

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
ADAM F [REDACTED]
by the Kenosha Unified School District
No. 1 Board of Education

DECISION
AND
ORDER
86-EX-11

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 an expulsion order dated April 16, 1986 by which the Kenosha Unified School District No. 1 Board of Education ordered that Adam F [REDACTED] be expelled from the Bullen Junior High School for the entire 1986-87 school year. Adam F [REDACTED], by his father, Larry F [REDACTED], filed this appeal by letter received by the Department of Public Instruction on September 9, 1986. In accordance with the provisions of Wis. Admin. Code PI 1.04(3), this decision is confined to our 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 Kenosha Unified School District No. 1 issued an expulsion order on April 16, 1986. The school board (board) specifically found that Adam F [REDACTED] (Adam) repeatedly vi-

olated school board rules concerning classroom conduct, smoking on school property, possession of cigarettes on school property, appearing late for classes, skipping classes and other violations. The board found that the interests of the school demanded Adam's expulsion.

Both Adam and his father were sent a letter containing a notice of an expulsion hearing. The notice was mailed on April 9, 1986 after attempts to personally serve the notice had been unsuccessful. The notice included a specific statement, Exhibit A, as to the charges, noted the time and place of the hearing and stated that the hearing could result in Adam's expulsion. A copy of Exhibit A and Wis. Stat. s. 120.13(1)(c) were included as well as notice of the right to counsel, the right to present evidence and cross examine witnesses and the right to a closed hearing.

The expulsion hearing was conducted on April 15, 1986 by the Kenosha Unified School District No. 1 Board of Education. Neither Adam nor his father appeared at the hearing. During the hearing, testimony was heard from the assistant junior high school principal regarding Adam's alleged violations of school board rules and the school's efforts to help Adam and his family. The assistant principal testified that Adam had been evaluated by an M-Team for purposes of determining whether Adam was a child with exceptional educational needs as defined in s. 115.76(3), Wis. Stats. He further testified that Adam was found not to be a child with EEN. He also stated that counselors met with Adam and his

parents, that Adam was assigned an "Interact Worker" but refused to cooperate (Minutes, p.4).

The assistant principal went on to testify regarding the incidents which led to the expulsion hearing (Exhibit A). He testified that Adam "skipped" individual classes but not an entire day of school; that Adam was disruptive during in-school suspension and finally, that Adam would do anything to get "kicked out of school" (Minutes, p.4).

The board concluded, based on the assistant principal's testimony, that Adam repeatedly violated school board rules concerning classroom conduct, possession and smoking of cigarettes on school grounds, appearing late for class and skipping class (Minutes, p.5). The board unanimously concluded that the interests of the school demanded Adam's expulsion and ordered said expulsion until the end of the 1986-87 school year. Subsequently, the board issued an order of expulsion dated April 16, 1986. On September 9, 1986, an appeal to the state superintendent was filed on behalf of Adam by his father.

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.

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." Additionally, it is incumbent upon the state superintendent in reviewing an expulsion decision to ensure that the board's decision is based upon one of the established statutory grounds and all procedural requirements have been met.

In his letter of appeal, the appellant's father raises several issues regarding Adam's expulsion. First, he alleges that he has tried working with the school personnel at Bullen Junior High School but that, "they were more concerned about punishing [Adam] than anything else" (Letter of appeal, p.1). Second, Mr. F██████████ states that his son, Adam, has been in trouble with the law. Mr. F██████████ also states that he was remarried in March 1986 and that he plans to transfer to Maryland within six (6) months. He further states that upon returning to Wisconsin, after being in Maryland for three (3) weeks, he discovered that Adam's ex-

pulsion notice indicated that Adam was expelled for the 1986-87 school year. Mr. F██████ alleges that he decided not to go to the expulsion hearing because he "didn't want to hear what he already knew, and the fact they would offer no help whatsoever" (Letter of appeal, p.2). He next states that he has enrolled Adam in the "S.E. Wisconsin Adolescent Drug and Alcohol Program" and that he and Adam attend a co-dependency group. Mr. F██████ finally alleges that his son's problems are caused by his mother who is chemically dependent, by his father as a co-dependent and thus, that these circumstances have given Adam an improper negative attitude. These allegations will be addressed below.

First, allegations regarding the attitude or motivation of the school board are beyond the scope of review by the state superintendent unless there is an allegation of discrimination against the student by the board. No such allegation has been made by the appellant or his parent. The statements made by Mr. F██████ regarding Adam and the family are informative but are not exculpatory of Adam's alleged misconduct. There is no allegation either by Adam or Mr. F██████ that Adam did not "do" all of the acts listed in Exhibit A. 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. 672, 695 (1976). Insofar as there is no denial of the

misconduct and a reasonable view of the evidence sustains the school board's findings, I conclude that the Board's findings are a reasonable view of the evidence.

Mr. F██████'s allegation that he failed to attend the expulsion hearing because he did not want to hear what he already knew is at best speculative and not germane to a procedural review of the expulsion order. Moreover, his claim that the board would not help is also speculative and beyond the scope of review by the superintendent. A review of the record indicates that both Adam and his father were duly notified by letter of the expulsion hearing and that said notice was timely. Additionally the letter of notice includes a statement regarding the right to legal counsel, a copy of the statute, s. 120.13(1)(c), Wis. Stats., and an exhibit which specifies the alleged acts of misconduct. There is nothing in the record to indicate that anything less than a full hearing was held and that the board considered all of the evidence in their determination. Accordingly, I find that all of the procedural requirements of s. 120.13(1)(c), Wis. Stats., were duly met.

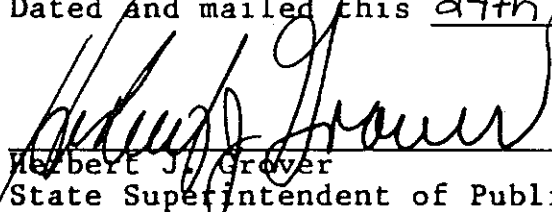
The appellant's final allegation regarding the cause of Adam's school behavior and subsequent enrollment in the "S.E. Wisconsin Adolescent Drug and Alcohol Program" is of concern to me since it implies that Adam's behavioral problems may be due to a chemical dependency or an exceptional education need. A review of the record indicates, however, that on February 19, 1985, Adam was evaluated by an M-Team

and found not to be a child with exceptional educational needs. The record further indicates that Adam has had several counseling opportunities and that both Adam and Mr. F██████████ participate in a co-dependency support group; I find that although this allegation may be true in part, nevertheless, the school met its responsibility by conducting an M-Team evaluation. It is my conclusion that the school was aware of Adam's alleged drug and alcohol dependency but cannot require Adam's participation in any counseling or support programs whether or not Adam is a child with EEN or child at risk within the meaning of s. 118.153(1), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Adam F██████████ for the balance of the 1985-86 school year and the entire 1986-87 school year by the Kenosha Unified School District No. 1 Board of Education is affirmed.

Dated and mailed this 24th day of October, 1986.


Herbert J. Grover
State Superintendent of Public Instruction