

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

ROY H [REDACTED]

by the Blair School District Board
of Education

DECISION
AND
ORDER
88-EX-04

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 May 18, 1988 decision of the Blair School District Board of Education to expel Roy H [REDACTED] from the Blair School District for an unspecified period of time. Roy by his mother, Mrs. Frances H [REDACTED], filed this appeal by letter dated July 20, 1988 which was received by the Department of Public Instruction on July 27, 1988. In accordance with the provisions of s. PI 1.04(5), Wis. Adm. Code, this decision is confined to a review of the record of the school board hearing, additional material filed in this appeal and the procedural standards which the school board must follow in accordance with s. 120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

By letter dated May 11, 1988 Roy H [REDACTED] and his mother, Mrs. Frances H [REDACTED], were each notified by the Junior-Senior High School principal, Mr. Robert M. Nugent, that a hearing would be held to discuss Roy's repeated refusal to follow school rules and his conduct while at school which endangers the health and safety of the students. The letter stated that as a result of the hearing, the School Board may vote to expel Roy from school. Enclosed with the letter were two attachments which specified four incidents of conduct by Roy which endangered the health and safety of others and 19 incidents of his refusal to follow school rules.

The letter also stated the date and time of the hearing (May 18, 1988 at 8:00 p.m.), where it would take place, and that Roy's rights under the law include the right to counsel and the right to a closed meeting. A copy of the applicable statutory provision, s. 120.13(1)(c), Wis. Stats., was printed on the back of the notice mailed to Roy and his mother.

A hearing was held in closed session before the Blair Public School District Board of Education on June 13, 1988. Present at the hearing were David Quarne, president of the Blair School Board, and all school board members. Attorney Bruce J. Kostner represented the Board. Also present were the superintendent of schools, William Urban, principals Robert Nugent and J. Ibinger, and staff members Faye

Hilgart, Larry Glynn, Cheryl Odness, and Kim Twesme. Mrs. Frances H [REDACTED], Fred H [REDACTED] and Rev. Dr. Jamie Keller, a counselor and family representative, also attended. Roy H [REDACTED] was not in attendance.

At the hearing evidence was offered to support the charge that Roy's conduct endangered the health and safety of the students. Shawn Ekern, a student at Blair Junior High School, testified that his glasses were broken and face cut in an unprovoked altercation between he and Roy. He stated that Roy grabbed Shawn and without reason put Shawn's arm behind his back and pushed him into the wall. After Shawn turned and pushed back, Roy put him in a head lock and hit him with his fist in the face and abdomen. Shawn also suffered a black eye as a result of the incident. Mr. Nugent, Junior-Senior High principal, later testified that he talked to Roy after he had discovered the fight, and that Roy admitted his involvement in the incident and explained that he just kind of "lost it." The incident is further documented in Exhibits #2 and 3.

Cheryl Odness, a home economics teacher at Blair Junior High School, testified as to an incident in her classroom in which Roy H [REDACTED] threw a pair of sewing shears across the room. She stated that at the beginning of the school year Roy threw the shears from the cooking area into the sewing area toward a student. She stated he did not strike the student, but came "awfully close" to doing so, and that there were other students in the area. Mrs. Odness said

that she did not believe he was aiming to hit anyone, but was mad, and that it was quite a distance to throw what was a sharp instrument. She immediately took Roy to the principal's office, and was instructed to write an incident report on a disciplinary referral form. That document was later offered into evidence as Exhibit #6.

Regarding another disciplinary incident, Mr. Nugent testified that on December 17, 1987, Roy and another student were involved in pushing and shoving another student around, that as a result the student hit his face and suffered a bruise. He stated both Roy and the other student were suspended one day in school for general horseplay. The incident is documented in Exhibit #4, a disciplinary referral form completed on December 18, 1987.

Mr. Nugent also testified that on October 6, 1987 Roy was found to have been engaging in horseplay in the halls. He stated Roy and another student were swinging a third student by the arms and legs on the third floor landing as if they were going to throw him down the stairs. He stated that both Roy and the other student were suspended. Exhibit #5 was offered into evidence to document this incident.

