

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
ROBERT D [REDACTED], JR.

by the School District of Crandon
Board of Education

DECISION
AND
ORDER
86-EX-02

NATURE OF THE APPEAL

This matter is before the State Superintendent of Public Instruction pursuant to s. 120.13(1)(c), Wis. Stats., on appeal from the January 24, 1986 decision of the Board of Education (Board) of the School District of Crandon (District) expelling the appellant from Crandon High School for the remainder of the second semester of the 1985-86 school year. Robert D [REDACTED], Jr. (Robert) by his attorney, Katherian Roe, filed this appeal by letter on February 21, 1986. In accordance with the provisions of Wis. Admin. Code sec. PI 1.04(3), this decision is confined to a 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

On January 17, 1986, Robert and his parents, Mr. and Mrs. Robert D [REDACTED], Sr. were notified by letter from Robert Jaeger, Acting School Superintendent, that an expul-

sion hearing would be held before the School District of Crandon Board of Education on January 24, 1986, to consider Robert's expulsion. The notice indicated that Robert was charged with conduct which could result in expulsion, to wit, attempting to instigate a fight with another student, spitting on a student and throwing a metal rod at the high school principal. The notice also included the right to counsel, the right to request a closed hearing and a copy of s. 120.13(1)(c), Wis. Stats.

An expulsion hearing was held on January 24, 1986 before the Board. Robert and his parents were present and represented by counsel. During the hearing the Board heard testimony from the junior high school principal, the physical education teacher, the high school principal, Robert and his father. The Board also received certain documents as exhibits including two written memoranda and a portion of the school's expulsion policy.

Mr. Fritcher, the junior high principal, testified that on October 22, 1985, he observed "Bob" and Mr. Van Duser, the physical education teacher, "having some words" and that Robert called the teacher an obscenity (Tr.3). Mr. Fritcher testified that he grabbed Robert and physically turned him around (Tr.8). He further testified that he warned Robert of being in serious trouble and that Robert got angry and left school (Tr.4). Mr. Fritcher stated that he later had a conference with Robert's father regarding Robert's behavior (Tr.4). He testified that Robert brought his father in for

a conference and that no notification of Robert's departure from school was given to Robert's parents (Tr.10). He further testified that he had spoken with Robert on November 12 following an incident involving Robert and his reading teacher (Tr.4). Mr. Fritcher testified that on December 10 he had spoken with Robert regarding an incident involving yet another teacher and Robert had gotten angry and left school (Tr.5). He testified that Robert and his father came to school on the following day. He stated that Robert was suspended for three days as a result of the December 10th incident for swearing and insubordination consisting of the attempted physical assault of the teacher (Tr.6).

Mr. Van Duser, the physical education teacher, testified regarding the January 15, 1986 incident. He testified that Robert came to phy. ed. class and participated by shooting basketballs. He testified that another student "accidentally" bumped into Robert and that Robert pushed and shoved the student and spat on his head (Tr.15). Mr. Van Duser testified that he asked Robert to go to the principal's office and that he followed Robert (Tr.15). He stated that while in the office Robert hit the ditto machine and then ran down the hall yelling obscenities (Tr.16). He then testified that later he saw Robert pick up a (driver education) parking flagpole rod and throw it in the direction of where he and the high school principal were standing (Tr.16). Mr. Van Duser testified that he and the principal followed Robert as Robert left the building (Tr.22). He

testified that he made written notes of the January 15th incident (Exhibit 1).

Mr. Sekel, the high school principal, testified that in his office on January 15, 1986, he saw Robert pound on the ditto machine and later, pound on lockers as Robert walked down the hall (Tr.28). He testified that while Robert was in his office he put his hand on Robert's shoulder (Tr.32). He further testified that he told Robert to go home (Tr.35). He testified that he and Mr. Van Duser followed Robert and that Robert threw the flagpole rod in their direction where it hit the wall (Tr.30). He further testified that he took notes (Exhibit 2) of the incident (Tr.31). Mr. Sekel testified that he knew that on October 22, Robert had been put back a grade from 9th to 8th grade (Tr.36). He testified that later Robert's father came in to speak with him about the January 15th incident and that although he spoke with Mr. D [REDACTED] about possible disciplinary actions regarding Robert, he (Mr. Sekel) did not have the authority to do so (Tr.37). He further testified that there had been no contact with the D [REDACTED] family since the January 15th incident and, that besides the expulsion hearing, there had been no effort between the administration and the family to find a satisfactory solution other than expulsion (Tr.39).

