

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Jamie P by Central/Westosha Union High School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 02-EX07</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 Central/Westosha Union High School District Board of Education to expel the above-named pupil from the Central/Westosha Union High School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 7, 2002.

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 7, 2002, from the district administrator of the Central/Westosha Union High School District. The

letter advised a hearing would be held January 15, 2002 that could result in the pupil's expulsion from the Central/Westosha Union High 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 not at school or not under the supervision of school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority. The letter specifically alleged that Jamie sold marijuana off school grounds that ultimately was found on school grounds, via the student to whom it was sold.

The hearing was held in closed session on January 15, 2002. The pupil and his parents appeared at the hearing represented by 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 not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority. 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 15, 2002, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through age 21. Minutes of the school board expulsion hearing are part of the record.

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 four issues. First, the parent alleges that the expulsion is too severe. The parent feels that the length of expulsion as well as the results of the expulsion, such as being banned from school property, is unfair. The parent argues that the conduct was not serious enough to warrant this level of discipline.

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 causes me to modify the pupil's expulsion period.

Secondly, the parent argues that the methods used to interview Jamie at school were unfair. Jamie was interviewed at school. The parent alleges that Jamie was threatened that if he did not cooperate his car would be confiscated and he would go to jail. According to the parent, Jamie was eventually taken from school to the police department without being advised of his rights or being told he was under arrest. First, I note that the parent's allegations regarding the threats are not supported by the record. Deputy Klinkhammer, the investigating officer, denied making these statements. Second, there is no law prohibiting the police or the school from interviewing or interrogating a student without parental permission or presence. Finally, whether Jamie was advised of his rights is not relevant to an expulsion hearing appeal. 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).

Thirdly, the parent complains about the process surrounding the expulsion hearing. Initially, the expulsion hearing was scheduled to take place on December 20, 2001. A hearing was begun on that day, however, the pupil's attorney objected to the sufficiency of the notice. The school board's counsel agreed that the notice was insufficient and concluded the hearing before all of the evidence was submitted. The district sent a new notice rescheduling the hearing for January 15, 2002. This notice complied with the statutory requirements, as discussed above. While it is unfortunate that the first notice was not sufficient, the board acted properly by concluding the hearing. The board also acted within its authority when it rescheduled the hearing and sent out new notices. The parent complains that some of the information presented at the first hearing was not presented at the second and some information presented at the second was not presented at the first. This is not a basis to overturn the expulsion. There is no evidence that the board relied upon any improper information.

Finally, the parent complains that the school district does not have a satisfactory program in place to deal with "problem students". The decisions school districts make regarding which programs, if any, it uses is a local decision. The state superintendent does not have authority to review this allegation in the context of an expulsion appeal.

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

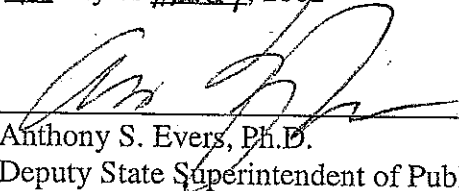
CONCLUSIONS OF LAW

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 Jamie P by the Central/Westosha Union High School District Board of Education is affirmed.

Dated this 26th day of March, 2002



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