

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Justin S [REDACTED] by the Marshfield School District Board of Education</p>	<p>DECISION AND ORDER 97/98-EX-21</p>
---	---

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 February 9, 1998 order of the Marshfield School District Board of Education to expel the above named pupil from the Marshfield School District until December 18, 1998 with an opportunity for conditional readmission after March 25, 1998. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on April 3, 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 January 30, 1998 from the district administrator of the Marshfield School District. The letter advised that a hearing would be held on February 9, 1998 which could result in the pupil's expulsion from the Marshfield 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 the supervision of school authority which endangered the property, health or safety of others. The letter specifically alleged possession of marijuana at school. 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 February 9, 1998. The pupil and his parents appeared at the hearing represented by 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 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 February 9, 1998, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until December 18, 1998 with an opportunity for conditional readmission after March 25, 1998.

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 require consideration. First, the pupil alleges that he was denied due process because he was not given notice, prior to his conduct, that

he could be expelled for possessing marijuana at school.¹ The school district's policy indicated that a pupil is subject to a five day suspension for possession or use of narcotics at school. The policy also states that a pupil who endangers the health, safety or welfare of others at school is subject to expulsion. The procedural due process due a student facing expulsion or long term suspension is identified in *Goss v. Lopez*, 419 U. S. 565, 573-76, 95 S.Ct. 729, 735-737, 42 L.Ed. 2d 725 (1975). 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). Justin was given notice of the charges and an opportunity to respond. Furthermore, all other statutory procedural requirements were met.

Whether or not the school district had or followed an AODA policy is irrelevant to my review. See *Joshua R. v. Edgerton School District*, Decision and Order No. 330 (July 29, 1997); *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. Justin'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 R. v. Edgerton School District*, Decision and Order No. 330 (July 29, 1997); *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*,

¹ The pupil alleges a constitutional due process right, apparently beyond the procedural due process guaranteed by *Goss*. Constitutional claims are generally beyond the authority of the State Superintendent, therefore, I defer that particular argument to circuit court for possible review.

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 Justin's conduct endangered the health or safety of others.

Secondly, the pupil alleges that the board did not follow its policy regarding treatment rather than punishment of a pupil who uses drugs. As stated earlier, the school board's policies in this situation are irrelevant to my determination. I am not authorized to review, approve or disapprove of school policy, I am only authorized to review expulsion decisions to ensure that the pupil has been provided adequate procedural due process. 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. *Joshua R. v. Edgerton School District*, Decision and Order No. 330 (July 29, 1997); *Troy Y. v. Burlington School District Board of Education*, Decision and Order No 309 (January 21, 1997); *Jason M v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Tony R v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

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

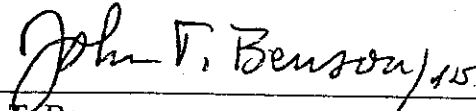
CONCLUSIONS OF LAW

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 Justin S [redacted] by the Marshfield School District Board of Education is affirmed.

Dated this 27th day of May, 1998.



John F. Benson
State Superintendent of Public Instruction