

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
 TRAVIS V [REDACTED]

by the Waterloo School District
 Board of Education

DECISION
 AND
 ORDER
 86-EX-09

This is an appeal to the State Superintendent of Public Instruction pursuant to s. 120.13(1)(c), Wis. Stats., from the May 6, 1986 decision of the Waterloo School District Board of Education to expel Travis V [REDACTED] from school for the remainder of the 1985-86 school year. Travis V [REDACTED], by his attorney, filed this appeal by letter dated May 20, 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 April 30, 1986, Travis' parents, Mr. and Mrs. James M [REDACTED], were notified by letter from the school superintendent, Dr. Wayne Benson, that Travis was being recommended to the Board of Education for expulsion from school. The letter specified 21 incidents of rule violations from November 1981 through April 1986, including eight since the

beginning of 1986, which were the basis for the expulsion recommendation. The letter also stated the date of the hearing (May 5), where the expulsion hearing would take place, that expulsion was being recommended, that the hearing could be held in private if so requested, that the parties had a right to have legal counsel present, and enclosed a copy of the applicable statutory provisions. "There is no evidence in the record that a notice of hearing was sent to Travis, individually.

A hearing was held before the Waterloo school board on May 5, 1986. In a letter to the Department of Public Instruction dated May 30, 1986, Dr. Benson states that the hearing date "had been verbally agreed upon between Mrs. M [REDACTED] and myself on April 28th indicating that the timeline of notification was met."

At the hearing the board heard testimony from the district administrator, the junior-senior high school principal, Mrs. M [REDACTED], Travis, three of Travis' teachers, and a friend of the M [REDACTED] family. During the hearing the witnesses discussed the 21 rule violations cited as the basis for the expulsion recommendation and Travis, himself, testified as to several of the incidents. The most recent incidents involved Travis getting into trouble while he was on the school bus and setting off a firecracker near the head of another person.

After considering the evidence presented, the board decided to expel Travis for the remainder of the 1985-86

school year and further decided that if one violation of the bus rules occurs in the 1986-87 school year, Travis will lose his riding privileges for the remainder of the school year. (Minutes of the hearing, p.15.)

On May 6, 1986 a Notice of Findings and Order for Expulsion was sent to both Travis and his parents. In that letter the board concluded that Travis was guilty of repeated refusal and neglect to obey school rules and actions while at school and on the school bus which endangered the property, health, and safety of others. The board also found that the interests of the school demanded that Travis be expelled.

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.

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 Dis-

trict 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 this case the record shows that certain procedures required by s. 120.13(1)(c), Wis. Stats., were not followed.

Section 120.13(1)(c), Wis. Stats., provides in relevant part that:

"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" (Emphasis added.)

This part of the statute requires (1) that the written notice of hearing must be sent at least five days before the hearing and (2) that the notice must be sent to the pupil and the pupil's parent or guardian if the pupil is a minor. The record indicates that neither of these requirements was met in this case.

First, the written notice of hearing was not sent to the parents at least five days before the hearing. The notice was mailed on April 30th for a hearing scheduled for May 5. Recognized rules of statutory construction for com-

puting time provide that in determining the time within which an act is to be done or a proceeding had, the first day is excluded, the last day is included, and the day on which the measuring event occurs is excluded in the computation. See s. 990.001(4)(a) and (d), Wis. Stats.

This means that the date on which the written notice was sent (April 30) would be excluded from the count of days and we are left with "counting" May 1, 2, 3, 4 and 5. The question then becomes whether the hearing may be held on the fifth day of notice (May 5) or whether five full days must intervene to meet the requirements of s. 120.13(1)(c), Wis. Stats.

The expulsion statute clearly provides that "not less than 5 days' written notice of the hearing" shall be sent to the pupil. (Emphasis added.) When interpreting statutes, nontechnical words used in the statute, which are not defined in the statute, are to be given their ordinary and accepted meaning, and that meaning may be ascertained from a recognized dictionary. State ex rel. First Nat'l Bank & Trust v. Skow, 91 Wis. 2d 773, 781 (1979); State v. Wittrock, 119 Wis. 2d 664, 670 (1984). In this case the term "not less than" is not defined in the statute. Black's Law Dictionary defines the words "not less than" to mean, "in the smallest or lowest degree, at the lowest estimate; at least." Revised Fourth Edition, 1968, p. 1209. (Emphasis added.) And Webster's New Collegiate Dictionary, (1977) p. 655, defines "at least" to mean "at the minimum." There-

fore, s. 120.13(1)(c), Wis. Stats., requires that the parties must be sent at the minimum, five days' written notice of the hearing.

