

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
BRANDON G [REDACTED]
v.
WEST DEPERE SCHOOL DISTRICT BOARD
OF EDUCATION

DECISION
AND
ORDER
89-EX-01

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction under s. 120.13(1)(c), Wis. Stats., from the decision of the West DePere School Board to expel Brandon G [REDACTED] for the remainder of the 1988-89 school year. This appeal was filed on February 24, 1989, by Brandon's attorney, Mr. Timothy Schumacher, and asks for a review of the original expulsion order (dated June 14, 1988) and the order revoking modification of the expulsion order (dated February 28, 1989).

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 hearings and the procedural standards required by s. 120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

1. On May 27, 1988, Brandon and his mother, Mrs. Barbara G [REDACTED], were each sent a letter advising them that the school board planned to hold a hearing to consider appropriate action regarding Brandon's repeated violation of school rules and an incident in which he repeatedly struck a teacher and used obscene language toward the teacher. Attached to the letter was a memo which listed and described 31 incidents of rules violations.
2. The notice was sent more than five days before the hearing, specified the charges against Brandon, stated the time and place of hearing, and indicated that the hearing could result in Brandon's expulsion.
3. The letter also included a copy of s. 120.13(1)(c), Wis. Stats., concerning expulsion proceedings.
4. The hearing was held on June 14, 1988.
5. Neither Brandon nor his mother attended the hearing.
6. The school superintendent and the vice-principal of the junior high school presented evidence concerning Brandon's repeated violations of school rules from No-

vember 1987 through May 1988 and a written statement from the teacher who Brandon assaulted on May 24, 1988.

7. Based on the evidence presented, the school board decided that Brandon was guilty of repeated refusal and neglect to obey school rules and of engaging in conduct while in school which endangered the property, health or safety of others.
8. Further, the board found that the interests of the school demanded Brandon's expulsion for the 1988-89 school year.
9. The Board also noted that it would be willing to review its decision before the start of the second semester if Brandon's parents would have him evaluated and would propose another plan of action that would agreeable.
10. The Board then issued its formal Order of Expulsion and mailed copies of the order to Brandon and his mother on June 17, 1988.
11. On December 15, 1988, Brandon, his mother, their attorney, and the school superintendent submitted to the school board a "Joint Application and Stipulation for Modification of Order of Expulsion" which asked the Board to reconsider its June 14, 1988, expulsion order

and allow Brandon to attend classes during the second semester (beginning around January 23, 1989).

12. Based on the conditions in the "Joint Application and Stipulation for Modification of Order of Expulsion" signed by Brandon, his mother, their attorney and the school superintendent, the Board agreed to modify its previous expulsion order and to readmit Brandon to school for the second semester. An order to this effect was signed by the clerk of the Board on December 15, 1988.
13. Brandon's readmission was specifically conditioned upon his complying with all the terms and conditions in the Joint Application and Stipulation. Specifically, Brandon agreed to abide by all school rules, to follow the directives of the school administrators, to complete a learning laboratory, to meet with the guidance counselor twice a week and to meet with the vice-principal once a week.
14. The Joint Application and Stipulation also provided that any modification order would not invalidate or otherwise affect the original expulsion order and specified the procedures to be followed in the event Brandon did not comply with the Stipulation.

15. On January 31, 1989, Brandon was suspended from school for three days (February 1, 2 and 3, 1989) for violating the school's policy on controlled substances (specifically, for possessing and consuming alcohol contrary to school policies.)
16. On February 6, 1989, the vice-principal of the Junior High, Mr. Lamal, wrote to Mrs. G [REDACTED] and advised her of his intent to ask the Board of Education to revoke its December 15, 1988, modification order and to expel Brandon for the remainder of the school year.
17. On February 7, 1989, Mrs. G [REDACTED] was notified by letter that a hearing would be held on February 16, 1989, to consider reinstating the original expulsion order.
18. The board held the hearing on February 16, 1989, and heard the testimony of the school vice-principal, Brandon, his mother, and Brandon's attorney.
19. After considering the evidence, the Board decided to revoke its modification order of December 15, 1988, on the grounds that Brandon had not complied with the terms and conditions of that order and the Joint Application and Stipulation.

20. Copies of the formal "Order Revoking Modification of Expulsion Order," dated February 28, 1989, were mailed to Brandon, his mother and their attorney on March 2, 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.

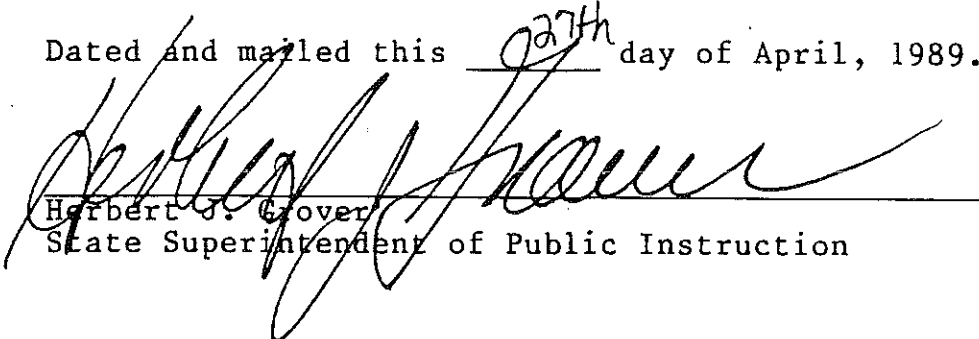
Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements of s. 120.13(1)(c), Wis. Stats., and that the board's decision was properly based on established statutory grounds.

In requesting this appeal, Brandon's attorney specifically asked whether an expelled student is entitled to receive at least homebound instruction. As a general practice, the Department of Public Instruction encourages districts to provide at least home-bound study for regular education students who have been expelled, although 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 Brandon G [REDACTED] by the West DePere School District Board of Education is hereby affirmed.

Dated and mailed this 27th day of April, 1989.



Herbert J. Grover
State Superintendent of Public Instruction