

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
ERNESTO G [REDACTED]
by the Waukesha School
District Board of Education

DECISION
AND
ORDER
92-EX-16

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 Waukesha School District Board of Education to expel Ernesto G [REDACTED] from Horning Middle School from October 1992 through the remainder of the 1992-93 school year and the 1993-94 school year. This appeal was filed by Ernesto's mother, Rose M. G [REDACTED], and was received by the Department of Public Instruction on October 30, 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 October 2, 1992, which indicated that a hearing was to be held on October 7, 1992. A separate copy of that Notice was properly sent to Ernesto and to his mother. According to the Notice the expulsion request was based on Ernesto's alleged repeated refusal to obey school rules and endangering the health and safety of others between August 27, 1992 and September 16, 1992, specifically, an incident on September 16, 1992 in which he threatened a teacher.

In addition, the Notice indicated that the school administration was requesting Ernesto's expulsion "for the remainder of the 1992-93 school year." It further advised that "this hearing may result in his expulsion for the remainder of the 1992-93 school year."

The hearing was conducted on October 7, 1992. Neither Ernesto nor his mother or other representative appeared at the hearing. The school district administration presented a document entitled Request for Expulsion, dated October 6, 1992, which outlined alleged rule violations from August 26, 1992, through September 16, 1992, and which provided additional background information on Ernesto's past disciplinary problems.

The minutes of the school board meeting indicate that the school board then voted to expel Ernesto from Horning Middle School for the remainder of the 1992-93 school year and for the 1993-94 school year. The minutes further indicate that the expulsion was based upon repeated refusal to obey school rules

and endangering the health and safety of others and an incident on September 16, 1992 in which he threatened a teacher.

A Notice of Expulsion dated October 9, 1992, also set forth this decision of the school board. However, neither the school board meeting minutes nor the Notice of Expulsion include a finding indicating that the interests of the school demand 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 Waukesha School District failed to comply with all of the applicable procedural requisites in two respects. I am, therefore compelled to reverse the expulsion decision on the grounds that follow.

First, sec. 120.13(1)(c), Wis. Stats., requires that an expulsion notice must advise that the expulsion "hearing may result in the pupil's expulsion." This requirement is to put the pupil and parent on notice as to what is at stake at the expulsion hearing. In this case, the Notice of Expulsion explicitly stated that Ernesto was facing potential expulsion for the 1992-93 school year. The school board's decision, however, extended the expulsion period through the 1993-94 school year. I find, therefore, that the Notice failed to adequately and correctly advise the pupil and parent of the actual interests at stake.

Second, the Notice of Expulsion 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 School Directors, Decision and Order No. 128 (5/10/85).

Based on the errors outlined above, I must reverse this expulsion decision. My decision should not be read as excusing or condoning Ernesto's alleged misconduct in any way. I recognize the extremely difficult task and associated frustrations a school district faces in addressing the needs of particularly challenging students. However, my statutory duty requires me to assure strict compliance with procedural detail in expulsion matters as reflected in this decision.

Lastly, in her appeal letter Ernesto's mother raises an issue involving Ernesto's "Attention Deficit Hyperactivity Disorder." I have repeatedly ruled that an expulsion appeal is not the proper forum in which to address compliance with special education laws. Ernesto's mother should be aware that if she disagrees with the findings of the school district's M-team with regard to Ernesto's alleged special needs, she may request a due process hearing to challenge that decision using the laws governing special education. She may also request an independent evaluation of Ernesto if she disagrees with the school district's evaluation. The independent evaluation would be at school district expense if the conditions in sec. PI 11.08, Wis. Admin. Code, are met. Ernesto's mother should feel free to call upon the school district staff or upon my staff for assistance in understanding Ernesto's rights under special education law.

CONCLUSIONS OF LAW

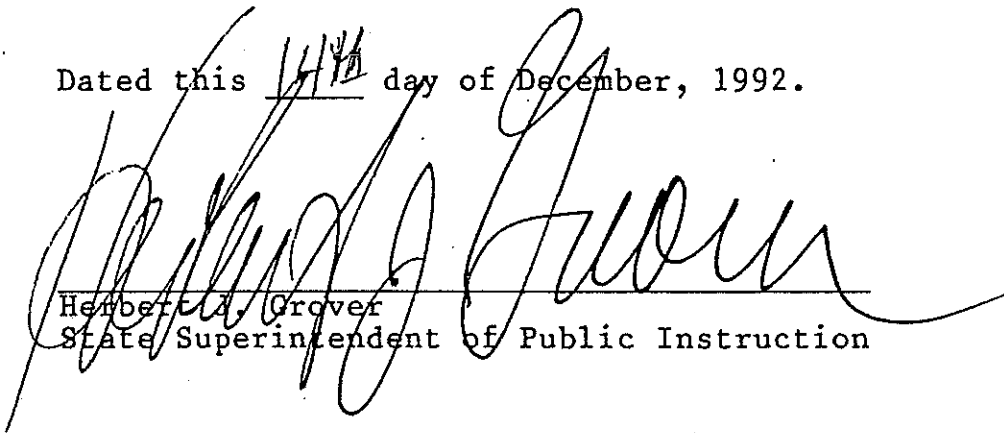
Based upon my review of the record in this case and the findings set out above, I conclude that the school board failed

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 Ernesto G [REDACTED]
by the Waukesha School District Board of Education is reversed.

Dated this 14th day of December, 1992.



Herbert A. Grover
State Superintendent of Public Instruction