Decision and Order No.: 465

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Phoua X by Saint Francis School District Board of Education	DECISION AND ORDER Appeal No.: 02-EX10

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 Saint Francis School District Board of Education to expel the above-named pupil from the Saint Francis School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 27, 2002.

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 December 21, 2001, from the district administrator of the Saint Francis School District. The letter advised a

hearing would be held on January 7, 2002 that could result in the pupil's expulsion from the Saint Francis School District. The letter was sent to the pupil's parents by certified mail. The letter alleged that the student engaged in conduct as described in "attached reports". Neither the letter nor the record clearly indicates what reports were attached to the notice of hearing.

The hearing was held in closed session on January 7, 2002. The pupil and her parents appeared at the hearing without counsel. According to the order signed by the school board's clerk, the school district administration presented evidence concerning the grounds for expulsion and the pupil and her parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations. However, the record of the expulsion hearing does not reveal that any of these procedures occurred.

According to the same order, the school board deliberated and found that the pupil refused or neglected to obey school rules and that the interests of the school are best served by the student's expulsion. The order for expulsion containing findings of fact and conclusions of law of a representative of the board[1], dated January 8, 2002, was mailed separately to the pupil's parents. The order stated the pupil was expelled for one year and that she is eligible for probationary readmission at the beginning of the second semester of the 2002-2003 school year.[2]

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

[1] This term "representative of the board" is very confusing. I cannot tell from the record to whom it is referring. It may be in reference to the board clerk who signed the order or it may refer to some other person. The use of this term, without explanation, could require reversal. However, due to the numerous other errors in the process, I do not need to determine the meaning or significance of "representative of the board".

[2] This order is internally inconsistent. The board ordered a one year expulsion (until January 8, 2003). Thus, if the order were affirmed, the board would lack authority to place conditions, such as probationary readmission, on the return of the student after January 8, 2003.

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.

Based upon a review of the record submitted by the school district, the expulsion is reversed for failure to comply with nearly every expulsion procedure requirement.[3] First, the notice of the expulsion was inadequate. It did not, as required by §120.13(1)(c)4. contain 1) the specific grounds for expulsion under subdivision 1, 2 or 2m; 2) the particulars of the misconduct; and 3) notice that the pupil and her parents may be represented *by counsel* at the hearing.

[3] To assist school district, the department developed standard notice of hearing and expulsion order forms as well as a checklist that a school board may customize for its own use. These forms are available on the department's website at http://www2.dpi.state.wi.us/ExsysWeb/WI-DPI_Discipline_App_v3/Discipline_v3_link028.html or by following the Disciplinary Action Advisor found on the department's home page at http://dpi.state.wi.us.

Second, the notice was not mailed separately to the pupil and her parents as required by §120.13(1)(c)4. Third, the board did not submit written minutes[4] or any other recording of the proceeding to the state superintendent for this review. The only logical conclusion from this failure is that the board did not keep written minutes as required by §120.13(1)(c)3.

Fourth, because no record of the information presented at the hearing has been submitted, there is no support for the conclusion that the student's conduct met any ground for expulsion. Therefore, the order signed by the board's clerk is not supported by the record. Fifth, there are findings in the board's order that are contrary to the sparse record that was submitted. For example, the "Nature of the Case" section of the expulsion order indicates that the case concerned the student's repeated refusal to neglect to obey school rules. However, this information was not contained in the notice of hearing, nor is there information in the hearing record to support an allegation of "repeated" rule violations. Additionally, "Findings of Fact" paragraph 3, of the expulsion order states that the notice of hearing contained a detailed summary of §120.13(1)(c) and that the student was given written notice of the expulsion hearing. Neither of these findings is supported by the notice that was actually provided or the record of the hearing.

Sixth, the board's order is not based on a ground for expulsion listed in §120.13(1)(c)1.,2. or 2m. A refusal or neglect to obey school rules is not sufficient, it must be repeated. See *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 28, 1993); *Jesse M. K. v. Tri-County Area School District Board of Education*,

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[4] The board submitted "approved minutes" for the appeal. However, these "approved minutes" do not provide any information, other than the fact that the board moved into closed session to consider an expulsion case. The record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996).

Decision and Order No 266 (Jan. 2, 1996); *Danielle A. W. v. Barron Area School District Board of Education*, Decision and Order No 310 (Jan. 31 1997); *Alfred L. v. Oconto Falls School District Board of Education*, Decision and Order No 338 (September 24, 1997); *Eric H. v. Central/Westosha Union High School District Board of Education*, Decision and Order No 377 (March 17, 1999.) Seventh, the board also failed to find that the interests of the school demands expulsion. Instead the order states the interests of the student, other students, faculty, and employees are "best served" by her expulsion. While the board may have meant this to mean that the interests of the school "demand" expulsion, I cannot infer this based upon the record submitted. Finally, the board failed to mail the expulsion order to the pupil. Only the parents were sent a copy of the expulsion order. Based upon information received at the department, it appears that the student's parents do not understand or speak English. Yet, the notices which were written in English were sent only to the parents. This is just one explanation for why the statute requires that notices be sent separately to the pupil and the parents.

It is unfortunate that a sixth grade student was expelled without any regard to the statutory due process requirements. Concerning the facts surrounding the expulsion, the school board did not provide any information, other than a written summary of the charges, to support its finding that the student engaged in misconduct. On the other hand, the student provided a copy of a statement made by the alleged victim. This statement was prepared by the administration and was apparently presented to the school board at the hearing but it does not implicate the student. While it is possible that the board heard other evidence to implicate the student, it has not explained what it was. Furthermore, the student denies her conduct and submitted a sworn statement describing the events that were the subject of the expulsion hearing to the school board. Based upon the letters of recommendation written by her teachers and

provided to the school board, the student is articulate and well-liked as well as a valued addition to the student body at Willow Glen School.

When a school board decides that conduct is so severe that it must revoke a child's right to a public education, it must do so in accordance with the law. This includes the statutory requirements as well as constitutional due process as defined by the United States Supreme court. It also must be based upon facts and not conjecture. In this case, the record submitted shows that the board did not comply with these standards and requirements.

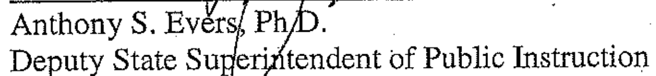
CONCLUSIONS OF LAW

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 Phoua X by the Saint Francis School District Board of Education is reversed.

Dated this 28th day of April, 2002



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Deputy State Superintendent of Public Instruction