

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
LESLIE F [REDACTED]
by the Milwaukee Public Schools Board
of School Directors

DECISION
AND
ORDER
86-EX-03

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. s.120.13(1)(c) from the February 18, 1986 decision and order to expel Leslie F [REDACTED] from Washington High School until March 3, 1986 with reinstatement at the Lapham Park Assessment Support Center. Leslie F [REDACTED], by her parents, Mr. and Mrs. Herbert L. F [REDACTED], Sr., filed this appeal by letter dated February 28, 1986. In accordance with the provisions of Wis. Admin. Code sec. PI 1.04(3), this decision is confined to a review of the notice of the hearing, the record of the school board hearing, the expulsion order and the procedural standards which the school board must follow in accordance with Wis. Stat. s.120.13(1)(c).

FINDINGS OF FACT

On February 7, 1986, Leslie F [REDACTED] (hereinafter Leslie) and her parents, Mr. and Mrs. F [REDACTED] (hereinafter her parents), were notified in writing by Mr. Phil Haddix, field

counselor in the Department of Student Services, Milwaukee Public Schools, that a hearing would be held before the Board of School Directors on February 18, 1986 to consider Leslie's expulsion from Washington High School. The notice of the hearing indicated that Leslie's name had been submitted to the Board of School Directors for expulsion as a result of a meeting on February 4, 1986 between Mr. and Mrs. F█████ and Mr. Luis Lopez, Assistant Administrative Specialist. Specifically, the notice stated that Leslie was accused of bringing a weapon (starter gun) to Washington High School on January 13, 1986. The notice included the time and place of the hearing, the charges against the student, the right to bring legal counsel, a statement indicating that written minutes of the hearing would be kept and a copy of Wis. Stat. s.120.13(1)(c).

A hearing was held before the school board on February 18, 1986. Leslie and her parents were present as well as five members of the school board. During the hearing the board heard testimony from the assistant principal at Washington High School, a field counselor in the Department of Student Services, an assistant administrative specialist and Mr. F█████. Several exhibits were introduced including a photocopy of the starter gun. The assistant principal testified that on January 11, 1986 at a Saturday night basketball game between Washington and North high schools, there had been an incident regarding a gun. The gun was allegedly given to a student identified as Leslie F█████ (Tr. 6). Mrs.

Powell, the assistant principal, further testified that on January 13, 1986, a student named Sonia T [REDACTED] had been brought to Mrs. Powell's office by a teacher who said that Sonia had waved the gun around in class and had made threatening remarks to other students (Tr.7). At this point, Mrs. Powell stated that she was shown the gun and that she spoke with Sonia about the seriousness of the incident and informed Sonia that she was being suspended (Tr.8). Mrs. Powell testified that Sonia told her that Leslie "Fox" had brought the gun to school and had given it to Sonia. Mrs. Powell stated that Sonia had indicated to her that at the Washington-North game there had been an incident and that Sonia had given Leslie the gun to keep for her (Tr.9). Mrs. Powell testified that when she asked students about Leslie "Fox" no one knew that person but that subsequently Leslie F [REDACTED] came into the administrative office and admitted to being the Leslie in question (Tr.9-10). Mrs. Powell testified that Leslie said that Sonia had given her the gun to keep, that Leslie had shown the gun to her parents and, that her parents had told her to take the gun back to school and return it to Sonia (Tr.10). Mrs. Powell stated that Leslie had returned the gun to Sonia (Tr.11). Mrs. Powell testified that she was shown the gun and that she knew it was a starter gun (Tr.12). She further testified that remarks from Leslie's teachers "were very positive" and that there was no information that Leslie had shown the gun to anyone but had returned it directly to Sonia (Tr.15).

Mr. Phil Haddix, a field counselor, testified that the policy regarding possession of starter guns classified these guns as real weapons. He stated that the starter guns were considered dangerous and extremely disruptive within the school setting (Tr.19-20). He further testified that the information he had was that Sonia T [REDACTED] was the alleged owner of the gun (Tr.21). Mr. Haddix added that he did not see a substantive difference between passing a weapon to another student and returning it to its owner (Tr.21). Mr. Haddix indicated that there was no malicious intent on the part of Leslie but that possession of an object (the gun) could warrant expulsion (Tr.22). Mr. Haddix concluded his testimony by stating that Leslie's involvement in the incident had not been discovered until Sonia had been questioned by Mrs. Powell (Tr.23).

