

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

MICHAEL L. [REDACTED]

by the School District of Waukesha
Board of Education

DECISION
AND
ORDER

94-EX-21

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 the Waukesha Board of Education expelling Michael L. [REDACTED] from that school district effective June 28, 1994, through the second semester of the 1995-96 school year. This appeal was filed by the pupil's mother, Anita L. [REDACTED], and was received by the Department of Public Instruction on July 22, 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 June 16, 1994 from the Executive Director of Student Services and Exceptional Education addressed to the pupil's parent. A copy of the Notice was also sent to the pupil. The June 16th Notice advised that a hearing would be held on June 28, 1994, which could result in the pupil's expulsion. As the basis for the proposed expulsion, the Notice alleged that the pupil had engaged in a fight on school grounds on Monday, June 6, 1994, which endangered the health and safety of others.

The board accordingly met on June 28, 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 does contain minutes of the hearing as well as a memorandum from the administration which summarizes the June 6th, 1994 incident. The record also contains a finding by the School District that the interest of the School District demands the expulsion of the pupil.

By letter dated June 29, the pupil and the pupil's mother were notified that the Board had expelled him for endangering the health and safety of others by engaging in a fight on school grounds on June 6, 1994.

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 a statutory requirement, I am compelled to reverse this expulsion decision. The district failed to provide a complete current copy of sec. 120.13(1)(c) Wis. Stats. with the notice of expulsion. Specifically, the version of that statute used by the district failed to include the statutory amendment accomplished by 1993 Wisconsin Act 284 which became effective April 28, 1994. The State Superintendent has long interpreted the requirement of furnishing a complete, current copy of the statute as

mandatory and has reversed expulsions for failure to provide this to the pupil and parent. See, e.g., Jack P. by the Crandon School District, Decision and Order No. 229, May 3, 1994; Bradley Scott P. by the Menasha Joint School District, Decision and Order No. 197, August 21, 1992; Chad K. by the Whittenberg-Birnamwood School District, Decision and Order No. 168, May 7, 1990. (In an attempt to avoid this type of error, I sent a memo on April 25, 1994 to all school districts in the state advising of the requirement to use the complete current version of the statute and providing a copy of the current statute as amended by 1993 Act 284.)

The pupil raises several issues in his post-hearing brief which he argues require reversal. Because I am compelled to reverse this decision on the ground of the above-referenced statutory deficiency, I do not decide those issues raised in the pupil's brief. However, it is noteworthy to comment on one issue. The pupil, who is now represented by counsel, proceeded pro se at the hearing. The pupil alleges in his post-hearing brief affidavit that he was not afforded an opportunity to cross-examine the District's witness. However, the pupil's affidavit does not reflect whether he requested and was denied the opportunity for cross-examination. While the School District minutes reflect that the hearing format allowed for the cross-examination of both "parties," the minutes are ambiguous as to whom the word "parties" refers and at what stage the opportunity for cross-examination was offered. Since cross-examination is a critical right, it is better practice to identify

clearly which witnesses testified and when the opportunity for cross-examination was afforded.¹

Because the district failed to comply with the foregoing statutory requisite, 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 this matter.


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 a procedural requirement of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Michael L. [REDACTED] by the Waukesha School District Board of Education is reversed.

Dated this 20th day of September, 1994.



John T. Benson
State Superintendent of Public Instruction

¹See DPI draft Outline of Expulsion Procedures and Rights, 10/10/91, which was made available to district administrators at CESA Professional Advisory Committee meetings statewide and to school board members at the Wisconsin Association of School Boards School Law Seminar.