

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of DAVID
G [REDACTED] by the Westosha School District
Board of Education

DECISION
AND
ORDER

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 June 2, 1982 decision of the Westosha School Board expelling the appellant, David G [REDACTED], from school until the beginning of the 1983-84 school year. This appeal was filed on November 16, 1982. In accordance with the provision 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. However, neither has done so.

FINDINGS OF FACT

David G [REDACTED], a tenth grade student at Central High School in the Westosha School District, was expelled by the Westosha School Board for delivery of a controlled substance in school, after a hearing held by the Board on June 1, 1982. The expulsion was for the entire 1982-83 school year.

The May 24, 1982 Notice of Expulsion Hearing sent to David and his mother contained the following alleged violations of school rules:

1. September 18, 1981 - Disrupting the normal procedures of the school (talking ninth period).

2. February 2, 1982 - Disrupting the normal procedures of the school (truant ninth period).
3. February 4, 1982 - Disrupting the normal procedures of the school (tardy ninth period).
4. May 21, 1982 - Disrupting the normal procedures of the school (delivery of a controlled substance).

David and his mother appeared before the Board at the expulsion hearing on June 1, 1982, where David admitted the correctness of the allegations against him.

The Board's order expelling David was issued on June 2, 1982. This appeal was filed with the State Superintendent on November 16, 1982. In it, David requests that the expulsion order be terminated so that he can return to school for the remainder of the 1982-83 school year. The request is based on his successful completion of a drug counseling program, his prior good record in school, and his desire to obtain a high school education.

CONCLUSIONS OF LAW

School districts are limited purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. Iverson v. Union Free High School District, 186 Wis. 342 (1925). School boards have been granted the authority to expel students in accordance with the provisions of sec. 120.13(1)(c), Wis. Stats. In addition to specifying several alternative grounds for expulsion, the statute expressly accords students charged with expellable offenses certain procedural rights including notice of hearing, entitlement to counsel, the option to close the hearing to the public, the preservation of a record of the proceedings, written notification of the expulsion order, and the right to appeal the Board's expulsion decision to the State Superintendent of Public Instruction.

In a recent Wisconsin Court of Appeals decision involving the State Superintendent's review of an expulsion appeal, the Court made the following observation:

While our decision here is founded solely upon an error of law of the state superintendent, we point out, obiter dicta, that the superintendent's review of a board's expulsion hearing would appear to be limited by the statute which created that appeal, namely, sec. 120.13(1)(c), Stats. The superintendent's review then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc. Racine Unified School District v. Thompson, 107 Wis. 2d 657 (1982).

On appeal, appellant does not challenge the appropriateness of the expulsion or claim any denial of the rights accorded to him under sec. 120.13(1)(c), Wis. Stats. Instead, he claims in effect that the punishment imposed has served its purpose and is no longer necessary. In light of the dicta contained in the Racine case quoted above, I must conclude that I am foreclosed from granting the relief requested.

IT IS THEREFORE ORDERED that appellant's request for termination of the expulsion order and reinstatement in school be and hereby is denied.

Dated and mailed this 25th day of February, 1983.



Herbert J. Grover
State Superintendent of Public Instruction