Mr. Luis Lopez, an assistant administrative specialist, testified that he conducted a preliminary expulsion hearing with Leslie on February 4, 1986. He testified that Mrs. Powell, Mr. F [REDACTED] and Leslie were present at that conference (Tr.29). Mr. Lopez testified that Mr. F [REDACTED] had indicated to him that Mr. F [REDACTED] did not feel that the starter gun was a real weapon but rather a toy weapon (Tr.30). Mr. Lopez testified that regardless of whether it was a toy weapon or not, the starter gun was still a weapon (Tr.32).

Mr. F [REDACTED] testified that Leslie was a loyal student at Washington High School who would not knowingly do anything to jeopardize herself or the school (Tr.34). He further

added that had he known how to define a weapon, he would not have allowed Leslie to bring the starter gun back to school. Mr. F [REDACTED] testified that he told Leslie to return the gun to the owner and not to flash it or show it to anyone (Tr.35). Mr. F [REDACTED] indicated that Leslie had shown him the gun at home, and told him that she had been given the gun to hold for a friend and that she was to return the gun to the friend at a later date (Tr.37). He concluded his testimony by stating that Leslie "had done one thing" (returned the starter gun) because he, a responsible adult and her father, had told her to do it (Tr.40). Leslie was present at the hearing but did not testify.

At the hearing the school district attorney presented to the board a memorandum from Lee R. McMurrin, superintendent of schools for the Milwaukee Public Schools, which outlined his conclusions that by bringing the starter gun to school Leslie had violated the board's policy governing the possession of concealed and dangerous weapons, expulsion was justified and the interest of the school demanded the student's expulsion. Superintendent McMurrin recommended that Leslie be expelled until April 7, 1986 with reinstatement through the Lapham Park Assessment Support Center.

After the witnesses had testified, the board retired to closed session to deliberate on the matter. When the board reconvened in open session, the board moved that Leslie should be expelled until March 3, 1986 and be reassigned to the Assessment Center for assessment and evaluation. The

school board indicated that they based their conclusions on the seriousness of the action and extenuating circumstances including statements that Leslie F[REDACTED] was a good student and that there was no malicious intent on her part (Tr.43).

On February 20, 1986, a letter was sent to Leslie and her parents informing them of the Board of School Directors' decision to expel Leslie until March 3, 1986 despite the superintendent's recommendation that she be expelled until April 7, 1986. The letter signed by Mr. Phil Haddix informed the F[REDACTED] family that their attendance was requested at a meeting to be held on February 24, 1986 to assist the family in identifying community resources.

On February 28, 1986, an appeal to the state superintendent was filed on behalf of Leslie by her parents.

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 s.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 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. Section 120.13(1)(c), Wis. Stats.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated that the scope of the state superintendent's review is limited by the language of s.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 in dicta stated 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." It is, therefore, 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 shows that the Milwaukee Public Schools' board complied with all the procedural requirements of s.120.13(1)(c), Wis. Stats., including notice and right to counsel. Accordingly, I conclude that there were no procedural violations of the statute in the expulsion process.

As to the grounds for the expulsion, possession of a weapon, the board's order indicated that it found possession

of the starter gun to be analogous to possession of a weapon. Further, passing this weapon to another student while at school and under the supervision of school authority was conduct which endangered the health and safety of others and the interest of the school demanded the pupil's expulsion.

In her letter of appeal, the appellant raised several issues concerning her expulsion. First, she alleges that the incident regarding the gun began on January 11, 1986 at a basketball game at which she was given the starter gun to "hold" but not told by the owner of the gun that the police were looking for it. Second, that she was told by her parents to return the gun to its owner but that she was unable to reach the owner. Third, she alleges that she did as she was told by her father, namely returned the gun, and that no one saw her with it, she did not point it at anyone or threaten anyone with it. Fourth, she contends that the reason she had possession of the gun for three hours was because she had not seen the gun's owner until that time. Fifth, the appellant contends that she should not be held responsible for the owner's action of initially giving her the gun. Sixth, she alleges that she was suspended not because she brought the gun to school or because she endangered anyone, but because the owner's mother had contacted someone on the school board and had inquired about what had happened to the girl who had brought the gun to school. In her letter of appeal, the appellant alleges that the school

board could have done something different than expulsion and suggests as an alternative a three (3) to seven (7) day suspension. Each of these allegations will be addressed separately.

