

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of



by St. Croix Falls School District  
Board of Education

DECISION AND ORDER

Appeal No.: 20-EX-03

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**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 St. Croix Falls School District Board of Education to expel the above-named pupil from the St. Croix Falls School District. This appeal was filed by the pupil's father and received by the Department of Public Instruction on March 16, 2020.

In accordance with the provisions of Wis. Admin. 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 Wis. Stat. § 120.13(1)(c).

**FINDINGS OF FACT**

The record contains a letter entitled "Notice of Pupil Expulsion Hearing of [pupil]," dated February 4, 2020, from the district administrator of the St. Croix Falls School District. The letter advised that a hearing would be held on February 13, 2020 that could result in the pupil's expulsion from the St. Croix Falls School District through his 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 while under the supervision of school authority, which endangered property, health, or safety of others. The letter specifically alleged that the pupil coordinated with a female student to meet in the boys school bathroom after school on January 30, 2020, spent 27 minutes in the boys bathroom stall with the female student, sexually exposed himself to the female student, and had sexual contact with the female student.

The hearing was held in closed session on February 13, 2020. The pupil's mother appeared at the hearing without counsel. The pupil did not attend the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil's mother was 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 did not make any findings regarding the specific conduct that the pupil engaged in that endangered the property, health or safety of others. The board found that the pupil engaged in conduct on January 30, 2020 while at school or while under the supervision of a school authority which endangered the property, health, or safety of others. The board further found that the interests of the school demand the student's expulsion. The order for expulsion containing the findings of fact of the school board, dated February 13, 2020, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until his 21st birthday, with the chance for early reinstatement at the beginning of the 2020-2021 school year. Early reinstatement criteria include completion of a professional counseling assessment and continuing private weekly counseling and/or treatment until June 2022. If reinstated early to school, the pupil will not be allowed on school grounds before or after school hours. Minutes of the expulsion hearing and an audio recording of the expulsion hearing are part of the record.

## DISCUSSION

The expulsion statute –Wis. Stat. § 120.13(1)(c) – gives school boards the authority to expel a student when specific substantive standards are met and specific procedures have been followed. *Madison Metro. Sch. Dist. v. Burmaster*, 2006 WI App. 17, ¶ 19, 288 Wis. 2d 771. In reviewing an expulsion decision, the state superintendent must ensure, among other things, 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 interest of the school district demand the pupil’s expulsion.

The appeal letter in this case raises three issues which require consideration. First, appellant challenges the school board’s conclusion that the pupil engaged in conduct which endangered the property, health or safety of others. Second, appellant argues that the pupil was treated more harshly than the female student involved in the incident. Third, appellant seeks to remove some of the conditions required for the pupil’s early reinstatement.

Appellant argues that the pupil’s actions did not meet the dictionary definitions of endangered of “to bring into danger or peril” or “to create a dangerous situation.” Appellant concedes that “what happened in the bathroom is morally unacceptable” but argues that to determine the pupil endangered the female student, the board would have had to determine that the pupil was at fault and the board did not have sufficient information to make that determination. However, St. Croix Falls Middle School Principal Joe Connors told the school board that a staff member saw a female student sitting on the floor crying in a closed boys bathroom stall with the pupil. When the female student opened the door, the staff member saw the pupil with his pants down sitting on the toilet. Principal Connors told the board that after reviewing video camera footage, he determined that the students were in the bathroom together

for 27 minutes. Principal Connors also told the board that it was his opinion, based on the video camera footage, that the meeting between the female student and the pupil in the boys bathroom was preplanned. Appellant concedes that the meeting in the boys bathroom was preplanned by the pupil and the female student.

Appellant's assertion that to find that the pupil endangered the female student's property, health or safety, the board would have had to determine that the girl was not a willing participant is not correct. The State Superintendent has previously upheld expulsions based on sexual intercourse as endangering the health or safety of others. *Nicole R. v. Granton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 301 (Sept. 19, 1996); *Kathleen W. v. Tri-County Area Sch. Bd.*, Decision and Order No. 130 (May 10, 1985). The pupil was seen by a staff member with his pants down in a stall with a female student. It was reasonable for the school board to determine – regardless of fault – that the pupil endangered the girl's health or safety.

There is no requirement that physical contact occur for misconduct to be considered endangerment. Even if no physical contact occurred while the pupil had his genitals exposed, the act certainly may have caused emotional/psychological distress or undue embarrassment to the female student. *See C.A. v. Merrill Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 692 (Feb. 15, 2012) (affirming finding of endangerment where pupil exposed his genitals to other students during class). Principal Connors' statement that the female student was crying when discovered by the staff member provides additional support for the school board's determination that the pupil endangered her. A school board's findings will be upheld if any reasonable view of the evidence sustains them.<sup>1</sup> *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019); *C.B. v. Germantown Sch. Dist. Bd. of Educ.*, Decision and Order No. 763 (June 12, 2018); *E.C. v. Oconomowoc Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 737 (June

14, 2016). In this case, the pupil did not explain to the school board what happened and the board was entitled to make its decision based on the information it received at the hearing.

