THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Jared K. by West Allis School District Board of Education	DECISION AND ORDER Appeal No.: 99/00 EX 16

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the West Allis School District Board of Education to expel the above-named pupil from the West Allis School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 2, 2000.

In accordance with the provisions of Wis. Adm. Code § PI 1.04(5), 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 § 120.13(1)(c). 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 March 13, 2000, from the principal of Nathan Hale High School in the West Allis School District. The letter advised that a hearing would be held on March 29, 2000 that could result in the pupil's

expulsion from the West Allis School District. The letter was sent separately to the pupil and his 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; or, that he engaged in conduct, while not at school or while not under the supervision of a school authority, which endangered the property, health, or safety of others. The administration also alleged that the conduct violated the school's Pupil Code of Rights and Responsibilities and Wis. Stats. § 120.13.[1] The letter specifically alleged Jared was under the influence of an illegal drug on March 3, 2000, while on a school field trip. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are part of the record.

The hearing was held in closed session on March 29, 2000. The pupil and his parents appeared at the hearing represented by an attorney. 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 April 3, 2000, was mailed

[1] A single violation of rules, without meeting any other expulsion criteria listed in §120.13(1)(c)1., 2. or 2m., does not meet the criteria for expulsion concerning repeated violation of rules. Furthermore, conduct that does not occur at school or while under the supervision of a school authority must endanger the health, property, or safety of others at school, others who are under the school's authority, employees of the school, or members of the school board to meet the criteria for expulsion under §120.13(1)(c)1. The language used in the notice of expulsion concerning conduct that did not occur under the supervision of a school authority does not accurately recite the language of the statute. However, neither of these errors requires the expulsion to be overturned. Neither criteria was used as a basis for expulsion in the expulsion order prepared by the school board.

separately to the pupil and his parents. The order stated the pupil was expelled through the first semester of the 2000-2001 school year with an opportunity for conditional readmission at the beginning of the 2000-2001 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 § 120.13(1)(c), 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 § 120.13(1)(c). 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's mother alleges there was insufficient evidence to support a finding that Jared's conduct endangered the health, safety, or property of others. In support of her argument, she states that Jared took one puff of marijuana but that he did not destroy property or cause any trouble to any teachers or other students. 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 term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages, the chance of loss or injury, or the capability of producing death or great bodily harm. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (Nov. 25, 1996); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995); and *Kirsten J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (Feb. 21, 1992). The state superintendent has repeatedly upheld expulsions that have found possession of marijuana at

school endangers the health, safety, and property of others. 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).

On March 3, 2000, Jared and his classmates were in Madison on a band field trip. One of Jared's classmates brought marijuana along. Jared knew the other student brought the marijuana and that the other student intended to smoke it while on the field trip. While waiting for the bus to return to West Allis, Jared and three others went into the Capitol's third-floor bathroom and smoked the marijuana. Jared admitted taking one or two hits of the marijuana. While the students were in the bathroom, the band teacher walked by the bathroom and smelled marijuana smoke. When Jared and another student walked past her in the hallway, she detected an odor of marijuana about them. The band teacher called the school for advice on how to handle the situation. She was advised to wait until the bus returned to West Allis and have the police investigate. The police met the bus when it returned to West Allis. The board's determination that this conduct endangered the health, safety, or property of others is reasonable and will not be overturned.

Secondly, the pupil's mother alleges that the board had predetermined to expel Jared. In support of this argument, she states that the board did exactly what the district administrator told her was likely to happen. However, there is no indication in the record the board predetermined the outcome of Jared's case. Jared was given a full opportunity to examine the administration's

witnesses and present evidence on his own behalf. Furthermore, the law presumes that school board members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board,* 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors,* 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied,* 370 U.S. 720 (1962). The fact that the board agreed with the district administrator's recommendation does not prove, or even imply, that the board predetermined the result.

In reviewing the record in this case, I find the school district did comply 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 did comply with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jared K by the West Allis School District Board of Education is affirmed.

Dated at Madison, Wisconsin, on June 30, 2000.

John T. Benson

John T. Benson
State Superintendent of Public Instruction