THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion

PATRICK LEE Y[redacted]

by the Kenosha Unified School District No. 1 Board of Education

DECISION AND ORDER 91-EX-08

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction from the June 24, 1991 order of the Kenosha Unified School District No. 1 Board of Education expelling Patrick from attendance at any school in the district until the end of the 1991-1992 school year. The appeal was filed by Patrick's mother, Gloria Y[redacted], and was received by the Department of Public Instruction on August 8, 1991.

The state superintendent's review authority under sec. 120.13(1)(c), Wis. Stats, is to ensure that the required constitutional and statutory procedures were followed, that the board's decision was based upon one of the established grounds, and that the board was satisfied that the interest of the school demanded that the student be expelled.

FINDINGS OF FACT

On June 7, 1991, Superintendent of Schools for the Kenosha School District sent separate letters to Patrick Lee Y[redacted] and to his parent, Gloria Y[redacted], advising them that the Kenosha School District Board of Education (hereafter "school board") would be holding a hearing on June 18, 1991, on whether to expel Patrick from school. The notice stated that the school board's determination would be based on consideration of evidence related to matters specified in an attachment to the notice, Exhibit "A."

Exhibit "A" states that on April 22, 1991, Patrick, along with several other high school and junior high school students, attacked two Lincoln Junior High School students "who were on their way to school." It alleges that after a number of students (who Patrick was accompanying) attacked a Lincoln student, Patrick hit another Lincoln student who had intervened on behalf of his friend. The exhibit states that Patrick hit the boy from behind on the side of the face, with a forceful blow which knocked him to the ground and caused significant injuries. It also indicates that the incident occurred at a location "immediately west of Lincoln Junior High School in Lincoln Park" shortly before school was to begin.

The notice appears to invoke the fourth of four grounds available for student expulsion under the statute, that ". . . Patrick Y[redacted] endangered the safety of another student who was under the supervision of school authority." The notice fur-

ther contained the names of students who had provided statements to school authorities. The notice was sent within the time period required by statute. It advised that the student and parent may be represented by an attorney at the hearing, and of the right to present evidence in behalf of the student and to contradict by cross examination or other means the evidence presented by school administration. It also advised that Patrick "need not make any statements which would be inculpatory, and he may remain silent if he so desires." The notice stated that the hearing will be closed to the public unless there is a request for an open hearing.

At the hearing Patrick and his mother appeared without counsel. Mr. Martinez, principal of Lincoln Junior High School, testified that on April 22, 1991 at about 8:08 in the morning, an incident occurred in an area not on the school grounds but across the street at Lincoln Park. Questioning at the hearing between Mr. Martinez and the school board attorney concerning the location of the incident, was as follows:

> Q: "Now you are talking about this area. This is not on the school grounds as such. It is across the street at Lincoln Park."
>
> A: "Right across the street."
>
> Q: "But because of the fact Lincoln Junior High School is situated with public property immediately to the west and [sic] a campus, so to speak of, you do supervise in this area?"
>
> A: "Yes, we do. We also use the area for physical education and other events, extracurricular activity events." (Transcript, pp. 6-7.)

Mr. Martinez went on to testify that unknown to administrators at the time, some of the students who were playing basketball attacked two students coming from a bridge. From his investigation, it appeared that the students who were playing basketball attacked two other students -- one group attacked and beat up one student and another "set" beat up another student, then proceeded to come to school.

Mr. Martinez stated his investigation began when he received a phone call from a parent informing him that her son was beaten up and she was taking him to the hospital. A police officer came to the school and took five students to the police station. The next day, with police cooperation, a number of students, black, white and Hispanic, were assembled and after many said they were not involved, the school authorities and police held a joint meeting with the students where the officials "got them (the students) involved" and "laid out expectations." (Tr. p. 8.) The officials then had students individually, some with parents present, write statements if they witnessed anything with regard to the April 22 incident.

Based on those statements, Police Officer Rogge and Principal Martinez began interviewing students. Mr. Martinez related that a number of students repeatedly stated that Patrick had struck the second student. Mr. Martinez further indicated that Patrick's blow required the second student to have stitches to his mouth and lip and loosened teeth. It appeared the principal had copies of the written student statements and was reviewing them as he testified. (Tr. p. 10.) No copies were placed in the

record. The record does not show copies were furnished to the pupil or parent. Neither asked for copies. The principal also stated that Patrick was not involved in causing injury to the first student attacked. Mr. Martinez, in answer to a question as to whether he had talked to Patrick so he could get an explanation of what happened, stated "No."

