THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of MIRANDA V[redacted] by the Howard-Suamico School District Board of Education	DECISION AND ORDER 93-EX-05

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 Howard-Suamico School District Board of Education to expel Miranda V[redacted] from Bay View Middle School for the remainder of the 1993-94 school year. This appeal was filed by Miranda's father, Bruce V[redacted] and was received by the Department of Public Instruction on January 21, 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), 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 certified letter dated December 13, 1993, from Principal Kristine A. Servais and Associate Principal George Georgia of Howard-Suamico School District to Miranda and a separate certified letter of the same date to Miranda's parents which indicated that an expulsion hearing was to be held on December 21, 1993. That letter properly advised that Miranda was charged with sale and/or exchange of an illegal substance or a substance she claimed to be drugs while at school which endangered the property, health, or safety of others. The notice went on to allege that letters exchanged between Miranda and another pupil referred to the substance as drugs. The certified letters explained that there was a right to request a closed hearing and that a public hearing could be requested. Attached to both certified letters were copies of the complete provisions of sec. 120.13, Stats. The notice letters further invited Miranda and her parents to call the principal or vice principal "with questions or concerns you have relative to the December 21 hearing."

The hearing was accordingly held before a hearing officer under sec. 120.13(1)(e), Stats., in closed session on December 21, 1993. The audio tape of the hearing indicates that Miranda and both her parents were present without counsel. At the beginning of the hearing the hearing officer recited an outline of hearing procedures. A written version is part of the record. Both the first and tenth provisions refer to the pupil and her parents' ability to have legal representation. There was no request for postponement, to obtain counsel or for any other purpose.

The district presented its evidence mainly through Associate Principal Georgia. Five written exhibits with additional sub-exhibits were admitted into evidence. One was an one and one-half page outline of Mr. Georgia's investigation. In sum the evidence showed that Miranda sold or gave a powdered substance--which Miranda told an investigating police officer was crushed "Max-Alert" pills--to another pupil on school grounds. Miranda had written two notes, one signed, to the other pupil, in which she proclaimed how "real" the drugs were, and had given Mr. Georgia a printed statement admitting crushing caffeine pills, saying they were drugs, and transferring them to the other student.

Mr. V[redacted] made several statements and both Miranda and her mother also spoke briefly. Miranda essentially agreed with the district's case except that she stated the other pupil had come to her for the substance, not the other way around, and she appeared to contest that she had received the $5.00 the other student had stated she paid Miranda for the material.

The district also entered into evidence copies of their drug prevention policy and the administrative rule enforcing it. The latter provided that sale or transfer of controlled substances or look-alike drugs would result in referral to law enforcement agencies and initiation of expulsion procedures. The portion of the parent-student handbook containing similar provisions was also entered into evidence.

At the conclusion of the hearing, the officer indicated a written recommendation would be sent to the parties and the school board which would take final action on the matter. The record contains copies of separate letters dated December 22, 1993, from

the hearing officer to Miranda and her parents enclosing the recommended findings and conclusions of the officer. In the order the examiner finds that Miranda endangered the health or safety of others by violating school policy against transfer of a controlled substance or look-alike drug while on school property or under school supervision and that the interests of the school demand Miranda's expulsion for the period mentioned above. The cover letter also states: "In order to enroll at Bay Port High School in the fall of the 1994-95 school year, we must have evidence that you have continued to comply with State Statute 118.15, . . . [quotes the compulsory school attendance law]. Records of your attendance in school will be necessary for the enrollment process . . . ."

The record further contains copies of separate letters dated January 13, 1994, from the district administrator to Miranda and her parents indicating the board at its meeting on January 12, 1994, affirmed the hearing officer's recommended order of expulsion

> ". . . for the remainder of the 1993-94 school year. You will have the opportunity to return to school for the 1994-95 school year.
>
> You are urged to enroll in educational and instructional programming that is in compliance with applicable statutes, laws, and regulations. As per Section 118.15 of the Wisconsin Statutes, your educational and instructional needs must be met
>
> [Quotes sec. 118.15, Stats.]
>
> You have the right to appeal . . . ." (Emphasis in original.)

By letter dated February 14, 1994, Attorney Louis Hovda, Legal Services of Northeastern Wisconsin, Inc., requested time to further investigate to determine whether his office would represent Miranda. Subsequent communications resulted in Mr. Hovda's advising the department he had undertaken such representation and on or about March 4,

1994, the Department received a brief on behalf of Miranda from him. By cover letter dated March 10, 1994, the district filed its response brief with the Department.

