

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

SUSAN MARIE H [REDACTED]

v.

KENOSHA UNIFIED SCHOOL DISTRICT

DECISION
AND
ORDER
88-EX-02

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 February 2, 1988 resolution of the School Board of the Kenosha Unified School District No. 1 to expel Susan Marie H [REDACTED] from attendance at any school in the school district from February 2, 1988 until August 20, 1989. This appeal, filed by Susan's attorney, Karen T. Wolf, Legal Action of Wisconsin, Inc., was received by the Department of Public Instruction on May 2, 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 27, 1988, Mrs. Jackie H [REDACTED] and Susan Marie H [REDACTED] were each sent a Notice of Hearing which advised them

that the Board of Education of the Kenosha Unified School District No. 1 planned to hold an expulsion hearing with regard to Susan on February 2, 1988 at 7:30 p.m. The notice stated that Susan was being considered for expulsion because of an alleged physical assault on a school administrator along with verbal threats directed at the administrator. Specifics of the alleged incidents were described in "Exhibit A" which was attached to the Notices.

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 Susan and her mother that the hearing would be closed unless they requested an open hearing. A copy of s. 120.13(1)(c), Wis. Stats., was included as part of the Notice.

On February 2, 1988 an expulsion hearing was held in closed session before the School Board of the Kenosha Unified School District No. 1. Present were board members Dr. Wilson, Mr. Metallo, Mr. Stengert, Mr. Podella, Mrs. Raditz, Mrs. Haubrich and Mrs. Landry. Also present were staff members Dr. Hosmanek, Mr. Euting, Mr. Saksvig, Mr. Wokwicz, Mr. Wilkins, Mrs. DeLabio, Miss Hein, Mr. Soulek and Ms. Pasek. Susan and her mother Jackie H [REDACTED] were present as well.

Eleanor Pasek, Dean of Students, testified that the only previous problems she knew of concerning Susan were unexcused absences and lack of proper gym uniform. She then testified regarding an incident of January 20, 1988 which

occurred by the buses in front of the school. Ms. Pasek indicated that she and Mr. Soulek saw a boy who appeared not to be a student standing near one of the buses and that Mr. Soulek went over to the boy. She testified that she noticed that two back windows on one of the buses were open and she asked that they be closed. Ms. Pasek indicated that Susan was sitting by one of the windows and refused to close it even after three requests to do so. Ms. Pasek testified that she observed that Susan "had given her 'the finger'" and she then requested that Susan get off the bus to talk to her. Ms. Pasek claimed that Susan used "vulgar" language and refused to get off the bus. Ms. Pasek testified that Mr. Soulek saw Susan give her "the finger" repeatedly and then asked Susan to get off the bus. Ms. Pasek indicated that Mr. Soulek leaned over and attempted to take Susan's arm and that Susan grabbed his hair, bit him in the head, and used vulgar language. Ms. Pasek testified that Susan was extremely violent and continued to hit, bite and scream as Mr. Soulek moved her down the aisle and off the bus.

Ronald Soulek, principal, testified to the fact that it had been determined there was no suspected EEN with regard to Susan. He then described the incident of January 20, 1988. Mr. Soulek said he observed Ms. Pasek talking to Susan and that he could see that Susan was refusing to leave the bus. He also testified that he saw Susan give Ms. Pasek "the finger" and that he got on the bus and told Susan to get off. Mr. Soulek claimed that Susan used vulgar lan-

gauge, again refused to leave the bus and that he then took hold of her arms. He stated that Susan hit his head, grabbed his hair, kicked him in the leg and bit him in the left arm while continuing to use vulgar language. He testified that together with Ms. Pasek he got Susan to his office. Mr. Soulek indicated that Susan's mother and the police were called and that Susan was charged with disorderly conduct and assault and suspended for three days.

Mr. Soulek then recommended that Susan be expelled for endangering the health, safety and welfare of others.

Susan testified regarding the incident with the boy and said it was separate from the bus incident.

Mr. Wokwicz testified that he thought there should be some period of expulsion because the type of behavior Susan engaged in cannot be tolerated.

The board convened in closed session to deliberate after receiving all of the testimony. The board members decided by a vote of 5 to 2 to expel Susan through August 20, 1989 based on their findings that her conduct had endangered the health, safety and welfare of others.

Written notices of expulsion dated February 3, 1988 were sent to Susan and Mrs. H[REDACTED]. The notices stated that expulsion was to begin "immediately" and continue until August 20, 1989.

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 her appeal dated April 29, 1988 and in her brief dated May 25, 1988, the appellant has alleged that the school board's decision to expel her for one and one-half years is not warranted by the circumstances and is contrary to the criteria prescribed by s. 120.13(1)(c), Wis. Stats. She also claims that by providing her with no opportunity for alternative education the school board is violating her right to education pursuant to Art. X, sec. 3 of the Wisconsin Constitution. Additionally, the appellant maintains that the school board was without power to order her expulsion because "it failed to make any finding that the interest of the school demands Susan's expulsion," and that "there is no evidence in the record to support a determination that the interest of the school demands Susan's expulsion." Appellant also claims that the length and breadth of her expulsion is not justified and constitutes abuse of discretion by the school board.

