

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
DALE C [REDACTED]

by the Central/Westosha School District
Board of Education

DECISION
AND
ORDER
86-EX-04

NATURE OF THE APPEAL

This matter is before the State Superintendent of Public Instruction pursuant to s. 120.13(1)(c), Wis. Stats., on appeal from the February 18, 1986 decision of the Board of Education (Board) of the Central/Westosha School District expelling the appellant, Dale C [REDACTED], from Central High School until the end of the 1985-86 school year. Dale C [REDACTED], by his parents, Mr. and Mrs. Clarence C [REDACTED], filed this appeal by letter dated March 6, 1986. In accordance with the provisions of Wis. Admin. Code sec. PI 1.04(3), this decision is confined to a review of the record of the school board hearing and the standards which the school board must follow in accordance with s. 120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

The Central/Westosha School District issued its Findings and Expulsion Order on February 19, 1986. The Board found that Dale C [REDACTED] was involved in the sale of a

look-alike drug to another student at Central High School on or about January 23, 1986. The Board further found that possession and sale of drugs on school property was against the rules of Central High School and the policy of the school board. The Board found that through the sale of drugs Dale C [REDACTED] had engaged in conduct while at school which endangered the health and safety of others and ordered the expulsion of the appellant until the end of the 1985-86 school year. The expulsion order also included a provision for a review of the matter by the Board prior to appellant's readmission in the fall of 1986.

On January 29, 1986, a Notice of Expulsion Hearing was sent to Mr. and Mrs. Clarence C [REDACTED], parents of the appellant, by the Central/Westosha School District office. The notice gave the time and place of the hearing (February 4, 1986), indicated that expulsion would be considered, stated the basis for the expulsion and included a copy of s. 120.13(1)(c), Wis. Stats.

On February 4, 1986, a letter was sent by Mr. Daniel Vliet, legal counsel for the Board, to Mr. Michael Fitzgerald, legal counsel for the C [REDACTED], in which there is notice of an adjournment for the expulsion hearing scheduled for February 4, 1986. The purpose of the adjournment, as indicated in Mr. Vliet's letter, was to allow time for drafting of an agreement regarding Dale C [REDACTED]'s voluntary withdrawal from Central High School. Additionally, there is

a statement regarding a waiver by appellant of any procedural objections to the Board's conduct in the matter.

On February 7, 1986, a letter was sent by Mr. Fitzgerald to Mr. Vliet stating that appellant and his parents no longer consented to the voluntary withdrawal and indicating that Mr. Fitzgerald assumed that there would be an expulsion hearing on March 4, 1986.

On February 11, 1986, a second Notice of Expulsion Hearing was sent by the district office to Mr. and Mrs. C██████. The notice included the date and time of the hearing, a statement of the charges, the right to counsel, the opportunity to request a public hearing, a statement regarding the possibility of expulsion, and a copy of s. 120.13(1)(c), Wis. Stats.

A hearing was held before the Board on February 18, 1986. Dale, his parents, Mr. Michael Fitzgerald, Mr. Vliet, the district administrator, the curriculum coordinator, a police detective from the Kenosha Sheriff's Department, three students, and five board members were present. During the hearing, testimony was heard from the police detective, the three students, the district administrator, the appellant, appellant's mother and a student's mother. The board also received several exhibits including the Kenosha Sheriff's investigation report, signed statements by two students, a copy of the student/parent handbook, a copy of the drug policy found in the handbook and a letter with reference to the appellant's character.

The detective officer testified that he was asked to investigate the alleged sale of drugs at Central High School which involved the purchase of "black Cadillacs" (Tr.13). He further testified that he had been told by the district administrator that a student had been taken to the hospital because the student appeared to be under the influence of a drug (Tr.13). The officer testified that he was told by Richard A [REDACTED], the student taken to the hospital, that he had purchased twenty (20) "black Cadillacs" from appellant at the price of \$10 for 20 capsules. The officer further testified that Richard told him that he had ingested four of the tablets and had flushed the remainder of the capsules down the toilet (Tr.14). The officer testified that he had questioned Carla H [REDACTED], another student, who verified Richard's story (Tr.14). The testimony by the officer went on to reveal that Dale had been called to the office and had been given Miranda warnings by the officer (Tr.15). Continued testimony by the officer revealed that he had further interviewed Richard A [REDACTED] and that Richard admitted to still having possession of the "black Cadillacs" at his home. The officer states that he next went to the A [REDACTED] home and was given a bag by Mrs. A [REDACTED] containing 16 black capsules. These capsules were taken by the officer to the Kenosha Health Department where they were analyzed by a forensic chemist and found to contain 24.9 milligrams of ephedrine and caffeine (Tr.16). The officer testified that his investigation was then ended be-

cause the capsules were not considered to be a controlled substance since they contained less than 25 milligrams (Tr.16).

