THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
MICHAEL C. G[redacted]

by the Hudson School
District Board of Education

DECISION
AND
ORDER
93-EX-16

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the order of the Hudson School District Board of Education expelling Michael C. G[redacted] permanently from the Hudson School District from on or about November 16, 1993, but permitting conditional request for re-enrollment beginning in the 1994-95 school year. This appeal dated December 7, 1993, was filed by Michael and was received by the Department of Public Instruction on December 13, 1993.

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

grounds, and that the school board was satisfied that the interests of the school district demand that the student be expelled.

FINDINGS OF FACT

The record contains an expulsion notice dated November 9, 1993, based on a departmental model form, along with two certified mail receipts indicating separate mailings from the Hudson School District administration to Michael and his parents. The notice advised that a hearing would be held on November 16, 1993, which could result in Michael's expulsion. The notice referenced the statutory ground of repeated refusal or neglect to obey school rules, and contained dates, descriptions, and the school rule violated in eleven separate acts of alleged misconduct between September 2 and November 4, 1993. Two referred to violation of the No Tobacco Use Policy and the others were evenly divided between Verbal Abuse of Staff and Insubordination. A copy of the expulsion statute was also included. The notice further indicated that at hearing Michael could be represented by counsel and he could request an open or closed hearing. The notice indicated the Board might consider the pupil's complete disciplinary and academic records and these were available for inspection.

The school board minutes (there was an apparent malfunction of the tape recorder) reflect the hearing was conducted in closed session on November 16, 1993, and only Michael's father appeared without counsel. The minutes do not reflect Michael's age or grade. At the hearing the school district administration was not represented by counsel but the school board was assisted by Attorney James Ward. The minutes reflect that

Michael's father agreed he had received the notice of expulsion and that his son, Michael, had received a separate copy but had elected to not attend the hearing. The school administration through the senior high principal, Robert Laney, outlined the reasons for the administration seeking expulsion, i.e., the three types of rules violations cited above. The senior high assistant principal, Barbara Lundgren, then went through the eleven violations. In response, the minutes reflect Michael's father indicated he had no basis for contesting the rule violations on Michael's part. The minutes further indicate the director of pupil services, Nancy Sweet, reported Michael had been referred for exceptional educational needs (EEN) screening but that no consent had been received from the parents. She also stated several meetings had been held with Michael's mother to explain alternative programs but they had been unacceptable to the mother. Michael's father was informed that notwithstanding Michael's possible expulsion, he would still be eligible to seek an evaluation for EEN, and that if it was determined Michael was an EEN student, an educational program designed to meet his needs would be made available.

Principal Laney recommended permanent expulsion with consideration of re-enrollment in the 1994-95 school year under the following conditions: 1) Michael would undergo psychological evaluation by a mutually agreed upon evaluator; 2) Michael would undergo alcohol and drug assessment by a mutually agreed upon evaluator; and 3) the G[redacted]s would provide disclosure of the findings of these assessments to the school administration. Mr. Laney further stated that up to this point Michael had shown no willingness to change and the administration felt he needed assistance in order to change.

There were discussion and questions from the school board members and Michael's father.

Thereafter, the parties were temporarily dismissed from the hearing room, the school board voted unanimously that the grounds for repeated refusal to obey school rules were proven and that the best interests of the school demanded Michael's expulsion, and a motion to accept the principal's recommendation, after discussion, also passed unanimously. Michael's father was invited back into the room and given the school board's decision.

The record includes a copy of an Order of Expulsion containing the appropriate findings and conclusions as well as proof of separate mailings to Michael and his parents on November 20, 1993.

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 High School Dist., 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from sec. 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.

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 to that set out in sec. 120.13(1)(c), Wis. Stats. In Racine Unified School Dist. 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." Id. It is, therefore, incumbent upon the State Superintendent in reviewing an expulsion decision to ensure that the required statutory procedures were followed, that the school board's decision is based upon one of the established statutory grounds, and that the school board is satisfied that the interests of the school district demand the pupil's expulsion.

In reviewing the record in this case I find that the Hudson School District complied with all of the procedural requisites in this matter. I am, therefore compelled to affirm the expulsion decision as entered.

The main procedural and constitutional issue raised in this matter is whether the record shows the school board went forward with the hearing knowing Michael's mother wanted a postponement. The record contains two letters from Michael's mother: a 16 page letter dated January 3, 1994, mostly addressing the merits of the 11 rule violations; and an undated six page letter received by this Department January 27, 1994, replying to the school district's letter-brief dated January 18, 1994.

