

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
ERIC K [REDACTED]  
by the Rosholt School District  
Board of Education

DECISION  
AND  
ORDER  
86-EX-08

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NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to s. 120.13(1)(c), Wis. Stats., from the Rosholt School District Board of Education resolution dated May 8, 1986 by which it was ordered that Eric K [REDACTED] be expelled from Rosholt High School through the end of the 1985-86 school year and for the entire 1986-87 school year. Eric K [REDACTED] filed this appeal by letter dated May 12, 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 procedural standards which the school board must follow in accordance with s. 120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

The Rosholt School District issued its resolution on May 8, 1986. The Board specifically found that Eric verbally threatened and used physical force against the baseball coach, Mr. Nee, and that said actions endangered

the health, safety and property of others. Based on two incidents, one on April 28 and another on April 29, the Board expelled Eric for the balance of the 1985-86 school year and through the 1986-87 school year. The Board also included a provision for Eric, at his discretion, to contract with a licensed tutor to complete course requirements for the spring semester (1986) and, a provision which stated that the Rosholt School District might grant credit for work completed from other certified educational institutions. There was also a notice advising Eric that he would be responsible for the cost of his tutor.

Eric was sent a letter on April 30, 1986 containing a notice of expulsion hearing scheduled for May 7, 1986. The notice included a specific statement as to the charges, noted the time and place of the hearing, a right to counsel and the right to a closed hearing as well as a copy of s. 120.13(1)(c), Wis. Stats.

The expulsion hearing was conducted on May 7, 1986 by the Board. Present at the meeting were Board members, Eric, the baseball coach, the district administrator, the high school principal, the athletic director, the assistant football coach, the social studies teacher and the softball coach. Eric was not represented by legal counsel. During the hearing, testimony was heard from the baseball coach, the softball coach and a social studies teacher relevant to the April 28 and April 29 incidents. At the hearing, documents were submitted as evidence including a Disciplinary

Resolution of Eric K [REDACTED] dated January 24, 1983 which included the following two statements:

3. Should Eric be referred to the high school office for disciplinary measures, this may, depending upon the severity of the problem, lead to immediate expulsitory proceedings.

4. The high school principal shall keep the Board abreast of Eric's behavior pattern, especially as it relates to the reasons for his previous expulsion.

The baseball coach testified that on April 28, Eric had verbally threatened him during a baseball game against Weyauwega High School. He further testified that on the following day, April 29, after a decision had been made to remove Eric from the team, Eric confronted him and again verbally threatened him. The coach testified that he started to walk away but that Eric intentionally pushed or shoved him with his elbow.

Eric, during the course of the coach's testimony, admitted that he had made statements to the coach which could be interpreted as threats. Eric stated that ". . . it was a promise, not a threat" (Hearing tape, side 2). Eric also stated that when he was provoked, he (Eric) would explode (Hearing tape, side 2). Eric indicated that, in his opinion, Coach Nee yelled at him and picked on him (Hearing tape, side 2). Eric further stated that he thought that the coach wanted to fight with him and that because he (Eric) was considerably larger than the coach, had Eric wanted to deliberately push or shove the coach, there would have been no question in the coach's mind as to an intentional as-

sault. Eric indicated that he had merely touched the coach, an unintentional act.

Mr. Kliss, the softball coach, testified that Eric confronted the baseball coach and "threw him a good elbow" (Hearing tape, side 2).

The Board next adjourned into closed session for the purpose of discussing Eric's expulsion. There was a unanimous vote to expel Eric and a resolution was made with regard to the terms and conditions of the expulsion. Eric was duly notified of the resolution by letter dated May 8, 1986.

#### CONCLUSION 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, 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.

In his letter of appeal, the appellant raised several issues regarding his expulsion. There were no allegations regarding the procedure followed in the expulsion process but only allegations of actions which were not done. First, the appellant alleges that if his behavior was of concern, the school administration failed to refer him to any community health resources in order to receive counseling and an opportunity to improve. Second, the appellant alleges that in several progress reports, there was no indication that there existed a problem in his attitude nor any behavioral problems. Each of these allegations is addressed below.

First, the allegation regarding a referral to a community health resource is not germane to either any substan-

tive or procedural objections to the expulsion. The Board specifically found that the appellant engaged in behavior which endangered the health, safety and property of others, namely Coach Nee, and that such behavior warranted Eric's expulsion. 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 (1979). In this case, there was direct testimony regarding the incidents in question and no contrary evidence was presented by the appellant.

Second, the allegation regarding the progress reports which did not indicate a problem in attitude or behavioral problems may be true but is without merit relevant to this appeal. A review of the record indicates that the Board took into consideration the fact that the appellant had nearly completed the requirements for the last semester by offering a list of qualified tutors so that Eric could complete the semester's work. Additionally, the Board noted that the district would grant credit for courses completed from other certified educational institutions so as to enable Eric to obtain a regular academic diploma. These two provisions of the resolution indicate a positive feeling by the administration that Eric is a capable student.

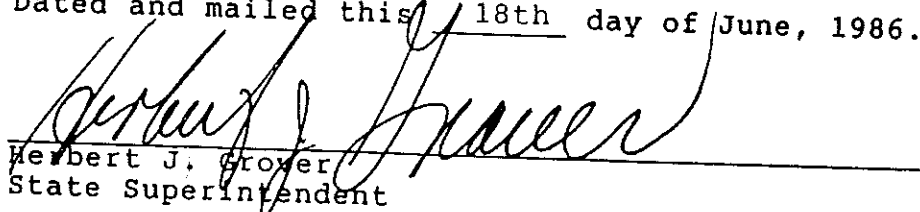
A review of the record, the hearing tape and videotape indicates that all the procedural requirements of

s. 120.13(1)(c), Wis. Stats., were met. Accordingly, I affirm the expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Eric K██████ by for the remainder of the 1985-86 school year and for the entire 1986-87 school year by the Rosholt School District Board of Education be and is hereby affirmed.

Dated and mailed this 18th day of June, 1986.

  
Herbert J. Grover  
State Superintendent