

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

 In the Matter of the Expulsion

JENNIFER L. [REDACTED]

 DECISION
 AND
 ORDER
 91-EX-04

 by the Siren 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 Siren School District Board of Education to expel Jenny L. [REDACTED] from the schools of the Siren School District for the balance of the 1990-91 school year with the right to be readmitted for the 1991-92 school year. This appeal was filed by Merribeth L. [REDACTED], Jenny's mother, and was received the by the Department of Public Instruction on March 15, 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

On February 19, 1991, Gerald E. Mikunda, Superintendent of the Siren School District, sent separate notices of an expulsion hearing to Merribeth L [REDACTED] and Jenny L [REDACTED] by registered mail. They were signed for on February 23, 1991, by Merribeth L [REDACTED].

The notices stated that a hearing would be conducted by the Board of Education of the School District of Siren on Monday, February 25, 1991. The notices gave the hour and place for the hearing and indicated the hearing may result in Jenny's expulsion. Attached to the notices was a current copy of sec. 120.13(1)(c), Wis. Stats.

The notices specified the charge as follows:

Jenny L [REDACTED] is hereby charged with knowingly conveying false information concerning an attempt or alleged attempt being made or to be made to destroy school property by means of explosives while not at school on Friday, February 8, 1991 at approximately 9:20 a.m.

The Siren School District Board of Education held the hearing at the time and place indicated on the notices. Jenny and her mother were at the hearing. Written minutes of the hearing were kept.

At the hearing James Bucher, high school principal, reviewed the activities of the day of the bomb threat and the written statements from witnesses and Jenny. Jenny and her

mother had an opportunity to respond to the charge and the evidence presented.

The administration recommended that Jenny be expelled for the remainder of the school year. The board reviewed and deliberated the evidence and found that Jenny knowingly conveyed or caused to be conveyed the bomb threat. The board decided to expel Jenny for the remainder of the school year and the administration was directed to make every reasonable effort to assist Jenny in her out of school educational needs. The board did not make a finding that it is satisfied that the interest of the school demands Jenny's expulsion.

On February 27, 1991, Beverly Lund, clerk of the Siren Board of Education, mailed separate notices of the expulsion to Jenny and to her mother. The notices stated that at the hearing on the 25th, the Siren Board of Education voted to expel Jenny for the remainder of the school year effective February 26, 1991, and that she would be eligible for regular readmission to school with the beginning of the 1991-92 school year. The notices stated that the board found that Jenny had knowingly conveyed false information concerning an attempt or alleged attempt being made or to be made to destroy school property by means of explosives while not at school on Friday, February 8, 1991 at approximately 9:20 a.m. The notices did not state that the board is satisfied that the interest of the school demands Jenny's 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 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.

In reviewing this case I did not find any evidence that the Siren Board of Education made a finding that it is satisfied that the interest of the school demands Jenny's expulsion. The only reference to this required finding is in the notice of hearing which gives as one of the purposes of the hearing to find whether or not the interest of the

school demands Jenny's expulsion. There is no indication in the record whether that finding was made by the board.

As I said in an earlier decision:

. . . 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.

Although the statute does not explicitly require these findings to be in writing, failure to put them in some sort of written form (even in the hearing transcript) deprives the state superintendent of any means of reviewing the board's decision to ensure that it meets the statutory standards. Since the state superintendent's review is not de novo, and is based on the record, it is necessary that the board's findings be reflected in the record in some manner. The state superintendent has no authority to speculate as to the board's findings when nothing is reflected in the record. (Emphasis added.) Joshua S. v. D.C. Everest School District, Decision and Order No. 173 (6/22/90).

Since the record contains no evidence that the necessary finding was made, I have no choice but to find that the board did not make it. I have previously held that failure to make a required finding constitutes reversible error. see Joshua S. v. D.C. Everest School District, supra. I find that the board did not fully comply with the statutory requirements for an expulsion.

My decision today does not condone the act which led the board to pursue Jenny's expulsion. I am simply carrying out the duty of the state superintendent to review expulsion

decisions for compliance with the procedural standards set out in sec. 120.13(1)(c), Wis. Stats.

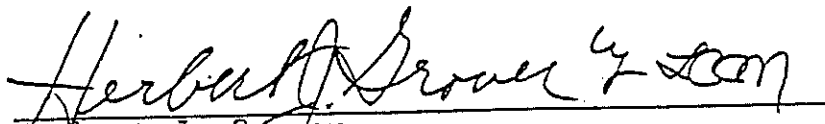
CONCLUSIONS OF LAW

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 Jennifer [REDACTED] by the Siren School District Board of Education is reversed.

Dated and mailed this 14 day of May, 1991.


Herbert J. Grover
State Superintendent of Public Instruction