

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>C. P.</p> <p>by Merrill Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 09-EX-20</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 Area School District Board of Education to expel the above-named pupil from the Merrill Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on August 13, 2009.

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 June 2, 2009, from the district administrator of the Merrill Area School District. The letter advised a hearing

would be held on June 11, 2009 that could result in the pupil's expulsion from the Merrill Area School District through the pupil's 21st birthday. 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 the pupil repeatedly touched one student on the buttocks and on the breasts; forced the head of a student into his crotch in an effort to imitate a sexual act against the student's will; inappropriately touched another student on the upper part of the thigh and on the buttocks; placed his hands inside his pants and touched his own genital area and then rubbed his hands in the face of two students; and repeatedly encouraged a seven year-old student to put his hands down the back of his pants, touch his buttocks, and rub his hands on students, which the seven year-old student did to two other students. The pupil's alleged behaviors occurred, at a minimum, on the bus during the week of May 18-22 during the AM and PM routes.

The hearing was held in closed session on June 11, 2009. The pupil and his parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parent 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 that 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 June 11, 2009,

was mailed separately to the pupil and his parent. The order stated that the pupil was expelled through June 15, 2014 with the opportunity of early readmission in September of 2011. Minutes of the school board expulsion hearing, an audio recording of the expulsion hearing and exhibits introduced at the 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 appeal claims that the pupil and his mother signed a document stating that they were signing away their right to representation at the expulsion hearing in exchange for the right for the pupil to return to school in the future and therefore alleges that the district committed a procedural violation. The record in this case includes the June 2, 2009 Notice of Hearing which notified the pupil and his mother of the pupil's alleged misconduct, advised them of their rights concerning the expulsion hearing, including the right to representation. Separate notices were mailed to the pupil and his mother; one written in English and one written in Spanish. Also included in the record is a copy of the certified mail receipts indicating that the pupil and his mother received the notice on June 3, 2009. After reviewing the record, including the audio recording of the expulsion hearing, it is determined that the pupil and his mother were properly notified of all of their rights and there is nothing that indicates that the district committed a procedural violation.

The appeal alleges that other students also participated in the misconduct, but that the pupil at issue is the only one being punished. Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998).

Finally, the appeal claims that the punishment of expulsion far outweighs the pupil's misconduct. 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 an extraordinary circumstance or a procedural violation that cause me to modify the pupil's expulsion period.

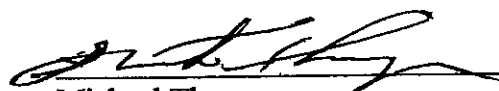
#### CONCLUSIONS OF LAW

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 C P by the Merrill Area School District Board of Education is affirmed.

Dated this 2<sup>NFO</sup> day of October, 2009

  
Michael Thompson  
Deputy State Superintendent of Public Instruction