

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

KIRSTIN J. P [REDACTED]

by the Mukwonago Area School
District Board of Education

DECISION
AND
ORDER
91-EX-11

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction from the October 7, 1991 order of the Mukwonago Area School District Board of Education expelling Kristin (hereafter Kris) from attendance in the district for the remainder of the 1991-92 school year. The appeal was filed by Kris's attorney, Jack J. Andersen, and was received by the Department of Public Instruction on December 23, 1991.

The state superintendent's review authority under sec. 120.13(1)(c), Wis. Stats., is to ensure that the required constitutional and statutory procedures were followed, that the board's decision was based upon one of the established grounds, and that the board was satisfied that the interest of the school demanded that the student be expelled.

FINDINGS OF FACT

On September 26, 1991, the district administrator for the Mukwonago Area School District sent separate letters to Kristin J. P [REDACTED] and his parents, Mr. and Mrs. Larry P [REDACTED], advising them that the Mukwonago Area School District Board of Education (hereafter "school board") would be holding a hearing on October 2, 1991 to decide whether to expel Kris from school. The notice stated that the school board's determination would be based on Kris's alleged involvement in spraying a toxic chemical in the halls of the high school on September 24, 1991, "thereby endangering the property, safety and health of students, teachers and staff."

The notice indicated that the hearing may result in Kristin's expulsion "for the remainder of the 1991-92 school year or beyond." It advised that Kris or his parents had the right to request that the hearing be held in closed session and that he or his parents had the right to be represented by counsel. The notice provided that Kris's prior academic, disciplinary, and attendance record may be considered by the school board should it consider what the appropriate penalty should be for Kris's actions in this matter. As required, a copy of sec. 120.13(1)(c), Wis. Stats., was attached to the notice. The notice and its service fulfilled the statutory requirements.

The hearing was later rescheduled to October 7, 1991, and conducted on that date by mutual agreement of Kristin F [REDACTED] and the school board. Kris and his parents appeared in person, and Kris was represented by counsel. The hearing was held in closed session at the request of Kris and his parents. A transcript of the hearing was prepared and supplied to the department. Briefs were later filed by both parties.

The hearing was conducted by Mark Olson, counsel for the school board. Dr. Paul Strobel, district administrator, presented the administration's case. Mr. Olson explained the procedures to be followed at the hearing, which included that the board would not be using rules of evidence so would accept all information presented and weight the sufficiency of it. The parties were advised that, after Dr. Strobel's presentation of his case, Kris and his parents and Kris's counsel would have an opportunity to ask any questions of the administration, followed by board members and Mr. Olson. Kris's counsel, Mr. Anderson, was also advised of their right to then present any witnesses, evidence, and statements they wished. Mr. Anderson indicated his acceptance of the procedures.

Dr. Strobel proceeded to introduce into evidence a transcription of statements Kris voluntarily gave in Dr. Strobel's office on September 25, 1991. (Exh. 1.) Kris's statements were made in front of Dr. Strobel, his parents, and the principal and assistant principal. Dr. Strobel read into the record certain por-

tions of the statement in which Kris admitted that on September 24, 1991, at approximately 7:10 a.m., he brought and intentionally spilled a chemical in a hallway of the high school. Kris's admission included statements that he acted on his own, and that he took full responsibility for the incident himself.

Dr. Strobel also read into the record portions of the statement made at the same meeting in his office by Assistant Principal Dave Arnott, who told those present at the meeting:

"We had students saying they were ill at 7:25 a.m. saying that they were physically ill from the fumes. . . .

"One teacher and two students had been transported to the hospital and he had had calls from Waukesha Memorial and doctors' offices about the chemical. Paul Strobel explained that people have been ill, . . ." (Transcript, p. 15)

The chemical that Kris admitted spilling in the school was established in the record to be "Malathion, 54.6 percent, xylene, 35 percent, and an inert material, 10.4 percent." (Exhibit 2.)

