

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
DOUGLAS G [REDACTED]
by the New London School
District Board of Education

DECISION
AND
ORDER
94-EX-10

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 action of the New London School District Board of Education expelling Douglas G [REDACTED] from that school district effective February 14, 1994, through the remainder of the 1993-1994 school year. This appeal was filed by the pupil's father, Darrell G [REDACTED] and was received by the Department of Public Instruction on March 18, 1994.

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 proceeding. 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 February 9, 1994, which was sent to the pupil and to his parents. The Notice advised that a hearing would be held on February 14, 1994, which could result in expulsion. The Notice also alleged that the pupil had brought a weapon to school and had thereby engaged in conduct which endangered the health, safety, or property of others.

Included with the Notice was a copy of a portion of sec. 120.13, Wis. Stats. The portion of that statute sent to the Department of Public Instruction as part of the record herein did not include the full text of sec. 120.13(1)(c), Wis. Stats., as is expressly required by the statutory subsection.

The board met on February 14, 1994. It is unclear from this record whether the board conducted a hearing on this pupil's expulsion at that time, who may have appeared at such hearing, or what evidence may have been presented to the board. No minutes were kept of such a hearing, although sec. 120.13(1)(c), Wis. Stats., expressly requires that written minutes of the hearing be kept. The record reveals only that the board voted to go into executive session at 8:25 p.m. and reconvened at 10:02 p.m. A motion was then made and unanimously approved to "expel a student for the remainder of the 1993/94 school year."

The record then shows a letter dated February 15, 1994, from the district administrator to the pupil and his parents. The letter indicates that the board had voted to "expel Douglas for the remainder of the 1993-94 school year." The letter does not

reveal any findings by the board supporting such an expulsion decision. Specifically, this record does not reveal that the board found the pupil guilty of the misconduct alleged, that such misconduct meets a statutory standard for expulsion, and that the interests of the school demand expulsion. All of those findings are expressly required by sec. 120.13(1)(c), Wis. Stats. (In addition, a portion of sec. 120.13(1)(c), Wis. Stats., quoted in that letter no longer reflects the current language of the statute in that it fails to include amendments to the law made in 1987.)

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.

As outlined above, the district in this case failed to comply with several statutory requirements. First, the district failed to include a full and current copy of sec. 120.13(1)(c), Wis. Stats., in its expulsion notice. The State Superintendent has previously ruled that such failure is reversible error. See Miranda V. v. Howard-Suamico School District, Decision and Order No. 224 (March 22, 1994); Bradley Scott P. v. Menasha Joint School District, Decision and Order No. 197 (August 21, 1992); Shane M. B. v. Green Bay Area Public School District, Decision and Order No. 190 (April 21, 1992); Russell B. v. Muskego-Norway School District, Decision and Order No. 175 (February 28, 1991); and Chad K. v. Whittenberg-Birnamwood School District, Decision and Order No. 168 (May 7, 1990).

Second, the district failed to maintain written minutes of the expulsion hearing. Without such minutes, it is impossible to determine whether evidence was submitted supporting the findings necessary to permit expulsion. This omission requires reversal.

Finally, the record fails to indicate that the board found the pupil guilty of the alleged misconduct, that the conduct

meets a statutory standard for expulsion, and that the interests of the school demand expulsion. This also constitutes reversible error. See e.g. Richard W. Jr. v. Central High School District of Westosha, Decision and Order No. 122 (September 13, 1984); Nicole P. v. Crandon School District, Decision and Order No. 184 (February 7, 1992).

Because the district failed to comply with the foregoing statutory requisites, I am compelled to reverse the expulsion decision in this matter. This decision should not be read as condoning the alleged conduct of the pupil in any way.

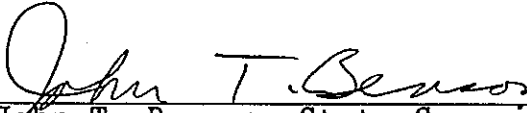
CONCLUSIONS OF LAW

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 Douglas G [REDACTED] by the New London District Board of Education is reversed.

Dated this 29th day of April, 1994.



John T. Benson, State Superintendent of
Public Instruction