

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A W</p> <p>by Spooner Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 06-EX-10</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 Spooner Area School District Board of Education to expel the above-named pupil from the Spooner Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 31, 2006.

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 April 7, 2006, from the district administrator of the Spooner Area School District. The letter advised a hearing would be held on April 18, 2006 that could result in the pupil's expulsion from the Spooner 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 not at school or not under the supervision of school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority. The letter specifically alleged that on April 5, 2006, the pupil sold marijuana to a high school student during the noon hour at the water tower, northwest of the school.

The hearing was held in closed session on April 18, 2006. 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 not while at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school or under the supervision of school authorities. 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 April 19, 2006, was mailed to the pupil and his parents. The order stated the pupil was expelled permanently, with an opportunity for readmission after one 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 generally appeals the expulsion. The parent alleges that the entire school board did not hear the expulsion hearing. There is no statutory requirement that the entire school board hear the expulsion evidence and rule on the expulsion request. See *Shawn C. v. Mauston School District Board of Education*, Decision and Order No. 375 (December 29, 1998). In fact, a quorum of a school board may appropriately conduct an expulsion hearing and render the expulsion. A majority of the elected school board members constitutes a quorum. *Tom C. v. Lake Holcombe School District Board of Education*, Decision and Order No. 115 (October 18, 1983).

In reviewing the case, however, I find that there is insufficient evidence in the record to support the board's findings. 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). However, in this case, there is no evidence in the record submitted to the state superintendent that the pupil's misconduct endangered the property, health, or safety of others at school or under the supervision of school authorities.

Where conduct occurs away from school and outside the supervision of a school authority, it must affect those at school or under the supervision of a school authority. *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997) and *Patrick Lee Y. v. Kenosha Unified School District*, Decision and Order No. 182 (October 9, 1991). For example, in *Jason Q. v. Hartford Union High School*, Decision and Order No. 272 (February 9, 1996) conduct away from school had a direct connection to on campus behavior. Jason sold drugs and used his connections at school to make the drug deals. The actual drugs that were sold made their way to the school the following day. But in other cases involving egregious misconduct, no connection was found. For example in *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997), Timothy used a knife to threaten another student while on a school bus. Even though this was related to conduct at school – Timothy had been taunted at school – the State Superintendent determined it did not meet the legal requirements of the statutory ground for expulsion.

Similarly, in *Patrick Lee Y. v. Kenosha Unified School District*, Decision and Order No. 182 (October 9, 1991), the State Superintendent overturned an expulsion relying on the same statutory grounds when Patrick caused severe injuries to a student in a city park, across the street from the school, as the students were on their way to school.

In this case, the alleged sale of marijuana occurred off school grounds. There is no evidence in the record that the marijuana was ever at school or that any dealing, setting up, or negotiating was done at school. While there may have been facts available to show the off-campus drug transaction endangered those at school, no evidence was included in the record to show this.

This decision does not condone the pupil's conduct. However, I must uphold the requirements contained in the statutes. In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. I, therefore, reverse this expulsion

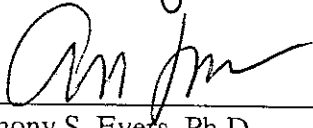
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of A. W by the Spooner Area School District Board of Education is reversed.

Dated this 27th day of July, 2006.



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

