

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
NANCY Z██████████

by the Janesville School District
Board of Education

DECISION
AND
ORDER
86-EX-05

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 March 20, 1986, by which the School District of Janesville Board of Education ordered that Nancy Z██████████ be expelled from Franklin Junior High School for the balance of the 1985-86 school year. Nancy Z██████████, by her attorney and also by her mother, Rosemary D██████████, filed this appeal by letter dated April 17, 1986. In accordance with the provisions of Wis. Admin. Code sec. 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 s. 120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

The School District of Janesville issued its Findings and Order dated March 20, 1986. The Board specifically

found that Nancy Z██████ possessed, distributed and sold "look alike" drugs at Franklin Junior High during normal school hours in violation of school rules and Board policy. The Board found that said conduct endangered the health and safety of others and that the interests of the school demanded her expulsion.

Both Nancy and her mother were sent a letter containing a notice of an expulsion hearing dated March 12, 1986. 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 her expulsion. A copy of school board policies and Wis. Stat. s. 120.13(1)(c) were included as well as notice of right to counsel and right to a closed hearing.

The written notice of the hearing was sent by the superintendent to Nancy and her mother, Rosemary D██████, by certified mail. The receipt for the certified mail indicates that the notice was sent on March 12. The hearing was scheduled for March 17.

The expulsion hearing was conducted on March 17, 1986 by the Janesville Board of Education. Nancy and her mother were represented by counsel at the hearing. During the hearing, testimony was heard from the junior high school principal, the assistant principal and Nancy. The two principals testified regarding the events leading to Nancy's initial suspension (Minutes, p. 1). They further testified that past procedure in similar situations was to ask for ex-

pulsion with drug assessment and counseling (Minutes, p. 1). Nancy testified that she told "a girl" that she could get pills for her and guessed that she had not thought of the consequences (Minutes, p. 1). A statement by Mr. Connors, the assistant principal, dated March 11, 1986 indicated that Nancy had told him that she had given two pills to another student (Celena M. [REDACTED]).

The Board concluded, based on the evidence, that Nancy had been involved with the delivery of a counterfeit substance and that said action, sale of a look-alike drug, endangered the health and safety of others at school. The Board concluded that the interests of the school demanded expulsion and ordered the expulsion for the balance of the 1985-86 school year with a provision for homebound instruction. Subsequently, the Board issued its Findings and Order, copies of which were sent, individually, to Nancy and her mother. On April 17, 1986, an appeal to the state superintendent was filed on behalf of Nancy by her attorney.

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, 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.

In the letter of appeal, the appellant raised several issues regarding her expulsion. First, she alleges that neither she or her mother were advised as to the charges against her. Second, she alleges that the statutory notices

required for suspension were not followed. Third, she alleges that the statutory and board procedures for notification were not followed because the certified mail receipt was dated March 14, 1986 and the hearing was scheduled for March 17, 1986. Fourth, she alleges that there was a denial of due process. Fifth, she alleges that there was insufficient evidence to warrant an expulsion. Sixth, she alleges that the principal had advised her that she did not need an attorney at the hearing. Seventh, she alleges that the vice principal "targeted" her for expulsion prior to the expulsion. Eighth, she alleges that the district administrator did not personally recommend expulsion to the Board. Ninth, and finally, she alleges that there was no evidence that she was "guilty of repeated refusal or neglect to obey the rules." Each of these allegations will be addressed below.

First, allegations as to the sufficiency of the evidence are beyond the scope of review by the state superintendent. In reviewing the findings of an administrative board sitting as the trier of fact, the Wisconsin Supreme Court has held that the findings of such a body "are conclusive if any reasonable view of the evidence sustains them. . . ." State ex rel. Deluca v. Common Council, 72 Wis. 2d 672, 695 (1976). Therefore, if there is any reasonable view of the evidence which will sustain the Janesville school board's findings, those findings must be upheld. Accordingly, I conclude that the Board's finding is a reasonable view of the evidence.