The appellant seeks reversal of the board's order and immediate readmittance into Kenosha Unified School District No. 1 and Lance Junior High. She also requests compensation, in the form of remedial educational services, for the loss of services since her expulsion.

First, I will address the appellant's argument that the school board failed to comply with the requirements of s. 120.13(1)(c), Wis. Stats. The statute specifies four alternatives, at least one of which the school board must find the pupil guilty of. It then states that in addition the school board must be satisfied that the interest of the school demands the pupil's expulsion. The statute reads 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 a pupil knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives, 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, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority, and is satisfied that the interest of the school demands the pupil's expulsion.

The appellant concedes that the school district did find that she engaged in conduct which endangered the property, health or safety of others. She claims, however, that

the school board acted unlawfully in that it did not find that the interest of the school demands the pupil's expulsion.

A careful reading of the statute shows that this is not what the statute requires the school board to do. First, the board must find one of the four alternatives. Then the school board goes into closed session in order to decide whether or not it is satisfied that due to this finding the interest of the school demands the pupil's expulsion.

This, in fact, is exactly what the Kenosha school board did. This fact is attested to in the "Notice of Expulsion" which states in relevant part,

The Board further determined that the best interests of the school district demanded the expulsion of Susan Marie H[REDACTED] from school.

Therefore, the school board complied with the requirements of s. 120.13, Wis. Stats.

The appellant's argument that the school board abused its discretion and violated her due process rights is also unfounded.

The appellant argues that the penalty is disproportionate to the misconduct. The state superintendent has no jurisdiction to address this matter. The duty of the state superintendent is to ensure that the procedures set forth in s. 120.13, Wis. Stats., are followed. However, it is my opinion that misconduct of this nature which caused a school principal injury necessitating a visit to the hospital is serious enough to warrant an expulsion of this type.

The appellant's argument that her due process rights have been violated is based on her assertion that the federal courts have held that "a decision to expel a student for a particular length of time may violate principles of due process where the penalty imposed is so disproportionate to the offense and bears no rational relation to any legitimate end" (appellant's brief at 9). This principle clearly has no application to the present case. The offense is certainly of great magnitude and is in violation of the law. The penalty of expulsion could have been much harsher, i.e., permanent expulsion, and would still be rationally related to a legitimate end, i.e., protecting the health, safety and welfare of others.

Appellant's final argument that the school board's decision to expel her without providing alternative education violates the Wisconsin Constitution, is similarly ungrounded.

Section 120.13, Wis. Stats., is an exception to Article X, section 3 of the Wisconsin Constitution. Since the right to education is a constitutional right, due process must be complied with. There must be sufficient notice, an opportunity for hearing, the right to be represented by counsel, etc. The fact that due process requirements were met in this case is not in dispute. There is no Wisconsin statute, administrative rule, or court decision that requires a district to provide an alternative education program to a regular education student, such as the appellant, who has been

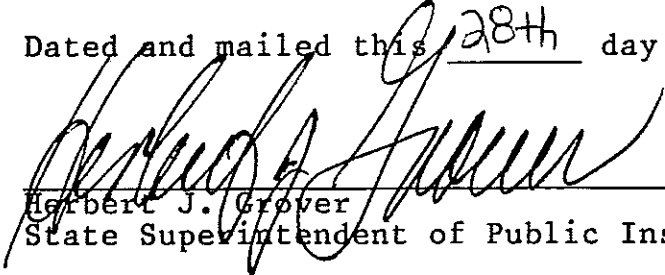
expelled. The appellant has brought to my attention a September 1980 decision of Superintendent Barbara Thompson regarding an expulsion for smoking at school. While this decision sets forth a requirement that alternative educational services for expelled students be provided, I have consistently held that there is no such requirement, and I am not bound by the decisions of my predecessor.

As a general practice, it is the recommendation of the Department of Public Instruction that districts provide at least home-bound study for regular education students who are expelled but, as stated above, such a program is not required. (See In the Matter of the Expulsion of Anita P., Decision and Order No. 124, 2/5/85 at p. 7 and In the Matter of the Expulsion of Dale C., Decision and Order No. 137, 5/15/86 at p.11.)

ORDER

It is therefore ordered that the expulsion of Susan Marie H [REDACTED] by the School Board of the Kenosha Unified School District No. 1 in the City of Kenosha, Wisconsin, is hereby affirmed.

Dated and mailed this 28th day of June, 1988.



Herbert J. Grover
State Superintendent of Public Instruction