

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion

JASON M [REDACTED]

by the Germantown School District
Board of Education

DECISION
AND
ORDER
91-EX-05

NATURE OF THE APPEAL

This is an appeal to the State Superintendent from the April 8, 1991, decision of the Germantown School District Board of Education to expel Jason M [REDACTED] from the Germantown Schools until the end of the 1990-91 school term. The appeal was filed on May 13, 1991, by Jason and his parents, Dennis and Linda M [REDACTED].

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, this decision is confined to a review of the record of the school board hearing. The state superintendent's review authority is specified in sec. 120.13(1)(c), Wis. Stats. The state superintendent's role is to ensure that the required statutory procedures were followed, that the board's decision was based upon one of the established statutory grounds, and that the board was satisfied that the interest of the school demanded that the student be expelled.

FINDINGS OF FACT

On March 28, 1991, Louis J. Birchbauer, Superintendent of Schools for the Germantown School District, sent separate letters to Jason M████ and to his parents, Mr. and Mrs. Dennis M████, advising them that the Germantown School District Board of Education (hereafter "school board") would be holding a hearing on April 8, 1991, on whether to expel Jason from Washington High School. The letter stated that the high school administrators have recommended Jason be expelled "for the act of starting a fire which endangered the safety of others and additional incidents of failure to obey school rules, such as, damage to a tree, damage to a school bus seat, damage of property located in classrooms (map, ornaments, ruler)."

The letter was sent within the time period required by statute and stated the time and place of the hearing. It also advised that the student and parents may be represented by an attorney at the hearing, and of their right to cross-examine witnesses or to bring their own witnesses and evidence to the hearing. The letter also informed the parents and student of their right to a closed hearing, and of procedures for so requesting.

The school board held Jason's expulsion hearing at the indicated time. Jason and his parents were present at the hearing and were represented by attorney Jack Umpleby. The hearing was recorded by both tape and by written notes; a transcript of the proceedings was subsequently prepared.

Mike Halstead, Director of Pupil Services, presented evidence on behalf of administration supporting the recommendation to expel. The administration's evidence included testimony from the assistant principal, Phillip Datka, who reported on his investigation of the incident. Mr. Datka referred to a document marked Exhibit B, which contained a chronological listing he prepared of the events involved in the investigation of the fire on March 25, 1991. He testified that in his presence Jason admitted to Officer Smith, of the Germantown Police Department, that he (Jason) started the fire. Mr. Datka also testified that Jason said someone else sprayed hair spray on the shirt, making the flames jump. According to Mr. Datka, Jason did not see who was holding the paper or spraying the hair spray. Mr. Datka investigated the involvement of three other boys whose names kept coming up from 12 boys questioned on the fire, but the three boys denied any participation, and there were no witnesses who would testify to their involvement. He said there was a boy who would testify to seeing Jason start the fire.

Another administration witness was Barry Bernstein, vocational coordinator and assistant principal at Washington High School. Mr. Bernstein identified Exhibit C, which was his report of the incident of March 25, 1991. Mr. Bernstein testified that on that morning 12 students were brought down to the attendance office to be interviewed about the fire in the boy's locker room. He stated Mr. Hudson, the physical

education department chair, did not assist in these interviews, but did talk to some of the boys in the area of the locker room before he brought them up to the office. Mr. Bernstein also identified one student who said he witnessed Jason start the fire inside a locker. Mr. Bernstein followed up with the student witness by talking to him later in the day, contacting his parent for approval for him to be interviewed, and then contacted Officer Smith to interview the witness in his office. Mr. Bernstein was also present with Mr. Datka when Jason admitted to Officer Smith his involvement in the fire.

Administration also called Bruce Seastrand, principal of Washington High School. Mr. Seastrand testified to hearing about the fire in the boy's locker room, responding to the fire scene, and hearing reports from Mr. Hudson and Mr. Soike, physical education teachers on duty at that time as to their discovery of the fire and efforts to douse the fire. He was also told that a number of boys were taken to the offices of Assistant Principals Datka and Bernstein, and that he determined the investigation was well underway and did not require his further involvement.

Mr. Seastrand also described how and why administration arrived at the recommendation to seek Jason's expulsion. He stated the reasons included the extreme seriousness of the conduct which could bring extreme danger to large numbers of people, his initial express refusal to cooperate with the investigation by denying involvement, and in minor part the

record or vandalism he had established during the current school year. Mr. Seastrand explained that the recommendation included an allowance for Jason to continue his studies, off campus, by permitting his parents to pick up assignments from three classes on a biweekly basis.

