

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

CHRISTOPHER K [REDACTED]

by the West Allis School District
Board of Education

DECISION
AND
ORDER
90-EX-01

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to s. 12013(1)(c), Wis. Stats., from the order of the West Allis School District Board of Education to expel Christopher K [REDACTED] from school for the remainder of the 1989-90 school year, effective January 31, 1990. This appeal was received by the Department of Public Instruction on February 21, 1990. In accordance with the provision of PI 1.04(5), Wis. Adm. Code, this decision is confined to a review of the record of the school board hearing and the procedural standards required by s. 120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

1. On January 24, 1990, Mr. and Mrs. James K [REDACTED] (Christopher's parents) personally received a Notice of Expulsion Hearing which advised them that the West Allis

School District Board of Education planned to hold an expulsion hearing concerning Christopher on January 31, 1990 at 3:00 p.m. In addition to the time and place of the meeting, the notice stated: "This hearing will be held in open session. As indicated in our telephone conversation, you may have legal counsel present at this hearing. In addition, we are providing for your reference copies of two Wisconsin Statutes which apply, 119.25 and 120.13. The hearing will be held in accordance with Statute 120.13." The notice contained no specific factual allegations, nor did it set forth the reasons for the proposed expulsion.

2. On January 31, 1990, the expulsion hearing was held in closed session before the West Allis School District Board of Education. Christopher, his mother, father, and grandmother were present at the hearing.
3. Christopher was not represented by counsel. He was asked if he was willing to proceed without counsel. The board denied the request to postpone the hearing until after a court resolution of an action arising from the same facts.

4. After considering the evidence presented, the board decided to expel Christopher for the remainder of the 1989-90 school year.
5. On February 6, 1990, a copy of the written findings and order of expulsion was sent to Christopher, individually, and his parents.

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 sets forth specific procedures which must be followed in the expulsion process. Section 120.13 (1)(c), Wis. Stats., reads in pertinent part:

Prior to such expulsion, the school board shall hold a hearing. 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

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 stated "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, the role of the state superintendent in reviewing an expulsion decision to ensure that the statutory procedures were followed.

Here it appears from the record that Christopher was not provided with written notice, and that the notice provided to his parents did not specify "the particulars of the alleged refusal, neglect or conduct" as required by the statute.

It is well established that a student is entitled to due process at an expulsion hearing. Racine Unified School District v. Thompson, see also Goss v. Lopez, 419 U.S. 565 (1975) It is also well established that notice is an integral part of procedural due process in these situations. For example, in Keller v. Fochs, 385 F. Supp. 262, 265 (E.D. Wis. 1974), the court held that a student facing expulsion was "entitled to timely and adequate notice of the charges against him so as to allow him a meaningful opportunity to be heard," even where the student unequivocally admitted the conduct charged.

In addition, our statute is clear that a student must be afforded notice of the specific charges to be presented against him/her at the expulsion hearing. Here no specific allegations or charges were set forth in the letter sent to Christopher's parents.

Second, notice of the hearing was not sent to Christopher 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). Also, when the legislature amended s. 120.13(1)(c), Wis. Stats., it extended the right to notice to individual students. Before this amendment this right did not exist for students. One cannot assume that a specific legislative amendment has no meaning. In previous expulsion decisions, I found this to be a violation of the statutory procedures. Travis V. v. Waterloo School District, Decision and Order No. 144 (7/2/86); Michelle R. v. Suring Public Schools Board of Education, Decision and Order No. 126 (3/7/85).

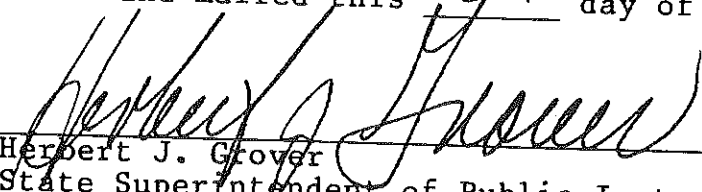
In this case the record shows that the procedures set forth in s. 120.13(1)(c), Wis. Stats., were not followed in two ways: specific allegations were not provided, and the student was not provided notice individually. I have previously held that the notice requirements of the statute are mandatory and that failure to comply renders the expulsion

decision void. Travis V. v. Waterloo School District, Decision and Order No. 144 (7/2/86); Michelle R. v. Suring Public Schools Board of Education, Decision and Order No. 126 (3/7/85). Because of the board's failure to follow the statutory mandate concerning sending specific notice and sending individual notice of the hearing to student, I must reverse the board's decision.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Christopher K [REDACTED] from the West Allis School District is hereby reversed.

Dated and mailed this 18th day of April, 1990.



Herbert J. Grover
State Superintendent of Public Instruction