

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from
the School District of Marshfield of
DANIEL I. M [REDACTED],

DECISION
AND
ORDER

Appellant.

THE NATURE OF THE CASE

This is an appeal to the State Superintendent of Public Instruction, pursuant to sec. 120.13(1)(c), Wis. Stats., from the February 10, 1982 decision of the Marshfield School Board expelling Daniel M [REDACTED] from the Marshfield Schools for the remainder of the 1981-82 school year. In accordance with the provisions of Wis. Admin. Code PI 1.04(3), this decision is based on a review of the record of the school board hearing. Both parties were offered an opportunity to submit written arguments regarding the merits of the appeal. The school district has elected to rely on the record established at the school board hearing. Appellant, however, did not respond to the request for written arguments.

FINDINGS OF FACT

Daniel M [REDACTED] is a ninth grade student at Marshfield Junior High School in the Marshfield School District. On February 3, 1982, Mr. Sadowska, head custodian of the school, heard a loud banging noise in a hallway outside his office. When he went to investigate, he found Daniel M [REDACTED] walking down the hallway [slamming the open doors of a row of newly installed lockers.] He directed Daniel to "knock it off." Daniel apparently laughed at Mr. Sadowska who then ordered Daniel to the principal's office. Daniel

[refused to go. Mr. Sadowska grabbed Daniel's coat collar intending to physically take him to the office. Daniel [responded by punching Mr. Sadowska in the mouth with his fist. The janitor's glasses were knocked to the floor and several more punches were directed at him before he succeeded in physically restraining Daniel. Mr. Sadowska's glasses were bent and he received a cut to the inside of his mouth which did not require medical care. With the assistance of Mr. Johnson, a physical education teacher, Daniel was taken to the principal's office. On the way to the office he threatened to knock Mr. Sadowska down again but made no attempt to carry out his threat. The police were called, Daniel was removed to the police station and a notice of a three day suspension was sent to his parents.

On February 5, 1982 an expulsion notice was sent to Daniel and his parents and his suspension was extended to seven days. The grounds alleged in the notice of hearing included the incident described above, two previous suspensions for [involvement in fights with students and another student's parent and Daniel's [truancy from school on January 25, 1982, the date on which he and his mother were to attend a conference with the Superintendent of Schools to discuss Daniel's involvement in the previous fights and additional incidents for which he had not been suspended. The notice also makes reference to a letter that had been sent to Daniel's parents on December 18, 1981 addressing Daniel's involvement in numerous incidents of fighting both on school premises and off the grounds during pre- and post-school hours. The parents were informed that Daniel's future involvement in fights in school would result in consideration of Daniel's expulsion by the board. They were also informed that the fights occurring off school property were of concern to city officials,

that the police would be patrolling the areas in question and would issue citations for disorderly conduct to students who were caught fighting or harassing others.

The hearing record also discloses that between September 17, 1981, the date on which Daniel enrolled in the Marshfield school system, and February 10, 1982, the date of the expulsion hearing, Daniel had received a total of four 3-day suspensions: two for fighting, one for disorderly conduct towards another student and parent, and one for failure to make up the 21 hours of after school study time (detention) assessed for being truant six days and tardy on one other.

At the hearing, when asked why he got into fights, Dan testified that there were two groups in school, the "dirts" and the "jocks" and they called each other names. He claimed not to be in either group but said that he went with the non-athletes.

CONCLUSIONS OF LAW

The grounds alleged as the basis of this appeal are as follows:

"I want to appeal this decision because I feel Daniel's and my rights were violated by the School Board and the decision that was made. I feel the facts presented at the hearing were one sided and, in part, untrue. I do not feel Daniel's side of the story was given satisfactory consideration and pertinent facts were ignored by the School Board. When notified of the hearing, I had no idea this would result in an expulsion and was not legally prepared. Also, I do not feel notice of this hearing was sufficient to adequately prepare for it."

Appellant's first contention is that the Board relied on "untrue" facts. The hearing transcript indicates, however, that the facts surrounding the incidents set forth in the school district's notice of expulsion hearing were virtually uncontested by appellant at the hearing.

Appellant also claims not to have been notified that the hearing could result in Daniel's expulsion. This contention is also without merit. The

document contains the following caption in underlined capital letters:

"NOTICE OF EXPULSION HEARING AND OF SEVEN (7) DAY SUSPENSION"

The notice, dated February 5, 1982, explicitly states that:

NOTICE IS HEREBY FURTHER GIVEN That said Board of Education will hold a hearing in order to determine whether the interest of the school demands the expulsion of said Daniel M. [REDACTED] on Wednesday, February 10, 1982, at 8:00 o'clock P.M. in the Board of Education's offices at 1010 East Fourth Street, in the City of Marshfield, Wood County, Wisconsin, which hearing may result in the said pupil's expulsion.

Section 120.13(1)(c), Stats., governing expulsions, was printed in full on the back of the notice, which was personally served by a deputy sheriff upon appellant's father, also on February 5, 1982. Appellant's mother had also previously received, via certified mail in December, a letter indicating that future incidents of fighting could result in Daniel's expulsion from school.

Appellant's third claim is that the notice of hearing was insufficient to adequately prepare for it. This argument is also without merit. While it is true that paragraph (a) of the Board's findings involved appellant's failure to make up the extra study time assigned to him for being truant and tardy, an allegation not contained in the notice of expulsion hearing, appellant has not shown that any harm resulted from the introduction of this evidence. No objection was made to it at the hearing, appellant's mother admitted her knowledge of both the incidents of truancy and failure to serve the assigned study time, and acknowledged having received notice of the suspension at the time it was imposed.

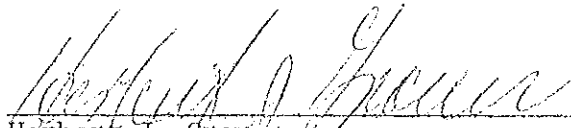
More importantly, there is sufficient evidence in the record to uphold appellant's expulsion even without this finding.

The Board has established that appellant is guilty of the conduct charged in the notice of expulsion hearing, and that this conduct constituted

both repeated refusal or neglect to obey the rules of the Marshfield school district and conduct which endangered the health or safety of others. The Board further found that the interests of the school demanded appellant's expulsion because of the disruption and problems caused by his conduct, and the need to balance the interests of the school, the staff and the student body against the interests of appellant. The Board, of course, was free to consider appellant's suspension for failure to serve assigned extra study time in reaching its decision on the punishment to be imposed. But again, even without that suspension, the Board's decision is fully supported by the record.

IT IS HEREBY ORDERED That the expulsion of appellant from Marshfield Junior High School for the remainder of the 1981-82 school year, be and hereby is, affirmed.

Dated and mailed this 17th day of May, 1982.



Herbert J. Grover
State Superintendent

An appeal from this decision may be taken within 30 days to the Circuit Court of the county in which the School District of Marshfield is located as provided in sec. 120.13(1)(c), Wis. Stats.