

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of J . . . K by Germantown School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 09-EX-02</p>
---	--

**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 Germantown School District Board of Education to expel the above-named pupil from the Germantown School District. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on January 16, 2009.

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 June 6, 2007, from the superintendent of schools of the Germantown School District. The letter advised a

hearing would be held on August 14, 2007 that could result in the pupil's expulsion from the Germantown School District through the pupil's 21st birthday. The letter was personally served separately on the pupil and his parent. 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 May 11, 2007, the pupil transferred and sold a controlled substance (marijuana) while in attendance at Kennedy Middle School; that on May 29, 2007, the pupil transferred a controlled substance (marijuana) while in attendance at Kennedy Middle School; and, that on May 31, 2007, the pupil was in possession of and used a mood altering substance (alcohol), was in possession of and used a controlled substance (marijuana) and was in possession of drug paraphernalia (marijuana pipe) while in attendance at Kennedy Middle School.

The hearing was held in closed session on August 14, 2007. The pupil and his parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his 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 that 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 August 25, 2007, was mailed separately to the pupil and his parent. The order stated the pupil was expelled

through January 8, 2015. A transcript of the hearing and exhibits introduced at the 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 which require consideration. First, the appeal claims that because the pupil's parent did not speak on his behalf at the expulsion hearing,

the pupil received an unfair hearing. The pupil's parent chose not to testify during the hearing. This decision by the parent does not create a procedural violation.

Next, the appeal alleges that there was not sufficient evidence for the board to conclude that the pupil brought the marijuana to school to sell. The assistant principal testified at the expulsion hearing, detailing his investigation. He testified to, and included in the record, several statements from students indicating that the pupil brought, consumed and sold marijuana at school on various occasions and consumed alcohol during lunchtime as alleged in the notice of expulsion hearing. In addition, he testified that the pupil, when interviewed, admitted to being in possession of and hiding marijuana and drug paraphernalia in his shoe. During this interview, the pupil took off his shoe and gave the principal a green leafy substance, a lighter, and a pot pipe. The school resource officer tested the substance and pot pipe residue and it was positive for marijuana.

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). A reasonable review of the evidence sustains the board's findings.

Finally, the appellant argues that expulsion is too severe. The appellant states that because the pupil was never punished for previous misconduct he did not understand the consequences of his actions. She also argues that the pupil should not be punished because the marijuana involved actually belonged to her husband. 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 an extraordinary circumstance or a procedural violation that cause me to modify the pupil's expulsion period.


#### 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 J - K by the Germantown School District Board of Education is affirmed.

Dated this 16<sup>th</sup> day of March, 2009.

  
Michael Thompson  
Interim Deputy State Superintendent