

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
[REDACTED] TERESA LYNN  
by the Janesville School District  
Board of Education

OPINION  
AND  
ORDER  
84-EX-01  
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THE NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. §120.13(1)(c) from the December 6, 1983 decision of the Janesville School Board expelling the appellant, Teresa Lynn [REDACTED] from school for the remainder of the 1983-84 school year. This appeal was filed on January 4, 1984. In accordance with the provisions of Wis. Admin. Code §PI 1.04(3), this decision is confined to our review of the record of the school board hearing and the procedural standards which the school board must follow in accordance with §120.13(1)(c), Wis. Stats. Both parties were provided with an opportunity to submit written arguments on the merits of this appeal. No arguments have been submitted.

FINDINGS OF FACT

By letter of the Deputy Clerk of the Janesville Board of Education dated December 6, 1983, Teresa Lynn [REDACTED] a student at Joseph A. Craig Senior High School, was expelled from school for the remainder of the school year. The letter states, in part, that the Janesville Board of Education also "voted . . . to base her readmittance upon her willingness to seek drug and alcohol counseling."

The School Board found, in accordance with Wis. Stat. §120.13(1)(c), that on November 22, 1983, Teresa Lynn ██████ sold a bag of marijuana at Craig High School; that such conduct endangered the property, health or safety of others at school; and that the interests of the School District demanded that Teresa Lynn ██████ be expelled. Teresa Lynn ██████ admitted to having engaged in such conduct on November 22, 1983 to Mr. Patrick Brooks, Assistant Principal and to Officer Lee of the Janesville Police Department. We find these facts supported by the record.

Both Teresa Lynn ██████ and her parents were sent, individually, a notice of hearing dated November 28, 1983, which provided them with five (5) days' notice of the hearing. The notice included a specific statement as to the charge, noted the time and place of the hearing, and stated that the hearing could result in expulsion. The notice advised that Teresa had a right to be represented by an attorney and to call and cross-examine witnesses. A copy of Wis. Stat. §120.13(1)(c) was attached to the notice.

The Board of Education kept and recorded minutes of the hearing which was held on December 5, 1983. Neither Teresa nor her parents requested that the hearing be closed, nor did either object to its closure on the school board's own motion.

The letter of expulsion was mailed, individually, to Teresa Lynn ██████ and to her parents. Both letters were received by certified mail on December 7, 1983.

#### CONCLUSIONS OF LAW

The United States Supreme Court discussed the due process rights of students involved in school disciplinary hearings in Goss v. Lopez, 419 U.S. 565 (1975). The case involved a short-term suspension and the Court

held that a property interest and a liberty interest were involved in obtaining a public education and, therefore, that due process applies to school expulsion hearings. The Court stated, in part, as follows:

Once it is determined that due process applies, the question remains what process is due. Morrissey v. Brewer, 408 U.S., at 481, 33 L.Ed.2d 484.

Id. at 577.

At the very minimum, therefore, students facing suspensions and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing.

Id. at 579.

We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.

(Emphasis added.) Id. at 584.

School districts are limited <sup>purpose</sup> municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. Iverson v. Union Free School District, 186 Wis. 342 (1925).

Wis. Stat. §§120.13(1)(b) and (1)(c) were enacted essentially in their present form by Chapter 94, Laws of 1973, prior to the Goss decision. The statute is, however, in consonance with both the Goss decision and the Iverson principle. The Wisconsin legislature has set forth two separate provisions for removing students from school: §120.13(1)(b) provides a procedure for suspensions lasting from 1-7 school days and §120.13(1)(c) provides a procedure for expulsions which are for a longer term.

The Wisconsin Court of Appeals, in Racine Unified School District v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 (1982), held that a student's right to due process in an expulsion hearing is satisfied even though some of the testimony presented was hearsay given by members of the school staff.

In addition to its holding, the Court discussed the statutory due process requirements which school boards must observe in expulsion proceedings:

The only applicable statute setting forth school board powers is §120.13(1), Stats. Particularly pertinent is subsection (c), which authorizes a school board to expel a student for, among other reasons, conduct which endangers the property of others. The statute then sets forth the procedural standards which the school board must follow:

- (1) The student is entitled to notice of a hearing;
- (2) The student is entitled to counsel at the hearing;
- (3) The hearing may be closed at the student's request;
- (4) The board must keep written minutes of the meeting;
- (5) If expulsion is ordered, such order shall be mailed to the student; and
- (6) An expelled student may appeal the expulsion to the state superintendent.

Id. at 665-667. The Court continued:

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, §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.

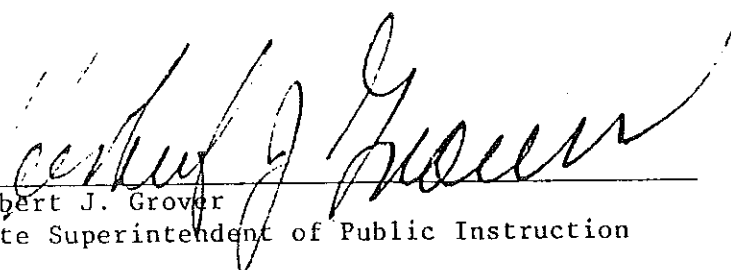
Id. at 667.

Having reviewed the record established in the school board's expulsion process, I have concluded that both the substantive provisions and the procedural mandates of Wis. Stat. §120.13(1)(c) have been met to the extent that they are applicable to the expulsion for the 1983-1984 school year. I am, however, specifically reserving judgment on the propriety of that provision of the school board's expulsion order which made Teresa Lynn [REDACTED] right to readmission to the public schools of Janesville contingent on her "willingness to seek drug and alcohol counseling." As desirable as this objective may be, I am uncertain that Wis. Stats., §120.13(1)(c) authorizes the school board to establish conditions on the readmission of an expelled student once the period of expulsion has lapsed. Rather than decide this

novel legal issue prematurely, I have decided to withhold judgment on this issue until such time as this issue is ripe for my review.

IT IS THEREFORE ORDERED that the expulsion of Teresa Lynn [REDACTED] from Craig High School for the 1983-1984 school year by order of the Janesville Board of Education be and is hereby upheld.

Dated and mailed this 1st day of June, 1984.

  
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Herbert J. Grover  
State Superintendent of Public Instruction