

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Alex H: by Eleva-Strum School District Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX 12
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NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the Eleva-Strum School District Board of Education to expel the above-named pupil from the Eleva-Strum School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 23, 2001.

In accordance with the provisions of Wis. Adm. Code § PI 1.04(5), 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 § 120.13(1)(c). 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 April 24, 2001, from the district administrator of the Eleva-Strum School District. The letter advised a hearing

would be held April 30, 2001 that could result in the pupil's expulsion from the Eleva-Strum School District until his 21st birthday. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that "(T)he state statute relating to pupil expulsion applicable in this instance is § 120.13(f)." The letter specifically alleged "...that the pupil be expelled for *violation of School Board Policy JFCH/JFCI, Alcohol and Other Drug Abuse...* possession of illegal drugs in or on school property with intent to sell." Minutes of the school board expulsion hearing, copies of the Notice of Pupil Expulsion Hearing, the Order of Expulsion, and various other documents related to the expulsion hearing are part of the record. An audiotape of the proceedings was also supplied to supplement the record.

The hearing was held in closed session on April 30, 2001. 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 present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found the pupil did 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 May 3, 2001, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until his 21st birthday.

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 § 120.13(1)(c), which establishes certain categories of offenses that may be the basis for an expulsion and sets out specific procedures that 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 § 120.13(1)(c). 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.

Alex and his parents raise several issues in the appeal letter.¹ However, because the notice of expulsion hearing was defective, I am compelled to overturn the expulsion. Therefore, there is no need to address the issues raised by pupil and his parents.

¹ The tone of the correspondence reveals a great deal of tension between the parents and the school district. As a reminder to the parties, it is not effective advocacy or appropriate to resort to name-calling, such as "sparmy."

This notice of expulsion hearing was defective because it did not comply with the specific requirements of §120.13(1)(c)4. One defect was noted by the board's attorney, John Behling. At the beginning of the hearing, Mr. Behling advised the pupil that the Notice of Expulsion sent out by the school district was defective because it did not specifically state the statutory provision Alex allegedly violated.² Mr. Behling offered Alex and his parents the opportunity to have a new hearing date with a new, correct notice sent. They were told this would not prejudice their case. They choose not to seek a new hearing but to proceed with the hearing on April 30. When asked a second time if they wanted to have a new hearing date and notice, Alex's parents chose to proceed immediately. Regardless whether this constituted a waiver by the parents of this particular defect, there were two other defects not specifically mentioned by the board's attorney.

First, the notice did not specifically state the misconduct Alex allegedly committed. It merely said Alex was to be expelled for "a violation of the School Board Policy JFCH/JFCI, Alcohol and Other Drug Abuse, possession of illegal drugs in or on school property with intent to sell." Second, the notice incorrectly cited the statutes applicable to expulsion. The notice indicated "(T)he state statute relating to pupil expulsion applicable in this instance is § 120.13(f)," (emphasis added). There is no such statute number. The correct statute citation is § 120.13(1) (emphasis added).

Section 120.13(1)(c)4. requires that not less than five days written notice of the hearing 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:

² The Department of Public Instruction has prepared sample forms for expulsion proceedings. These can be obtained from the department or downloaded from the department's website. The forms are also available at the end of the Disciplinary Action Advisor, which is on our website,

...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...

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 or her so as to allow 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, § 120.13(1)(c)4. 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). The notice of expulsion hearing in this case merely alleged that Alex was in possession of illegal drugs with the intent to sell. This does not constitute adequate notice. This requires reversal.

The second defect also requires reversal. §120.13(1)(c)4. requires the notice of expulsion hearing to state that the statutes related to pupil expulsion are 119.25 and 120.13(1). The notice of expulsion hearing did not include this information.

Because the board did not comply with the notice requirements of §120.13(1)(c)4., I am compelled to overturn the expulsion. It has long been precedent that the notice requirements of the statute are mandatory in nature, and failure to comply with the statutory requirement renders the expulsion void. See *Todd M.G. v. Wonewoc-Union Center School District Board of Education*, Decision and Order No. 416 (June 13, 2000); *Ryan G. v. Sparta Area School District*

Board of Education, Decision and Order No. 325 (May 19, 1997); *Christopher K. v. West Allis School District Board of Education*, Decision and Order No. 166 (April 18, 1990); and *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 143 (July 2, 1986).

Thus, the failure to include the specific allegations of misconduct and the correct statutes related to student expulsions require me to overturn the expulsion. The board may cure the error by providing proper notice of the expulsion hearing, re-hearing the expulsion, and providing proper notice of the expulsion decision.

This decision does not condone the pupil's conduct, nor does it suggest the expulsion ordered by the board is inappropriate. However, I must uphold the requirements contained in the statutes.

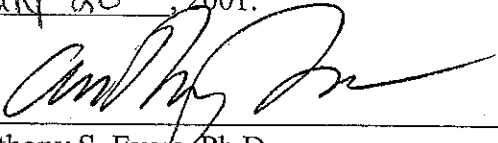
CONCLUSIONS OF LAW

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 § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Alex Hermundson by the Eleva-Strum School District Board of Education is reversed.

Dated at Madison, Wisconsin, on July 20, 2001.



Anthony S. Evers, Ph.D.
Deputy State Superintendent of Public Instruction

Parties to this appeal are:

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Kenneth R. Rogers
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APPEAL RIGHTS

Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

COPIES MAILED TO:

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