Opinion No. 59-214

December 30, 1959

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Charles A. Feezer Assistant District Attorney Fifth Judicial District Carlsbad, New Mexico

QUESTION

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Does a public school board or public school authorities under board's direction have the power to expel or suspend a student who has engaged in conduct detrimental to the interest of the school system even though he has not been handled as a delinquent or actually admitted participation in a delinquent or illegal act?

CONCLUSION

See analysis.

OPINION

*{*328}* **ANALYSIS**

Although we shall answer your specific question, it is impossible to anticipate at this time what specific conduct might be considered detrimental to the interest of the school system. However, our opinion is that a school board, either acting as a board or through the school authorities, has the power to suspend or expel a student who has engaged in conduct detrimental to the interest of the school system, even though the student who has engaged in such conduct has not been handled as a delinquent or actually admitted participation in a delinquent or illegal act.

We are aware of Article XII, Section 5 of the New Mexico Constitution, which reads as follows:

"Every child of school age and of sufficient physical and mental ability shall be required to attend a public or other school during such period and for such time as may be prescribed by law."

This constitutional provision has been supplemented by Section 73-13-3, N.M.S.A., 1953 Compilation. This statute stated in effect that children who have passed their sixth birthday must attend a public school in the district in which they reside until they have reached their seventeenth birthday unless sooner graduated from high school. The statute specifically exempts from its operation, children attending private or

denominational schools maintaining courses of instruction approved by the state board of education, those physically or mentally unfit or incompetent, or those residing more than three miles from a public school where no free public means of conveyance to and from the school is furnished.

Despite these constitutional and statutory provisions it is our opinion that the school boards have authority to enact reasonable regulations relating to the suspension or expulsion of students. Generally, the law in connection with the powers of boards of education to suspend or expel students is stated in 47 Am. Jur., Schools, Sections 177, 178 and 181 which state that the enjoyment of the right of attending the public schools is necessarily *{*329}* conditioned on compliance by pupils with reasonable rules, regulations and requirements of the school authorities. School authorities may suspend or expel pupils from public schools for insubordination or misconduct subversive of the discipline of the school providing only that their actions must be reasonable or in the enforcement of the rules and regulations. The Supreme Court of Mississippi in the case of **McLeod, et al., v. State, ex rel Colmer,** 154 Miss. 468, 122 So. 737, (1929) held that a compulsory education provision in the Mississippi statutes did not prevent the school authorities from suspending or expelling students from public schools if the actions of the board were reasonable. The Court stated:

"The compulsory education provision of the school code, and the other provisions above set out, should be construed together. So construed, they do not mean that a child is entitled to attend a public school regardless of his conduct, but, on the contrary, that it is subject to such reasonable rules for the government of the school as the trustees thereof may see fit to adopt."

Another case coming to the same conclusion is **Barnard v. Shelburne,** 216 Mass. 19, 102 N.E. 1095 (1916). This case held that the Board of Trustees of a public high school could expel a student for failure to maintain a sufficient scholastic standard provided the standards set by the trustees were reasonable. The court said:

"The right of every child to attend the public schools is subject to such reasonable regulations as to qualifications of pupils to be admitted and retained in the respective schools as the school committee shall prescribe."

The Barnard case did not mention whether Massachusetts had a compulsory education law. However, we have checked the Massachusetts statutes and find that Massachusetts has had a compulsory attendance law since 1852.

Other courts have held that students may be expelled or suspended for such acts as using profane or obscene language, leaving the school grounds during school hours, or irregular or tardy attendance. 47 Am. Jur., Schools, §§ 181-185. Some cases have even gone so far as to allow expulsion or suspension for acts committed by the student away from school, but considered detrimental to the school discipline. 47 Am. Jur., Schools § 186.

You will note that the acts constituting grounds for exclusion allowed in the authorities just cited are certainly broader than illegal acts or acts for which a child might be adjudged a delinquent. In this connection, we note that under Section 13-8-26, N.M.S.A., 1953 Compilation (P.S.) the juvenile courts certainly have jurisdiction over pupils who are habitually truant from school or who habitually refuse to obey the reasonable and lawful commands of teachers, but this jurisdiction can only be exercised at such time as a case involving a juvenile is brought before the court by action of the District Attorney in his capacity as Juvenile Attorney. We do not view this jurisdiction as abrogating the rights of school boards to expel or suspend students for violations of reasonable regulations regarding school discipline.

We realize that there is no provision in the New Mexico statutes specifically giving to school boards, or school authorities acting under their direction, powers of expulsion or suspension of students. However, all school boards do have the supervision and control of all schools under their jurisdiction. See, for example §§ 73-9-7 and 73-10-2 relating to the powers of County and Municipal boards of education, respectively. Our opinion is that such powers must of necessity include the power to expel or suspend students who violate reasonable rules and regulations respecting school discipline.

*{*330}* We are aware of our Opinion No. 57-258 which held that students of school age could not be excluded from school simply because they were married. Suffice it to say that the mere fact of marriage could not be considered as a reasonable grounds for expulsion.

We wish to reiterate that we cannot, in this opinion, suggest that specific conduct of a student would be the subject of expulsion or suspension. However, the rules stated above should be helpful in giving to you a general picture of the powers of a school board or school authorities in this regard.

By: Philip R. Ashby

Assistant Attorney General