Robert testified that on January 15, 1986, during gym class, he was pushed aside by a student (Tr.52). He further testified that this same student "cut out to the side" while they were running laps and that he (Robert) pushed him,

punched and spat on him (Tr.53). Robert testified that he believed that the student cut in front of him on purpose (Tr.64). Robert stated that he was told by Mr. Van Duser to leave and that he went to get a drink of water prior to going to the office (Tr.54). He testified that he was told by Mr. Van Duser not to get a drink and was then pushed by Mr. Van Duser (Tr.55). Robert further testified that he hit the ditto machine and was then grabbed on the arm by Mr. Sekel (Tr.55). He stated that he swore at both Mr. Van Duser and Mr. Sekel and was told to go home (Tr.57). Robert stated that he punched the locker on his way down the hall and that he threw the parking flagpole rod (Tr.57). Robert testified that he was mad and threw the pole because he wanted to hit the principal and the teacher (Tr.63). Robert also testified regarding the prior October 22 incident. He stated that he and his cousin were late for class when they were approached by Mr. Van Duser who asked him if he (Robert) had a problem and called him "Boy" (Tr.59). Robert testified that he swore at Mr. Van Duser in the presence of Mr. Fritcher (Tr.60).

Mr. D [REDACTED], Robert's father, then testified regarding the October 22 incident. He stated that he spoke with Mr. Fritcher who told him that Mr. Van Duser and Robert had a misunderstanding (Tr.68). Mr. D [REDACTED] stated that it was his impression that there was more focus on the staff member than the student (Tr.69). Regarding January 15th, Mr. D [REDACTED] testified that Robert had come home upset and that

Mr. D [REDACTED] had gone to school to look for a teacher but was unable to find one and had returned the next day to speak with Mr. Sekel (Tr.71). He testified that he had been referred to Mr. Sekel by another teacher and believed that it was within Mr. Sekel's authority to handle the incident (Tr.72). He next testified that he was told that Robert would be suspended (Tr.73). Mr. D [REDACTED] testified that Robert had never had problems with school prior to attending Crandon High School (Tr.74). He further stated that earlier on October 22, 1985 there had been a discussion regarding Robert's grade placement (Tr.74).

Next, the Board considered the expulsion. A majority voted to expel Robert for the remainder of the 1985-86 spring semester. The expulsion hearing was then concluded.

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, 353 (1925). A school board's power to expel students derives from s. 120.13(1)(c), Wis. Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which must be followed in the expulsion process. As far as grounds for expulsion, the statute states in part,

The school board may expel a pupil from school whenever it finds . . . that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, . . . and is satisfied that the interest of the school demands the pupil's expulsion. Section 120.13(1)(c), Wis. Stats.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated that the scope of the state superintendent's review is limited by the language of s. 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 in dicta stated that, "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." It is, therefore, incumbent upon the state superintendent in reviewing an expulsion decision to ensure that the required statutory procedures were followed, and that the board's decision is based upon one of the established statutory grounds.

A review of the record indicates that the Board interpreted s. 120.13(1)(c), Wis. Stats., and adopted its own policies and procedures consistent with the statutory requirements. The Board adopted specific policies and procedures to be followed in certain defined instances including expulsion for behavior which endangered the health and safety of others and set forth these rules encompassing s. 120.13(1)(c), Wis. Stats., in Section 507 of its own

rules. Immediately under the definition of expulsion as per s. 120.13(1), Wis. Stats. 1981, the Crandon School District's procedure is stated as follows:

Expulsion From School 507

The board may expel a student from school whenever it finds the student guilty of repeated refusal or neglect to obey the rules OR that the student engaged in conduct while at school or while under the supervision of school authority which endangered the property, health or safety of others and is satisfied that the interest of the school demands the student's expulsion.

s. 120.13 (1) 1981

Procedure

1. Expulsion procedures shall remain the responsibility of the Board.
2. Prior to the SUPERINTENDENT'S recommendation to the Board that a student be expelled, the following steps shall have been taken and documentation of those steps shall have been accomplished.
 - a. A teacher or staff member who has recognized the students repeated refusal or neglect to obey rules or has knowledge of conduct by a pupil which has endangered the property, health or safety of others shall advise the principal.
 - b. The principal, after receiving the complete record of the student, shall evaluate the gravity of the situation.
 - 1) If warranted, the principal shall advise the parents of the pupil of the gravity of the situation and shall keep a record that the parents were so advised.

