

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of



by Chequamagon School District  
Board of Education

DECISION AND ORDER

Appeal No.: 21-EX-05

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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 Chequamagon School District Board of Education to expel the above-named pupil from the Chequamagon School District. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on June 15, 2021.

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," dated May 26, 2021, from the superintendent designee of the Chequamagon School District. The letter advised that a hearing would be held on June 10, 2021 that could result in the pupil's expulsion from the Chequamagon 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 a school authority which endangered the property, health, or safety of an employee and/or of others. The letter specifically alleged that “[o]n or about May 24, 2021, [the pupil] was in possession of marijuana (THC concentrated pod), a dab pen, two vape pens, and four nicotine concentrated pods while at school and/or under the supervision of school authorities.”

The hearing was held in closed session on June 10, 2021. The pupil and his parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents were given the opportunity to present evidence and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found that the pupil engaged 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 pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated June 23, 2021, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the first semester of the 2022-2023 school year and provided that the pupil would be eligible for early reinstatement as of September 1, 2021 if he met certain requirements. Minutes of the school board 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 demands the pupil's expulsion.

The appeal letter in this case raises three issues which require consideration. First, appellant contends that the board's decision to expel the pupil is "very unfair" and that "[e]xpelling a student[] does more harm than good, and continues to affect them years down the road." Appellant complains that the principal did not take into consideration that the teacher who reported the incident said he saw another student hand an item to the pupil and that the student who handed the item to the pupil was not punished in any way. Appellant contends that the pupil is not a threat to the students, staff or anyone else.

The decisions 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). *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *I.B. v. Nicolet UHS Sch. Dist. Bd. of Educ.*, Decision and Order No. 716 (Feb. 14, 2014). 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. *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *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). Appellant has specified no extraordinary circumstance here. I will address the school district's compliance with procedural requirements below.

Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *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. *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *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). In addition, the best interest of the pupil is not an element that must be considered by the school board. *W.T. v. Beloit Turner Sch. Dist. Bd. of Educ.*, Decision and Order No. 591 (May 4, 2007).

Appellant complains that the pupil's past behavior incidents were referenced in the hearing to support expulsion.<sup>1</sup> Allegations of misconduct not included in the notice of hearing may not be considered for the purposes of determining grounds for expulsion. However, the board may consider such allegations in determining whether the interest of the school demands the pupil's expulsion. In this case, the notice of pupil expulsion hearing provided notice to the pupil and appellant that "if any of the allegations made above are proven, in considering whether to expel the pupil, and if so, for what period of time, the Board may consider the pupil's complete disciplinary and academic records." Therefore, it was not improper for those records to be considered in this case.

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<sup>1</sup> As part of her argument on appeal, appellant submitted several exhibits regarding the school district's treatment of the pupil that were not introduced at the expulsion hearing. Because they are not part of the record of the expulsion hearing, they may not be considered in this appeal.

Second, appellant raises complaints related to her contention that the pupil is a child with a disability. State superintendents have consistently held that an expulsion appeal is not the appropriate context within which to challenge a school district's application of special education provisions to a particular student. *Middleton-Cross Plains Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 794 (June 26, 2020); *R.M. v. Oak Creek-Franklin Joint Sch. Dist. Bd. of Educ.*, Decision and Order No. 711 (January 30, 2014); *Daniel O. v. Kenosha Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 704 (June 4, 2013); *N.K. v. Marshall Sch. Dist. Bd. of Educ.*, Decision and Order No. 620 (May 15, 2008); *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). Such challenges are beyond the scope of the state superintendent's review when there is no evidence in the record that the student was identified as a child with a disability. *Middleton-Cross Plains Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 794 (June 26, 2020); *S.R. v. Chippewa Falls Area Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 723 (February 25, 2015). Here, it is undisputed that the pupil was not identified by the school district as a child with a disability prior to the expulsion hearing. As the hearing officer explained at the expulsion hearing, the evaluation process for special services may still proceed in a different setting, outside of the expulsion context.

Third, appellant contends that the pupil's due process rights were violated when the school principal initiated the process leading up to the discipline and then participated in the expulsion hearing to determine whether to expel the pupil. In support of this argument, she quotes Wis. Stat. § 119.25(2)(b), which provides, "No administrator may be designated to participate in an expulsion hearing if he or she was involved in the incident that led to the expulsion proceeding." Even if the principal had been involved in the incident that led to the

expulsion proceeding, the cited provision applies only to the Milwaukee Board of School Directors. *See* Wis. Stat. § 119.01. Wis. Stat. § 120.13(1)(c) governs the expulsion proceedings in this case and contains no similar provision. Appellant contends that the principal cannot be impartial and “cannot play both the judge and the jury after initiation of such harsh punishment.” Appellant appears to misunderstand the principal’s role at the expulsion hearing. The hearing minutes indicate that the principal presented evidence and made recommendations on behalf of the school district. The principal was not a member of the school board and did not vote on the expulsion. There is no conflict of interest or violation of due process caused by the principal’s roles with respect to the investigation and expulsion hearing.

