

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

RAYMOND M [REDACTED]

v.

SIREN SCHOOL DISTRICT

DECISION
AND
ORDER
88-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 the January 25, 1988 resolution of the Siren Board of Education to expel Raymond M [REDACTED] from Siren High School for a period of 60 days effective January 18, 1988. This appeal, filed by Raymond's attorney, Howard J. Bichler, was received by the Department of Public Instruction on March 4, 1988. In accordance with the provisions of PI 1.04(3), Wis. Adm. Code, this decision is confined to a review of the record of the school board hearing and the procedural standards required by s. 120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

On January 18, 1988, Mrs. Margaret M [REDACTED] and Raymond were each sent a Notice of Hearing which advised them that the Siren Board of Education planned to hold an expulsion hearing, with regard to Raymond, on January 25, 1988 at

7 p.m. The notice stated that Raymond was being considered for expulsion because of the following alleged incidents:

1. October 16, 1987: possession of marijuana.
2. December 3, 1987: use of abusive/profane language directed toward Mrs. Richardson.
3. January 15, 1988: provoking a fight which caused injury to another student.

The notices were served more than five full days before the hearing, described the specific allegations being made, stated the time and place of the hearing, explained that expulsion was being considered, and advised Raymond and his mother that the hearing would be closed unless they requested an open hearing. A copy of s. 120.13(1)(c), Wis. Stats., was attached.

On January 25, 1988 an expulsion hearing was held in closed session before the Siren School Board. Present were board members Rudolf Mothes, Beverly Lund, Barbara Geske, William Bidon, Donald Swenson, Clare Lidel, and Loretta Nelson. Also present were Raymond M██████████, his mother, Mrs. Margaret M██████████, and his attorney, Howard Bichler. Beverly Oustigoff, Home School Coordinator, James Bucher, principal, Robert Lee, Superintendent, and Janis Wegner, secretary, were present as well.

Mr. Bucher, the school principal, recommended that Raymond be expelled for the remainder of the school year due to the fact that he had been suspended three times during this school year. The three suspensions were the result of

the incidents of October 16, 1987, December 3, 1987 and January 15, 1988.

Raymond's attorney, Howard Bichler, then commented on the three incidents. With regard to the charge of abusive/profane language, Mr. Bichler testified that Raymond told him he felt regret for "making the statement". Mr. Bichler stated that Raymond also told him he "felt he was being treated differently and that his permission slip was being delayed".

Mr. Bichler testified with regard to the marijuana incident as well. He indicated that Raymond said "he was not caught with the marijuana on his person".

With regard to the fight incident, Mr. Bichler claimed that "at worst Raymond was only 50% responsible", and that "it appeared that the other student was not being held responsible for the incident".

Mr. Bichler concluded by stating that Raymond was interested in returning to school and "would try and deal with situations differently".

Raymond testified that he would like to finish school here until he moves to Florida in February or March.

The home school coordinator, Beverly Oustigoff, testified that Raymond has had problems outside of school and that she feels race is not a factor in Raymond's difficulties, as both white and Native Americans were upset about his actions. Ms. Oustigoff further testified that Raymond

received counseling with a Native American psychologist on the day of the fight incident.

The board convened in closed session to deliberate after receiving all of the testimony. The board members decided by a unanimous vote to expel Raymond for a period of 60 days based on their findings that Raymond was guilty of repeated refusal or neglect to obey the rules and that his conduct had endangered the property, health or safety of others.

The school board announced its decision and stated that the effective date of the expulsion was January 18, 1988. Written notices were sent to Raymond and Mrs. M██████████.

CONCLUSIONS OF LAW

School districts are limited purpose municipal corporations and have only those powers which are conferred specifically by statute or are necessarily implied therefrom. Iverson v. Union Free High 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. Concerning grounds for expulsion, the statute states in relevant part,

The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, . . . or finds that the pupil engaged in conduct while at school or while under the supervision of a

school authority which endangered the property, health, or safety of others, . . . and is satisfied that the interest of the school demands the pupil's expulsion.

Section 120.13(1)(c), Wis. Stats.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has indicated 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 opined in dicta 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." Thus, it is incumbent upon the state superintendent in reviewing an expulsion decision to ensure that the required statutory 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 in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements of s. 120.13(1)(c), Wis. Stats., and that the board's decision was properly based on established statutory grounds.

In his appeal and in his letter of April 6, 1988, the appellant has alleged that the school board had insufficient evidence for expulsion. Specifically, the appellant claims that the evidence shows no direct possession or control of marijuana and is, thus, insufficient to form the basis of an

expulsion order. He also alleges that the use of abusive/profane language was not in a loud volume, not spoken directly to any individual, and was a result of frustration regarding the questioning of his absence permission note. Finally, regarding the fight, the appellant alleges that he was, at worst, equally responsible for the commencement of the fight. He also contends that standing alone, this incident was not sufficient to cause his expulsion.

Since the superintendent's review is limited to ensuring that the required statutory procedures were followed and that the board's decision is based upon one of the established statutory grounds, the superintendent lacks jurisdiction to review the sufficiency of the evidence. As recorded in the findings, the required statutory procedures were followed, a fact which the appellant has not challenged, and the expulsion was based on two of the established statutory grounds.

In addition the appellant believes that the school board exceeded its authority with regard to expulsions by requiring an expulsion hearing after three suspensions without prior notice of this rule to students and parents. The school board is not required to notify students and parents of this policy. According to s. 120.13, Wis. Stats., a student may be expelled for repeated refusal or neglect to obey the rules. Two suspensions would be enough to constitute repeated refusal to obey. Additionally, the offense underlying Raymond's first suspension, possession of

marijuana, would be enough alone to trigger an expulsion since it is conduct which endangered the property, health or safety of others. Furthermore, Raymond's second notice of suspension contained the following warning:

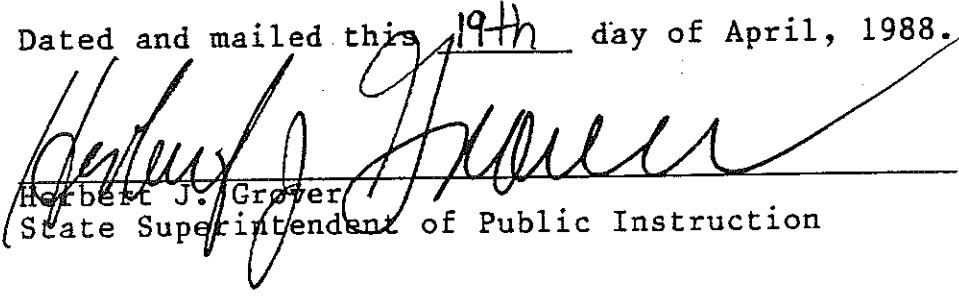
Please note that this is Raymond's second suspension this school year. A third will result in an expulsion hearing with the Siren Board of Education.

Therefore, it appears that Raymond had notice of the possibility of an expulsion hearing and was fairly treated in accordance with s. 120.13, Wis. Stats.

ORDER

It is therefore ordered that the expulsion of Raymond M██████ by the School Board of the School District of Siren in the City of Siren, Wisconsin, is hereby affirmed.

Dated and mailed this 19th day of April, 1988.


Herbert J. Grover
State Superintendent of Public Instruction