

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
SHANE M. B [REDACTED]  
by the Green Bay Area Public School  
District Board of Education

DECISION  
AND  
ORDER  
92-EX-07

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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 Green Bay Area Public School District Board of Education to expel Shane M. B [REDACTED] from the schools of the Green Bay Area Public School District for an unspecified period of time. This appeal was filed by Shane M. B [REDACTED] and was received by the Department of Public Instruction on March 30, 1992. No grounds for the appeal were specified.

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 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 or more 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

The record contains a Notice of Expulsion Hearing dated March 10, 1992, and addressed to the pupil and to his mother, Mrs. Jolene B [REDACTED], which is attached hereto and incorporated herein. The pupil resides in Green Bay while his mother resides in San Diego, California. That Notice indicated that an expulsion hearing would be held on March 17, 1992, to consider whether to expel the pupil. The record does not reflect the manner in which this Notice was sent to its addressees.

The school board held Shane's expulsion hearing at the place and at the approximate time stated in the Notice of the Expulsion Hearing. Shane appeared at the hearing without counsel. In addition, Dori E. Smith of 1051 Ninth Street, Green Bay, Wisconsin, appeared with Shane and indicated that Shane was currently residing at her home. Written minutes of the hearing were kept and a tape recording of the hearing was prepared and submitted to the State Superintendent with the record.

At the hearing the school district called Don Jensen, Assistant Principal of Southwest High School, to testify as to the basis for the proposed expulsion. A memorandum from Mr. Jensen to the school principal, Don Lundin, dated March 10, 1992, was submitted into the record. That memorandum detailed Mr. Jensen's contact with Shane on the school premises on March 6, 1992, which culminated in the discovery of a "butterfly" knife in Shane's jacket pocket. The record does not reflect that Shane was provided a copy of that memorandum prior to the expulsion hearing, nor were the contents of that memorandum

incorporated or reflected with specificity in the Notice of Expulsion Hearing referenced above.

Mr. Jensen further testified that Shane had the knife on school premises on a previous date. It is unclear whether Shane allegedly made such an admission to Mr. Jensen or whether Mr. Jensen received this information about Shane from another student. At the hearing, Shane did admit to possessing the knife on school premises on March 6, 1992, but denied having it at school at any other time.

Upon conclusion of the hearing, the school board deliberated in executive session. The school board voted to expel Shane and entered an Order to that effect dated March 23, 1992. That Order found that Shane had engaged in ". . . conduct while at school which endangered the property, health, and safety of others, to wit: Possession of a dangerous weapon on school premises." The Order made no finding as to whether the interests of the school district demanded Shane's expulsion.

The record contains a letter from Dr. Joynt dated March 23, 1992, and addressed to Shane and to Shane's mother. That letter references the expulsion order as an attachment. The record does not reflect the manner in which the letter was delivered to its addressees.

#### 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 to that set out in 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 ensure 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 find that the Green Bay Area Public School District failed to comply with all of the procedural requisites in this matter. I am, therefore compelled to reverse the expulsion decision on the grounds that follow.

First, I find that the Notice of Expulsion Hearing failed to "specify the particulars of the alleged refusal, neglect or conduct" upon which the proposed expulsion was based. I find the

March 10, 1992 Notice quite confusing. In particular, it is unclear whether and at what point the quotation of school district policy ends and the allegation(s) against this particular pupil begin. Having reviewed the record, I am assuming that the alleged violation was contained in the phrase ". . . to wit: for possession of a dangerous weapon on school premises which endangered the health and safety of others." See attached Notice, first paragraph, page 2. However, this phrase can easily be read as simply a portion of the school district policy which immediately precedes it.

Furthermore, the quoted phrase lacks specificity as to the particular violation(s) alleged. For example the weapon is not described nor is the date or dates of the possession identified. I have previously held that a pupil has a right to timely and adequate notice of the charges against him so as to afford a meaningful opportunity to be heard, even where the pupil unequivocally admits the conduct charged. See e.g. Michaelene J. v. Washington School District Board of Education, Decision and Order No. 161 (5/19/81). Further, I have consistently held that failure to specify the particulars of the alleged conduct renders the expulsion decision void. See e.g. Christopher K. v. West Allis School District Board of Education, Decision and Order No. 166 (4/18/90).

Next, I find that the Notice failed to include the full and current text of sec. 120.13(1)(c), Wis. Stats., as is required by that statute. I have previously reversed expulsion decisions

based on such failure. See e.g. Russell B. v. Muskego-Norway School Board of Education, Decision and Order No. 175 (2/28/91).

Finally, the record shows that the school board failed to make the requisite finding as to the interest of the school district which demanded the expulsion of the pupil. This failure is, likewise, reversible error. See e.g. Michael S. v. Milwaukee Public Schools Board of Education, Decision and Order No. 128 (5/10/85).

Based on the three errors outlined above, I must reverse this expulsion decision. It is unnecessary, therefore, for me to inquire further as to the manner of service of the Notice and Order to Shane and his mother.

By this decision, I do not wish to minimize the seriousness of the charges against Shane in any way. However, my statutory duty requires me to assure strict compliance with procedural detail in these matters.

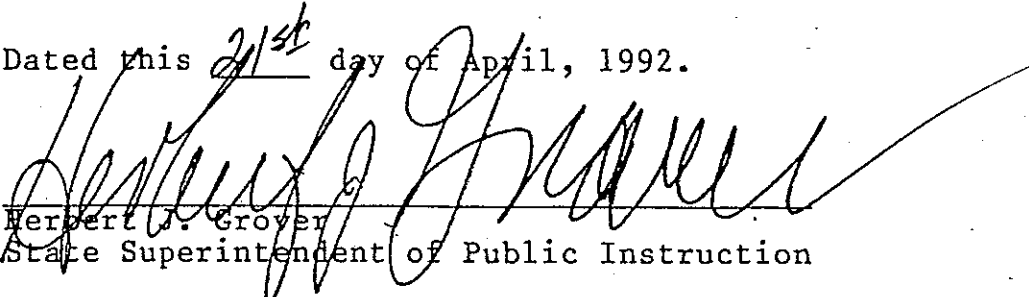
#### CONCLUSIONS OF LAW

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.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Shane M. B█████ by the Green Bay Area Public School District Board of Education is reversed.

