

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
MICHAEL G [REDACTED]

by the Campbellsport School District
Board of Education

DECISION
AND
ORDER
87-EX-01

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 Campbellsport School District Board of Education on December 15, 1986 to expel Michael G [REDACTED] from Campbellsport High School for the remainder of the 1986-87 school year and for all of the 1987-88 school year. Michael G [REDACTED], by his mother, Mrs. Eleanora G [REDACTED], filed this appeal by letter received by the Department of Public Instruction on February 13, 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 FACT

On December 5, 1986, Mrs. G [REDACTED] was personally served with a notice that the Campbellsport School District

Board of Education had scheduled a hearing for December 11, 1986 to consider whether to expel Michael from school. The notice was addressed to both Mrs. Eleanora G [REDACTED] and Michael G [REDACTED]. The notice stated that Michael was being considered for expulsion because on or about December 3 and 4, 1986, he had allegedly been involved in the sale or transmittal of marijuana involving other students of the Campbellsport School District. The notice also stated that such conduct violated the school district's drug and alcohol policy contained in the Student Handbook. The notice included the right to counsel, advised that the hearing would be closed unless Michael or his mother requested an open hearing and included a copy of s. 120.13(1)(c), Wis. Stats.

An expulsion hearing was held on December 11, 1986, before the Board. Michael and his mother were present. During the hearing, the Board heard testimony from the school district administrator, the high school principal, a police officer employed by the Fond du Lac Sheriff's Department, Michael and Mrs. G [REDACTED]. The Board also received the following documents in evidence: exhibit no. 1, the Campbellsport High School Student Handbook; exhibit no. 2, a five-page document including the notice of the expulsion hearing, admission of service of the notice, a letter dated December 5, 1986, from the school district administrator to Mrs. G [REDACTED] notifying her of Michael's suspension from school, and a copy of the three pages from the high school Student Handbook that describe the district's drug and alco-

hol abuse policy; and exhibit no. 3, Michael's grade report for the first nine weeks of the fall 1986 semester.

Mr. Bertone, the school district administrator, identified exhibits 1 and 2. He testified that each student is given a copy of exhibit no. 1, the High School Student Handbook, each year. He also testified that he interviewed several students of Campbellsport High School in regard to Michael's alleged offense. He stated that George W. admitted giving the marijuana to Michael, who gave it to Jody I. Mr. Bertone stated that Jody I. admitted to him that Michael gave her the marijuana. Mr. Bertone further testified that he spoke to Chris G. [REDACTED], who said that he sold the marijuana to George W. Finally, Mr. Bertone testified that the marijuana was passed from Michael to Jody in school by Jody's locker. He stated that Jody confirmed that and he believed that George also said that. Mr. Bertone recommended that Michael be expelled from the Campbellsport School District.

Michael testified that marijuana was handed to him and that he gave it to Jody. He said that he knew it was marijuana and assumed that Jody paid George for it, although he did not see the payment made. He also stated that he did not at this time or any time receive money for such a transaction. He passed the marijuana to Jody solely as a favor to George, who was a good friend. He admitted trying drugs, but never in school. He admitted wrongdoing, but stated that he had never been a troublemaker in or out of school.

Jerry LaFleur, the high school principal, read Michael's grades from exhibit no. 3, the grade report for the first nine weeks of the fall 1986 semester. He also stated that Michael had been absent two and one-half days during the semester.

Mrs. G [REDACTED] said that Michael had not been in trouble previously, that this was his first offense, and that he deserved a chance.

Officer Tynan of the Fond du Lac Sheriff's Department testified that he interviewed each individual involved in the incident. He stated that George did not want to give the marijuana to Jody because he did not want to do it on school property. Officer Tynan said that Michael's only involvement was as a delivery person for George, and that no money was exchanged between Michael and any other party. He said that Michael's offense was a serious one; in his opinion, Michael violated state statutes. He said that under state law, both George and Michael could be charged under the same statute.

After receiving all the testimony, the Board deliberated in closed session. The Board ultimately adopted an order on December 15, 1986, expelling Michael from the schools of the Campbellsport School District for the remainder of the 1986-87 school year and for all of the 1987-88 school year. In the order, the Board found that Michael knowingly assisted and completed the sale and transmittal of marijuana to Jody I. while at school and that such activity repres-

ented a violation of the drug and alcohol policy contained in the High School Student Handbook. The Board concluded that Michael engaged in conduct which endangered the property, health or safety of others and that it was in the best interest of the school district to expel him. The expulsion order was sent to Michael and to Mrs. G [REDACTED].

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 required procedures were followed and that the board's decision is based upon one of the established statutory grounds.

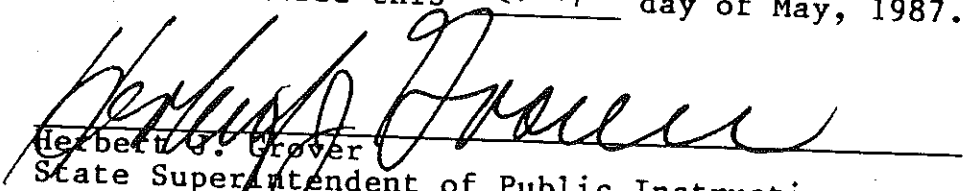
Based upon my review of the record, the briefs of the parties and the findings set out above, I conclude that the Board complied with the procedural requirements of s. 120.13(1)(c), Wis. Stats., and that the Board's decision was based on established statutory grounds.

