

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
KATHLEEN W [REDACTED]
by the Tri-County Area School Board

DECISION
AND
ORDER
85-EX-02

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 14, 1985 decision and order of the Tri-County Area School Board to expel Kathleen W [REDACTED] from school for the remainder of the 1984-85 school year. This appeal was filed on March 20, 1985. In accordance with the provisions of Wisconsin Administrative Code §PI 1.04(3), this decision is confined to a review of the record of the school board hearing and the procedural standards required by §120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

On February 15, 1985 Kathleen and her parents were individually notified by letter from Mr. Thomas Whalley, Acting District Administrator, that a hearing would be held before the Tri-County school board on February 25, 1985 to consider Kathleen's expulsion. The notice indicated that Kathleen and another student, Bill S., were "charged with the breaking of school district rules and engag-

ing in conduct as follows: Engaging in petting and sexual activity on January 15, 1985 on the athletic bus returning from Iola-Scandinavia." The notice also gave the time and place of hearing, indicated expulsion would be considered and included copies of §120.13 (1)(c), Wis. Stats., and relevant parts of the Student Handbook concerning due process.

A hearing was held before the school board on February 25, 1985. Kathleen and her parents were present at the hearing and were represented by counsel. During the hearing the board heard testimony from the school principal, the two basketball coaches, the school bus driver, a student witness, and Kathleen. The board also received certain documents as exhibits. These exhibits included several typewritten transcriptions of statements which students had given the coaches and principal and a diagram of the inside of the school bus. The principal, Ms. Arndt, testified that she took statements from two cheerleaders who indicated they saw Kathy and Bill engage in sexual intercourse in the bus on January 15th. Ms. Arndt testified that one student was sitting in the seat directly in front of Bill and Kathy and the other was sitting kitty-corner across from them (Tr.17). At the hearing Ms. Arndt refused to identify the cheerleaders whose statements she had taken (Tr. 15). Ms. Arndt further testified that she was satisfied the witnesses were telling the truth and that it was her opinion that this sort of conduct [i.e., engaging in sexual

intercourse] endangered the health and safety of the students involved as well as other students (Tr. 25).

Assistant basketball coach James Fazen testified that two basketball players told him that they personally witnessed Bill and Kathy "screwing" in the back of the bus (Tr. 27 and 28). Mr. Fazen also testified that he had every reason to believe the players were telling him the truth and further, that in his opinion, such activity would be harmful to the health and welfare of the students involved and other students (Tr. 27).

Head basketball coach John Sherman testified that around February 7 or 8, 1985 some of his basketball players told him that Bill and Kathy had engaged in sexual intercourse on the bus on January 15th (Tr. 36-37). Subsequently, Mr. Sherman asked the students he coached who could have witnessed the incident to write down what they saw. The students were given the option to write "No comment" if they chose. Mr. Sherman testified that some of the students who had told him they saw Kathy and Bill have sexual intercourse chose not to submit written statements to that effect (Tr. 39).

A student, Steve G., testified that on January 15, 1985 he was sitting directly in front of Bill and Kathleen and stated he did not witness any petting or sexual activity (Tr. 48-49). Under cross-examination he further testified that he really did not pay much attention, and really did not look, but he believed if Bill

and Kathleen had been doing anything other than "laying hands", he would have known just by movement or sound (Tr. 50).

Kathleen testified that she and Bill did not engage in any petting or sexual activity (Tr. 55). She also admitted that she had lied before the athletic board hearing when she testified that she had not been sitting with Bill on January 15, 1985. She stated she had lied because she did not want Bill to get into any trouble and she did not want to upset her own boyfriend (Tr. 55-56). Bill was present at the hearing but he did not testify.

After all the witnesses had testified, the attorney for the school district asked the board to limit its consideration of the written statements from students only to the two statements Ms. Arndt had taken which specifically indicated that the activity they witnessed took place on January 15, 1985 (Tr. 60). The board then recessed to a closed session to consider the evidence. When the board reconvened in open session, they verbally stated their findings and conclusion that sexual intercourse had occurred between Bill and Kathleen on January 15, 1985 and found that Kathleen should be expelled for the remainder of the school year (Tr. 63).

