

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Tiffany S' by Edgerton School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 04-EX12</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 Edgerton School District Board of Education to expel the above-named pupil from the Edgerton School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 22, 2004.

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 2, 2004, from the district administrator of the Edgerton School District. The letter advised a

hearing would be held on February 9, 2004 that could result in the pupil's expulsion from the Edgerton School District. The letter was sent separately to the pupil and her 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 January 29, 2004, a marijuana pipe was found in the student's jacket which was in the student's locker at Edgerton High School.

The hearing was held in closed session on February 9, 2004. The pupil and her parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parent 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 13, 2004, was mailed separately to the pupil and her parents. The order stated the pupil was expelled for two years, with an opportunity for early readmission beginning on January 25, 2005. 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 appellant alleges that there was insufficient notice of the grounds on which the expulsion was based. The appellant acknowledges that the notice of expulsion hearing stated that the ground for expulsion was "endangering the property, health, or safety of others." The appellant argues that the district did not really rely on that ground but instead relied on the non-noticed ground of repeated rule violations. He basis this argument on the language in the notice of expulsion that states "all in violation of the Board of education rules and procedures concerning the use of illegal substances,

for these reasons, the School Administration believes the interests of the school demand the pupil's expulsion." This language appears in the notice of expulsion hearing after two notices that the administration believed the conduct endangered the property, health or safety of others.

A student facing expulsion is entitled to timely and adequate notice of the charges against him or her so as to allow a meaningful opportunity to be heard. *Keller v. Fochs*, 385 F. Supp. 262, 265 (E.D. Wis. 1974). Furthermore, § 120.13(1)(c)4. clearly requires notice of the specific grounds for expulsion and the particulars of the alleged misconduct. Section 120.13(1)(c)4. requires that not less than five days written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The **notice shall state all** of the following:

...The specific grounds, under subd. 1., 2., or 2m., and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based...

The administration gave clear notice to the pupil that it believed her conduct on January 29 endangered the property, health or safety of others and the board agreed that the pupil's conduct endangered the property, health or safety of others. The inclusion in the notice of expulsion that this also violated the board's rules and procedures regarding illegal drugs does not negate nor confuse the notice. Thus, I find no procedural violation.

The appellant also alleges that board misapplied or misinterpreted its policy on illegal substances. Because the pupil was alleged to have endangered the property, health or safety of others, the school board's policies in this situation are irrelevant to my determination. 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.

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*, Decision and Order No. 330 (July 29, 1997); and *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995). Furthermore, expulsions based upon possession of marijuana, have routinely been upheld by the state superintendent as conduct that endangers the property, health or safety of others. *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); *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); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994). 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 in § 120.13(1)(c). In this case, the board did comply.

Finally, the appellant alleges that the assistant principal and administration's legal counsel were present during the board's deliberations and that one member of the board was not present during the deliberations. The appellant alleges this violates her right to an impartial and fair hearing. First, aside from the appellant's assertions, there is no evidence to support the allegation. The transcript of the hearing does not reflect who went into deliberations. The board's attorney has submitted affidavits of the attorney, the assistant principal and the board member attesting that neither the attorney nor the assistant principal were present during deliberations and that no board member left the boardroom during deliberations. Therefore, even if it were a violation for any of this to occur, there is no factual basis for the allegation and it is rejected.

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 Tiffany S. by the Edgerton School District Board of Education is affirmed.

Dated this 21st day of June, 2004.



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