

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
TAIWAN O. W [REDACTED]
by the Kenosha Unified School
District No. 1 Board of Education

DECISION
AND
ORDER
92-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 Kenosha Unified School District No. 1 Board of Education to expel Taiwan O. W [REDACTED] from the schools of the Kenosha School District for the balance of the 1991-92 school year. This appeal was filed by Taiwan's mother, Delores W [REDACTED], and was received by the Department of Public Instruction on February 13, 1992.

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 school board's decision was based upon one of the established statutory grounds, and that the school board was satisfied that the interests of the school district demand that the student be expelled.

FINDINGS OF FACT

On January 8, 1992, Delores W [REDACTED], and on January 9, 1992, Taiwan, were each personally served with a copy of a Notice of Hearing Regarding Possible Expulsion of Student from School for Taiwan sent by Anthony Bisciglia, superintendent of the Kenosha Unified School District No. 1. Individual copies of that same notice were mailed to Taiwan and his mother on January 8, 1992, by Alicia J. Neal.

The notice informed them that on January 16, 1992, at 8:00 p.m., the school board would hold a hearing at the School Board Meeting Room at the Educational Support Center in Kenosha to consider Taiwan's possible expulsion. A complete copy of sec. 120.13(1)(c), Wis. Stats., was attached to both notices. The notice stated that the expulsion decision would be based on consideration of evidence related to specific reported disciplinary incidents which were itemized in an attached list and incorporated into the notice.

The school board held Taiwan's expulsion hearing at the place and at the approximate time stated in the notice of hearing. Taiwan was present at the hearing with his mother. Written minutes of the hearing were kept and a transcript of the hearing was prepared and submitted to the State Superintendent with the record.

At the beginning of the hearing Ms. Kathleen Haller, a school board member, read a statement of Taiwan's rights at the hearing. Taiwan was not represented by legal counsel.

At the hearing the school district called three teachers, the dean of students and the principal of the school to testify about the disciplinary reports incorporated into the notice of hearing. Each witness verified the incidents reported to the best of their knowledge. Taiwan and his mother had the opportunity to present evidence and to cross-examine the witnesses.

On January 17, 1992, individual copies of the Notice of Expulsion were mailed to Taiwan and his mother. The order expelled Taiwan beginning immediately and until the end of the 1991-92 school year. The order stated that the school board found that ". . . Taiwan O. W [REDACTED] while at school repeatedly engaged in sexually explicit conduct thereby threatening the safety and welfare of other students." The order also stated that the school board had determined that the best interests of the school district demanded Taiwan's expulsion. Those findings state a statutory basis for 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 High School Dist., 186 Wis. 342, 353, 202 N.W. 788 (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 Dist. v. Thompson, 107 Wis. 2d 657, 667, 321 N.W.2d 334 (1982), the Court of Appeals in dicta 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." Id. It is therefore incumbent upon the State Superintendent in reviewing an expulsion decision to insure that the required statutory procedures were followed, that the school board's decision is based upon one of the established statutory grounds, and that the school board is satisfied that the interests of the school district demand the pupil's expulsion.

In reviewing the record in this case I found that the Kenosha Unified School District No. 1 complied with all of the requirements for a proper expulsion. I will therefore affirm its decision.

Mrs. W [REDACTED] has raised several issues related to the hearing that she has asked me to review. Although these issues are not ones that can be taken up in an expulsion review I will briefly address them.

Mrs. W [REDACTED] raises questions of credibility of witnesses and surprise at the evidence given by the teachers called. The issue of the credibility of witnesses is an issue to be decided by those who are present at the hearing, not by an appellate body that has no opportunity to see and hear the witnesses. The other

issue of Mrs. W [REDACTED]' surprise at the teachers testimony can be answered by reading the notice of hearing sent by the district. All of the teachers who testified had submitted disciplinary reports that were included in the attached list of incidents. The teachers testified to those events they had reported. Therefore, there was notice of their testimony.

The other questions raised by Mrs. W [REDACTED] relate to her son's multidisciplinary team (M-team) evaluation for special education services. Mrs. W [REDACTED]' recourse in this area is to ask the school district for a hearing regarding questions she has about that evaluation. That area is completely governed by special education law and is not dealt with in the expulsion setting. If a child is determined not to be in need of special education, as is the case here, the school district is then free to proceed with an expulsion. The school district in this case waited to conduct the expulsion proceeding until it had reached the conclusion that Taiwan was not in need of special education.

While I sympathize with Mrs. W [REDACTED] in her desire to get Taiwan back in school, the decision was made by the school board in accordance with the law and is a legal expulsion. I am without authority to inquire any further into the matter.

CONCLUSIONS OF LAW

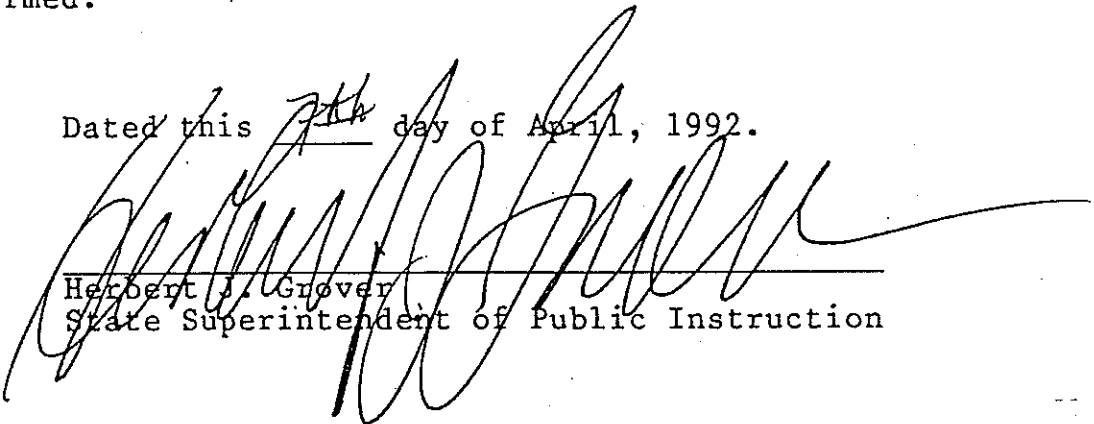
Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats., that the school board's decision was properly based

on established statutory grounds and that the school board found that the interest of the school district demanded that the student be expelled.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Taiwan O. W. [REDACTED] by the Kenosha Unified School District No. 1 Board of Education is affirmed.

Dated this 7th day of April, 1992.



Herbert J. Grover
State Superintendent of Public Instruction