

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of



by Waupun Area School District  
Board of Education

DECISION AND ORDER

Appeal No.: 23-EX-04

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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 Waupun Area School District Board of Education to expel the above-named pupil from the Waupun Area School District. This appeal was filed by the pupil's father and received by the Department of Public Instruction on March 20, 2023.

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 March 6, 2023 from the district administrator of the Waupun Area School District. The letter advised that a hearing would be held on March 13, 2023 that could result in the pupil's expulsion from the Waupun Area 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 at school or under the supervision of a school authority. The letter specifically alleged that:

[O]n February 2, 2023 at approximately 12:15 p.m. in Kristen Wettereau’s math classroom, it was reported that [the pupil] had made the comment, “Approximately, this ruler is going to go through your throat” towards two students who were working in a group with him.

The hearing was held in closed session on March 13, 2023. The pupil and his father 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 March 16, 2023, was mailed separately to the pupil and his father. The order stated the pupil was expelled through his 21st birthday. Minutes of the school board expulsion hearing and a transcript 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 four issues which require consideration. First, appellant contends that the school board should have found the pupil to be a student with a disability, noting that appellant provided the school board with the pupil's psychiatric diagnostic evaluation that was conducted during the pupil's suspension but prior to the expulsion hearing. 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. *Chequamegon Sch. Dist. Bd. of Educ.*, Decision and Order No. 812 (June 2, 2022); *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *R.M. v. Oak Creek-Franklin Joint Sch. Dist. Bd. of Educ.*, Decision and Order No. 711 (Jan. 30, 2014). 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 School District Board of Education*, Decision and Order No. 794 (Jun. 26, 2020); *S.R. v. Chippewa Falls Area Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 723 (Feb. 25, 2015). Although appellant contends that the pupil should have been identified as a child with a disability, it is undisputed that the district did not identify the pupil as a child with a disability either at the time of the incident or at the time of the expulsion hearing. Any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures.

Second, appellant complains that the district was unwilling to negotiate terms of the pupil's withdrawal from the district and states that the expulsion order thus incorrectly stated that on February 20, 2023, the board "moved to hold the expulsion of [the pupil] in abeyance,

pending negotiation of a withdrawal agreement.” A district’s refusal to negotiate the terms of an offered withdrawal agreement does not support reversal of an expulsion.

Third, appellant argues that “The DPI website states that expulsion should be used with repeated non-compliance of the rules” and contends that repeated means more than two and that the pupil does not have more than two instances of documented problems. Although a student may be expelled for “repeated refusal or neglect to obey the rules,” Wis. Stat. § 120.13(1)(c)1., the district did not seek expulsion and the board did not expel the pupil on that basis. Instead, the board relied on a different basis for expulsion, which allows expulsion for “conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others,” Wis. Stat. § 120.13(1)(c)1. The record supported the board’s finding that the pupil engaged in such conduct.

Finally, appellant contends that expulsion until the pupil is age 21 “is a heavy handed over reaction that denies an otherwise well behaved student, who is an ongoing victim of bullying, a public education.” The state superintendent has the authority to “approve, reverse, or modify” the school board’s decision. Wis. Stat. § 120.13(1)(e)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). 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).

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

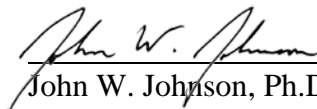
### **CONCLUSIONS OF LAW**

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 Waupun Area School District Board of Education is affirmed.

Dated this 12th day of May, 2023

  
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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]

[REDACTED]  
[REDACTED]  
[REDACTED]

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District Administrator  
Waupun Area School District  
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