

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
DUSTIN L. M [REDACTED]

by the Cedarburg School
District Board of Education

DECISION
AND
ORDER
92-EX-18

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 Cedarburg School District Board of Education dated November 23, 1992, which permanently expelled Dustin L. M [REDACTED], from the Cedarburg High School. This appeal was filed by Dustin's mother, Linda J. M [REDACTED], and was received by the Department of Public Instruction on December 11, 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 demand that the student be expelled.

FINDINGS OF FACT

The record contains a Notice of Suspension or Expulsion dated October 16, 1992, and addressed to Dustin's mother. The Notice indicated that Dustin was suspended for "possession, use and distribution of illegal drugs on school property during school hours." The Notice also indicated that an expulsion hearing would be scheduled. In addition, the record contains a letter dated October 20, 1992, to Dustin and his mother notifying each of them of the expulsion hearing date, time, place, and purpose. That letter also referenced the alleged drug related misconduct as the basis for the proposed expulsion.

The hearing was conducted in closed session on November 4, 1992. Dustin, his mother, and his aunt appeared at the hearing. At the hearing the school district administration presented evidence supporting the alleged misconduct by the pupil. Dustin did not refute the allegations, but indicated that he was now involved in group therapy, that he had learned from his mistake, and that he was working on his problems. Dustin's mother also addressed the board and summarized the series of disruptive events Dustin had experienced over the years, as well as his overall good academic record. She also indicated that Dustin admitted his misconduct and agreed to participate in counselling to address his problems.

After the hearing, the school board deliberated in closed session and returned with its decision to expel Dustin permanently. An Order of Expulsion was subsequently entered on November 23, 1992, and was sent to Dustin and to his mother. In

reaching its decision, the school board found that Dustin had engaged in the possession, use, and distribution of an illegal drug at school and that such misconduct endangered the health, property, and safety of students and employees and was in violation of school rules. Finally, the school board found that the interests of the school would be best served by the pupil's expulsion.

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 Franklin School District complied with all of the procedural requisites in this matter. I am, therefore compelled to affirm the expulsion decision as entered. Dustin's mother urges that permanent expulsion is too harsh in this circumstance and requests that the period of expulsion be shortened to one year. The district, in its brief, however, correctly points to my past decisions in which I have made clear that I am not authorized to insert my judgement as to the appropriate penalty in a given case. If the statutory procedures have been followed and a statutory basis for expulsion is shown, I will not reach the issue of the severity of the penalty or compare the actions of different school boards in expulsion matters.

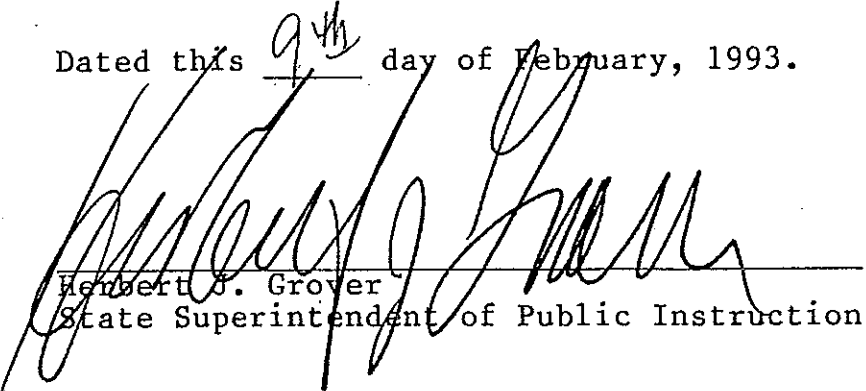
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Dustin M [REDACTED] by the Cedarburg School District Board of Education is affirmed.

Dated this 9th day of February, 1993.


Herbert J. Grover
State Superintendent of Public Instruction