There was also evidence offered at the hearing to support the allegation of repeated refusal by Roy H██████ to follow school rules. Teacher Kim Twesme testified as to several incidents in which she had to discipline Roy for disrupting the class through his use of inappropriate language. She stated that on at least four occasions she had to ask

him to leave the classroom for using obscenities. She explained such language is disruptive because it sets a tone suggesting others in the class may talk in this way as well. She stated there is no behavior that allows her to predict when he is going to do this, and that she has talked to him about the problem at which time he appeared cooperative.

Mr. Nugent testified as to other incidents in which Roy was sent to the office for disrupting the class through use of inappropriate language. Teacher Larry Glynn testified that while Roy was fairly well behaved in his science class, the school work was often not done and Roy did not do well on tests. He stated Roy did not skip homeroom, but experienced a lot of unexcused tardiness. He stated further that there were behavioral problems both times that a substitute teacher served in his classroom in which Roy was sent to the office, once for leaving class and going home without permission. Faye Hilgart, another teacher at Blair Junior High, testified that Roy often skipped her class. She stated that Roy did assignments when he attended.

Mr. Nugent offered extensive testimony and documentation showing repeated refusal by Roy H [REDACTED] to follow school rules in additional areas. These include disruptive behavior in the classroom (Exhibit #9: Disciplinary Referrals of 8/28/87 and 3/28/88 and Student's Pass or Transfer Slip of 3/17/88), smoking in school (Exhibit #9: Discipline Referral of 11/12/87 resulting in one day in-school suspension), skipping or walking out of class (Exhibit #9: disci-

plinary notes of 3/7/88 and Disciplinary Referrals of 9/10/87 and 3/28/88), and refusal to complete assignments (Exhibit #9: Student's Pass or Transfer Slip of 4/20/88).

There is evidence in the record of the hearing that the Blair Public Schools made repeated efforts to contact Roy H[REDACTED]'s parent or family regarding their concern about Roy's behavior. Exhibit #8, consisting of 16 pages, lists in chronological order the series of letters, meetings, phone conversation and progress reports involving the Blair Public Schools and Roy's mother and family representative (Rev. Dr. Jamie Keller) between September 11, 1987 and April 21, 1988. By letter to Mrs. H[REDACTED] dated March 8, 1988, Mr. Nugent requested a meeting with Roy's mother to try to solve the problem with Roy's behavior. He also advised Mrs. H[REDACTED] that he had referred Roy to Social Services.

In a letter to Mrs. H[REDACTED] dated March 10, 1988, Mr. Nugent outlined additional infractions by Roy of skipping out of one in-school suspension and leaving the principal's office and the school building without permission, announcing he was not going to serve the two-day suspension. Mr. Nugent then advised that he was suspending Roy out of school for three days and requiring a meeting with Mrs. H[REDACTED], Roy, himself and the school psychologist. Following this meeting, another was held involving teachers to discuss the problems Roy was having in class and exploring ways of working with Roy. While suggestions were made at this meeting

and subsequent to it as to ways for Roy to complete missed assignments and to get along in class, Mr. Nugent advised Mrs. H[REDACTED] by letter of April 21, 1988 that Roy was being considered for retention for not doing third quarter make-up work and for failing most classes at that time.

Mr. Nugent testified that EEN evaluations of Roy were recommended to Mrs. H[REDACTED] on several occasions, but that Mrs. H[REDACTED] refused to consent to such evaluations. Exhibit #10, entitled "Permission to Evaluate" (page 1), documents the EEN assessments recommended on March 14, 1988 and the signature of Mrs. Frances H[REDACTED], who checked "I do not give my permission for evaluation" on the form. Mr. Nugent's letter to Mrs. H[REDACTED] of April 21, 1988 (Exhibit #8, page 15) included another offer "to test and evaluate Roy to see if there is a learning or emotional problem that is interfering with his schooling." The evidence shows Mrs. H[REDACTED] did not allow such evaluation to occur.

The record shows there was an orderly presentation of all the evidence. The Board was careful to extend due process to Mrs. H[REDACTED] throughout the expulsion proceeding. She was allowed to be assisted by Rev. Dr. Jamie Keller who, while a family representative, was neither a parent nor an attorney for Roy or his mother. Mrs. H[REDACTED] was given an opportunity to testify, to cross-examine witnesses, to make statements in response to the testimony of witnesses or to the offering of exhibits, and to offer any concluding statements.