Next, appellant complains that the school district “let the girl off the hook.” Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. *J.H. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 721 (Aug. 18, 2014); *C.A. v. Merrill Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 692 (Feb. 15, 2012); *N. H. v. Germantown Sch. Dist. Bd. of Educ.*, Decision & Order No. 681 (May 2, 2011). As a general rule, and one that applies in this case, I do not have the authority to address issues of fairness and unevenness of disciplinary measures. *J.H. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 721 (Aug. 18, 2014); *A.B. v. Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 453 (Feb. 1, 2002).

Third, the decision of a school board regarding early reinstatement conditions is not subject to review by the state superintendent. Wis. Stat. § 121.13(1)(h)2. Furthermore, the decision to expel a student and for how long are within the complete discretion of the school board as long as it complies with all the procedural requirements of Wis. Stat. § 120.13(1)(c). *I.B. v. Nicolet UHS Sch. Dist. Bd. of Educ.*, Decision and Order No. 716 (Feb. 14, 2014); *Peter F. v. Suring Sch. Dist. Bd. of Educ.*, Decision and Order No. 471 (July 18, 2002). 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. *C.T. v. Milwaukee Pub. Schs.*, Decision and Order No. 718 (May 22, 2014); *A.M. v. West Allis-West Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 703 (Feb. 18, 2013). In this case, as discussed below, all procedural requirements were not met. I note,

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<sup>1</sup> The board's failure to make specific findings of fact regarding the conduct the pupil engaged in is discussed below.

however, that in reviewing this case, I do not see an extraordinary circumstance that might cause me to modify the pupil's expulsion period in the absence of the procedural violation.

Finally, an issue not raised by appellant must be addressed. An expulsion order or record must indicate that the board found the pupil guilty of the alleged misconduct, that the conduct meets a statutory standard for expulsion and that the interests of the school demand expulsion. *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *James R. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 396 (Aug. 17, 1999); *Douglas G. v. New London Sch. Dist. Bd. of Educ.*, Decision and Order No. 228 (Apr. 29, 1994). Although the hearing record contains information regarding the misconduct presented to the board, there is no indication in the expulsion order as to what conduct the board *found* that the pupil engaged in to meet the statutory grounds for expulsion. This constitutes reversible error. *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *James R. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 396 (Aug. 17, 1999); *Douglas G. v. New London Sch. Dist. Bd. of Educ.*, Decision and Order No. 228 (April 29, 1994). The only factual findings in the expulsion order related to the underlying misconduct are:

1. That the pupil, [], was enrolled at St. Croix Falls Middle School in the 8th grade on January 30, 2020.

\* \* \*

4. That the pupil on January 30, 2020, did:

**Engage in conduct which endangered the property, health or safety of others at school or under the supervision of school authority.**

5. That based on the conduct on January 30, 2020, the pupil did engage in conduct while at school or while under the supervision of the school authority which endangered the property, health, or safety of others.

(Findings of Fact and Expulsion Order at 1 (emphasis in original).) The expulsion order simply repeats the statutory standard for expulsion without a specific finding of misconduct and is insufficient.

In reviewing the record in this case, I find that the school board did not comply with all of the procedural requirements. I therefore reverse this expulsion. If the board composition is the same as it was at the time of the decision, it may cure the error by reconvening and making specific findings of misconduct. If that determination is made, the board may continue with the expulsion by creating a complete expulsion order and sending it to the pupil and his parents. Alternatively, if the district chooses, it may remedy the error by rehearing the expulsion and issuing a complete expulsion order containing specific findings of misconduct. *See, e.g., J.L. v. Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019); *Z.Y. v. Wauwatosa Sch. Dist. Bd. of Educ.*, Decision and Order No. 690 (Jan. 11, 2012).

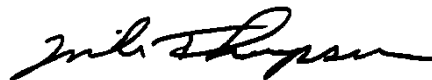
### CONCLUSIONS OF LAW

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

### ORDER

IT IS THEREFORE ORDERED that the expulsion of [REDACTED] by the St. Croix Falls School District Board of Education is reversed.

Dated this 15th day of May, 2020



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

## APPEAL RIGHTS

Wis. Stat. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of Wis. Stat. § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

Parties to this appeal are:

[REDACTED]

[REDACTED]

Mark Burandt  
District Administrator  
St. Croix Falls School District  
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A copy of this decision was mailed to all parties listed above.