THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from
Racine Unified School District of
[redacted]

OPINION AND
FINAL ORDER

Appellant.

THE NATURE OF THE CASE

This is an appeal to the State Superintendent of Public Instruction of the State of Wisconsin pursuant to Section 120.13(1)(c), Wis. Stats., from an expulsion decision of the Board of Education of the Racine Unified School District (hereinafter Board), expelling [redacted] (hereinafter Appellant), a 12th grade student at Case High School from April 19, 1979, to May 18, 1979. Having reviewed the memorandums of counsel and being fully apprised of all matters of record consisting of the appeal from the Board's expulsion decision of April 19, 1979, minutes of the board hearing of April 19 with attachments, notice of the expulsion hearing and related correspondence relative to these matters, the State Superintendent of Public Instruction makes the following:

FINDINGS OF FACT

There is no material dispute as to the relevant facts which appear to be as follows:

On April 6, 1979, Appellant and 3 other students were found in a van on the school parking lot. Appellant was in possession of marijuana and was smoking marijuana. Appellant was suspended from school and on April 12, 1979,

a hearing was held by the District Director of Pupil Personnel at which time Appellant admitted possessing and smoking marijuana. At the conclusion of the April 12 hearing, the District Director informed him and his parents that he would recommend his expulsion from school.

On April 13, notice was sent to the Appellant's parents, that on April 6, 1979, Appellant was allegedly in the possession of and smoking marijuana on school property and that a hearing would be held by the Board on April 19, 1979, at which time the Director of Pupil Personnel would recommend Appellant's expulsion from school for violation of the rule in the student handbook which provided:

> "A student shall not possess or be under the influence of illegal drugs, alcoholic beverages or controlled substances at any school or school sponsored activity."

Appellant was aware of the school rule on possession and use of marijuana prior to April 6, 1979. At the conclusion of the April 19 hearing, the Board voted to expel Appellant until May 18, 1979, as a result of violating the school board policy prohibiting the use or possession of a controlled substance such as marijuana.

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 be issued ". . . specifying the particulars of the alleged refusal, neglect or conduct . . ." (emphasis supplied) for which expulsion is sought.

A free public education is a matter of express constitutional right in this state. Wisconsin Constitution, Art. X, sec. 3. Noting the constitutional significance of this right, the U.S. Supreme Court has held that, at a minimum, due process demands that a student charged with serious misconduct must be provided with adequate notice of charges and an opportunity to be heard before he or she may be lawfully deprived of that right. Goss v. Lopez, 419 U.S. 565 (1975). In 1974, the U.S. District Court for the Eastern District of Wisconsin granted summary judgment to an expelled student on the grounds of inadequate notice in Keller v. Fochs, 385 F. Supp. 262, a case involving an expulsion ordered by the Wauwatosa Board of Education. Citing with approval the Seventh Circuit Court of Appeals holding in Betts v. Board of Education, 466 F. 2d 629 (1969), the Court stressed the necessity of adequate notice of charges to enable a student to prepare his defense:

> Even in that situation wherein a student unequivocally admits the conduct charged at an expulsion hearing, and procedural protections thus serve a more limited function in terms of insuring a fair and reasonable determination of the retrospective factual question of guilt of the conduct charged, the Seventh Circuit Court of Appeals will look to the existence of adequate notice of the charges and sufficient opportunity to prepare for the hearing on review of alleged due process violations. p. 265.

The court went on to note at p. 266: "The lack of adequate notice necessarily affects Plaintiff's ability to prepare his defense and thus the meaningfulness of his opportunity to be heard." The state legislature has codified the case law in this respect by requiring the notice of hearing under Section 120.13(1)(c) to state the ". . . particulars of the alleged refusal, neglect, or conduct . . ." giving rise to the expulsion proceeding.

The minutes of Appellant's expulsion hearing contain a reference to Appellant having admitted giving marijuana to three other students. The District's memorandum brief discusses at some length the dangers of a student who passes marijuana and gives it to others. Because the notice failed to state that Appellant was being charged with transferring marijuana to other students, it is defective on its face as to this issue (see Keller and Goss, supra). The provision of a hearing would be nothing more than a hollow gesture and due process will not be accorded if an individual charged with an offense were not given advance notice of specific allegations so that he may have a real opportunity to prepare a defense prior to hearing.

Thus, in the instant case, the only issue before the State Superintendent, is the sole charge that the possession and use of marijuana on school property is "conduct while at school or while under the supervision of a school authority which endangers the property, health or safety of others . . ."

The State Superintendent has repeatedly ruled that the simple possession of marijuana is inadequate as a matter of law to constitute such a danger to the property, health or safety of others to warrant expulsion. [1] There is simply no causal link between a person possessing and smoking marijuana and

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[1]For example, see orders of the State Superintendent dated January 12, 1979 and April 18, 1975, in which an expulsion grounded upon the possession of marijuana was reversed for this reason against the same respondent district as in the instant matter.

any purported threat to the health, safety or property of others. Moreover, Respondent's attempted showing, by hearsay and other incompetent evidence, that other persons possessing marijuana have been involved in violent conduct is insufficient to establish that Appellant's duly noticed and proven conduct threatened the property, health or safety of others at Case High School.

While this office is forced to reverse Appellant's expulsion for the foregoing 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. 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, supra, and Art. X, Sec. 3, Wisconsin Constitution.

BY ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: The April 19, 1979 expulsion decision of the Board expelling Appellant from school until May 18, 1979, is reversed. It is further ordered that all references to this matter be forthwith expunged from any and all records relating to Appellant maintained by the District and that Appellant be provided reasonable opportunity to make up all school work missed by virtue of the decision herewith reversed and to receive full credit therefor.

Dated this 6th day of July, 1979.

Barbara Thompson

Barbara Thompson
State Superintendent