

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion

PAUL K [REDACTED]

DECISION
AND
ORDER
90-EX-06

by the Flambeau School District
Board of Education

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 May 4, 1990 decision of the School District of Flambeau Board of Education to expel Paul from school for the remainder of the 1989-90 school year. The appeal was filed by Paul's parents, Mr. and Mrs. Raymond K [REDACTED], and was received by the Department of Public Instruction on May 18, 1990.

As provided in s. 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 requirements which the school board must follow under 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 April 27, 1990, Paul's parents, Mr. and Mrs. K [REDACTED], were notified by letter from the Director of Pupil Services, Dr. David Keller, that Paul must appear for an expulsion hearing on May 4, 1990. The letter described in general terms the conduct which was the basis for the expulsion hearing as "continued refusal to obey school rules, increasingly disruptive behavior, and an accumulation of greater than 10-violations." Attached to the letter were photocopies of numerous high school disciplinary referral forms on Paul outlining behavioral problems during the time period of December 13, 1989 through April 27, 1990.

The letter also stated the date of the hearing (May 4), where the hearing would take place, that Paul was to be suspended from school until the time of his hearing, and enclosed a copy of the Wisconsin law and school policy on expulsions. There is no evidence in the record that a notice of hearing was sent to Paul, individually. The fact that no written notice of hearing was sent to the pupil was confirmed in a telephone conference with the parties conducted by legal counsel to the state superintendent on July 12, 1990. In that conference Dr. Keller first indicated that while he did not recall sending a copy to Paul of the notice of hearing sent to his parents, he did verbally advise Paul of the expulsion hearing.

Dr. Keller indicated later in the conference that Paul received a Flambeau High School disciplinary referral form on April 26, 1990, which contained information about the expulsion hearing. The referral does not describe the specific allegations being made, but mentions that Paul was consistently in violation of school rules and that any further violations would lead to an expulsion hearing. It states that Paul earned a violation for insubordination on April 26, 1990, and that he was suspended until May 4 at 2:00 p.m. It does not mention a violation for which Paul was cited on April 27, 1990, alleging that Paul and another student removed school lunch tickets on April 17 and 19, 1990. In the comment section of the form, it states that Paul shall appear before an expulsion hearing, and gives the date, time and place of the hearing. It goes on to state that further explanation of this process shall be mailed within 48 hours. It does not include a copy of s. 120.13(1)(c), Wis. Stats., which sets forth the procedures and rights relating to expulsions of pupils from school.

A hearing was held before the Flambeau school board on May 4, 1990. Written minutes of the hearing were kept. The minutes reflect that the parents confirmed receiving notice of the expulsion hearing and a copy of the state statute regarding expulsion. Dr. Keller read Paul's violations into the record. The allegation that Paul stole lunch tickets, documented in the April 27, 1990, disciplinary referral

form, was also read into the record. The administration recommended expulsion for Paul, and that some alternatives beyond school attendance be addressed. Ted East, of the Rusk County Department of Social Services, offered another alternative to expulsion in having Rusk County Social Services assist the school district in developing a program for Paul.

At the end of the hearing the school board convened into executive session. The board then took action to expel Paul from school for the remainder of the 1989-90 school year, and encouraged his attendance in summer school.

Following the hearing, the school district sent a copy of the Order of Expulsion to Mr. and Mrs. K██████, but did not send a copy of the order to Paul. In that document the board concluded that Paul had repeatedly neglected or refused to obey school rules. The board also found that the interests of the school demand that Paul 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. 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 District v. Thompson, 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 This paragraph shall be printed in full on the face or back of the notice." (Emphasis added.)

The cited part of the statute requires (1) that the notice be sent to the pupil and the pupil's parent or guardian if the pupil is a minor and (2) that the expulsion statute be printed in full on the face or back of the notice. The

record indicates that the student was not given the full notice required by statute.

First, the written notice of hearing sent to Paul's parents was not sent to Paul 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 parent 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).

I must reject the district's retrospective construction of the April 26, 1990 disciplinary referral form as meeting the notice requirement under the statute. The form on its face acknowledges that it is not a complete notice in its indication that "further explanation of this process shall be mailed within 48 hours." No copy of the expulsion statute accompanied the referral form. The district did not send Paul further explanation of the process in the form of a notice of hearing and copy of the expulsion law, as it did for his parents. An additional violation in which Paul was alleged to have engaged (stealing lunch tickets), as cited in the April 27, 1990 referral form and read into the record at the expulsion hearing, was not mentioned on this April 26, 1990 referral form. The form, thus, also lacked the required specificity as to the allegations upon which the expulsion hearing would be based.

I have consistently held that failure to fully comply with the notice provisions in the statute is fatal error. The notice provisions under s. 120.13(1)(c), Wis. Stats., are mandatory and failure to comply with them renders the expulsion decision void. Chad K. v. Wittenberg-Birnamwood School District, Decision and Order No. 168 (5/7/90), Christopher K. v. West Allis School District, Decision and Order No. 166 (4/18/90); Travis V. v. Waterloo School District, Decision and Order No. 144 (7/2/86).

In reviewing this record I also found there was no evidence that the school district sent Paul a copy of the expulsion order. In the July 12, 1990 conference call with legal counsel, the school administrators acknowledged that no copy of the expulsion order had been sent to Paul, only to his parents. The statute specifically states that the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parents. Failure by the district to comply with this procedural requirement also renders the expulsion defective.

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

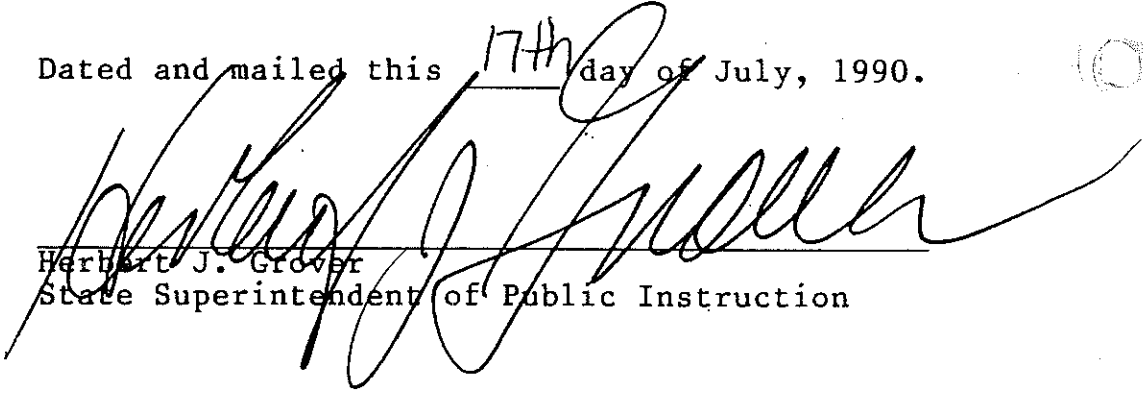
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set forth 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, 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 Paul K [REDACTED] by the School District of Flambeau is reversed.

Dated and mailed this 17th day of July, 1990.


Herbert J. Grover
State Superintendent of Public Instruction