

STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

---

In The Matter of the Expulsion of  
RHIANNON V [REDACTED]  
by the Muskego-Norway School District  
Board of Education

DECISION  
AND  
ORDER  
92-EX-03

---

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction from the January 21, 1992, Findings and Order of Expulsion of the Muskego-Norway School District Board of Education expelling Rhiannon V [REDACTED] from attendance in the school district through September 1, 1992. The appeal was filed by Jeffrey V [REDACTED], Rhiannon's father, and was received by the Department of Public Instruction on February 26, 1992.

As provided under sec. PI 1.04(5), Wis. Adm. Code, this appeal is confined to a review of the record of the school board hearing, and written statements filed by the parties. The state superintendent's review authority is to ensure that the required statutory procedures under sec. 120.13(1)(c), Wis. Stats., were followed, that the school board's decision was based upon one of the established statutory grounds, and that the school board was satisfied that the interests of the school district demanded that the student be expelled.

Rhiannon and her father raise two major issues in their appeal: (1) that Rhiannon did not endanger the health, safety,

or property of others; and (2) that the decision to expel was excessive in regard to the conduct involved.

#### FINDINGS OF FACT

On January 13, 1992, Richard Fahning, guidance counselor at Ray Lane Middle School in the Muskego-Norway School District personally delivered separate letters to Rhiannon V [REDACTED] and her parents, Mr. and Mrs. Jeffrey V [REDACTED], advising them that the Muskego-Norway School District Board of Education (hereafter "school board") would be holding a hearing on January 21, 1992, to decide whether to expel Rhiannon from school. The notice stated that the reason the administration of the school district was recommending her expulsion was because on or about Wednesday, January 8, 1992, Rhiannon allowed another student(s) to conceal a gun and bullets in her locker, which conduct "endangered the property, health and safety of others."

The notice indicated that the hearing could result in Rhiannon's expulsion. It stated the hearing would be closed to the public, and that Rhiannon had the right to be represented at the hearing by counsel. The notice provided that Rhiannon's prior disciplinary, behavioral and progress records might be considered in determining the length of the possible expulsion. As required, a copy of sec. 120.13(1)(c), Wis. Stats., was attached to the notice.

The hearing was held on January 21, 1992. Rhiannon and her parents appeared in person and without counsel. The hearing was held in closed session at the determination of the school board.

The school board kept written minutes of the hearing, and later provided a transcription of the hearing based upon notes taken by school personnel. The school board also provided a tape recording of the proceeding.

At the hearing, Middle School Assistant Principal Anne Marie Terry testified that she became aware that a fight was to occur between two students, and that several other students and possibly weapons would be involved. She contacted a police detective, who assisted her in questioning students and tracking down the gun to Rhiannon's locker. According to Ms. Terry, Rhiannon told her that the gun was not her gun, that she was holding the gun for another student (Jamie), and that she knew it was in her locker. In response to questioning by Rhiannon's father, Ms. Terry stated that to her knowledge Rhiannon's name had not been mentioned with any of the students involved in the fight or planned fight up until the time the gun was found in her locker.

Detective Sergeant James Budish, of the Muskego Police Department, testified that on January 8, 1992, he learned from Assistant Principal Terry that two factions of students were planning a fight at the south parking lot behind Bay Lane Middle School, that weapons may be involved, and that Ms. Terry had retrieved bullets that afternoon. He stated that he went to the school, questioned students, and eventually searched Rhiannon's locker, where he found a .25 caliber automatic pistol with a gun magazine containing live rounds of ammunition. Detective Sergeant Budish testified that upon asking Rhiannon about the

gun, she said she was holding it for Jamie, and that it was not her gun. Detective Sergeant Budish stated that later at the police department Rhiannon made a statement indicating how she had obtained the gun, reinforcing earlier statements that while she did not see or touch the gun, she was involved in conversations with other students and allowed one of them to keep the gun in her (Rhiannon's) locker because quite a few people knew about the gun and her friend Jamie's connection to it.

