

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
BRADLEY SCOTT P [REDACTED]

by the Menasha Joint School
District Board of Education

DECISION
AND
ORDER
92-EX-13

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 Menasha Joint School District Board of Education to expel Bradley Scott P [REDACTED] from the schools of the Menasha Joint School District from May 12, 1992, through the the first semester of the 1992-1993 school year. This appeal was filed by Bradley's mother, Elaine P [REDACTED], and was received by the Department of Public Instruction on July 14 , 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 May 12, 1992, which indicated that a hearing was to be held on May 20, 1992. The Notice further alleged that Bradley was "guilty of repeated refusal or neglect to obey the rules of conduct at Menasha High School". The Notice contains no further description or information regarding the nature of such alleged repeated refusal or neglect.

A copy of sec. 120.13(1)(c), Wis. Stats., appeared on the back of the Notice. However, the statutory section was not current in that it failed to reflect the amendments to that section enacted by 1987 Act 88, section 3, effective November 28, 1987.

The record also fails to reflect whether a separate copy of that Notice was timely provided to both Bradley and to his parent. The school district at hearing, however, did make reference to such requirement.

The hearing was conducted in closed session on May 20, 1992. Bradley and his mother and father appeared at the hearing without counsel. The School District administration presented evidence of a variety of rule violations allegedly committed by Bradley. Bradley and his parents were given an opportunity to respond and to make argument to the school board.

After the hearing, the school board deliberated in executive session. Bradley and his parents were excluded from such deliberation, while members of the School District administration remained with the school board.

After deliberation, the school board issued a document entitled Disposition of Expulsion Hearing dated May 21, 1992. The document indicated that the school board had voted to expel Bradley. It stated that the "reason for the expulsion is that Bradley repeatedly refused to obey the rules of conduct at Menasha High School". No further detail or description of such repeated refusal was given. In addition, the document contained no finding that the interests of the school district demand Bradley's expulsion.

The Disposition document was addressed to Bradley's mother and copied to Bradley's father who resides at another address. The record fails to show that a separate copy of the document was sent to Bradley.

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 Menasha Joint School District failed to comply with all of the applicable procedural requisites in several respects. 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, as required by sec. 120.13(1), Wis. Stats. The Notice included only a reference to alleged repeated refusal or neglect to obey school rules. 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 (5/19/89). 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).

Second, I have previously determined that failure to provide a current copy of sec. 120.13(1)(c), Wis. Stats., constitutes reversible error in these proceedings. See e.g. Chad K. v. Wittenberg-Birnamwood School District, Decision and Order No. 168 (5/7/90).

Third, I have reversed expulsion decisions for failure to properly provide a separate written notice of hearing to both the pupil and parent. See e.g. Russell B. v. the Muskego-Norway School District, Decision and Order No. 175 (2/28/91). In this case, the record is unclear whether this requisite was met. Given the other clear procedural errors presented, I do not base reversal on this requirement, but wish only to highlight the issue for the school district's future reference.

In addition, I have some concern about the fact that school district personnel remained during the school board's deliberation, while the pupil and parents were excluded. Previous expulsion decisions have admonished school boards to avoid even the appearance of unfairness in these proceedings. See Michaelene J. and Russell B., cited above. Again, due to other errors in this present case, it is unnecessary for me to determine whether this factor alone may constitute reversible error.

Next, the expulsion Disposition fails to describe the violations that the school board determined had occurred and which were deemed severe enough to require Bradley's expulsion. Given the failure of the Notice of Hearing to describe the charges with specificity, this lack of specificity in the school board's ultimate decision renders meaningful review difficult to impossible.

The Disposition document also fails to make the finding, required by statute, that the interests of the school district demand the pupil's expulsion. I have previously reversed expulsion decisions on that basis. See e.g. Michael S. v. Milwaukee Public Schools Board of Education, Decision and Order No. 128 (5/10/85).

Finally, the record fails to show that a separate written copy of the Disposition was properly provided to both Bradley and to his parent. It appears from the record that while each parent was sent a copy of the decision, no copy was sent to the pupil. Again, I have reversed expulsion decisions on this basis. See e.g. Michael S. and Russell B., cited above.

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

By this decision, I do not wish to address the merits of the charges against Bradley in any way. This decision should not be read as condoning the pupil's alleged violations. My statutory duty requires me to assure strict compliance with procedural detail in these matters as reflected in this decision.

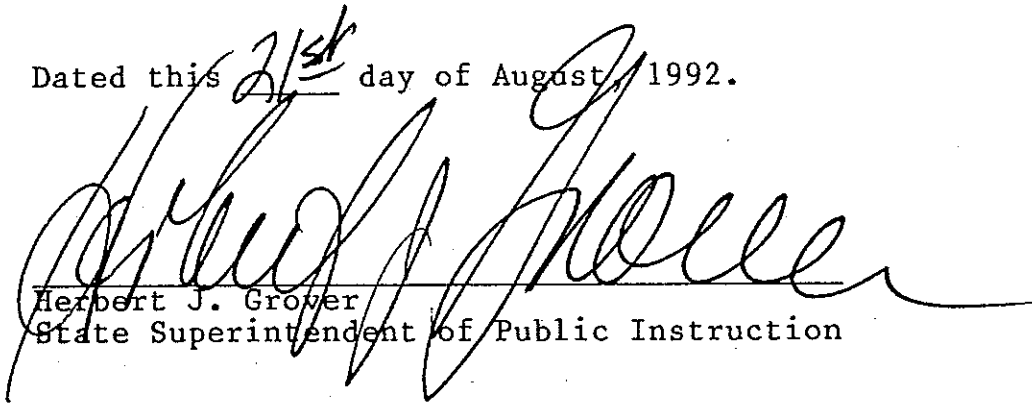
CONCLUSIONS OF LAW

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 Bradley Scott P██████ by the Menasha Joint School District Board of Education is reversed.

Dated this 21st day of August, 1992.


Herbert J. Grover
State Superintendent of Public Instruction