

STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
ROBERT M [REDACTED]

by the Kiel School District Board  
of Education

DECISION  
AND  
ORDER  
87-EX-02

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NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to s. 120.13(1)(c), Wis. Stats., from an order issued by the Kiel School District Board of Education on February 24, 1987, to expel Robert M [REDACTED] (hereafter Robert) from Kiel High School for the remainder of the 1986-87 school year. Robert's father, Mr. Philip D. M [REDACTED], filed this appeal by letter received by the State Superintendent on March 27, 1987. 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 FACTS

On February 10, 1987, Robert and his parents were notified by letter from the high school principal that Robert had "reached the maximum five-point level of the Kiel High School disciplinary point system" and therefore was required

to appear before the Board of Education for a disciplinary hearing on February 23, 1987. The letter indicated that the disciplinary action might include expulsion and listed a number of incidents in which Robert had been involved during the 1986-87 school year, including those for which disciplinary points had been assessed.

The notice of hearing letter was served more than five full days before the hearing, described the incidents that led to the assessment of points and possible expulsion, stated the time and place of hearing, and included a copy of s. 120.13(1)(c), Wis. Stats.

On February 23, 1987, the expulsion hearing was held before the Kiel Board of Education. At the hearing the high school principal offered testimony in the form of a written report which detailed Robert's current grades, his attendance record, the discipline report for the current year, communications with Robert's family, and comments by Robert's teachers as to his academic standing, behavior, and general attitude towards school.

Under the school's discipline policy Robert had been assessed five points for various rule violations as follows:

- Point #1 - 08/25/86 - Failure to serve detentions from the previous school year.
- Point #2 - 09/18/86 - Disruptive behavior in detention hall despite repeated warnings.
- Point #3 - 09/30/86 - Disruption of detention hall.
- Point #4 - 11/04/86 - Left cafeteria without permission and was wandering in the building.

Point #5 - 02/06/87 - Vandalism in commons bathroom  
with two other students.

The principal's report to the Board also cited several other incidents for which no discipline points had been given. Those incidents included two truancies, misusing a hall pass, being late to detention, leaving class early without permission, smoking in the school building on three separate occasions, loitering in the building, harassing another student several times, and being disrespectful to the principal. All these incidents also constitute violations of the school rules as spelled out in the student handbook.

After hearing the principal's testimony, Robert and his father were given an opportunity to respond to the report and then the board members asked questions of Robert concerning the various incidents and Robert's interest in graduating from high school.

The Board then convened in executive session to deliberate. The Board determined that Robert was guilty of repeated refusal or neglect to follow school rules and that the best interests of the school demanded Robert's expulsion. By a unanimous vote the Board decided to expel Robert for the remainder of the 1986-87 school year and to permit him to return to school in the fall of 1987 with a clear disciplinary record.

The next day, February 24, 1987, the high school principal mailed a letter to Robert and his parents formally advising them of the Board's decision to expel Robert.

### 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 the procedural requirements of s. 120.13(1)(c),

Wis. Stats., and that the Board's decision was based on established statutory grounds, that is, "repeated refusal or neglect to obey the rules."

However, in his letter of appeal and brief, Robert's father raises several issues which must be addressed.

First, he alleges that Robert is being doubly punished since he served detentions for his misbehavior and the expulsion is much more severe than the individual detentions served.

I do not find that Robert has been doubly punished. First, the school board has established a discipline policy which clearly sets out the types of conduct which may result in points or other discipline being given and outlines the procedural steps the school will follow each time a point is assessed. The record shows that the school closely followed its own policies and repeatedly gave Robert and his parents notice of the discipline problems. Further, under s. 120.13(1)(c), Wis. Stats., the legislature has determined that a pupil may be expelled from school for "repeated refusal or neglect to obey the rules." The statute does not require that any one rule violation must be serious enough to justify expulsion, only that there be repeated violations. The record in this case clearly establishes that Robert refused to follow the school rules on numerous occasions.

Second, Mr. M██████ questions the fairness of charging Robert with a point toward his expulsion for failing to

serve all his detentions from the previous school year. The school board has established a policy on detentions which provides that if an underclassman refuses to take care of any detentions outstanding on the last day of school, "a disciplinary 'point' will be assigned which will carry over into the following school year, . . ." (Student Handbook, p.21). It is within the Board's statutory authority to establish such rules and policies for the district. (Sec. 120.13(1)(a), Wis. Stats.) If Mr. M██████ believes this policy is unfair, his recourse is to the Board to persuade them to change the policy.

