

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion

MICHAEL P. D [REDACTED]

DECISION
AND
ORDER
90-EX-07

by the Kenosha Unified School
District Board of Education

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 Kenosha Unified School District Board of Education to expel Michael P. D [REDACTED] from the schools of the Kenosha Unified School District from June 25, 1990, until the end of the summer school session in 1991. This appeal was filed by Sue A. D [REDACTED], Michael's mother, and was received by the Department of Public Instruction on August 7, 1990.

In accordance with the provisions of s. PI 1.04(5), Wis. Adm. Code, this decision is confined to a review of the record of the school board hearing. The state superintendent's review authority is specified in s. 120.13(1)(c), Wis. Stats. The state superintendent's role is to ensure that the required statutory procedures were followed, that the board's decision was based upon one of the established statutory grounds, and that the board was

satisfied that the interest of the school demanded that the student be expelled.

FINDINGS OF FACT

On June 12, 1990, Sue [REDACTED] and Michael D [REDACTED] were each served with a notice of hearing regarding the possible expulsion of Michael from school by the Kenosha Unified School District. The hearing notice stated that a hearing would be held on June 21, 1990, at 7 p.m. in the School Board Office Building, 3600 52nd Street, Kenosha, for the purpose of determining whether Michael should be expelled from school. The notice included a complete copy of s. 120.13(1)(c), Wis. Stats.

The notice alleged that Michael had endangered the safety of others while at school and that he repeatedly violated rules of good conduct. Specific examples of Michael's conduct underlying the allegations were outlined in the notice.

The school board had a transcript of the hearing made as the record of the hearing and kept written minutes of the Executive Session of the Kenosha Unified School Board during which the decision to expel Michael was made.

Two of Michael's teachers, the Dean of Students, the Assistant Principal and the Principal of Michael's junior high testified at the hearing corroborating the allegations against Michael. Testimony was received regarding Michael's repeated violation of school rules for conduct while in

class and in the school building and regarding Michael's conduct in school which endangered the health and safety of other students.

The Kenosha Unified School District decided to expel Michael in Executive Session following the hearing. The decision was based on the testimony presented at the hearing.

A Notice of Expulsion dated June 25, 1990, was mailed to Sue D [REDACTED] and to Michael. The Notice of Expulsion stated that Michael was expelled immediately and until the end of the summer school session in 1991. The notice stated that the expulsion was being ordered because the Board found that Michael repeatedly violated School Board rules relating to conduct while in class and in the school building and that he had acted in school in a manner that endangered the health and safety of other students. The Board also stated in the notice that it had determined that the best interests of the School District demanded the expulsion of Michael D [REDACTED] from the Kenosha Unified School District.

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. 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 spe-

cific procedures which 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 by the language of s. 120.13(1)(c), Wis. Stats. In Racine Unified School District v. Thompson, the Court of Appeals in dicta stated that "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 reviewing 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, and that the board is satisfied that the interest of the school demands the pupil's expulsion.

Ms. D [REDACTED] appeals to me to overturn the Board's decision based on factors related to her belief that her son should have been classified as a special education student. She believes that if he had received specialized instruction and services he would not have the discipline problems he has. She, therefore, believes that Michael's expulsion was unjustified and asks me to put him back in school.

While I have great respect and sympathy for Ms. D [REDACTED]'s position, I am unable to address the issues she raises in this appeal. My authority in an expulsion appeal is limited to reviewing the procedures of the expulsion

process itself. Ms. D. [REDACTED] is in essence challenging the district's application of special education law. That challenge is beyond what I may legally do in this appeal.

Ms. [REDACTED] should know that she may request a multi-disciplinary team evaluation for Michael even though he is expelled. If she disagrees with the finding of the M-team she may request a due process hearing to challenge that decision using the laws governing special education. Ms. D. [REDACTED] may also request an independent evaluation of her son if she disagrees with the school district's evaluation. The independent evaluation would be at school district expense if the conditions in s. PI 11.08, Wis. Adm. Code, are met. She should feel free to call upon the school district staff or my staff for assistance in understanding Michael's rights under special education law.

In reviewing the record in this case I found that the Kenosha Unified School District complied with all of the requirements for a proper expulsion. I will, therefore, affirm its decision.

CONCLUSIONS OF LAW

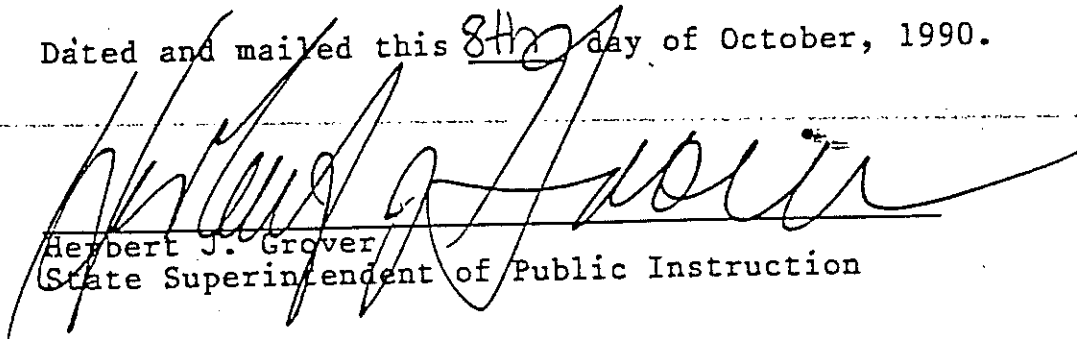
Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements of s. 120.13(1)(c), Wis. Stats., that the board's decision was properly based on established statutory grounds and that the

board found that the interest of the school demanded that the student be expelled.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Michael P. D. [REDACTED] by the Kenosha Unified School District Board of Education is affirmed.

Dated and mailed this 8th day of October, 1990.


Herbert J. Grover
State Superintendent of Public Instruction