

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

BRIAN C [REDACTED]

by the Sheboygan Area School District
Board of Education

DECISION
AND
ORDER
88-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 the June 13, 1988 decision of the Sheboygan Area School District Board of Education to expel Brian C [REDACTED] from the Sheboygan Area School District schools for a period of one year. Brian, by his attorney, H. C. Humke, filed this appeal by letter dated July 8, 1988 which was received by the Department of Public Instruction on July 11, 1988. In accordance with the provisions of s. 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 which the school board must follow in accordance with s. 120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

On June 8, 1988 Brian's parents, Mr. and Mrs. Richard C [REDACTED], were notified by letter from the school superintendent, Dr. George P. Longo, that a hearing would be held to

determine whether Brian violated school rules and to determine what penalties should be given. Specifically, the letter stated that the hearing was being held to determine whether Brian was involved in the selling of a controlled substance at North High School. The letter stated that if Brian is found guilty the action of the board may result in his expulsion. The letter also stated the date of the hearing (June 13), where it would take place, that it would be a private hearing unless a public hearing is requested, and that Brian may be represented at the hearing by counsel.

A copy of the applicable statutory provision was enclosed with the letter. A copy of this letter was also sent to Brian individually.

A hearing was held before the Sheboygan Area school board on June 13, 1988. Present at the hearing were Roland Lorenz, acting president of the Sheboygan Area School District and school board members Randall Converse, Richard Lang, David Mills, and Steven Weina. Attorney Paul Hemmer was representing the Board. Also present were the superintendent of schools, Dr. Longo, Mr. Robert Ericson, principal, Ms. Kristin Martin, vice principal, Ms. Donna Schwichtenberg, vice principal, and Dr. Thomas Evert, director of Pupil Services, who served as principal spokesman for the school district. Brian C [REDACTED], his mother, Mrs. Richard C [REDACTED], and Officer Dwayne Jordan, police liaison officer, also attended.

At the hearing Dr. Evert recommended that Brian be expelled from the schools of the Sheboygan Area School District for one year, based upon his conduct of possessing drugs and selling drugs to other students at North High School. He then testified regarding school board policy relating to alcohol and other drug abuse. He stated that board policy 5144.1 provides for automatic recommendation for expulsion if a student is involved in the selling of a controlled substance at North High School. Dr. Evert also related that the student handbook states that, "Students selling or giving away illegal drugs on campus will be recommended to the Board of Education for expulsion from school."

Mr. Lorenz asked Brian if he understood the charges against him. Brian answered "yes." Mr. Lorenz then asked, "Do you admit to these charges?". Brian replied, "yes."

The administration then presented information relating to Brian's grades, discipline and other background. Police Officer Jordan also testified to the fact that Brian admitted selling drugs at school and storing drugs in his locker. Officer Jordan explained that he and Brian removed the drugs from Brian's locker and these consisted of marijuana and hashish.

Mr. Ericson then presented a final statement explaining why the district recommended expulsion for one year. He stated that their concern was with the effect Brian's behavior was having on other students.

After considering the evidence presented, the board decided to expel Brian from the schools of the Sheboygan Area School District effective immediately until June 12, 1989. The school board issued an Order of Expulsion dated June 13, 1988. The board made written findings and conclusions that Brian engaged in conduct while at school which endangered the health and safety of others, and that the board was satisfied that the interest of the school demanded Brian'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. 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." It is, therefore, 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.

I have previously held that the notice provision of s. 120.13(1)(c), Wis. Stats., requires that five full days must intervene between the date notice is sent and the date of the hearing. If the notice provision is interpreted in this manner, the school board would have needed to have sent the notice on June 7th in order to comply with the statute. However, I have reconsidered my previous interpretation of this statutory language and now hold that the notice provision is satisfied if the notice is sent at least five days prior to the date of the hearing.

Section 120.13(1)(c), Wis. Stats., provides in relevant part that:

Not less than 5 days written notice of the hearing shall be sent to the pupil. . . ." Emphasis added.

