THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of MICHAEL RYAN H[redacted]	DECISION AND ORDER
by the Clinton Community School District Board of Education	94-EX-03

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 decision of the Clinton Community School District Board of Education expelling Michael Ryan H[redacted] from that school district effective October 24, 1993, through the remainder of the 1993-1994 school year. This appeal was filed on behalf of Michael by Attorney Robert D. Junig and was received by the Department of Public Instruction on January 19, 1994.

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 a notice of expulsion hearing dated October 19, 1993, which was properly sent to the pupil and to his parents. The Notice advised that a hearing would be held on October 24, 1993, which could result in Michael's expulsion. The Notice also advised that the basis of the proposed expulsion was Michael's alleged conduct at school which endangered the health, safety, or property of others, specifically his alleged possession of a loaded handgun while on school property during the week of October 4-8, 1993.

The hearing was accordingly conducted in closed session on October 24, 1993. Michael and his parents and attorney appeared at the hearing.

At the hearing the school district administration presented evidence supporting the alleged misconduct by the pupil. According to the minutes of the expulsion hearing, Police Chief James Korth testified that Michael had given a statement to an Officer Fairchild. Michael allegedly admitted that he had taken the handgun to school and left it in his truck and that he also had it on his person at school. Chief Korth was not present during Officer Fairchild's interview of Michael. Police Officer Dan Stearns also testified that Michael had admitted that he took the gun to school in his truck and that he also had it in his pants at school. It is not clear whether Officer Stearns was present when Michael made that statement. According to the minutes of the hearing, counsel for the pupil argues that no such testimony was offered. It also appears from the minutes of the

hearing that unidentified juveniles had reported to law enforcement and/or school officials that the pupil was in possession of the gun in the school parking lot.

At the hearing, Michael denied taking the gun to school in his truck or into school on his person. He admitted purchasing the gun and possessing it off of school grounds. He also admitted to handling the gun in the school library for a few seconds prior to buying it. Another student had brought the gun into the school and passed it among several students, including Michael, under a library table.

After the hearing, the school board deliberated in closed session and entered its decision to expel Michael. Notice of the Expulsion Decision dated October 25, 1993, was properly sent to Michael and to his parents. In reaching its decision, the school board found that Michael had endangered the health, safety, or property of others at school.

The board also found that the interests of the school district demanded expulsion. The expulsion decision expelled Michael for the remainder of the 1993-1994 school year.

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 school district complied with all of the procedural requisites in this matter. I am, therefore compelled to affirm the expulsion decision as entered.

In his appeal, counsel for Michael raises several objections to the expulsion proceeding. First, he argues that the district failed to follow required procedure because it suspended Michael for a ten day suspension period prior to sending a notice of expulsion hearing. Counsel accurately points out that sec. 120.13(1)(b), Wis. Stats., limits a district's authority to

suspend a pupil to three days unless a notice of expulsion hearing has been sent. However, the State Superintendent lacks authority to review a suspension under sec. 120.13(1)(b), Wis. Stats. See, Joshua K. v. Clinton Community School District, Decision and Order No. 216 (January 31, 1994), Jesse K. v School Board of Joint District No. 2, Decision and Order No. 131 (June 17, 1985), and Nancy Z. v. Janesville School District, Decision and Order No. 139 (May 23, 1986). 1

Second, counsel objects to the timeliness of the notice of the expulsion hearing. However, pursuant to the State Superintendent's prior decisions regarding the manner of computing the five day notice period required under sec. 120.13(1)(c), Wis. Stats., I find that the notice of hearing was sufficient in this matter. See e.g., Lori P. v. Cudahy School District, Decision and Order No. 169 (May 21, 1990), Marc G. v. Maple School District, Decision and Order No. 213 (December 20, 1993).

Counsel next objects to the use of Michael's statement to Officer Fairchild on the grounds that the statement was solicited

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1 In Lenny R. G. v. Madison Metropolitan School District, Decision and Order No. 207 (May 17, 1994), the district "suspended" the child for over a month before issuing its expulsion hearing notice. Under the Department's interpretation of secs. 120.13(1)(b) and (c), Wis. Stats., if an expulsion hearing is not conducted within 15 school days of the pupil's suspension, the district must allow the child to return to school. The Department's decision in Lenny R. G. was reversed in circuit court. The case is now pending in the court of appeals. In this case, however, the hearing and expulsion decision did take place within 15 school days of the pupil's first day of suspension. The Department's interpretation expressed in the Lenny R. G. decision is therefore, not directly implicated.

after Michael had requested a lawyer and was, therefore, obtained in violation of Michael's constitutional rights. Based on the case law cited by counsel, the statement may be subject to suppression in the criminal/juvenile delinquency context. However, the constitutional protection against self-incrimination does not apply in the context of an administrative expulsion hearing. See, John C. B. v. Milwaukee School District, Decision and Order No. 116 (October 31, 1983).

Finally, counsel argues that the evidence was insufficient to establish the alleged misconduct. The board's findings, however, are reasonably supported by evidence in the record. This is true whether the challenged testimony of Dr. Cass was or was not in fact offered at hearing as the minutes reflect. In addition, a school board is permitted to consider the testimony of officials containing statements made to them in the course of their investigation by students who witnessed the conduct. See e.g., Kathleen W. v. Tri-County Area School Board, Decision and Order No. 130 (May 10, 1985). The State Superintendent will not, therefore, disrupt the school board's findings in this matter on appeal. See e.g., Joshua S. v. D.C. Everest School District, Decision and Order No. 170 (June 20, 1990), Roy H. v. Blair School District, Decision and Order No. 159 (September 26, 1988), John P. v. West Allis-West Milwaukee School District, Decision and Order No. 215 (January 14, 1994).

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 Ryan H[redacted] by the Clinton Community School District Board of Education is affirmed.

Dated this 10th day of March, 1994.

John T. Benson

John T. Benson, State
Superintendent of Public Instruction