

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of  Kevin M [REDACTED]  by the Oak Creek-Franklin School District Board of Education</p>	<p>DECISION AND ORDER 97/98 EX 32</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 June 6, 1998 order of the Oak Creek-Franklin School District Board of Education to expel the above named pupil from the Oak Creek-Franklin School District through the 1998-99 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on August 18, 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 May 11, 1998 from the district administrator of the Oak Creek-Franklin School District. The letter advised that a hearing would be held on May 18, 1998 which could result in the pupil's expulsion from the Oak Creek-Franklin School District. The letter was sent separately to the pupil and his parents by certified mail.<sup>1</sup> 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 that Kevin was in possession of marijuana at school on May 5, 1998. Minutes of the school board expulsion hearing and a copy of the exhibits used at the hearing were submitted to the department.

The hearing was held in closed session on May 18, 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 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 June 6, 1998, was mailed

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<sup>1</sup> While the school district has not provided copies of the certified mail receipt nor an affidavit confirming that the notice was sent separately to the pupil and his parents, the attorney for the school district has stated in his brief that the notice was mailed separately, via certified mail, to the pupil and his parents. There is no argument made by the pupil or his parents that separate notice was not received and the record is clear that both did receive notice and attend the hearing. Given the absence of any objection by the pupil or his parents, I find that notice was sent to separately to the pupil and his parents.

separately to the pupil and his parents. The order stated the pupil was expelled through the 1998-99 school year. The board also ordered that Kevin was permitted to return to school on a probationary basis on January 4, 1999 if he completed an AODA screening. The board further ordered that the expulsion be would be expunged from Kevin's pupil record when he leaves the school district, if he returned to school on January 4, 1999, had completed the AODA screening and was not found to have committed a suspendable offense between May 18, 1998 and the end 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.

The appeal letter in this case raises two issues which requires consideration. First, the pupil's parent alleges that the punishment imposed by the school district was too severe. 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*, 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). 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).

Secondly, the parent alleges that there was insufficient evidence to support the finding that Kevin possessed marijuana on school grounds. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *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. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *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).

The evidence submitted to the board included a presentation of written documents "Statement of Violation", "Summary of Evidence", and "Administrative Recommendation" as well as oral testimony provided by Associate Principal Ed Mittag. These written documents were summaries of reports that had been prepared by the witnesses to the event, Mr. Mankowski and Ms. Fisher. In summary, the board was presented with the following information. Mr. Mankowski, at teacher at Oak Creek High School, smelled marijuana smoke in the boys' "pool" locker room at approximately 1:40pm on May 5, 1998. He approached the two students in the locker room, Kevin and another student. Kevin had a bag of marijuana in his hand. Ms. Fisher,

school safety liaison, was called to the locker room. Both boys were removed from the area. Mr. Mittag interviewed Kevin. Kevin stated that he found the marijuana in a locker. Kevin emptied his pockets in front of Mr. Mittag and a single white smoking paper, commonly used to smoke marijuana, was found in his pocket. A reasonable view of this evidence sustains the board's findings.

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

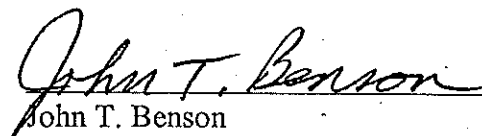
#### CONCLUSIONS OF LAW

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 Kevin M [REDACTED] by the Oak Creek-Franklin School District Board of Education is affirmed.

Dated this 15th day of October, 1998.

  
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John T. Benson  
State Superintendent of Public Instruction