

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

ROBERT J. K██████████

by the Manitowoc Public School District
Board of Education

DECISION
AND
ORDER

94-EX-09

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 March 3, 1994, order of the Manitowoc Public School District Board of Education to expel Robert J. K██████████ from Wilson Junior High School for the remainder of the third quarter of the 1993-94 school year. This appeal, dated March 9, 1994, was filed by Robert's attorney, Terence P. Fox, and was received by the Department of Public Instruction on March 11, 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 hearing. The State Superintendent's review authority is specified in sec. 120.13(1)(c), 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 24, 1994. This Notice advised that a hearing would be held on March 2, 1994, which could result in Robert's expulsion for the remainder of the school year or a shorter time as determined by the board of education. The Notice of Expulsion Hearing was sent separately to Robert and his parents. The Notice indicated the reason for the expulsion request was based on an allegation that Robert brought a knife to school and threatened to use it on another student. A copy of sec. 120.13, Wis. Stats., was attached to the Notice. The record also contains the minutes of the board of education meeting, the minutes of the closed session on the expulsion hearing, board of education policy statements on expulsions, possession and use of weapons, and a copy of a statement made by the principal at the expulsion hearing. No audiotape of the hearing was made.

The minutes indicate the hearing was conducted in closed session on March 2, 1994. Robert and his parents appeared at the hearing and were represented by Attorney Terence P. Fox. According to the minutes, the school administration presented witnesses in support of its expulsion request. Robert, his parents, and their attorney were given an opportunity to speak and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The minute sheet indicates that because the student brought a weapon to school, the interest of the school demanded his expulsion.

The record also contains a Notice of Expulsion and an Expulsion Order dated March 3, 1994. This Notice advised the parents that their son was expelled from school

for the remainder of the third quarter of the 1993-94 school year. The basis for the expulsion, according to the Notice of Expulsion, was that Robert brought a knife to school and "allegedly threatened another student." This Notice of Expulsion, a copy of sec. 120.13, Wis. Stats., and a copy of the Expulsion Order were sent to Robert's parents. There is nothing in the record to indicate any of these documents were sent to the pupil

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.

The facts of this case present an issue of statutory compliance. Section 120.13(1)(c), Wis. Stats., specifically states that the pupil, and, if the pupil is a minor, the pupil's parents shall receive notice of the expulsion order. In this case, the Notice of Expulsion and Expulsion Order dated March 3, 1994, were sent to the pupil's parents. The record does not indicate the expulsion notice or order were sent to the pupil. The minute sheet makes no reference to any directive that the parents and Robert would receive a copy of the Expulsion Order. The Notice of Expulsion sent to the parents indicates copies were sent to various individuals but does not indicate that the pupil was one of those individuals. The statutory notice requirements of sec. 120.13(1)(c), Wis. Stats., have been held to be mandatory. The failure to send a copy of the Expulsion Order to the pupil is reversible error. Paul K. v. Flambeau School District Board of Education, Decision and Order No. 171 (July 17, 1990), and Antonio M. v. Kenosha Unified School District No. 1 Board of Education, Decision and Order No. 176 (April 18, 1991).

The briefs submitted by counsel raised the issue of the sufficiency of the evidence upon which the school board relied in making its decision. Because this case is reversed on a procedural defect, it is unnecessary to discuss this issue.


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 Robert J. K████ by the Manitowoc Public School District Board of Education is reversed.

Dated this 3rd day of May, 1994.


John T. Benson
State Superintendent of Public Instruction