

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Julia M. by Hamilton School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 99/00 EX 08</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), Stats., from the order of the Hamilton School District Board of Education to expel the above-named twelfth-grade pupil from the Hamilton School District. This appeal was filed by the pupil and was received by the Department of Public Instruction on February 15, 2000.

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), 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 12, 2000, from the district administrator of the Hamilton School District. The letter advised that a hearing would be held on January 18, 2000 that could result in the pupil's expulsion from the Hamilton 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 that endangered the property, health, or safety of others or that she engaged in conduct while not at school or not under the supervision of school authority that endangered the property, health, or safety of others at school. The letter specifically alleged that Julia negotiated the sale of marijuana on school grounds over several days during Photographic Expressions class during the week of December 6, 1999 and sold the marijuana while off school grounds on Saturday, December 11, 1999, to another Hamilton High School student. This student delivered the marijuana to other Hamilton High School students at school on December 14, 1999. 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 January 18, 2000. The pupil, her parents and their attorney, Robert Sutton, appeared at the hearing. 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

that endangered the property, health, or safety of others. The board also found she engaged in conduct while not at school or not under the supervision of school authority that endangered the property, health, or safety of others at school. 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 January 25, 2000, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through her 21st birthday.

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), 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), 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 that require consideration. First, the pupil alleges the board improperly relied upon Julia's confession. Secondly, the pupil alleges the expulsion was not consistent with the board's policy.

The school's investigation began when it discovered that another student had marijuana on school grounds. That student admitted Julia sold him the marijuana at his home on Saturday. The school, with the assistance of the school liaison officer, interviewed Julia, who first denied any knowledge of the marijuana. She subsequently admitted she negotiated the sale of the marijuana while on school grounds and transferred the marijuana to the other student on Saturday.

The pupil alleges this statement was made without the benefit of *Miranda* warnings. However, there is no testimony in the transcript of the expulsion hearing to support this contention. When the school administrator who was present for the interview was questioned, she said she did not know if the warnings were given. No one else testified about the statement. Regardless, whether *Miranda* warnings were given or not is irrelevant to the proceeding. It was not improper for the school board to rely on evidence that resulted from the interview. Expulsion hearings are not criminal proceedings. The exclusionary rule, which in criminal cases may demand the exclusion of illegally obtained evidence, does not apply to administrative expulsion hearings. See e.g. *In the Interest of Thomas J.W.*, 213 Wis. 2d 264, 276 (Ct. App. 1997); *State v. Carpenter*, 197 Wis. 2d 252, 541, N.W. 2d 05 (1995); *State ex re. Struzik v. DHSS*, 77 Wis. 2d 216, 221 (1977). This principle has been consistently applied in expulsion

hearings. *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order No. 395 (August 16, 1999); *Leo P. v. Whitewater Unified School District Board of Education*, Decision and Order No. 351 (March 31, 1998); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

The board was free to determine whether the admission was reliable. This is a credibility determination that is solely within the discretion of the board.

The second issue raised by the pupil concerns the school district's policy regarding drug and alcohol abuse. The pupil claims the decision to expel was contrary to the student handbook. Hamilton School District Policy 443.4 – Rule (2) , paragraph A, subparagraph 4, provides a guideline when a student sells or distributes alcohol or drugs:

Selling and/or distribution of intoxicants (including alcohol), drugs (including look-a-like drugs or inhalants):

- a. Contact police (if the conduct is a law violation)
 - b. Contact parent or guardian
 - c. Suspension
 - d. Contact Student Assistance Program
 - e. Refer to Hamilton Board of Education for expulsion
- Hamilton School District Policy 443.4 – Rule(2), A.4.

The handbook that is distributed to each pupil states:

It is against school policy and law to possess, distribute or consume alcohol or other drugs on school property. ... Any violation of these rules can result in suspension, expulsion and referral to the appropriate law enforcement authorities.

Thus, the school district's decision to recommend expulsion was consistent with district policy and the student handbook.

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

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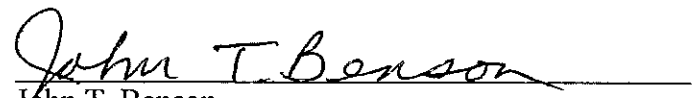
CONCLUSIONS OF LAW

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), Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Julia Mc by the Hamilton School District Board of Education is affirmed.

Dated at Madison, Wisconsin on April 11, 2000.


John T. Benson
State Superintendent of Public Instruction