

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

CHAD K [REDACTED]

by the Wittenberg-Birnamwood School
District Board of Education

DECISION
AND
ORDER
90-EX-03

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to s. 120.13(1)(c), Wis. Stats., from the decision of the Wittenberg-Birnamwood School District to expel Chad K [REDACTED] for the balance of the 1989-90 school year with the right to make application to re-enter Wittenberg-Birnamwood High School for the 1990-91 school year. This appeal was filed by Richard K [REDACTED], Chad's father, and was received by the Department of Public Instruction on March 7, 1990.

In accordance with the provisions of s. PI 1.04(5), Wis. Adm. Code, this decision is confined to a review of the record of the school board hearing. The state superintendent's review authority is specified in s. 120.13(1)(c), Wis. Stats. The state superintendent's role is to ensure that the required statutory procedures were followed, that the board's decision was based upon one of the established statutory grounds, and that the board was

satisfied that the interest of the school demanded that the student be expelled.

FINDINGS OF FACT

On February 16, 1990, Gerald A. Jackson, District Administrator of the Wittenberg-Birnamwood School District, sent Mr. and Mrs. Richard K [REDACTED] and Chad letters advising them that the Wittenberg-Birnamwood Board of Education had scheduled a hearing on February 27, 1990, to consider Chad's possible expulsion. The letters indicated that the district was considering Chad's expulsion for specific charges which were as follows:

- 11-17-89 - Chewing tobacco on School Grounds - 1st offense
- 12 -8-89 - Smoking on School Grounds - 2nd offense
- 1 - 5-90 - Smoking on School Grounds - 3rd offense
- 1 -29-90 - Smoking on School Grounds - 4th offense

Other considerations will include:

Continued tardiness to class resulting in 2 detentions

Leaving school (campus) resulting in 1 detention

Disrespectful and insubordination, including hitting the teacher twice in the arm resulting in 1 detention

Continued tardiness to class resulting in 1 detention

Chad also has a history of not responding to teacher requests, resulting in removal from class.

The February 16, 1990, letter noticing the hearing described the specific allegations being made, stated the time and place of the hearing, stated that the hearing may result in Chad's expulsion, and had an outdated copy of s. 120.13(1)(c), Wis. Stats., on the reverse side. The version of the statute copied by the district was in effect prior to May 15, 1980.

The copy of s. 120.13(1)(c), Wis. Stats., used by the district does not include two provisions found in the current statute. It does not include the information that the hearing must be closed if the pupil or the pupil's parent requests it. It also does not include the information that the state superintendent must issue a decision in an appeal within 60 days of receipt of the request and that the school board's decision remains in effect during the time of the appeal.

The Wittenberg-Birnamwood Board of Education held Chad's expulsion hearing at 7:45 p.m. on February 27, 1990. Written minutes of the hearing were kept. Mr. Jackson read into the record the letter he sent to Chad and his parents noticing the hearing. That included the above-quoted information regarding the charges against Chad. Mr. Jackson also read into the record his recommendations for what should be done about Chad. The recommendations included expulsion for the remainder of the 1989-90 school year with services provided during the period of expulsion to allow him to earn

credits for the balance of the 1989-90 school year while at home, and the right to reapply for the 1990-91 school year.

At the end of the hearing the school board convened into executive session. The board subsequently announced that it had decided to expel Chad following Mr. Jackson's recommendation by a 5 to 3 vote with 1 abstention.

Subsequent to the hearing, Mr. Jackson sent a letter to Chad's parents dated February 28, 1990. The record forwarded by the school district does not include evidence that a letter was sent to Chad. The letter indicates that the School Board of the Wittenberg-Birnamwood School District adopted Findings of Fact, Conclusions, and an Order directing that Chad be expelled in accordance with the recommendations made by Mr. Jackson. The letter spelled out the conditions of the expulsion but did not include any Findings of Fact or Conclusions. It did not state that the school board expelled Chad for one of the grounds specified in the statute and it did not state that the school board was satisfied that the interest of the school demanded that Chad be expelled.

DISCUSSION

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. Concerning grounds for expulsion, the statute states in relevant part,

The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, . . . or 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.

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, that the board's decision is based upon one of the established statutory grounds, and that the board is satisfied that the interest of the school demands the pupil's expulsion.

The record in this case indicates that the student and his parents were not given the full notice required by statute. The law requires that the statute ". . . shall be printed in full on the face or back of the notice." See s. 120.13(1)(c), Wis. Stats. Since the version printed on the notice by the school district was outdated and incomplete, the school district did not print the statute in full as required by law and the notice provided by the school district was therefore insufficient.

I have consistently held that failure to fully comply with the notice provisions in the statute is fatal error. The notice provisions contained in the statute are mandatory and failure to comply with them renders the expulsion decision void. ^{Christopher} ~~I~~ K. v. West Allis School District, Decision and Order No. 166 (4/¹⁸~~80~~/90); 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 requiring a full copy of the statute to be attached to the notice of the expulsion hearing, I must reverse the board's decision.

In reviewing this record I also found that there was no evidence that Chad had been sent a copy of the February 28, 1990, letter sent to his parents by Mr. Jackson formally announcing the expulsion and the right to appeal that decision. The statute specifically states that the pupil, and, if the pupil is a minor, the pupil's parents, shall receive

notice of that decision. The lack of that letter is also a procedural error on the part of the district.

Finally, in reviewing this case I could not find any reference to the statutory basis relied upon by the board in deciding to expel Chad or to the board's having found that the interest of the school demands Chad's expulsion. I have interpreted the statute to mean that a district may only expel a student after it has found that the student is guilty of one of the four alternate grounds listed in the statute and that the board is satisfied that the interest of the school demands the pupil's expulsion. Since the record contains no indication that either of these findings was made, I have no choice but to find that the board failed to make them and therefore to find procedural error.

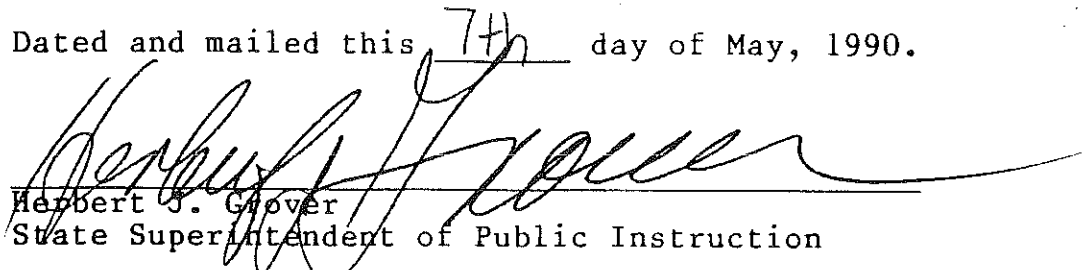
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of s. 120.13(1)(c), Wis. Stats., and, further, that based upon the statutory standard of review required of the state superintendent I conclude that the school board's noncompliance constitutes reversible error.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Chad K [REDACTED] by the Wittenberg-Birnamwood School District is reversed.

Dated and mailed this 7th day of May, 1990.


Herbert J. Grover
State Superintendent of Public Instruction