The board members indicated that they based their conclusions on the written statements of the unidentified cheerleaders and the testimony of Ms. Arndt and Messrs. Fazen and Sherman, and indicated they did not find Kathleen's testimony or that of her witness, Steve G., to be credible (Tr. 63).

Another school board meeting was held on March 14, 1985 at which time the board reviewed and approved the proposed order of expulsion.

On March 15, 1985 copies of the board's findings, conclusions and order to expel were mailed to Kathleen and her parents individually, as required by §120.13(1)(c), Wis. Stats. In that expulsion order the Board indicated that in reaching its decision it limited its consideration of the written statements to the two statements Ms. Arndt had taken from the cheerleaders; that it took into consideration the testimony of Ms. Arndt, Mr. Sherman and Mr. Fazen; that Kathleen's admission of lying at the athletic council meeting made her testimony "not worthy of credence" and that Steve G. testified "that he didn't look." The Board concluded that the alleged sexual activity had taken place, that this activity endangered the health or safety of the students involved as well as other students, and that the interest of the school demanded the expulsion of both Kathleen and Bill.

CONCLUSIONS OF LAW

School districts are limited purpose municipal corporations and have only those powers which are conferred specifically by statute or are necessarily implied therefrom. Iverson v. Union Free High School District, 186 Wis. 342, 353 (1925). A school board's power to expel students derives from §120.13(1)(c), Wis.

Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which must be followed in the expulsion process. As far as grounds for expulsion, the statute states in relevant part,

The school board may expel a pupil from school 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, . . . and is satisfied that the interest of the school demands the pupil's expulsion.

§120.13(1)(c), Wis. Stats.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has indicated that the scope of the state superintendent's review is limited by the language of §120.13(1)(c), Wis. Stats. In Racine Unified School District v. Thompson, 107 Wis. 2d 657, 667, 321 N.W.2d 334 (1982), the Court of Appeals opined in dicta that, "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." Thus, it is incumbent upon the state superintendent in reviewing an expulsion decision to ensure that the required statutory procedures were followed, and that the board's decision is based upon one of the established statutory grounds.

A review of the record in this case indicates that the Tri-County Area School Board complied with all the procedural requirements of §120.13(1)(c), Wis. Stats., including notice, right to counsel, and right to a closed hearing. Accordingly, I conclude

that there were no procedural violations of the statute in this expulsion process.

As to the grounds for the expulsion, the board's order indicated that it found that the sexual activity, which it concluded had taken place, endangered the health or safety of the students involved as well as other students and that the interest of the school demanded the students' expulsions.

The appellant contends that the board's findings and conclusions are not supported by the record. Further, the appellant argues that the school board improperly relied upon hearsay evidence in reaching its decision, that appellant was denied the opportunity to confront and question the students who allegedly witnessed the sexual activity, that the school's investigation and handling of the matter was biased, that the school district's attorney improperly acted as advocate for the school district while giving counsel to the school board, and that the board improperly evaluated the credibility of the testimony of Kathleen and Steve G.

In reviewing the findings of an administrative board sitting as the trier of fact, the Wisconsin Supreme Court has held that the findings of such a body "are conclusive if any reasonable view of the evidence sustains them . . ." State ex rel. DeLuca v. Common Council, 72 Wis. 2d 672, 695 (1976). Thus, if there is any reasonable view of the evidence which will sustain the Tri-County School Board's findings, those findings must be upheld.

The school board heard conflicting testimony as to whether sexual intercourse took place between Kathleen and Bill on the school bus on January 15, 1985. The principal and coaches testified that several students had related that they [the students] personally saw the sexual activity. On the other hand, Kathleen denied that any sexual activity took place and Steve G. testified he did not witness any sexual activity between Bill and Kathleen. Given this conflicting evidence, it was solely within the province of the school board to judge the credibility of the witnesses and to determine whom they believed. DeLuca, supra at 695; State ex rel. Wasilewski v. Board of School Directors, 14 Wis. 2d 243, 260, 111 N.W.2d 198 (1961).

