THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
GLENN P[redacted]

by the School District of Wauwatosa
Board of Education

DECISION
AND
ORDER
86-EX-01

NATURE OF THE APPEAL

This matter is before the State Superintendent pursuant to s.120.13(1)(c), Wis. Stats., on appeal from the January 9, 1986 decision of the School Board (Board) of the School District of Wauwatosa (School District or District) expelling the appellant, a student with exceptional educational needs (EEN), from Wauwatosa West High School until the commencement of the second semester of the 1986-87 school year. The appellant has made no claim of procedural irregularity under Wis. Stat. s.120.13(1)(c); rather, the appellant has claimed violations of both federal and state special education laws as they may relate to the expulsion process. Specifically, the appellant maintains that the Board was without power to expel Glenn because the District did not comply with the procedural requirements of the Education for All Handicapped Children Act (EAHCA), 20 U.S.C. ss.1401 _et seq._, and Chapter 115, Subchapter V, Wis. Stats. (Chapter 115), prior to Glenn's expulsion.

Now, having fully reviewed all matters of record regarding the expulsion process, the State Superintendent makes the following:

FINDINGS OF FACT

Glenn P[redacted] is a high school student who has been diagnosed as being emotionally disturbed (ED) and who, at the time of his expulsion on January 9, 1986, was in attendance at and receiving exceptional educational needs (EEN) services in the Wauwatosa School District. In an order dated January 9, 1986, the Board, after a full due process hearing of the same date determined that 1) on November 27, 1985, Glenn P[redacted] knowingly conveyed or caused to be conveyed a threat or false information concerning an alleged attempt being made or to be made to destroy school property, namely Wauwatosa West High School, by means of explosives; 2) an M-team had been convened to determine whether Glenn's conduct was related to his identified EEN; 3) the Board accepted the M-team's report and conclusion that Glenn's conduct was not related to his identified EEN; and 4) the interest of the School District demands Glenn's expulsion.

CONCLUSIONS OF LAW

School districts are limited purpose municipal corporations and have only those powers which are expressly provided for by statute or are necessarily implied thereby. Iverson v. Union Free High School District, 186 Wis. 342

(1925); also, see generally Elroy-Kendall-Wilton District Schools v. CESA 12, 102 Wis. 2d 274 (Ct. App. 1981). The legislature has given school boards the power to expel students in accordance with Wis. Stat. 120.13(1)(c).

In Racine Unified School District v. Thompson, 107 Wis. 2d 657, 667, 321 N.W.2d 334 (Ct. App. 1982), the Wisconsin Court of Appeals has stated that the State Superintendent's review of a board's expulsion hearing under s.120.13(1)(c), Wis. Stats., is intended to "insure that the school board followed the procedural mandates of subsection (c)." The appellant in this matter, having been and being fully represented by counsel, does not appeal and, therefore, this decision does not address the Board's decision on the basis of the procedural mandates of subsection (c).

Expulsion decisions of the State Superintendent involving EEN students (Decision and Order Nos. 124 and 125, inter alia) have considered and cited a number of federal court decisions in recognizing that handicapped children are afforded certain procedural safeguards under EAHCA and Chapter 115 which must be addressed during the state mandated expulsion process; see specifically, Blue v. New Haven Board of Education, 3 EHLR 552:401 (D.Conn. 1981), Stuart v. Nappi, 443 F.Supp. 1235 (D.Conn. 1978), Doe v. Koger, 480 F.Supp.225 (N.D. Indiana 1979), S-1 v. Turlington, 635 F.2d 342 (5 Cir. 1981), cert. denied 102 S.Ct. 566 (1981), Kaelin v. Grubbs, 4 EHLR 554:115 (6 Cir. 1982). Based upon this case law, the State Superintendent has stated that

> in expulsion proceedings involving EEN students, an additional consideration must be superimposed over . . . sec. 120.13(1)(c), Stats. . . . At a minimum, therefore, in the case of the EEN student, the board must not only consider the student's guilt or innocence of an expellable offense and the broader policy consideration of whether or not the interests of the school demand the student's expulsion, but must further, by referral to and report back from the M-team or comparable professional staffing arrangement, determine whether any causal relationship exists between the misconduct at issue and the student's handicapping condition. . . . (T)he Board has no discretion but to rely upon the judgment of the appropriate staffing as to this issue.