Mr. Martinez answered affirmatively to some additional questions about whether the school supervises the area of Lincoln Park where the altercation occurred.

The principal of Tremper High School, Dr. Chester Pulaski, also testified. In answer to a hypothetical question based in part on the assumption that the junior high "to some extent must extends (sic) its jurisdiction outside of the actual school property line because of the nature of its location," he gave his opinion that although Patrick had not been a discipline problem, he would recommend "a period of expulsion." (Tr. p. 19.)

Although the junior high principal, Mr. Martinez, had not questioned Patrick about the incident, apparently Dr. Pulaski had since in response to a question by Chairman Nieman he indicated that when the incident occurred Patrick should have been at Tremper for 45 minutes, and Patrick's explanation had been that he missed the city bus. (Tr. p. 21-22.) The distance between the two schools was estimated at at least two miles.

At the conclusion of the administration's case, the following exchange occurred concerning Patrick's right to testify:

> MR. NEIMAN: With that, it is your turn to present witnesses or testify on your own behalf. If either of you would like to be

sworn to testify, that will be now done. Otherwise, we will move on to closing statements.

PATRICK Y.: Move on.

MR. NEIMAN: Ms. Y.?

GLORIA Y.: I don't have any, but the kid's going to tell the truth.

MR. NEIMAN: Mr. Wokwicz, we have a request to inquire as to whether the student would choose to answer questions not being under oath or under oath. But it would still have to be his choice.

MR. WOKWICZ: He does not have to answer any questions or testify in any way. That's been--especially if there is something which in any way could have any other type of juvenile or criminal aspects to it. He cannot be forced to testify. If there is anything he would say, it would be admissions against interest if he said something, but if that is explained to him and if he wants to explain, I see no reason for the board not to get what are the facts in this matter.

MR. NEIMAN: Before we move on, Mr. Metallo?

MR. METALLO: With that in mind, I do have a question or two I would like to ask Patrick.

Patrick, as has been stated, you do not have to answer, but would you consider being sworn in so that we may ask you some questions?

PATRICK Y.: No.

MR. METALLO: That is his choice. . . .

In his closing statement, the attorney for the school board, among other things, argued:

All I can say is that Lincoln Junior High School does have to watch out for what is happening in Lincoln Park and in that immediate vicinity. It has become part of the

school's jurisdiction whether we like it or not.

When Ms. Y[redacted] and Patrick were asked whether either wished to make a closing statement, Ms. Y[redacted] stated:

> I don't have no statements. This is my first time coming through this. I don't have an education. I am not understanding half of this stuff you all say. But if you all want to take that from him, that is all I got to say. (Tr. p. 25.)

In its expulsion order, the school board found that Patrick, "On April 22, 1991, in the vicinity of Lincoln Junior High School, while students were going into school and under the supervision of Lincoln Junior High school personnel, did strike a Lincoln Junior High School student causing physical injury." The board further found that the interests of the district demanded Patrick's expulsion from school.

Ms. Y[redacted] has appealed the expulsion of her son, stating "I feel that the Kenosha Unified School District made the wrong decision to expel my son and in doing so set him up for possible failures in his future." She points to two specific concerns as the basis for her appeal: (1) The action taken by the school was not fair to all students involved in the altercation, and singled out African-American students as the only recipients of discipline even though white Americans admitted to entering into the attack. Of those disciplined, her son was the only one who received an expulsion. She in part contradicted the testimony of Dr. Pulaski by stating ". . . This is difficult for me to understand as the High School my son attends did not advocate for an

expulsion, but chose to suspend him for three days, which is understandable. Lincoln Junior High School advocated for the expulsion of my son, but did not advocate for the expulsion of any of the students who attended Lincoln Junior High School." (2) The school district did not, she alleges, take into account the behavioral and academic progress that Patrick has made. Ms. Y[redacted] complains that "the length of time that the school expelled him for will not only destroy the positive gains he has made but also create a feeling of hopelessness and despair."