Mrs. G[redacted]s January 3, 1994, letter and the school district's January 18, 1994, response refer to Michael's mother suffering an anxiety attack upon arriving in the hallway outside the school board hearing room and her distress continuing. Michael's father apparently spoke in the hallway with the school board president, high school principal, and Attorney Ward. Mrs. G[redacted]'s January 3 letter also indicates there were comments from the administration that the meeting was 20 minutes late and they needed to get

started. Attorney Ward's letter is not to the contrary, and indicates his belief that Michael's mother's distress was due to seeing the numbers of school district witnesses who were present for possible testimony about the rule infractions. Mrs. G[redacted]s January 27, 1994, reply letter is not to the contrary. Attorney Ward's letter of January 18 states a suggestion was made that if the hearing format was too intimidating from Michael's mother's standpoint, she need not personally appear but could let her husband appear without her. This was done. Mr. Ward states there was no request for postponement and that even if there had been, it is not clear the school board would or should have granted it.

Mrs. G[redacted]'s January 27 letter adds that Attorney Ward accurately recounts the substance of the hallway conversation but, without indicating to whom or when, she also states she asked the hearing be delayed or changed to another evening. Mr. Ward's response dated February 3 states he has spoken with the district administrator, principal, vice principal (with whom Mrs. G[redacted] had had several prior contacts in regard to behavioral and disciplinary situations) and the pupil services director, who with himself deny having heard either of the G[redacted]'s ever request a postponement. He further states the district administrator was well aware that Mrs. G[redacted] "often wept" during earlier meetings on the subject of her son's behavior.

Section PI 1.04(5), Wis. Adm. Code, states that departmental reviews of hearings are "of the record." The Department has in the past referred to supplementary information and affidavits submitted by counsel for a district, Lenny R. G. v. Madison Metropolitan School District, Decision and Order No. 207, p. 12 (May 17, 1993), but found

it was not then required to directly rule on their admissibility, Id., p. 15. I will similarly refrain from ruling so on the additional factual information submitted by both sides here in that I find the information does not change the outcome. I conclude since there was no express request for postponement on the record, and the extra-record information from appellant is too general and is directly contested by the district (compare Benjamin L. v. Maple School District, Decision and Order No. 214, p. 7 [December 28, 1993]), the expulsion should not be disturbed on this ground.

I agree with the school district that this Department's decision in Michaelene J. v. Washington Island School District, Decision and Order No. 161 (May 29, 1989), is factually distinguishable in that there a request for postponement was made by the mother the day before and the day of the hearing on the record and was premised in part on the inability to retain counsel on such short notice for a geographically difficult hearing site. On the other hand I cannot agree that the district complied with that part of Michaelene J., supra, p. 10, that states both the "substance and appearance of fairness are to be preserved." (Emphasis added.) The school district suggests that it had no way of knowing the G[redacted]s wanted a postponement. It did have a way--it could have asked Michael's mother.

It was apparently obvious to all that Mrs. G[redacted] was desirous of being present and was physically unable to be in the hearing room, let alone actively participate. Better practice would have called for the school district, on its own initiative, to inquire whether

Michael's mother wanted an adjournment in light of all the circumstances.[1] This is common practice in many judicial and administrative proceedings. My predecessor pointed out the sensitivity with which expulsion hearings should be approached, particularly and especially when unrepresented parties are involved. Patrick Lee Y. v. Kenosha Unified School District No. 1, Decision and Order No. 182, pp. 17-21 (October 9, 1991). Our schools and school boards should not only meet the minimal and technical requirements of the law but should lead by example in having their processes also demonstrably appear fair. These circumstances do not meet that test.

With respect to the duration of the expulsion, it has been this Department's practice to leave that question to the discretion of local boards. Akida B. v. Board of School Directors of the City of Milwaukee, Decision and Order No. 208 (July 8, 1993), and that precedent will be observed here as well.

The G[redacted]s had previously not consented to EEN screening for Michael. Of course the applicable rules permit a district itself to request a due process hearing to contest the consent refusal when faced with such a situation. Sections PI 11.10(1)(c) and 11.04(1)(a)3., Wis. Adm. Code. The Department encourages the use of this type of treatment-based approach particularly in cases like this where there appears to be a basis

[1] The department has previously held that the requirement that the pupil be returned to the classroom in situations where the hearing cannot be accomplished within the 15 school days suspension period under sec. 120.13(1)(c) Stats., is an insufficient reason to deny postponement of a hearing. Michaelene J., supra., p. 14. Other arrangements to isolate the student from other students at school can be made if that is the district's concern.

for it and the usual progressive disciplinary steps do not seem to be bearing fruit. The record does not show whether the school district considered this avenue.

As the school district points out and as the G[redacted]s have been advised, if Michael is determined to have an exceptional educational need after testing, the school district will be obligated, in spite of his permanent expulsion or any conditions placed on readmission, to offer him an educational program to meet his needs. Benjamin L. v. Maple School District, supra., pp. 6-7. There are also circumstances under which an independent examination at school district expense may be obtained. I encourage the G[redacted]s to avail themselves of these opportunities.

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

ORDER

IT IS THEREFORE ORDERED that the expulsion of Michael G[redacted] by the Hudson District Board of Education is affirmed.

Dated this 11th day of February, 1994.

John T. Benson
State Superintendent of Public Instruction