

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
MALAYNA H [REDACTED]

by the Wauwatosa School
District Board of Education

DECISION
AND
ORDER
92-EX-14

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the order of the Wauwatosa School District Board of Education to expel Malayna H [REDACTED] from Longfellow Middle School in the Wauwatosa School District effective September 8, 1992. This appeal was filed by Attorney Robin Shellow on behalf of Malayna H [REDACTED] and was received by the Department of Public Instruction on September 25, 1992.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, this Decision and Order 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 school board's decision was based upon one or more of the established statutory grounds, and that the school board was satisfied that the interests of the school district demand that the student be expelled.

FINDINGS OF FACT

The record shows that Malayna and her mother, Nancy Knight, were each provided a copy of the notice of the expulsion hearing dated August 27, 1992. That notice indicated the date and time of the hearing and included a current copy of sec. 120.13(1)(c), Wis. Stats. The notice also indicated that expulsion was being recommended because the student allegedly engaged in conduct at school on May 27, 1992, which conduct included oral sexual activity with two other students.

The hearing was held in closed session on September 3, 1992. Malayna was present at the hearing and was represented by Attorney Shellow.

At the hearing, the school district presented evidence supporting its allegation against Malayna. In response, Ms. Shellow did not dispute that Malayna had engaged in oral sexual activity with two other students at school. However, she presented evidence and argument in support of the position that Malayna was not a voluntary participant in that sexual activity.

After the hearing, the school board deliberated in closed session. The school board then entered its Order of Expulsion dated September 8, 1992. In its Order, the school board found that Malayna had engaged in voluntary oral sexual activity with two other students on school grounds on May 27, 1992. The school board further found that such activity endangered the property, health, and safety of others. Finally, the school board found that the best interests of the school demanded Malayna's expulsion based on that sexual activity.

After filing this appeal, Ms. Shellow requested an opportunity to file briefs and a briefing schedule was accordingly set. In lieu of a brief, Ms. Shellow filed a letter dated October 30, 1992, in which she requested that prior to issuing a decision in this appeal, the Department "conduct a full scale investigation of this case and review all female student transfers and withdrawals from (Longfellow School) in the last five years." In her letter, Ms. Shellow criticized certain evidence which was accepted at the school board's hearing over her objections. She also reiterated her defense that Malayna was a victim of sexual assault rather than a willing participant in sexual misconduct at school. Ms. Shellow cited no procedural violations of sec. 120.13(1)(c), Wis. Stats. The school board filed no written argument.

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 High 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.

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 to that set out in 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 in dicta 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." Id. It is, therefore, incumbent upon the State Superintendent in reviewing an expulsion decision to ensure that the required statutory procedures were followed, that the school board's decision is based upon one of the established statutory grounds, and that the school board is satisfied that the interests of the school district demand the pupil's expulsion.

In reviewing the record in this case I find that the Wauwatosa School District complied with all of the procedural requisites set out at sec. 120.13(1)(c), Wis. Stats. The request by Ms. Shellow for a "full scale investigation" is clearly beyond my statutory authority set out in that section. In addition, I am bound by that statute to issue a timely decision in this appeal.

I am, therefore, compelled to affirm the expulsion decision as entered.

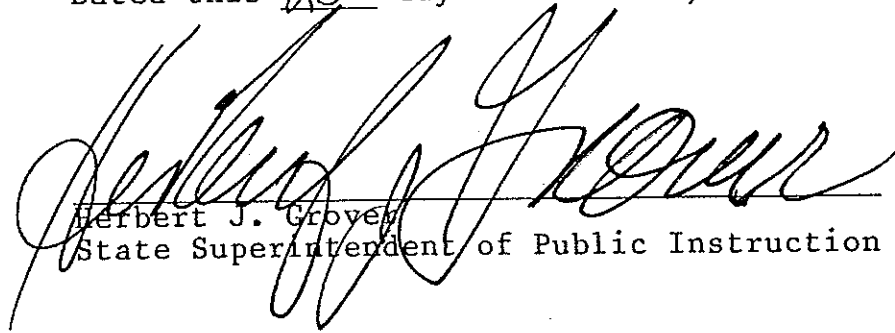
CONCLUSIONS OF LAW

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

ORDER

IT IS THEREFORE ORDERED that the expulsion of Malayna H [REDACTED] by the Wauwatosa School District Board of Education is affirmed.

Dated this 23rd day of November, 1992.



Herbert J. Grover
State Superintendent of Public Instruction