

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion

JOSHUA S [REDACTED]

DECISION
AND
ORDER
90-EX-08by the D. C. Everest School
District Board of Education

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the order of the D.C. Everest Area School District Board of Education reaffirming its March 22, 1990, decision to expel Joshua S [REDACTED] from the Schools of the D.C. Everest School District for the balance of the 1989-90 school year with the right to be readmitted for the 1990-91 school year upon completion of two conditions. This appeal was filed by Philip J. Freeburg, Joshua's attorney, and was received by the Department of Public Instruction on August 27, 1990.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, this decision is confined to a review of the record of the school board hearing and meetings. The state superintendent's review authority is specified in sec. 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

I adopt the Findings of Fact set forth in my June 22, 1990, decision reversing the March 22, 1990, expulsion of Joshua S [REDACTED] by the D.C. Everest School District (Decision and Order 90-EX-05).

The D.C. Everest Area School District Board of Education did not notify Joshua or his parents that it was going to address Joshua's expulsion at its July 9, 1990, meeting.

On July 9, 1990, the Board of Education met in executive session to deliberate on Joshua's expulsion and my decision reversing that expulsion.

At that July 9th meeting, school board attorney Ronald Rutlin reviewed with the board my decision reversing Joshua's expulsion. He recommended the board correct its procedural errors cited in that decision by affirming its findings of fact and issue the order signed by the clerk. He stated that only members present at the March 22nd hearing could vote on the motion.

At that July 9th meeting, the members of the Board present at Joshua's March 22nd hearing, passed a motion, which read in part:

to reaffirm the expulsion of Joshua S [REDACTED] based upon the evidence submitted at the March 22, 1989 [sic] hearing which established repeated refusal or

neglect to obey the rules of the school district and ordered Josh S [REDACTED] expelled from school for the remainder of the 1989-90 school year under the following conditions and that the interest of the school district demands his expulsion.

On July 10, 1990, the D.C. Everest Area School District sent letters to Mr. and Mrs. S [REDACTED] and to Joshua informing them of the decision to expel Joshua. The District attached to the letters Findings of Fact, Conclusions of Law and an Order directing Joshua's expulsion. The Findings of Fact, Conclusions of Law and Order state that Joshua was found to have repeatedly refused or neglected to obey school rules and that the interests of the school demand his expulsion.

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 sec. 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 sec. 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 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.

When I reviewed Joshua's March 22nd expulsion I found that the notice of the expulsion hearing and the hearing itself complied with the procedural requirements. The school board's fatal errors were that it had made no written finding that Joshua was guilty of one of the four alternate grounds listed in the statute and that the board had not found that it was satisfied that the interest of the school demanded Joshua's expulsion. Section 120.13(1)(c), Wis. Stats., requires school boards to make both those findings to effect a valid expulsion.

The main question in this appeal is whether the D.C. Everest School Board could expel Joshua on July 9, 1990, by making the missing findings based on the record of the March 22nd hearing. Joshua argues that there must be a hearing before an expulsion and that since he did not have a hearing immediately preceding the July 9th decision, he was denied due process and this expulsion must be reversed. I agree with Joshua that you must have a hearing before an ex-

pulsion, however, I find that he did have a hearing on March 22nd and that he was, therefore, not denied due process. There is no time limit on when a decision must be made after a hearing. The board also acted in good faith in that it reaffirmed its decision to expel Joshua within two and one-half weeks of receiving my decision reversing the previous expulsion.

In Joshua's original appeal I reviewed the expulsion proceeding and found that the hearing and the notice of the hearing complied with the procedural requirements. The error concerned the decision made after the hearing. In amending its earlier action the board was correcting its previous error. The board's decision was made by members who were present at the March 22nd hearing and was made "based upon the evidence submitted at the March 22, . . ." hearing. Contrary to Joshua's assertions, I do find evidence in the record that the board considered the March 22nd proceeding and that based upon the evidence submitted at that proceeding made the requisite findings. I do not find fault with the board's procedure.

It is also asserted that Joshua had a right to be informed of the board's intent to reconsider his expulsion on the night of July 9th. Joshua has a right to notice of the hearing and the board's consideration of expulsion, which he did receive prior to the March 22nd hearing. The board was not accepting additional testimony or argument. The board was simply reviewing a record, clarifying and reaffirming a

decision. I know of nothing granting Joshua the right to further notice of the decision being made. Joshua's attorney does not suggest that had further notice to Joshua been provided, that any input not already made would have been made. There has been no suggestion of prejudice to Joshua because of the failure to provide additional notice. I think as a matter of consideration the board should have notified Joshua of its intent, and I would recommend to the board that it do so in the future, but it is not error on its part that it did not notify Joshua of its executive meeting.

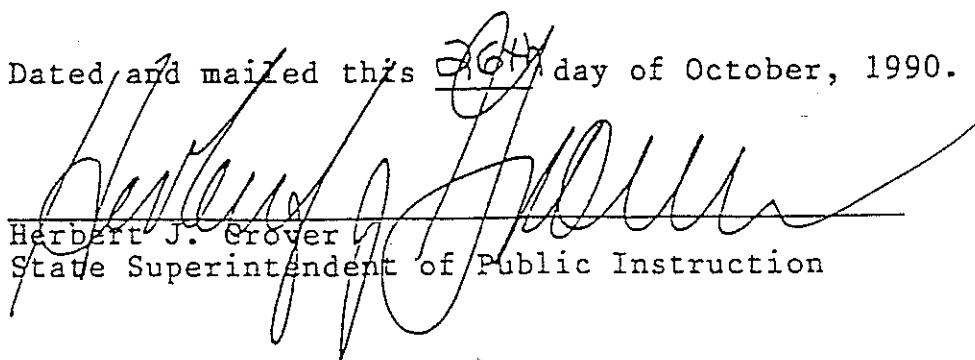
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Joshua S. [redacted] by the D.C. Everest School District Board of Education is affirmed.

Dated and mailed this 26th day of October, 1990.


Herbert J. Grover
State Superintendent of Public Instruction