Decision and Order No.: 552

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of D. S. by Cedar Grove-Belgium Area School District Board of Education	DECISION AND ORDER Appeal No.: 05-EX 19

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 Cedar Grove-Belgium Area School District Board of Education to expel the above-named pupil from the Cedar Grove-Belgium Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 13, 2005.

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 March 8, 2005, from the district administrator of the Cedar Grove-Belgium Area School District. The letter advised a hearing would be held on March 16, 2005 that could result in the pupil's expulsion from the Cedar Grove-Belgium Area School District through the pupil's 21st birthday. 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 February 26, 2005, the pupil was under the influence of marijuana while on school grounds.

The hearing was held in closed session on March 16, 2005. 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 March 18, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through end of the 2005-2006 school year with an opportunity for early readmission on June 20, 2005. 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 appellant essentially raises two issues to be considered. First, he alleges that his conduct did not warrant expulsion because he did not use or possess marijuana while at school, that his behavior at the time of the conduct was not disruptive and that there is no

evidence that he was under the influence of marijuana while at school. Second, he alleges the punishment was excessive.

It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996); *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); and *Taiwan O. W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). Further, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *Daniel A. v. Mauston School District Board of Education,* Decision and Order No. 324 (May 8, 1997); *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order, No. 222 (March 10, 1994).

The board found, as alleged in the notice of expulsion, the pupil was under the influence of marijuana when he returned to a school dance. The pupil would like the State Superintendent to apply a standard of "under the influence" as stringent as that used to prosecute a person for a crime that "under the influence" as an element of the offense. The State Superintendent has never imposed such a standard and refuses to do so in this case. The school board must be convinced that a pupil's conduct endangered the health, safety or property of others at school. In this case, the pupil left the school dance and returned 50 minutes to 120 minutes later, having ingested marijuana. There is no requirement that it be to a level of intoxication, merely that his

conduct endangered others. Neither is there any requirement that his conduct involved disruption.

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).

Expulsions involving being at school after ingesting alcohol or other drugs have been routinely upheld by the state superintendent. *Evan D. v. Burlington Area School District Board of Education*, Decision and Order No. 484 (February 18, 2003); *Jessica G. v. Chippewa Falls Area Unified School District Board of Education*, Decision & Order No. 409 (March 15, 2000); *Troy Y. v. Burlington Area School District Board of Education,* Decision & Order No. 309 (Jan. 21, 1997); *Daniel A. v. Mauston School District Board of Education*, Decision & Order No. 324 (May 8, 1997); *Thomas P. v. Necedah Area School District Board of Education*, Decision & Order No. 289 (May 23, 1996). Therefore, it was not unreasonable for the board to conclude that ingesting marijuana and then returning to a school dance constituted "under the influence" in that his conduct endangered the health, safety, or property of others.

The appellant also alleges that board's only evidence that the pupil ingested marijuana before returning to school was his own statement. This is not true. One of the dance chaperones observed the pupil's behavior throughout the night. The chaperone saw him leave the dance and return on at least two occasions. After the last time he left the building, the pupil returned to the

dance approximately 35 minutes later smelling of burnt marijuana. The chaperone happened to be a past deputy sheriff who had experience in dealing with people who had smoked marijuana as well as training in the area of alcohol and other drug issues. This information, combined with the pupil's admission that he left the dance, smoked marijuana and then returned, is more than sufficient for the board to make its findings.

The pupil also alleges that there is no basis for finding that the interests of the school demands expulsion. The board has wide discretion in determining whether the interests of the school demand expulsion. Conduct that endangers the health, safety or property of others is more than sufficient to establish that the interests of the school demand expulsion. *Brad M. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); *Kristin P. v. Mukwonago Area School District Board of Education*, Decision and Order No. 185)(February 21, 1992); *John B. V. Milwaukee Public School District Board of Education*, Decision and Order no. 115 (October 31, 1983). The pupil chose to engage in misconduct in a very public way. He went in and out of the dance and appeared just minutes before the end of the dance after using marijuana. Thus, it is not unreasonable for the board to determine that the behavior is unacceptable and dangerous and that the interests of the school demand expulsion.

The appellant also alleges that the punishment was excessive. In support of his argument, the appellant cites cases from other jurisdictions. However, Wisconsin school districts are not bound by cases from Florida or Utah state courts or Alabama federal district courts.

The board heard all of the student's argument as to why he should not be expelled. The board had an opportunity to consider alternative lengths or conditions of expulsion. In fact, despite no requirement to do so, the board offered an early reinstatement option. (Which the

pupil takes exception to as being too Draconian.) One time possession of drugs has repeatedly been upheld as conduct warranting expulsion. *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); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (December 5, 1995); *Raymond M. v. Siren School District Board of Education*, Decision and Order No. 156 (April 19, 1998).

The pupil also alleges that he did not have notice that being under the influence of marijuana at school could result in expulsion. There is no requirement that pupil's be advised, prior to the misconduct, that illegal conduct could result in expulsion. Furthermore, he and his parents were notified in the school handbook that this misconduct could result in a referral for expulsion.

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 demeanor of witnesses 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 causes me to modify the pupil's expulsion period.

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.

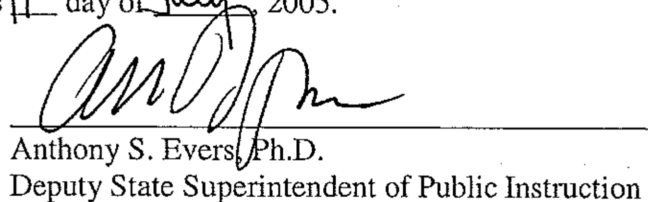
CONCLUSIONS OF LAW

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 D S by the Cedar Grove-Belgium Area School District Board of Education is affirmed.

Dated this 11th day of July, 2005.



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