

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>J S</p> <p>by Merrill School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-03</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 Merrill School District Board of Education to expel the above-named pupil from the Merrill School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 24, 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 January 9, 2008, from the district administrator of the Merrill School District. The letter advised a hearing

would be held on January 14, 2008 that could result in the pupil's expulsion from the Merrill School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her parents 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 December 18, 2007, the pupil illegally possessed and consumed prescription drugs (i.e., Klonopin) for which she had no valid prescription at the Merrill High School located at 1201 North Sales Street, Merrill, Wisconsin, while school was in session.

The hearing was held in closed session on January 14, 2008. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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. The school board 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 school board, dated January 14, 2008, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through June 30, 2009. Minutes of the school board expulsion hearing and two CD's of the expulsion hearing are 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 raises several issues which require consideration. First, the pupil is alleging that there are insufficient facts to support the board's decision to expel. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Leo P. v. Whitewater Unified School District*, Decision and Order

No. 351 (March 31, 1998); *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. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *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 alleges she was not aware that she was taking prescribed medication when she took and consumed two pills from a classmate during class. She claims she thought she was taking over-the-counter medication such as Tylenol or Ibuprofen for a headache. She also claims that the investigating officer was not certain and had no proof that she ever possessed or consumed prescription medication. However, the record indicates the pupil admitted to school officials that she knew the pills were anti-depressant medication, and took one hoping it would cure her headache. Therefore, a reasonable view of the evidence sustains the board's findings.

Next, the appeal alleges that the student did not engage in conduct that endangered the property, health, or safety of others. The pupil claims she attended all classes at school with no strange reactions or symptoms to the medication. In addition, there were no reports filed by teachers reporting anything unusual in the pupil's behavior. However, previous expulsions based upon mere possession of a controlled substance have routinely been upheld by the state superintendent. *Liana D. v. The Milwaukee Public School District Board of School Directors*,

Decision and Order No. 335 (September 15, 1997), *B. S. v. The New London School District Board of Education*, Decision and Order No. 578 (July 27, 2006) and *Katie Mae P. v. The Lodi School District Board of Education*, Decision and Order No. 531 (February 4, 2005). In this case, I find it was reasonable to conclude that the pupil's conduct endangered the health and safety of others.

Finally, the appeal alleges that the school board improperly notified the pupil's parents of the expulsion. The appeal claims that the board informed the parents in letters and also during the expulsion hearing that they would telephone the parents after the school board made its decision regarding the expulsion that evening. There is nothing in the record that reflects this allegation. Regardless, whether or not the school board told the pupil's parents that they would be notified by telephone regarding the expulsion decision is irrelevant. There is no procedural requirement that the decision of an expulsion must be conveyed via the telephone. In fact, the only procedural requirement regarding notification of an expulsion decision is that the expulsion order must be mailed separately to the pupil, and, if the pupil is a minor, to the pupil's parent or guardian. The record includes evidence that this procedural requirement was met.

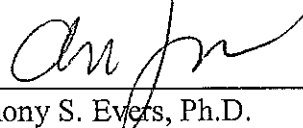
CONCLUSIONS OF LAW

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 J. S. by the Merrill School District Board of Education is affirmed.

Dated this 20th day of March, 2008.



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