

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Muranda R. [REDACTED]</p> <p>by the Winneconne Community School District Board of Education</p>	<p>DECISION AND ORDER 98/99 EX-21</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 May 17, 1999 order of the Winneconne Community School District Board of Education to expel the above-named pupil from the school district through the end of the first semester of the 1999-2000 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on June 3, 1999.

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 3, 1999, from the district administrator of the Winneconne Community School District. The letter advised that a hearing would be held on May 10, 1999 that could result in the pupil's expulsion from the Winneconne Community School District. The letter was sent separately to the pupil and her parents by 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 that she intentionally concealed a pipe containing marijuana residue in another student's jacket while on school grounds on April 23, 1999. Minutes of the school board expulsion hearing and an audiotape of the expulsion are also part of the record.

The hearing was held in closed session on May 10, 1999. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 May 17, 1999, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the end of the first semester of the 1999-2000 school year. The order allowed the pupil to

re-enroll for the first semester of the 1999-2000 school year if she completed an AODA assessment and necessary treatment and successfully completed the studies provided to her by the school district during the period of expulsion.

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 that may be the basis for an expulsion and sets out specific procedures that 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 one issue that requires consideration. The parents challenge the district's finding that Muranda's conduct endangered the health, safety, welfare or education of others. According to the record provided, a pipe containing marijuana residue was found in another student's jacket during a school locker search on Friday, April 23, 1999. Muranda admitted that the pipe and residue found in the jacket was hers. She admitted that she borrowed the other student's jacket on Sunday night, April 18, 1999 and left the marijuana pipe in it. She also admitted that, on Wednesday, April 21, she told the owner of the jacket that she would take the pipe out of the jacket but forgot to do it.

Expulsions based upon possession of marijuana have previously been 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. While Muranda did not have the marijuana in her possession at the time it was found, it was her actions that put the marijuana in the pocket. Furthermore, there was evidence that she knew the pipe was in the jacket that was at school. Thus, it was reasonable to conclude Muranda's conduct endangered the property, health, or safety of others.

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

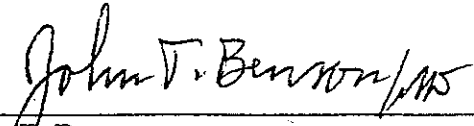
CONCLUSIONS OF LAW

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 Muranda P [REDACTED] by the Winneconne Community School District Board of Education is affirmed.

Dated this 2nd day of August, 1999.



John T. Benson
State Superintendent of Public Instruction