Dr. Strobel then introduced four accident reports documenting how one student, two teachers, and one secretary became ill from exposure to the chemical fumes. (Exh. 4.) He read into the record portions of the exhibit describing signs and symptoms from these individual's exposure to the fumes:

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". . . rescue staff saw her fall twice as she was walking down the path after being exposed to chemical smells in school. She fainted twice, . . . she was checked by the ambulance crew and, in fact, she was one of the students transported to the hospital." (Tr. p. 17, l. 6-14.)

". . . what part of body was affected, burning eyes, elevated blood pressure, runny nose, chest pain, headache, and numbness in face. She was seen by Dr. Cummins, and again, what happened, chemical spill." (Tr. p. 17, l. 18-22.)

" . . . I became ill after inhaling chemical fumes for thirty minutes while on before-school hall duty. At approximately seven-forty a.m. I began to wheeze heavily and unable to catch my breath. I used my Ventolyn inhaler and my symptoms abated some. I was evacuated outside with the others, but I continued to have respiratory stress, headaches, and light-headedness. Later my blood pressure was very elevated and I had rapid pulse rate.

She was also transported to the hospital by an ambulance. . . she saw her doctor on the next day, September 25th. She missed that day of school, she was too ill to return to school on September 25th, she was placed on medication by her doctor, . . . " (Tr. p. 18, l. 1-16.)

"The next accident report is from . . . a teacher at the high school. If you read under what happened again, the fumes in the building were very offensive. I feared for the safety of my unborn child--she's pregnant--" (Tr. p. 18, l. 17-21.)

The school nurse's report, Exhibit 4, documents how large numbers of students and staff "seemed to have been affected by contact with fumes or contact with the unidentified substance. The transcript reveals the following notes:

"On 9/24/91, MHS, many students came into the health room to get away from the odor in the hallway. Two students were ill with nausea and vomiting.

"Prairie View Middle School . . . Seventeen students seen in health room. Persons were evaluated by two health assistants and two EMTs. The school nurse was present for assessment and decision making . . .

"MHS, between nine-thirty and ten fifty-five, thirty-seven staff members conferred with the school nurse with the help of a student nurse . . .

"One student and one staff member were transported to Waukesha Memorial Hospital by the rescue squad. The next day, September 25th, more students coming to health room.

Signs and symptoms verified in severity and included some of the following, headache, sore throat, eye irritation, nausea, dizziness. A few complained of irritation of the bronchial passages, slight tightness in the chest." (Tr., p. 19-20.)

Dr. Strobel also testified that he received twenty to thirty phone calls from parents and doctors concerned about the chemical spill and wanting to know the nature of the substance. There was testimony that, when the fire department arrived, no one knew what the chemical was, whether toxic or not, and that the fire department ordered the school closed. With regard to damage to property, Dr. Strobel introduced Exhibit 5, which listed direct costs from the chemical spill of \$9,067.69, and indirect costs, associated with high school staff salaries loss of time, of \$31,259.00.

Finally, Dr. Strobel introduced a letter of apology from Kris (Exh. 6), and a petition containing about one hundred twelve names of people who worked at the high school calling for, among other things, the expulsion of the student from the high school. (Exh. 7.)

In cross-examination Dr. Strobel testified that Malathion is a pesticide, and that he believes it is commonly sold over the counter.

Responding to further questions by board counsel Mark Olson, Dr. Strobel answered that he feels the interests of the district require that the board uphold his recommended expulsion "Because this incident did in fact endanger the property, health, and safety of others at the school." (Tr., p. 41, l. 16-20.)

Following the presentations by the administration and by Kris and his attorney, the school board convened in executive session to consider the recommendation, and following deliberation, decided to sustain the recommendation that Kristin P [REDACTED] be expelled for the remainder of the 1991-92 school year. It further recommended and directed administration to work with the parents if they so desire to devise an alternative program of education for the period of the expulsion, provided it be at no additional cost to the district. It also directed administration to seek appropriate restitution from the parents for any financial loss to the district as a result of the chemical spill.

The school board sent a separate copy of its Order of Expulsion, dated October 15, 1991, to Kris and to his parents.

