

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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

DECISION
AND
ORDER
86-EX-07

NATURE OF THE APPEAL

This is an appeal pursuant to s. 120.13(1)(c), Wis. Stats., from the March 31, 1986 decision and order to expel Christopher F [REDACTED] from the Dover Street School until May 5, 1986 with reinstatement into the Milwaukee Public Schools (MPS) after assessment and evaluation. Christopher F [REDACTED], by his attorney, Paul B. Higginbotham, filed an appeal by letter dated April 25, 1986. In accordance with the provisions of sec. PI 1.04(3), Wis. Admin. Code, 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

On March 31, 1986, the Milwaukee Public Schools Board of School Directors (hereinafter Board) issued its decision regarding the expulsion of Christopher F [REDACTED] from the Milwaukee Public Schools (hereinafter MPS) in a letter addressed to Ms. Constance F [REDACTED], Christopher's mother, and

copied to Christopher. The decision noted that Christopher was expelled from school until May 5, 1986 and that on April 7, 1986 a meeting would be held in order to identify community resources available to Christopher. A copy of S. 120.13(1)(c), Wis. Stats., was included with the decision.

Both Christopher and his mother were notified by letter on March 14, 1986 from MPS that Christopher's name had been submitted to the Board with a recommendation that he be expelled based on his alleged possession of a weapon and pointing this weapon at other students. The letter of notice of hearing did not specifically state that Christopher's alleged possession of a pellet gun and pointing the gun at others constituted behavior which endangered the health and safety of others. The notice included the date of the hearing, the time and place of the hearing, the right to counsel, and a copy of s. 120.13(1)(c), Wis. Stats.

An expulsion hearing was conducted on March 20, 1986 by the Board. At the hearing, Christopher and his parents and attorney were given a document entitled Procedural Guide Relative to Statutory Basis for Expulsion. This document specifically stated that by being in possession of a weapon and pointing said weapon in the direction of other children at Dover Street School, Christopher engaged in conduct while at school, and under the supervision of school authority, which endangered the health and safety of others.

Present at the hearing were board members, the assistant secretary-business manager, an assistant superintendent, an assistant principal, an assistant city attorney who is counsel for the administration, legal counsel for Christopher, Christopher and his mother. The Board received several documents into evidence including a xeroxed photograph of the alleged weapon, a statement by Ms. Bouras, the head secretary of Dover Street School, a statement by a teacher at Wilbur Elementary School and various statements made by students. Testimony was heard from an assistant principal at Dover Street, the head secretary, a field counselor, an assistant principal from Fritsche Junior School, a student from Fritsche Junior School and Christopher.

The assistant principal from Dover Street testified that he had been informed by the head secretary that there was a youngster with a gun on the playground (Tr. 8). He stated that he had spoken with Christopher and asked him whether he had seen anybody with a gun. Christopher responded at first that he had not but then said that there had been a child from Bay View (Tr. 8). The assistant principal further testified that he had asked other children about the gun and they indicated to him that they had not seen anybody with a gun (Tr. 8). The assistant principal stated that he was told by other children that Jason C [REDACTED] had the gun. He testified that he picked up two backpacks and found the gun (Tr. 9). He further testified that he gave the secretary a signal to call the police (Tr. 9).

The assistant principal went on to testify regarding Christopher's involvement with the gun. He testified that Christopher admitted to "slapping" two boys (Tr. 10). He stated that the police officers who came to the school identified the gun as a pellet gun. He also testified that Christopher denied waving or pointing the gun at anyone. The assistant principal testified that prior to the date of the incident, approximately two days earlier, he had met with all the "intermediate youngsters", including Christopher, and had explained the school policy and rules regarding possession of a weapon (Tr. 21). He testified as to the contents of four statements from other students present on the school grounds on the day of the incident (Tr. 15-18). He further testified that nowhere in the statement by Kyle (Exhibit 7) did it say that Christopher had pointed the gun at anyone (Tr. 31) and that Christopher only admitted to holding the gun down by his side (Tr. 32).

The head secretary of Dover Street School testified that on February 26, 1986 (the day of the incident), she was in the office when two students came in and told her that Christopher had a gun on the playground (Tr. 34). She also stated that she looked out the window and observed Christopher for about five minutes with a gun up in the air and also pointing the gun at children (Tr. 34). She testified that in her opinion the gun that was brought in by the assistant principal was the same gun she had seen Christopher holding (Tr. 36).

The field guidance counselor testified. She testified that Christopher admitted to possession of a weapon identified as a pellet gun, that he obtained the gun from a friend and that he intended to give the gun to his friend's younger sister (Tr. 42). She further testified that Christopher admitted slapping two student witnesses, misleading the assistant principal about who had the gun but denied pointing or waving the gun in the direction of the students (Tr. 42). She also testified that Christopher said that he was aware of the rule against weapons at school (Tr. 42).

The assistant principal from Fritsche Junior School testified regarding the involvement of a student, Jason, in the Dover Street School incident. He testified that he met with Jason and that Jason told him that he had given the gun to Christopher to hold while he (Jason) entered the Dover building for his sisters (Tr. 45). He further testified that Jason told him that Christopher had waved the gun at other students or had held the gun on other students (Tr. 46).

