

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A D.</p> <p>by Milwaukee School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-02</p>
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**NATURE OF THE APPEAL**

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the Milwaukee School District Board of Education to expel the above-named pupil from the Milwaukee School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 16, 2008.

In accordance with the provisions of Wis. Adm. Code § PI 1.04(5), 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 § 120.13(1)(c). 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 November 30, 2007, from the Student Services Coordinator of the Milwaukee School District. The letter

advised a hearing would be held on December 12, 2007 that could result in the pupil's expulsion from the Milwaukee School District. The letter was sent separately to the pupil and his parent by certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that on November 16, 2007, the above named pupil engaged in inappropriate sexual activity at Thoreau Elementary School.

The hearing was held before an independent hearing panel on December 12, 2007. The pupil and his parent did not appear at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

After the hearing, the independent hearing panel deliberated and 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. The panel further found that the interests of the school demand the student's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the panel, dated December 12, 2007, was mailed separately to the pupil and his parent. The order stated the pupil was expelled through June 13, 2008. He was offered alternative education at an MPS partnership school during the period of expulsion. The school board reviewed the independent hearing panel's order on December 18, 2007, and approved it. The pupil and his parent were advised by letter dated January 15, 2008 of the board's decision. A transcript of the hearing is part of the record.

#### **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 § 120.13(1)(c), which establishes certain categories of offenses that may be the basis for an expulsion and sets out specific procedures that 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 § 120.13(1)(c). 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 (Lenny 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 in this case requests that the expulsion be modified to a lesser offense. Since the authority to "approve, reverse or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has consistently declined to modify the length of expulsions. *David D. v. Central High School District of Westosha Board of Education*, Decision and Order No. 429 (January 25, 2001); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993). The school board is in the best position to judge the demeanor of witnesses as well as to know

and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In reviewing this case, I do not see the extraordinary circumstance or procedural violation that would cause me to modify the pupil's expulsion period.

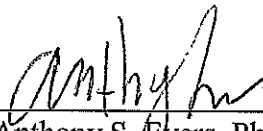
#### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did comply with all of the procedural requirements of §120.13(1)(c).

#### ORDER

IT IS THEREFORE ORDERED that the expulsion of A D. by the Milwaukee School District Board of Education is affirmed.

Dated this 12<sup>th</sup> day of March, 2008.

  
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Anthony S. Evers, Ph.D.  
Deputy State Superintendent of Public Instruction