A review of the record indicates that Nancy and her mother were notified by letter dated March 12 of the charges against Nancy. The letter signed by Mr. Mrdjenovich specifically states that the basis for the expulsion was the possession, distribution and selling of several types of pills. Moreover, said letter includes a statement regarding the right to legal counsel, copies of the relevant Board policies and procedures as well as a copy of the statute (s. 120.13(1)(c), Wis. Stats.). Accordingly, I find no merit to the allegations that the notice was deficient in its content. Further, there is no evidence in the record that Nancy was "targeted" for expulsion. Accordingly, I find this allegation to be without merit.

A review of the record shows that Nancy was duly represented by counsel and that the Board considered a packet of materials including copies of the Board policies and testimony by various officials as well as testimony by the appellant. There is nothing in the record to indicate that anything less than a full hearing was held with full participation by all parties. The record indicates that the Board considered the evidence in its determination and did not "automatically" expel the appellant. Accordingly, I find this allegation to be without merit.

The state superintendent has no statutory authority to review suspensions under s. 120.13(1)(b), Wis. Stats. Since the state superintendent's powers are entirely statutory, it must be concluded that the state superintendent lacks juris-

diction to address this issue. See Douglas B. v. Wauwatosa Public Schools, Expulsion Decision and Order #86, 1/15/82.

Appellant's allegation of the Board's failure to give timely notice of the expulsion hearing needs to be examined in light of both the statutory language of s. 120.13(1)(c), Wis. Stats., and the legislative intent of the notice requirement.

Section 120.13(1)(c), Wis. Stats., states in part:

Not less than 5 days' 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, specifying the particulars of the alleged refusal, neglect or conduct, stating the time and place of the hearing and stating that the hearing may result in the pupil's expulsion.

A reading of the statute thus indicates that the notice must have been sent at least five days prior to the hearing. In this case, the record shows that the receipt for certified mail indicates the date of mailing as March 12. The hearing was scheduled for March 17. In determining the number of days, one must look at Chapter 990, Construction of Statutes. Section 990.001(4)(a), Wis. Stats., provides in part:

The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last. . . .

In addition, s. 990.001(4)(d), Wis. Stats., states:

Regardless of whether the time limited in any statute for the taking of any proceeding or the doing of an act is measured from an event or from the date or day on which such event occurs, the day on which such event took place shall

be excluded in the computation of such time.

In computing the time for notice, neither the date of mailing (March 12) nor the date of the hearing (March 17) would be included. Thus, Nancy was given only four days notice of the expulsion hearing. Therefore, the notice of the expulsion was not timely and the appellant was given insufficient notice.

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, s. 1.

The 1973 amendments to s. 120.13(1)(c), Wis. Stats., 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 s. 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 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 s. 120.13(1)(c), Wis. Stats., are mandatory in nature.

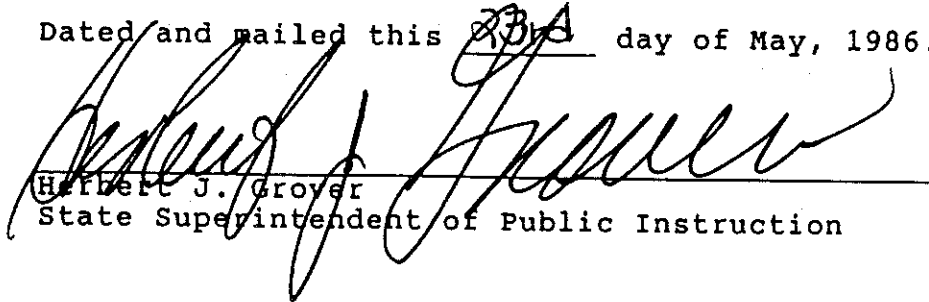
Because of the Board's failure to follow the statutory procedures concerning sending timely written notice to the pupil, I find that I must reverse the Board's decision to expel Nancy.

I have reached this decision with reluctance. 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 comply with the procedural requirements of s. 120.13(1)(c), Wis. Stats., as discussed above, the order of the Board must be reversed.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Nancy Z██████ for the remainder of the 1985-86 school year by the Janesville School District Board of Education be and is hereby reversed.

Dated and mailed this 23rd day of May, 1986.


Herbert J. Grover
State Superintendent of Public Instruction