THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion

JOHN K[redacted]

by the Wisconsin Rapids School District Board of Education

DECISION AND ORDER 91-EX-03

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction under sec. 120.13(1)(c), Wis. Stats., from the February 25, 1991 decision of the Wisconsin Rapids School District Board of Education to expel John K[redacted] for the remainder of the school year. John's parents, Tim and Joyce K[redacted], filed this appeal, which was received by the Department of Public Instruction on March 18, 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 the Wisconsin Rapids School District Board of Education (hereafter "board") personally served a notice of expulsion hearing on the pupil, John K[redacted], on February 19, 1991. The notice was enclosed in an unaddressed envelope, but was addressed on the face of the notice to John K[redacted], and was delivered to John at his home by the assistant principal. A duplicate copy of the notice of hearing to John was left with John in an unmarked, unaddressed envelope. John's parents, Tim and Joyce K[redacted], received no notice of hearing addressed or marked separately for them.

The notice informed John that a hearing would be held by the board on February 25, 1991 to consider his expulsion from school. The notice alleged that on Friday, February 15, 1991, at 7:24 a.m., John made a telephone call to Lincoln High School stating, "There is a bomb." The notice alleged further that John "admitted to making the aforementioned telephone bomb threat." It also alleged that John repeatedly violated school rules, without specifying any conduct to support that allegation.

The notice to John stated that the meeting would be held in closed session unless John requested an open hearing. It did not notify him that the hearing would be open to the public unless he or his parents requested that it be closed. The notice advised him that he may bring witnesses

to testify, and of his right to be represented by legal counsel, but did not mention John's parents' right to be present or represented by counsel at the hearing. Copied on the back of the notice was sec. 120.13(1)(c), Wis. Stats.

The record also shows that a hearing was held by the board on February 25, 1991. The board moved into closed session on a unanimous voice vote; however, there is no evidence to show a closed session was requested by pupil or parents.

Acting Superintendent Dean Ryerson began the hearing, and confirmed that notice of the hearing was given to John K[redacted] on February 19, 1991. While the attorney for the school board commented on his belief that John and his mother were both given a copy of the notice on February 19, there was no evidence at the hearing or otherwise in the record that the school board sent a separate written copy to the parents, as required by the statutes, or that it personally served the parents with a separate copy of the notice. What I find in the record is evidence that the board left two blank envelopes with John on February 19, 1991, each with a copy of the notice of hearing marked on its face solely to John.

The record shows that John K[redacted] was present at the hearing, and was represented by Attorney David Grace. Mr. and Mrs. K[redacted] were also present at the hearing, but were not represented by counsel.

While the board did not initially address whether or not Mr. and Mrs. K[redacted] had any right to present information on John's behalf, Mr. K[redacted] was acknowledged as having a question or comment at the end of the hearing, and was allowed to speak to the board. Mr. K[redacted]'s comments included dissatisfaction with the allegation listed in the notice of hearing sent to John concerning repeated violations of school rules. According to Mr. K[redacted], John has not been in any trouble (other than the alleged false bomb report) during his 10 years at school there except for absenteeism, and so the reference to repeated violation of school rules "makes him sound like he's done a lot of bad things and I take exception to that."

At the hearing evidence was presented concerning John making a phone call to Lincoln High School at 7:24 a.m. Friday, February 15, 1991. The call consisted of a male voice making the statement "there is a bomb," followed by an immediate hang-up. School officials testified that the call was traced to the K[redacted] residence, that John was confronted upon his arrival at school by the assistant principal and a representative of the Wood County Sheriff's Department (within one-half hour of the call), and that John admitted making the call and that there was no bomb. His admission of the false call was made a few minutes before classes started that morning.

The evidence also showed that as far as any other disciplinary record, John had contacts with school officials

during the past three years concerning attendance problems. It was noted that these contacts "had typically involved truancy, skipping selectively individual class periods, a couple of failure to serve detention type of concerns."

High school principal Tim Laatsch concluded the administrative presentation of the case to the board by recommending John be expelled from school for the balance of the school term. He based his recommendation on the fact "that John was suspended in accordance with both state law and local laws and the language specifically written in that law covering these kinds of cases conveying a threat concerning an attempt to destroy school property, i.e., a bomb threat . . . ."

The record shows that the board's Order of Expulsion was separately mailed to both the pupil and his parents. In the order expelling John, the board made the following findings:

> The Board of Education finds John K[redacted] guilty of refusal or neglect to obey school rules. Specifically, the Board finds that John K[redacted] refused or neglected to obey school rules on February 15, 1991, and, engaged in conduct while at school or while under the supervision of school authorities which could endanger the property, health and safety of others. The Board of Education finds that while under the supervision of school authorities, John K[redacted] engaged in conduct which endangered the property, health, and safety of others. The Board of Education is satisfied that the interest of the school demands the student's expulsion from school.

