

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.

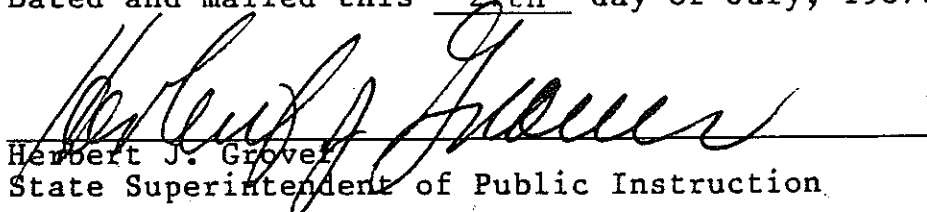
I am raising this issue here for advisory purposes only and encourage the district to reconsider that part of its decision which conditions Michael's readmittance to school

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. Groves  
State Superintendent of Public Instruction