

## THE STATE OF WISCONSIN

BEFORE

## THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
EUGENE N [REDACTED] by the Flambeau  
School District Board of Education

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OPINION  
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 April 6, 1983 decision of the Flambeau school board expelling the appellant, Eugene (Geno) N [REDACTED] from school for the remainder of the 1982-83 school year. This appeal was filed on April 8, 1983. 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 this appeal. Neither, however, has done so.

## FINDINGS OF FACT

Geno N [REDACTED] a ninth-grade student at Flambeau High School, was expelled by the Flambeau School Board for repeated violations of the school district's no smoking policy after a hearing held by the school board on April 6, 1983. The expulsion was for the remainder of the 1982-83 school term.

The March 25, 1983 Notice of Expulsion Hearing sent to Geno and his parents contained the following alleged violations of school rules:

- A. 10/4/82 Smoking on school property in violation of Article IV, Section IV, Board of Education Policy.
- B. 10/12/82 Smoking on school property in violation of Article IV, Section IV, Board of Education Policy.

- C. 10/12/82 Smoking on school property in violation of Article IV, Section IV, Board of Education Policy.
- D. 2/23/83 Having tobacco on his person while on school premises in violation of Article IV, Section IV, Board of Education Policy.

Geno and his parents appeared before the board at the expulsion hearing held on April 6, 1983, where Geno admitted the correctness of the allegations against him. The board's order expelling Geno was issued on the same date.

The basis for this appeal (filed on April 8, 1983) is that the punishment imposed by the board, expulsion for the remainder of the school year, is too harsh under the circumstances.

#### 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:

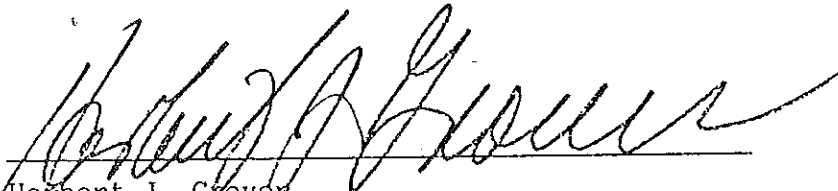
While our decision is founded solely upon an error of law of the state superintendent, we point out, obiter dicta, that the superintendent's review of a board's expulsion hearing would appear to be limited by the statute which created that appeal, namely, sec. 120.13(1)(c), Stats. The superintendent's 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).

Section 120.13(1)(c), Wis. Stats., specifies that 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. Geno N [REDACTED] has repeatedly violated the School District of Flambeau's rules relating to smoking in school. These repeated and deliberate violations of school rules, in spite of the imposition of less drastic disciplinary measures, support the school board's conclusion that the interest of the school demanded Geno's expulsion.

The board's decision to expel the appellant from school for repeated violations of school rules is adequately supported by the record in this matter. The record also reflects that appellant was accorded all of the procedural rights due him under sec. 120.13(1)(c), Wis. Stats.

IT IS THEREFORE ORDERED that this appeal be and hereby is denied.

Dated and mailed this 9th day of May, 1983.

  
Herbert J. Grover  
State Superintendent of Public Instruction