DISCUSSION

A school board's power to expel students derives from sec. 120.13(1)(c), Wis. Stats., which sets forth specific grounds for expulsion and procedures which must be followed in the expulsion process. In reviewing the record of this expulsion, I find that the board did not have before it sufficient evidence of one of the statutory elements necessary for proof of a valid expulsion.

In both its Notice of Hearing and Notice of Expulsion, the board relies on the statutory ground of pupil misconduct occurring outside of school which endangers the safety of others under the supervision of school authority. The specific statutory reference is:

120.13(1)(c). "The school board may expel a pupil from school whenever it . . . finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority . . . ."

The district does not maintain the incident occurred "at school" but rather insists the record shows the students were "under the supervision of a school authority."

The general notion of supervision in the law is an extremely broad one and arises in many different situations. The board has not suggested any specific legal analogs for interpreting the meaning of the word "supervision" in sec. 120.13(1)(c), Wis. Stats. It has not cited any cases on this point.

The department has reviewed several areas of the law, and not found any particularly helpful. These include old insurance coverage cases, see Schmidt v. American Mutual Accident Ass'n, 96 Wis. 304, 309, 71 N.W. 601 (1897), and Peterson v. Time & Indem. Co., 152 Wis. 562, 564, 140 N.W. 286 (1913). Worker's compensation and unemployment compensation cases focus generally upon the concept of "control over the details of work." See Princess House, Inc. v. DILHR, 111 Wis. 2d 46, 330 N.W.2d 169 (1983) and cases cited therein. These lines of inquiry do not seem to be particularly helpful in this context.

The municipal tort liability negligent supervision cases employ the concepts of agency and negligence or conduct within the scope of employment. The department has been unable to locate a case

sufficiently close to the facts in this expulsion matter to be helpful.

Similarly, the state superintendent has not formally addressed the supervision issue presented in this case in prior expulsion decision. I want to take this opportunity to point out that this same board in another recent case, In the Matter of Antonio M., 91-EX-02, Decision and Order No. 176 (4/18/91), sought to rely on misconduct of the student that occurred "in the immediate vicinity of the school . . . behind the Dairy Queen on the south side of the school . . . ." The notice to the pupil in that case stated that that incident occurred "immediately off school property." Many other on-school property incidents were involved, as well as a subject matter jurisdictional issue related to notice, which made it unnecessary to comment further about the location of the incident. (Although another recent expulsion case mentioned the supervision provision in sec. 120.13(1)(c), Wis. Stats., in dicta , it merely noted the board's failure to specify the ground upon which the board was relying in both its notice and the evidence. In the Matter of the Expulsion of John K., 91-EX-03, Decision and Order No. 178 (5/17/91).)

Under these circumstances, it is appropriate to refer to common dictionary definitions. In Webster's Ninth New Collegiate Dictionary, the word "supervision" is defined:

> The action, process or occupation of supervising; esp: a critical watching and directing (as of activities or a course of action).

This definition appears limited to actual supervision. Applying it I must conclude that no critical watching or directing occurred here.

The board did not receive adequate evidence to establish that the student who Patrick allegedly endangered was "under the supervision" of school authorities. I find nothing in the record to show that students who were present in the park on the morning of April 22, 1991 were under the actual supervision of school personnel. The expulsion hearing transcript refers only to general statements that at various times school officials supervise the area in Lincoln Park. The junior high school principal answered affirmatively to questions about whether the school supervises the area, and stated they also use it for physical education and extracurricular events. (Tr. pp. 6, 7, 12.)

Not only is it clear that there was no actual supervision of the park at the time of the incident, but school authorities remained ignorant of the episode until someone apparently contacted a parent of an injured child, and that parent called the junior high principal to say she was taking her child to the hospital.

There is reference to Mr. Brandt coming in from his position "in front of the building" and the principal "greeting the students because they normally come in through the library entrance." Even assuming that visual observation legally constitutes "supervision," there is no evidence the park or the area where the incident occurred was visible before, during or after the incident by either school employee. Rather the evidence is

that the park area is at times used for extracurricular activities, "for physical education and other events" (Tr. pp. 6-7). Presumably, the area is actively supervised during such use.

