

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
CHAD B [REDACTED]
by the Janesville School
District Board of Education

DECISION
AND
ORDER
93-EX-02

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 Janesville School District Board of Education to expel Chad B [REDACTED] from Janesville School District system from February 1993 through the remainder of the 1992-93 school year. This appeal was filed by Chad's mother, Sandra B [REDACTED], and was received by the Department of Public Instruction on February 18, 1993.

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 letter from Donald Mrdjenovich, Superintendent of Janesville Schools, dated February 4, 1993, which indicated that an expulsion hearing was to be held on February 15, 1993. A separate copy of that letter was properly sent to Chad and to his mother. That letter properly advised that Chad and his mother had the right "to present witnesses and to cross-examine those testifying at the hearing with the Board." The letter further invited Chad and his mother to call Mr. Mrdjenovich if he "could be of any special assistance prior to the expulsion hearing."

The hearing was accordingly held before the board in closed session on February 15, 1993. The minutes of the hearing indicate that Chad's mother "said she had also asked the school district's lawyer to subpoena the teacher and others so she could verify her case. Attorney Krohn explained to Mrs. B [REDACTED] that she had the right to subpoena anyone she felt necessary to her cause, but that she would have had the responsibility for having the subpoenas served; it would not be the responsibility of the district."

In her appeal to this Department, Chad's mother included a letter addressed to Robert Krohn, attorney for the district, and to "Board Members" dated February 11, 1993. In that letter she requested that several people, including all of Chad's teachers, be subpoenaed to the expulsion hearing. According to the board meeting minutes, the people she requested to be subpoenaed were not present at the hearing. In addition, in the final paragraph

of her letter of February 11, 1993, she also requested that Chad be "evaluated for a Student-At-Risk or have an M-Team evaluation done."

Evidence was presented supporting the district's recommendation to expel Chad. Chad's mother was permitted to comment on the evidence. The board then deliberated and reached a decision to expel Chad. The minutes indicate that the board would permit Chad to apply for readmission "contingent upon an EEN assessment and under a strict behavioral contract." An expulsion order dated February 22, 1993, was accordingly entered. The order indicated that Chad "will have the right and opportunity to apply to the District Administrator, demonstrating acceptable progress and behavior as of July 15, 1993 for purposes of enrollment for the 1993-1994 school year, and any such readmittance for such school year shall be under a strict behavioral contract and contingent upon an EEN assessment."

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 Janesville School District failed to comply with all of the applicable procedural requisites. I am, therefore compelled to reverse the expulsion decision on the grounds that follow.

The record reveals that Chad's mother wished to take testimony from several school employees and that she specifically requested in her letter addressed to Mr. Krohn and to board members that certain named individuals be subpoenaed to the hearing. As was made clear in Racine Unified School District v. Thompson, supra (cited above), the board is authorized pursuant to sec. 885.01(4), Wis. Stats., to issue subpoenas to compel the presence of witnesses at expulsion hearings. Chad's mother enjoys no such statutory authority to issue subpoenas. Under

sec. 885.01(4), Wis. Stats., the board is the proper entity from which to seek the issuance of a subpoena. The board may well have required Chad's mother to "serve" the subpoenas, but should not have refused her proper request to have the subpoenas "issued." Because the board failed to properly act on her request to secure the presence of witnesses, I find that Chad's mother was denied procedural rights at the expulsion hearing.

With regard to the "conditions" attached to Chad's reapplication for admission for the 1993-1994 school term, I have previously questioned whether a district has the authority to place conditions on the readmission of a pupil. Trevis P. v. Arrowhead School District, Decision and Order No. 121 (9/13/84); Michael J. B. v. Palmyra-Eagle Area School District, Decision and Order No. 151 (7/27/87); Lori P. v. Cudahy School District, Decision and Order No. 169 (5/21/90). In this case, however, I specifically find that the district lacks the authority to condition readmission on an EEN evaluation. With regard to children who are suspected to have an exceptional educational need (EEN), the district must follow the particular state and federal statutory and regulatory scheme created to address the interests of such children. Generally, a child may not be evaluated for an EEN without parental consent. However, a district may seek to override the parent's refusal to give consent by seeking a due process hearing on the matter. That is the appropriate route by which to address a dispute over the propriety of an evaluation. The district may not circumvent this specific statutory and regulatory scheme governing consent for an

M-Team evaluation by conditioning readmission after expulsion on an EEN evaluation.

In addition, in this case it appears that the issue of consent would not be an issue. In her letter addressed to Mr. Krohn and board members Chad's mother specifically requested an M-Team evaluation. Given the condition contained in the expulsion decision, the board apparently acknowledges that there is reasonable cause to believe that the child is a child with EEN. Note that a parent may request such an evaluation even after the expulsion of the child. Michael P. D. v. Kenosha Unified School District, Decision and Order No. 172 (10/8/90). In this case the parent requested the evaluation prior to the expulsion and the district is required to timely process that request pursuant to the particular rules and time frames governing special education in this state. Alleged error in processing that request for evaluation may be reviewed by the Department of Public Instruction in the context of a complaint under the Individuals with Disabilities Education Act (IDEA), rather than in the context of an expulsion appeal.

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

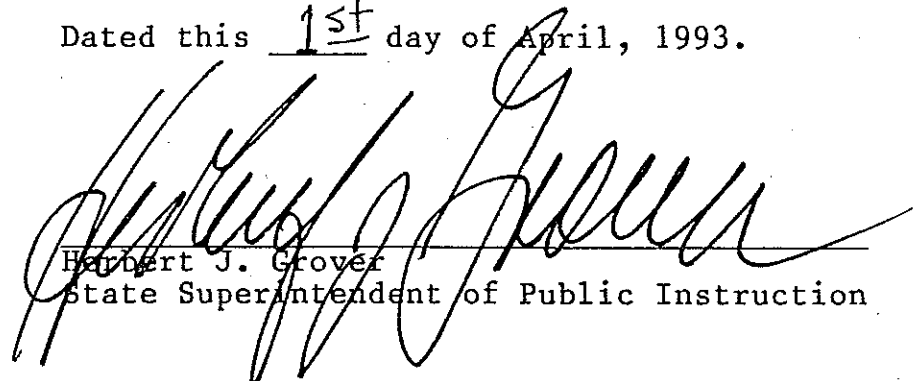
CONCLUSIONS OF LAW

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 Chad B [REDACTED] by the Janesville School District Board of Education is reversed.

Dated this 1st day of April, 1993.



Herbert J. Grover
State Superintendent of Public Instruction