Finally, an issue not raised by appellant must be addressed. The notice of expulsion hearing provided to the pupil failed to comply with the requirements of Wis. Stat. § 120.13(1)(e)4. It has long been precedent that the notice requirements of the statute are mandatory in nature, and failure to comply with the statutory requirements renders the expulsion void. *See, e.g., Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *Alex H. v. Eleva-Strum Sch. Dist. Bd. of Educ.*, Decision and Order No. 438 (July 20, 2001). Among other things, the notice of expulsion hearing must state “the particulars of the pupil’s alleged conduct upon which the expulsion proceeding is based.” Wis. Stat. § 120.13(1)(c)4.a. The notice of expulsion hearing in this case alleged, “[o]n or about May 24, 2021, [the pupil] was in possession of marijuana (THC concentrated pod), a dab pen, two vape pens, and four nicotine pods while at school and/or under the supervision of school authorities.” (emphasis added.) This does not constitute adequate notice as to the location of the alleged misconduct. “[A] student facing expulsion is entitled to timely and adequate notice of the charges against him so as to allow him a meaningful opportunity to be heard.” *Keller v. Fochs*, 385 F. Supp. 262, 265

(E.D. Wis. 1974). Proper notice must inform the pupil of the time frame during which the misconduct occurred, where the misconduct occurred, and a description of the conduct to be considered. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *C.M. v. Pulaski Comm. Sch. Dist. Bd. of Educ.*, Decision and Order No. 701 (Dec. 5, 2012); *A.S. v. Milwaukee Public Sch. Dist. Bd. of Educ.*, Decision and Order No. 674 (Dec. 21, 2010).

The school district contends that “[t]he allegations in the notice were specific.” Contrary to the school district’s assertion, the notice of pupil expulsion hearing was not specific with respect to the location of the misconduct. The pupil was entitled to know the location at which the district alleged the misconduct occurred. *C.M. v. Pulaski Comm. Sch. Dist. Bd. of Educ.*, Decision and Order No. 701 (Dec. 5, 2012). Because the notice failed to include the particulars of where the alleged misconduct occurred, the school district did not give adequate notice to the pupil about the charges that would be considered at his expulsion hearing and the expulsion must be reversed. *See Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *C.M. v. Pulaski Comm. Sch. Dist. Bd. of Educ.*, Decision and Order No. 701 (Dec. 5, 2012); *A.B. v. Milwaukee Academy of Science Charter School*, Decision and Order No. 697 (June 18, 2012).

In reviewing the record in this case, I find that the school district did not comply with all of the procedural requirements. I therefore reverse this expulsion. If the district chooses, it may remedy the errors by providing proper notice of the expulsion hearing and rehearing the expulsion. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *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).

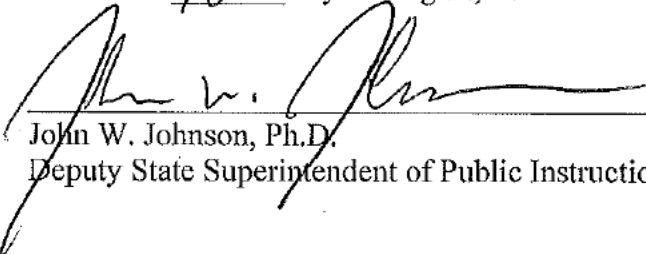
**CONCLUSIONS OF LAW**

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not 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 Chequamagon School District Board of Education is reversed.

Dated this 10<sup>th</sup> day of August, 2021

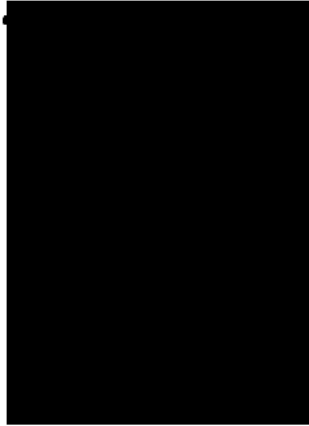
  
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John W. Johnson, Ph.D.  
Deputy State Superintendent of Public Instruction



## 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:



Raymond Schulte  
District Administrator  
Chequamagon School District  
420 9th Street North  
Park Falls WI 54552

## COPIES MAILED TO:



Geoffrey Lacy  
Strang, Patteson, Renning, Lewis & Lacy, s.c.  
205 Doty Street, Ste. 201  
Green Bay, WI 54301