

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
RICARDO S [REDACTED]

by the School District of Wisconsin  
Rapids Board of Education

DECISION  
AND  
ORDER  
86-EX-10

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NATURE OF THE APPEAL

This is an appeal pursuant to s. 120.13(1)(c), Wis. Stats., from the May 29, 1986 decision and order by the School District of Wisconsin Rapids Board of Education to expel Ricardo (Rick) S [REDACTED], a 16-year-old sophomore, from Lincoln High School for the remainder of the 1985-86 school year as well as for the 1986 summer school session. Ricardo S [REDACTED], by his attorney, Richard E. Bender, filed an appeal to the state superintendent by letter dated July 23, 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 May 23, 1986, Ricardo S [REDACTED] (hereafter Rick) and his parents, Mr. and Mrs. Leon S [REDACTED], were individually served with notices that the Wisconsin Rapids Board of Edu-

cation (hereafter Board) had scheduled a hearing to consider whether to expel Rick from school. The notice stated that Rick was being considered for expulsion because of allegations that he had sold 8 to 9 marijuana cigarettes to other students at the junior and senior high schools. The notice was given five full days before the hearing, described the specific allegations being made, stated the time and place of the hearing, explained that expulsion was being considered, and advised Rick and his parents of their right to counsel and their right to an open hearing. A copy of the expulsion statute, s. 120.13(1)(c), Wis. Stats., was printed on the back of the hearing notice.

On May 29, 1986 the expulsion hearing was held before the school board. Rick, his mother, and his attorney were present at the hearing. The Board heard testimony from the principal at Lincoln High School, the assistant principal, an investigator from the county sheriff's department, and Rick.

The assistant principal and the sheriff's department investigator both testified that Rick had admitted selling the marijuana cigarettes to 5 to 6 other students at the junior and senior high schools as alleged. Rick testified that he sold the marijuana cigarettes because he was broke and did not have any money.

The witnesses discussed at some length Rick's current standing in class, what grades he was receiving, and that if he were expelled he would lose the credits from the current

semester and would not be able to count them towards graduation. The high school principal testified that Rick was a joint-enrollment student at the junior and senior high schools because he had not completed all the course requirements necessary to be promoted to high school. The high school principal recommended that Rick not be permitted to take his final exams and that he be expelled for the remainder of the school year and the 1986 summer school session, and that he be formally assessed for drug and alcohol use before reenrolling in the fall.

Rick's attorney cross-examined all the witnesses presented on behalf of the district and presented arguments in Rick's behalf. The attorney argued that Rick should not be expelled, that the Board should permit Rick to take his final exams, that Rick should be permitted to attend summer school, and that expulsion was too severe a penalty for the misconduct involved. Further, Rick's attorney argued that the Board should take into consideration the harm an expulsion would cause to Rick, the fact that he had eventually cooperated with law enforcement officials, and that Rick had not really been given an opportunity to correct his behavior in this regard.

The Board then convened in closed session to deliberate. When the Board reconvened in open session, it announced its decision to expel Rick for the remainder of the school year and for the 1986 summer session and that before

Rick reenrolled in the fall he must submit to a formal assessment for the use and abuse of alcohol and drugs.

The next day, May 30, 1986, the Board issued a formal expulsion order which was mailed by certified mail to both Rick and his parents. The order stated that the Board found Rick to be guilty of refusal or neglect to obey school rules, and that he had engaged in conduct while under the supervision of school authorities which endangered the property, health and safety of others. Further, the Board found that it was satisfied that the interest of the school demanded Rick'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. The statute specifies the recognized grounds and states in part,

The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, . . . or 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, "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.

Based upon my review of the record in this case and the findings set out above, I conclude that the Board complied with all the procedural requirements of s. 120.13(1)(c), Wis. Stats., and that the Board's decision was properly based on established statutory grounds.

However, in his letter of appeal Rick has raised several issues regarding his expulsion which must be addressed.

First, Rick alleges that the expulsion was without just cause. The record shows that Rick admitted selling marijuana cigarettes to other students at the junior and

senior high schools, that the school had rules against possessing or selling marijuana, and that Rick was aware of those rules. Accordingly, the record supports the Board's conclusions that Rick repeatedly violated school rules and endangered the health and safety of others by his conduct. These are among the reasons specifically permitted by s. 120.13(1)(c), Wis. Stats., as grounds for a student to be expelled from school. Therefore, I conclude that this allegation is without merit.