In her letter of appeal, Mrs. G [REDACTED] challenges the expulsion on the ground that it was excessive. The decision to expel a student and the determination of the length of an expulsion are both within the discretion of the school board as long as the Board complies with all of the procedural requirements of s. 120.13(1)(c), Wis. Stats. As noted above, I find that the Board followed the requirements of s. 120.13(1)(c), Wis. Stats. The allegation is therefore outside the state superintendent's scope of review.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Michael G [REDACTED] by the Campbellsport School District Board of Education is affirmed.

Dated and mailed this 26th day of May, 1987.


Herbert G. Grover
State Superintendent of Public Instruction

STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
MICHAEL J. B█████
by the Palmyra-Eagle Area School
District Board of Education

DECISION
AND
ORDER
87-EX-03

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 Palmyra-Eagle Area School District Board of Education on May 21, 1987 to expel Michael B█████ from the Palmyra-Eagle High School for the first semester of the 1987-88 school year. Michael, through his attorney, James W. Hammes, filed this appeal by letter received by the Department of Public Instruction on June 9, 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 FACT

On May 8, 1987 Mr. and Mrs. B█████ and Michael were each sent a letter and Notice of Expulsion Hearing, advising them that Michael was being suspended from school from May 7

through May 15, 1987, and that a hearing had been scheduled for May 18, 1987 at which time the school board would consider whether to expel Michael. The notice stated that Michael was being considered for expulsion for bringing marijuana to school and placing it in other students' lockers. The notice stated that Michael had the right to be represented by counsel, that the hearing would be closed unless Michael or his parents indicated they did not want the hearing to be closed, and included a copy of s. 120.13(1)(c), Wis. Stats.

An expulsion hearing was held in closed session before the school board on Monday, May 18, 1987. Michael and his parents were present and testified. The high school principal testified that on May 5 Michael placed marijuana in the lockers of some other students. The principal also testified that Michael admitted this conduct on May 6 and 7.

The district administrator then recommended that the board find that Michael had repeatedly refused to obey the rules and that he had engaged in conduct which endangered the health and safety of other pupils. The administrator recommended expulsion with certain conditions being attached to the expulsion. The board then voted and by a vote of 6 to 1 agreed to accept all the recommendations of the district administrator.

On May 21, 1987 Michael and his parents were sent copies of the board's amended Order of Expulsion. In the Order the Board found that Michael was guilty of putting

marijuana in the lockers of other pupils; that he was guilty of repeated refusals to obey school rules; that he had engaged in conduct while at school which endangered the health and safety of other pupils; and that the interest of the school demands the pupil'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. 243, 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, that is, repeated refusal to obey school rules and engaging in conduct which endangered the health and safety of other pupils. Therefore, I conclude that the board has complied with all the procedural requirements of s. 120.13(1)(c), Wis. Stats., and its decision to expel Michael must be affirmed.

Although the board's decision to expel Michael meets all the statutory procedural requirements, I question that part of the board's order which conditions Michael's readmittance to school at the beginning of the second semester upon his participation in an approved alcohol and drug abuse counseling program. Although it is certainly desirable for a school to encourage a student to receive counseling and even to refer a student for counseling when there is reason to believe the student has a drug or alcohol problem, I question whether a school board has any authority to require a student to participate in such counseling in order to attend school.

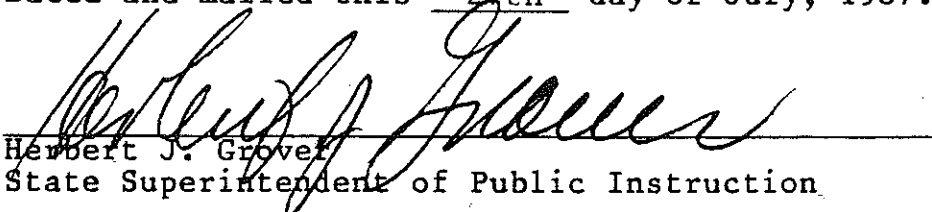
I am raising this issue here for advisory purposes only and encourage the district to reconsider that part of its decision which conditions Michael's readmittance to school

to his participating in a school-approved drug and alcohol counseling program. I have previously questioned this practice in other expulsion decisions. See Decision and Order No. 120 (6/1/84, at pp. 4-5), and Decision and Order No. 121 (9/15/84, at p. 5). I also wish to call to the board's attention a recent opinion from the Attorney General which is related to the issue of drug and alcohol counseling (see OAG 30-87, 6/12/87) and I encourage the board to contact department staff who work with drug and alcohol programs to receive technical assistance on how best to address this issue.

ORDER

Based on the findings discussed above, IT IS THEREFORE ORDERED that the expulsion of Michael J. B█████ by the Palmyra-Eagle Area School District Board of Education for the first semester of the 1987-88 school year is affirmed.

Dated and mailed this 27th day of July, 1987.



Herbert J. Grover
State Superintendent of Public Instruction