

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
SHAWN F. [REDACTED]

by the School District of Slinger
Board of Education

DECISION
AND
ORDER

94-EX-13

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 School District of Slinger Board of Education expelling Shawn F. [REDACTED] from that school district effective April 20, 1994 through June 10, 1994. This appeal was filed by the pupil's parents, Mr. and Mrs. Scott Zandi, and was received by the Department of Public Instruction on May 3, 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 letter dated April 15, 1994, from the Middle School Principal addressed to the pupil's parents. The letter does not contain any reference to a copy also being sent to the pupil. However, in forwarding the record to the Department for this review, the district indicates that two copies of the letter were sent to the pupil and his parents in the same envelope. The record does not reveal to whom the envelope was actually addressed.

The April 15 letter advised that a hearing would be held on April 19, 1994, which could result in the pupil's expulsion. As the basis for the proposed expulsion, the letter alleged that the pupil had displayed a "look alike" weapon on school grounds and had threatened an elementary student with the weapon.

The board accordingly met on April 19, 1994 and convened in closed session to consider the proposed expulsion. The pupil appeared with his parents and without counsel. It is unclear from this record what if any testimony was actually offered during that closed session. However, the record contains several documents apparently offered in that session. One document included in the record is a memo from the Elementary School Principal to the District Administrator dated April 15, 1994. That memo summarizes the district's investigation of the "look alike" gun incident. The record also contains a letter from the mother of the child who was allegedly threatened by the pupil. In addition, the record includes letters from Shawn to the elementary school child's family

and to the school apologizing for his conduct regarding what he described as a "cap gun".

By letter dated April 20, 1994, Shawn's parents were notified that the Board had expelled Shawn for endangering the health and safety of others by threatening and intimidating an elementary student with a "look alike" gun. The record does not include a finding by the Board that the interest of the school demands expulsion of the pupil. In addition, the record contains no indication that the pupil was separately informed as to the Board's expulsion decision.

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.

Because the district in this case failed to comply with several statutory requirements, I am compelled to reverse this expulsion decision. First, the district provided notice of the expulsion hearing only four days prior to the date the hearing was conducted. The statutory minimum notice period is five days. See e.g. Lori P. by the School District of Cudahy, Decision No. 169; May 21, 1990. This error alone would require reversal. It is unnecessary, therefore, to decide whether the district also failed to provide a separate notice of the expulsion hearing to the pupil. I would caution the district, however, that mailing two copies of a notice addressed to parents in one envelope at least raises a serious question as to whether the statutory requisite of separate notice to the pupil was in fact met.

Next, the record fails to reflect the requisite finding by the Board that the interests of the school demands expulsion. This omission requires reversal. See e.g. Nicole P. v. Crandon School District, Decision and Order No. 184 (February 7, 1992); Bradley

Scott P. by the Menasha Joint School District, Decision No. 197, Aug. 21, 1992.

Finally, the record fails to show that the pupil was mailed a copy of the expulsion decision. This omission also requires reversal. See e.g. James by the Hortonville School District, Decision No. 118, March 28, 1984; Chad K. by the Wittenberg-Birnamwood School District, Decision No. 168, May 7, 1990.

Because the district failed to comply with the foregoing statutory requisites, I am compelled to reverse the expulsion decision in this matter. If there is to be a legally valid expulsion, the process must be repeated absent any procedural error. This decision should not be read as condoning the alleged conduct of the pupil or minimizing the concerns of both the district and the family of the child who was allegedly threatened. I do note that Shawn's parents express respect and gratitude to school for willingness to work with Shawn to permit him to progress to the ninth grade next fall. I applaud that effort and flexibility and encourage the continued mutual efforts and respect between school and parents that is reflected in this case.

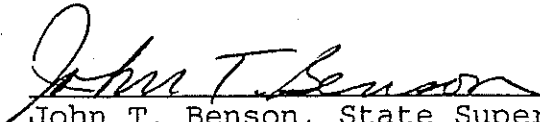
CONCLUSIONS OF LAW

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 Shawn F [REDACTED] by the Slinger School District Board of Education is reversed.

Dated this 9 day of June, 1994.



John T. Benson, State Superintendent of
Public Instruction