

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Joe Br</p> <p>by Westfield School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 03-EX13</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 Westfield School District Board of Education to expel the above-named 16 year old 11<sup>th</sup> grade pupil from the Westfield School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 11, 2003.

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 February 6, 2003, from the district administrator of the Westfield School District. The letter advised a

hearing would be held on February 21, 2003 that could result in the pupil's expulsion from the Westfield School District through . 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 November 20, 2002, Joe acted with the intent to deliver marijuana to an undercover police officer while at school.

The hearing was held in closed session on February 21, 2003. The pupil and his parents appeared at the hearing without counsel. At the beginning of the hearing, the pupil and his parents were advised that the notice contained an error. They were informed that the conduct actually occurred on November 22, 2002, rather than November 20, 2002. The pupil and his parents were offered the opportunity to adjourn the hearing due to this new information. The father indicated he did not object to proceeding. After reviewing the police reports, Joe did not request any further adjournment.<sup>1</sup> At 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 February 21, 2003, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through

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<sup>1</sup> This situation differs from the circumstances in the recent decision, *Justin B. v. Westosha/Central High School Board of Education*, Decision and Order No. 494 (May 6, 2003). In that case, the school district insisted the notice was correct when questioned before the hearing and the school board did not offer an adjournment of the hearing when the date discrepancy was identified during the hearing.

through the 2003-04 school year with an opportunity for conditional readmission at the beginning of the 2003-04 school year. 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 asserts that it was unfair of the district to use an undercover police officer to lure or trap the pupil and convince him to sell her marijuana at school. The record indicates that while at school the pupil sold marijuana to an undercover deputy sheriff on several occasions. It also indicates that at least some of the marijuana came from his father's own supply of homegrown marijuana. The school board was given this information. It is within the board's discretion to allow an undercover officer to be placed in the school and within its discretion to rely upon her investigation at school to take disciplinary action. The use of an undercover deputy sheriff is not unlawful.

In reviewing the record in this case, I find the school district did comply 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 did comply with all of the procedural requirements of §120.13(1)(c).

#### ORDER

IT IS THEREFORE ORDERED that the expulsion of Joe B. by the Westfield School District Board of Education is affirmed.

Dated this 10 day of June, 2003.

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