THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from
Suring School District of WILLIAM S[redacted],

Appellant.

OPINION
AND
ORDER

THE NATURE OF THE CASE

This matter is before the State Superintendent under sec. 120.13(1)(c), Stats., on appeal from the decision of the School Board (hereinafter Board) of the Suring School District (hereinafter District) expelling appellant from the District schools for the balance of the first semester of the 1981-82 school year on October 26, 1981. Now having fully reviewed all matters of record, the State Superintendent of Public Instruction makes the following:

FINDINGS OF FACT

Appellant's parents were notified on October 20, 1981, that appellant was being recommended for expulsion from the District schools for having used marijuana on school property on September 25, 1981 and for having been in possession of marijuana in a pipe on school grounds on October 1, 1981. At the time of the incidents giving rise to this action appellant was a 16 year old 11th grade student attending the District high school. Appellant had been diagnosed as an exceptional educational needs (EEN) child (L.D. or learning disabled). After the occurrence of the two events involving possession or use of marijuana, a meeting was held on October 14, 1981 between appellant and his parents, the school's M-team, and the school

principal for the purpose of determining whether appellant's conduct in the events of September 25 and October 1, 1981 were related to or caused by his EEN condition. It was concluded at this meeting that appellant's EEN was "strictly for academics in reading and not for inappropriate behavior."[1]

CONCLUSIONS OF LAW

Appellant's main contention is there was no proof that appellant possessed and used marijuana on September 25, 1981, nor that the pipe taken from him at school by Mr. Wessel on October 1, 1981 was a marijuana pipe.[2] In a recent decision, the Court of Appeals, District II, held that hearsay evidence (a police officer's report) was of sufficient probative force upon which to based in part an expulsion.[3] In this case, the hearsay evidence

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1. This meeting was properly called by the school board before the expulsion hearing because courts facing the issue have consistently ruled that expulsion cannot be imposed for conduct or behavior indicative of EEN (State Superintendent's Expulsion Decision Digest, page 19). Quoted from a taped transcript of the October 14, 1981 meeting (supplied by appellant's parents).

2. The record indicates that after notice on October 20, 1981, an expulsion hearing was held at which appellant and his parents were present. The record reveals that Mr. Wessel, principal, who was present at the incidents giving rise to these charges testified as to the incidents of September 25 and October 1, 1981 and that appellant's parents were given the opportunity to question the principal and other witnesses and declined. The record also contains as an exhibit the principal's statement of the September 25, 1981 event for which appellant was suspended after a conference with the parent and a police officer's statement of the investigation of the October 1, 1981 incident, both admitted without objection of appellant or his parents.

3. Racine Unified School District v. Barbara Thompson, State Superintendent of Public Instruction, Case No. 80-2202, in Court of Appeals, District II. Decision issued May 19, 1982, held that the State Superintendent's review was limited upon appeal to insure that the Board followed procedural standards such as right to notice, right to counsel, etc., contained in sec. 120.13(1)(c), Stats. In the instant case, I find that the Board complied with all the procedures required by subsec. (1)(c) as explicitly as the Board did in the Racine case.

with Mr. Wessel's testimony and other testimony was of sufficient probative force to support the conclusion that appellant was guilty of the two incidents of misconduct as charged.

In committing the misconduct as charged, appellant has engaged in repeated violation of school rules. The expulsion of appellant on its merits was justified under sec. 120.13(1)(c), Stats., and is affirmed in all respects.

BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: So ordered.

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

Herbert J. Grover
State Superintendent