

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
David ██████████  
by the Hortonville School District  
Board of Education

OPINION  
AND  
ORDER

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THE NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to §120.13(1)(c), Wis. Stats. from the December 1, 1983 decision of the Hortonville School Board expelling the appellant, David ██████████ from school until the end of the first semester of the 1983-1984 school year. This appeal was filed on December 8, 1983. In accordance with the provisions of Wis. Admin. Code §PI 1.04(3), this decision is confined to our review of the record of the school board hearing and the procedural standards which the school board must follow in accordance with §120.13(1)(c), Wis. Stats. Both parties were provided with an opportunity to submit written arguments on the merits of this appeal.

## FINDINGS OF FACT

By Order of Expulsion of the Hortonville School District Board of Education, December 1, 1983, David [REDACTED], a student at Hortonville High School, was expelled for the remainder of the first semester of 1983-84 school year and placed on disciplinary probation for the balance of his enrollment in the Hortonville School District. The School Board found, in accordance with Wis. Stat. §120.13(1)(c) that on November 14, 1983, David [REDACTED] set off a firecracker in a school bathroom and on November 18, 1983, David [REDACTED] participated in the discharge of approximately one-hundred (100) firecrackers inside the school building, during school hours, and in the presence of numerous other students; that such conduct endangered the property, health or safety of others while at school; and that the interests of the School District demand that David [REDACTED] be expelled. David [REDACTED] admitted to having engaged in said conduct on November 14, 1983 and on November 18, 1983 at the expulsion hearing before the Board of Education on December 1, 1983. We find these facts supported by the record.

David [REDACTED] was sent a notice of hearing dated November 22, 1983 which provided him with 5 days' notice of the hearing. The notice included a specific statement as to the charge, noted the time and place of the hearing, and stated that the hearing could result in expulsion. The notice also advised that David had the option of an open or closed hearing and could be represented by counsel. A copy of Wis. Stat. §120.13 was attached to the notice.

The Board tape recorded the expulsion hearing and also kept minutes of the meeting.

The Order of Expulsion was mailed to Mr. and Mrs. [REDACTED] and received by certified mail on December 6, 1983. The record does not indicate that the school district clerk mailed a copy of the Order to David [REDACTED] as required by Wis. Stat. §120.13(c).

## CONCLUSIONS OF LAW

The United States Supreme Court discussed the due process rights of students involved in school disciplinary hearings in Goss v. Lopez, 419 U.S. 565 (1975). The case involved a short-term suspension and the Court held that a property interest and a liberty interest were involved in obtaining a public education and, therefore, that due process applies to school expulsion hearings. The Court stated, in part, as follows:

Once it is determined that due process applies, the question remains what process is due. Morrissey v. Brewer, 408 U.S., at 481, 33 L. Ed. 2d 484.

Id. at 577.

At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing.

Id. at 579.

We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.

(Emphasis added.) Id. at 584.

School districts are limited municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. Iverson v. Union Free School District, 186 Wis. 342 (1925).

Wis. Stat. §§120.13(1)(b) and (1)(c) were enacted essentially in their present form by Chapter 94, Laws of 1973, prior to the Goss decision. The statute is, however, in consonance with both the Goss decision and the Iverson principle. The Wisconsin legislature has set forth two separate provisions for removing students from school: §120.13(1)(b) provides a procedure for suspensions lasting from 1-7 school days and §120.13(1)(c) provides a procedure for expulsions which are for a longer term.

The Wisconsin Court of Appeals, in Racine Unified School District v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334, (1982), held that a student's right to due process in an expulsion hearing is satisfied even though some of the testimony presented was hearsay given by members of the school staff. In addition to its holding, the Court gave direction to the State Superintendent of Public Instruction. The Court stated, in part, as follows:

The only applicable statute setting forth school board powers is §120.13(1), Stats. Particularly pertinent is subsection (c), which authorizes a school board to expel a student for, among other reasons, conduct which endangers the property of others. The statute then sets forth the procedural standards which the school board must follow:

- (1) The student is entitled to notice of a hearing;
- (2) The student is entitled to counsel at the hearing;
- (3) The hearing may be closed at the student's request;
- (4) The board must keep written minutes of the meeting;
- (5) If expulsion is ordered, such order shall be mailed to the student; and
- (6) An expelled student may appeal the expulsion to the state superintendent.

(Emphasis added.) Id. at 665-667. The Court continued:

We point out, obiter dicta, that the superintendent's review of a board's expulsion hearing would appear to be limited by the statute which created that appeal, namely, §120.13(1)(c), Stats. 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. at 667.

Having reviewed the record established in the school board's expulsion hearing, we conclude that the "procedural mandates of subsection (c)" have been violated by the Hortonville School District Board of Education. Specifically, our record does not indicate that the student-appellant, [REDACTED], was mailed an expulsion order as required by Wis. Stat. §120.13(1)(c). Consequently, the Board's expulsion of the appellant is not supported by

the record. The appellant was denied the procedural rights due him under Wis. Stat. §120.13(1)(c), as well as his constitutional right to due process of law.

IT IS THEREFORE ORDERED that the Order of the Hortonville School District Board of Education expelling ██████████ be and hereby is reversed.

Dated and mailed this 28th day of March, 1984.

  
Herbert J. Grover  
State Superintendent of Public Instruction