

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

LORI P [REDACTED]

by the School District of Cudahy
Board of Education

DECISION
AND
ORDER
90-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 order of the School District of Cudahy to expel Lori P [REDACTED] from school for the second semester of the 1989-90 school year. This appeal was received by the Department of Public Instruction on March 21, 1990. In accordance with the provision of s. 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

1. On January 30, 1990, Lori P [REDACTED] and her parents each personally received a Notice of Hearing which advised them that the Cudahy School District planned to hold an expulsion hearing on February 6, 1990 at 7:00 p.m. at

the Cudahy school administration building. In addition to setting forth the time and place of the hearing, the notices stated that the hearing might result in Lori's expulsion, and stated the particulars of the incidents leading up to the recommendation of expulsion. The notice contained a copy of the applicable school board policy and a copy of s. 120.13(1)(c), Wis. Stats.

2. On February 6, 1990, the expulsion hearing was held before the Cudahy School Board of Education. Lori appeared at the hearing with her parents and was represented by counsel.

3. Evidence was presented which supported the following findings of fact as stated in the Order:

1. Lori P [REDACTED] sold a controlled substance, to-wit, marijuana, to Jason P [REDACTED] at the Cudahy High School on January 15 and January 17, 1990. Specifically, money was given to Lori P [REDACTED] by Jason P [REDACTED] on January 15, 1990, and the controlled substance was given to Jason P [REDACTED] by Lori P [REDACTED] on January 17, 1990. Both of these transactions occurred in the homeroom which both students attended at the Cudahy High School.

2. On January 17, 1990, Jason P [REDACTED] was apprehended and searched by the Police Liaison Officer of the School District of Cudahy. During the investigation which followed, Jason P [REDACTED] stated to the Police Officer, in the presence of Cudahy High School Assistant Principal Robert P [REDACTED], that he had obtained the controlled substance from Lori P [REDACTED] on January 17, 1990, and that he had provided her with

money to pay for the controlled substance during homeroom on January 15, 1990.

3. Following the removal of the controlled substance from Jason's P [REDACTED] possession by the Police Liaison Officer on January 17, 1990, the substance was chemically tested at the Cudahy Police Department. The test revealed that the substance taken from Jason P [REDACTED] on January 17, 1990, was marijuana.

4. On or after January 18, 1990, Lori P [REDACTED], by her own admission, took money (approximately \$30.00) from Jason P [REDACTED] and represented to him that she would later deliver drugs to him in return for the money.

5. The above-referenced misconduct by Lori P [REDACTED] endangered the property, health and safety of persons at the Cudahy High School.

6. The above-referenced misconduct by Lori P [REDACTED] constituted a violation of the rules and policies promulgated by the School District of Cudahy's Board of Education, to-wit, the policy entitled "Alcohol and Other Drugs Abuse Policy", adopted September 26, 1988.

4. After considering the evidence presented, the board voted to expel Lori for the second semester of the 1989-90 school year.

5. On February 6, 1990, the board issued a written order of expulsion including that:

5. It is the further conclusion of the Board that the best interests of Lori P [REDACTED] and the School District of Cudahy will be best served through direction to the student that she be allowed to return as a student at the

Cudahy High School as of the commencement of the 1990-91 school year, under conditions established by the Board and Administration through the implementation of the School Board policy entitled "Alcohol and Other Drugs Abuse Policy". That is, Lori P [REDACTED] shall be considered for 1990-91 readmission to the Cudahy High School if certain conditions precedent, as outlined in the above-referenced policy, are met. Specifically, Lori P [REDACTED] is to undergo an alcohol and other drug assessment by a private agency, and shall be readmitted to the Cudahy High School in 1990-91 upon satisfactory completion of a treatment plan, if such a treatment plan is deemed to be necessary after completion of the alcohol and other drug assessment.

and ordering:

IT IS HEREBY ORDERED by the Board of Education of the School District of Cudahy that Lori P [REDACTED] be, and hereby is, expelled from the Cudahy High School for the second semester of the 1989-90 school year and is to be readmitted to the Cudahy High School upon the commencement of the 1990-91 school year, subject to the conditions stated in Conclusion No. 5, above.

DISCUSSION AND CONCLUSIONS

The student by counsel has appealed the decision of the school board alleging that s. 120.13(1)(c), Wis. Stats., was violated in that they did not receive five days notice of the hearing. Specifically she makes the argument that in computing time between the notice and the hearing we should exclude Saturdays, Sundays and holidays pursuant to s. 801.15 (1)(b), Wis. Stats.

This argument is misguided. Section 801.15 is contained within the Wisconsin Statutes setting forth the rules of civil procedure for Wisconsin courts. An expulsion hearing is not an "action or special proceedings" for which the rules of civil procedure apply.

