THE STATE OF WISCONSIN

BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

ISAAC S[redacted], II

by the Milwaukee School District Board of Education

DECISION
AND
ORDER
92-EX-02

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 Milwaukee School District Board of Education to expel Isaac S[redacted], II, from the schools of the Milwaukee School District through June 14, 1992. This appeal was filed by Jeffrey P. Van Groll, attorney, on behalf of the pupil, and was received by the Department of Public Instruction on February 26, 1992.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, this Decision and Order is confined to a review of the record of the school board hearing. The State Superintendent's review authority is specified in secs. 120.13(1)(c) and 119.25(2), 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 best interests of the school demanded that the student be expelled.

FINDINGS OF FACT

The chronology of events in this matter is somewhat convoluted. My attempt to succinctly state that chronology follows:

Isaac was accused of battery to a school district staff person on January 7, 1992. By letter dated January 7, 1992, the school district notified Isaac and his parents that an investigative conference for Isaac was to be held on January 10, 1992, at 8:30 a.m. regarding the alleged battery. Separate copies of that letter were addressed to Isaac and to his parents, Mr. and Mrs. Isaac S[redacted], and were delivered by a delivery service to the address on file with the school. Reference to a copy of that January 7, 1992 letter contained in this record shows that address to be one on North Joyce Avenue. The record does not reflect whether a person accepted delivery at that address and, if so, the identity of such person.

No one appeared from the S[redacted] family, or on their behalf at the January 10, 1992, investigative conference. In the afternoon of January 10, 1992, Isaac's father called Josephine Lawrence, the school district's Student Service Specialist, and stated he was unaware of the conference. When Ms. Lawrence asked why he was calling if he was unaware of the conference, he responded that someone had told him, or his wife, about it. (See minutes of the meeting of the independent hearing panel, p. 30.) Isaac's father also acknowledged, however, that the letter of January 7, 1992, had been received at the "home" or North Joyce Avenue address.

The investigative conference was rescheduled for January 14, 1992. Isaac and his father attended that conference. However, his father stated that his attorney, Jeffrey Van Groll, was also expected to attend. The conference was completed in 50 to 60 minutes. At that point, Attorney Van Groll called Ms. Lawrence and advised that he had been "tied up in court." He then spoke to Isaac's father by telephone, but neither requested that the conference be rescheduled.

On January 15, 1992, letters of the same date were delivered by messenger service to Mr. and Mrs. Isaac S[redacted] and Isaac S[redacted], II, at the "home address" on North Joyce Avenue notifying them of an expulsion hearing to be held on January 21, 1992, at 10:45 a.m. The basis for the proposed expulsion was the alleged battery to staff referenced above.

On January 21, 1992, at 9:10 a.m. Ms. Lawrence received a call from Isaac's father who stated that he and his attorney were ill and unable to attend the expulsion hearing. Ms. Lawrence agreed to reschedule the hearing.

Later in the morning of January 21, 1992, Ms. Lawrence telephoned Isaac's father to inform him that the expulsion hearing would be rescheduled for January 27, 1992, at 11:00 a.m. Isaac's father asked that his letter, his lawyer's letter and Isaac's letter containing notice of the rescheduled expulsion hearing be delivered to Mr. S[redacted]'s place of employment. (See affidavit of Ms. Lawrence dated March 19, 1992, and minutes of the meeting of the Independent Hearing Panel, pp. 38-39.)

Reference to the record indicates that the January 21, 1992, letter containing notice of the January 27, 1992, expulsion

hearing was addressed to a location on West Fond du Lac Avenue. Three copies of that letter were delivered by messenger service to that address, including a copy meant for Isaac, a copy for his father and a copy for Attorney Van Groll. The letter was signed for at the "work address" on West Fond du Lac Avenue by one George Henry. The record does not reflect who this individual is or what his relationship to Isaac or Isaac's father may or may not be.

On January 27, 1992, at 11:00 a.m. the Independent Hearing Panel for the school district assembled to conduct Isaac's expulsion hearing. Neither Isaac, his parent(s), Attorney Van Groll, nor other representative of Isaac or his parent(s) appeared. The hearing commenced at 11:15 a.m. At 11:25 a.m. Ms. Lawrence's secretary entered the hearing room with a telephone message from Attorney Van Groll, who had stated that the S[redacted] family was sick and would be unable to attend the hearing. Attorney Van Groll asked that the hearing be rescheduled.

The hearing continued and the panel received evidence from the school district supporting the proposed expulsion. The panel then discussed the matter in executive session from 12:28 p.m. to 12:32 p.m. After such deliberation, the panel returned finding Isaac had committed the alleged battery against staff and that the interests of the school district demanded that he be expelled until June 14, 1992.

The panel entered an Expulsion Order on January 27, 1992, which was mailed to Isaac's father under cover of a letter dated January 28, 1992, and copied to Isaac. The "North Joyce Avenue"

or "home address" was used for Mr. S[redacted]. The record does not reflect the address used for Isaac. The Expulsion Order indicated that the Milwaukee Board of School Directors would review and approve, reverse or modify the order within 30 days.

On February 26, 1992, this department received a letter appealing the Expulsion Order from Attorney Van Groll dated February 25, 1992. In that letter, Attorney Van Groll stated that a "meeting" was originally scheduled for January 10, 1992, but was rescheduled to January 27, 1992, due to a conflict in his schedule. The letter further stated that Mr. S[redacted] and Isaac had the flu on January 27, 1992, and that Attorney Van Groll had requested a postponement on that basis.

In response to Attorney Van Groll's February 25, 1992 letter, this department's Chief Legal Counsel, Robert J. Paul, requested the record in this matter by letter to the parties dated February 28, 1992.