(Decision and Order #85 dated January 6, 1982. Emphasis added.) This language is not to suggest that the full panoply of rights afforded handicapped children under EAHCA and Chapter 115 is reviewable by the State Superintendent under s.120.13(1)(c), Wis. Stats. Nor does it dictate that the M-team or comparable professional staffing, in making its determination of a causal relationship between the student's misconduct and handicapping condition for purposes of possible expulsion under Wis. Stat. s.120.13(1)(c), must comport with all of the procedural requirements of EAHCA and Chapter 115.

It is clear that the board itself is not qualified to make a determination as to the causal relationship between the misconduct at issue and the student's handicapping condition (Decision and Order #85 dated January 6, 1982); hence, the requirement that the school board rely on the re-

port from the M-team or comparable professional staffing. However, in meeting its obligation to a handicapped student during the expulsion process and in relying on the report of the M-team or comparable professional staffing, the school board must ensure that the members of the M-team or comparable professional staffing are qualified to make the causal relationship determination and that the determination was, in fact, clearly made. If the composition of the M-team which is directed to report its finding to the school board is in accordance with federal and state handicapped law, the school board will be assured that a professional staffing has been assembled which is competent to make the determination necessary to report to the board. It would, consequently, be advisable for any school board to follow state and federal special education law to the extent that the law ensures a competent professional staffing.

If the M-team or comparable professional staffing determines that no causal relationship exists between the misconduct at issue and the student's handicapping condition, the board may proceed to expel the student as it would a non-handicapped child.

> It is the purpose of the Handicapped Act . . . to provide handicapped students placement which will guarantee their education despite the student's handicap. It is not the purpose of the Handicapped Act to provide handicapped students placement which will guarantee their education despite the student's will to cause trouble. For an appropriately placed handicapped child, expulsion is just as available as for any other child. Between a handicapped child and

> any other child, the distinction is that, unlike any other disruptive child, before a disruptive handicapped child can be expelled, it must be determined whether the handicap is the cause of the child's propensity to disrupt.

Doe v. Koger, 480 F.Supp. 225 (N.D. Ind. 1979). If the M-team or comparable professional staffing determines that a causal relationship exists between the misconduct at issue and the student's handicapping condition, the board may not proceed to expel the student. Rather, the board must refer the student to an M-team which fully meets the requirements of both federal and state handicapped law, at which time all of the rights afforded handicapped children under EAHCA and Chapter 115 are applicable.

It would seem reasonable for a school board to ask for an M-team or comparable professional staffing report before the board proceeded to an expulsion hearing. If, then, the report indicated that the school board could not proceed to expel such a student, the board would not have gone through an expulsion hearing unnecessarily. On the other hand, a board may prefer to proceed to an expulsion hearing and make its expulsion decision contingent upon a subsequent finding of the M-team or comparable professional staffing that no causal relationship exists between the misconduct at issue and the student's handicapping condition.

> (N)either the rights accorded under the applicable handicapped legislation nor the constraints of procedural due process would appear to dictate any particular order . . . provided that continuity of placement is maintained during the pendency . . .

(Decision and Order #85 dated January 6, 1982.)

Finally, federal case law indicates that it may not be appropriate to cease all educational services to a handicapped student even if the student is expelled. S-1 v. Turlington, 635 F.2d 342, 348 (5 Cir. 1981); Kaelin v. Grubbs, 4 EHLR 554:115, 121 (6 Cir. 1982).

