Decision and Order No.: 477

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Todd N. by Elmbrook School District Board of Education	DECISION AND ORDER Appeal No.: 02-EX 22

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 Elmbrook School District Board of Education to expel the above-named pupil from the Elmbrook School District. This appeal was filed by the pupil and received by the Department of Public Instruction on July 3, 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 May 9, 2002, from the district administrator of the Elmbrook School District. The letter advised a hearing

would be held on May 22, 2002 that could result in the pupil's expulsion from the Elmbrook 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 at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that on May 2, 2002 at Brookfield East High School, Todd provided money to purchase marijuana.

The hearing was held in closed session on May 22, 2002. 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 June 24, 2002, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2002-03 school year. 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 filed by the parent raises four issues. First, the parents state that prior to the expulsion hearing the school district administrator offered to allow Todd to withdraw from school rather than be expelled, but that he did not recommend that course of action. This is not a basis for appeal. A student can withdraw from public school as long as he or she is enrolled in a different public school, a private school or is being home schooled. The district, however, may forge ahead with the expulsion. The state superintendent has previously suggested that agreements between the district and the pupil to withdraw rather than be expelled are problematic. It can give the pupil a false sense that the threat of expulsion is over and it can

require other public school districts to enroll pupils who have endangered others at school and would be expelled but for a plea agreement.

Next, the parents state that the board abused its discretion by concluding that Todd's behavior endangered the health, welfare, or safety of others at school. While at school, Todd agreed to buy $200 worth of marijuana for $50 from another student (the "salesman"). On another day, he brought the $50 to school and gave it to the "salesman". The next day, a third student brought marijuana and gave it to the "salesman" while they were in biology class. The "salesman" got caught with the marijuana before he could deliver it to Todd. When the administration learned that the drugs were at school, Todd was questioned and admitted his involvement. The administration also asked him to empty his pockets. When he did so, a pipe that could be used to smoke marijuana was found in one of his pockets.

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 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). The state superintendent has also routinely upheld expulsions based on conduct involving the negotiation or sale of drugs at school or under the school's authority. *Julia M. v. Hamilton School District Board of Education*, Decision and Order No. 412 (April 11, 2000); *Nicole G. v. Ashland School District Board of Education*, Decision and Order No 390 (July 1, 1999); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No 350 (March 25, 1998).

The parents also allege that the school board's order did not contain an analysis of its determination that the interests of the school demands expulsion. The board's expulsion order included a conclusion that the interests of the school are best served by expulsion. While this is not the exact language of the statute, the words have the same meaning. Furthermore, there was considerable testimony at the expulsion hearing concerning the interests of the school. Thus, the conclusion is based upon the record.

Finally, the parents allege that the punishment was arbitrary, unreasonably excessive and disproportionate to the conduct. The parents claim that the district administrator based the recommendation on a value judgment rather than an objective standard applied evenly and fairly to all students. There was testimony at the expulsion hearing that the term of expulsion was recommended because it would be treating Todd like others were treated. The district administrator also noted that lighter punishment was used earlier in the year; however, it obviously did not have the deterrent effect the district desired. 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 evidence 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 would 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 Todd N by the Elmbrook School District Board of Education is affirmed.

Dated this 22 day of August, 2002

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