

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

Appeal of
KATHLEEN D [REDACTED]

ORDER
DISMISSING
APPEAL

Findings of Fact

Appellant, by her attorney, has sought to invoke the jurisdiction of this office under sec. 120.13(1)(c), Stats., to hear an appeal as to certain disciplinary action taken against her by the Manitowoc Public Schools. According to the documents submitted in conjunction with her purported appeal, the relevant facts appear to be as follows. Appellant is a student at Lincoln High School, Manitowoc. After hearing before the high school principal, and subsequent review by both the District Administrator and Board of Education, she was suspended from the school's cheerleading squad on the basis of a newspaper report indicating that she had been charged with a violation of a local shoplifting ordinance. The charge has not as yet been disposed of by the courts. In imposing the suspension, the school district has apparently relied upon a rule adopted by the Board of Education in accordance with Wisconsin Interscholastic Athletic Association policy which provides in relevant part:

" . . . any student whose conduct in or out of school is such that it reflects discredit upon himself, his school, or the community shall be prohibited from representing the school in any capacity."

Conclusions of Law

Section 120.13(1)(c), Stats., confers school boards the authority to expel students from school on the grounds and via the procedures specified therein. Said statute, likewise, creates a right to review by this office. This case presents the question of whether the disciplinary denial of an extracurricular privilege for a period of more than 3 days is likewise reviewable under the statute.

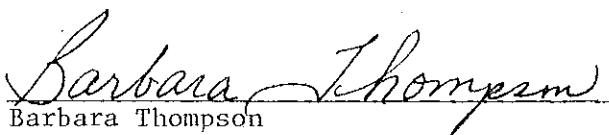
The Attorney General has opined that in addition to the barring of students from school attendance, the statute likewise governs the procedures for the disciplinary denial of school transportation services mandated by sec. 121.54, Stats. See 74 OAG 124. Presumably, then, an "expulsion" from the school bus may be appealed to this office in the same manner as are expulsions from school attendance. The Attorney General's conclusion is based upon the fact that sec. 121.54, Stats., expressly requires that transportation services be provided to certain students. Accordingly, such students have been accorded an express right to such services of which they may only be deprived via the utilization of the statutory procedures specified for general suspension or expulsion.

The Attorney General's analysis is inapplicable here. Unlike transportation services, the legislature has not accorded students the express right to participate in extracurricular activities. Indeed, there is no statute mandating that schools even establish extracurricular programs. For this reason, the school district was not obligated to follow the specific procedures set forth in sec. 120.13(1)(c) Stats., in imposing the discipline in question. Since that statute is not applicable here, the right of review created thereby is likewise inapplicable.

For the above reasons, this appeal must be dismissed for want of subject matter jurisdiction. However, due to the significant policy issues presented, this office makes the following observations on a strictly advisory basis under the authority of sec. 115.28(3), Stats. Appellant argues that the rule upon which the discipline has been grounded is void for overbreadth and vagueness and, hence, she has been denied substantive due process of law. Plainly speaking, it is difficult to conceive of a more vague or overly broad regulation. As appellant points out, it is not reasonably possible for an individual to readily discern what sort of activities are prohibited by the proscription against conduct ". . . that . . . reflects discredit upon [the student], his school, or the community . . ." In addition, inasmuch as the rule purports to regulate out of school conduct bearing no relation to the school, it would seem to exceed the Board of Education's rulemaking powers under sec. 120.13(1)(a), Stats. Likewise, since the incident giving rise to the discipline in question appears to be nothing more than an unproven allegation of misconduct under a municipal ordinance (in effect punishment for merely being charged), the school's response would not appear to comport with the requirements of substantive due process.

BY ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: The appeal is dismissed for lack of subject matter jurisdiction.

Dated this 3rd day of December, 1979.


Barbara Thompson
State Superintendent