

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
TREVIS P [REDACTED]
by the Arrowhead School District
Board of Education

DECISION
AND
ORDER
84-EX-02

THE NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to §120.13(1)(c), Wis. Stats., from the March 19, 1984 decision of the Arrowhead School Board to expel the appellant, Trevis P [REDACTED], from school for the balance of the 1983-84 school year, and to consider him for reinstatement for the 1984-85 school year only if evidence is presented that he has received counselling from the Waukesha County Council on Alcohol and Other Drug Abuse.

FINDINGS OF FACT

On Friday, March 9, 1984, a detective from the Waukesha Sheriff's Department came to Arrowhead High School and requested to speak to two students concerning a sale of marijuana from one student to another or others. The detective had received a pipe and a bag of marijuana from the father of a student of Arrowhead High School, Jackie L [REDACTED]. Jackie had told her father and the detective that she got the pipe and marijuana from a friend of hers who had bought it from the appellant, Trevis P [REDACTED]. After an investigation which included speaking with a number of students, it was learned

that Jackie herself bought the marijuana from the appellant. The appellant admitted to the detective and Dean James Yde that he sold marijuana to Jackie on school grounds. He also signed a statement to that effect for the Waukesha Sheriff's Department. Appellant stated that he bought the marijuana from another student at Arrowhead and sold it to Jackie. He admitted that he purchased marijuana from this student on two occasions, both times on school grounds.

Appellant was charged with possession and sale of controlled substances while at school, in violation of the Arrowhead Policy on Student Conduct, Alcohol and Drugs, which provides:

A student shall not possess, sell, use, transmit, or be under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, or intoxicant of any kind:

(1) on the school premises during, immediately before, and immediately after school hours;
...

1984 Arrowhead High School Student Handbook, p.4.

Appellant was suspended from school beginning March 12, 1984. On March 13, 1984, an administrative hearing was held on the charge. At this hearing, the appellant admitted again that he sold marijuana to Jackie L. [REDACTED] and also that he had provided marijuana to students on other occasions.

On March 13, 1984 notice was sent to the appellant and his parents, informing them that the appellant would be recommended for expulsion from Arrowhead High School pursuant to §120.13(1)(c), Wis. Stats., and informing them of their right to attend and be represented by counsel at a hearing scheduled for March 19, 1984 before the Board of Education to consider the recommendation.

On March 19, 1984 after a hearing, appellant was expelled from school for the remainder of the school year by the Arrowhead School Board on the grounds that his conduct in selling the marijuana endangered the health and safety of others. Appellant's expulsion is appealed on the grounds that the School Board's action "...was arbitrary and capricious, in that they failed to consider or take into account the individual nature of Trevis P [REDACTED] as a student, but as a matter of policy determined to expel him from school as an example to the student body."

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). Under §120.13(1)(c), Wis. Stats., a school board has been granted the authority to expel a pupil "... whenever it finds ... that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others." In order for a school to rely upon this as grounds for expelling a student, it must be established both that the conduct occurred while the student was on school premises or under the supervision of a school authority and that the conduct "endangered the property, health or safety of others."

In this case, the first part of the test is satisfied by the appellant's own admission that he sold the drugs to Jackie on school

property. As regards the second part of the test, it is clear that our legislature views the sale and/or distribution of controlled substances as a safety and health threatening activity, for it is a criminal act. The appellant's act of selling marijuana, therefore, supplies the necessary causal link between student conduct and a threat to the health or safety of others, required by the statute for an expulsion. It is evident from the record that appellant's expulsion in its entirety satisfied the statutory criteria set forth for such action.

Though the appellant argues that the expulsion was arbitrary and capricious because the Board did not consider "the individual nature of [the appellant] as a student", this argument must be dismissed because the statute does not require school boards to take into account a student's "individual nature" when determining whether a particular act is an expellable offense.

In reviewing a school board's expulsion decision, the state superintendent is limited by the statute which created the appeal, in this case, §120.13(1)(c), Wis. Stats., Racine Unified School District v. Thompson, 107 Wis. 2d 657, 667, 321 N.W. 2d 334 (1982).

Here, the evidence demonstrates that the expulsion was based upon an act which clearly violated rules contained in the school's published student conduct handbook and that the act fell within the criteria necessary to expel a student under §120.13(1)(c), Wis. Stats. 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.

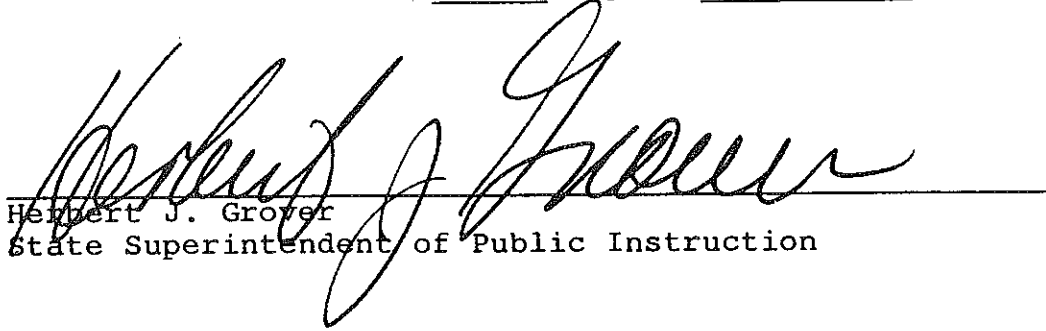
However, the notice of expulsion to the appellant and his parents states as follows:

In addition, as I indicated to you, it will be necessary for Trevis to become involved with a drug counseling agency such as the Waukesha County Council on Alcoholism and Other Drug Abuse. These contacts will need to be made prior to September, 1984. We will require a statement from such an agency indicating that they worked with Trevis and feel that he was cooperative with them.

While it is desirable that a student with a drug or alcohol problem obtain counselling, I am uncertain that Wis. Stat. §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.

IT IS THEREFORE ORDERED that the expulsion of Trevis P. [REDACTED] from Arrowhead High School for the 1983-1984 school year by the Order of the Arrowhead Board of Education be and is hereby upheld.

Dated and mailed this 13th day of September, 1984.


Herbert J. Grover
State Superintendent of Public Instruction