

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion

RUSSELL B. [REDACTED]

by the Muskego-Norway School
District Board of Education

DECISION
AND
ORDER
91-EX-01

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 Muskego-Norway School District Board of Education to expel Russell W. B. [REDACTED] from the schools of the Muskego-Norway School District effective December 11, 1990 through July 30, 1991. This appeal was filed by Helen B. [REDACTED], Russell's mother, and was received by the Department of Public Instruction on February 4, 1991.

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. 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

The record shows that a single notice, dated November 28, 1990 and addressed to Mrs. Helen B [REDACTED] and Russell W. B [REDACTED], was sent by registered mail. Helen S. B [REDACTED] signed for that notice on November 29, 1990.

The notice stated that a hearing would be conducted by the School Board for the Muskego-Norway School District (hereafter board) on Monday, December 5, 1990. The number "5," however, was crossed out and the number "3" written in. (It is noted that December 3, 1990 fell on Monday.)

The notice gave the hour and place for the hearing and indicated that the hearing may result in Russell's expulsion. It also specified the alleged conduct causing the proposed expulsion.

Attached to the notice was a copy of sec. 120.13(1)(c), Wis. Stats. The version attached, however, was not current in that it failed to reflect the amendments to that section enacted by 1987 Act 88, section 3, effective November 28, 1987.

The record also shows that a hearing was actually held by the board on December 10, 1990. The record does not indicate the manner in which Russell and/or Mrs. B [REDACTED] were advised of this new hearing date. Apparently, no written notice was sent with regard to the new date.

Russell and Mrs. B [REDACTED] did attend the hearing on December 10, 1990. The minutes from the hearing indicate that at the request of Russell and Mrs. B [REDACTED], Marie H [REDACTED], Aaron P [REDACTED], Cheryl P [REDACTED], Keven B [REDACTED], Julie B [REDACTED] and Steve B [REDACTED] also attended the hearing.

At the hearing Robert Rammer, Muskego High School principal, read the charges against Russell and listed the dates and description of incidents causing the proposed expulsion. Mr. Rammer also read the administrative recommendation that Russell be expelled based on his conduct.

The minutes from the hearing indicate that Mrs. B [REDACTED] made a brief statement in which she alleged, among other things, that Russell had not been tested for "learning or behavioral disabilities." Russell also made a brief statement. James Heiden, school board member, then indicated that the board would go into a closed session to vote. The record does not reflect any questions to or statements made by the several persons listed above who were allegedly present at the request of Mrs. B [REDACTED] and Russell.

The record contains a single letter dated December 11, 1990 and addressed to Russell B [REDACTED] and Mrs. Helen B [REDACTED]. That letter advised as to the board's decision to expel Russell. This expulsion notice at least arguably contained an implicit finding by the board that Russell had repeatedly refused or neglected to obey school rules and had engaged in conduct that endangered the health and safety of others. However, the letter contained no finding that the board was

satisfied that the interest of the school demands Russell's expulsion. Minutes from the hearing indicate that Russell's conduct was considered, while no reference to the "interest of the school" is reflected therein.

On February 4, 1991, the State Superintendent received a letter dated January 31, 1991 from Mrs. Helen S. B [REDACTED] appealing the expulsion of Russell. In her appeal, Mrs. B [REDACTED] alleged, among other things, that Russell's friends and siblings were not allowed to speak on his behalf at the hearing and that Mr. Rammer was present during the board's deliberation, while Russell and Mrs. B [REDACTED] were excluded.

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 sets forth 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 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." (emphasis added). It is, therefore, the role of the state superintendent in reviewing an expulsion decision to ensure that the statutory procedures were followed.

It appears from this record that several procedural errors were made in this case. As is more fully discussed below, these errors require the reversal of the board's expulsion decision.

First, written notice of the hearing was not sent to Russell individually. Section 120.13(1)(c), Wis. Stats., 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 sec. 120.13(1)(c), Wis. Stats., in 1973, it specifically extended to individual pupils the right to 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 these 1973 amendments, these individual pupil rights did not exist in the law. See sec. 120.13(1)(c), Wis. Stats. (1971). One must assume that this specific legislative amendment means that the individual pupil, not just the parent has a right to receive notice.

I find that addressing a single notice to both the pupil and his parent does not meet the statutory requirement of individual notice to the pupil. In addition, the single notice addressed to Russell and his mother contained a different hearing date than the date on which the hearing actually occurred. Nothing in the record indicates that Russell and his mother received separate and statutorily sufficient notice of the actual hearing date.

I have previously reversed expulsion decisions based on failure to meet the statutory notice requirements. 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); Paul K. v. Flambeau School District Board of Education, Decision and Order No. 171 (7/17/90).

Second, sec. 120.13(1)(c), Wis. Stats., must be printed in full on the face or back of the notice of hearing. In this case, the board failed to include with its notice a complete current version of sec. 120.13(1)(c), Wis. Stats. The version sent with its notice of hearing failed to include the amendments adopted pursuant to 1987 Act 88, section 3, effective November 28, 1987. I have previously reversed an expulsion decision for failure to include the full current statute. Chad K. v. Wittenberg-Birnamwood School District, Decision and Order No. 168 (5/7/90).

Third, sec. 120.13(1)(c), Wis. Stats., provides in pertinent part as follows:

(c) 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 a pupil knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives, 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, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority, and is satisfied that the interest of the school demands the pupil's expulsion. (Emphasis added.)

