

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

James S

by Waupun School District
Board of Education

DECISION AND ORDER

Appeal No.: 00/01 EX26

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 Waupun School District Board of Education to expel the above-named pupil from the Waupun School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 28, 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 October 31, 2001, from the district administrator of the Waupun School District. The letter advised a hearing

would be held November 13, 2001 that could result in the pupil's expulsion from the Waupun School District through 2001-02 school year. 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. The letter specifically alleged that on October 26, 2001 he used and was under the influence of alcohol at the volleyball game. A transcript of the hearing is part of the record.

The hearing was held in closed session on November 13, 2001. 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 November 21, 2001, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of third quarter of 2001-02, with an opportunity for probationary admission at the beginning of the third quarter.

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. The pupil's father alleges that there was no evidence that James' conduct endangered others and that the penalty was unduly harsh. 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. These terms embrace the notion of harmful acts or actions that are detrimental or involve loss or damages. *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

previously upheld expulsions that based a finding of dangerousness on the use and possession of alcohol at school or while attending school functions. *Thomas P. v. Necedah Area School District Board of Education*, Decision and Order 289 (May 23, 1996); *Adam S. v. East Troy Community School District Board of Education*, Decision and Order 300 (Aug. 9, 1996); *Troy Y. v. Burlington Area School District Board of Education*, Decision and Order 309 (Jan. 21, 1997); *Daniel A. v. Mauston School District Board of Education*, Decision and Order 324 (May 8, 1997); *Jeremy S. v. Hayward Community School District Board of Education*, Decision and Order 382 (May 20, 1999). 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 board had sufficient evidence to determine that James attended the volleyball game after using alcohol. It is within their discretion to determine that he endangered the property, health, or safety of others.

The pupil's father also alleges that the punishment was too harsh. 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.

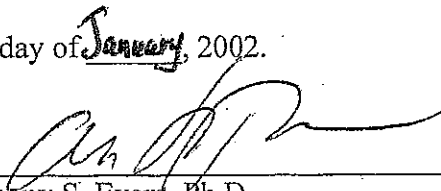
CONCLUSIONS OF LAW

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 James S. by the Waupun School District Board of Education is affirmed.

Dated this 25 day of January, 2002.



Anthony S. Evers, Ph.D.
Deputy State Superintendent of Public Instruction