

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
NICOLE P [REDACTED]
by the Crandon School District
Board of Education

DECISION
AND
ORDER
92-EX-08

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 Crandon School District Board of Education reaffirming its December 11, 1991, decision to expel Nicole P [REDACTED] from the Crandon School District for the remainder of the 1991-92 school year with the right to be readmitted for the 1992-93 school year. This appeal was filed by Frederick J. Voss, attorney for Nicole and her parents, Linda and Gordon P [REDACTED], and was received by the Department of Public Instruction on April 1, 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 and meetings. 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 interest of the school district demanded that the student be expelled.

FINDINGS OF FACT

I adopt the Findings of Fact set forth in my February 7, 1992, decision (Decision and Order 91-EX-10) reversing the December 11, 1991, expulsion of Nicole P [REDACTED] by the Crandon School District Board of Education (hereafter "school board").

On February 12, 1992, the school board held a special meeting to consider making a technical correction of its expulsion decision of December 5, 1991. The school board gave notice of its meeting to Nicole and her parents, but did not give five (5) days' notice prior to holding its meeting. The record shows that Nicole's parents attended the meeting, but Nicole did not.

The record shows there was a discussion between the school board and Nicole's parents in closed session at the special school board meeting. The school board then resumed open session, in which the following motion was passed unanimously:

To reaffirm the expulsion of Student A based upon the evidence submitted at the December 5, 1991 hearing which established repeated refusal or neglect to obey the rules of the school district and ordered Student A expelled from school for the remainder of the 1991-92 school year and that the interest of the school district demands his/her expulsion.

All members of the school board were present for both the initial evidentiary hearing on December 5, 1991, and the special meeting on February 12, 1992, in which the expulsion was reaffirmed.

The school board subsequently sent copies of its amended expulsion order to Nicole and her parents by certified mail, which were received by the P [REDACTED] on February 15, 1992. The Amended Order refers to the matter "having come on for hearing before the Board of Directors of the School District of Crandon, on the 5th day of December, 1991, and again on the 12th day of February, 1992, . . ." It states that Nicole "repeatedly refused to obey school rules and that the interest of the school district demands her 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(10)(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 ensure that the decision is based upon one of the established statutory grounds, and that the school board is satisfied that the interest of the school district demands the pupil's expulsion.

When I reviewed Nicole's December 11, 1991, expulsion I found that the notice of the expulsion hearing and the hearing itself complied with the procedural requirements. The school board's fatal error was that it had made no written finding that the interest of the school district demanded Nicole's expulsion. Section 120.13(1)(c), Wis. Stats., requires school boards to make this finding to effect a valid expulsion.

The main question in this appeal is whether the school board could expel Nicole on February 12, 1992, by making the missing finding based on the record of the December 5, 1991, hearing. Counsel for Nicole argues that her right to due process was violated when the school board expelled her on the same set of facts as those of the expulsion which was reversed by the State Superintendent. He also asserts that the school board failed to give Nicole five (5) days' notice of the "expulsion hearing" held on February 12, 1992.

Contrary to counsel's suggestion, I do not find double jeopardy in the fact that the school board, in correcting a technical, non-jurisdictional error, reaffirmed its previous expulsion decision based on the evidence presented at the

original expulsion hearing. Double jeopardy is a criminal law concept not applicable here. In Nicole's original appeal I reviewed the expulsion proceeding and found that the hearing and the notice of hearing complied with the procedural requirements. The error concerned the decision made after the hearing. In amending its earlier action the school board was correcting its previous error. The school board's decision was made by members who were present at the December 5, 1991, hearing and was made "based upon the evidence submitted at the December 5, 1991 hearing" I do not find fault with the school board's procedure. Joshua S. v. D.C. Everest School District Board of Education, Decision and Order No. 173 (10/26/90).

As to the issue of notice, I agree with counsel that there must be at least five (5) days' written notice of an expulsion hearing. I find, however, that Nicole did receive proper notice prior to the December 5, 1991, hearing and that she was, therefore, not denied her notice and due process. There is no time limit on when a decision must be made after a hearing. The school board acted in good faith in reaffirming its decision to expel Nicole within one week of receiving my decision reversing the previous expulsion. While the school board in some instances in the record referred to its February 12, 1992, meeting as a "hearing," the school board was not accepting additional evidence. The school board was simply reviewing a record, making an additional finding based on previously noticed and offered evidence, and reaffirming its earlier decision. I know of nothing granting Nicole the right to further notice of the

decision being made. There has been no suggestion of prejudice to Nicole because of the failure to provide a full five (5) days' notice. In fact, the record shows that Nicole's parents did attend the special meeting of the school board on February 12, 1992.

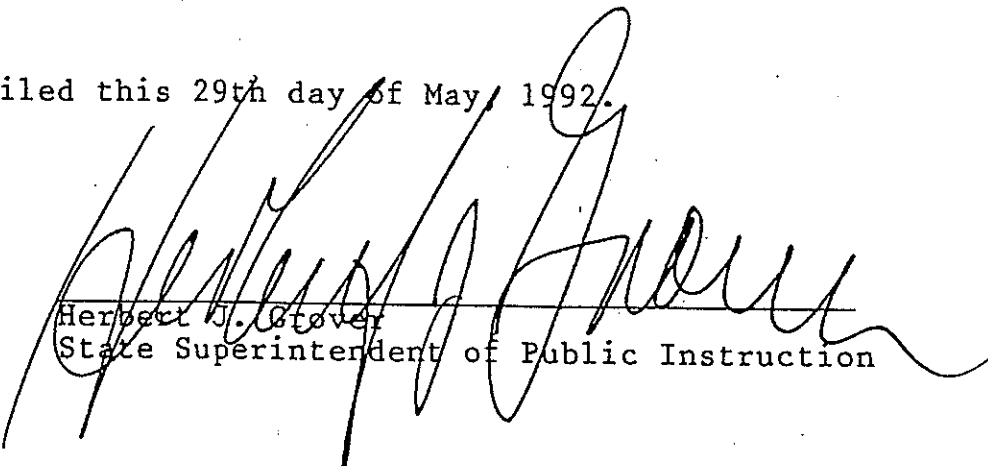
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

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

Dated and mailed this 29th day of May, 1992.


Herbert J. Stover
State Superintendent of Public Instruction