

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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

DECISION  
AND  
ORDER  
86-EX-12

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. s. 120.13(1)(c) from an expulsion order dated October 16, 1986 by which the Kenosha Unified School District No. 1 Board of Education ordered that Lavell A [REDACTED], a sophomore at Bradford High School, be expelled from attendance at any school in the school district from October 16, 1986 through June 11, 1987. Lavell A [REDACTED], by his mother, Mrs. Cynthia F [REDACTED], filed this appeal by letter received by the Department of Public Instruction November 21, 1986. In accordance with the provisions of Wis. Admin. Code 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

On October 2 and October 3, 1986, Lavell and his mother, Mrs. Cynthia F [REDACTED], were personally served with

notices that the Board of Education of the Kenosha Unified School District No. 1 had scheduled a hearing for October 15, 1986 to consider whether to expel Lavell from school. The notice stated that Lavell was being considered for expulsion because of incidents on September 10, and September 18, 1986 in which Lavell had allegedly used foul language to school staff, had pushed a teacher, had threatened a staff person, and had been involved in a fight with another student.

The notice was served more than five full days before the hearing, described the specific allegations being made, stated the time and place of hearing, explained that expulsion was being considered, advised Lavell and his mother that the hearing would be closed unless they requested an open hearing and stated that Lavell could be represented at the hearing by counsel.

On October 15, 1986 the hearing was held in closed session before the school board. Lavell, his mother, and Mr. Vaughn, a community impact worker, were present at the hearing. The Board heard testimony from a teacher and a school counselor who had witnessed the incidents, the assistant principal at the high school, the high school principal, the M-Team Systems Manager, Lavell, his mother and Mr. Vaughn.

Mr. Becker, a teacher at the high school, testified about the incident on September 10, 1986. On that day Mr. Becker had asked Lavell to leave a school assembly because of inappropriate and disruptive behavior. Lavell allegedly

began using abusive language directed toward Mr. Becker, and once outside the assembly allegedly continued the abusive language and threw a pencil at Mr. Becker and then forcefully shoved Mr. Kranen, the assistant principal.

Mr. Cohan, a counselor and social worker at the high school, testified about the September 10th incident. Mr. Cohan testified that he became involved when he saw Lavell, Mr. Becker and Mr. Kranen outside the assembly. Mr. Cohan testified that he saw Lavell push Mr. Kranen and heard Lavell use abusive language and make threats.

Mr. Cohan also testified about the September 18th incident. On that day he and Mr. Kranen were called to the commons area because of a possible fight. Mr. Cohan testified that he and Mr. Kranen intervened, and that Mr. Kranen restrained Lavell while Mr. Cohan restrained the other student. Mr. Cohan then testified that Lavell broke away from Mr. Kranen and threw several punches, hitting Mr. Cohan.

Mr. Kranen, the assistant principal at the high school, testified about the two incidents. Concerning the September 10th incident, Mr. Kranen testified that when he intervened in the hallway he heard Lavell arguing and swearing and Lavell pushed him sharply as he tried to get Lavell to go to the school office. As a result of that incident Lavell was suspended for three days.

Concerning the September 18th incident, Mr. Kranen testified that when he got to the commons area that day he saw Lavell and another student in the center of a group of stu-

dents who were arguing. Mr. Kranen testified that he stepped between Lavell and the other student, and that Lavell broke away and swung at the other student. Lavell was suspended for another three days as a result of that incident.

Mr. Kranen also testified that Lavell had previously been enrolled in a special education program when he was in junior high, but that his mother had removed him from that program.

Mr. Dolan, the M-team systems manager, testified about Lavell's previous enrollment in the district's special education program. Mr. Dolan testified that in February 1986 Mrs. F██████ revoked her consent for Lavell's placement in special education. Mr. Dolan became involved in the case in September 1986 when the possibility of expulsion was raised. Mr. Dolan testified that he visited with Mrs. F██████ on September 25, 1986 and offered her some options for Lavell, including re-enrolling him in the special education program or the district's TIME (Total Interagency Model for Education) program. Mr. Dolan testified that Mrs. F██████ refused those options.

During the hearing Mr. Vaughn, on behalf of Lavell, testified that Lavell had been pushed into anger in the two incidents and that Lavell had been the victim. Mr. Vaughn also stated he felt Lavell should be given another chance.

Lavell testified that he had not intentionally hit Mr. Cohan and denied that he had pushed Mr. Kranen.

After receiving all the testimony the board then convened in closed session to deliberate. When the board reconvened, it decided by a majority vote to expel Lavell until the end of the current academic year based on their findings that Lavell had endangered the health, safety and welfare of others.