In order for Travis to have had a minimum of five days' written notice of the hearing, he needed notice for all of May 1, 2, 3, 4 and 5. However, he did not have notice for the entire day of May 5, since the hearing actually took place that day. Therefore, Travis received only four full days of notice and part of a fifth day. This does not comply with the statutory requirement and, therefore, the notice was not sufficient under the statute. (See also Ward v. Walters, 63 Wis. 39, 44 (1885), in which the Wisconsin Supreme Court held that a statute requiring "at least four weeks" notice of a tax sale, meant that the full four weeks had to intervene between the day notices were posted and the day of the sale in order for the sale to be valid.)

The district administrator states that the parents were verbally notified on April 28th that the hearing would be held on May 5th, and therefore he alleges the notice was timely. I find this argument to be without merit since the statute on its face requires written notice be sent.

Second, notice of the hearing was not sent to Travis individually. The statute clearly requires that when minor pupils are involved, the notice of hearing must be sent to the pupil and the pupil's parents or guardian. When the word "and" is used in a statute, it means that both of the stated requirements must be met. Trojan v. U.W. Board of

Regents, 128 Wis. 2d 270, 273 (1985). Further, when the legislature amended s. 120.13(1)(c) in 1973 it specifically extended to individual pupils the right to prior notice of hearing, the right to notice of the expulsion decision, and the right to appeal. See Laws of 1973, ch. 94 (effective August 9, 1973). Before the 1973 amendments, these individual pupil rights did not exist in the law. See s. 120.13(1)(c), Wis. Stats. (1971). I have previously held that the notice requirements of s. 120.13(1)(c), Wis. Stats. are mandatory in nature and that failure to comply with the statute's requirements renders the expulsion decision void. See Michelle R. v. Suring Public Schools Board of Education, Decision and Order No. 126 (3/7/85), citing Muskego-Norway Consolid. Schools v. WERB, 32 Wis. 2d 478, 483 (1967), and James G. v. Hortonville School District Board of Education, Decision and Order No. 118 (3/28/84), and David S. v. Hortonville School District Board of Education, Decision and Order No. 119 (3/28/84).

Because of the board's failure to follow the statutory procedures concerning sending timely notice and sending individual notice of the hearing to the pupil, I must reverse the board's decision to expel Travis.

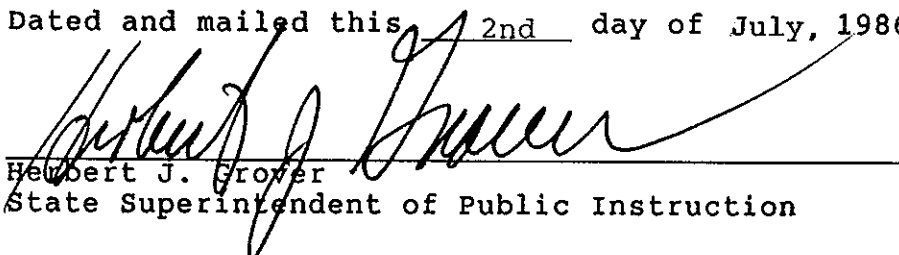
I have reached this decision with a great deal of reluctance since the record supports the board's conclusions that Travis committed offenses which would justify expulsion. Further, I wish to make it clear that my decision should in no way be construed as condoning the actions of

the pupil. However, in deciding these appeals it is the state superintendent's duty to ensure that all procedural requirements have been followed. When a board has not complied with the requirements of s. 120.13(1)(c), Wis. Stats., the board's order must be reversed.

ORDER

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

Dated and mailed this 2nd day of July, 1986.



Herbert J. Grover
State Superintendent of Public Instruction