

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
MIKE M [REDACTED]

by the School Board of
Iola-Scandinavia Public Schools

DECISION
AND
ORDER
85-EX-06

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. s.120.13(1)(c) from the Findings and Order dated October 29, 1985, by which the Iola-Scandinavia School District Board of Education ordered that Mike M [REDACTED] be expelled from Iola-Scandinavia High School for the balance of the 1985-86 school year. Mike M [REDACTED], by his mother, Melissa A. S [REDACTED], filed this appeal by letter dated November 20, 1985. In accordance with the provisions of Wis. Admin. Code PI chapter 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 s.120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

The Iola-Scandinavia School District Board of Education issued its Findings and Order dated October 29, 1985. The Board specifically found that Mike M [REDACTED] repeatedly refused or neglected to obey school rules and engaged in conduct

which endangered school property when he painted obscenities on a building on September 21, 1985, and that the interest of the Iola-Scandinavia High School required that Mike M [REDACTED] be expelled for the balance of the 1985-86 school year.

Both Mike M [REDACTED] and his mother were sent, individually, a notice of hearing dated October 17, 1985. Both Mike M [REDACTED] and his mother received the notice in time for an additional pre-hearing conference which was held on October 23, 1985. It thus provided them with five (5) days' notice of the scheduled October 28, 1985 hearing. The notice included a specific statement as to the charges, noted the time and place of the hearing, and stated that the hearing could result in expulsion. The notice on the back of the letter advised that Mike M [REDACTED] had a right to an open or closed session and to be represented by an attorney. A verbatim copy of Wis. Stat. s.120.13(1)(c) was xeroxed on the back of the notice.

The clerk of the Iola-Scandinavia Board of Education took minutes of the expulsion hearing which was held on October 28, 1985. Subsequently, the Board issued its Findings and Order, copies of which were sent, individually, to Mike M [REDACTED] and his mother.

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. s.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 s.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.

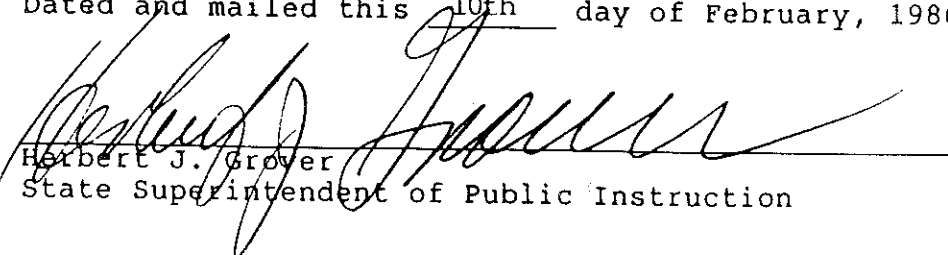
Id. at 667.

In finding that Mike M [REDACTED] repeatedly refused or neglected to obey schools rules and endangered school property and that the interest of the school demanded that Mike M [REDACTED] be expelled, the Iola-Scandinavia School District Board of Education has met the substantive provisions of Wis. Stat. s.120.13(1)(c). The record on appeal supports the findings made by the Board. In making its findings, the Board met the procedural requirements set forth in Wis. Stat. s.120.13(1)(c). By making its substantive findings within the procedural framework adopted in Wis. Stat. s.120.13(1)(c), the Board has not only provided Mike M [REDACTED] 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 Mike M [REDACTED] for the balance of the 1985-86 school year by the Iola-Scandinavia School District Board of Education be and is hereby affirmed.

Dated and mailed this 10th day of February, 1986.


Herbert J. Grover
State Superintendent of Public Instruction