Jason testified in his defense, and explained his involvement in starting the fire. He admitted to walking over to a group of kids around a locker and lighting a corner of a piece of paper which he said was already in the locker. He stated he did not know if he told a different story when he was questioned. He said after he lit the corner he walked away, that the whole piece went up in flames leading him to believe there was hairspray on it. Jason stated he returned back to the locker to put it out but he could not touch the locker because of the heat.

Jason also said he wanted to clear up some things stated on Exhibit A, listing incidents throughout the school year in which Jason caused damage to various types of school property. He indicated that his involvement was minimal in these events, and the damage small.

The record shows that the board's Order of Expulsion was separately mailed to both the pupil and his parents. The Order contains findings that while on the premises of the high school on March 25, 1991, Jason admits he participated in setting a fire in a locker in the boys' locker room, and that as a result a fire ensued. The school board finds that Jason's actions endangered the property, health

and safety of others at the school, and that the interest of the school demands Jason's expulsion. The board's Order expels Jason from the school until the end of the present school term, but allows Jason the opportunity to continue his studies in three required courses at home. It states that upon successful completion to those exams, Jason is entitled to one-half credit per course. It also recommends that Jason use the time during his expulsion to undertake volunteer work at a burn center in order to further appreciate the seriousness of his conduct.

On May 13, 1991, the State Superintendent received a letter dated May 4, 1991, from Dennis, Linda and Jason M. [REDACTED] appealing Jason's expulsion from school. They support the appeal by asserting Jason "made a mistake which he is truly sorry for," that they were denied an opportunity to cross-examine a witness whose alleged "written testimony was very damaging to Jason," and that they were advised to have legal counsel by the superintendent of the school district, which placed a financial burden on the family.

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 sec. 120.13(1)(c), Wis. Stats., which sets forth spe-

cific 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 sec. 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 stated "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." (emphasis added). It is, therefore, the role of the state superintendent in reviewing an expulsion decision to ensure that the statutory procedures were followed.

In this case the record shows that the procedures set forth in sec. 120.13(1)(c), Wis. Stats., were followed and that the school board's decision was based on established statutory grounds.

In their letter of appeal the parents allege their counsel was unable to cross-examine one witness, Mr. Hudson, whose written testimony was allowed which was damaging to Jason. In essence, the parents are alleging that the administration relied on hearsay evidence which deprived them due process at the hearing. As indicated in my findings, however, Jason's conduct in starting a fire was established not through reliance on hearsay testimony of the physical education instructor, Mr. Hudson. Rather, there was overwhelming

direct evidence of Jason's participation in the fire through his own testimony at hearing, by testimony of two witnesses to his admission of guilt to Officer Smith in their presence, and by the fact that administration had a student eyewitness available who would testify to Jason's starting the fire.

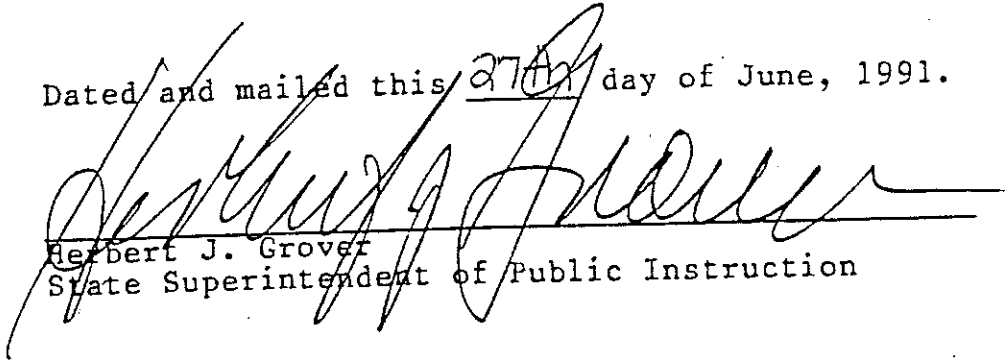
Any references to Mr. Hudson concerned his actions in responding to the fire, and were not statements of conversations or conclusions implicating Jason. Even if the references to Mr. Hudson's actions that day made by other witnesses were construed to be hearsay, it must be shown that hearsay testimony of a speculative and unsubstantiated nature was relied on extensively before it would rise to the level of a constitutional deprivation of a due process right. See Antonio M. v. Kenosha Unified School District No. 1, Decision and Order No. 176 (4/18/91). That is not the case here.

The parents point to Jason's remorse for his conduct, and the financial burden placed on their family in obtaining legal counsel as additional grounds for this appeal. While these may be factors for consideration by the school board in reaching its decision, they are not matters relevant to my appellate review, and do not constitute a legal basis for reversal of the expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jason M [redacted] from the schools of the Germantown School District is hereby affirmed.

Dated and mailed this 27th day of June, 1991.


Herbert J. Grover
State Superintendent of Public Instruction