In an attempt to give the school board an additional opportunity to address the supervision question, the department directed a letter to the school board's attorney with respect to the type of proof that might be called for to show a school exercises supervisory jurisdiction over a park across the street, on both practical and legal bases. On the practical side, in statements provided by the school board's attorney, it was mentioned that:

> . . . The students would know that the basketball area and the bridge are only a short distance from the school building and would be well within Mr. Brandt's view.
>
> * * *
>
> The descriptions given of the areas involved would place the area of attack very close to school property the school building itself.
>
> * * *
>
> Dr. Martinez states that Mr. Brandt, who would have usually been on the corner of 18th and 68th (public property), was on the day of attack, however, not in his usual position but was on the front stairs of the building and came inside when the bell rang. There is certainly sufficient evidence to show supervision in an area well known to the participants at the hearing. (Emphasis added.)

The test is not what should happen or what might happen in terms of supervision, nor what students know or should know, but what an initial fact finder and an independent reviewer can know from

the record about the existence of supervision at the time and location in question.

This record does not put an independent reviewer, totally unfamiliar with the location of this school, its entrances, and its relationship to the park, in a position to judge sufficiently the adequacy of the proof. Whether the students "would know" or the board members hearing the case find the "area well-known" to them, is not adequate for purposes of the state superintendent's review. The transcript shows that the park was "immediately to the west" of Lincoln Junior High School (Tr. p. 6), that the park was "across the street," that Mr. Brandt "was in front of the building," and that certain of the incidents took place near "the big bridge," apparently in the park. The record does not reveal whether the front door of the building faces east or west or even north or south. It does not reveal the relationship of the corner of 18th and 68th to the school or the park. The record is unclear as to where the "library entrance" through which some students normally enter is. The record does show, however, that the children involved in the park incident were not under any actual supervision by school authorities at the time of the altercation.

With respect to constructive supervision, the school board's attorney was asked whether there was any proof of a pre-existing written agreement between the school district and the city, or the city police and fire departments regarding the use of the park or liability with respect to students using the park, whether the school's insurance covered accidents involving school

children in the park and whether teachers were paid to supervise students in the park or were assigned playground duty in the park.

The attorney responded that he knew of no written agreements between the district and the city or its police and fire departments concerning liability in the park. However, he was sure the police and fire departments "concern themselves" with the park, school grounds and school buildings just as the school district "is concerned" with the safety of children in such public areas as the streets, sidewalks and parks immediately adjacent to the schools. Significantly, he indicated he believed school insurance covers

> ". . . our employees whenever they are supervising school children, including on supervised field trips, while busses are being loaded even though they are on public streets, etc. There would always be questions of fact to establish the actual supervision being given or required in a particular situation." (Emphasis added.)

In answer to a leading question that the school supervises the area of Lincoln Park quite closely, Mr. Martinez responded, "Regularly." (Tr. p. 12). This is insufficient. There is no evidence of daily active supervision of the park by school authorities immediately before and after the school day. Nor is there any evidence of a school policy providing for such supervision. Further, there was no evidence of past practice of school officials having in any way disciplined other students for activities before or after school in the park.

Under sec. 120.13(1), Wis. Stats., the board may promulgate and adopt rules and regulations, not inconsistent with state statutes, "pertaining to conduct . . . in order to maintain good decorum . . . ." Assuming the board could validly adopt a rule proclaiming it will enforce school rules in the park, there is no evidence of such a rule, nor any disciplinary rules in this record. Compare Bunger v. Iowa High School Athletic Assn., 197 N.W.2d 555, 559-564 (Iowa 1972).

Therefore, the ultimate conclusion I must draw, based upon this record, is that the children who were endangered were not under the actual supervision of school authorities when the misconduct occurred. Further, the evidence does not support a conclusion that they were under some form of "constructive" supervision sufficient to bring the matter within the parameters of sec. 120.13(1)(a), Wis. Stats. Because of the board's failure to establish that the pupil's conduct fell within one of the statutory grounds for expulsion, I must reverse its order expelling Patrick.

I find it important, however, to also address several additional points. The most important of these is the admonition given by the board's attorney to the pupil concerning his right to testify.

The department gave further opportunity for the attorney for the school board to address this issue and in addition solicited written opinions on this question to the Wisconsin Association for School Boards (the Association) and the Wisconsin Civil Liberties Union. The department received responses from the attor-

ney for the school board and from the Association, but press of time did not permit the civil liberties union to respond on the merits of the question.

