

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p style="text-align: center;">D J</p> <p>by Germantown School District Board of Education</p>	<p style="text-align: center;">DECISION AND ORDER</p> <p style="text-align: center;">Appeal No.: 09-EX-04</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 Germantown School District Board of Education to expel the above-named pupil from the Germantown School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 6, 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 December 17, 2008, from the district administrator of the Germantown School District. The letter advised a

hearing would be held on January 5, 2009 that could result in the pupil's expulsion from the Germantown School District until his 21st birthday. The letter was sent separately to the pupil and his parents. 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 or about Friday, December 12, 2008, the pupil smoked marijuana in a boys' bathroom and was in possession of marijuana, drug paraphernalia and a lighter while at Germantown High School.

The hearing was held in closed session on January 5, 2009. 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 January 12, 2009, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through June 10, 2014. A transcript 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 several issues which require consideration. The appeal claims that the pupil does not have a record of repeated refusal or neglect to obey school rules and that he did not endanger school property or the health or safety of others. The notice of expulsion hearing dated December 17, 2008 alleges that on or about Friday, December 12, 2008,

the pupil smoked marijuana in a boys' bathroom and that he was in possession of marijuana, drug paraphernalia and a lighter while at Germantown High School. The associate principal and the school resource officer testified at the hearing detailing the investigation. The associate principal testified that after a staff member reported the boys' bathroom smelling of marijuana he and the school resource officer reviewed the security video and identified the pupil as being one of four students that had been in the bathroom during the time span in which the alleged act occurred. The associate principal confronted the pupil in front of his locker and asked if he had anything that he should not have and the pupil replied "yes, a pipe." The pupil was then asked if he used that pipe to smoke marijuana in the first floor science wing bathroom and the pupil replied "yes." The associate principal searched the pupil's locker and found a pipe wrapped in toilet paper or tissue in the pupil's jeans. The pupil informed the associate principal that there was marijuana in a metal container keychain in his jeans and later confessed that he and another student smoked half a bowl together. The school resource officer tested the substance and it was positive for marijuana. The school board ruled that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. Regardless of whether or not the pupil has a record of repeated refusal or neglect to obey school rules, it was determined that he endangered the property, health or safety of others.

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). 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). In this case, the pupil was found in possession of marijuana and drug paraphernalia, admitted to being the owner of the marijuana and drug paraphernalia and confessed to smoking marijuana during school in the boys' bathroom at school.

Expulsions based on possession of marijuana have routinely been upheld by the state superintendent. *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); *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); *Robin L. v. East Troy Community School District*, Decision and Order No. 253 (June 21, 1995); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994). A reasonable view of the evidence sustains the board's findings.

The appeal also alleges that the pupil was not given a fair sentence because he did not make false statements; he signed a statement against himself; he did not make threats, carry

weapons or hurt another person; and, the decision expelled him for four years on his first incident, yet for firearm possession, it is only a mandatory 1 year expulsion. In essence, the appeal questions the severity of the punishment and asks that the pupil be reinstated. 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.

The appeal also states that since the pupil is only 15 years of age, he is still required by law to attend school until the age of majority. This is true. 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. A school district has the discretion to offer alternative education. While the Department of Public Instruction encourages districts to provide alternative education to expelled students, such a program is not required. *Matt L. v. Merrill Area Public School District Board of Education*, Decision and Order No. 381 (May 19, 1999); *Barry W. v. Kenosha Unified School District Board of Education*, Decision and

Order No. 220 (March 7, 1994); *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989); *Richard S. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 145 (September 5, 1986); *Dale C. v. Central/Westosha School District Board of Education*, Decision and Order No. 137 (May 15, 1986). School districts have authority to refuse to accept any student during the term of an expulsion from another school district, § 120.13(1)(f). Thus, while a pupil may have difficulty enrolling in another school, it is not a basis for reversing this expulsion.

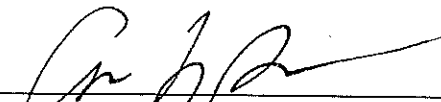
CONCLUSIONS OF LAW

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

Dated this 7th day of April, 2009.



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