Rhiannon also testified that her friend Jamie had told Rhiannon early in the day on January 8, 1992, that Jamie had brought a gun to school, and that Rhiannon did not believe her. Consistent with her earlier statements, Rhiannon explained that after lunch that day two friends came up to her and told her people had found out about the gun and they were afraid they would get caught with it. Rhiannon stated they asked her if it would be okay if they put it in her locker, and she said it would be all right. According to Rhiannon, after she closed her locker on the gun Jamie told her she did not intend to use the gun and was going to take it home.

Among the exhibits admitted into evidence by administration was Exhibit A-4, "District Student Behavior Policies Update." That document sets forth student offenses that will result in automatic suspensions or a recommendation for expulsion. Included on the list were the offenses of possession of a weapon; conduct which endangers the health, property or safety of others; and the commission of a crime while on school property or under the supervision of school authority.

After deliberation, the school board voted to accept the administrative recommendation to expel Rhiannon V [REDACTED]. In its Findings and Order of Expulsion the school board found that while at school on January 8, 1992, Rhiannon, based upon her own admission and the evidence presented at hearing, endangered the health and safety of others by knowingly possessing a gun at school and concealing that gun at school. The school board also ordered that the administration offer not less than four hours nor more than six hours per week of homebound instructional services to Rhiannon. The school board sent a separate copy of its Order of Expulsion, dated January 21, 1992, to Rhiannon and her parents.

In his letter of appeal Mr. V [REDACTED] states that on January 8, 1992, his daughter ". . . was asked to hold in her locker a .25mm hand gun that was brought to school by another student, which she agreed to. This is her mistake. She is guilty of having a hand gun on school property. This, I'm not disputing." What Mr. V [REDACTED] does dispute, as stated in his letter of March 18, 1992, is the school board's conclusion that Rhiannon's conduct endangered the health, safety or property of others.

#### 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 Dist., 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's

power to expel students derives from sec. 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 . . . 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.

Sec. 120.13(1)(c), Wis. Stats.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated in dicta 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 Dist. 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." Thus, it is incumbent upon the state superintendent in reviewing an expulsion decision to ensure that the statutory procedures were followed, and that the school board's decision is based upon one of the established statutory grounds.

A review of the record in this case shows the school board complied with all the procedural requirements of sec. 120.13(1)(c), Wis. Stats. Accordingly, I conclude that there were no procedural violations of the statute in the expulsion process.

As to the grounds for the expulsion, allowing another student or students to conceal a gun and bullets in her locker, the school board's order indicated that it found that by knowingly possessing and concealing a gun at school, Rhiannon endangered the health and safety of others. It based its finding on Rhiannon's admission and on other evidence presented at the hearing, including a student behavior policy that made possession of a weapon an expellable offense. It concluded that her conduct caused "a significant and serious threat to the health and safety of others and a disruption to the educational environment . . ." and found that the best interests of the school demanded her expulsion.

In his appeal, Mr. V██████ argues that Rhiannon's conduct with regard to the gun did not endanger the health, safety or property of others. He points out that Rhiannon never touched or handled the gun, nor did she transport the gun or tell anyone she had the gun in her locker. He calls the charge in this case "unfounded."

A review of the record affirms Rhiannon's father's allegation but does not materially alter the basis for the expulsion, that Rhiannon knowingly possessed and concealed a gun and bullets while at school and under school authority. In reviewing the findings of an administrative board sitting as the trier of fact, the Wisconsin Supreme Court has held that the findings of such a body ". . . are conclusive if any reasonable view of the evidence sustains them." State ex rel. DeLuca v. Common Council, 72 Wis. 2d 672, 695, 242 N.W.2d 689 (1976),

citing State ex rel. B'nai B'rith Foundation v. Walworth County Board of Adjustment, 59 Wis. 2d 296, 303, 304, 208 N.W.2d 113 (1973). Therefore, if there is any reasonable view of the evidence which will sustain the school board's findings, those findings must be upheld. Accordingly, I conclude that the school board's finding that Rhiannon's conduct in knowingly possessing and concealing a gun at school violated school rules and constituted grounds for expulsion is a reasonable view of the evidence heard by the school board.

