

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

DOUGLAS S [REDACTED]

by the Neenah School District
Board of Education

DECISION
AND
ORDER
89-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 order of the Neenah Joint School District Board of Education to expel Douglas S [REDACTED] from the schools of the Neenah Joint School District on a permanent basis with no provision for reinstatement effective March 20, 1989. This appeal, filed by Douglas' father, Jerald F. S [REDACTED], was received by the Department of Public Instruction on March 23, 1989. In accordance with the provisions of PI 1.04(5), 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 March 15, 1989, Mr. and Mrs. Jerald S [REDACTED] and Douglas were each sent a Notice of Hearing which advised them that the Neenah Joint School District Board of Education planned

to hold an expulsion hearing, with regard to Douglas, on March 20, 1989, at 7:30 p.m. The notice stated that Douglas was being considered for expulsion because it was alleged that he transferred a controlled substance to another student on school property on March 3, 1989.

The notices were served five days before the hearing, described the specific allegations being made, stated the time and place of the hearing, explained that expulsion was being considered, advised them that Douglas was entitled to be represented by legal counsel and advised them 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 March 20, 1989, an expulsion hearing was held in closed session before the Neenah Joint School District Board of Education. Present were board members Cynthia Buchta, Scott Butler, David Ellis, John Hinkfuss, Thomas Payne and Judith Ward. Also present were Douglas S█, Jerald S█, John Thiel, attorney for the school board, George Grigsby, Superintendent, Larry Lewis, Principal, and Rhonda Jagla, Police Liaison Officer. Written minutes of the meeting were kept by Jean Olsen, the Recording Secretary.

Mr. Lewis testified that on March 13, 1989, Douglas S█ admitted to Mr. Lewis that he had transferred marijuana to another student in the Conant Building of the Neenah High School on March 3, 1989. In response to questioning by Mr. Ellis, Douglas S█ admitted to the allegations at the school board hearing.

The Neenah Joint School District Board of Education found that on March 3, 1989, Douglas S [REDACTED] transferred a controlled substance, marijuana, while on school property. The school board found that Douglas' actions violated Board Policy 543.5 regarding student involvement in transferring a controlled substance on school property. The school board made written findings that Douglas S [REDACTED]'s conduct endangered the health or safety of others and that the interests of the school demanded Douglas' expulsion.

The Neenah Joint School District Board of Education expelled Douglas S [REDACTED] effective March 20, 1989, with no provision for reinstatement. A copy of the written findings and order was sent to Mr. and Mrs. Jerald S [REDACTED] and to Douglas Sell on March 22, 1989.

DISCUSSION

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. 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 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.

In their appeal and in their brief, appellants assert that Douglas S. [REDACTED] was unfairly treated by the school board because three other students were involved in the incident and not one of them was expelled. 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 issue. Judgment questions, such as the one raised by appellants, are to be addressed at the local level by school administrators and parents.

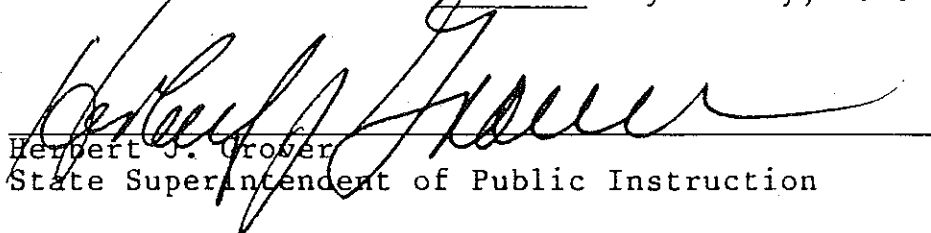
CONCLUSIONS OF LAW

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.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Douglas S. [REDACTED] by the Neenah School District is hereby affirmed.

Dated and mailed this 23rd day of May, 1989.


Herbert J. Grover
State Superintendent of Public Instruction