Dated this 21<sup>st</sup> day of April, 1992.

  
Herbert J. Grover  
State Superintendent of Public Instruction



P.O. BOX 23387 • GREEN BAY, WISCONSIN 54305

ADMINISTRATIVE OFFICES: 200 S. BROADWAY  
GREEN BAY, WISCONSIN 54303

THOMAS M. JOYNT, Ph.D., SUPERINTENDENT  
PHONE: (414) 448-2101

March 10, 1992

Shane M. B. [REDACTED]  
c/o Dori E. Smith  
1051 Ninth Street  
Green Bay, WI 54304

Mrs. Jolene [REDACTED]  
7532 Charmant Drive #315  
San Diego, CA 92122

RE: NOTICE OF EXPULSION HEARING

Dear Mrs. B. [REDACTED] & Shane B. [REDACTED]:

This letter is to inform you that pursuant to authority given to me under Section 120.13 (1) (c) of the Wisconsin Statutes, you will be suspended from Southwest High School, for a period not to exceed ten (10) consecutive school days effective March 6, 1992. This suspension anticipates an expulsion hearing before the Board of Education. The school board may expel a pupil from school whenever it finds him/her guilty of repeated refusal or neglect to obey the rules by violating the school district's Policy (KBED-Expulsion-(The Board of Education may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, or finds that a pupil knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives, or finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority, and is satisfied that the interest of the school demands the pupil's expulsion. Prior to such expulsion, the School Board shall hold a hearing in full compliance with the provisions of Section 120.13 (1) (c) Wisconsin Statutes. Upon the ordering by the School Board of the expulsion of a pupil, the School District Clerk shall mail a copy of the Order to the pupil and, if the pupil is a minor, the pupil's parent or guardian may appeal the expulsion to the State Superintendent of Public Instruction. An appeal from the decision of the State Superintendent may be taken within thirty (30) days to the Circuit Court of Brown County. The Superintendent of Schools shall cause the development of appropriate administrative rules for the implementation of this policy; and KEB-Threats to or by Students (The Board of Education will not tolerate threats to or by students. Rules shall be written to assure the protection of all students and staff. Such rules shall authorize appropriate disciplinary



Mrs. Jolene B [REDACTED] & Shane B [REDACTED]  
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measures; 1) Any threats to or by students should be reported to the supervisor in charge and if the situation warrants, to the principal and/or the assistant principal, who will act with discretion in giving out the name(s) of informant(s), 2) The principal and assistant principal shall decide whether to report incidents to the appropriate administrative personnel and/or the police, juvenile authorities, 3) all incidents that could result in severe physical harm or loss of life must be reported to the above stated authorities; to wit: for possession of a dangerous weapon on school premises which endangered the health and safety of others.

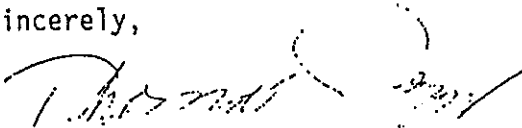
The above statute allows for a conference within five (5) days following the commencement of suspension. I have taken the liberty to schedule such a conference in the school district offices, Room #333, Green Bay Area Public Schools Administration Building, 200 S. Broadway, Green Bay, Wisconsin, on Monday, March 16, 1992 at 5:00 p.m. This conference will be held with Daniel Nerad, Executive Director-Curriculum. (414) 448-2190

Section 120.13 (1) (c) of the Wisconsin Statutes states:

"(c) The school board may expel a pupil from school whenever it finds him guilty of repeated refusal or neglect to obey the rules, or finds that he engaged in conduct while at school or while under the supervision of a school authority which endangers the property, health or safety of others, and is satisfied that the interest of the school demands his expulsion. Prior to such expulsion the school board shall hold a hearing thereon. Not less than 5 days' written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to his parent or guardian, specifying the particulars of the alleged refusal, neglect or conduct, stating the time and place of the hearing and stating that the hearing may result in the pupil's expulsion. The pupil, and if the pupil is a minor, his parent or guardian may be represented at the hearing by counsel. The school board shall keep written minutes of the hearing. Upon ordering by the school board of the expulsion of a pupil, the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, his parent or guardian. The expelled pupil or, if the pupil is a minor, his parent or guardian may appeal the expulsion to the state superintendent. An appeal from the decision of the state superintendent may be taken within 30 days to the circuit court of the county in which the school is located. THIS PARAGRAPH SHALL BE PRINTED IN FULL ON THE FACE OR BACK OF THE NOTICE."

PLEASE BE INFORMED THAT PURSUANT TO THE ABOVE STATUTE, A HEARING TO CONSIDER EXPULSION HAS BEEN SCHEDULED AT A SPECIAL MEETING OF THE BOARD OF EDUCATION FOR Tuesday, March 17, 1992 at 3 p.m. IN THE BOARD OF EDUCATION OFFICES, ROOM 331, GREEN BAY AREA PUBLIC SCHOOLS ADMINISTRATION BUILDING, 200 S. BROADWAY, GREEN BAY, WISCONSIN.

Sincerely,

  
DR. THOMAS M. JOYNT  
Superintendent of Schools  
TMJ:v