

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In Re: Loren S [REDACTED] and Sano M [REDACTED],
Appellants,

vs.

Lakeland Union High School District,
Respondent.

DECISION
AND
ORDER

THE NATURE OF THE CASE

This matter is before the State Superintendent on the joint appeal under sec. 120.13(1)(c), Stats., of Loren S [REDACTED] and Sano M [REDACTED] of April 20, 1981 orders of the Lakeland Union High School District School Board (hereinafter the Board) expelling both students from school until the conclusion of the 1980-81 school year. Since the expulsions of both appellants are based upon the same incidents, the parties have stipulated to the consolidation of the two cases both before the Board and on appeal to this office. Now having fully reviewed all matters of record and having the benefit of the briefs of counsel for the parties, the State Superintendent of Public Instruction makes the following:

FINDING OF FACTS

There is no material dispute as to the facts of this case. On the evening of February 26, 1981, appellants appeared at Lakeland High School in the company of 3 other youths. Thereupon, [the five consumed a bottle of liquor which appellant S [REDACTED] had apparently stolen from a local merchant. Sometime later, the five forcibly broke into and entered several locked classrooms and stole a small quantity of

school supplies, including tape and staplers. Upon exiting the classrooms, the group proceeded to the school parking lot where two of their number smashed the windshields of several parked cars amid the active encouragement of the remaining youths.]

Thereafter, the five youths entered a Merrill Public School's school bus which had been parked at the high school during a regional girls basketball tournament and stole the keys which had been left in the ignition. Upon observing the group leave the bus, the Merrill bus driver pursued them on foot and apprehended one youth off school premises. The youth surrendered the keys but then pulled a knife and threatened to "cut up" the driver. Thereafter, the five fled away. At this point, the driver returned to the high school and reported the incident to school officials at the basketball game and police authorities were summoned.

CONCLUSIONS OF LAW

Sec. 120.13(1)(c), Stats., establishes several substantive grounds for expulsion including repeated refusal or neglect to obey school rules and conduct endangering the property, health or safety of others. In the case of "dangerous" conduct, either the student whose conduct creates the danger must be at school or under the supervision of a school authority, or if the student is away from school premises and not under school supervision, the person whose property, health or safety is endangered by the student's conduct must be at school or under the supervision of a school authority. This office must conclude that these grounds are satisfied by the uncontroverted facts of record.

The Student Code of Lakeland High School prohibits the consumption of alcohol on school premises and the theft of, or damage to, school property. Appellants' conduct on February 26, 1981 contravened all three rules and therefore constitutes the multiple infraction of school rules as contemplated by sec. 120.13(1)(c), Stats.

In addition, the incidents to which appellants were parties of breaking and entering, theft of school property and vandalism of automobiles in the parking lot occurred at school and not only endangered the property of others, but in fact did damage to such property. Likewise, appellants were parties to the group which stole the Merrill bus driver's ignition keys and were involved in the threatening of the driver with a knife. Although this last incident occurred away from school premises, the Merrill bus driver was acting in the scope of his employment which required him to transport the Merrill Public School's team to Lakeland; accordingly, the bus driver was under the supervision of a school authority when his safety was endangered. Therefore, this incident, too, falls under the ambit of sec. 120.13(1)(c), Stats.

Once the School Board determines that a student's conduct falls within one or more of the statutory grounds for expulsion, sec. 120.13(1)(c), Stats., requires that the Board determine that, in light of that conduct, the interests of the school demand the student's expulsion. (Appellants contend that their expulsions were inappropriate and excessive in relation to the offenses committed. This argument, in effect, challenges the Board's determination that the interests of Lakeland High School demanded their expulsion for the balance of the school year.)

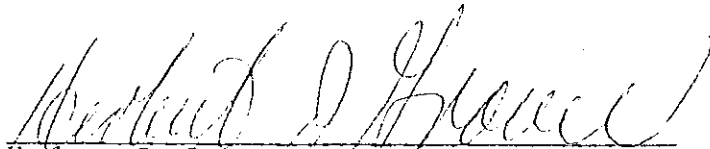
Initially, appellants correctly note that the State Superintendent is not bound by the Board's determination that the interests of the school demanded the expulsions in question. See City of Beloit v. Thompson, Rock County Circuit Court, case no. 18475, Memorandum Decision March 12, 1975. However, the fact that such discretion exists does not in and of itself compel that that discretion be exercised to reach a conclusion contrary to that of the Board. Rather, some reasonable basis for the exercise of that discretion should appear of record. This office finds nothing in the record which would warrant the State Superintendent in substituting his judgment for that of the Board in this case. Appellants have not disputed their involvement in the offenses set forth above. Taken as a whole,

these offenses amount to a most serious breach of school discipline. The fact that concurrent juvenile proceedings have been undertaken will not deprive the Board of jurisdiction over the matter since the Juvenile Code and the Expulsion Act represent separate legislative enactments with differing and distinct policy objectives. Likewise, the fact that appellants are members of a protected class (American Indian) will not preclude expulsion where appellants can point to no other student who has committed school related offenses comparable to those of February 26, 1981 and managed to avoid expulsion.

Under the circumstances, the Board could reasonably conclude that the interests of Lakeland High School demanded appellants' expulsions. Accordingly, the Board is entitled to an order affirming the expulsions and dismissing appellants' appeals.

BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: So ordered:

Dated this 2 day of September, 1981.


Herbert J. Grover
State Superintendent