

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of



by Oak Creek-Franklin Joint School District  
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-17

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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 Oak Creek-Franklin Joint School District Board of Education to expel the above-named pupil from the Oak Creek-Franklin Joint School District. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on October 12, 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 dated September 21, 2022, from the principal of Oak Creek High School. The letter advised that a hearing would be held on October 4, 2022 that could result in the pupil's expulsion from the Oak Creek-Franklin Joint School District through his 21st birthday. The letter was sent separately to the pupil and his father 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 others. The letter specifically alleged that

on September 16, 2022, at approximately 8 pm at the Oak Creek High School football game near the home-side, west bleachers, [the pupil] was found gathered with several students, all of whom had cups partially filled with Mountain Dew. [The pupil] was carrying a bag, which is prohibited at football games as are carry-ins. Upon the subsequent search of [the pupil]'s backpack, [the pupil] was found to be in possession of a baby bottle filled with a purple substance, which upon testing through the Oak Creek Police Department was found to contain both Oxycodone and Fentanyl....

The hearing was held in closed session on October 4, 2022. The pupil, his father, his grandfather and an advocate appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his father 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. 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 October 4, 2022, was mailed separately to the pupil and his father. The order stated the pupil was expelled until [REDACTED], his 21st birthday. Minutes of the school board expulsion hearing and an audio recording of the 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 demands the pupil’s expulsion.

The appeal letter in this case raises two issues which require consideration. First, appellant is dissatisfied with the school board’s failure to provide an alternative school for the pupil, contending that “it is the school district’s job to ensure that all children who reside within the jurisdiction be provided with the resources and educational needs that each child has.” Appellant states “[i]t is a human right to have an education and we should not be ostracized from the whole city of Oak Creek just to find him a school.” A school board may deprive the pupil of his right to a public education if the board complies with the requirements of Wis. Stat. § 120.13(1)(c) and follows “fundamentally fair procedures to determine whether the misconduct has occurred.” *Remer v. Burlington Area Sch. Dist.*, 286 F.3d 1007, 1010 (7th Cir. 2002) (quoting *Goss v. Lopez*, 419 U.S. 565, 574 (1975)). The school board provided the pupil all required process in this case. The state superintendent has the authority to “approve, reverse, or modify” the school board’s decision. Wis. Stat. § 120.13(1)(c)3. However, because the school board is in the best position to know and understand what its community requires as a response to school misconduct, the state superintendent has historically chosen not to second-guess the appropriateness of a school board’s determination. *See, e.g., Appleton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 820 (Nov. 15, 2022); *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *Madison Metro. Sch. Dist. Bd. of Educ.*, Decision and Order No. 786 (Nov. 7, 2019). I see no extraordinary circumstance here that would prompt

me to overrule the determination of the board that expulsion is an appropriate response to the pupil's actions. A school district has the discretion to offer alternative education. The Department of Public Instruction encourages districts to provide alternative education to expelled students, but such a program is not required. *D.R. v. Milwaukee Pub. Sch. Dist. Bd. of Educ.*, Decision and Order No.700 (Dec. 19, 2012); *Matt L. v. Merrill Area Pub. Sch. Dist. Bd. of Educ.*, Decision and Order No. 381 (May 19, 1999).

Second, appellant states that the pupil is Palestinian-American, and that the pupil's father feels that the school district is racist. However, appellant does not provide any explanation for the allegation of racism, nor does she allege that students of a different race, ancestry or national origin who engaged in the same conduct as the pupil and had a similar behavior record were not expelled. Regardless, because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. *Chequamegon Sch. Dist. Bd. of Educ.*, Decision and Order No. 812 (June 2, 2022); *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). This does not minimize the seriousness of an allegation that a school district is racist. If the pupil believes he was discriminated against because of his race, he may follow the district's non-discrimination policy and procedure to file a complaint with the district. If he does so and 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).

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.

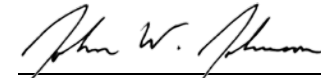
**CONCLUSIONS OF LAW**

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 Oak Creek-Franklin Joint School District Board of Education is affirmed.

Dated this 6th day of December, 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]

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Oak Creek-Franklin Joint School District  
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COPIES MAILED TO:

[REDACTED]

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