

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
CHRISTOPHER P [REDACTED]
by the Shorewood School District
Board of Education

DECISION
AND
ORDER
92-EX-06

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 Shorewood School District Board of Education to expel Christopher P [REDACTED] from the schools of the Shorewood School District for the balance of the 1991-92 school year. This appeal was filed by Christopher's father, James William P [REDACTED], and was received by the Department of Public Instruction on March 19, 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

The principal of Christopher's school, Margaret A. Tackes, sent a notice of an expulsion hearing addressed to Christopher, his father and his mother. The notice stated the date, time and location of the hearing and included a complete copy of the current version of sec. 120.13(1)(c), Wis. Stats. The notice stated the reasons expulsion was being considered and that expulsion could be a result of the hearing.

The notice was sent to Christopher and his parents on March 6, 1992, for a March 10, 1992, hearing. The notice gave the parties four days' notice of the hearing. The statute requires school boards to give five days' written notice of an expulsion hearing. The notice was not sent within the time frame established by sec. 120.13(1)(c), Wis. Stats. The school district asked Christopher's father to waive the statutory requirement that five days' written notice be given of the hearing. The father agreed to the waiver in the interests of speedy resolution.

The hearing date on the written notice was March 10, 1992. The hearing was not held on that date but was postponed to March 12, 1992, at the request of the school board. No written notice was given of the March 12, 1992, hearing.

The expulsion hearing was held on March 12, 1992. Christopher and his parents were in attendance. School district staff gave testimony regarding the incidents which resulted in Christopher's proposed expulsion. Staff testified that Christopher brought a knife to school and took it out in class

and attempted to carve on a sewing machine counter top piece. Staff also testified to Christopher's continuous behavioral problems in school, including classroom disruptions, talking back to staff, receipt of numerous detentions and having displayed a small sharp screw driver he brought to school.

After the hearing the school board met. The school board voted to expel Christopher for the remainder of the 1991-92 school year. On March 15, 1992, the school district clerk signed an order of expulsion for Christopher which was addressed to Christopher with copies indicated to each of his parents. The school board found that Christopher had engaged in conduct while at school which endangered the property, health and safety of others, and that he was guilty of repeated refusal or neglect to obey the rules. The school board also found that the interests of the school district demanded Christopher'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 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 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." Thompson, supra. 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 demand the pupil's expulsion.

In reviewing the record in this case I found that the Shorewood School District did not give Christopher and his parents five days' written notice of the hearing. This error is technical and the five-day period was waived by the father at the request of the school district and though the record does not show it, I will assume that waiver was also made on behalf of the son. Both the parents and child appeared at the hearing which apparently was postponed until after the five (5) days' prior notice period, for reasons not shown on this record.

I have consistently held that a school district must meet all of the statutory requirements to effect a valid expulsion.

James G. v. Hortonville School District Board of Education,
Decision and Order No. 118 (3/28/84); 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); John K. v.
Wisconsin Rapids School District Board of Education, Decision and
Order No. 178 (May 17, 1991); and Isaac S. v. Milwaukee School
District Board of Education, Decision and Order No. 187
(4/21/92).

Section 120.13(1)(c), Wis. Stats., provides in relevant part
that:

Not less than 5 days' written notice of the hearing shall be
sent to the pupil and, if the pupil is a minor, to the
pupil's parent or guardian, . . . (Emphasis added.)

Id.

I realize in not reversing this expulsion I am departing
slightly from past precedent which would call for a "strict"
application of the five day statutory time period even in spite
of the father's consent to waive. My past decisions have tended
to interpret the statutory advance notice and time requirements
as if they were in the nature of subject matter jurisdictional
questions and not waivable rather than in the nature of personal
jurisdiction and waivable.

Nonetheless, because of the express consent by the father,
the actual hearing occurring after five days' notice, and the
appearance of the parents and child at the postponed hearing, I
feel an exception must be made on these facts. It may well be

that I have been interpreting the statute too strictly and rigidly. I am willing to have the court more clearly indicate on facts like these just how technically I must apply this five-day time limit.

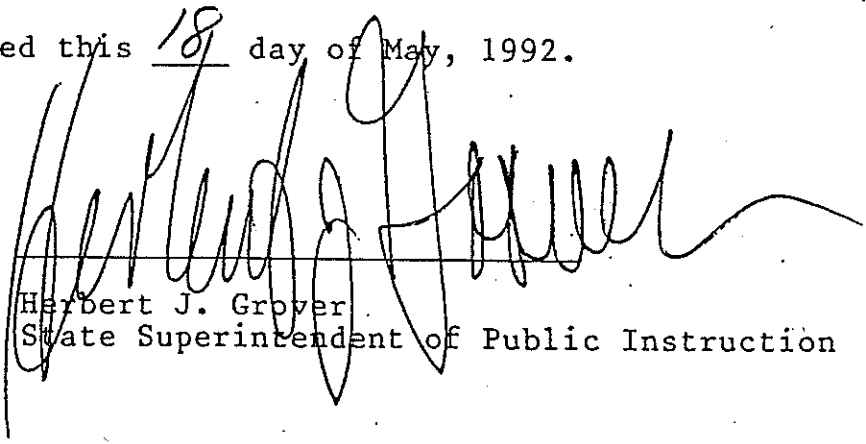
CONCLUSIONS OF LAW

Based upon my review of the record in this case, and the findings set out above, I conclude that the school board's action should be affirmed.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Christopher P [REDACTED] by the Shorewood School District Board of Education is affirmed.

Dated and mailed this 18 day of May, 1992.



Herbert J. Grover
State Superintendent of Public Instruction