

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>N [REDACTED] P [REDACTED]</p> <p>by Wisconsin Dells School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 14-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. Stat. § 120.13(1)(c) from the order of the Wisconsin Dells School District Board of Education to expel the above-named pupil from the Wisconsin Dells School District. This appeal was filed by the pupil's father and received by the Department of Public Instruction on April 22, 2014.

In accordance with the provisions of Wis. Admin. 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 Wis. Stat. § 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

On March 13, 2014, several law enforcement officers from the Wisconsin Dells Police Department and the Columbia County Sheriff's Office conducted a scheduled "K-9 sniff" at the Wisconsin Dells High School. Starting around 9:00 a.m., two K-9 handlers searched the school's parking lot. Whenever a K-9 gave a positive alert (i.e., the dog detected a potentially illegal substance), school staff would locate the vehicle's owner and escort him or her to the parking lot. Approximately 12 vehicles had a positive alert, including the truck that the pupil drove to school.

A search of the truck revealed trace amounts of "marijuana shake" in the vehicle. After the search, the pupil was sent to the school principal's office. During questioning, the pupil stated that he had stopped smoking marijuana two weeks earlier due to start of the baseball season. The pupil also stated that he had recently vacuumed the inside the vehicle. Officer Eric Torkelson, the school's resource officer, told the pupil that a citation would be issued for possession. The pupil was immediately suspended from school and released to his parents.

The record contains a letter entitled "Notice of Expulsion Hearing," dated March 20, 2014, from the district administrator of the Wisconsin Dells School District. The letter advised that a hearing would be held on March 26, 2014, that could result in the pupil's expulsion from the Wisconsin Dells School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by certified and regular 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 the pupil was in possession of marijuana while on school premises on March 13, 2014.

The hearing was held in closed session on March 26, 2014. 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, including the testimony of three law enforcement officers. The pupil and his parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations. The parents took full advantage of this opportunity, forcefully advocating for the pupil throughout the hearing.

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 demanded the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated March 28, 2014, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through until the age of 21. The order also provided the pupil with the possibility of readmission if he complied with a variety of conditions, including passing several drug tests, meeting with a school counselor, and completing his homework. Minutes of the school board expulsion hearing and a transcript of 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 Wis. Stat. § 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 expulsion decision, the state superintendent must ensure,

among other things, 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 raises eight issues which require consideration. First, the appellant alleges that the expulsion hearing notice failed to include the particulars of the alleged misconduct. I disagree. State superintendents have repeatedly held that proper notice must inform the pupil of the time frame during which the misconduct occurred, where the misconduct occurred, and a description of the conduct to be considered. *See e.g., Ulysses R. by the South Milwaukee School District* (509) April 17, 2004; *Ryan K. by the Pewaukee School District* (439) July 24, 2001. The purpose of this notice is to allow a student to adequately prepare for the expulsion hearing. *M.S. by the Milwaukee Public School District* (675) December 21, 2010. In this case, the expulsion notice stated that the pupil was being expelled “for possession of a controlled substance (marijuana), while on high school premises on March 13, 2014.” The notice is adequate because it accurately informed the pupil and his parents of the time, place, and description of the misconduct.

Second, the appellant argues that the school district did not comply with the suspension statute, Wis. Stat. § 120.13(1)(b). Because violations of the suspension law are outside the scope of the state superintendent's review, it is unnecessary for me to determine whether or not the school district complied with the suspension statute. *T.J. by the Wittenberg-Birnamwood School Dist.*, (717) May 21, 2014, *citing Madison Metro. Sch. Dist. v. Wisconsin Dep't of Pub. Instruction*, 199 Wis. 2d 1, 13, 543 N.W.2d 843, 848 (Ct. App. 1995).

Third, the appellant alleges that the school board based its decision solely on police reports and testimony by law enforcement officers, in violation of Wis. Stat. § 118.127. That

particular statute prohibits school districts from using law enforcement records as the “sole basis” for expelling a pupil. It does not prohibit the use of law enforcement testimony as we have in this case. The purpose of the statute, presumably, is to limit hearsay. The school board heard testimony from a number of witnesses, including the pupil’s parents and the law enforcement officers who wrote the reports, and it accepted several exhibits, including records produced by the school district (e.g., the pupil’s attendance and discipline reports). As such, the school board did not base its decision solely on law enforcement records.

Fourth, the appellant argues that the police reports were misleading because the reports reference other pupils whose names were redacted. I disagree. The school district was required by state law to redact the other students’ names. *See Wis. Stat. §§ 118.125 and 939.396.* While one school board member appeared to be initially confused, both the parents and the school administrator took the opportunity to clarify that the reports were in regards to three students, not just the pupil.

Fifth, the appellant argues that the school board prevented the pupil’s parents from testifying about why the pupil should not have been charged with possession. In conducting an expulsion hearing, the school board has the right to limit testimony to relevant matters. In Earl N. by the Milwaukee School Dist., the state superintendent held that a student-appellant’s allegations regarding criminal proceedings against the student arising out of the same misconduct for which expulsion proceedings were brought are irrelevant to the student’s expulsion under Wis. Stat. § 120.13(1)(c). Earl N. by the Milwaukee School Dist., (111) March 3, 1983. As such, it is irrelevant whether or not Officer Torkelson should have cited the pupil for possession

of marijuana under a municipal ordinance. Therefore, it was not reversible error for the school board to limit irrelevant testimony.¹

Sixth, the appellant argues that the school board erred by not considering instances in which other students received less harsh discipline for similar or worse misconduct. However, the record shows that the pupil's parents did raise this issue multiple times during the hearing. As such, the school board could have considered the allegations.

Seventh, the appellant challenges the school board's findings that the pupil endangered the property, health, or safety of others and that it is in the school's interest to expel him. A school board's findings will be upheld if any reasonable view of the evidence sustains them. Nathan by the Delavan-Darien School Dist., (391) July 23, 1999. Further, state superintendents have consistently held that possession of marijuana, even very small amounts, meets the statutory grounds for expulsion. *See e.g.*, Joshua S. by the Beloit-Turner School Dist., (307) Jan. 14, 1997; Steven S. by the Merrill Area School Dist., (311) Feb. 7, 1997. There is ample evidence in the record, including testimony that marijuana possession endangers students, to support the school board's findings. Therefore, the findings must be upheld.

Finally, the appellant alleges that the pupil was denied due process because "it was pre-determined that the board would rule for expulsion." In reviewing an expulsion appeal, the state superintendent must ensure that the school board was fair and impartial. T.J. by the Wittenberg-Birnamwood School Dist., (717) May 21, 2014. There is a presumption that public officials, including school board members, will discharge their duties fairly, impartially, and in good faith. K.W. by the Racine Unified School Dist., (705) July 30, 2013, *citing* Heine v. Chiropractic Examining Board, 167 Wis.2d 187 (Ct. App., 1992). There is insufficient evidence in the record

¹ The record indicates that the school board *did* allow the parents to raise this issue at various points in the expulsion hearing. For example, the parents questioned one of the law enforcement officers on the definition of possession.

to overcome this presumption. Rather, it appears that the school board discharged its duties fairly, impartially, and in good faith.

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 complied with all of the procedural requirements of Wis. Stat. §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of N [REDACTED] P [REDACTED] by the Wisconsin Dells School District Board of Education is affirmed.

Dated this 23rd day of June 2014



Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction