

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
BRADLEY P [REDACTED]
by the South Milwaukee School
District Board of Education

DECISION
AND
ORDER
92-EX-17

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 South Milwaukee School District Board of Education expelling Bradley P [REDACTED] from South Milwaukee Middle School in February 1992 through the remainder of the 1991-92 school year and for the entire 1992-93 school year. This appeal was filed by Bradley's mother, Kim Hojnacki, and was received by the Department of Public Instruction on November 17, 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 demand that the student be expelled.

FINDINGS OF FACT

The record contains a letter to Bradley's mother from the South Milwaukee Middle School Principal dated February 18, 1992, which indicated that a hearing was to be held on February 26, 1992 to consider Bradley's expulsion. A separate copy of that letter was properly sent to Bradley. According to the letter, the expulsion recommendation was based on Bradley's alleged involvement in a sexual assault as well as prior incidents of battery, fighting, disruption, and disrespect.

In addition, the letter indicated that the school administration was requesting Bradley's expulsion "from the South Milwaukee Middle School." It further advised that "this hearing may result in expulsion from the South Milwaukee Middle School."

The hearing was accordingly conducted on February 26, 1992. Bradley and his mother appeared at the hearing and were accorded an opportunity to present evidence and argument and to address the evidence presented by the school administration. The administration presented evidence supporting Bradley's involvement in inappropriate touching of girls at school, as well as his prior multiple violations of school rules.

The school administration also presented its recommendation that Bradley be expelled from South Milwaukee Middle School for the remainder of the 1991-92 school year and that he be considered for summer school in light of the fact that he was at the time an eighth grader.

After the hearing, the board entered an Order of Expulsion dated February 26, 1992. According to that Order, the board

considered Bradley's misconduct and the interests of the South Milwaukee Middle School. The board then ordered that Bradley be expelled from the South Milwaukee Middle School for the remainder of the 1991-92 school year and the entire 1992-93 school year.

In her letter of appeal, Bradley's mother indicates that Bradley received education at a community day treatment program from July through October 1992. She also included a day treatment education report from the program which appears to indicate that Bradley was studying at the ninth grade level and which recommends his return to public school in regular education at the ninth grade level. In her appeal letter, Bradley's mother also alleges that she telephoned the South Milwaukee School Board and "asked them to waive the expulsion base (sic) on his excellent progress. They also denied this request."

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

pupil and parent on notice as to what is at stake at the expulsion hearing. See In the Matter of the Expulsion of Ernesto G. by the Waukesha School District Board of Education, Decision and Order No. 200 (12/14/92). In Ernesto G., 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. On that basis I found that the Notice failed to adequately and correctly advise the pupil and parent of the actual interests at stake.

Likewise, in the current appeal I find that the letter regarding the expulsion hearing properly advised that expulsion from the middle school may result. The letter did not, however, advise that expulsion from the high school may also result. The Order of Expulsion technically references Bradley's expulsion from the middle school only and must be affirmed to the extent that it applied to his expulsion from that school. Neither the letter advising of the expulsion hearing nor the Order referenced expulsion from the high school. However, to the extent that the school board may construe the Order as applicable to Bradley's attendance at the high school, the Order must be reversed.

My decision should not be read as excusing or condoning Bradley's misconduct in any way. I recognize the extremely difficult task a school district faces in addressing the needs of particularly challenging students. Nor should this decision be construed as an attempt to insert my judgement as to the appropriate penalty which Bradley should face as a result of that

misconduct. Rather, my statutory duty requires me to assure strict compliance with procedural detail in expulsion matters as reflected in this decision.

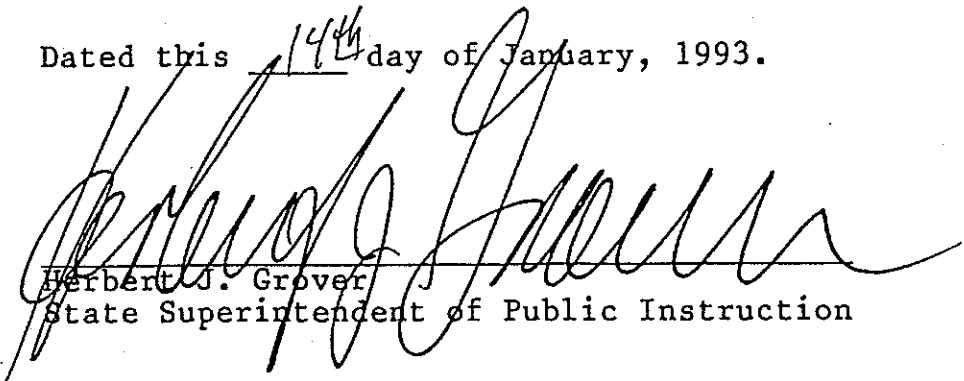
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats., with regard to Bradley's expulsion from the South Milwaukee Middle School, but failed to provide the requisite notice which would permit the board to exclude Bradley from the high school as well.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Bradley P [redacted] from the South Milwaukee Middle School is affirmed and it is further ordered that said expulsion may not be construed to exclude Bradley P [redacted] from the South Milwaukee High School if he is otherwise eligible to attend such high school.

Dated this 14th day of January, 1993.


Herbert J. Grover
State Superintendent of Public Instruction