While the expulsion contains a provision ordering a copy of the order be mailed to the pupil, the record shows that separate expulsion orders were mailed to both the pupil and to his parents.

On March 18, 1991, the State Superintendent received a letter dated March 14, 1991, from Tim and Joyce K[redacted] appealing their son's expulsion from school. In a subsequent letter dated April 24, 1991, Mr. and Mrs. K[redacted], among other comments, argued that John's case was handled unfairly. They state that three boys who had phoned in a bomb threat to the high school two weeks earlier had merely been suspended for three days, and that the prior bomb scare involved an evacuation and major disruption of the school, unlike in John's situation. Letters were also sent to the State Superintendent from others in the Wisconsin Rapids community, attesting to John's good character and the severeness and inequity of the board's action against him.

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 separately to the parents by mail or by proper personal service. Section 120.13(1)(c), Wis. Stats., requires that when minor pupils are involved, the notice of hearing must be "sent" to the pupil and, if the pupil is a minor, to 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). In effecting proper service of an expulsion hearing notice to the parent under the law, I interpret "sent" to require more than delivering to the pupil an unaddressed en-

velope intended for the parent. The school made no showing that the parents could not be reached by mail; in fact the board provided evidence of having reached the parents by certified mail in sending the expulsion order. Further, there is nothing in the record to show that personal service on one or both of the parents was attempted and unsuccessful.

Even the statute on service of summons in a civil action under sec. 801.11(1)(a) and (b), Wis. Stats., requires that a summons be personally served upon a defendant or, after reasonable diligence the defendant cannot be served, on a competent person over the age of 14 at the person's usual place of abode. This record is completely void of any showing of reasonable diligence in serving the parents personally or sending the notice to them by mail. Absent such a showing, I find that substitute service on a pupil facing expulsion, of a blank envelope containing a copy of the pupil's notice of expulsion hearing, is not acceptable service for purposes of compliance with the procedural mandate of sec. 120.13(1)(c), Wis. Stats.

Compliance with service of hearing notice procedure is required for jurisdiction in an expulsion hearing, even where the parent has actual notice of the hearing. See Horrigan v. State Farm Ins. Co., 106 Wis. 2d 675 (1982). I have previously held that the notice requirements of sec. 120.13(1)(c), Wis. Stats., are mandatory in nature and that failure to comply with the statute's requirements renders

the expulsion decision void. See 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); Michelle R. v. Suring Public Schools Board of Education, Decision and Order No. 126 (3/7/85).

The exclusion of the parent from proper and careful service of notice is further evident in the response by Acting Superintendent Ryerson to a written request from this department dated April 24, 1991, to furnish from the record copies of any materials relating to how notice of hearing was sent to the pupil and parent. In his reply, Mr. Ryerson enclosed a copy of the official notice of hearing, and explained that "delivered by Mr. Peterson . . ." meant the assistant principal personally delivered the notice to John at his home. There is no mention of any notice going to the parents. The single document attached to the reply is marked "Copy To: John K[redacted]." There is no reference to another copy going to parents.

The contents of the notice of hearing were also deficient. While the alleged bomb threat is specifically listed as one reason for the expulsion hearing, the other allegation, "you have repeatedly violated school rules" is bald on its face and without any particularity as to give the pupil and parents notice of what charge to defend against at hearing.

There was evidence presented at hearing to support the charge in the notice concerning John's involvement in making

a false bomb scare. In reviewing the final expulsion order, however, I find the board did not recite the statutory ground relating to conveying a bomb threat. The board, rather, cites refusal to obey school rules and conduct while at school which endangered others as the basis for its expulsion. I find there was neither sufficient prior notice of these charges in the notice of hearing, nor evidence at the hearing to support such findings.

The board in this case relied on statutory grounds which are not supported in the notice of hearing charges or in the evidence presented. There was no proper foundation of the charge of repeated refusal or neglect to obey the rules in the notice of hearing, nor was it developed sufficiently at hearing. Further, the board's finding that John engaged in conduct while at school or while under the supervision of a school authority is not supported in either the notice of hearing or evidence presented. John's conduct related to a bomb threat which was made while he was at home and outside of school hours. Accordingly, I find that the board has not established the requisite statutory grounds in its findings.

Because of the board's failure to follow the statutory procedures concerning sending written notice to the parent and to establish the requisite statutory grounds which were properly noticed prior to hearing and proven at hearing, I find that I must reverse the board's decision to expel John.

I have reached this decision with a great deal of reluctance. My decision should in no way be construed as condoning the actions of the pupil However, it is clear that in deciding these appeals it is the state superintendent's duty to ensure that all procedural requirements have been followed. Because the board did not comply with the procedural requirements of sec. 120.13(1)(c), Wis. Stats., as discussed above, the order of the board must be reversed.

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 John K[redacted] by the Wisconsin Rapids School District Board of Education is reversed.

Dated and mailed this 17th day of May, 1991.

Herbert J. Grover
State Superintendent of Public Instruction