically alleged Charles possessed marijuana while at the Middle School on October 22, 1997. 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 November 6, 1998. The pupil and his parents appeared at the hearing without counsel. At the hearing the school district administration accepted an admission by Charles 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 November 10, 1997, was mailed separately to the pupil and his parents. The order stated the pupil was expelled for 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 two issues which requires consideration. First, the parent alleges that the board did not follow proper procedures at the expulsion hearing. Second,

the parent alleges that there was insufficient evidence presented to find that Charles knowingly possessed marijuana and thus insufficient evidence to expel him.

The parent alleges that because the board did not ask Charles or the parents whether they understood the pupil's rights and procedures of the hearing that the expulsion should be overturned. Due process in a student expulsion hearing need not take the form of a judicial or quasi-judicial trial and the proceedings cannot be equated to a criminal trial or juvenile delinquency proceeding. *Linwood v. Board of Education*, 463 F.2d 763, 770 (7th Cir. 1972). I have reviewed the written transcript and find no procedural violations. At the beginning of the hearing, Mr. Wyatt, the school board president, read to Charles the rights he had during the hearing. The information read to Charles repeated the statutory rights pursuant to sec. 120.13(1)(c), Stats., that were contained in the notice of expulsion hearing letter sent separately to Charles and his parent on October 27, 1997. In addition to the statutory rights, Mr. Wyatt informed him of the right not to testify as to any matter which may implicate him in any criminal matter. He also explained the procedures that would be employed during the hearing. This information was also contained in the October 27, 1997 notice of expulsion letter. Following the reading of "rights and procedures" Mr. Wyatt asked Charles if he had any questions as to the procedures to be followed and Charles responded "No." While this litany of rights and procedures is not required, it is very helpful to everyone involved. Even if it were required, Mr. Wyatt gave Charles an opportunity to ask questions, however, Charles stated he had no questions. Based upon Charles' answer, it can be deduced that he understood what Mr. Wyatt had read. Furthermore, while the hearing was a formal expulsion hearing, there is no evidence in the record that anyone was prevented from speaking or asking questions. If the parents did not understand

something Mr. Wyatt said, they could have raised the question then. Finally, it is not alleged that the parents or Charles failed to understand anything the Mr. Wyatt read, only that an inquiry was not made. I do not find any error in the procedure used by the board.

The second issue raised by the pupil's parent surrounds the procedure used by the administration and the board to prove that Charles was guilty of the conduct alleged. In essence, the parent alleges that Charles' admission was not a knowing admission and that absent the admission there was insufficient evidence to find him guilty. At the beginning of the administration's case, the District Administrator, Mr. Magar, related the information he had received regarding the allegation of possession of marijuana by Charles. He indicated that a police liaison officer conducted the investigation. He reported that in the course of the investigation, Charles admitted that he possessed marijuana on school grounds. Following Mr. Magar's opening statement, the following exchange took place:

MR.WYATT: I will ask you, Charles, do you understand the allegations against you?

CHARLES: Yes.

MR.WYATT: Now I will ask you do you admit to that the allegations against you are true or do you deny this allegation?

CHARLES: Yes, they are.

MR.WYATT: They are true?

CHARLES: Yeah.

Charles' father than interrupted Mr. Wyatt's next sentence to make a comment. Mr. Wyatt allowed the father to comment that he did not believe that Charles knew what the package was

"for sure" - he was just taking the word of the person who gave it to him. Another exchanged occurred between Mr. Wyatt and Charles.

MR WYATT: Charles, I have to ask you, did you suspect that there was marijuana in this package?

CHARLES: I don't know.

MR.WYATT: Did you have reasonable belief that there was something like that in there?

CHARLES: No.

MR.WYATT: Does anybody else have any questions?

MR. BULEBOSH: Are we allowed to ask the circumstances, what the package looked like, how it was found, anything?

MR.WYATT: Well, we need -- We do need to ask one more question. Well actually do you have -- Let me go back and ask the question again. Do you admit the allegation or deny it? Did you knowingly have marijuana on your possession or do you deny it?

CHARLES: Yes, I did, yes.

MR.WYATT: You admit it?

MR GUSE (School attorney): You're aware that it was marijuana?

CHARLES: I wasn't sure until he told me it was.

Mr. Wyatt then surmised, on the record, that Charles was denying he knew he had marijuana in his possession. Mr. Wyatt then suggested they move on to the presentation of the administration's case regarding the possession of marijuana. At this point it is apparent that Charles and his father were having an off-the-record discussion. Mr. Wyatt asked them if they

needed time to talk. Charles' father indicated that he just wanted to make sure Charles "was answering what was intended". Mr. Wyatt interrupted the father stating:

MR. WYATT: I want to make sure that he understands the allegation is that he knowingly had marijuana in his possession on school property, and my understanding of your answer was that you did not knowingly know that, you did not knowingly have it?

CHARLES: When I received it, no, but after he told me then when I first got it, then I didn't know but --

MR. GUSE: At what point did he tell you what it was?

CHARLES: Right after he handed it to me, he says do you know what this is, I said no, and he told me it was marijuana.

Mr. Guse then continued to question Charles about the timing of Charles' knowledge and Charles admitted that after he had possession of the package, but before being confronted by school authority, he knew the package contained marijuana.

The school board is in the best position to judge credibility. *Nicholas K. v. Hudson School District Board of Education*, Decision and Order No. 305 (December 5, 1996); *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); *William S. v. Tri-County Area School District Board of Education*, Decision and Order No. 132 (June 21, 1985). 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). Thus, 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); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994).

It was reasonable for the board to conclude that Charles knew, at that time he was found to be in possession of marijuana that he knew it was marijuana.

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

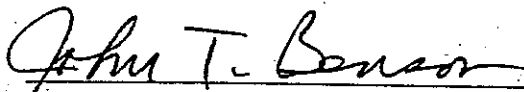
CONCLUSIONS OF LAW

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 Charles E. [REDACTED] by the Elkhart Lake-Glenbeulah School District Board of Education is affirmed.

Dated this 20th day of April, 1998.



John T. Benson

State Superintendent of Public Instruction