

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

James L

by Hamilton School District  
Board of Education

DECISION AND ORDER

Appeal No.: 02-EX11

**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 Hamilton School District Board of Education to expel the above-named pupil from the Hamilton School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 12, 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 November 19, 2001, from the district administrator of the Hamilton School District. The letter advised a

hearing would be held on November 29, 2001 that could result in the pupil's expulsion from the Hamilton School District through his 21st birthday. 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 or about October 15, 2001, James was in possession of and sold marijuana on the school grounds of Templeton Middle School.

The hearing was held in closed session on November 29, 2001. 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 December 10, 2001, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through through 2006-07. A transcript of the hearing is 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 three issues. First, the pupil alleges that his rights were violated because the school's vice principal interviewed him without advising him of constitutional rights referred to as "Miranda rights". James was interviewed by the vice principal concerning an allegation that James brought marijuana to school and sold it to another student while at school. James admitted that the allegations were true. The school's police liaison officer was also present during this interview:

It was not improper for the school board to rely on the 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.

Second, the pupil alleges that he his punishment was excessive and disproportionate to the conduct of the person to whom he sold the marijuana. James alleges that he only sold the marijuana to the other student because the other student threatened him. Thus, he argues, the other student should receive a more harsh punishment. Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998). Furthermore, there is no evidence in the record concerning the other student's punishment. Finally, 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.

Finally, the pupil argues that the school district did not take any responsibility for allowing this "type of activity" for occurring on school grounds. "Type of activity" apparently refers to the threat that James said he received. James said the other student called him at home and told him to sell him marijuana, "or else". This argument has no relevance to an expulsion appeal. As previously noted, an expulsion appeal is limited to whether the statutory procedures have been followed. Whether or not James thinks the school should have done something more to encourage him to make better choices is an issue between James and the school, not subject to the State Superintendent's appeal authority.

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

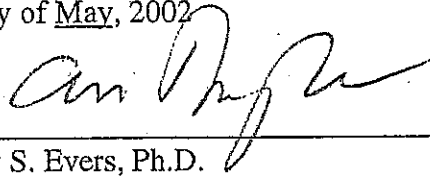
#### CONCLUSIONS OF LAW

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 L. [redacted] by the Hamilton School District Board of Education is affirmed.

Dated this 9th day of May, 2002



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