

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
RANDY H [REDACTED]
by the Central/Westosha UHS School
District Board of Education

DECISION
AND
ORDER
93-EX-01

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 Central/Westosha UHS School District Board of Education (hereinafter "district") to expel Randy H [REDACTED] from Central High School District of Westosha from January 12, 1992, through June 6, 1993. This appeal was filed by Randy H [REDACTED] and was received by the Department of Public Instruction on February 8, 1993. The Department also received a letter dated January 26, 1993, from JoAnn S [REDACTED], Social Worker for the Kenosha County Department of Social Services, also purporting to appeal the expulsion. Ms. S [REDACTED]'s letter indicates that Randy is in the custody of that Department and lives with a foster family, the R [REDACTED]. Ms. S [REDACTED] objects to the expulsion proceeding in that neither the Kenosha County Department of Social Services nor Randy's natural parent were notified of the proceeding.

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 December 17, 1992, which indicated that a hearing was to be held on January 12, 1993. A separate copy of that Notice was sent to Randy and to his foster father, Mr. R [REDACTED], with whom he resides. According to the Notice, the expulsion request was based on Randy's "conduct while in school or while under the supervision of a school authority which has endangered the property, health and safety of others." Specifically, the notice alleged that Randy was in possession of a gun on school grounds and in the school building. The notice further indicates that "the incident which led to the administration's recommendation that Randy be expelled from school occurred on January 9, 1992," and that the pupil was suspended from school for his involvement in this alleged incident on December 11, 1992.

The hearing was duly conducted on January 12, 1993, in closed session. Randy appeared with his foster mother, Mrs. R [REDACTED]. The school district administration presented evidence

that Randy had possessed a gun at school, including a statement from Randy that he had possessed a BB gun at school and that he knew that to be against school rules. The record is not completely clear as to the date of this incident of misconduct, but it appears to have occurred on December 9, 1992. Nothing in the record indicates that Randy possessed a gun at school on January 9, 1992, as alleged in the Notice of Expulsion Hearing.

The minutes of the school board meeting indicate that the school board then voted to expel Randy until June 6, 1993. An Order of Expulsion was also sent separately to Randy and to Mr. R [REDACTED] under cover letter dated January 14, 1993. That order found that Randy had possessed a gun on school grounds. The order also concluded that by virtue of possessing the gun, Randy had refused to obey school rules and that the interest of the school demanded his 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 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 "specify the particulars" of the alleged misconduct which may result in the pupil's expulsion. In this case, the Notice of Expulsion Hearing explicitly referred to alleged misconduct which occurred on January 9, 1992. The evidence received at hearing, however, related to misconduct which apparently occurred on December 9, 1992. No evidence reflects misconduct by the pupil on January 9, 1992. I have previously held that the notice requirements are of a

jurisdictional nature and failure to comply will render the expulsion void. See John K. v. Wisconsin Rapids School District, Decision and Order No. 178 (May 17, 1991), Christopher K. v. West Allis School District, Decision and Order No. 166 (April 18, 1990), Travis V. v. Waterloo School District, Decision and Order No. 144 (July 2, 1986) and Michelle R. v. Suring Public School District, Decision and Order No. 126 (March 7, 1985). I find, therefore, that the Notice failed to adequately and correctly specify the particulars of the allegations involved.

Second, the Notice of Expulsion Hearing indicates that the alleged misconduct endangered the health, property and safety of others. However, the district failed to make such a finding in its Expulsion Order. Instead, the district found that Randy's possession of a gun at school constituted a refusal to obey school rules, a different ground than the one alleged in the notice. Section 120.13(1)(c), Wis. Stats., permits expulsion upon a finding of repeated refusal to obey school rules, but not on the basis of a single refusal. The record in this case does not reflect a finding of repeated rule violations nor does the Notice of Expulsion Hearing allege repeated rule violations. A district may expel for a single refusal to obey which includes conduct that endangers health, property, or safety, but it must allege, prove, and find that such is the case. Here the district has mixed in its notice and findings the elements of the ground of a single act of endangering safety with the ground of repeated refusal to obey rules.

Finally, the issue was raised as to whether the Kenosha County Department of Social Services should have been served with Notice of the Expulsion Hearing. The district correctly notes that the State Superintendent has viewed the term "guardian" contained in sec. 120.13(1)(c), Wis. Stats., broadly to permit service upon a grandparent with whom the pupil resided rather than service upon the natural parent. Nathan N. v. Hudson School District, Decision and Order No. 163 (6-5-89). Service upon the foster parent in this case is certainly analogous to service upon the grandparent in Nathan N. Although there may be cases in which a county department of social services should be served with Notice of an expulsion hearing, given the foregoing errors requiring reversal in this case, it is unnecessary for me to determine whether social services should have been served in this case. Similarly, given Randy's individual appeal filed with me, it is unnecessary to decide whether an appeal filed only by a county department would be proper for me to review.

In conclusion, based on the errors outlined above, I must reverse this expulsion decision. My decision should not be read as excusing or condoning Randy's alleged misconduct in any way. However, my statutory duty requires me to assure strict compliance with procedural detail in expulsion matters as reflected in this decision.

CONCLUSIONS OF LAW

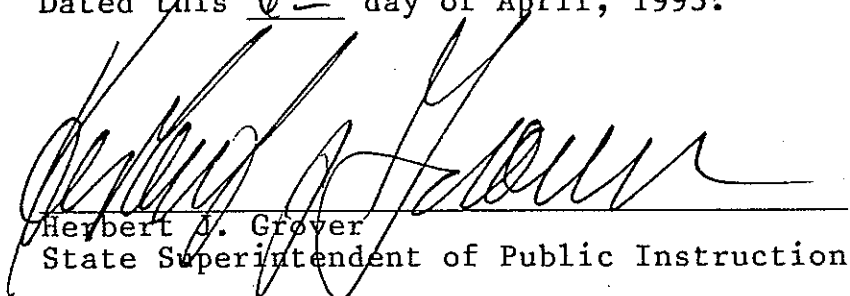
Based upon my review of the record in this case and the findings set out above, I conclude that the District failed to

comply with all of the procedural requirements of
sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Randy H [REDACTED] by
the Central/Westosha UHS School District Board of Education is
reversed.

Dated this 6th day of April, 1993.



Herbert A. Grover
State Superintendent of Public Instruction