Attorney Anderson appealed the expulsion of Kristin [REDACTED] on two bases: First, he maintains that there was no evidence of a causal correlation between the reported symptoms and the chemical spill. He notes in his brief dated February 12, 1992, that "less than 0.5 ounces of a diluted, common household pesticide was squirted down a school hall that had entrances and exits at both

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ends that lead to the outside." He concludes there is no basis to find that Kristin ██████ endangered the property, health or safety of others. Second, he argues that the school board has not met the statutory burden of being satisfied that the interest of the school demands the expulsion of the pupil, as required under sec. 120.13(1)(c), Wis. Stats. Third, he asks that the State Superintendent overturn or modify the school board's expulsion order "because it is excessive considering the offense and it creates an undue hardship on Kristin P ██████ and his family." (Appellant's Brief, p. 8.)

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 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 sec. 120.13(1)(c), Wis. Stats. In Racine Unified School District v. Thompson, 107 Wis. 2d 657, 667 (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 reviewing the record in this case I found that the Mukwonago Area School district Board of Education complied with all of the requirements for a proper expulsion. I will therefore affirm its decision.

Counsel for Kristin argues there was no evidence of conduct which endangered others, and contends there was no showing of a connection between the chemical spill and any symptoms experienced in the aftermath. To the contrary, I find there is more than adequate evidence to show that serious illness and other side effects resulted from Kris's conduct in spilling the chemical. As described in the above Findings, there were numerous reports of student and staff illnesses as a result of their exposure to the chemical fumes, many of whom required medical assessment and treatment. The records also contains evidence of significant property damage and expense arising from the incident. I have previously held that if there is any reasonable view of the evidence which will sustain the board's findings, those findings must be upheld. Roy H. v. Blair School Dist., Decision and Order No. 159 (9/26/88); Lon Greg S. v. Port Washington-Saukville School Dist., Decision and Order No. 148 (2/10/87).

Do acts which cause illness, physical problems, fear and damage "endanger the property, health and safety of others"? I find that they do. The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damage or the chance of loss or injury. These terms embrace the notion of wrongful acts, or actions which are detrimental or involve loss or damage. Michalene J. v. Washington Island School Dist., Decision and Order No. 165 (8/1/89). The record reflects the harm, damage and chance of loss or injury suffered by many as a result of Kris's act. The school board's conclusion that Kris's conduct endangered the property, health and safety of others must be supported.

Counsel's argument that the school board failed to meet the test of being satisfied that the interest of the school demands the pupil's expulsion must also be rejected. I have held in the past that conduct which endangers the health or safety of another student, in the absence of any mitigating circumstances, is more than sufficient to establish that the interest of the school demands the pupil's expulsion. John C. B. v. Milwaukee School Dist., Decision and Order No. 116 (10/31/83). I find that to be the case here.

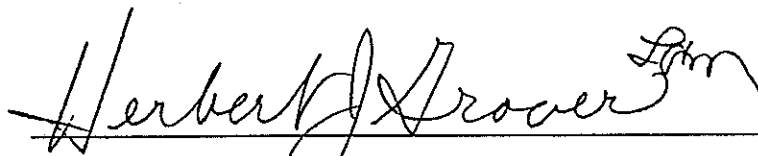
The student also contends the decision to expel is excessive the conduct involved. Since the decision of the Court of Appeals in Racine Unified School Dist. v. Thompson, supra, however, in which

the Court states in dicta that the review of an expulsion decision by the state superintendent is limited to determining whether the statutory requirements of sec. 120.13(1)(c), Stats. have been met, I have taken the position that my review does not extend to matters such as the harshness or duration of the expulsion. Lavell A. v. Kenosha Unified School Dist., Decision and Order No. 147 (1/12/87); Jesse K. v. School Bd. of Joint Dist. No. 2 of Sun Prairie, Decision and Order No. 131, 6/17/85). I will not, therefore, exercise any discretion to review whether the expulsion was disproportionate to the misconduct.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Kristin P [REDACTED] from the schools of the Mukwonago Area School District is hereby affirmed.

Dated and mailed this 21st day of February 1992.



Herbert J. Grover

State Superintendent of Public Instruction