

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.: 22-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 Chequamagon School District Board of Education to expel the above-named pupil from the Chequamagon School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 5, 2022.

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 November 16, 2021, from the district administrator of the Chequamagon School District. The letter advised that a hearing would be held on November 22, 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 mother 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 the property, health, or safety of an employee and/or of others. The letter specifically alleged that “[o]n November 10, 2021, at Chequamegon High School/Class ACT Charter School, [the pupil] was in possession of marijuana while at school under the supervision of school authorities.”

The hearing was held in closed session on November 22, 2021. The pupil and his mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his mother 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 engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others at school and/or under the supervision of a school authority. 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 December 3, 2021, was mailed separately to the pupil and his mother.<sup>1</sup> The order stated the pupil was expelled through the remainder of the 2021-2022 school year and would be eligible for early reinstatement on January 3, 2022 if he complied with certain requirements. A video recording of the expulsion hearing is 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 demands the pupil's expulsion.

The pupil raises four issues which require consideration. First, the pupil asks "the Department of Public Instruction and Chequamegon School Board to provide time for me to explain further insight into the circumstances surrounding the events and situations leading to the expulsion." On an expulsion appeal, the state superintendent may only review the decision of the school board. *See Wis. Stat. § 120.13(1)(c)3* ("If the school board's decision is appealed to the state superintendent, within 60 days after the date on which the state superintendent receives the appeal, the state superintendent shall review the decision and shall, upon review, approve, reverse or modify the decision."). I have no authority to consider additional evidence that was not presented to the school board.

Second, the pupil notes that he is a student with a disability and contends that the district did not provide him a free appropriate public education (FAPE). He also contends that the district "inappropriately and perhaps illegally revoked my IEP." The state superintendent has 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. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *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). The pupil has filed a complaint with the Department of Public Instruction under the Individuals with Disabilities Education Act (IDEA) raising the same concerns raised in this

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<sup>1</sup> The order mailed to the pupil's mother was returned to the district undelivered.

expulsion appeal. The IDEA complaint process is the appropriate setting to address those concerns.

Third, the pupil notes that despite the district holding a manifestation determination meeting prior to the expulsion hearing because the district recognized that he was a student with a disability, the expulsion order states “[a]s of the date of the pupil expulsion hearing, [the pupil] did not meet the criteria for special education services.” During the expulsion hearing, a board member asked the district administration about the pupil’s opportunities to continue his education during the expulsion period. In response, High School Principal John Oswald stated that the pupil “right now does have an IEP, and so he would be getting services for that disability and we can figure out a way to allow him to work within that framework that would allow him to continue with his school work.” Superintendent Ray Schulte also confirmed that the pupil had an IEP and that the district had conducted a manifestation hearing. Thus, the only evidence presented to the board at the expulsion hearing was that the pupil had an IEP and that he would continue to receive services for his disability even if the district expelled him. Despite this, the board found “As of the date of the pupil expulsion hearing, [the pupil] did not meet the criteria for special education services, and [the pupil] and/or his parent/guardian or representative make no claim to the contrary.” A school board’s findings will be upheld if any reasonable view of the evidence sustains them. *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); *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). Because no reasonable view of the evidence supports a finding that the pupil did not meet the criteria for special education services, the board’s finding to that effect cannot be upheld. However, a

finding that the student did not meet the criteria for special education services was not necessary for the board to determine that expulsion was appropriate.

Finally, the pupil suggests that his expulsion was racially motivated, noting that he is American Indian and that white students who committed similar infractions or worse were not even suspended. Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *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). 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. *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *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). 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). *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *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). 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. *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *C.T. v. Milwaukee Pub. Schs.*, Decision and Order No. 718 (May 22, 2014). I see no extraordinary circumstance here that would prompt me to overrule the determination of the board that expulsion is the appropriate response to the pupil's actions. This does not minimize the seriousness of appellant's allegations. With his reply brief filed in this expulsion appeal, the pupil has copied the Department of Public Instruction on a discrimination complaint he filed with the district under the district's non-discrimination policy. That is the proper forum to address the pupil's allegations of discrimination. If he receives a negative determination from the district, he may file an appeal under Wis. Stat. § 118.13(2)(b). *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022).

Errors not raised by the pupil also merit mention. The Findings and Order of Pupil Expulsion states in the introduction, finding 2 and finding 6 that the hearing was held on November 23, 2021 even though all the record evidence, including the video recording, indicates that the hearing was held on November 22, 2021. The board also found that “[o]n or about November 10, 20921 [sic] [the pupil] was in possession of marijuana while at school and under the supervision of school authorities.” This typographical error may have been grounds for reversal if it were an error in the day instead of an obvious error in the year. *See, e.g., Justin B. v. Central/Westosha High Sch. Dist. Bd. of Educ.*, Decision and Order No. 494 (May 2003). The board should correct these scrivener's errors, but they are not a basis to reverse the expulsion.

*Michael J. v. Nicolet Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 456 (Mar. 4, 2002).

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion. This should not be taken as lack of concern for the consequences of expulsion to the pupil. I encourage the school district to support the pupil's future learning and graduation from high school.

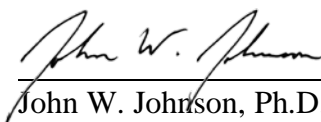
### **CONCLUSIONS OF LAW**

Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied 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 Chequamegon School District Board of Education is affirmed.

Dated this 2nd day of June, 2022



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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:

[REDACTED]  
[REDACTED]  
[REDACTED]

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