THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from the Lake Holcombe School District of KERRY C[redacted],

OPINION AND 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 appeal from an October 19, 1981 order of the School Board (hereinafter Board) of the Lake Holcombe School District (hereinafter District) expelling appellant from the schools of the District for the balance of the current school year. Now having fully reviewed all matter 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 school in the District. Appellant has been found to have exceptional educational needs, i.e., mental retardation (MR) and had been placed in the District EMR program, the latest placement by the M-team being December 1980, where he remained until expelled by the Board.

Following due notice a hearing was held on October 19, 1981, at which appellant failed to appear in person or by representation. At the hearing, uncontested evidence was offered by the District that on September 21, 1981, appellant left school without permission prior to the end of the school day; on September 30, 1981, appellant was found to be in possession

of tobacco products on school premises; and on October 9, 1981, appellant sold a quantity of marijuana in excess of one ounce for two dollars to a student at school. The uncontested evidence is that disciplinary events charged were disruptive of the educational environment of the District schools from which the Board could conclude that the interest of the school required appellant's expulsion.

CONCLUSIONS OF LAW

Appellant's sole basis of appeal is that the misconduct charged for which his expulsion was ordered was caused by or related to his exceptional educational needs and that under the circumstances expulsion was not appropriate.[1]

In this case, the record fully supports the Board's conclusion that the appellant committed an expellable offense. Appellant admittedly sold marijuana to a fellow student at school as charged in the notice of hearing. The sale of controlled substances in the school is inherently dangerous to the health and safety of others and satisfies the requisite substantive ground for expulsion under sec. 120.13(1)(c), Stats. See orders of the State Superintendent in cases 76-7703X (May 16, 1977) and 74-7503X (May 2, 1975) cited in "The State Superintendent's Expulsion Decision Digest." The Board's findings that appellant has engaged in repeated violations of school rules and particularly that his conduct has threatened the health and safety of his fellow students and has been disruptive of the environment of the District schools must be sustained in the absence of competent evidence of record in support of appellant's assertion that his mental retar-

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1. Letter of January 15, 1982 from appellant's counsel stating grounds for appeal and relief sought in response to request from Mary Brooks Fraser, DPI Legal Counsel.

dation was the cause of and related to the conduct for which he was expelled. The record contains not one scintilla of evidence in support of that contention.

To the contrary, a member of the District's M-team testified that appellant's handicapping condition was mental retardation, that he had been reevaluated in November of 1980, and that the team had recommended continuation of appellant's enrollment in the District's EMR program. The M-team member testified that the team found no evidence of emotional disturbance during their evaluations. The district also presented testimony that due to appellant's involvement in disciplinary incidents in school during March and May of 1981, he had been evaluated by a pediatrician, a clinical psychologist and a neurophysiologist. All three concurred in the M-team's recommendation that the District's EMR program was an appropriate placement for appellant. Finally, the M-team member testified that in his professional opinion there was no evidence that appellant's handicapping condition of EMR had any bearing on appellant's conduct in selling marijuana in school.

The record supports, on the basis of sufficient competent evidence, that the misconduct for which appellant's expulsion is sought was unrelated to his EEN condition and so finding, his expulsion is affirmed.[2]

BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: So ordered.

Dated and mailed this 7th day of April, 1982.

Herbert J. Grover
State Superintendent of Public Instruction

2. City of Beloit v. Thompson, Rock County Circuit Court, Case #18475 Memorandum Decision, March 12, 1975.