

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from
the Schools of the Racine Unified School
District of JAMES G [REDACTED],

OPINION AND
FINAL ORDER

Appellant.

THE NATURE OF THE CASE

This is an appeal pursuant to Section 120.13(1)(c), Stats., from an order of the Board of Education, hereinafter Board, of the Racine Unified School District, hereinafter District, expelling appellant from school until November 6, 1978. This matter having come before the State Superintendent of Public Instruction on appellant's motion for summary judgment, this office will confine itself to a review of the record of the Board's September 20, 1978 hearing, including attached exhibits and papers filed with the State Superintendent relative to the appeal by the parties.

FACTS

There is no material dispute as to the facts, which, viewed most favorably to the District, appear to be as follows. On September 6, 1978, appellant, while on school grounds, was [observed to attempt to light a small marijuana pipe.] He was thereupon taken to the school's administrative office where he surrendered the pipe to school and local law enforcement authorities at which

time law enforcement personnel identified the presence of marijuana residue in the pipe. Further investigation revealed appellant was then [in possession of rolling papers, a "roach" clip and a cigarette lighter.] Appellant stated that he had found the pipe and was lighting it in an effort to burn away the residue so that he could sell the pipe. While denying that he had been smoking marijuana upon apprehension, he did not dispute that the residue in question was that of marijuana. He further conceded that he was aware of school rules against the use or possession of marijuana and the penalties imposed for infractions of those rules.¹ At two subsequent meetings with school authorities, appellant acknowledged that the pipe contained marijuana residue.

On September 15, 1978, appellant's parents were notified by letter that the Board would hold an expulsion hearing on September 20, 1978, stating the charge against appellant as follows:

"The purpose of this meeting is to hold a hearing regarding charges made against your son . . . in that on September 6 your son was alleged to be in possession of marijuana on school property."

Upon the close of the hearing, the Board voted to expel appellant until November 6, 1978, and issued the order which is now before this office.

¹The District's Student Code sets forth rules as to controlled substances as follows:

"Controlled Substances. Case High School has a very rigid policy about the use of alcohol, drugs, and other controlled substances. The use and possession of controlled substances is absolutely forbidden at any time on any part of the school property, or in connection with any school activity. Students involved in the use and/or possession of drugs or controlled substances will be referred to the Racine County Sheriff's Department, Narcotics Division, for arrest and will also be subject to immediate removal and expulsion from school."

CONCLUSIONS OF LAW

School districts are limited purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied thereby. Iverson v. Union Free High School Dist., 186 Wis. 342 (1925). The legislature has conferred upon school boards the power to expel students by Section 120.13(1)(c), Stats. The statute mandates a two part test for determining whether expulsion is warranted in a particular case. Initially, it must be established that the conduct with which a student is charged falls within either of the alternative statutory grounds for expulsion: ". . . repeated refusal or neglect to obey school rules . . ." or ". . . conduct while at school or while under the supervision of a school authority which endangers the property, health or safety of others . . ." Once a student's conduct has been found to fall within either of the proscribed grounds, the second part of the test requires a finding to be made that, in view of such conduct, the interests of the school demand his or her expulsion. The statute further requires that a written notice of hearing specify the particulars of the offending conduct for which expulsion is sought.

In the instant case, the sole charge noticed related to appellant's alleged possession of marijuana while on school property. As no other incidents were noticed, hence ruling out the ground relating to "repeated" infractions; it is clear that the District chose to rely on the second statutory ground: conduct which endangers the property, health or safety of others. However, the charge noticed is insufficient on its face to satisfy this ground. [The State Superintendent has repeatedly ruled that simple possession of marijuana, standing alone, is inadequate as a matter of law to constitute such a danger

to the property, health or safety of others as to warrant expulsion.²] There is simply no causal nexus between an individual having marijuana on his person and any purported threat to the health, safety or property of others. Under the circumstances, this office has no alternative but to grant appellant's motion. While this office is forced to reverse appellant's expulsion for the above reasons, this decision is in no way a condonation of the drug abuse which is plaguing increasing numbers of young people in our schools. The State Superintendent is deeply concerned over this problem and remains committed to sound programs for combating its spread.³ However, no matter how noble be our aim to eliminate drugs from our schools, we must not use this end in justification of procedural shortcuts which, as in this case, result in the deprivation without adequate due process of law of a student's property right to a free public education. See Goss v. Lopez, 419 U.S. 565 (1975) and Art. X, Sec. 3, Wisconsin Constitution.

BY ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, Appellant's motion for summary judgment is granted and the Board's September 20, 1978 order expelling appellant is hereby and herewith vacated. The Board shall forthwith expunge any and all references to this matter from District records relating

²For example see Order of the State Superintendent of Public Instruction, April 18, 1975, in which an expulsion grounded upon possession of marijuana was reversed for this reason against the same respondent District as in the instant matter.

³In this respect, the State Superintendent of Public Instruction notes with approval the District's written policy providing for assistance to students who seek counselling regarding drug related problems.

to appellant. It is further ordered that the District provide appellant with reasonable time and such instructional services as are necessary to enable him to make up, without loss of credit, all coursework and assignments missed by virtue of the order herewith vacated.

Dated this 12th day of January, 1979.

Barbara Thompson
Barbara Thompson
State Superintendent