

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p style="text-align: center;">Athena S:</p> <p>by School District of Omro Board of Education</p>	<p style="text-align: center;">DECISION AND ORDER</p> <p style="text-align: center;">Appeal No.: 00/01 EX 06</p>
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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 School District of Omro Board of Education to expel the above-named pupil from the School District of Omro. This appeal was filed by the pupil and received by the Department of Public Instruction on February 21, 2001.

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 January 4, 2001, from the district administrator of the School District of Omro. The letter advised a hearing would be held on January 10, 2001 that could result in the pupil's expulsion from the School District of Omro through her 21st birthday. 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 and/or endangered the property, health, or safety of any employee or school board member of the district. The letter specifically alleged Athena was in possession of drug paraphernalia (a "pot pipe") on school premises on December 19, 2001. Minutes of the school board expulsion hearing and audiotape of the expulsion hearing are part of the record. The hearing was held in closed session on January 10, 2001. 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 including the property, health, or safety of any employee or school board member of the district. 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 the school board, dated January 25, 2001, 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 2001-2002 school year. The expulsion order also set forth conditions Athena must meet if she wishes to apply for early readmission to school.

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 several issues requiring consideration. First, Athena's father alleges the entire expulsion process was defective, because Athena's five-day suspension was extended to January 10 before the Notice of Expulsion was sent out in violation of § 120.13(1)(c) [emphasis added]. Suspension and expulsion proceedings are two separate types of proceedings governed by different sections of the statutes. Suspensions are governed by § 120.13(1)(b) [emphasis added], which states:

§ 120.13(1)(b)2: The school district administrator or any principal... may suspend a pupil for not more than 5 school days or, if a notice of expulsion hearing has been sent under par. (c)4... for not more than a total of 15 consecutive school days....

Expulsions are governed by §120.13(1)(c), et. seq. [emphasis added]. The state superintendent lacks jurisdiction to review suspensions. The state superintendent's jurisdiction for review only covers the expulsion proceedings, which commence with the expulsion hearing notice. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

Second, Athena's father alleges the Notice of Expulsion is defective because it erroneously states the offense occurred on December 19. He includes copies of citations issued by the police to support his allegation. The discrepancy in dates was not raised at the hearing, and the citations were not entered into evidence at the hearing. Furthermore, Athena's father stated on the record that he was not contesting the charges. Matters not raised before the board cannot be raised for the first time on appeal. *Travis J.M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25,

2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Tony R. v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995) and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995).

Third, Athena's father alleges mere possession of a pot pipe was insufficient evidence to support a finding that Athena's conduct endangered the health, safety, or property of others. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Jared K. v. West Allis School District Board of Education*, Decision and Order No. 421 (June 30, 2000); *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); 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 (November 25, 1996); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (December 5, 1995); and *Kirsten J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (February 21, 1992). The state superintendent has repeatedly upheld expulsions that have found possession of drug paraphernalia or 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).

In this case, Athena admitted on the record to having the pot pipe at school. Upon further questioning, Athena also admitted her original story of finding the pipe in a snow bank was untrue. She told the board that she had possession of the pipe for several days – holding it at the request of a friend who told Athena that she (the friend) was fearful she would be caught with the pipe. Athena did not name the friend at the hearing. Athena's father states she only had a pipe at school and not any controlled substances. The police report on record contradicts this assertion. According to the police report, there was sufficient drug residue in the pipe that Athena was issued two citations: one for possession of drug paraphernalia (the pot pipe) and one for possession of a controlled substance (the marijuana residue in the pipe).

Finally, Athena's father asks the state superintendent to consider several points in Athena's favor, alleging the punishment was too severe. Since the authority to "approve, reverse or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has consistently declined to modify the length of expulsions. *David D. v. Central High School District of Westosha Board of Education*, Decision and Order No. 429 (January 25, 2001); *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). The school board is in the best position to judge the demeanor of witnesses as well as to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In reviewing this case, I do not see the extraordinary circumstance or procedural violation that cause me to modify the pupil's expulsion period.

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

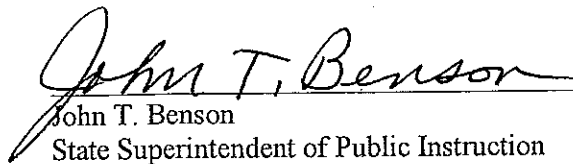
CONCLUSIONS OF LAW

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 § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Athena S by the School District of Omro Board of Education is affirmed.

Dated at Madison, Wisconsin, on April 17, 2001.



John T. Benson
State Superintendent of Public Instruction