Decision and Order No.: 504

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Ben J. by New Glarus School District Board of Education	DECISION AND ORDER Appeal No.: 03-EX 20

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 New Glarus School District Board of Education to expel the above-named pupil from the New Glarus School District. This appeal was filed by the pupil and received by the Department of Public Instruction on October 23, 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 September 17, 2003, from the district administrator of the New Glarus School District. The letter advised a

hearing would be held on September 23, 2003 that could result in the pupil's expulsion from the New Glarus School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents. 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 September 15, 2003, while on a school bus during a school sponsored activity (football game), the pupil smoked marijuana.

The hearing was held in closed session on September 23, 2003. 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 September 23, 2003, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through January 27, 2004 with an opportunity for early readmission beginning November 7, 2003. 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 three issues: An unsigned, undated document was added to the pupil's behavioral file between September 22, 2003 and September 23, 2003; the board made no findings as to the pupil's conduct endangering the property, health or safety of others; and the board made no statement of what evidence supported its unarticulated findings.

In the notice of the expulsion hearing, the pupil was advised that his behavioral record may be used by the board in determining the appropriate penalty if they found he engaged in the alleged misconduct. The district made those records available to the pupil and his parents. Accordingly, his parent went to school the day before the hearing to look at his file. At the

hearing the next day a new document was presented to the board concerning a prior athletic code violation. The pupil's attorney questioned the administration about the document and raised concerns about the board's use of it. However, the pupil's attorney did not indicate he needed or wanted an adjournment to further investigate the document. If requested, an adjournment would have been the appropriate remedy. Thus, I find no violation.

The pupil also alleges that that the board made no findings as to the pupil's conduct endangering the property, health or safety of others and the board made no statement of what evidence supported its unarticulated findings. The order of expulsion indicates that the board found that the pupil smoked marijuana while on a school bus at an away football game on September 15, 2003. Thus, the board did make factual findings. Expulsions based upon mere possession of marijuana have routinely been upheld by the state superintendent as a matter of law. *Brian M. v. Lodi School District*, Decision and Order No. 425 (October 23, 2000); *Andrew C. v. Milwaukee Public School District,* Decision and Order No. 386 (June 11, 1999); *Julian H. v. Milwaukee Public School,* Decision and Order No. 379 (April 20, 1999); *Shannon T. v. Milwaukee Public School District,* Decision and Order No. 354 (April 16, 1998); *Joshua S. v. Beloit-Turner School District,* Decision and Order No. 307 (January 14, 1997); *Donald P. v. Westby Area School District,* Decision and Order No. 299 (August 9, 1996*); Robin L. v. East Troy Community School District,* Decision and Order No. 253 (June 21, 1995); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994). The state superintendent has also found that a single puff of marijuana endangers the health, property and safety of others. *Jared K. v. West Allis School District Board of Education*, Decision and Order No. 421 (June 30, 2000). Therefore, it was reasonable for the board to conclude that the pupil's conduct in this case endangered the property, health or safety of others.

There is one aspect of the board's expulsion order that does not comply with the law. The board determined that an expulsion until January 27, 2004 was appropriate. But the board attached conditions to enrollment at that time. The board does not have authority to put conditions on enrollment after the conclusion of the expulsion term. *Miranda v. Howard-Suamico School District Board of Education*, Decision and Order No. 224 (March 22, 1994); *Lori L. v. Baraboo School District Board of Education*, Decision and Order No. 227 (April 22, 1994); and *Paul O. v. Florence County School District Board of Education*, Decision and Order No. 232 (June 28, 1994). However, as the decision to expunge an expulsion from a pupil's record is solely within the discretion of the board, it does retain authority to require certain behaviors or actions to before expunging the expulsion from the pupil's record.

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 Ben J i by the New Glarus School District Board of Education is affirmed.

Dated this 19th day of December, 2003.

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