First, a review of the record and transcript in this case confirms that the incident involving the appellant's possession of the starter gun did have an antecedent event, the basketball game of the prior Saturday night, January 11, 1986. The appellant's allegation is true but has no direct bearing on the grounds for the expulsion. Appellant further admits possession of the starter gun through testimony by appellant's father. I conclude that the first allegation is true but is not in conflict with the findings of the board which found that there was possession of a starter gun by appellant.

Second, appellant contends that she was told by her parents to return the gun but was unable to locate the owner. A review of the transcript affirms the allegation that appellant was told what to do with the gun by her parents. The transcript does not reveal what or how many attempts were made to return the gun prior to the commencement of the school week. I conclude that appellant's allegation of parental advice is true but find no evidence to support the claim of inability to locate the owner. Accordingly, I find the second half of this allegation to be without merit.

Third, appellant claims that she neither pointed nor threatened anyone with the starter gun. A review of the re-

cord and transcript affirms the appellant's allegation but does not materially alter the basis for the expulsion, that the appellant had possession of the starter gun while at school and under school authority.

Fourth, appellant contends that possession of the gun for three hours was solely due to her inability to locate the gun's owner until three hours had elapsed. A review of the record and transcript affirms the allegation but, as in the prior claim, does not materially alter the basis for the expulsion. Accordingly, I conclude that the allegation is true but without material relevance.

Fifth, the appellant contends that she should not be held responsible for the actions of the gun's owner. A review of the record and transcript does not reveal any claim or contention by the school personnel involved in this incident that the appellant has been held responsible for anyone else's behavior. Accordingly, I conclude this allegation is without merit.

Sixth, the appellant alleges that she was suspended on grounds other than possession, implying that had the gun owner's mother not informed the school of the name and identity of the person who brought the gun to school, there would have been no suspension or expulsion. A review of the record and transcript indicates that the school board was informed of the identity of the appellant after a preliminary hearing had occurred. Accordingly, I conclude that this allegation is speculative and without merit.

Lastly, the appellant alleges that the school board could have taken some other action than expelling her, suggesting a three (3) to seven (7) day suspension. Section 120.13(1)(b), Wis. Stats., sets out the requirements for suspension and states in part,

the school district administrator . . . may suspend a pupil for not more than 3 school days or, if a notice of expulsion hearing has been sent under par. (c), for not more than a total of 7 consecutive school days for noncompliance with such rules or school board rules . . .

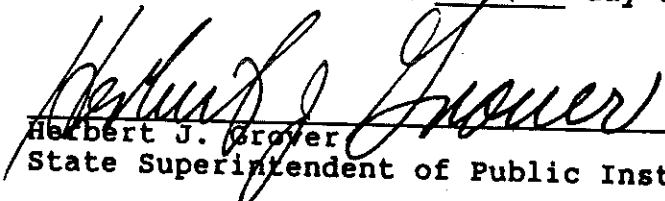
Clearly the school board has statutory authority to suspend a student for up to seven days if an expulsion hearing is pending. Once the board has held an expulsion hearing and has found grounds for the expulsion, the board cannot retroactively order a longer suspension in lieu of an expulsion. A review of the record and transcript indicates the board took into consideration the appellant's good behavior and school record and ordered an expulsion that would end on March 3, 1986 despite the school superintendent's recommendation to the board that the appellant be expelled until April 7, 1986. 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). Therefore, if there is any reasonable view of the evidence which will sustain the Milwaukee school board's findings, those findings must be upheld. Accord-

ingly, I conclude that the school board's finding that appellant's possession of a starter gun (which closely resembled a real gun) was in noncompliance with school rules and constituted grounds for expulsion is a reasonable view of the evidence heard by the school board. Based on the record, I affirm the expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Leslie F██████ until March 3, 1986 by the Milwaukee Public Schools Board of School Directors be and is hereby affirmed.

Dated and mailed this 1st day of May, 1986.



Herbert J. Grover
State Superintendent of Public Instruction