

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

NATHAN N [REDACTED]

by the Hudson School District  
Board of Education

DECISION  
AND  
ORDER  
89-EX-04

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to s. 120.13(1)(c), Wis. Stats., from the order of the Hudson School District Board of Education to expel Nathan N [REDACTED] from school for the remainder of the 1988-89 school year, effective March 13, 1989. This appeal was received by the Department of Public Instruction on April 6, 1989. In accordance with the provisions of PI 1.04(5), Wis. Adm. Code, this decision is confined to a review of the record of the school board hearing and the procedural standards required by s. 120.13(1)(c), Wis. Stats.

FINDINGS OF FACT

1. On March 8, 1989, Mr. and Mrs. Roger N [REDACTED] (Nathan's grandparents) and Nathan were each personally given a Notice of Expulsion Hearing which advised them that the Hudson School District Board of Education planned to

hold an expulsion hearing concerning Nathan on March 13, 1989, at 5:30 p.m. The notice stated that Nathan was being considered for expulsion because it was alleged that on March 7, 1989, he assaulted and physically injured a teacher.

2. Nathan's grandparents were given the notice because the school records indicated that Nathan was living with his grandparents, and the district had no information about Nathan's parents.
3. On March 9, 1989, after learning that Nathan's mother, Ms. Cyndee P█████, also lived in the Hudson area, the school district personally delivered to Ms. P█████ a copy of the Notice of Expulsion Hearing which had already been delivered to Nathan and his grandparents.
4. The notices given to Nathan and his grandparents were delivered five days before the hearing, described the specific allegations being made, stated the time and place of the hearing, explained that expulsion was being considered, advised them that Nathan was entitled to be represented by counsel and advised them that the hearing would be closed unless they requested an open hearing. A copy of s. 120.13(1)(c), Wis. Stats., was enclosed.

5. The notice given Ms. P████, Nathan's mother, included all the information noted above, except that it was delivered to Ms. P████ four days before the hearing.
6. On March 13, 1989, the expulsion hearing was held in closed session before the Hudson School District Board of Education. Nathan, his mother and his grandparents were present at the hearing, and Nathan was represented by counsel.
7. Nathan's attorney objected to the proceedings on the grounds that Nathan's mother had not been given sufficient notice of the hearing. The attorney also stipulated that the assault occurred, that the board had grounds for expelling Nathan, and that Nathan should not be in the school setting.
8. School district officials recommended that Nathan be expelled for the remainder of the 1988-89 school year, and that the board consider allowing Nathan to complete the 9th grade through a home-bound education program and by taking courses in summer school, so that he could be enrolled as a sophomore in the fall of 1989.
9. The board also heard from Nathan and his attorney about the alternative education programs they wanted the board to consider if they decided to expel Nathan.

10. Testimony provided by Nathan's attorney and the school district's attorney indicated that although Nathan's grandparents were not his "legal guardians," the only forms the school had indicated that Nathan was living with his grandparents. There is no evidence that the school district was aware that Ms. P████ was Nathan's mother or that she had legal custody of Nathan at the time the district sent out the notice of expulsion hearing.
11. After hearing the testimony of Nathan, his attorney, and the school district officials, the board found that by assaulting and inflicting physical injury on a teacher, Nathan had engaged in conduct while at school which endangered the health and safety of others. The board also found that the interest of the school demanded Nathan's expulsion, and ordered that Nathan be expelled from school until the beginning of the 1989-90 school year, subject to completion by Nathan, at his option, of the third quarter of the 1988-89 school year on a home-study basis.
12. A copy of the written findings and order was sent to Nathan, his mother, and his grandparents on March 23, 1989.

## 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 School District, 186 Wis. 342, 353 (1925). A school board's power to expel students derives from s. 120.13(1)(c), Wis. Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which must be followed in the expulsion process. Concerning the grounds for expulsion, the statute states in relevant part,

The school board may expel a pupil from school whenever it . . . finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others . . . and is satisfied that the interest of the school demands the pupil's expulsion.