A student from Fritsche Junior High testified that she had been present at Dover Street School on the day of the incident (Tr. 48). She testified that Jason had told her that the gun did not work (Tr. 49). She stated that Jason gave the gun to Christopher, that Christopher pointed the gun at Eddie and then put it (the gun) down to his side (Tr. 51). She testified that Eddie was not afraid and "acted like he was shot and (he) fell down" (Tr. 51). She

then stated that she did not watch Christopher the entire time he held the gun (Tr. 51). She said that she saw Christopher put the gun down by a book bag (Tr. 51). She further testified that Christopher held the gun in his hand for about five minutes (Tr. 53). She also testified that Eddie did not know that the gun was broken (Tr. 56).

Christopher testified that he was aware of the weapons policy of the school (Tr. 58). He stated that he had seen the BB gun at Jason's house and that he knew that the gun did not work (Tr. 60). He stated that on February 26th, Jason gave him the gun and that he stuck the barrel part into his pocket (Tr. 63). He testified that he held the gun by the barrel and shook it at Eddie (Tr. 63). Christopher stated that he then gave Jason's sisters the gun and they put it in their book bag (Tr. 63). He testified that he did not point the gun at anybody other than Eddie and did not wave the gun around at all (Tr. 64). He testified that he hit two children (Tr. 64). Christopher stated that he told the assistant principal that the "boy" who had the gun came from Bay View so as to not get Jason in trouble (Tr. 65).

Jason, a student from Fritsche Junior High, testified that he was the owner of the gun involved in the February 26th incident (Tr. 71). He testified that the gun was broken and could not shoot BB's on the day of the incident (Tr. 71). He further stated that he gave the gun to Christopher and that he observed Christopher shaking the gun at Eddie (Tr. 71).

After deliberating in closed session, the Board reconvened and moved to expel Christopher. The Board stated that by being in possession of a weapon and pointing this gun in the direction of other children on February 26, Christopher engaged in conduct while at school and under the supervision of school authority which endangered the health and safety of others, that said conduct is grounds for expulsion and that the school's interest demanded Christopher's expulsion.

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, 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 and by his legal brief, the appellant raised several issues regarding his expulsion. First, the appellant alleges that the record does not support the Board's finding that Christopher endangered the health and safety of other persons as required by s. 120.13(1)(c), Wis. Stats. Second, the appellant alleges that the school board has no authority to establish an additional basis for expelling students beyond the mandate of s. 120.13(1)(c), Wis. Stats. Each of these allegations will be addressed separately below.

First, a review of the record indicates that Christopher was in possession of a gun while on school grounds both by his own admission and by the testimony of several witnesses. According to the school board's policy and rules, the mere possession of a gun may be sufficient to

justify expulsion. The evidence further supports the Board's finding that Christopher pointed the gun to at least one fellow student. There is nothing in s. 120.13(1)(c), Wis. Stats., or in any prior expulsion decisions, to suggest that a student's conduct must reach a level of criminal behavior as defined in any of the state statutes dealing with criminality; whether the gun was "broken" or not is irrelevant under s. 120.13(1)(c), Wis. Stats. The reaction to the presence of a gun on school grounds can create a dangerous situation at school. The property, health, and safety of others may be endangered by the presence of a gun. Moreover, the record does not clearly indicate whether or not all of the students knew that the gun did not work. 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. Delucca v. Common Council, 72 Wis. 2d 672, 695 (1976). Therefore, if there is any reasonable view of the evidence which sustains the Board's findings, those findings must be upheld. Accordingly, I conclude that the Board's finding is a reasonable view of the evidence.

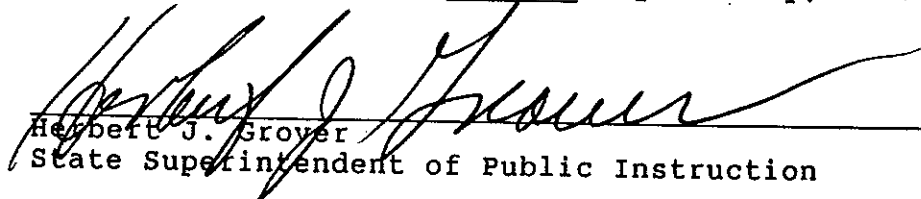
As to the appellant's second allegation, a review of the record indicates that the Christopher's conduct endangered the property, health and safety of others as defined in s. 120.13(1)(c), Wis. Stats. Because the evidence reasonably supports the Board's finding and because there were

no procedural violations of s. 120.13(1)(c), Wis. Stats., I conclude that the second allegation is without merit. Accordingly, I affirm the expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Christopher F. [REDACTED] until May 5, 1986 by the Milwaukee Public Schools Board of School Directors be and is hereby affirmed.

Dated and mailed this 2nd day of July, 1986.


Herbert J. Grover
State Superintendent of Public Instruction