THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from the Milwaukee School District of SEAN H[redacted],

Appellant.

OPINION AND ORDER

THE NATURE OF THE CASE

This is an appeal pursuant to sec. 120.13(1)(c), Stats., from the May 18, 1982 decision of the Board of School Directors of the Milwaukee Public Schools, hereinafter the District, expelling appellant from Juneau High School. Now having fully reviewed all matters of record relative to this case in accordance with Wis. Admin. Code s. PI 1.04(3), the State Superintendent of Public Instruction makes the following:

FINDINGS OF FACT

At the time of the events giving rise to this proceeding, appellant was enrolled as a student at respondent's Juneau High School. On or about May 5, 1982, appellant and two other male students forced T.L., a fifteen year old female student, into an unoccupied schoolroom as she was preparing to go to class. One of the trio stood guard at the door as appellant pulled T.L. across the room and, despite her protestations, pulled down her slacks and underwear and " . . . tried to put his thing against (her)." (Transcript page 11.) Thereupon, appellant took T.L. to a point in the room which could not be seen from the hallway as she attempted to get dressed. Appellant then forcibly removed her slacks and underwear and again tried to have sex with her. T.L. continued to refuse and pleaded with the young man to be released. Thereafter, the remaining members of the trio attempted without

success to have intercourse with T.L. She was finally allowed to leave by E.C., one of three male students, in exchange for a promise to have sex with him later. Subsequent to these events, appellant threatened to beat T.L. if she ever reported the incident.

On May 13, 1982, the district's administration issued notice of hearing before the Board of School Directors to consider the expulsion of appellant on the basis of a charge that he " . . . allegedly molested a female student . . . " at Juneau on May 4, 1982. Hearing was held on the evening of May 18, 1982. T.L. and the principal of Juneau High who had previously investigated the above described incident testified on behalf of the administration. Appellant appeared in person and by his attorney. Save for cross-examination of these two witnesses, appellant offered no evidence in defense to the charge, declined to testify himself, and called no witnesses on his own behalf. Following its deliberations, the Board ordered the expulsion now under review. On the next day, the substance of that order was confirmed in writing in a letter to appellant and his mother.

Additional facts are set forth in the balance of this opinion.

CONCLUSIONS OF LAW

School districts are limited purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied thereby. Iverson v. Union Free High School District, 186 Wis. 342 (1925). The legislature has conferred upon school boards the power to expel students by sec. 120.13(1)(c), Stats. In addition to specifying several alternative grounds for expulsion, that statute goes on to expressly accord students charged with expellable offenses with certain due process rights including notice of hearing, entitlement to counsel, the option to close the hearing to the public, the preservation of a record of the proceedings and written notification of the expulsion order.

In the conduct of expulsion proceedings, lay boards of education are not bound by the technical niceties of the rules of evidence or procedure. Racine Unified School District v. Thompson, 107 Wis. 2d 657, 663-664 (App. 1982). "(T)he process due a student in a disciplinary action is to be determined by balancing the deprivation at stake with the efficiency possible in the hearing and, we believe, the ability of the school board to implement those protective procedures." Racine Unified at page 662. Thus, it has been observed, the State Superintendent's role in an expulsion appeal need entail no more than a review to determine whether or not the skeletal procedures set forth at sec. 120.13(1)(c), Stats., have been followed. Racine Unified at page 667.

The record amply demonstrates that the sec. 120.13(1)(c), Stats., safeguards were accorded appellant. Nevertheless, the gist of his appeal is a contention that due process was denied him in that his counsel was allegedly denied an opportunity to cross-examine T.L. at the hearing. Curiously, this contention is based not upon any direct ruling from the Board nor on any other affirmative effort on its part to limit counsel's questioning of that witness. Indeed, the record reflects that nothing of the sort occurred. Rather, this claim is based upon the presiding board member's failure to rule on an objection raised by the Assistant City Attorney who prosecuted the administration's case.

During the course of her cross-examination of T.L., appellant's attorney pointedly asked the witness if she had consented to participation in the incident. At this point the Assistant City Attorney interposed an objection to the question on materiality grounds, arguing that consent was not an issue in a charge involving alleged "sexual misconduct." Although a brief debate between counsel ensued, the presiding board member never ruled on the Assistant City Attorney's objection. (Transcript page 19.) It is

this failure to make a ruling which appellant contends denied him the right of cross-examination.

This contention cannot be sustained. Assuming arguendo that my review on this point is not precluded by Racine Unified, it is noted that the responsibility to secure a ruling on an objection to the admissibility of evidence rests with the party making the objection. An objection for which no ruling has been made is not simply deemed overruled; rather, it is treated as a nullity and as though the objection had never been raised. The objection is considered waived and the argument advanced in support of it is not preserved for the purposes of further review. See 88 C.J.S. Trial §114. Under the circumstances, the Assistant City Attorney's objection was of no legal significance and in no way precluded appellant from continuing with the cross-examination of T.L. as to consent or any other issue. Indeed, the record reflects the subsequent elicitation of testimony from both witnesses relative to the issue of consent: During recross-examination appellant's counsel questioned T.L. as to her relationship with appellant both before and after the May 4, 1982 incident and their exchange of notes, telephone numbers, and calls. (Transcript pages 23-24.) The only conceivable relevance of this line of questioning would be in relation to the issue of T.L.'s consent or lack thereof. On direct examination, the Juneau High School principal who had investigated the incident testified as to the basis for her conclusion that there had been no consent. (Transcript pages 26-27.)

Appellant further asserts that through raising the objection discussed above, the Assistant City Attorney amended the charge from one of sexual molestation as noticed to simply "sexual misconduct." As appellant properly points out, sexual molestation connotes an act of violence and coercion thereby supplying the element of danger essential to a single transaction expulsion under sec. 120.13(1)(c), Stats., while "sexual misconduct" does

not. However, since the objection and supporting argument stand as a nullity, they could not amount to an amendment of the charge from that duly noticed prior to hearing.

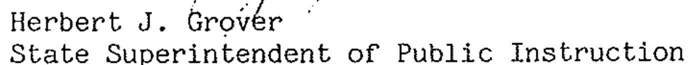
Finally, appellant maintains that he was denied due process by the Board's failure to issue findings of fact and conclusions of law in conjunction with its order that appellant be expelled. Unlike the resolution of contested cases under Chapter 227, Stats., sec. 120.13(1)(c), Stats., contains no requirement that an expulsion order be accompanied by findings of fact and conclusions of law. Lay boards of education are not bound by the provisions of Chapter 227, Stats., and need only abide by the specific procedures set forth in sec. 120.13(1)(c), Stats. Racine Unified. Desirable as findings of fact and conclusions of law may be, I cannot conclude that their articulation is essential to a lawful expulsion under the statutes.

The record amply demonstrates that 15 year old T.L. did not consent to the May 4, 1982 sexual molestation, and I have so found. See also sec. 940.225(4)(a), Stats. I therefore conclude that appellant engaged in conduct at school which endangered the health and safety of T.L. within the meaning of sec. 120.13(1)(c), Stats., and that the interests of Juneau High School demanded his expulsion therefor.

Therefore, the Board is entitled to an order affirming the expulsion of appellant and dismissing this appeal.

BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: So ordered.

Dated and mailed this 10th day of February, 1983.



Herbert J. Grover
State Superintendent of Public Instruction