

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Peter F.</p> <p>by Suring School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 02-EX18</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 Suring School District Board of Education to expel the above-named pupil from the Suring School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 20, 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 April 2, 2002, from the district administrator of the Suring School District. The letter advised a hearing would

be held April 9, 2002 that could result in the pupil's expulsion from the Suring 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 threatened the safety of others while at school¹. The letter specifically alleged that on March 26, 2002, the pupil admitted he possessed and consumed a controlled substance while at school.

The hearing was held in closed session on April 9, 2002. 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 April 16, 2002, was mailed to the pupil and his parents. The order stated the pupil was expelled through the first semester of the 2002-03 school year. Minutes of the school board expulsion 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*

¹ The statutory grounds for expulsion uses the term "endangered" rather than threatened. However, in the context of this expulsion hearing and in the absence of the issue being raised either at the hearing or on appeal by the pupil's attorney, this paraphrasing will be accepted. Districts should take care however, to use the language provided in the statutes.

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, filed by the pupil's attorney, did not allege any procedural violations. In a subsequent brief,² the pupil's attorney alleged that the board did not have authority to expel the pupil because the school district guidelines on drug and alcohol use only suggested suspension as a possible penalty for possession of drugs at school. The board disputes this characterization. The board states that the student handbook clearly states that a pupil using or possessing alcohol or controlled substances can result in suspension or expulsion. It is not

² The board objects to the pupil's brief because it was untimely. The brief was untimely. However, as indicated in a letter to the parties, the brief was accepted under the circumstances.

necessary for me to determine whether the policy or the guidelines are controlling. I am not authorized to review, approve or disapprove of school policy; I am only authorized to review expulsion decisions to ensure that the pupil has been provided adequate procedural due process. Whether or not the school district had or followed an AODA policy is irrelevant to my review. See *John J. D. v. Whitehall School District Board of Education*, Decision and Order No. 406 (February 15, 2000); *Justin S. v. Marshfield School District Board of Education*, Decision and Order No. 361 (May 27, 1998); *Joshua R. v. Edgerton School District Board of Education*, Decision and Order No. 330 (July 29, 1997); *Donald P. v. Westby Area School District Board of Education*, Decision and Order No. 299, (August 9, 1996). The decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at § 120.13(1)(c). *Joshua R. v. Edgerton School District Board of Education*, Decision and Order No. 330 (July 29, 1997); *Troy Y. v. Burlington School District Board of Education*, Decision and Order No. 309 (January 21, 1997); *Jason M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 294 (June 24, 1996); and *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

The pupil's attorney also alleged that the pupil's conduct did not endanger the health or safety of others at school. Possession and use of controlled substances is a violation of law that endangers the property, safety and health of other students. Expulsions based upon possession of controlled substances have been repeatedly upheld as endangering the health and safety of others at school. See *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. Thus, it was reasonable to conclude Peter's conduct endangered the health or safety of others.

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 Peter F. by the Suring School District Board of Education is affirmed.

Dated this 18th day of July, 2002



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