THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of EARL N[redacted] by the Milwaukee School District, Board of School Directors

DECISION AND ORDER

THE NATURE OF THE ACTION

This is an appeal to the State Superintendent pursuant to sec. 120.13(1)(c), Stats., from the June 2, 1982 decision of the Board of School Directors of the Milwaukee Public Schools expelling the appellant, Earl N[redacted], from the Milwaukee Public Schools. The appeal was filed on August 2, 1982. In accordance with the provisions of Wis. Admin. Code s. PI 1.04(3), this decision is confined to a review of the record of the school board hearing. Both parties were provided with an opportunity to submit written arguments on the merits of this appeal and have done so.

FINDINGS OF FACT

Earl N[redacted], a ninth grade student at Juneau High School in the Milwaukee School District, was expelled by the Milwaukee Board of School Directors for conduct which endangered the health and safety of another student after a hearing held by the Board on June 2, 1982.

The misconduct at issue occurred on May 4, 1982, when appellant and two other male students forced T.L., a fifteen year old female student, into the unoccupied wrestling room at Juneau High School as she was preparing to go to class. While one of the trio stood guard at the door, the second student dragged T.L. across the room, where despite her protestations, he pulled down

her slacks and underwear and attempted to have sexual intercourse with her while appellant watched. Appellant advised the other student to take T.L. to another part of the room where they couldn't be seen from the door. That student and the appellant then took turns attempting to have sexual intercourse with T.L. T.L. testified that the appellant "unzipped his pants and tried to put his penis in me and whispered in my ear." One of the other students held her down when she tried to fend the appellant off. Appellant finally allowed her to leave the room 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.

CONCLUSIONS OF LAW

In his letter of appeal, appellant has proposed several grounds on which he believes the Milwaukee Board of School Directors' expulsion decision should be reversed. They are as follows:

1. That the expulsion was for a sexual assault that never occurred.
2. That the alleged sexual assault was referred to the juvenile court and litigated.
3. That at the hearing in juvenile court, the Assistant District Attorney for Milwaukee County stated on the record that the victim was untruthful and moved that the charge be reduced to disorderly conduct.
4. That based on the police and the District Attorney's investigation, there was no sexual assault.
5. That the School Board's expulsion of Earl N[redacted] was premature and without any factual foundation.
6. That the school board had a duty to properly investigate the allegations against Earl N[redacted] and to discover all of the facts surrounding the allegations made against him.

7. That Earl N[redacted] plead guilty to a disorderly conduct charge only because he felt that looking at the totality of the circumstances, he was technically guilty of acting in a disorderly manner, since the girl that he was accused of sexually assaulting was after him and he was in fact present when she was pursuing other male students in a lewd and lascivious way.

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 (1925). School boards have been granted the authority to expel students in accordance with the provisions of sec. 120.13(1)(c), Stats. In addition to specifying several alternative grounds for expulsion, the statute expressly accords students charged with expellable offenses certain procedural 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, written notification of the expulsion order, and the right to appeal the Board's expulsion decision to the State Superintendent of Public Instruction.

A recent Wisconsin Court of Appeals decision contained the following observation regarding the State Superintendent's scope of review of a school board's expulsion decision.

> While our decision here is founded solely upon an error of law of the state superintendent, we point out, obiter dicta, that the superintendent's review of a board's expulsion hearing would appear to be limited by the statute which created that appeal, namely sec. 120.13(1)(c), Stats. 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. Racine Unified School District v. Thompson, 107 Wis. 2d 657 (1982).

The gist of all seven of appellant's proposed grounds for reversal is that appellant was expelled from the Milwaukee Public Schools for a sexual assault which never occurred. He does not claim that he was denied any of the procedural rights afforded to students pursuant to the provisions of sec. 120.13(1)(c), Stats., or that the misconduct for which he was expelled was not an expellable offense. Accordingly, we find all of the appellant's contentions to be without merit.

Contrary to appellant's assertion on appeal, he was expelled in accordance with the provisions of sec. 120.13(1)(c), Stats., for "conduct . . . which endangered the . . . health or safety of others," not for "sexual assault." Appellant's assertions regarding the proceedings against him in Children's Court and whether he was guilty of "sexual assault" or other criminal conduct are also irrelevant to his expulsion from school in accordance with the provisions of sec. 120.13(1)(c), Stats. In a similar case, the New Jersey Commissioner of Education upheld a student's expulsion for an "atrocious assault and battery" on another student, observing that the "not guilty" verdict previously rendered in criminal court on a criminal charge arising from the same act was based on a different quantum of proof. In the criminal case, the state had to establish guilt beyond a reasonable doubt, while in the school disciplinary proceeding the school need only establish the truth of the charge by a preponderance of the credible evidence. "S.T." v. Board of Education, 1972, N.J. School L. Dec. 555.558. See also Nzuve v. Castleton State College, 335 A.2d 321 (Vermont 1975).

In the present case, there is no doubt that the misconduct with which the appellant was charged (i.e. conduct which endangered the health or safety of another student) actually occurred. Indeed, the testimony regarding the incident

given by the victim and the male students involved is remarkably similar. The testimony differed only in that each of the male students acknowledged what had happened but claimed to be an innocent bystander while the other two students committed the acts in question. Under the circumstances, the evidence is more than sufficient to establish that appellant was guilty of conduct which endangered the health and safety of another student.

IT IS THEREFORE ORDERED that the expulsion of the appellant, Earl N[redacted], from the Milwaukee Public Schools, be and hereby is affirmed.

Dated and mailed this 3RD day of March, 1983.

Herbert J. Grover
State Superintendent of Public Instruction