

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

MICHAEL S [REDACTED]

by the Kaukauna Area School District  
Board of Education

DECISION AND ORDER  
97/98-EX-07

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**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 December 8, 1997 order of the Kaukauna Area School District Board of Education to expel the above named pupil, a 11th grade student at Kaukauna High School, from the Kaukauna Area School District for the remainder of the 1997-98 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on December 26, 1997.

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 interest of the school district demands that the student be expelled.

## FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing" dated December 2, 1997 from the district administrator of the Kaukauna Area School District. The letter advised that a hearing would be held on December 8, 1997 that could result in the pupil's expulsion from the Kaukauna Area School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that the pupil engaged in chronic misbehavior and conduct which threatens the safety or the well-being of other students and staff. The letter specifically alleged that Michael possessed a weapon in school, lighted a plastic toy on fire and placed it in a wastebasket, and vandalism to school property. Minutes of the school board expulsion hearing and a transcript of the hearing are also part of the record.

The hearing was held in closed session on December 8, 1997. The pupil and his parents appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found the pupil did engage in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others and that the pupil also violated school rules. The school board further found that the interests of the school demand the student's expulsion. A letter informing the pupil and his parents of the basis for the expulsion and term of expulsion was sent on December 9, 1997. An order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated December 8, 1997 ( nunc pro tunc February

17, 1998) was mailed separately to the pupil and his parents. The order stated Michael was expelled for the remainder of the 1997-98 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 District.*, 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 District 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.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lemy G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). 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.

The appeal letter raises one issue which requires consideration. In essence, the pupil's mother asserts that there was insufficient evidence to support the expulsion. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996), *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994), and *Taiwan O. W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). Further, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *Daniel A. v. Mauston School District Board of Education*, Decision and Order No. 324 (May 8, 1997) *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996) and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). The pupil mother also suggests that the expulsion was motivated by the school's belief that Michael is gay. While there was a reference in the transcript to Michael's campaign to be named homecoming queen, there was no evidence produced at the expulsion hearing to support the contention that the school sought expulsion because of this.<sup>1</sup>

In the mother's brief she raised two issues which require consideration. First, she claims that because the school and the school board were represented by the same attorney that there is a conflict of interest. This objection was not raised at the expulsion hearing. I have repeatedly held that the same attorney may assist the administration in the presentation of its case and assist the

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<sup>1</sup>Wisconsin school law, sec. 118.13, Stats., prohibits "discrimination" against a child if the child is a member of one of 14 "protected classes". These include sex, race, physical, mental or emotional condition and sexual orientation. Each school district is required to have a written pupil non-discrimination complaint process. If a parent believes his or her child is being discriminated against at school, he or she may file a complaint with the district which ultimately must be decided by the school board. This process is further described in the attached information sheet.

school board in its duties. See *Bradley B. v. Spooner School District Board of Education*, Decision and Order No. 107 (Feb. 13, 1983); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985); *William S. v. Tri-county Area School District Board of Education*, Decision and Order No. 132 (June 12, 1985). I find no evidence of misconduct or unfairness in Mr. Gill's representation of both the board and the administration

The second issue raised in the pupil's brief alleges that the school board decided the case prior to the hearing on December 8, 1997. The initial hearing was scheduled to take place on December 2, 1997. When the parties convened on December 2, it was found that the notice of hearing did not include a complete copy of sec. 120.13(1)(c), Stats. After beginning testimony the hearing was adjourned so that the board could provide a complete copy of the statute. The hearing was then started over on December 8, 1997.<sup>2</sup> The hearing was conducted, in its entirety, on December 8, 1997. I find no procedural irregularity in this practice.

In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

### 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.


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<sup>2</sup> I note that the district's policy requires a copy of sec. 120.13(1)(c), Stats. This requirement apparently comes from the expulsion statute. This requirement was deleted from the statute in 1995 Wis. Act 235. Thus, the initial notice for the December 2, 1997 hearing was not defective. A summary of the rights listed in sec. 120.13(1)(c), Stats., is all that is required to give the pupil adequate notice. I advise all districts to review and modify their policies to comply with state law.

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of Michael S [REDACTED] by the Kaukauna School District Board of Education is affirmed.

Dated this 23rd day of February, 1997.

  
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John T. Benson  
State Superintendent of Public Instruction