Since DPI rules do not provide further explanation of this section, I have looked at s. 990.001, Wis. Stats., "Construction of laws; rules for." Sec. 990.001(4)(a), Wis. Stats., "Time, How Computed," provides that:

The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last. . . . (Emphasis added.)

If this section is applied in interpreting s. 120.13(1)(c), Wis. Stats., it is reasonable to conclude that the day the notice is sent should be excluded but the day of the hearing should be included. This means that the date on which the written notice was sent (June 8) would be excluded from the count of days and we are left with "counting" June 9, 10, 11, 12, and 13. Thus, in this case, if the 8th is excluded and the 13th is included, then five days notice was sent to the pupil and the school board complied with this procedural requirement of s. 120.13(1)(c), Wis. Stats.

In his appeal and in his letter of July 8, 1988, the appellant has alleged that the school board had insufficient evidence of the fact that his conduct endangered the health or safety of others.

According to s. 120.13(1)(c), Wis. Stats., a student may be expelled for endangering the health or safety of others. The school board found that Brian's conduct which consisted of selling marijuana to other students, a fact not in dispute, was conduct which endangered the health and safety of other students. Further, Officer Dwayne Jordan, police

liaison officer, testified that, in his opinion, the sale of drugs to students threatens their health and safety. Based upon this record, there clearly was sufficient evidence that Brian's conduct endangered the health and safety of others.

Even without the testimony of the police liaison officer, I believe there would have been sufficient evidence to conclude that the health and safety of others was endangered by Brian's conduct. I have ruled in previous decisions and continue to hold that selling drugs to other students is conduct which endangers the health and safety of other students. (See Decision and Order Nos. 121 (9/13/84) and 145 (9/5/86).) This is a fact of which I am taking judicial notice and it is not necessary for the school district to present evidence which proves this fact.

School officials have an obligation to create and maintain a safe school environment and to protect the general student population from the harmful actions of others. The expulsion process is a means not only to discipline an offending student, but also to ensure that a safe school environment is maintained. It is essential that school boards have the authority to take action to eliminate the sale of drugs on school grounds. Expelling a student who is an admitted dealer of drugs may be the most effective way a board has of tackling the problem of drugs in the school setting. The decision whether an expulsion is necessary to maintain and preserve a safe and drug-free school environment is a

decision left to the Board's discretion under the provisions of s. 120.13(1)(c), Wis. Stats.

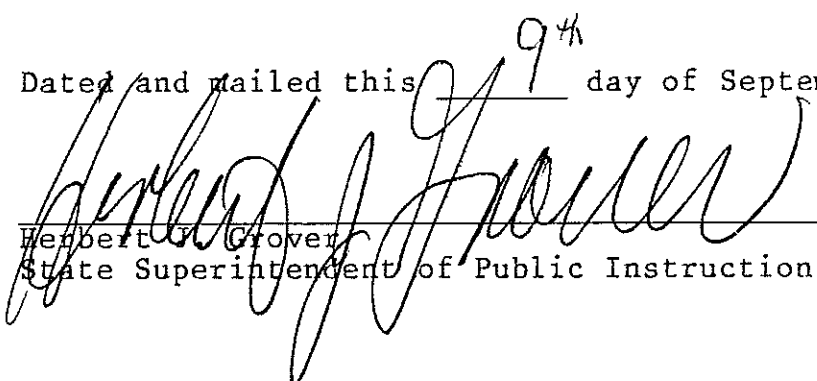
Thus, the school district is not required to prove the nexus between the conduct of a student selling drugs to other students and conduct which endangers the health and safety of other students.

Therefore, it appears that Brian was fairly treated in accordance with s. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Brian O [REDACTED] from the schools of the Sheboygan Area School District is hereby affirmed.

Dated and mailed this ^{9th} day of September, 1988.


Herbert F. Grover
State Superintendent of Public Instruction