In previous expulsion appeals, I have determined that s. 990.001, Wis. Stats., applies in determining how to calculate the time necessary between the notice of hearing and conducting the hearing. (E.g., Brian C. v. Sheboygan Area School District, Decision and Order No. 158). Section 990.001(4)(a), Wis. Stats., states:

(a) The time within which an act is to be done or a proceeding had or taken shall be computed by excluding the first day and including the last; and when any such time is expressed in hours the whole of Sunday and of any legal holiday, from midnight to midnight shall be excluded.

(b) If the last day within which an act is to be done or proceedings had or taken falls on a Sunday or legal holiday, the act may be done or the proceeding had or taken on the next secular day.

Clearly the applicable statute indicates that in computing time both Saturday and Sunday should be included. For example, in Brian C. v. Sheboygan Area School District, we held that sufficient notice was given when the parties received notice on June 8, 1988 and the hearing was held on June 13, 1988. There the notice arrived on a Wednesday and the hearing was held on a Monday. In order to determine that the parties had five days notice, Saturday and Sunday

had to have been included in the computation of time. Similarly here the notice was received on January 31, 1990 and the hearing was held on February 6, 1990. This gave the parties sufficient notice as required by the statute, s. 120.13 (1)(c), Wis. Stats. The school district committed no error.

In this case the record shows that the procedures set forth in s. 120.13(1)(c), Wis. Stats., were followed and that the Board's decision was based on established statutory grounds. Therefore, I conclude that the board has complied with all of the requirements of s. 120.13(1)(c), Wis. Stats., and its decision to expel Lori must be affirmed.

Since I have determined that this decision must be affirmed, I do not need to reach the school district's question of whether this is a valid appeal since it is signed by the student's counsel rather than the student and her parent or guardian. Even if the district prevailed on this argument, it would not change the result, the decision of the board would be affirmed.

Although I have decided to affirm this decision, I must state that I question the portion of the board's order which conditions Lori's readmission to school upon her "satisfactory completion of a treatment plan, if such a treatment plan is deemed to be necessary after completion of the alcohol and other drug assessment." (Order of Expulsion.) I have dealt with that issue previously in an expulsion decision, there I stated:

Although it is certainly desirable for a school to encourage a student to receive counseling and even to refer a student for counseling when there is reason to believe the student has a drug or alcohol problem, I question whether a school board has any authority to require a student to participate in such counseling in order to attend school.

I am raising this issue here for advisory purposes only and encourage the district to reconsider that part of its decision which conditions Michael's readmittance to school (on) his participating in a school-approved drug and alcohol counseling program. (Michael J. v. Palmyra-Eagle Area School District, Decision and Order No. 151 (7/27/1987))

I again question whether school districts have the authority to so condition readmission. I, however, do not intend to discourage counseling or treatment but suggest that boards should pursue different avenues. As stated in "Law News":

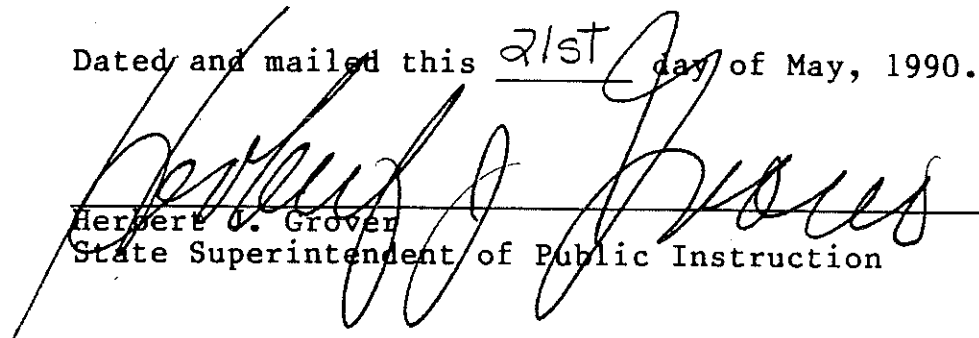
While school boards may not have authority to require counseling or assessment, we believe they may structure the participation in appropriate assessment or counseling as an alternative to expulsion or as a condition for early readmission to school should the student choose that option. (Education Forward, May 1989.)

Similarly in this case I raise the issue only in an advisory capacity. The issue of readmission is not presented here in this expulsion appeal. In an expulsion appeal I only have authority to determine if the Board's actions were in compliance with s. 120.13(1)(c), Wis. Stats. I, however, urge the board to reconsider this portion of its action at the appropriate time.

ORDER

Based on the findings discussed above, IT IS THEREFORE ORDERED that the expulsion of Lori P. [REDACTED] from the School District of Cudahy is affirmed.

Dated and mailed this 21st day of May, 1990.


Herbert C. Grover
State Superintendent of Public Instruction