

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p style="text-align: center;">C. A</p> <p>by Merrill Area School District Board of Education</p>	<p style="text-align: center;">DECISION AND ORDER</p> <p style="text-align: center;">Appeal No.: 11-EX-15</p>
--	---

**NATURE OF THE APPEAL**

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 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 December 23, 2011.

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 18, 2011, from the interim district administrator of the Merrill Area School District. The letter

advised a hearing would be held on November 30, 2011 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 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 November 11, 2011, the pupil exposed his genitals in front of other students in a classroom setting at Prairie River Middle School.

The hearing was held in closed session on November 30, 2011. The pupil and his parents appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil, his parents and his attorney 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 November 30, 2011, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through June 30, 2016 with the opportunity for conditional reinstatement. Minutes of the school board expulsion hearing, a 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. The pupil's attorney claims that the school district had lack of grounds to expel the pupil. Specifically, the pupil's attorney claims that the pupil's conduct does not qualify as sexual harassment, as alleged by the school district; that the misconduct did not interfere with the

classroom environment; and, that it did not endanger the property, health or safety of others.

Whether or not the pupil's misconduct would statutorily be classified as sexual harassment is not within the scope of my review. I am only authorized to review expulsion decisions to ensure that the pupil has been provided adequate procedural due process.

Although the pupil's attorney disagrees with the school district's determination that the pupil's misconduct endangered the property, health and safety of students and teachers while at school, the term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damages, the chance of loss or injury, or the capability of producing death or great bodily harm. These terms embrace the notion of harmful acts or actions that are detrimental or involve loss or damages. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (Nov. 25, 1996); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995); and *Kirsten J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (Feb. 21, 1992); *G. J. v. Medford Area School District Board of Education*, Decision & Order No. 683 (May 17, 2011); *T. S. v. West Allis-West Milwaukee School District Board of Education*, Decision & Order No. 684 (May 20, 2011). In this case, the pupil exposed his genitals during class. The pupil's attorney argues that the majority of students in the classroom did not see the misconduct. However, not only does the pupil admit to this behavior, but testimony and witness statements included in the record reveal that at least three students did see the pupil's behavior. There is no requirement that physical contact occur for misconduct to be considered endangerment. In addition, although no physical contact occurred while the pupil had his genitals exposed, the act certainly may have caused emotional/psychological distress or undue embarrassment to students in the classroom. The school district's determination to expel the pupil was thus based upon a statutory ground.

The pupil's attorney also claims that because the school district punished the pupil the same as another student who committed a more severe act during the misconduct at issue the district committed discrimination. 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); *D. M. v. Milwaukee Public School District Board of Education*, Decision & Order No. 680 (April 8, 2011); *N. H. v. Germantown School District Board of Education*, Decision & Order No. 681 (May 2, 2011). The school board is in the best position 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 causes me reverse the expulsion or to modify the pupil's expulsion period.

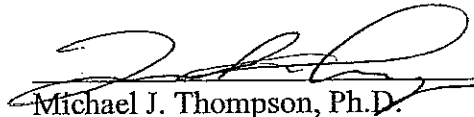
#### **CONCLUSIONS OF LAW**

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

Dated this 15<sup>th</sup> day of February, 2012

  
\_\_\_\_\_  
Michael J. Thompson, Ph.D.  
Deputy State Superintendent of Public Instruction