

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
PETER J [REDACTED]
by the Hamilton School District
Board of Education

DECISION
AND
ORDER
85-EX-01

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 Findings and Order dated January 18, 1985, by which the Hamilton School District Board of Education ordered that Peter J [REDACTED] be expelled from Hamilton High School for the balance of the 1984-85 school year. Peter J [REDACTED], by his Attorney Robert Hornik, filed this appeal by letter dated February 25, 1985. In accordance with the provisions of Wis. Admin. Code s. 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 to this appeal have submitted written arguments.

FINDINGS OF FACT

The Hamilton School District Board of Education issued its Findings and Order dated January 18, 1985. The Board specifically found that Peter J [REDACTED] initiated a food fight in the Hamilton

High School cafeteria on December 21, 1984; that this action violated an express prohibition of the Hamilton High School 1984-1985 Student Handbook and endangered the property, health, and safety of others; and that the interest of the Hamilton High School demanded that Peter J. [REDACTED] be expelled for the balance of the 1984-85 school year.

Both Peter J. [REDACTED] and his parents were sent, individually, a notice of hearing dated December 28, 1984. Both Peter J. [REDACTED] and his parents received the notice on December 31, 1984 which provided them with five (5) days' notice of the scheduled January 8, 1985 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 advised that Peter J. [REDACTED] had a right to an open or closed session, to be represented by an attorney, to present witnesses, and to cross-examine administration witnesses. A verbatim copy of Wis. Stat. §120.13-(1)(c) was attached to the notice.

The Hamilton Board of Education tape recorded the expulsion hearing which was held on January 8, 1985. Subsequently, the Board issued its Findings and Order, copies of which were sent, individually, to Peter J. [REDACTED] and his parents and received by certified mail on January 19, 1985.

CONCLUSIONS OF LAW

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 School District, 186 Wis. 342 (1925). The Wisconsin legislature has set forth, in Wis. Stat. §120.13(1)(c), the procedures required to be followed in school expulsions.

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 if some of the testimony presented is hearsay given by members of the school staff. In addition to its holding, the court discussed the statutory due process requirements which school boards must observe in expulsion proceedings. The court stated in part as follows:

The only applicable statute setting forth school board powers is §120.13(1)(c), 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 the 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 hearing; (5) If expulsion is ordered, such order shall be mailed to the student; and (6) An expelled student may appeal the decision to the state superintendent.

(Footnote omitted.) Id. at 665-667. The court continued in part as follows:

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, s.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.

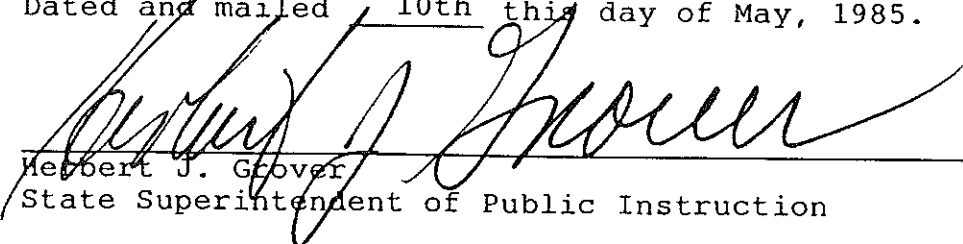
Id. at 667.

In finding that Peter J. ██████ endangered the property, health, and safety of others and that the interest of the school demanded that Peter J. ██████ be expelled, the Hamilton School District Board of Education has met the substantive provisions of Wis. Stat. §120.13(1)(c). The record on appeal supports the findings made by the Board. In making its findings, the Board carefully and fully met the procedural requirements set forth in Wis. Stat. §120.13(1)(c). By making its substantive findings within the procedural framework adopted in Wis. Stat. §120.13(1)(c), the Board has not only provided Peter J. ██████ with due process but also ensured that its disciplinary action would be upheld on appeal to the state superintendent.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Peter J. [REDACTED] for the balance of the 1984-85 school year by the Hamilton School District Board of Education be and is hereby affirmed.

Dated and mailed 10th this day of May, 1985.


Herbert J. Grover
State Superintendent of Public Instruction