

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
 MICHELLE R [REDACTED]
 by the Suring Public School District
 Board of Education

DECISION
 AND
 ORDER
 84-EX-08

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. §120.13(1)(c) from the November 29, 1984 decision of the Suring Board of Education to expel the appellant, Michelle R [REDACTED], from school for the balance of the 1984-85 academic school year. This appeal was filed on December 11, 1984. In accordance with the provisions of Wisconsin Administrative Code §PI 1.04(3), this decision is confined to a review of the record of the school board hearing and the procedural standards required by §120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

On November 21, 1984 Michelle's parents, Mr. and Mrs. Philip R [REDACTED], were notified by letter from the school superintendent, Mr. William Kean, that he was recommending to the school board that Michelle be expelled from school. The letter specified four incidents of rule violations which were the basis for the expulsion recommendation, stated when and where the expulsion hearing would

take place, and included a copy of the applicable statutory provisions. There is no evidence in the record that a notice of hearing was sent to Michelle, individually.

A hearing was held before the Suring school board on November 28, 1984. Michelle and her parents were present at the hearing and were represented. At the hearing the board heard testimony from the school principal, two intern teachers, and a student, and received exhibits and written statements from appellant and the school administrators.

The School Board found that Michelle R [REDACTED] had violated school rules on the following occasions:

1. On December 20, 1983 she was in possession of a controlled substance while at school;
2. On January 26, 1984 she kicked out a window of the high school and entered the high school in an intoxicated state;
3. On October 29, 1984 she was caught consuming alcohol on school grounds and proceeded to a homeroom where she threatened some students and refused to obey the teacher's directions to leave;
4. On November 14, 1984 she and another student verbally harassed and threatened physical abuse of two Suring intern teachers while off campus and after school hours.

Based on these findings the school board concluded that it was in the best interest of the school district that Michelle be expelled from school for the remainder of the 1984-85 school year because of her history of repeated rules violations.

On November 30, 1984 a letter and copy of the expulsion order were sent to Mr. and Mrs. R████, and to Michelle, individually.

CONCLUSIONS OF LAW

School districts are limited purpose municipal corporations and have only those powers which are conferred specifically by statute or are necessarily implied therefrom. Iverson v. Union Free High School District, 186 Wis. 342 (1925). Section 120.13(1)(c), Wis. Stats., provides that a school board may expel a pupil for "repeated refusal or neglect to obey the rules ..."

In regard to procedures, the statute requires that "... written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian ..." §120.13(1)(c), Wis. Stats. (Emphasis added.)

The record in this case shows that the Suring school board based its decision to expel Michelle on findings that she was guilty of repeated refusal to obey school rules. The record also shows that no written notice of hearing was sent to Michelle individually, as required by statute.

The Wisconsin Court of Appeals has indicated that the state superintendent's review of expulsion decisions appears to be limited by the language of §120.13(1)(c), Wis. Stats. In Racine Unified School District v. Thompson, 107 Wis. 2d 657, 667, 321 N.W.2d 334 (1982), the Court of Appeals opined in dicta that, "The superinten-

dent'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." Thus, it is incumbent upon the state superintendent in reviewing an expulsion decision to ensure that proper procedures were followed.

In this case the record is clear that the school board did not send a written notice of hearing to Michelle individually as required by §120.13(1)(c), Wis. Stats. The consequences of this failure will rest upon whether one construes the requirements of the statute as mandatory or directory.

The Wisconsin Supreme Court has noted,

"The differences between what is mandatory and directory lies mainly in the duty to comply and the consequence of noncompliance. Generally, a mandatory provision must be strictly complied with and there is no discretion in the agency or public official. Failure to comply with a mandatory statute renders the proceeding void, while noncompliance with a directory provision does not invalidate the proceeding."

Muskego-Norway Consolidated Schools JSD No. 9 v. W.E.R.B., 32 Wis. 2d 478, 483 (1967). (Emphasis added.) Therefore, if the notice requirement of §120.13(1)(c), Wis. Stats., is mandatory, the district's failure to send Michelle notice of the hearing will render the expulsion order void. However, if the requirement is merely directory, then the failure to comply with §120.13(1)(c) will not necessarily invalidate the expulsion order.