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 Howard-Suamico School District complied with all of the applicable procedural requisites. I am, therefore compelled to affirm the expulsion decision for the reasons that follow.

Mr. Hovda raises three arguments in support of reversal of the expulsion, the first two relating to notice of the right to retain counsel. First he argues that since the copy of the statute enclosed with the expulsion hearing notice was on a separate sheet of paper and not "printed in full on the face or back of the notice," secs. 120.13(1)(c) and (e), Stats., the statute was not literally complied with and accordingly the decision must be reversed.

It is true that the statute literally states that secs. 120.13(1)(c) or (e), Stats., must be printed in full on the face or back of the notice. However, as pointed out by the district, the Department in prior cases has repeatedly found that attaching the statutory language rather than printing it in the body of or on the back of the notice meets this requirement. Though addressing other issues, the decision in Teresa Lynn K. v. Janesville School District, Decision and Order No. 120 (06/01/84), recites that the copy of the expulsion statute "was attached" to the hearing notice. Similarly, in Travis V. v. Waterloo School District, Decision and Order No. 144 (07/02/86), while noting other errors with respect to the timeliness and entitlement to separate notice, no error was found as to the "enclosed" copy of the statute. Perhaps more compelling is Patrick P. v. Mauston School District, Decision and Order No. 167 (04/26/90). In that case Patrick and his parents had appeared at two earlier board hearings, one an expulsion hearing preceded by a hearing notice with a copy of the expulsion statute "printed on the back" of it. This

hearing did not result in expulsion, but in a contract for continued conditional attendance. The second board meeting found no breach of the conditions. Upon a subsequent breach, the administration initiated a new expulsion hearing notice but "[a] copy of the statute, s.120.13(1)(c) was not attached to this notice." (Emphasis added). The opinion further indicated that this notice "failed to contain a copy of s. 120.13(1)(c), Wis. Stats., as required by statute," and that it was error "[b]ecause of the board's failure to follow the statutory mandate requiring a copy of the statute to be attached to the notice . . . ." (Emphasis added). While the balance of the opinion emphasizes the mandatory nature of the procedural requirements of the statute, it is obvious that for many years the Department has accepted the inclusion of a copy of current text of the expulsion statute along with the hearing notice as compliance with the statutory language. I will not disturb that interpretation here.

Mr. Hovda next argues that the notice letter itself should have separately referred to Miranda and her parents' statutory right to retain counsel. Mr. Hovda states "the appellant was neither notified of her right to counsel nor was notice given in the proper form." While I agree with Mr. Hovda that the optimum practice is to highlight the statutory right to retain counsel separately in the body of the hearing notice letter, I believe the legislative purpose of requiring inclusion of a copy of the statute is to permit the parties to read it and thus inform themselves as to their rights. I agree that this redundancy would be designed to better insure and achieve actual notice. Here the parties were informed of the right to counsel by inclusion of the copy of the statute. While I most

sincerely recommend that districts follow the practice suggested by Mr. Hovda, I do not find this approach to be required by the statute.

Thirdly, Mr. Hovda suggests that the language of the cover letters dated December 22, 1993, accompanying the examiner's proposed decision and expulsion order, imposed improper conditions to readmission of Miranda. While my predecessor has suggested that the applicable statutes do not authorize school boards to attach conditions to readmission AFTER the period of expulsion has expired, apparently based on the view that once the state constitutional right to attend school is reinstated, it is an unconditional right (see Note on Department-recommended form Findings and Order of Pupil Expulsion, rev. 12/09/91), I do not find that that is what has occurred here. I construe the language of the district's cover letter dated January 13, 1994, accompanying notice of the board's final action, as qualifying the arguably conditional and mandatory language of the earlier letter. I agree with the district that the January 13 letter merely informs the parties of the applicable compulsory attendance laws which remain applicable to Miranda and her parents even though Miranda has been expelled. I also note the district's concern that Miranda was being expelled from middle school and its desire to put her and her parents on notice so that she may be able to meet the standard requirements for admission to high school in the fall of 1994, if that is her intent. The requirements cited appear to be applicable to everyone who seeks such admission.

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 Miranda V[redacted] by the Howard-Suamico School District Board of Education is affirmed.

Dated this 22nd day of March, 1994.

John T. Benson
State Superintendent of Public Instruction