Third, Mr. M██████ questions the fairness of statements the principal allegedly made to Robert on the first day of school that if he got another four points the principal would see to it that Robert got "kicked out of school." Without sworn testimony from either Robert or the principal on this issue, I am not in a position to determine whether such a statement was made, and if so, under what circumstances it was made. Even if such a statement was made, that would have no bearing on whether the school board had grounds to expel Robert. The record establishes that Robert repeatedly violated the school rules. Robert is responsible for his own behavior and he is the one who decided not to follow the rules. Nothing the principal did or did not say would excuse Robert's actions subsequent to the statement.

Fourth, Mr. M██████ questions the principal's actions in ejecting Robert from the school building after 5:00 p.m.

when Robert was waiting to be picked up by his father. The Student Handbook provides that students may not stay in the school building after 3:45 p.m. unless they make arrangements with one of the faculty members for supervision (see Student Handbook, p.5), and that if students are loitering in unsupervised areas after 4 p.m., the point system may be used (Student Handbook, p.29). Further, the detention policy states that students will be notified at least one day in advance of their assignment to the detention room "to provide the student an opportunity to make necessary transportation and/or other detention room work arrangements" (Student Handbook, p.22). From the record before me, I cannot determine exactly what happened on this particular day. However, it is clear that students are not supposed to be in the building after 3:45 p.m. unless they are supervised. If Robert had to wait until 5 p.m. for a ride, it was his responsibility to make arrangements with a faculty member for supervision. Regardless of the facts of this particular incident, the principal's ejection of Robert from the building after 5:00 p.m. does not constitute grounds for reversing the Board's decision to expel Robert.

Fifth, Mr. M██████ offers an explanation for Robert's refusal to speak to the PACE representative. Since this refusal was not one of the grounds for the Board's decision to expel Robert, I find that it is irrelevant to my review.

Sixth, Robert denies the allegation that he was running across the table tops on November 5, 1986. Since Robert was

not assessed any discipline points for this alleged violation, I find that it is irrelevant to my review.

Seventh, Robert denies taking money from another student on December 18, 1986. Again, since no discipline points were assessed for this alleged conduct, and it was not one of the grounds relied upon in expelling Robert, I find that it is irrelevant to my review.

Eighth, Mr. M██████ states that Robert was only trying to explain to the principal that he was not involved in the January 27, 1987 incident, and the principal interpreted this as "smart-mouthing". Again, although this incident is listed in the principal's report to the school board, Robert was not assessed any discipline points for it, and hence, it is irrelevant to this appeal.

Ninth, Mr. M██████ questions whether the January 23, 1987 incident in which Robert failed a quiz and stated in writing his dislike for the class and his intent to fail the class, should be part of a point system. The record indicates that Robert was not assessed any discipline points or expelled for failing this quiz or for making known to the teacher his feelings about the class. Since Robert was not disciplined for this incident, it does not bear on this appeal.

Tenth, Mr. M██████ questions whether one of the board members should have excused herself from voting since she is distantly related by marriage to Robert. The record contains no evidence that the board member has any reason to be



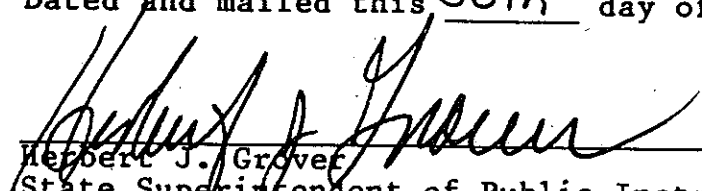
biased or, in fact, is biased against Robert. Accordingly, I find this allegation to be without merit. I also note that the Board decided to expel Robert on a vote of 7 to 0. Therefore, even if the vote of this one board member was discounted, the decision to expel would still have been supported by a majority of the Board.

In summary, I conclude that the objections raised by Mr. M██████ do not affect the validity of the Board's decision to expel Robert.

ORDER

IT IS ORDERED that the expulsion of Robert Maurer by the Kiel School District Board of Education is hereby affirmed.

Dated and mailed this 30th day of April, 1987.

  
Herbert J. Grover  
State Superintendent of Public Instruction