- 2) At this stage, every reasonable effort shall be made to receive the cooperation of the parents to find a satisfactory solution to the student's problem.
- 3) All the school pertinent resources shall cooperate with the student and his/her parents to find a satisfactory solution.

(School District of Crandon Board of Education Expulsion Hearing Policy, Exhibit #3.)

In his letter of appeal and by his legal brief, the appellant raised several issues regarding his expulsion. First, the appellant alleges that failure by the school district to comply with its own rules (Section 507(2) of the School District of Crandon Policy Manual) namely, a) failure to give notice to the parents of the gravity of situation, b) failure to provide documentation of efforts made in a cooperative attempt with parents to find a satisfactory solution, c) failure to document efforts of the school administration in cooperation with the appellant and his parents to find a satisfactory solution utilizing school resources, and d) failure to give notice to appellant's parents that the principal might recommend expulsion resulted in the wrongful expulsion of the appellant from the Crandon Junior High School. Second, the appellant alleges that the Crandon School Board has exceeded its authority by violating the rules which it adopted as its own policy and procedure. Each of these allegations shall be addressed below.

First, the transcript shows that the high school principal did not inform Mr. D [REDACTED] that the appellant might be suspended (Tr.38). Testimony by the high school principal indicates that no one in the administration either called or wrote to the appellant's family regarding the seriousness of the incidents beyond the conversations which Mr. D [REDACTED] had immediately after the January 15th incident (Tr.39). The transcript further reveals that on at least one occasion, the incident involving the appellant and a teacher was characterized as a misunderstanding (Tr.68). My review indicates that the Board failed to give notice to the parents of the gravity of the situation as required under Section 507(2)(B)(1) of the School District of Crandon Policy Manual.

The appellant alleges that there was no documentation of cooperative efforts between parents and the school to find a satisfactory solution either with or without school resources. My review of the record reveals no documentation that any effort was made by the school beyond the attempts of the appellant's father to talk with school officials. A review of the record and transcript confirms the fact that appellant's father was the one who initiated contact with the school following incidents involving his son and the school (Tr.10, Tr.37).

Second, the record indicates that the Board adopted disciplinary policies in December, 1982, following an investigation and recommendations made by the Department of Pub-

lic Instruction relevant to claims and concerns of alleged discrimination. The Board on its own initiative and by its action incorporated the requirements of Wis. Stat. s. 120.13(1)(c). It is within the scope of my authority to look at s. 120.13(1)(c), Wis. Stats., in light of the Board's own interpretation of said statute and hold the Board accountable. My review of the record and transcript in this case affirms appellant's allegation that the Board exceeded its authority by violating its own policy and procedure.

The legislative history indicates that when s. 120.13(1)(c), Wis. Stats., 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, sec. 1.

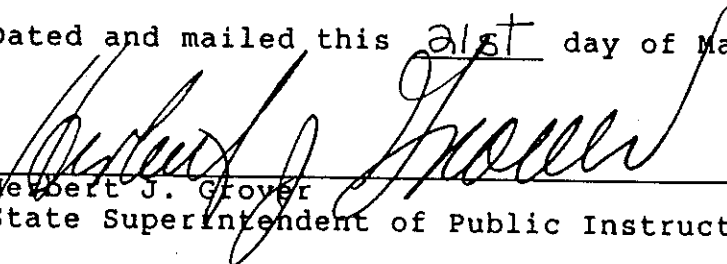
Because of the Board's failure to follow their own procedural requirements concerning the advising, recordkeeping, reasonable effort at receiving parental cooperation and documentation of said process, I must reverse the Board's decision to expel Robert. I have reached this decision with a great deal of reluctance and this 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 and, therefore, the order of the Board must be reversed.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Robert D [REDACTED], Jr. for the remainder of the second semester of the 1985-86 school year by the School District of Crandon Board of Education be and is hereby reversed.

Dated and mailed this 21st day of May, 1986.



Herbert J. Grover
State Superintendent of Public Instruction