

State of Wisconsin

DEPARTMENT OF PUBLIC INSTRUCTION

Barbara Thompson, Ph.D.
State Superintendent

Dwight M. Stevens, Ph.D.
Deputy State Superintendent

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of an Appeal Filed with the
State Superintendent on or about January
26, 1976, Appealing the Expulsion of David
J. L. [REDACTED] from Oak Creek High School.

DECISION
AND
ORDER

Both parties to the above appeal or their counsel, have agreed and stipulated that the full record of the expulsion hearing held by the Oak Creek Board of Education, hereinafter known as the Board, on January 19, 1976, including exhibits and minutes of said hearing, may be used in lieu of any further de novo hearing by the State Superintendent in the determination of this appeal. The State Superintendent, after consideration of the entire record and being fully advised in the premises, makes the following findings and order.

That David J. L. [REDACTED], hereinafter known as David, a student at Oak Creek High School, was expelled by the Oak Creek School Board for the remainder of the 1975-76 school year after a hearing held on January 19, 1976.

David was expelled for the [possession of a bag containing an ounce of marijuana while on the premises of Oak Creek High School] on January 12, 1976.

The Board Policy contained in the Parent-Student Handbook provided on page 11, item 14,

"Students are to refrain from:
Possession or use of alcoholic beverages, narcotics, or any other controlled substance on school property.

VIOLATIONS OF ANY OF THE ABOVE CODES WILL REQUIRE A PARENTAL CONFERENCE AND POSSIBLE SUSPENSION, REFERRAL TO LOCAL AUTHORITIES, OR TO THE SCHOOL BOARD FOR EXPULSION."

Section 4002.2 provides as follows:

"The school board may expel a pupil from school whenever it finds him guilty of repeated refusal or neglect to obey the rules, or finds that he engaged in conduct while at school or while under the supervision of a school authority which endangers the property, health or safety of others, and is satisfied that the interest of the school demands his expulsion." (Found on page 56a - item (2).

The rules further provide on page 56b as follows:

"Rules Governing Suspension and Expulsion

- (a) Failure to comply with the rules and regulations as outlined by the administrative staff and approved by the Board.
- (f) The possession or use of intoxicants, narcotics, or any other controlled substance at school at any time."

It clearly appears that evidence was presented and David admitted to the possession of a bag containing marijuana while on the Oak Creek school grounds on January 12, 1976, as charged in the notice of the expulsion hearing.

It was not charged and there was no evidence presented to show that David offered or passed marijuana to other students on January 12, or at any other time nor was there evidence that marijuana was being smoked by David or other students on school premises on January 12.

The Order of the Board expelling David announces that its reason therefor was David's possession of an illegal drug on the premises of Oak Creek Senior High School on January 12.

CONCLUSIONS

Although it appears that David was in the possession of a bag of marijuana on his person while on the premises of the Oak Creek High School on January 12, there was no evidence that he offered or transferred the marijuana to other students. Furthermore, there was no evidence of conduct on David's part which would threaten the health or safety or property of others.

I cannot and do not condone the possession of marijuana by students in the public schools, however, Section 120.13 (1) (c), Wis. Stats., provides that the school board may only expel a pupil from school for repeated refusal to follow school rules or for such conduct which "endangers the property, health or safety of others".

I can only conclude from the legislative history of Section 120.13 (1) (c), Wis. Stats., as amended by Chapter 94, Laws of 1973, and contained in 1973 Assembly Bill 252, and amendments thereto, that in the absence of repeated violations of school rules, a pupil may only be expelled for single violations where there is evidence of conduct which endangers the property, health or safety of others.

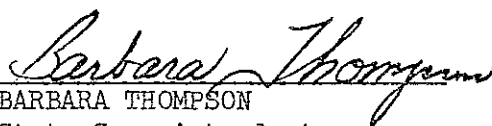
If David persists in his violation of this school rule or other school rules or if he evinces conduct endangering health or safety of others, the Board can order David's expulsion.

In the instant case there is no showing that David's possession of marijuana threatened the safety or health of others or that he repeatedly violated school rules. David must be immediately reinstated to his status as a student in the Oak Creek Schools.

IT IS HEREBY AND HEREWITH ORDERED That the expulsion of David J. [REDACTED] from Oak Creek High School be reversed and that David be forthwith admitted to attend said High School for the remainder of the 1975-1976 school year and all reference to David's expulsion is ordered expunged from his school record.

Dated this 16th day of February, 1976.

Signed:


BARBARA THOMPSON
State Superintendent
State of Wisconsin