

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
JOSEPH F [REDACTED]

by the Almond-Bancroft School
District Board of Education

DECISION
AND
ORDER
92-EX-09

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 Almond-Bancroft School District Board of Education to expel Joseph F [REDACTED] from the schools of the Almond-Bancroft School District from March 12, 1992, through the remainder of the 1991-1992 school year. This appeal was filed by Joseph's mother, Margarita F [REDACTED] and was received by the Department of Public Instruction on April 2, 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 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 6, 1992, which was sent separately to Joseph and to his mother. The Notice referenced an attached summary of disciplinary reports on Joseph dating from October 9, 1989 through March 4, 1992. The Notice advised that based on that list of misconduct, three statutory bases for expulsion would be shown. Specifically, the Notice indicated that based on that conduct, the pupil had engaged in repeated refusal or neglect to obey the rules, the pupil had engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others and that the 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.

The hearing was conducted in closed session on March 12, 1992. Joseph and his mother appeared at the hearing without counsel. Jeffrey T. Jones, attorney for the school district, explained the hearing procedures. Joseph and his mother were asked if they could understand English and each indicated that they could. However, at the request of Joseph's mother, another person, Juanita F. [REDACTED], was permitted to attend the hearing to assist in interpretation of the proceeding if necessary.

At the hearing, Mr. Ed Poock, District Administrator, presented a list of disciplinary reports on Joseph, and his attendance records. In addition to the incidents included on the

list of disciplinary reports provided with the Notice of Hearing, however, Mr. Poock also testified that Joseph had most recently thrown scissors in class.

According to the minutes of the hearing, Ken Stahl, High School Principal, then submitted "pink disciplinary notices with respect to each of the violations." Among those documents was a disciplinary referral alleging that Joseph had thrown scissors on March 9, 1992.

According to the minutes of the hearing, Joseph stated at the hearing that "most of the disciplinary notices were correct" and that he knew that the type of conduct listed was not allowed in school.

After the hearing, the school board deliberated in closed session and returned with its decision to expel Joseph. The record indicates that the Findings and Order of Expulsion were mailed separately to Joseph and his mother on March 18, 1992. In reaching its decision, the school board found that Joseph had engaged in repeated violation of school rules and that he had thrown scissors in a classroom. The school board further found that Joseph was guilty of repeated refusal or neglect to obey the rules and that he engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. Finally, the school board found that the interests of the school demanded 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 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 Almond-Bancroft 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.

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, as required by sec. 121.13(1), Wis. Stats. The Notice included a summary of disciplinary reports on Joseph dating through March 4, 1992. The Notice further advised that based on that conduct, three statutory bases for expulsion would be shown as discussed in the foregoing findings. That summary of misconduct, however, includes absolutely no reference to the allegation that Joseph threw scissors in class. The disciplinary documents submitted by the school district at hearing indicate that that conduct allegedly occurred on March 9, 1992, three days after Notice of the expulsion hearing was issued. Nonetheless, the school district submitted evidence on that allegation. Further, the school board found the allegation to be true and based its expulsion decision on that conduct as well as on proof of repeated violation of school rules reflected in the disciplinary summary attached to the Notice of Expulsion Hearing.

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). In this case, I specifically find that where a school board relies on multiple grounds in reaching its expulsion decision, the pupil and parent must be fairly and specifically notified of the particular underlying conduct supporting each ground.

Based on the error outlined above, I must reverse this expulsion decision.

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

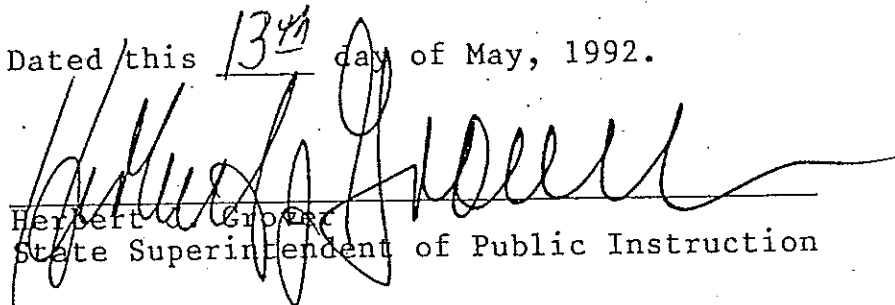
CONCLUSIONS OF LAW

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 Joseph F. [REDACTED] by the Almond-Bancroft School District Board of Education is reversed.

Dated this 13th day of May, 1992.


Herbert A. Groves
State Superintendent of Public Instruction