

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

Petition of Douglas A. B [REDACTED],

Appellant,

vs.

Wauwatosa Public Schools,

Respondent.

OPINION
AND
ORDER

THE NATURE OF THE CASE

This matter is before the State Superintendent under color of sec. 120.13(1)(c), Stats., on appeal and motion for temporary relief from a disciplinary order of the Wauwatosa School Board (hereinafter Board) as to appellant. Now having fully reviewed all matters of record, 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 a 17 year old student attending West Senior High School in the Wauwatosa School District (hereinafter District). On November 20, 1981, school authorities searched appellant's locker and person and allegedly found him in [possession of marijuana.] Thereafter, the District issued a notice of a December 3, 1981 hearing before the Board and which charged him with the aforementioned conduct. The notice further indicated that "(the hearing) could result in further action by the School Board including the possibility of his expulsion from school." Following the hearing, the Board ordered that appellant be transferred from his assigned classes at the high school to what the district characterized as an "in-house

suspension" at the District's Hawthorne Junior High School effective December 8, 1981 through January 21, 1982. Under the terms of the Board's order, the so-called "in-house suspension" amounted to his placement in an individual, self-contained instructional program under the direct supervision of a certified teacher hired by the district for that purpose and with assignments provided by his regular classroom teachers. The order further required daily attendance upon his studies at the junior high school from 9:00 a.m. through roughly 2:30 p.m. and provided for his taking of regularly scheduled final examinations at the high school upon the conclusion of the semester.

CONCLUSIONS OF LAW

In his Petition of Appeal, appellant asserts the conduct with which he was charged, that is, a single act of possession of marijuana, is insufficient under prior rulings of this office to satisfy the grounds for expulsion under sec. 120.13(1)(c), Stats. The District, however, maintains that the Board's December 3, 1981 order did not constitute an expulsion, thereby calling into question this office's subject matter jurisdiction over the appeal.

The word "expel" is neither defined by the legislature nor is it a term of art. In ordinary and common usage, "expel" means to force out, eject, or to cut off from membership and all privileges attendant thereto. Webster's New Collegiate Dictionary (Springfield-1977) at 403. Judicial construction of the term is in accord. For example, see Bigger v. U.C. Comm., 46 A2d 137, 143 (Del.-1946). In the context expulsion from the schools of a district, the term "expel" must be understood to signify the disciplinary removal of a student from the privileges of membership, that is, admission and enrollment, in the district's schools.

In light of the foregoing considerations, it cannot be concluded that the action of the Board under review constituted an expulsion within the

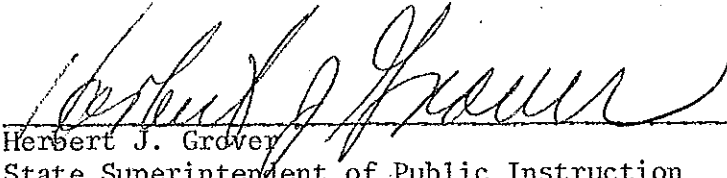
meaning of sec. 120.13(1)(c), Stats. The language of the notice of hearing did not foreclose the possibility of discipline falling short of expulsion. Appellant's attendance and enrollment in the District's schools continues and he remains subject to sec. 118.15(1)(a), Stats., for substantially all of the regular school day. The continuation of his academic studies has been provided for under the direct supervision of a qualified teacher and he retains the full right to take final examinations in each course of study.

Sec. 120.13(1)(a), Stats., accords local school boards broad discretion as to both the academic placement and progress and the discipline of students enrolled in the schools of the district. As such, the Board is ultimately responsible for determining the propriety of a student's placement in any given academic program within its schools. While a disciplinarily, as opposed to an academically, motivated transfer of a student from one programmatic setting to a more restrictive one may well implicate due process, it cannot be concluded on the basis of this record that the Board failed to accord appellant sufficient procedural protections since it acted within the constraints of substantially all the safeguards mandated by sec. 120.13(1)(c), Stats., for the outright removal of students from the schools of a district. Indeed, the procedural requirements contemplated by the Wisconsin statute far exceed the minimal constraints of procedural due process in the context of student exclusions articulated by the U.S. Supreme Court in Goss v. Lopez, 419 U.S. 565 (1975).

The powers of the State Superintendent are entirely statutory in origin. In the absence of statutory authority to review student disciplinary matters falling short of expulsion, this office must conclude that it lacks the power to pass upon the merits of this appeal. Accordingly, this matter must be dismissed for want of subject matter jurisdiction.

BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: So ordered.

Dated and mailed this 15th day of January, 1982..



Herbert J. Grover
State Superintendent of Public Instruction