Second, Rick alleges he was denied due process. A review of the record indicates that the Board complied fully with the procedural requirements for an expulsion hearing. The student and his parents received a written notice of the charges, the student was given an opportunity to speak in his own defense, the student had the opportunity to question all witnesses against him, and the student was fully represented by counsel. Further, the student was also given an opportunity to be heard on the issue of what discipline was warranted by the student's admitted conduct. Accordingly, I conclude there was no denial of due process. See Betts v. Board of Educ. of City of Chicago, 466 F.2d 629, 633 (7th Cir. 1972).

Third, Rick alleges he was deprived of his constitutionally protected right to a public education. The Wisconsin Constitution, Art. X, Sec. 3, provides that the legislature shall establish district schools which shall be free and without charge for tuition to all children between

the ages of 4 and 20 years. Sections 120.13(1)(b) and (c), Wis. Stats., provide the grounds and procedures to be followed to suspend and expel a child from public school. Thus, the legislature has by statute recognized certain situations in which a child may be excluded from receiving a public education. The constitutional provision for public schools does not guarantee an education for every child, regardless of whether he or she is found guilty of misconduct which harms others. Although it might be advisable for districts to offer alternative educational programs for students who have been expelled, there is currently no law which requires a district to do so. Thus, I conclude this allegation is without merit.

Fourth, Rick alleges the Board made the expulsion decision without considering other more reasonable alternatives. The record shows that Rick and his attorney presented a number of alternatives to the Board and discussed the consequences for Rick if he was expelled. Further, in issuing its decision at the hearing, the Board stated that in making the decision to expel it intended to send a clear signal to the students that there are consequences to certain behaviors, and that expulsion is one of those consequences. Thus, the record is clear that alternatives were presented to the Board, but the Board chose expulsion in this case. Thus, I conclude there is no merit to this allegation.

Fifth, Rick alleges he was discriminated against "in that he was treated differently than other students simi-

larly situated." The appellant has offered no evidence and has presented no argument as to how he believes he was treated differently than others. Without some indication of what the allegations are in regard to this issue, it is impossible for me to review this claim.

Sixth, Rick alleges that expulsion was too severe a remedy based on the totality of the circumstances. The decision whether to expel a student is one which is left to the discretion of the Board, as long as it acts within the parameters of s. 120.13(1)(c), Wis. Stats. The Board considered other alternatives which were presented by the appellant, but found that the statutory bases for expulsion had been established and made the decision to expel. In reviewing the findings of an administrative board sitting as a trier of fact, it is the general rule 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). Based on the record present in this case, I conclude the findings of the Board are reasonable and therefore must be sustained.

Seventh, Rick alleges the expulsion "was requested and ordered as a means of punishing [him] which for those reasons is repugnant to the U.S. and Wisconsin Constitutions." The appellant has not identified which provisions in the state and federal constitutions he believes have been violated by the expulsion, so it is difficult to address this claim meaningfully. However, I believe it is important to



note that the legislature has seen fit to give school boards clear statutory authority to expel pupils who have repeatedly violated school rules or have engaged in conduct which endangers the health and safety of others.

In this case Rick admitted selling marijuana cigarettes to at least five to six other students at both the high school and junior high. Further, the investigator from the sheriff's office testified that Rick was "a major dealer" at school. Rick's conduct not only violated school rules, it clearly endangered the health and safety of the other students who bought the marijuana. School officials have an obligation to create and maintain a safe school environment and to protect the general student population from the harmful actions of others. The expulsion process is therefore a means not only to discipline the offending student, but also to ensure that a safe school environment is maintained. It is essential that school boards have the authority to take action to eliminate the sale of drugs on school grounds and at school events. Expelling a student who is an admitted dealer of drugs may be the most effective way a board has to begin tackling the problem of drugs in the school setting. The decision whether an expulsion is necessary to preserve a safe and drug-free school environment is a decision left to the Board's discretion under the provisions of s. 120.13(1)(c), Wis. Stats.

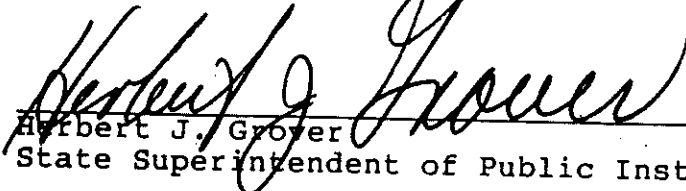
In summary, I conclude that the Board followed the procedural requirements of s. 120.13(1)(c), Wis. Stats., and

that the student was accorded full due process protections in this case. I find no support in the record for any of the allegations raised in the appellant's letter of appeal.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Ricardo S. [REDACTED] by the School District of Wisconsin Rapids Board of Education is hereby affirmed.

Dated and mailed this 5th day of September, 1986.

  
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Herbert J. Grover  
State Superintendent of Public Instruction