

## THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of  
Richard P [REDACTED] by the Board of  
Education from Central High School  
District of Westosha, Salem, Wisconsin.

OPINION AND  
FINAL ORDER

Nature of the Case

This is an appeal to the State Superintendent of the State of Wisconsin, pursuant to Section 120.13(1)(c), Wis. Stats., from an order of the Board of Education (hereinafter Board) of the Central High School District of Westosha (hereinafter District) expelling Richard P [REDACTED] (hereinafter Richard), a junior in Central High School until the beginning of the 1979-1980 school year. Being fully apprised of all matters of record, consisting of copies of the transcript and minutes of the November 21, 1978 and January 23, 1979 proceedings before the Board, notice of charges sent Richard's parents prior to the November 21 meeting, the Board's order or letter of expulsion of November 22, 1978, teacher anecdotal reports presented at the November 21 Board meeting and a copy of the District Administrator's letter or expulsion order of December 5, 1978, the State Superintendent makes the following

Findings of Fact

On November 14, 1978, Richard's parents received written notice that the Board would conduct a hearing on November 21, 1978 as to his possible expulsion

from Central High School. The notice contained a list of some 26 instances from September 8, 1978 to November 7, 1978, where Richard was alleged to have [violated school rules.]

That some 19 of the alleged violations were for Richard having been tardy from class and the remaining charges were for other violations of school rules.

After the hearing on November 21, the Board issued its Order which retained Richard in school and provided as follows:

"A MOTION to act under 120.13 (1)(c), Wisconsin Statutes, and expel Richard; to suspend this order of expulsion and place him on probation until June 6, 1979; such probation to be lifted and this order applied if any violation of school rules or reasonable rules of conduct occurs which would ordinarily result in a suspension; and, if this order is not applied before June 6, 1979, probation is lifted and this order is revoked."

That Richard attended Central High School thereafter until December 7, 1978, at which time he and his parents were notified by the District Administrator by letter and phone that the Administrator would apply the Board's expulsion order of November 21 for the following stated reasons:

"The following items form the basis for this decision:

November 27 Tardy  
November 27 Talking - 3rd hour study hall  
November 29 Tardy - 2 times  
Disturbance in 3rd hour study hall  
December 5 Disturbance in in-school suspension  
December 6 Disturbance in 3rd hour study hall

[In the case of the last two items, Richard used threatening language to a male teacher and obscene and offensive language to a female teacher. In the first case, three members of the administrative staff sat down with him trying to get him to see exactly what he had done. It was obvious that they did not succeed. The very next day we had the incident with the female teacher.

I consider this record shows no change in behavior since his appearance before the board."

At its January 23, 1979 regular meeting at which it denied Richard's plea for readmittance to Central High School, the Board considered the incidents contained in the district administrator's letter of December 5, applying the expulsion order of November 21, 1978, particularly those incidents listed as involving the use of threatening language to a male teacher and obscene and offensive language to a female teacher. No notice that the Board would consider the additional charges at the January 23 meeting was ever sent to Richard's parents nor was any communication sent by the Board to the P [REDACTED]'s concerning its decision not to readmit Richard.

Conclusions of Law

A school district is a quasi-public corporation, with only the powers given it by statute "and such implied powers as are necessary to execute the powers expressly given to it." State ex rel. Van Straten v. Milquet (1923) 180 Wis. 108, 113. The school board is also a creature of statute with only those powers expressly conferred on it by statute, and such powers as are necessary to execute the powers expressly given it. The legislature has conferred upon the school boards the power to expel students by Section 120.13 (1)(c), Stats. The statute requires that a written notice of hearing be issued specifying the particulars of the offending conduct for which expulsion is sought.

Section 120.13(1)(b) Stats., authorizes the school district administrator \*  
to suspend a pupil for not more than 3 days or if a notice of expulsion proceeding has been sent, for a period of not over 7 consecutive days but the statutes nowhere confer authority on district administrators to expel pupils, similar to that conferred on boards.

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).

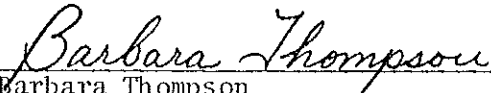
In the instant case the action of the district administrator in excluding Richard could only be valid if found to be action of the Board taken pursuant to Section 120.13(1)(c) Stats. To sustain a claim that the statutory requirement of notice and hearing were complied with, the District must show that there was a notice of a hearing specifying with particularity the alleged offending conduct to be considered at the hearing prior to an expulsion. In this case the closest thing that Richard got to a hearing on the additional charges for which his expulsion was ordered, was the regular meeting of January 23, 1979. At that meeting the Board considered the additional incidents but denied the plea for Richard's readmittance. Even assuming arguendo that the additional charges were a sufficient basis for Richard's expulsion, fundamental fairness and the Wisconsin Legislature, through Section 120.13(1)(c), demand that he first have notice of the particular charges and an opportunity for a hearing on such charges. This Richard and his parents did not have and Richard could not be deprived of his constitutional rights to attend public school without the district providing the required safeguards.

BY ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, Appellants' appeal is granted and the action of the district administrator in making effective the November 21, 1978 Board order is hereby and herewith vacated

and all reference to the December 5 letter and the incidents therein described, and reference to the expulsion based on such charges is to be forthwith expunged from District records relating to Richard. The Board shall forthwith admit Richard to full attendance at Central High School.

It is further ordered that the District provide Richard 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 action herein vacated and such make up work may consist of attendance at summer school courses authorized for credit by the District.

Dated this 12th day of April, 1979.

  
Barbara Thompson  
State Superintendent