Decision and Order No.: 548

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of O. S. by Racine Unified School District Board of Education	DECISION AND ORDER Appeal No. 05-EX 15

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 Racine Unified School District Board of Education to expel the above-named pupil from the Racine Unified School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 28, 2005.

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 March 1, 2005, from the pupil's middle school at the Racine Unified School District. The letter advised a

hearing would be held on March 11, 2005 that could result in the pupil's expulsion from the Racine Unified School District through the pupil's 21st birthday. The letter was sent in one envelope to the pupil's home. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that on February 28, 2005, the pupil made sexual remarks to another student while in a classroom at the middle school.

The hearing was held in closed session on March 11, 2005 before a duly appointed hearing examiner. The pupil and his parents appeared at the hearing. 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 hearing officer 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 hearing officer 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 March 11, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through March 11, 2005. An audiotape of the expulsion hearing is part of the record. On March 21, 2005, the Racine School Board met and adopted the hearing officer's findings.

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.

In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. 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**.

In this case, the notice of expulsion hearing was not sent, separately, to the pupil and his parents. The middle school secretary mailed one letter to the pupil's address on either March 1 or March 2. That statue requires that the notice of expulsion hearing be sent to the pupil AND the parent. When the word "and" is used in a statute, it means both of the stated requirements

must be met. *Trojan v. U.W. Board of Regents*, 128 Wis. 2d 270, 273 (1985). Also, when the legislature amended the statute in 1973, it specifically extended to individual pupils the right to prior notice of the hearing. Laws of 1973, ch. 94. Before the 1973 amendment, these individual pupil rights did not exist in the law.

The state superintendent has routinely held the notice requirements in §120.13(1)(c) are mandatory in nature and failure to comply with the statute requires reversal of the expulsion order, even if both the pupil and the parent appear at the expulsion hearing. *See Michelle R. v. Suring Public Schools Board of Education*, Decision and Order No. 126 (March 7, 1985), citing *Muskego-Norway Consolidated Schools v. WERB*, 32 Wis. 2d 478, 83 (1967); *Paul K. v. Flambeau School District Board of Education*, Decision and Order No. 171 (July 17, 1990); *Russell B. v. Muskego-Norway School District, Decision and Order No. 175 (February 29, 1991); Robert K. v. Manitowoc Public School District Board of Education*, Decision and Order No. 230 (May 3, 1994); *Phillip c. v. Wausaukee School District Board of Education*, Decision and Order No. 280 (March 22, 1996). *Tyrell D. v. Racine Unified School District Board of Education*, Decision and Order No. 288 (May 14, 1996).

Placing two notices in one envelope does not meet these requirements. The state superintendent has previously overturned expulsions where both the pupil's and parent's notice were provided to the pupil. *John K. v. Wisconsin Rapids School District,*, Decision and Order No. 178 (May 17, 1991). Providing two notices in one envelope addressed to the parents is not distinguishable. *Ulysses R. v. South Milwaukee School District Board of Education*, Decision and Order No. 509 (April 17, 2004); *Ryan S. v. Pewaukee School District Board of Education*, Decision and Order No. 445 (September 25, 2001); *Ryan K. v. Pewaukee School District Board of Education*, Decision and Order No. 439 (July 24, 2001); and *Raymond K. v. Phillips School*

District Board of Education, Decision and Order No. 435 (June 25, 2001). It has also been determined mailing the student's copy of the notice of hearing to the father's work address does not comply with the statute. *Isaac S. v. Milwaukee Public School District*, Decision and Order No. 187 (April 21, 1992). "To find otherwise would eviscerate the legislature's clear directive that pupil and parental rights are to be treated as distinct and separate in these matters. Although pupil and parental interests may frequently coincide, that is not always the case and the legislature has clearly directed school districts not to assume these interests to be one in the same." *Isaac S. v. Milwaukee Public School District*, Decision and Order no. 187 (April 21, 1992). Finally, there are strong public policy reasons for the requirement of separate notices. Most expulsions involve teenage students. It is common knowledge among educators and parents that privacy is an important teenage right. In many households, the parents do not open the teenager's mail and the teenager does not open the parent's mail. Thus, when two notices are placed in one envelope addressed only to the parent or the student there is no assurance that the mandatory procedural requirement of sending separate notices has been met.

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 in these cases that the notice requirements of the statute are mandatory in nature, and failure to comply with the statutory requirement renders the expulsion void. See *Telsea M. v. East Troy Community School District Board of Education*, Decision and Order No. 408 (February 24, 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).

If the district chooses, it may remedy this error by providing proper notice of the expulsion hearing, rehearing the expulsion, and providing proper notice of the expulsion decision. See *Joshua D. v. Tomorrow River School District*, Decision and Order No. 415(May 24, 2000); *Nick N. v. Elcho School District Board of Education,* Decision and Order No. 373 (December 4, 1998); *Adam S. v. East Troy Community School District Board of Education,* Decision and Order No. 300 (August 9, 1996); *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992); and *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

Because of this procedural violation, I am required to reverse this expulsion.

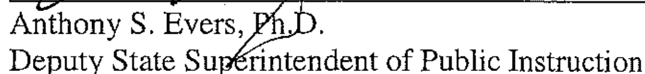
CONCLUSIONS OF LAW

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 O . S by the Racine Unified School District Board of Education is reversed.

Dated this 27th day of June, 2005.



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