Further, it was not improper for the board to rely upon the hearsay evidence presented by the principal and two basketball coaches. In Racine Unified School District v. Thompson, 107 Wis. 2d 657 (Ct. Apps. 1982), the Wisconsin Court of Appeals was persuaded that hearsay statements from school teachers or staff members were admissible in a school disciplinary hearing and could be found to have "sufficient probative force upon which to base, in part, an expulsion." Id. at 664. The Racine court also indicated it was particularly persuaded by the rationale used by the federal 5th Circuit Court of Appeals in Boykins v. Fairfield Board of Education, 492 F.2d 697 (5th Cir. 1974), cert. den. 420 U.S. 962 (1975).

In Boykins the 5th Circuit noted that it was disinclined to impose upon a board of laypeople the duty of observing and applying the rules of evidence, and concluded that, "the rights at stake in a school disciplinary hearing may be fairly determined upon the 'hearsay' evidence of school administrators charged with the duty of investigating the incidents." Id. at 701.

In the case at hand, the school principal and coaches were charged with investigating the allegations against Kathleen and Bill. Their investigations consisted of talking to the basketball players and cheerleaders who were on the bus on the day in question and eliciting the students' oral and written statements as to their personal knowledge of the events.

Based on the circumstances of this case, and the nature of the conduct in question, I believe it was appropriate for the school board to base its decision to expel entirely on the hearsay testimony presented by the principal and coaches as to the statements made by other students.

The appellant charges that the principal and other school officials were somehow biased against her and that their testimony should therefore be discounted. In order to support an allegation of bias there must be some evidence in the record to show either actual bias or that there were special facts or circumstances which would lead one to believe that there was a high probability of bias. DeLuca, supra at 684.

I can find nothing in this record which indicates that any of the school staff had any actual bias against Kathleen or that the circumstances of the investigation and proceedings before the school board indicated a high probability of bias. There is a legal presumption that public officials act fairly, impartially and in good faith. Wasilewski, supra at 266. Absent any evidence in the record to establish the contrary, the presumption must hold.

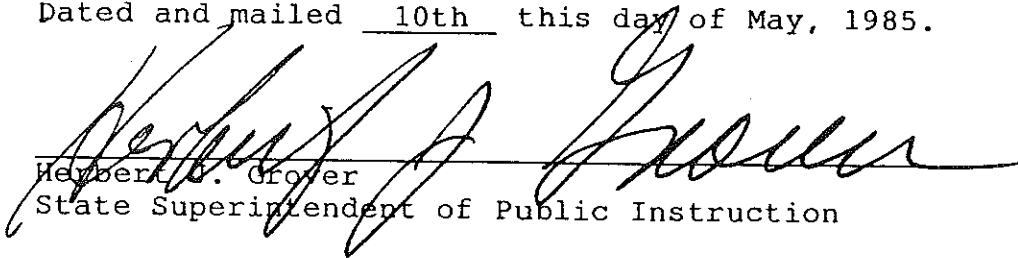
The appellant also alleges that the attorney for the school district acted improperly by assisting the school administrators in presenting their case and giving advice to the school board. I can find nothing in the record which indicates that the attorney acted improperly in this matter.

Based upon the discussion above, I conclude that the board's decision to expel Kathleen for engaging in conduct which endangered the health or safety of herself and others, is adequately supported by the record. I further conclude that the record shows that Kathleen was accorded all the procedural rights which were due her under §120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Kathleen W [REDACTED] for the remainder of the 1984-85 school year by the Tri-County Area School Board be and is hereby affirmed.

Dated and mailed 10th this day of May, 1985.


Herbert C. Grover
State Superintendent of Public Instruction