It is the general rule that when the word "shall" is used in a statute, the statute is presumed to be mandatory, unless a differ-

ent construction is necessary to carry out the clear intent of the legislature. In Matter of E.B., 111 Wis. 2d 175, 185, 330 N.W.2d 584 (1983); Karow v. Milwaukee County Civil Service Commission, 82 Wis. 2d 565, 570, 263 N.W.2d 214 (1978). Further, "when the words 'shall' or 'may' are used in the same section of a statute, one can infer that the legislature was aware of the different denotations and intended the words to have their precise meanings." Id. at 571.

In this case, the words "shall" and "may" each appear several times in §120.13(1)(c), Wis. Stats. Therefore, one may presume that the legislature understood the different meanings of these words and intended "shall" to denote a mandatory requirement.

However, the courts have at times construed the word "shall" to be directory, "if necessary to carry out the legislature's clear intent." Cross v. Soderbeck, 94 Wis. 2d 331, 340, 288 N.W.2d 779 (1980); Karow, supra at 571. To determine legislative intent the courts consider such factors as: the terms of the statute in relation to its scope, history, context, and subject matter; the spirit or nature of the act; the general objective sought to be accomplished by the statute; the consequences which would result from alternative interpretations of the act; and whether a penalty is imposed for violating the act. Muskego-Norway, supra at 485c; Cross v. Soderbeck, supra at 340.

In this case, the legislative history indicates that when §120.13(1)(c) was amended in 1973 the legislature stated its purpose as follows,

"The purpose of this act is to provide access to educational opportunity for pupils, to provide for the orderly operation of public elementary and high schools in this state, and to ensure fairness in the administration of school rules"

L.1973, Ch. 94, §1. (Emphasis added.)

The 1973 amendments to §120.13(1)(c) are noteworthy because they changed the procedures governing expulsions to provide, among other things, that the pupil must receive not less than five days' written notice of the hearing, that the pupil must receive a copy of the expulsion order, and that the pupil may appeal the expulsion decision to the state superintendent. These changes are indicative of legislative intent when compared to the previous version of the statute which made no provision for prior notice of the expulsion hearing and permitted only the pupil's parents or guardian to receive a copy of the expulsion order or to appeal the expulsion decision to the state superintendent. See §120.13(1)(c), Wis. Stats., (1971). These statutory changes manifest a clear legislative intent to extend to the individual pupil the right to prior notice of hearing, the right to notice of the expulsion decision and the right to appeal.

It is further noted that these statutory changes preceded the U.S. Supreme Court's landmark decision in Goss v. Lopez, 419 U.S. 565 (1975), which addressed the issue of constitutional due process in school suspensions of less than ten days. The procedural requirements set out in §120.13(1)(c), Wis. Stats., are independent of the case law discussions of due process, and may well exceed the protections required by a constitutional due process analysis.

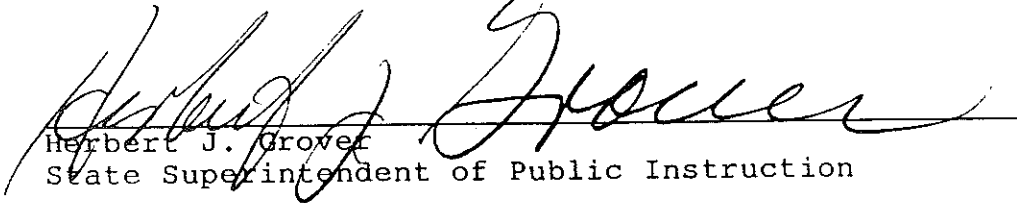
It is my conclusion that the language of the statute, its legislative history and the objectives it seeks to accomplish all indicate that the notice requirements set out in §120.13(1)(c), Wis. Stats., are mandatory in nature. Therefore, it follows that the school district's failure to send a written notice of the expulsion hearing to Michelle individually not less than five days before the hearing renders the expulsion decision void. Accordingly, I must reverse the board's decision to expel Michelle for the remainder of the 1984-85 school year.

I have reached this decision with a great deal of reluctance since I find that the record clearly supports the board's conclusion that Michelle committed offenses which would justify the expulsion. My decision should in no way be construed as condoning the actions of the pupil. However, it is clear that in deciding these appeals it is the state superintendent's duty to ensure that all procedural requirements have been followed. Because the board did not send Michelle a written notice before the expulsion hearing, the order of the board must be reversed.

ORDER

IT IS THEREFORE ORDERED that the order of the Suring Public School District Board of Education expelling Michelle R [REDACTED] for the remainder of the 1984-85 school year be and hereby is reversed.

Dated and mailed this 7th day of March, 1985.


Herbert J. Grover
State Superintendent of Public Instruction