

Schools—School Trustees—Rules—High Schools.

A rule prescribed by a school board which suspends or excludes a pupil from all school privileges for failure to make certain grades is inconsistent with law which provides that the free public schools shall be open to all children between the ages of 6 and 21 years.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

March 15, 1926.

My dear Miss Trumper:

You have requested an opinion regarding the legality of a regulation which has been adopted by the school board of district No. 55, Musselshell county. The regulation is as follows:

“A pupil who fails to pass, because of repeated inattention and idleness, in at least three subjects during any two successive six week periods of the school year will be placed upon probation at the beginning of the following six week period, notice to the parent or guardian being given simultaneously. Failure to maintain a passing grade in three subjects during the probation period shall cause such pupil to be suspended from the high school at any regular report time during the semester or at the close

of the semester provided the parent or guardian has been duly warned. The time of suspending a pupil shall be left optional with the board of school trustees of school district No. 55, after receiving the report of the principal, superintendent or other information. A pupil suspended from school will not be reinstated again during that school year, and, if he be reinstated, will remain on probation until he makes a passing grade in three subjects during the first six week period after his reinstatement. Exceptions may be made in case of illness or part time attendance."

Section 1015 R. C. M. 1921, as amended by chapter 122, laws of 1923, provides:

"Every school board unless otherwise specially provided by law shall have power and it shall be its duty: * * *

"1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction for their own government of schools under their supervision. * * *

"10. To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six years of age where the interests of the school require such exclusion."

There is no doubt as to the power of school boards to make reasonable rules for the government of their schools. The only question presented, therefore, is whether the above rule is a reasonable one, and whether it is inconsistent with law.

The care and management of schools is vested in the school board and includes the right to establish and maintain standards for the promotion of pupils as members of any particular class and so long as the school board acts in good faith and does not make rules which exclude a pupil from school, its action is not subject to review by any other tribunal.

Barnard vs. Inhabitants of Shelburne (Mass.) 102 N. E. 1095;
Peterson vs. School Board (Mont.) 236 Pac. 670.

The right to suspend pupils from school for disobeying rules must, of course, be for the disobedience of such rules as the school board has power to make and in this respect disobedience usually applies to some misconduct on the part of the student and not to his failure to maintain a certain excellence in his studies.

In *Barnard vs. Inhabitants of Shelburne* (supra) the court said:

"When the real ground for exclusion from a particular school or grade is failure to maintain a proper standard of scholarship and there is opportunity afforded to the pupil to attend another school adapted to his ability and accomplishments, there is no illegal exclusion from school within the meaning of the statute."

The rule of the school board in this case does not permit the pupil to attend any other grade during the school year and in this respect is clearly in conflict with the provisions of section 7 of article XI of the constitution, which provides:

“The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years.”

A school board may not adopt a rule which excludes from the school a pupil between the ages of six and twenty-one years who is capable of doing work in some grade, though not capable of doing the work in a particular grade. He cannot be excluded from the school but can only be excluded from the particular grade.

It is, therefore, my opinion that the foregoing rule is in conflict with the provisions of the constitution in that it does not provide that the pupil shall be permitted to attend some lower grade adapted to his ability and accomplishments.

Very truly yours,

L. A. FOOT,
Attorney General.