

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
 LON GREG S [REDACTED]
 by the Port Washington-Saukville School
 District Board of Education.

DECISION
 AND
 ORDER
 86-EX-13

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 order issued by the Port Washington-Saukville School District Board of Education on November 11, 1986 to expel Lon Greg S [REDACTED] from Port Washington High School through January 23, 1987. The expulsion is based on an altercation that occurred on October 29, 1986 between Greg S [REDACTED] and another senior at Port Washington High School. Greg S [REDACTED] by his attorney, Robert E. Sutton, filed this appeal by letter dated December 8, 1986. In accordance with the provisions of PI 1.04(3), Wis. Admin. Code, this decision is confined to a review of the record of the school board hearing and the procedural standards the school board must follow in accordance with s. 120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

The Port Washington-Saukville School District issued an expulsion order on November 11, 1986. In the order, the

school board specifically found that Lon Greg S [REDACTED] (Greg) endangered the health and safety of others while at school. The board found that the interest of the school demanded his expulsion. The expulsion order was sent to Greg's parents, Mr. and Mrs. George S [REDACTED], with a cover letter dated November 13, 1986. The district has included in the record an affidavit signed by the secretary to the district administrator. In the affidavit, the secretary attests that on November 13, 1986, she mailed a copy of the expulsion order and cover letter directly to Greg.

Both Greg and his parents were sent a letter containing a notice of an expulsion hearing. The notice was received on November 5, 1986. The notice included a specific statement as to the charges, noted the time and place of the hearing and stated that the hearing could result in Greg's expulsion. A copy of s. 120.13(1)(c), Wis. Stats., was included as well as notice of the right to counsel and the right to a closed hearing.

The expulsion hearing was conducted on November 11, 1986, before the board. Greg and his parents were present at the hearing.

At the hearing, the board heard testimony from five students, the principal and assistant principal of the high school, the district director of special services and the junior varsity soccer coach.

Travis T., Troy L. and Timm S., all seniors at Port Washington High School, testified about the incident on Oc-

tober 29, 1986. The three students were with Rick N., another high school senior, in the commons room of the high school that morning. They were talking about the previous night's soccer game, from which Greg had been ejected for disputing a referee's call. They testified that Greg came over to their group and began pushing Rick. Greg and Rick pushed each other several times. They heard Rick state that he was not going to fight and saw Rick start to turn and walk away. They stated that Greg then grabbed Rick's left arm, swung him around, and punched him in the face and then in the side of the head. Rick fell, hitting his head on the floor.

Rick N. also testified. He stated that while he was talking with some friends in the commons, Greg came over and started pushing him. Rick testified that he told Greg that he was not going to fight, and that he began to walk away. Greg grabbed his arm and swung Rick around. Rick's next recollection is of being in the ambulance.

Daniel B., also a high school senior, testified that he saw Greg start to push Rick, that he heard Rick tell Greg that he would not fight him, that Greg then threw Rick into a corner, held him and hit him twice.

John Walstra, Port Washington High School principal, testified that he was summoned immediately after the incident. He found Rick on the floor in a pool of blood. Rick was turning purple. Mr. Walstra testified that the assistant principal, Allen Urness, managed to insert a knife be-

tween Rick's teeth and pry his mouth open so that Rick could start breathing again. Allen Urness also testified as to these events.

Gary Myrah, the Director of Special Services, testified as to Greg's behavior at a meeting held on October 31 in the principal's office.

Don Snider, the junior varsity soccer coach, testified about the soccer game played the night before the altercation with Rick N. Greg was ejected from the game by a referee for protesting a call made by the referee.

Greg also made a statement at the hearing. He stated that Rick provoked him by taunting him about the previous night's soccer game and calling him "Lonners". He stated that Rick chucked him under the chin prior to Greg throwing a punch; he also testified that Rick was walking away when Greg grabbed him, tore his shirt and punched him.

The police department report, introduced into evidence at the hearing, notes that Rick sustained a brain concussion as a result of the fight with Greg.

After receiving all the testimony, the board deliberated and ultimately adopted the order of expulsion mentioned above. In its order, the board found that Greg had engaged in a fight with another student. The board concluded that Greg endangered the health and safety of others and that the interest of the school demanded his expulsion. Greg was expelled through January 23, 1987.

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.

Based upon my review of the record in this case and the findings set out above, I conclude that the Board complied with all of 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 his letter of appeal, Greg's attorney raises several other issues which should be addressed.

First, he alleges that Greg and his parents were denied due process because they agreed to a closed hearing and to proceeding without counsel only because board representatives indicated that if they did so, Greg would not be expelled. As noted above, this decision is confined to a review of the record. The notice of the expulsion hearing sent to both Greg and to Greg's parents stated clearly the right to counsel and the right to an open hearing if desired. In addition, the notice included a copy of s. 120.13(1)(c), Wis. Stats., which specifies these rights. Finally, at the beginning of the hearing, Gary Ruesch, the board's attorney, asked Greg's parents whether they wished to have the hearing closed. Mr. S██████ responded, "Fine". Mr. S██████ also agreed to proceed without counsel. I find nothing in the record that substantiates the allegation. I therefore conclude that the allegation is without merit.

Second, Greg's attorney alleges that the evidence presented before the board was insufficient to support an order for expulsion. Section 120.13(1)(c), Wis. Stats., authorizes a school board to expel a pupil from school if the board finds ". . . that the pupil engaged in conduct while at school . . . which endangered the property, health or safety of others . . . and is satisfied that the interest of

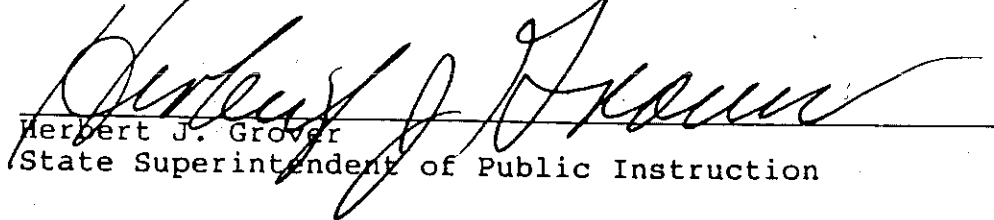
the school demands the pupil's expulsion." The board made these findings. In reviewing the findings of an administrative board sitting as the trier of fact, the Wisconsin Supreme Court has held that the findings of such a body ". . . are conclusive if any reasonable view of the evidence sustains them" State ex rel. Deluca v. Common Council, 72 Wis. 2d 672, 695 (1976). In reviewing the record, I find ample testimony to the effect that Greg engaged in a fight with another pupil while at school, resulting in severe injuries to the other pupil. I conclude that a reasonable view of the evidence in the record sustains the board's findings. Therefore, the board's findings must be upheld.

Finally, Greg's attorney challenges the expulsion on the grounds that it was excessive and too severe a punishment. The decision to expel a pupil and the determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with s. 120.13(1)(c), Wis. Stats. As noted above, I find that the board followed the procedural requirements of s. 120.13(1)(c), Wis. Stats. The allegation is thus outside the state superintendent's scope of review.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Lon Greg S [REDACTED] by the Port Washington-Saukville School District Board of Education is hereby affirmed.

Dated and mailed this 10th day of February, 1987.


Herbert J. Grover
State Superintendent of Public Instruction