THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In re:

Norman B[redacted],
Appellant
vs
School District of
Crandon,
Respondent

OPINION
AND
FINAL ORDER

Case no. 79-8005X

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THE NATURE OF THE CASE

This is an appeal pursuant to Section 120.13(1)(c), Stats., of a decision of respondent's board of education, hereinafter the Board, to expell appellant from schools of the respondent district for a period of nine weeks. Now having fully reviewed all matters of record, the State Superintendent of Public Instruction makes the following

FINDINGS OF FACT

The material facts in the case are not in dispute and, in relevant part, are stated as follows in appellant's Appeal of Decision:

> On Saturday, November 3, 1979, the appellant, a minor, age 15, born February 2, 1964, and a freshman student at the Crandon High School of the School District of Crandon, Wisconsin, admitedly [sic] [vandalized a portion of the exterior school grounds by spray painting obscenities on an exterior door to the school building and an old consession stand located on the football field adjacent to the school grounds.]
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> On December 12, 1979, a Notice of Hearing and Specification of Charges was delivered to the parents of the minor and a hearing was subsequently held on January 2, 1980...

Following the expulsion hearing the parents of appellant were notified on January 3, 1980, of the expulsion of [appellant] from the School District for a period of nine weeks beginning January 14, 1980....[1]

CONCLUSIONS OF LAW

On appeal to this office, appellant has raised the following issues:

1. That the School District of Crandon is without authority under Section 120.13(1)(c) to expell a pupil for conduct engaged in during hours of other than those of normal school operation or related to any school activities or under the supervisions of any school authority.

2. That the record as it now exists is insufficient to support the finding and determination of expulsion and is insufficient to support an appeal by review of the record only.

3. That the penalty of a nine week expulsion constitutes great despairity between the conduct alleged and proved and the punishment imposed constituting an abuse of discretion by the School District of Crandon.

4. Impermissible factors were considered by the School District of Crandon in arriving at the expulsion.

5. That the respondent failed to provide written notice of the hearing to the minor and failed to provide a copy of the Order of Expulsion to the people as required by Section 120.13(1)(c).

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

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[1]The January 3, 1980 notice of the Board's decision further provided:

> Norman will be given the opportunity to continue his class work during this 9 week grading period, by having one of his parents pick up weekly assignments from his teachers. Passing grades will be required for the 9 week period for a successful 9 week grading period. Work progress will be periodically monitered [sic.] by the board of education.

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 interest of the school demands his or her expulsion.

From the notice of hearing and record as a whole, it is clear that respondent chose to rely upon the second alternative ground in prosecuting appellant's expulsion: ". . . conduct while at school or while under the supervision of a school authority which endangers the property, health or safety of others . . ." Appellant initially contends that school board jurisdiction under this ground is absent where the misconduct charged occurs on school premises but during non-school hours and unrelated to a supervised school activity. However, reference to the clear and unambiguous language of the statute dictates that this contention must be rejected. As this office stated in In Re: Expulsion of J.C., case no. 78-7906X, Order of the State Superintendent, July 11, 1979:

> The ground relied upon is composed of three elements, of which the first two are alternative and the third mandatory. In order to satisfy the ground, it must first be established that the conduct in question either (1) occurred "at school," that is, on school premises, or (2) took place while the student was under the supervision of a school authority. Upon the establishment of either of these elements, the third element requires proof that the conduct complained of was such that it endangered the property, health or safety of others.

That the legislature has been concerned with the situs of misconduct for which expulsion could be imposed and not the hours of actual school operation is made manifest from the passage of Chapter 202, Laws of 1979 (effective May 7, 1980) which amended Section 120.13 Stats. to allow expulsion in cases

of off premises misconduct which endangers persons and property at school. See also State ex rel. Dresser v. District Board, 135 Wis. 619, 627 (1908).

Appellant further asserts that the evidence of record is insufficient to support the Board's finding that this ground was satisfied. Such contention must likewise be rejected for the simple reason that appellant here, as below, has unequivocally admitted to vandalizing school property by spray painting obscentities on certain portions of the school building.[2] It cannot seriously be contended that his acknowledged misconduct did not endanger the property of respondent since harm in fact befell same.

Appellant maintains that the Board's ordering of a nine week expulsion for such misconduct was excessive and constituted an abuse of discretion. In essence, appellant's position in this regard raises the issue of whether or not the Board properly concluded that the interests of the school demanded his expulsion. As does the court in the sentencing phase of a criminal proceeding, the Board in addressing this question must consider not only issues of law and fact, but also questions of public policy. It cannot be disputed that the Board has a substantial interest in protecting school property from those who would do damage to same. Such property, after all, is acquired by expenditures from the public treasury and is held in trust for the benefit of the general public. The Board is obligated to protect the public treasury from otherwise needless expenditures such as those occasioned by appellant's defacing of the school. Moreover, his conduct in this regard, directed as it was at the school as an institution constituted deliberate defiance of school authority to the same extent as would open insubordination to instructional personnel in the classroom. The Wisconsin Supreme Court has long recognized the propriety of

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[2]For similar reasons, appellant's claim of entitlement to a de novo hearing is without merit inasmuch as no material dispute exists as to the facts.

the removal of students in cases of misconduct holding the authority and discipline of the school for naught or tending to hold the school and its personnel up to ridicule and contempt. State ex rel. Dresser, supra. Under these circumstances and in view of the fact that the Board provided appellant with the opportunity to continue his studies during the period of expulsion, cannot be concluded that the ordering of a nine week expulsion was unreasonable, much less so shocking to the conscience as to constitute an abuse of discretion.[3]

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[3]In conjunction with the filing of his appeal, appellant moved for temporary reinstatement pendant lite. The provision of instructional opportunities during the period of expulsion is dispositive of this matter.

Section PI 1.09, Wisconsin Administrative Code, provides:

"PI 1.09 Temporary orders. The state superintendent may issue such protective order or grant such temporary relief as is necessary to preserve the rights of any party to a matter subject to this chapter prior to the issuance of a final decision or order."

The grant or denial of such temporary relief as contemplated by this provision and as sought by appellant is highly discretionary. Brown v. Milwaukee Board of School Directors, 83 Wis. 2d 316 (1978). At a minimum, a party seeking such relief has the burden of showing that he will be irreparably harmed if the relief sought is not granted, that he has no adequate remedy at law, and that there is a reasonable likelihood that he will prevail on the merits of the case. See generally Werner v. A. L. Grootemaat & Sons, Inc., 80 Wis. 2d 513 (1977), and cases cited therein.

Appellant asserted that he would be irreparably harmed if the Board's order was not stayed and he not be temporarily reinstated to attendance pending the adjudication of this appeal. The manner in which it is contended that he would have been so harmed is unstated; presumably, however, appellant believed that his continued exclusion from classroom attendance during the nine week period would so substantially interfere with his educational progress as to render futile any remedial order which might issue were he to succeed on the merits of his case.

This argument would be more persuasive if the record reflected that appellant had been denied instructional services during the period in question. However, the record does not so reflect and appellant has not suggested otherwise. Rather, the Board's order of expulsion specifically directed that appellant be provided with a program of homebound instruction. As such, it must be assumed that

Appellant suggests that the Board gave consideration to impermissable factors in reaching its decision. The supposed "impermissable factors" are unstated by appellant and none are apparent of record. Accordingly, this contention must be dismissed.

Finally, appellant challenges the failure of the Board to provide him with his own copy of the notice of hearing. He likewise asserts a similar error as to the service of notice of the Board's decision. Sec. 120.13(1)(c), Stats., clearly requires that where the student is a minor both documents must be provided to the student and to his parents. It is equally clear from the record that both documents were directly provided only to his parents. However, appellant did in fact appear at the January 2, 1980 hearing before the Board in the company of his mother and an appeal on his behalf was taken to this office a mere three weeks after his parents were served with the notice of the Board's decision. Under the circumstances, it cannot be concluded that appellant was in any way prejudiced by respondent's failure to provide him with his own personal copies of the materials in question and appellant has not contended otherwise. As such, respondent's omissions in this regard constitute harmless error and will not serve to invalidate his expulsion.

Respondent is entitled to an order affirming the expulsion of appellant and dismissing the instant appeal.

BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: So ordered.

Dated this 18th day of November, 1980.

Barbara Thompson
Barbara Thompson
State Superintendent of Public Instruction

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the Board's mandate was carried out, that the homebound program was comparable in content to the course of study offered in the classroom and that appellant was to receive credit for such homebound studies as he successfully completed. To conclude otherwise in the absence of a contrary allegation would require that this office ignore the presumptions of regularity in the conduct of governmental activities and good faith in the discharge of public responsibilities by governmental officials. Faust v. Ladysmith-Hawkins School Systems, 88 Wis. 2d 525 (1978).