A student, Carla H [REDACTED], testified that she had given a muscle relaxant to Richard A [REDACTED] on Wednesday during an algebra class which she had with both Dale and Richard (Tr.27). She further testified that on Thursday, the following day, she was present during a conversation involving Dale and Richard regarding "black Cadillacs" (Tr.28). She testified that they discussed the price of the pills and the time for the transaction (Tr.29). Carla testified that she had been given the muscle relaxants by a friend who had in turn been given the pills by her mother (Tr.31). Further, she testified that she did not know why she had given the muscle relaxant to Richard (Tr.32). She then testified that Richard's mother had called her on Friday, January 24, and had told Carla that Richard was having trouble talking and walking and that he had taken too many "black Cadillacs" (Tr.34).

Richard A [REDACTED], a student, testified that he, Dale and Carla had a conversation during an algebra class regarding "black Cadillacs" (Tr.37). He testified that Dale told him to meet Dale at Dale's locker on Friday morning to purchase the capsules (Tr.38). He further testified that he met Dale at locker 282 and purchased capsules for \$10. Richard stated that the pills were in a Tupperware container located at the bottom of the locker (Tr.38). Richard testi-

fied that he did not know why he first told the officer that he had ingested two of the capsules instead of telling the officer that he had taken four of the capsules (Tr.39). He further testified that he had taken a muscle relaxant earlier that week which had been given to him by Carla (Tr.40). Richard testified that he was asked by his parents to reveal the name of the person who had sold him the caffeine pills (Tr.47).

Mr. Sorenson, the school district administrator, testified that he sent Dale's parents notice of the expulsion hearing and that the drug policy of the school differentiated between the sale and use of drugs (Tr.51).

Dale testified that on January 22, 1986, he observed Richard and his friends entering a tenth hour algebra class. Dale stated that Richard was stumbling and was unable to talk straight (Tr.53). He further testified that Richard said that he had taken some pills. Dale testified that he offered to get Richard more pills but that he had no intention of following up on his statement and supplying the pills to Richard (Tr.54). Dale testified that he told Richard that if Richard bought the pills in quantity he could obtain the pills for 50 cents a piece rather than 75 cents. Dale then testified that he did not have any "black Cadillacs" or caffeine pills (Tr.54). He testified that he did not sell or give Richard any drugs or caffeine pills on the following day, Thursday. Dale stated that on Friday he was told by another student that Richard had been taken to

the office for "some pills" and that Richard had said that he had obtained the pills from Dale (Tr.55).

Dale further testified that later on Friday, Richard informed him that he (Richard) and Carla were going to smoke reefers together (Tr.56). He testified that earlier in the week he had observed Carla give Richard five white pills during algebra class. Dale testified that he had not said anything to the deputy or principal when called to the principal's office because he had been told by his parents not to respond (Tr.58).

Lance S [REDACTED], a student, testified that he was a "narc" for the Village Hall and that as a narc his job was to observe students who either use or transact drugs and inform the police (Tr.60). He testified that he received no money for his job (Tr.61). He stated that he knew, by observation, that Richard was a user and dealer of drugs (Tr.62). He further testified that Carla dealt in drugs, namely muscle relaxers and speed (Tr.63). Lance testified that he had not informed Officer LaPoint about Richard and Carla and that he had discontinued his work as a narc because of threats (Tr.65).

Mrs. A [REDACTED], Richard's mother, testified that as a nurse she was familiar with drug symptoms and had not had any indication that Richard used marijuana (Tr.71). Richard was recalled to testify and he denied any drug sale or drug use and stated that Lance had a reputation for selling speed (Tr.73).

