

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from
the School District of Owen-Withee of
FRED P [REDACTED]

DECISION
AND ORDER

Appellant.

THE NATURE OF THE ACTION

This is an appeal to the State Superintendent, pursuant to sec. 120.13 (1)(c), Stats., from the February 10, 1982 decision of the Owen-Withee School Board expelling Fred P [REDACTED] from Owen-Withee High School for the remainder of the 1981-82 school term. In accordance with the provisions of Wis. Admin. Code s. PI 1.04(3), this decision is confined to the review of the record of the school board hearing. Both parties were provided with an opportunity to submit written arguments on the merits of this appeal but have declined to do so.

FINDINGS OF FACT

Fred P [REDACTED], an eleventh grade student at Owen-Withee High School, was expelled by the Owen-Withee School Board for [repeated violations of the high school's no smoking policy] after a hearing held by the Board on February 10, 1982. The expulsion was for the remainder of the 1981-82 school term.

Fred's violations of the no smoking policy (sec. 6.01 of the Owen-Withee High School Policy) and the previous actions taken are as follows:

- 11/2/81 Cigarettes on person. Three days in-school suspension (11/2/81 - 11/4/81).
- 11/4/81 Cigarettes on person. Three days out-of-school suspension (11/5/81 - 11/6/81, 11/9/81).

- 12/1/81 Smoking. Suspended from school until Board could meet on 12/3/81. Student was expelled for 10 days.
- 2/4/82 Smoking. The student was suspended until the Board hearing on 2/10/82, at which time the present expulsion was imposed.

The actions taken by the district conform fully to its stated policy. Fred was obviously aware of the policy and the possible sanctions for violating the rule a fourth time. Nevertheless, he chose to disregard the rule again and has now suffered the consequences provided for in the policy.

CONCLUSIONS OF LAW

In his letter of appeal, appellant has proposed six grounds on which he believes the Owen-Withee School Board's expulsion decision should be reversed.

They are as follows:

- (1) The Board made no findings of fact that the student's conduct caused a disruption or problem in school to the extent that it interfered with the orderly operation of the school.
- (2) The Board made no finding of fact balancing the interest of the student with those of the school staff, teachers and other pupils.
- (3) The Board made no finding of fact that expulsion was the only valid discipline and that it was the most appropriate remedy.
- (4) The School Board failed to keep adequate written minutes of the hearing.
- (5) The hearing itself was conducted in the form of a three-ring circus, rather than a formal hearing, which denied due process to the student.
- (6) Deliberations of the Board following the "hearing" were conducted in closed session. Neither the pupil nor the pupil's guardian requested that the hearing be closed. Under such circumstances, the pupil had no way of knowing if the Board considered extraneous factors in its deliberations that may not have been pertinent to matters developed during the course of the so-called "hearing."

Appellant has offered no statutory references or citations of legal authority in support of his proposals.

We find the first three grounds to be totally without merit on the basis of the record in this case. Pursuant to the provisions of sec. 120.13(1)(c), Stats., a school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey rules and is satisfied that the interest of the school demands the pupil's expulsion. Fred P [REDACTED] has repeatedly violated the Owen-Withee High School Rules relating to smoking in school. These repeated and deliberate violations of school rules in spite of the imposition of less drastic disciplinary measures reasonably permitted the inference that the interests of the school demanded appellant's expulsion.

Appellant's fourth ground for reversal is that the record of the hearing is inadequate. However, he has failed to provide us with the details of whatever alleged inadequacies he believes exist in the record. This Department has stated on numerous occasions that it prefers a transcript of an expulsion hearing (whether from tape or stenographic notes) because it results in a more complete and accurate record. However, sec. 120.13(1)(c), Stats., specifies that a district must only keep written minutes of the hearing and does not require a verbatim record of the hearing. This the Owen-Withee Board did, and the record does, as discussed above, clearly satisfy the statutory requirement placed on the Board. In view of the fact that appellant has not provided us with an explanation as to why or how the record is inadequate, this contention is also without merit.

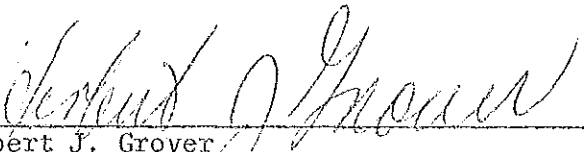
Appellant's fifth contention suffers from the same deficiencies as the fourth. It consists of nothing more than a bald assertion or opinion and in the absence of any supporting documentation must be deemed to be without merit.

Appellant's final contention is that the Board violated his rights by conducting their deliberations after the hearing in closed executive

session. This assertion is in direct contradiction to the specific provisions of sec. 19.85(1)(a), Stats., and is without merit.

IT IS HEREBY ORDERED That the expulsion of appellant from the School District of Owen-Withee for the remainder of the 1981-82 school term, 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 Owen-Withee is located as provided in sec. 120.13(1)(c), Wis. Stats.