With regard to a finding as to the student's conduct warranting expulsion under the statute, the board failed to make an explicit finding in its written expulsion order. While better practice requires an explicit finding, such a finding could at least arguably be implied from the following language contained in the December 11, 1990 letter addressed to Russell and Mrs. B [REDACTED]:

It was charged by representatives of the school's administration that Russell had repeatedly refused or neglected to obey school rules, and had engaged in conduct endangering the health and safety of others. Following comments by school administrators and yourselves, the Board deliberated in private. The School Board voted to expel Russell B [REDACTED] from Muskego High School effective Tuesday, December 11, 1990, through Friday, July 30, 1991.

Reference to the vote to expel immediately after reference to the alleged grounds for expulsion implies that the board found those grounds to be present.

However, even if a finding as to conduct could fairly be implied, the December 11, 1990 letter is silent as to the second necessary finding. It makes no reference as to whether the board is "satisfied that the interest of the school demands the pupil's expulsion." Unlike the issue as to Russell's conduct, the minutes of the hearing include no indication that the board considered the issue as to the interests of the school at the hearing or made a finding as to that issue. The only reference to this issue is contained in the November 28, 1990 notice of hearing which states, among other things, that the hearing would be held "to determine whether or not the interest of the school demands his expulsion." On this record, it is impossible to conclude that the board actually made this crucial finding. I have previously held this omission to be reversible error. Michael S. v. Milwaukee Public School Board of Education, Decision and Order No. 128 (5/10/85).

Fourth, the record reflects a single letter, dated December 11, 1990 and addressed to both Russell B. [REDACTED] and Mrs. B. [REDACTED], which articulated the board's decision to expel Russell. Section 120.13(1)(c), Wis. Stats., provides in pertinent part:

Upon the ordering by the school board of the expulsion of a pupil, 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 parent or guardian." (Emphasis added.)

I have previously held that failure to mail an individual notice to the pupil constitutes reversible error. Michael S. v. Milwaukee Public School Board, Decision and Order No. 128 (5/10/85). As with the failure to mail a separate notice of hearing discussed above, I find that addressing a single expulsion order to both the pupil and his parent does not adequately comply with this statutory requisite.

In her letter of appeal, Mrs. B. [REDACTED] alleges, among other things, that Russell's friends and siblings were not allowed to speak at the hearing and that Mr. Rammer remained during the board deliberations while she and Russell were excluded. Given the four clear errors in statutory procedure outlined above, the expulsion decision must be reversed on those grounds above. It is, therefore, unnecessary for me in reaching my decision to address the allegations raised in Mrs. B. [REDACTED] letter of appeal. However, I would caution the board that the pupil facing expulsion should be afforded a meaningful opportunity to be heard, including an opportunity to offer relevant evidence in his behalf. I would also caution the board that basic due process requires that an expulsion decision be made by an impartial tribunal. The presence of school administrative staff during board deliberations after the hearing has concluded and the pupil and

parent have been excused raises at least the appearance of partiality. Compare Michaelene J. v. Washington Island School District, Decision and Order No. 161 (5/17/89).

Finally, during the hearing Mrs. B [REDACTED] alleged that Russell had not been tested for "learning or behavioral disabilities." She did not, however, allege that as a basis for her appeal and I need not reach the issue given the other procedural errors herein. However, I have previously ruled that an expulsion appeal is not the appropriate context in which to challenge the district's application of special education law. Such a challenge is beyond the scope of an appeal to me under sec. 120.13(1)(c), Wis. Stats. (See 90-EX-07)

Mrs. B [REDACTED] should know that she may request a multidisciplinary team evaluation for Russell. If she disagrees with the finding of the M-team she may request a due process hearing to challenge that decision using the laws governing special education. Ms. B [REDACTED] may also request an independent evaluation of her son if she disagrees with the school district's evaluation. The independent evaluation would be at school district expense if the conditions in sec. PI 11.08, Wis. Adm. Code, are met. She should feel free to call upon the school district staff or my staff for assistance in understanding Russell's rights under special education law.

The foregoing discussion and my decision herein should in no way be construed as condoning or minimizing Russell's alleged conduct which led the district to pursue his expulsion.

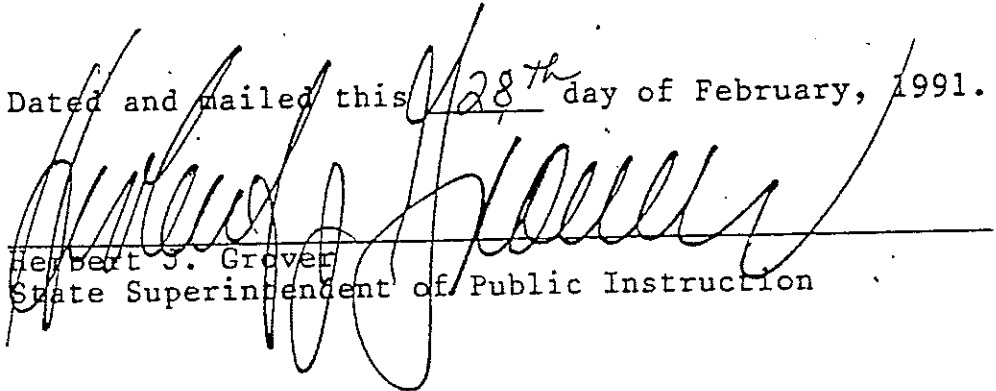
CONCLUSIONS OF LAW

Based upon my review of the record in this case, and the findings set out above, I conclude that the school board failed to comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats. 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 Russell B. [REDACTED] by the Muskego-Norway School District Board of Education is reversed.

Dated and mailed this 28th day of February, 1991.


Herbert S. Grover
State Superintendent of Public Instruction