

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
NICOLE P [REDACTED]

by the Crandon School District
Board of Education

DECISION
AND
ORDER
91-EX-10

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 Crandon School District Board of Education to expel Nicole P [REDACTED] from the schools of the Crandon School District for the balance of the 1991-92 school year. This appeal was filed by Nicole's mother, Linda P [REDACTED], and was received by the Department of Public Instruction on December 20, 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 demand that the student be expelled.

FINDINGS OF FACT

On November 23, 1991, Nicole and her parents received separate Notices of Expulsion Hearing for Nicole sent by Robert Jaeger, superintendent of the Crandon School District. The notices informed them that on December 5, 1991, at 7 p.m., the school board would hold a hearing at the school district office in Crandon to consider Nicole's possible expulsion. A complete copy of sec. 120.13(1)(c), Wis. Stats., was attached to both notices.

The notices gave the reasons for the possible expulsion as follows:

Disruptive behavior in school; insubordination; failure to obey school rules; physical abuse; verbal abuse; unauthorized entry into schools; instigating fights; fighting (see attached sheet for details).

On the attached sheets was an itemized list of disciplinary incidents involving Nicole that underlaid the stated reasons for considering Nicole's expulsion.

The Crandon school board held Nicole's expulsion hearing at the time and place stated in the notices. Written minutes of the hearing were not kept but a tape recording of the proceeding was made and submitted to the State Superintendent with the record. Nicole was present at the hearing with her parents.

At the hearing Erhardt Van Duser, principal of the high school Nicole attended, testified concerning the incidents listed in the notice of expulsion. Nicole and her parents had the opportunity to present evidence and to cross-examine Mr. Van Duser.

On December 11, 1991, separate copies of the school board's order expelling Nicole for the remainder of the 1991-92 school year were mailed to Nicole and to her parents. The order stated that the school board found "That Nicole had repeatedly refused to obey school rules, policies and procedures as set forth in the student handbook and as explained to her by the high school principal." That finding states a statutory basis for expulsion.

The expulsion order did not contain a finding that the Crandon School Board was satisfied that the interest of the school demands the pupil'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 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 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 insure that the required statutory procedures were followed, that the board's 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.

I have not found any evidence in the record of this case that the board made a finding that the interest of the school demanded Nicole's expulsion. There was neither an oral finding made at the hearing nor a written finding in the order of expulsion.

That finding is necessary to effect a valid expulsion. As I have said previously:

. . . I have interpreted the [expulsion] 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 does not contain any evidence that the board found that the interest of the school demanded Nicole's expulsion, I must conclude that the board did not make that finding. Failure to make a required finding is a reversible error. See Joshua S. v. D.C. Everest School District, supra, and Jennifer L. v. Siren School District, Decision and Order No. 177 (5/14/91). Since I find that the board did not fully comply with the statutory requirements for an expulsion, I have no choice but to reverse the board's decision.

I do not condone Nicole's actions and am not overturning the board's decision for substantive reasons. I am simply carrying out my duties established by statute and the courts, to review expulsion decisions for compliance with the procedural requirements set out in sec. 120.13(1)(c), Wis. Stats.

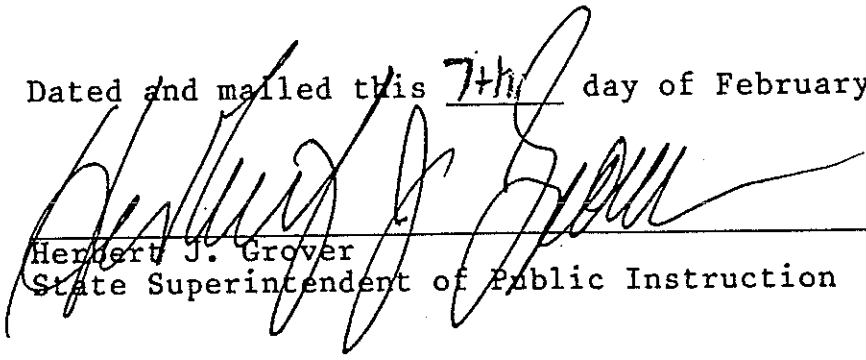
CONCLUSIONS OF LAW

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 Nicole P [REDACTED]
[REDACTED] by the Crandon School District Board of Education is re-
versed.

Dated and mailed this 7th day of February, 1992.



Herbert J. Grover
State Superintendent of Public Instruction