Mr. V [REDACTED] also alleges that the decision to expel Rhiannon was wrong, that there are other actions the school board could have taken other than expelling Rhiannon, such as keeping her out of after-school activities. He maintains Rhiannon is a good student, holds a high grade point average, and has participated in many positive school activities such as cheerleading, math club, girls basketball team and year book staff.

The record shows that the school board ordered that the expulsion end on September 1, 1992, and that Rhiannon continue to receive homebound instructional services during the period of her expulsion. Since the school board's notice of expulsion advised Rhiannon and her parents that her disciplinary, behavioral and progress records may be considered in determining the length of the possible expulsion, the school board was in a position to take Rhiannon's good academic and extracurricular record into account in ordering a one-semester expulsion during which time homebound instruction is to be provided.



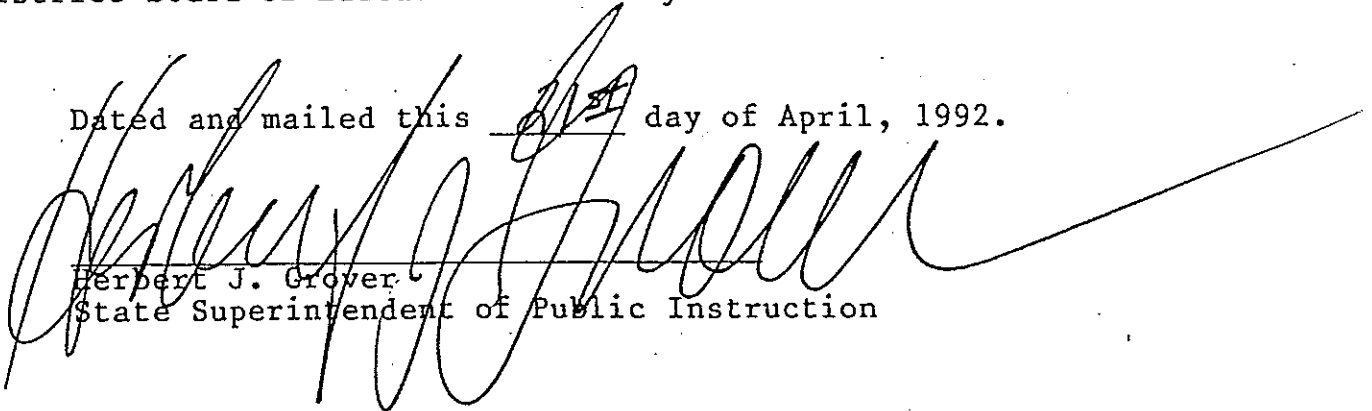
Further, since the court of appeals' decision in Racine Unified School Dist. v. Thompson, supra, stating in dicta that the state superintendent's review in expulsion appeals is limited to determining whether the requirements of sec. 120.13(1)(c), Wis. Stats. have been met, I have consistently taken the position that my review does not extend to matters such as the harshness or duration of the expulsion. Kristin J. P. v. Mukwonago Area School District Board of Education, Decision and Order No. 185 (2/21/92); Michael G. v. Campbellsport School District Board of Education, Decision and Order No. 150 (5/26/87). Under all the circumstances I find no basis on which to alter that practice here.

While I sympathize with Mr. and Mrs. V [REDACTED] in their desire to get Rhiannon back in school, the decision was made by the school board in accordance with the law and is a legal expulsion. Based on the record, I affirm the expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Rhiannon V [REDACTED] until September 1, 1992, by the Muskego-Norway School District Board of Education is hereby affirmed.

Dated and mailed this 21<sup>st</sup> day of April, 1992.

  
Herbert J. Grover  
State Superintendent of Public Instruction