

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

ERNESTINA G [REDACTED]

by the Wautoma Area School District
Board of Education

DECISION AND ORDER
94/95-EX-11

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 December 20, 1994 order of the Wautoma Area School District Board of Education to expel Ernestina G [REDACTED] for the remainder of the 1994-95 school year. This appeal, dated March 31, 1995, was filed by Ernestina's attorney, Karen S. Roehl, and was received by the Department of Public Instruction on April 3, 1995.

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 letter from the Wautoma Area School District administration. This letter advised a hearing would be held on December 19, 1994, which could result in Ernestina's expulsion from school. The letter was sent separately to Ernestina and her parents by certified mail. The certified mailing indicates that the letter was received by Ernestina and her parents on December 14, 1994. In addition, the record contains a written statement by the school administration that the letters were personally delivered to Ernestina and her parents on December 13, 1994. The letter indicated the reason for the expulsion hearing was that Ernestina repeatedly refused to follow school rules and engaged in conduct while at school under the supervision of school authorities which endangered the health and safety of others at the school. The letter detailed 15 separate incidents of Ernestina's refusal to obey school rules. The letter also stated that on December 8, 1994 Ernestina struck and kicked another student, causing bodily harm. The letter further indicated a copy of sec. 120.13(1)(c), Wis. Stats., was reproduced on the reverse side of the letter. The record also contains exhibits introduced at the expulsion hearing on December 19, 1994.

The hearing was conducted in closed session on December 19, 1994. Ernestina and her parents appeared at the hearing without counsel. A transcript of the hearing was prepared and is part of the record.

At the hearing, Ernestina's father requested a postponement of the hearing to obtain legal counsel for his daughter. He indicated a written request for a postponement was made prior to the hearing and he attempted by phone to obtain a postponement. The school administration admitted a phone call from Mr. G. [REDACTED] requesting a delay and a written communication on the

subject of a delay were received. The record contains a handwritten note acknowledging a phone call from Mrs. G [REDACTED] on December 15, 1994 indicating her attorney might not represent her daughter and requesting more time. The school administration, as stated in the note, denied the request. The record also contains a letter dated December 15, 1994 signed by Mr. G [REDACTED] requesting a postponement because they "have not found an attorney yet." In a letter dated December 16, 1994 the school administration denied the request for a postponement. The record also contains a letter dated December 16, 1994 from the school administration to Ernestina and her parents changing the location of the hearing.

The school administration then presented evidence concerning Ernestina's repeated refusals to obey school rules and her conduct in hitting and kicking another student. Pictures of the victim and a medical report detailing the victim's injuries are also part of this record. Several students also testified to their observations of Ernestina hitting and kicking the victim. The school administration then offered into evidence several conduct reports and disciplinary referral sheets concerning Ernestina's conduct in school. These exhibits were introduced into evidence and are part of the record. The school's disciplinary policy was also admitted into evidence and is part of this record. Ernestina and her parents were given an opportunity to cross examine these witnesses and to present evidence. Ernestina refused to testify without an attorney present to represent her.

After the hearing, the school board deliberated in closed session. The school board decided to expel Ernestina for the remainder of the 1994-95 school year. The board found Ernestina repeatedly refused or neglected to obey the rules and she engaged in conduct while at school or under the supervision of a school authority which endangered the property, health or

safety of others. The board also found the best interest of the school demands the pupil's expulsion. A copy of the expulsion order was sent separately to Ernestina and her parents by certified mail.

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 pupil raises several issues in the appeal brief questioning the propriety of the notice of hearing, the sufficiency of the expulsion order and alleged violation of Ernestina's right to legal

representation. Because the school district failed to comply with the statutory requirements, I am compelled to reverse this expulsion decision. The district failed to provide a complete copy of sec. 120.13(1)(c), Wis. Stats., with the notice of expulsion. The version of the statutes used by the district failed to include the statutory amendment contained in 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. *Michael L. v. School District of Waukesha Board of Education*, Decision and Order No. 239 (September 20, 1994); *Chad K. v. Wittenberg-Birnhamwood 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 requirements to use the complete, current version of the statute and providing a copy of the current statute as amended by 1993 Act 284.)

Because I am compelled to reverse this expulsion decision I do not decide the other issues raised in the appeal brief. However, one issue requires comment. The pupil's parents apparently attempted by phone and letter, prior to the hearing, to obtain a postponement for the purpose of securing legal counsel for the pupil. These requests were denied. At the hearing, the pupil's father again requested a continuance of the hearing for the purpose of obtaining an attorney. This request was also denied. School boards should very carefully consider a request for postponement made for the purpose of securing legal counsel. The right to a free education in Wisconsin is both constitutional and fundamental. *Busé v. Smith*, 74 Wis. 2d 550, 567, 247 NW 2d 141 (1976). Its withdrawal by a school board is a grave act. The pupil's statutory right to counsel is most significant. A prior decision reversed an expulsion for failure to reschedule or delay the expulsion hearing in order for the parties to obtain counsel. *Michaelene J. v.*

Washington School District Board of Education, Decision and Order No. 161 (May 19, 1989).

In responding to such requests the board should consider the nature of the request for an adjournment. The school board should also state its reasons for granting or denying such requests. If no case-specific reasons for denial appear in the record, it is difficult if not impossible for the State Superintendent to perform the review function.

Because the district failed to comply with the foregoing statutory requirement I must reverse the expulsion decision. This decision should not be read as condoning the actions of the pupil in this case or minimizing the concerns of the school district and the board. If there is to be a legally valid expulsion, the process must be repeated absent any procedural error.

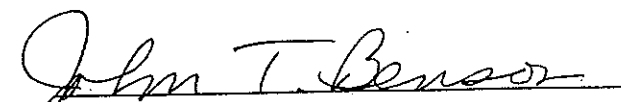
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude 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 Ernestina G. [REDACTED] by the Wautoma Area School District Board of Education is reversed.

Dated this 1st day of June, 1995.


John T. Benson
State Superintendent of Public Instruction