Section 120.13(1)(c), Wis. Stats.

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 by the language of s. 120.13(1)(c), Wis. Stats. 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." It is, therefore, incumbent upon the state superintendent in re-

viewing an expulsion decision to ensure that the required statutory procedures were followed and that the board's decision is based upon one of the established statutory grounds.

In his appeal, Nathan and his attorney raise two issues. First, they allege that Nathan's mother did not receive sufficient notice of the expulsion hearing. Second, they challenge the board's refusal to provide them with copies of the curricula being used in Nathan's classes for the fourth quarter of this school year.

Section 120.13(1)(c), Wis. Stats., provides that, "Not less than 5 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. . . ."

It is clear that five days' notice of the hearing was not sent to Nathan's "parent," i.e., his mother. However, five days' notice of the hearing was sent to Nathan's grandparents. Therefore, the issue is whether the school district complied with the requirement to notify the "pupil's parent or guardian," by sending the notice to Nathan's grandparents.

Nathan's attorney contends that the notice of hearing given to Nathan's grandparents does not comply with the law, since the grandparents had not been formally appointed by a court to be Nathan's guardians.

The term "guardian" is not defined in Chapter 120, Wis. Stats., nor in any of the other statutes which relate to

school law (i.e., Chapters 115-121, Wis. Stats.). Although the term "guardian" is defined in Chapters 48 and 880, Wis. Stats., (see ss. 48.02(8) and 880.01(3), Wis. Stats.), those definitions apply only to those particular chapters. It does not necessarily follow that those definitions apply to Chapter 120, Wis. Stats. See Town of Lafayette v. City of Chippewa Falls, 70 Wis. 2d 610, 619 (1975).

In this case, the school district's attorney testified that the only forms the school district had on file on March 8, 1989, indicated that Nathan was living with his grandparents and that the district did not know the name or whereabouts of either of Nathan's parents. This testimony was not rebutted by Nathan, his attorney, or his mother.

Based on the information in this record, I find that Nathan's grandparents were his "de facto" guardians for school expulsion purposes. Since the school district had no information about the identity or whereabouts of Nathan's parents, it was reasonable for the district to rely upon the information provided by Nathan's grandparents and to presume the grandparents were Nathan's guardians. I do not interpret s. 120.13(1)(c), Wis. Stats., to mean that a person must be a court-appointed guardian in order to receive notice under this section. Accordingly, I conclude that under the facts of this case, the notice sent to Nathan's grandparents on March 8, 1989, met the requirements of the statute to notify the pupil's "parent or guardian."

If a child is not living with his or her natural parents, then it is the parents' obligation to let the school district know what the child's living situation is and who has legal custody or guardianship of the child. In this case the school district did provide timely notice to the people it reasonably believed were Nathan's guardians, and acted promptly to notify Nathan's mother as soon as her identity was known. The school district should not be penalized for not notifying Nathan's mother when the district had no notice of the mother's name or address, or of the fact that she had legal custody of Nathan.

Nathan and his attorney also question whether under the open records law the school district may refuse to give them copies of the curricula being used by Nathan's teachers in his fourth quarter classes.

As state superintendent, I do not have authority to enforce the open records law, therefore I do not believe it would be appropriate for me to comment on this issue. I encourage Nathan and his attorney and the school district to try to resolve this matter on their own. If that is not possible, then other remedies are available under s. 19.37, Wis. Stats.



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 complied with all of the procedural requirements of s. 120.13(1)(c), Wis. Stats., and that the board's decision was properly based on established statutory grounds.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Nathan N [REDACTED] by the Hudson School District is hereby affirmed.

Dated and mailed this 5<sup>th</sup> day of June, 1989.

*Herbert J. Grover* *by RW*

Herbert J. Grover  
State Superintendent of Public Instruction