In making its expulsion decision in the case of Glenn P[redacted], the School Board directed an M-team to determine whether Glenn's misconduct was related to his EEN and concluded, based upon the M-team's report, that it was not. As noted, it is incumbent upon a school board to ensure that the members of the M-team or comparable professional staffing are qualified to make the causal relationship determination and that the determination was, in fact, made. The appellant does not, in this appeal, challenge the composition or qualifications of the M-team, and this decision does not, therefore, address that issue. The appellant does, however, argue that there is no basis for the School Board's determination that Glenn P[redacted]'s behavior was not related to his handicap. I agree insofar as the School Board failed to ensure that the causal relationship determination was, in fact, clearly made by the M-team.

The M-team report dated December 4, 1985, concerning the December 3, 1985 M-team meeting (Exhibit #4) states, in part, as follows:

> The question addressed at this meeting was "Should this behavior, which would not be tolerated from a regular education student, be tolerated from this

> student due to the fact that he has an identified EEN and therefore could not be responsible for his behavior?" . . . It is the opinion of the group that Glenn's behavior should not be tolerated simply because he is enrolled in a program for the emotionally disturbed one hour a day. For the greater part of his school day, he is functioning as a regular education student, and should be treated as any other student.

Testimony presented at the expulsion hearing is in accordance with the findings made by the M-team in its report. (T. 20-21, 24-26, 65-66, 68-71). Based upon the M-team report and the testimony presented at the January 9, 1986 expulsion hearing, the School Board concluded that Glenn's conduct was not related to his identified EEN.

In reviewing the M-team report and the testimony presented at the January 9, 1986 expulsion hearing, I find no basis to conclude, as did the Board, that the M-team found that Glenn's conduct was not related to his identified EEN. The M-team concerned itself with whether or not Glenn's behavior should be tolerated, the amount of time Glenn was enrolled in an ED program, and whether Glenn should be treated as a regular education student. These considerations do not lead to, and the M-team did not clearly make, a determination as to whether or not Glenn's behavior was caused by his handicapping condition.

If the Board is not itself qualified to make a determination as to the causal relationship between the misconduct at issue and the student's handicapping condition, the Board must rely on an M-team report in which the causal relation-

ship determination was clearly made by those who are qualified to make it. Since no such causal relationship determination is clearly found either in the December 4, 1985 M-team report or in the testimony presented to the Board, there is no basis to support the School Board's determination in its January 9, 1986 order that the Board accepted the M-team's report and conclusion that Glenn's conduct was not related to his identified EEN.

For this reason, the expulsion order of the Wauwatosa School District concerning Glenn P[redacted] dated January 9, 1986 must be reversed pending a finding of the M-team or comparable professional staffing that no causal relationship exists between the misconduct at issue and the student's handicapping condition and a further adoption by the Board of such a finding, if one is made. Continuity of Glenn's placement in the Wauwatosa School District special education program is to be maintained during the pendency of such action.

This decision and order is limited to the State Superintendent's review authority under s.120.13(1)(c), Wis. Stats., and nothing stated herein is intended to diminish or deny any rights accorded the appellant under EAHCA and Chapter 115 or other applicable laws.

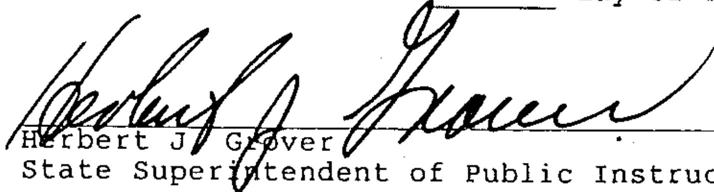
Furthermore, this opinion is not intended to condone or minimize the seriousness of the behaviors which were the subject of Glenn P[redacted]'s expulsion hearing, nor to dissuade the School District of Wauwatosa from taking re-

sponsible action to protect its students and staff through appropriate disciplinary measures against those students who would threaten the educational environment.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Glenn P by the Wauwatosa School District Board of Education be and is hereby reversed and remanded to the Board for proceedings not inconsistent with this opinion.

Dated and mailed this 24th day of February, 1986.



Herbert J. Grover
State Superintendent of Public Instruction