The next day, October 16, 1986, the board issued a formal Notice of Expulsion which was mailed to Lavell and his mother. The Notice stated that the Board was taking this action based on its findings that on two occasions Lavell had endangered the health and safety of others at the high school by assaulting the assistant principal, throwing a pencil at a teacher, and threatening teachers and administrators. The Board also found that the best interests of the school demanded Lavell'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.

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 that all procedural requirements have been met.

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 based on established statutory grounds.

However, in Mrs. F██████'s letter of appeal, and in letters submitted by Mr. Gary Jackson and Mr. Dennis Bedford, several other issues were raised about Lavell's expulsion which must also be addressed. Basically, the letters raise concerns about the fairness of the hearing and the impartiality of the school board and challenge the expulsion as being too severe. The letters also contend that the board should have offered Lavell some sort of alternative

education program short of expulsion. These allegations will each be addressed separately.

First, Mrs. F██████ challenges the fairness of the hearing. She alleges that Lavell was not given an opportunity to explain his actions, that the participants at the hearing were not impartial and that the board did not really listen to Mrs. F██████ or Mr. Vaughn or take their views into consideration.

The minutes of the board hearing indicate that Lavell, Mrs. F██████ and Mr. Vaughn all testified before the board and their testimony is part of the record. There is nothing in the record to indicate that anything less than a full hearing was held and that the board considered all the evidence it was presented. Therefore, I find there is no merit to the allegations that Lavell was not given an opportunity to explain his actions or that the board did not take Mrs. F██████'s and Mr. Vaughn's views into consideration. Further, I find nothing in the record to support the allegation that the members of the board were biased in some way.

Second, Mrs. F██████ challenges the expulsion as being too severe or excessive a punishment for Lavell's behavior and contends the board should have offered Lavell some sort of alternative education program. The record shows that David Dolan, the M-Team Systems Manager, visited with Mrs. F██████ in-person and offered her the options of re-enrolling Lavell in the special education program or in the TIME program, a special program which serves high-risk students in a

more restrictive setting than the regular high school. Thus the district did attempt to offer Lavell some alternative programs short of expulsion, but these options were rejected by Mrs. F [REDACTED].

It is important to note that once a child is removed from participation in the special education program then the special protections of that program no longer apply to the child, and the child can be expelled from school the same as any regular education student. In this case the district did offer Lavell and his mother an opportunity to re-enroll Lavell in special education. Had Lavell and his mother chosen to do that, then the district would have evaluated Lavell to determine the most appropriate placement for him. But since Mrs. F [REDACTED] refused the special education placement and also refused the other placement offered by the district, the board had no obligation to offer any other alternative programs. 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.

Lavell's mother also challenges Lavell's expulsion for the remainder of the school year as being excessive. The decision whether to expel a pupil, and if so for how long, is left to the discretion of the school board, as long as it acts within the parameters of s. 120.13(1)(c), Wis. Stats. As noted above, I find the board followed the procedural requirements of s.120.13(1)(c), Wis. Stats. Further, since



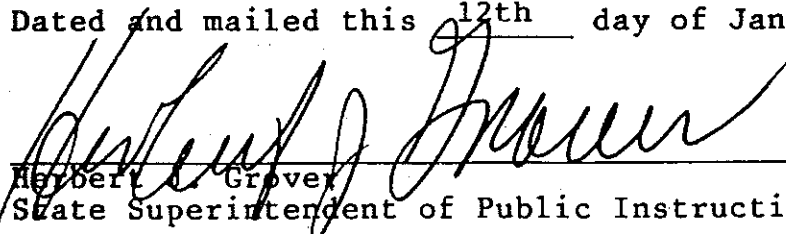
the Racine v. Thompson decision, supra, the state superintendent has interpreted the dicta in that decision to mean that his review of an expulsion decision is limited to determining whether the procedural requirements of s. 120.13(1)(c), Wis. Stats., have been met, and that he is, therefore, foreclosed from reviewing an expulsion in terms of whether the length of the expulsion is excessive. See Matter of Expulsion from the Three Lakes School District of Kelly B., Decision and Order #100, State Superintendent, 8/23/82.

In summary, I conclude that the board followed the procedural requirements of s. 120.13(1)(c), Wis. Stats., and that the other allegations raised by Mrs. F█████ are without merit, and as to the excessiveness of the expulsion, are outside the scope of review by the state superintendent.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Lavell A█████ by the Kenosha Unified School District No. 1 Board of Education is hereby affirmed.

Dated and mailed this 12<sup>th</sup> day of January, 1987.

  
Herbert L. Grover  
State Superintendent of Public Instruction