

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Zachary G [REDACTED] by the East Troy Community School District Board of Education	DECISION AND ORDER 98/99 EX-22
---	-----------------------------------

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 February 22, 1999 order of the East Troy Community School District Board of Education to expel the above-named pupil through the 1999-2000 school year. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on June 16, 1999.

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 interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated February 16, 1999, from the district administrator of the East Troy Community School District. The letter advised that a hearing would be held on February 22, 1999 that could result in the pupil's expulsion from the East Troy Community School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil repeatedly refused to obey school rules and engaged in conduct while at school or under the supervision of school authority that endangered the property, health, or safety of others. The letter did not specify what conduct Zach allegedly engaged in, nor did it contain the dates of any alleged misconduct. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on February 22, 1999. The pupil and his parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents were given the opportunity to cross-examine witnesses and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found that the pupil did repeatedly refuse to obey school rules and engage in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others. The school board further found that the interests of the school demand the student's expulsion. The order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated February 22, 1999, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 1999-2000 school year.

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 District*, 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 that 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 District 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.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). 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 appeal letter in this case raises two issues that require consideration. The pupil alleges that the notice of expulsion hearing was insufficient and that the term of expulsion was

unduly harsh. Because the notice of expulsion hearing did not comply with the requirements of sec. 120.13(1)(c)4., the expulsion must be reversed.

Sec. 120.13(1)(c)4., Stats., requires that not less than 5 days written notice of the hearing under subd. 3., shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The notice shall state all of the following:

- a. The specific grounds, under subd. 1., 2., or 2m., and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based.
- b. The time and place of the hearing.
- c. That the hearing may result in the pupil's expulsion.
- d. That, upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed.
- e. That the pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel.
- f. That the school board shall keep written minutes of the hearing.
- g. That if the school board orders the expulsion of the pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.
- h. That if the pupil is expelled by the school board the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the department.
- i. That if the school board's decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.
- j. That the decision of the school board shall be enforced while the department reviews the school board's decision.
- k. That an appeal from the decision of the department may be taken within 30 days to the circuit court for the county in which the school is located.
- L. That the state statutes related to pupil expulsion are ss. 119.25 and 120.13(1).

The notice did not contain the particulars of misconduct. It is well established that a student is entitled to due process at an expulsion hearing. *Goss v. Lopez*, 419 U.S. 565 (1975); *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 321 N.W. 2d 334 (1982). It is also well established that notice is an integral part of procedural due process in these situations.

A student facing expulsion is entitled to timely and adequate notice of the charges against him so

as to allow him a meaningful opportunity to be heard, even where the student unequivocally admits the conduct charged. *Keller v. Fochs*, 385 F. Supp. 262, 265 (E.D. Wis. 1974).

Furthermore, sec. 120.13(1)(c)4., Stats., clearly requires specific notice of the misconduct alleged. Expulsions have been repeatedly overturned based upon this error. *Bradley Scott P. v. Menasha Joint School District Board of Education*, Decision and Order No. 197, (August 21, 1992); *Christopher K. v. West Allis School District Board of Education*, Decision and Order No. 166 (April 18, 1990); *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 144 (July 2, 1986).

In this case, there was no indication in the notice of expulsion hearing what misconduct was going to be considered by the board. The pupil's attorney submitted, on appeal, an affidavit of the pupil's mother that indicates that on February 18, 1999 she received a two page document titled "Record of Improper Behavior." However, there is no evidence in the record that this document was sent with a cover letter describing the significance of the document, that it was sent no less than 5 days prior to the expulsion hearing, or that it was sent separately to the pupil and the parents. While it may be permissible for a district to "amend" its notice of expulsion hearing to include the particulars of misconduct, the amended notice must meet the requirements of sec. 120.13(1)(c)4., Stats. The subsequent mailing of the "Record of Improper Behavior" did not meet the requirements of sec. 120.13(1)(c)4., Stats.¹

¹ The notice also stated "As required by law, the applicable pupil expulsion statute, s. 120.13(1)(c), Wis. Stats., is printed on the back of this notice". The record submitted by the school district does not show that the statute was in fact printed on the notice. It should be noted that the statute no longer requires the printing of the statute on the notice, but it does require that each right specified in sec. 120.13(1)(c), Stats., be included, in writing, in the expulsion notice. By virtue of the mother's affidavit, it is clear that a summary of pupil expulsion law was printed on the back of the form. Districts are reminded to provide a clear and complete copy of the record.

The district argues that the challenges to the adequacy of the Notice of Expulsion hearing are meritless. In support of this argument, the district refers to two previous East Troy School District expulsions upheld by the State Superintendent, *Paul R.*, Decision and Order number 262 and *Adam S.*, Decision and Order Number 304. First, both *Paul R.* and *Adam S.* were initially overturned by the state superintendent because of a failure to comply with statutory requirements. Secondly, it is noted that the form used in this case is not the same as the form used in *Paul R.* and *Adam S.* In both *Paul R.* and *Adam S.*, the district included specific allegations of misconduct in the notice of hearing. Therefore, the reliance on *Paul R.* and *Adam S.* is misplaced.

Because the expulsion is overturned on this ground, it is not necessary to address the other issues raised by the pupil.

In reviewing the record in this case I find the school district did not comply with all of the procedural requisites. I reverse this expulsion with reluctance. The pupil has apparently been given several warnings about his conduct and the most recent conduct involved a battery to another pupil. However, I must comply with the requirements of the statutes in these matters and reversal of this case is mandatory.

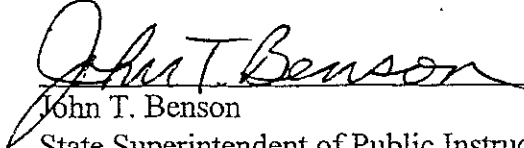
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Zachary G [REDACTED] by the East Troy Community School District Board of Education is reversed.

Dated this 11th day of August, 1999.



John T. Benson
State Superintendent of Public Instruction