On March 5, 1992, Attorney Paul received a letter from Attorney Van Groll dated March 2, 1992, indicating his desire to file a brief on the matter. Attorney Paul accordingly set a briefing schedule by letter to the parties dated March 11, 1992.

On March 12, 1992, this department received a copy of the record in this matter. That record included a letter dated March 3, 1992, from Ms. Lawrence to Mr. Isaac S[redacted] informing him that the Milwaukee Public School's Board of School Directors had reviewed and affirmed the panel's Expulsion Order on February 26, 1992. That March 12, 1992 letter was sent to the "North Joyce Avenue" address and was copied to Isaac at an address unspecified in the record.

The record contains no other documentation as to the school board's final decision in this matter. It is noted that February 26, 1992, was the 30th day after the panel entered its Expulsion Order. March 3, 1992, the date of Ms. Lawrence's letter, was, therefore, six days after the statutory deadline for the school board's decision. See sec. 119.25(2), Wis. Stats.

On March 19, 1992, this department received a letter from Attorney Van Groll dated March 16, 1992, which stated that he was withdrawing as counsel in this matter. On March 19, 1992, this department received another letter from Mr. Van Groll dated March 18, 1992, repeating that his representation was terminated and asking that "all curtesies (sic)" be given to Mr. S[redacted] in terms of meeting deadlines contained in the briefing schedule.

On March 23, 1992, this department received a letter dated March 19, 1992, from Susan D. Bickert, Assistant City Attorney acting on behalf of the school district. That letter enclosed a factual affidavit executed by Ms. Lawrence on March 19, 1992, and was submitted to address certain assertions contained in previous letters filed by Attorney Van Groll.

To date, the department has received no other information or argument from Isaac, his parent(s), or representative(s) of Isaac or his parent(s). The department on April 16, 1992, received a brief filed by Attorney Bickert on behalf of the school district.

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 Dist., 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from secs. 120.13(1)(c) and 119.25, Wis. Stats., which set 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 in dicta that the scope of the State Superintendent's review is set out in 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 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). Id. It is, therefore, the role of the State Superintendent in reviewing an expulsion decision to ensure that the statutory procedures were followed.

My review of this record reveals a procedural error with regard to sending notice of the rescheduled hearing to Isaac. As is more fully discussed below, this error requires the reversal of the school board's expulsion decision.

Sections 120.13(1)(c) and 119.25(2), Wis. Stats., clearly require that when minor pupils are involved, the notice of hearing must be sent to the pupil and to the pupil's parent or guardian. Use of the word "and" in a statute means that the stated requirements must be met inclusively. Trojan v. Univ. Wis. Regents Bd., 128 Wis. 2d 270, 273, 382 N.W.2d 75 (1985).

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. Further, when the legislature created sec. 119.25, Wis. Stats., via 1987 Wis. Act 88, it utilized the same language regarding separate notice to pupils and parents, thereby reaffirming this specific procedural requisite.

In my view, the legislature has clearly and justifiably stressed the importance of assuring that both the minor pupil and the pupil's parent receive notice of their respective rights in expulsion matters. Therefore, I have previously reversed expulsion decisions based on failure to specifically meet these statutory notice requirements. Michelle R. v. Suring Public School District Board of Education, Decision and Order No. 126 (3/7/85); Travis V. v. Waterloo School District Board of Education, Decision and Order No. 144 (7/2/86); Paul K. v. Flambeau School District Board of Education, Decision and Order No. 171 (7/17/90); Russell B. v. Muskego-Norway School District Board of Education, Decision and Order No. 175 (2/28/91); and John K. v. Wisconsin Rapids School District Board of Education, Decision and Order No. 178 (5/17/91).

In this case, I find that sending notice of the rescheduled hearing to Isaac at his father's work address failed to meet the statutory requirement of individual notice to the pupil. Nothing

in the record indicates that Isaac would also be present, employed, or residing at that address or that he would indeed receive the notice delivered to that address.

Mr. S[redacted] did direct Ms. Lawrence to send Isaac's notice to Mr. S[redacted]'s work address. However, the pupil's statutory rights and the requisite notice provisions cannot be foregone at the unilateral request of the parent. To find otherwise would eviscerate the legislature's clear directive that pupil and parental rights are to be treated as distinct and separate in these matters. Although pupil and parental interests may frequently coincide, that is not always the case and the legislature has clearly directed school districts not to assume these interests to be one in the same.

As noted in the school district's brief, I have also previously ruled that failure to reschedule or delay an expulsion hearing may constitute reversible error. Michaelene J. v. Washington School District Board of Education, Decision and Order No. 161 (5/19/89). However, due to the school district's failure to properly serve Isaac with notice of the rescheduled hearing, it is unnecessary for me to determine whether or not the school district's refusal to set yet another new date in this case was error.

Finally, I note that the record does not adequately show that the school board made its final decision approving the panel's Expulsion Order within 30 days of that order. Again, it is unnecessary in this case for me to determine whether or not this could constitute reversible error. I would, however, caution the school board that the statute appears clear in this

regard and that failure to timely issue a final decision may unduly delay a pupil's pursuit of appeal rights.

Due to the nature of the allegations against the pupil, I have reached this decision with a great deal of reluctance. The foregoing discussion and my decision herein should in no way be construed as condoning or minimizing Isaac's alleged conduct which led the school district to pursue his expulsion. However, in deciding this appeal, I am bound to scrutinize the record to ensure that all procedural requisites have been followed.

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 secs. 120.13(1)(c) and 119.25, 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 Isaac S[redacted], II by the Milwaukee School District Board of Education is reversed.

Dated and mailed this 21st day of April, 1992.

Herbert J. Grover
State Superintendent of Public Instruction