The board members next discussed the testimony of Lance and obtaining verification of his job as a "narc" and voted to not obtain corroboration from the officer (Tr.79). The board then deliberated and voted to expel Dale C [REDACTED] from Central High School for the balance of the school year.

On February 19, 1986, a letter confirming the expulsion was sent to the C [REDACTED] including a finding that Dale was involved in the sale of a look-alike drug to another student, that possession and sale of drugs is against the rules of the school and that, therefore, Dale's conduct endangered the health and safety of others.

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 School District, 186 Wis. 342 (1925). The Wisconsin legislature has set forth, in Wis. Stat. s. 120.13(1)(c), the procedures required to be followed in school expulsions.

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 if some of the testimony presented is hearsay. In addition to its holding, the court discussed the statutory due process requirements which

school boards must observe in expulsion proceedings. The court stated in part as follows:

The only applicable statute setting forth school board powers is s. 120.13(1)(c), 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 the 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 hearing; (5) If expulsion is ordered, such order shall be mailed to the student; and (6) An expelled student may appeal the decision to the state superintendent.

(Footnote omitted.) Id. at 665-667.

The court continued in part as follows:

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, s. 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 of right to counsel, etc.

Id. at 667.

A review of the record in this case indicates that the Central/Westosha School District Board complied with all the procedural requirements of s. 120.13(1)(c), Wis. Stats., including notice, right to counsel, and the 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 sale of a look-alike drug, 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 student's expulsion.

In the letter of appeal, the appellant through his parents raised several issues concerning his expulsion. First, he alleged that his reputation was damaged for something he had not done. Second, he alleged that he had been denied an education. Third, the appellant alleges that he "was guilty" before the hearing started and, last, that he was denied due process of law. Each of these allegations will be addressed separately.

First, a review of the record and transcript indicates no negative statements or comments regarding appellant's character. There is nothing in the record to indicate that Dale was being held responsible for anything other than the sale of a look-alike drug which the Board concluded had taken place. Accordingly, I find no basis for the allegation and, therefore, conclude it is without merit.

Second, the appellant claims that he has been denied an education. A review of the record and transcript affirms the allegation that the Central/Westosha School Board told Mr. and Mrs. C [REDACTED] that they (C [REDACTED]) would have to pay for Dale's education (Tr.86). Further, the Board alluded to other sources, namely Reuther Alternative and private

schooling (Tr.86). Accordingly, I find the allegation to be true insofar as education at Central High School is concerned for the remainder of the school year. Whereas it would have been reasonable and even advisable for the Board to recommend an alternative such as a homebound program, nevertheless, there is no statutory authority for the state superintendent to order a local district to provide options when it has determined that expulsion is warranted.

Third, a review of the record and transcript does not support the allegations that the appellant was found guilty prior to the hearing. The record does indicate that the finding by the Board was based primarily on the testimony of the two other students. Accordingly, while I find no basis to the appellant's allegation, I would caution the Board when making its decision to not rely solely on the uncorroborated testimony of another student involved in the incident.

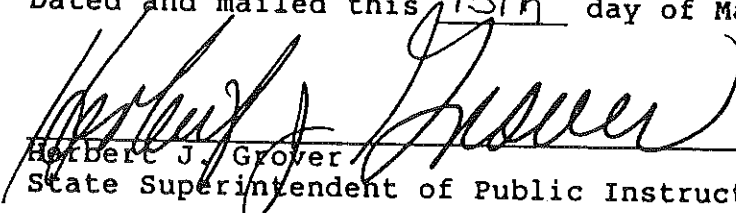
Lastly, the appellant alleges a denial of due process. A review of the record and transcript indicates that the Board fully complied with the procedural requirements for an expulsion hearing. The record reveals, however, an attempt by the Board to obtain a voluntary withdrawal and waiver from the student. Accordingly, I find no denial of due process but caution the Board as to careful consideration of all the facts surrounding an incident before making such an offer of a waiver to parents and/or the pupil-appellant.

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 Board's findings, those findings must be upheld. Based on the record, I affirm the expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Dale C [REDACTED] for the remainder of the 1985-86 school year by the Central/Westosha School District Board of Education be and is hereby affirmed.

Dated and mailed this 15th day of May, 1986.


Herbert J. Grover
State Superintendent of Public Instruction