The record shows that the school board attorney advised the student that his statements, if he chose to testify, might be used against him in future juvenile delinquency or adult criminal proceedings. The department's concern was that this admonition may have had a chilling effect upon the student's decision not to testify, and that it may have inadvertently encouraged the silence of the pupil.

The Association's first point is that any inquiry with respect to this point is irrelevant because the pro se pupil has not raised it and therefore, inferentially, the issue has been waived. The Association states it finds no authority that supports the notion that the DPI should determine in its review whether or not the Fifth Amendment privilege falls under the procedural aspects of the statute or raises a more substantive matter. It appears the Association suggests our review is limited strictly to procedural matters set out in sec. 120.13, Wis. Stats.

However, sec. 120.13(1), Wis. Stats., while outlining a series of important procedural rights, is not fully comprehensive of all pupil rights in expulsion cases. For example, it states that a pupil has a right to a hearing upon request, and a right to a lawyer. It does not discuss ability to present witnesses, the ability to testify or refrain from testifying, the right to cross examine, the right to avoid coerced self-incrimination,

etc. These critical and venerated constitutional rights, some of which have been held to apply by the U.S. Supreme Court, Goss v. Lopez, 419 U.S. 565 (1975), and others by other federal courts, go unmentioned in the statute. This obviously cannot mean that they do not apply to expulsions in this state. They clearly do apply. See In the Matter of the Expulsion of Michaelene J., 89-EX-02, Decision and Order No. 161 (5/19/89).

Constitutional rights, of course, can be waived, but any such waiver must be "knowing and intelligent," Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.E. 1451 (1938). The Association seems to suggest that if a school board violates an important constitutional right of an unrepresented pupil, and the pupil or parent do not object, the constitutional error is waived.

It is not a novel legal principle that courts must give pro se petitioners' pleadings liberal construction and a great deal of leeway in interpretation as to whether they state a cause of action. State ex rel. Terry v. Treger, 60 Wis. 2d 490, 496, 211 N.W.2d 4 (1973). The Supreme Court has gone on to point out that liberal construction policies are applied not solely in prisoner pro se cases, but even in general municipal civil cases. State ex rel. Furlong v. Waukesha County Court, 47 Wis. 2d 515, 522, 177 N.W.2d 333 (1970) and Beane v. City of Sturgeon Bay, 112 Wis. 2d 609, 334 N.W.2d 235 (1983), as cited in Amek Bin-Rilla v. Israel, 113 Wis. 2d 514, 335 N.W.2d 384, 388 (1983).

The state superintendent believes that a similar interpretation should apply with respect to possible constitutional errors

in the conduct of board expulsion proceedings involving pro se pupils. This is hardly a departure from established law. Even in the context of a fully adversarial criminal proceeding, with attorneys on both sides, reviewing courts may formally notice critical prejudicial error which was not objected to by trial counsel. This is generally applicable statutory law, sec. 901.03(1)(a), Stats. A fortiori, if a judicial reviewing body can notice a plain error not objected to by trial counsel in a fully adversarial criminal trial, McClelland v. State, 84 Wis. 2d 145, 267 N.W.2d 843, 851 (1978), this agency can certainly notice such constitutional error in a pro se pupil expulsion case.

The Association also states:

> It is dangerous to suggest that expulsion hearings be held to the same standards of evidence and procedural criminal and civil court proceedings when there is much well settled authority that states otherwise. [Boykins v. Fairfield Board of Ed., 420 U.S. 962 (1975).] We find no case law to support taking you into the arena suggested by your letter.

In Boykins v. Fairfield Board of Ed., 492 F.2d 697 (5th Cir. 1974), the 5th Circuit affirmed the expulsions of nine black students who allegedly had become leaders in a school boycott that arose out of very hotly contested desegregation orders and conflict in the Fairfield School District going back to 1966. The 5th Circuit refused to grant "universal confrontation and cross-examination of witnesses" or the right to appointed counsel in expulsion cases. The U.S. Supreme Court denied certiorari in that case without offering an opinion. Less than a year after the 5th Circuit opinion, however, the U.S. Supreme Court in Goss

v. Lopez, 419 U.S. 565 (1975), extended limited due process hearing rights in "short" pupil suspension cases of up to 10 days. Under Goss, supra, notice and opportunity for hearing apply in all short suspension cases. The court, at the conclusion of the opinion, suggested more rights may apply in expulsion cases such as the rights of cross examination, presentation of witnesses in one's own behalf, and the right to counsel (not appointed).

