

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>M . M</p> <p>by Sheboygan Falls School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 09-EX-03</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 Sheboygan Falls School District Board of Education to expel the above-named pupil from the Sheboygan Falls School District. This appeal was filed by the pupil's attorney and received by the Department of Public Instruction on January 28, 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 dated October 16, 2008, from the district administrator of the Sheboygan Falls School District regarding the pupil's Notice of Expulsion Hearing. The letter

advised a hearing would be held on October 27, 2008 that could result in the pupil's expulsion from the Sheboygan Falls 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 October 10, 2008, the pupil was in possession of marijuana at the Sheboygan Falls High School.

The hearing was held in closed session on October 27, 2008. 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 November 17, 2008, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2009-10 school year. Minutes of the school board expulsion 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 two issues which require consideration. First, the pupil's attorney claims that there is insufficient evidence to expel the pupil. He alleges that the pupil did not violate any rule nor is there evidence to prove he was in possession of marijuana. He alleges that a third party confessed to owning the marijuana found in the pupil's car. The notice of expulsion hearing dated October 16, 2008, alleges that on October 10, 2008, the pupil was in possession of marijuana on school grounds. The principal and school liaison officer testified at the hearing detailing the investigation. They testified that during a search using a drug dog, there was a positive response to the pupil's vehicle. The pupil was removed from class

and escorted to the parking lot. Upon searching the vehicle, green, leafy, plant-like material was found. The liaison officer asked the pupil when was the last time he smoked marijuana or had it in his car and the pupil replied "within the last week." The officer also asked the pupil if anyone came to school with him that day and the pupil replied "no." During the interview, the pupil did not dispute that the marijuana was his. The school liaison officer tested the substance and it was positive for marijuana. At the expulsion hearing, the principal told the school board that the day after the incident another pupil went to the police station and claimed that the marijuana was his.

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). It was within the board's discretion to give weight to the evidence and arguments, as it deemed appropriate. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111N.W. 2d 198 (1961). See also *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395

(August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). In this case, the marijuana was found in the pupil's car. The pupil made statements that could be construed as an admission. The board balanced this information with the allegation that the drugs belonged to someone else and determined that the pupil endangered the health, safety or property of others at school. A reasonable view of the evidence sustains the board's findings.

Second, the pupil's attorney alleges that it is a violation of the pupil's Constitutional rights to be denied a public education. However, during the period of expulsion from a Wisconsin public school under § 120.13(1)(c) or 119.25, the pupil's **right** to a public education pursuant to the Wisconsin Constitution is suspended.

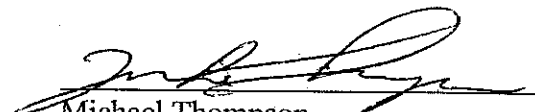
#### CONCLUSIONS OF LAW

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 M M by the Sheboygan Falls School District Board of Education is affirmed.

Dated this 20<sup>th</sup> day of March, 2009.

  
Michael Thompson  
Interim Deputy State Superintendent

Parties to this appeal are: