

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion from  
the Lake Holcombe Public Schools of  
JON A. S [REDACTED],

DECISION  
AND  
ORDER

Appellant.  
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THE NATURE OF THE CASE

This is an appeal pursuant to sec. 120.13(1)(c), Stats., of a May 7, 1981 decision of the Board of Education of the Lake Holcombe Public Schools (hereinafter "district") to expel appellant from school for the balance of the 1980-81 school year. Now having conducted a review of the record of proceedings before the board pursuant to sec. PI 1.04(3), Wis. Admin. Code, the State Superintendent of Public Instruction makes the following:

FINDINGS OF FACT

At the time of the events giving rise to this matter, appellant was an 8th grade student at the district's Lake Holcombe School. Between October and April of the 1980-81 school year, appellant established a pattern of conduct in violation of a variety of school rules including [smoking at school, refusal to perform a classroom assignment, disobedience to teacher directives, and cursing and the use of profane language] in response to attempted corrective action by instructional personnel. The district's board has adopted a policy calling for the application of progressive discipline in the event of repeated student misconduct. Accordingly, following each of appellant's offenses, a proportionately more severe penalty was meted out. By April 29, 1981, appellant had already received three separate suspensions from school of one, two and three days respectively in addition

to sundry lesser in-school sanctions.

On April 29, 1981, a female teacher directed appellant and a companion to come out of a school bathroom where the two had been for some time. Although appellant later acknowledged that he was not himself indisposed, he did not comply with the teacher's order but, rather, waited for his companion to finish relieving himself before leaving the room. At this point, the teacher issued appellant the final disciplinary referral giving rise to this case. Thereafter, following due notice and hearing, the board ordered his expulsion for his continued misconduct in spite of attempted corrective measures by school authorities. The board further ordered that during the summer, appellant be allowed to make up work missed by virtue of the expulsion so that he will be able to enter the 9th grade along with his classmates at the beginning of the 1981-82 school year.

#### CONCLUSIONS OF LAW

Sec. 120.13(1)(c), Stats., empowers school boards to expel a student upon finding him guilty of repeated refusal or neglect to obey school rules provided that the board is satisfied that the interests of the school demand expulsion. The latter part of this standard serves to preclude this remedy to student disorder in situations involving a limited number of relatively insignificant infractions where less rigorous forms of discipline would be likely to correct the problem. This, however, is not the situation in the instant case. Here, the district had attempted, without any success whatsoever, to correct appellant's behavior by progressive discipline. As of his April 29, 1981 offense, the district had exhausted all available forms of discipline short of expulsion and still appellant persisted in his defiance of school authority. At such point, the district

was left with no alternative but to expel. Accordingly, the board properly concluded that the interests of the school demanded his expulsion.

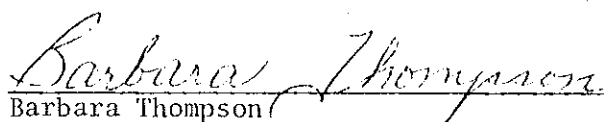
Appellant contends that as to the final incident, he was wrongfully referred for disciplinary action because he eventually came out of the bathroom, and thus, it is urged, he obeyed the teacher's order. This contention cannot be sustained. It is clear that appellant did not come out of the room upon being told to do so but rather, waited until a time of his own choosing to leave the room. As such, the board could properly find that he had disobeyed the teacher's order.

Appellant further asserts that the penalty of expulsion was too severe in relation to the nature of his offenses. However, for the reasons noted previously, the board could conclude that the interests of the school demand expulsion. Notice is taken of the fact that the actual period of expulsion imposed is little more than three weeks. In light of the board's order that appellant be allowed to make up work missed by attending school for a comparable period during the summer, it cannot be concluded that under the circumstances the ordering of a three week expulsion was unreasonable, much less so shocking to the conscience as to constitute an abuse of discretion.

Wherefore, the district is entitled to an order affirming the expulsion of appellant and dismissing the appeal.

BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: So ordered.

Dated this 21st day of May, 1981.

  
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Barbara Thompson  
State Superintendent