Trial courts have the power, though rarely exercised, not only to be so actively involved as to examine witnesses, but also to call them on their own motion. Judge Learned Hand in stating this went on:

> A judge is more than a moderator; he is charged to see that the law is properly administered, and it is a duty which he cannot discharge by remaining inert.

U.S. v. Marzano, 149 F.2d 923, 925 (2nd Cir. 1945), as quoted in State v. Nutley, 24 Wis. 2d 527, 562, 129 N.W.2d 155 (1964).

> While the court cannot function as a partisan, it may take necessary steps to aid in the discovery of truth.

Nutley, supra, at 562. Also see Lemerond v. State, 44 Wis. 2d 158, 164, 170 N.W.2d 700 (1969). Also see U.S. v. Liddy, 409 F.2d 428, 438-442 (D.C. Cir. 1974), cert. denied, 420 U.S. 911.

In my general quasi-judicial review function I must be satisfied the proceedings were fair to both sides. To require me to stand aside in the face of a constitutional error would be a violation of my responsibilities under the statute.

The Association also suggests that it would be error only if a school district "had a rule that required the student to testify . . . and that failure to do so would result in automatic expulsion." I do not agree. While this may be the general proposition applicable in defenses in section 1983 constitutional tort litigation, Monell v. N.Y. City Dept. of Soc. Serv., 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611, 635 (1978), it has little bearing in the area of proof of statutory elements or possible violation of pupil due process rights in expulsion cases. A one-time individual circumstance of chilling effect to exercise a recognized due process right to testify, in my view, is sufficient to raise the possibility of prejudicial error.

However, both the attorney for the school board and the Association argue that the record is clear that the pupil in this case made the decision not to testify BEFORE the critical admonition was given. I agree. For this reason, I conclude that the otherwise potentially chilling admonition given by the board attorney could not have been prejudicial in this case.

The department had asked the parties and others mentioned above to comment on possible applicability of the exclusionary rule developed in Oddsen v. Board of Fire and Police Commissioners, 108 Wis. 2d 143 (1982), in the context of the school board attorney's warning in this case. I agree with both the Association and the attorney for the board that it would be procedurally difficult if not impossible to attempt to apply a proscriptive rule in these proceedings at this time. This is so only because Wisconsin courts have not yet been asked to apply in the context

of pupil expulsion and possible subsequent juvenile or criminal proceedings, the rule of Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616 (1967), and Oddsen v. State, supra. Both of those cases involved the coercive circumstances of having to respond to misconduct charges, that may also be criminal, in an employment disciplinary proceeding where one's job is at stake, and having any such self-incriminating replies available to the prosecution in subsequent criminal proceedings. I agree that the proper way to have this issue presented is for the pupil to decide to testify, and if juvenile or adult criminal proceedings follow, let the pupil invoke the Garrity/Oddsen rule in those proceedings. Boards in the meantime should be alert to my concern about chilling a pupil's right to testify.

It further appears that one of the board members, apparently in good faith, attempted to permit the student to tell his side of the story without it being recorded or being under oath. Seeking off the record evidence is improper and should be avoided.

I will continue to apply the law as I have in the past, fairly and in the context of existing precedents and applicable law as I find it. The school board's jurisdiction, like mine, is circumscribed by statute. I am most sympathetic to the difficult circumstances that many urban school boards face particularly with children from different ethnic and racial backgrounds. Boards, however, must be careful to confine themselves as best they can within the limits of the statute and constitutional safeguards.

CONCLUSIONS OF LAW

Based on my review of the record in this case, and the findings set out above, I conclude the school board failed to establish that the incident in question occurred while the pupil was supervised within the meaning of sec. 120.13(1)(c), Wis. Stats. Further, based upon the statutory standard of review required of the state superintendent, I conclude that the school board's failure constitutes reversible error.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Patrick Lee Y[redacted] by the Kenosha Unified School District No. 1 Board of Education is reversed.

Dated and mailed this 9th day of October, 1991.

Herbert J. Grover
State Superintendent of Public Instruction