After considering the evidence presented, the board decided to expel Roy from the schools of the Blair School District for an unspecified period of time. The school board issued an Order of Expulsion and mailed it to Roy and Mrs. H [REDACTED] by letter dated June 9, 1988. The board made written findings and conclusions that Roy engaged in conduct while at school and under the supervision of school authorities which endangered the property, health and safety of others, and that the board was satisfied that the interest of the school demanded Roy'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 su-

perintendent'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.

In her letter of appeal to the state superintendent dated July 20, 1988, Mrs. H██████ alleges that "at the hearing at least 2 witnesses did not tell the truth. One lied." Again in her letter to the state superintendent of August 31, 1988 supplementing her first letter, Mrs. H██████ points to inconsistencies between statements made by teacher Kim Twesme during the meeting Mr. Nugent arranged involving Roy, his mother, the Kellers and staff and her testimony at the hearing concerning whether Roy used inappropriate language.

Allegations as to the credibility or sufficiency of the evidence are beyond the scope of review by the state superintendent. In reviewing the findings of an administrative board sitting as the trier of fact, the Wisconsin Supreme

Court has held that the findings of such a body "are conclusive if any reasonable view of the evidence sustains them. . . ." State ex rel. Deluca v. Common Council, 72 Wis. 2d 672, 695 91976). Therefore, if there is any reasonable view of the evidence which will sustain the Blair school board's findings, those findings must be upheld. Accordingly, I conclude that the Board's finding is a reasonable view of the evidence.

Mrs. H [REDACTED] further contends in her letter of August 31, 1988 that she advised Mr. Nugent she thought a lot of Roy's problems were due to his lack of reading skills, and that he agreed to have Mrs. Twesme help Roy during their free periods. She seems to be suggesting the school failed to follow-up in providing this help.

As outlined in the findings of fact, Blair school officials made efforts to get other professionals involved in determining more precisely the nature of Roy's problems. Mr. Nugent and others recommended EEN evaluations of Roy on at least two occasions, and also attempted to get county social services involved. The record shows that Mrs. H [REDACTED] resisted those efforts, and refused to consent to testing of this kind.

It is important to note that once a child is removed or prevented by parents from participating in a special education program, the special protections of that program do not apply to the child, and the child can be expelled from school the same as any regular education student. See Matter

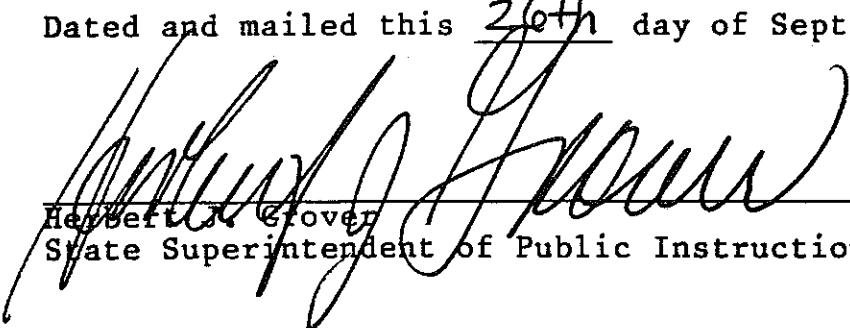
of Expulsion from the Kenosha Unified School District of Lavell A., Decision and Order No. 147, State Superintendent, 1/12/87.

Finally, Mrs. H [REDACTED] raises objections, in her August 31, 1988 letter, to what she alleges was the disparate treatment between the discipline imposed on Roy by the school and the lack of consequences for other students involved in some of the same incidents. The issue of the evenness and fairness of disciplinary measures implemented by schools is one the state superintendent is without authority to address. It should be noted, however, that in regard to at least one of the situations in which Mrs. H [REDACTED] complains of disparate treatment, Mr. Nugent testified both students served a one-day in-school suspension. In addition, the disciplinary handling or parental notification involving other students is not relevant to Roy's expulsion and this appeal.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Roy H [REDACTED] from the schools of the Blair School District is hereby affirmed.

Dated and mailed this 26th day of September, 1988.



Herbert A. Grover
State Superintendent of Public Instruction