



State of Wisconsin \ DEPARTMENT OF PUBLIC INSTRUCTION

*file - Legal
Opinions*

William C. Kahl
State Superintendent

WISCONSIN HALL, 126 LANGOON STREET
MADISON, WISCONSIN 53702

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of an Appeal Filed with the
State Superintendent of Public Instruction
Appealing from the Expulsion of Jesse F. [REDACTED]
from the Lake Holcombe High School, Holcombe,
Wisconsin.

O R D E R

Facts related to the above entitled expulsion appeal were determined by the State Superintendent of Public Instruction at a conference held at the State Superintendent's direction by Dr. A. A. Buchmiller, Deputy State Superintendent, Max C. Ashwill, Legal Counsel, Department of Public Instruction, and W. P. Erpenbach, Consultant, Department of Public Instruction, commencing at 4:00 P.M. on January 6, 1972, at the Lake Holcombe High School, Holcombe, Wisconsin. Jesse F. [REDACTED], Wilbur F. [REDACTED] and Josephine F. [REDACTED] appeared by their attorney, John G. Hibbard, and the Lake Holcombe School Board by its attorney, Ernest Gay.

The following appears from information submitted at said conference of January 6, 1972:

On November 17, 1971, the Lake Holcombe Board of Education, hereinafter known as the Board, voted to expel Jesse F. [REDACTED], hereinafter known as Jesse, 16 years of age, from the Lake Holcombe High School for the remainder of the 1971-1972 school year.

The disciplinary incidents involving Jesse's attendance at said high school for the 1971-1972 school year and which were considered by the Board were as follows:

On May 17, 1971, Jesse was suspended from attendance at Lake Holcombe High

School for skipping school.

Between August 26 and September 1, 1971, Jesse was called to the principal's office on 3 different occasions where he was warned that his hair was a longer length than permitted by the school dress code as set forth in the student handbook.

On September 1, 1971, the high school principal suspended Jesse from attendance at school for 3 days for violation of the hair rule and upon his return to school was again suspended for length of hair and was not allowed to attend school until October 18, 1971.

Jesse was absent from physical education classes on October 18 and on October 20 for which he was assigned detention.

Jesse was found with a cigarette in the band room on October 19 and was admittedly in violation of the school's no smoking rule.

Jesse failed to report for detention on October 21 and it was found that he had cut history class whereupon he was suspended from school and returned on October 27. It is not clear whether this suspension was for the smoking incident or a combination of the incidents which occurred from October 18 through October 21.

On October 29 Jesse, with a group of students at the high school, was objecting to the failure of school authorities to change the dress and grooming code and was thereafter suspended from school for failure to go to his classes. The principal who was involved in the discussion with Jesse and other students failed to notify the boys of any change in the dress and grooming rule as it affected length of male students' hair, which change purportedly took place when Jesse was allowed to return to school on October 18.

No serious matter of student health or disruption of school activities was shown to exist at the time of the enactment of the student handbook hair rule contained in the dress and grooming code, or later, that would provide the basis for

justification of the rule even if such rules were properly adopted and signed by the Board.

The exclusion of Jesse from attendance at the Lake Holcombe High School from September 1 to October 18 by successive suspension by the principal and superintendent for violation of a rule known to be unenforceable is completely unexplainable and unanswerable.

Jesse admittedly violated the school no smoking rule. However, it is considered that the detention penalties inflicted by school authorities were sufficient penalty for this incident and the incidents of absences for 2 physical education classes and one history class.

The Board is to be commended for its hearing afforded Jesse on November 15, 1971, although it is doubted that the later closed decision making session on November 17 with the prosecutorial staff in attendance (principal and administrator), without Jesse's parents, or counsel, present, amounted to procedural due process. In any event, this was cured by the appeal to the State Superintendent and hearing there afforded Jesse.

Although Jesse is not to be complimented for any school disruption caused at the October 29 incident, it is considered that this could have been averted had the principal, or other members of the school administration, told the boys involved that the "hair rule" portion of the unjustified dress and grooming code was deleted.

In the absence of any showing of disruption in classes by the absence of Jesse and considering that the school detention for such violation of school rules was proper penalty, it is determined that the violation of school smoking rules does not consist of repeated violation of school rules as required by sec. 120.13 (1), Wis. Stats., for expulsion.

IT IS HEREBY AND HEREWITH ORDERED That the expulsion of Jesse F. [REDACTED] from Lake Holcombe High School be reversed and that Jesse forthwith be admitted to attendance at the High School.

Dated this 28th day of January, 1972.

SIGNED:

William C. Kahl
WILLIAM C. KAHL
STATE SUPERINTENDENT