

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from
the School District of Cudahy of
DARLENE B [REDACTED],

OPINION AND
FINAL ORDER

Appellant.

THE NATURE OF THE CASE

This matter is before the State Superintendent of Public Instruction under sec. 120.13(1)(c), Stats., on an appeal from a December 7, 1981 decision of the Board of Education (hereinafter Board) of the School District of Cudahy (hereinafter District) expelling appellant from the schools of the District for the remainder of the 1981-82 school year. Now having fully reviewed all matters of record, the State Superintendent makes the following:

FINDINGS OF FACT

At the time of the events giving rise to this matter appellant was a student in the District's junior high school and was residing with her older sister, Pamela Kaleta. On November 12, 1981, [appellant burst into a science classroom yelling and shouting and carrying a knife on her person threatening to kill another student in the classroom. It was undisputed that appellant was carrying a knife on her person at the time of making the threat and that her entry into the classroom caused a disruption of that classroom and other classes in session in adjacent classrooms.]

Following due notice and hearing, appellant was expelled on the basis of that conduct.¹ Additional facts will be set forth as necessary in the balance of this opinion.

1. Appellant was charged additionally with having arranged for the beating of a Cudahy student on the way home from school on November 5, 1981, which appellant denied at the hearing. Because the Board did not include any reference to this charge as a basis for its order of expulsion of December 8, 1981, it is not discussed here.

CONCLUSIONS OF LAW

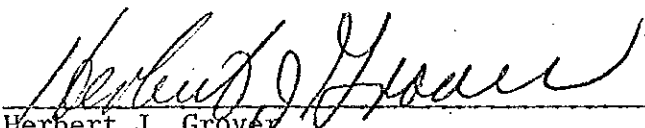
It is concluded that appellant's threatening conduct occurring in the District's science classroom constituted conduct which threatened the health and safety of other students, and it is further concluded that the interest of the school demanded appellant's expulsion.

It is clear from the record (Board's Transcript, pages 52-58) that the District intends to give appellant home tutoring as soon as the sister with whom she lives in Cudahy secures guardianship. In this regard, a child may be a resident of a school district different than that of his or her parent or guardian if the child actually resides in the district "for other, as a main purpose, than to participate in the advantages which the school affords."² The record clearly shows from the testimony of appellant's sister (Transcript, pages 12-18) that appellant was living with her sister because her father could no longer care for her and would support the conclusion that she is a resident for school purposes under Thayer. See also sec. 48.62 (2), Stats., which permits close relatives to provide care and maintenance of children living with them without obtaining a foster home license.³

Under the circumstances, the December 8, 1981, order of the Board must be affirmed.

BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: So ordered.

Dated and mailed this 12th day of February, 1982.



Herbert J. Grover
State Superintendent of Public Instruction

2. State ex rel. School District No. 1 of Waukesha v. Thayer, 74 Wis. 48 (1889).
3. Sec. 48.62(1), Stats., which would require any person who provides care and maintenance for children in his home to obtain a foster home license even though legal custody may be transferred. However, sec. 48.62(2), Stats., provides an exception from such licensing for a relative who provides for the care and maintenance of a child residing with him. Relatives are defined as: (continues on page 3)

". . . a parent, grandparent, brother, sister, first cousin, nephew, niece, uncle or aunt. This relationship may be by consanguinity or direct affinity."