

## THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Appeal of Mr. and Mrs. Harold D. [REDACTED], Parents of Allen D. [REDACTED], of the Decision made by the School Board of the Palmyra-Eagle School District on October 13, 1977, to Expel their son, Allen D. [REDACTED] from the Palmyra High School

DECISION  
AND  
ORDER

The State Superintendent, after consideration of the testimony, including that produced at a hearing conducted by the Department of Public Instruction Hearing Officer Roger Sumby, on February 20, 1978, and the entire record and being fully advised in the matter, makes the following findings and order:

Findings of Fact and Conclusions of Law

Allen D. [REDACTED], a tenth grade student at Palmyra High School, was expelled from school by an order dated October 13, 1977, after a hearing before the Palmyra-Eagle Area School District Board held on October 12, 1977. The expulsion was for the remainder of the 1977-78 school year. The grounds for Allen's expulsion from school were [repeated refusal and neglect to obey the rules of the school district and conduct while at school or under the supervision of a school authority which endangered the property, health or safety of others.] The record also discloses that both school officials and school board members had reasonable cause to believe that Allen D. [REDACTED] had exceptional educational needs as defined in Sec. 115.76, at the time Allen's expulsion hearing was held.

The Amended Notice of Expulsion Hearing, dated October 4, 1977, listed the following incidents as the basis for holding the hearing:

1. Irregular, nonpunctual and/or not in school attendance on September 9, 1977 (6th, 7th and 8th hour classes) and September 13, 1977.
2. The use of indecent and abusive language to Mr. Chmiel, Mr. Cobb and Mr. Fanshaw September 21, 1977. Uncontrollable behavior during conference of September 21, 1977.
3. Swinging at and kicking Mr. Chmiel September 21, 1977. Disruptive classroom behavior September 12, 1977.
4. The use of and/or possession of firecrackers on September 20, 1977. Found in an unauthorized area during school hours on September 15, 1977.
5. Failure to follow the directions of teachers and/or school staff (Mr. Demler - 9/19/77), (Mr. Cobb - 9/15/77).

There is no significant disagreement as to the facts surrounding the incidents denoted in the Amended Notice as numbers 1, 2, 3 and 5. However, no evidence was introduced at the hearing to support the allegation in Number 4 of the Amended Notice alleging an incident involving the use of and/or possession of firecrackers on September 20, 1977. The record further indicates school authorities knew that another student, and not Allen D [REDACTED], was guilty of the conduct in question. The incidents denoted by numbers 2 and 3 in the Amended Notice arose out of the wrongful accusation by school authorities that Allen D [REDACTED] had engaged in conduct which was both dangerous and unlawful.

Allen's behavior in response to this wrongful and serious accusation, however inappropriate it was, should have been anticipated by the faculty member making the accusation, given his personal knowledge of Allen's behavioral problems. [While Allen's use of obscene and abusive language towards a teacher is not to be condoned, the teacher overreacted to the incident and provoked Allen's swing at him.] Similarly, Allen's inappropriate behavior in the high

school principal's office should have been anticipated by the school officials involved given their extensive knowledge of Allen and his problems.

The record indicates that the behavior denoted in Number 3 of the Amended Notice relating to disruptive classroom behavior on September 12, 1977 was Allen's response to having been tipped out of his seat by another student. Allen openly admitted that he frequently taunted the other student about his obesity, but denied having said or done anything that was the immediate proximate cause of the other student's action, and the record does not support such a finding.

The information in the record does not support a finding that Allen engaged in conduct while at school or under the supervision of a school authority which endangered the property, health or safety of others.

Allen D [REDACTED], as denoted in incident Number 1 of the Amended Notice was not in school attendance during the 6th, 7th or 8th hour classes on September 9, 1977, or on September 13, 1977, and these absences were not excused. (However, unexcused absences from school do not constitute behavior which is subject to punishment under the expulsion statute,) inasmuch as the legislature has provided a specific remedy for such behavior elsewhere in the statutes, and because the nature of this behavior is such that it cannot be shown that the interest of the school demands expulsion for engaging in it.

The behavior denoted in the Amended Notice in incident Number 4 relating to Allen's presence in an unauthorized area on September 15, 1977 is unrefuted and is a violation of school rules. Likewise, the behavior denoted in the Amended Notice as incident Number 5 is unrefuted and is a violation of school rules.

The record does not support a finding that Allen was guilty of repeated refusal and neglect to obey the rules of the school district, such as could satisfy the school board that the interest of the school demanded Allen's expulsion.

After a thorough examination of the entire record, it is apparent that behavior and conduct of Allen which was part of his school record but was not included in the Amended Notice of Hearing, played a role in the school board's determination to expel Allen from school and in determining the length of the expulsion. It further appears that such behavior and conduct formed the basis for the school's referral of Allen for multidisciplinary team evaluation. Wisconsin law requires parental consent in writing before a child may be evaluated to determine the nature and extent of his exceptional educational needs. Mr. and Mrs. Harold D. [REDACTED], parents of Allen, had been informed of Allen's suspected exceptional educational needs as required by law, but had repeatedly refused to consent to evaluation of those suspected needs, despite the school's efforts to convince them of the necessity for determining and dealing with these needs.

It appears, therefore, that Allen D. [REDACTED] was expelled from school because his parents refused to consent to evaluation of his suspected exceptional educational needs. Allen's expulsion from school on the basis of his suspected handicapping condition is both inappropriate and unlawful. The school board X has other legal options available to deal with parental refusal to consent to multidisciplinary evaluation.

THEREFORE, IT IS ORDERED That the expulsion of Allen D. [REDACTED] from Palmyra High School for the remainder of the 1977-78 school year, hereby and is overturned.

Allen is to be reinstated as a student at Palmyra High School on the first school day after receipt of this order. The expulsion is to be expunged from his record.

Dated this 17th day of March, 1978.

Barbara Thompson