

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of



by River Valley School District  
Board of Education

DECISION AND ORDER

Appeal No.: 23-EX-09

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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 River Valley School District Board of Education to expel the above-named pupil from the River Valley School District. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction on May 22, 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 entitled “Notice of Pupil Expulsion Hearing,” dated May 9, 2023, from the high school principal of the River Valley School District. The letter advised that a hearing would be held on May 15, 2023 that could result in the pupil’s expulsion from the River Valley School District through her 21st birthday. The letter was sent separately to the pupil and her mother by certified mail. The letter alleged that the pupil’s conduct endangered the property,

health, or safety of others at school and that the pupil repeatedly refused or neglected to obey school rules. The letter specifically alleged that on February 13, 2023, at approximately 1:30 p.m., the pupil smoked marijuana in a bathroom stall at school; and that on Monday, May 8, the school found alcohol and a vape dispenser in the pupil's locker, alcohol in a bottle the pupil left in her classroom, and a vape dispenser in the pupil's sweatshirt. The letter further alleged that possession of marijuana at school and possession of alcohol at school is a violation of school rules found on page 22 of the High School Handbook.

The hearing was held in closed session on May 15, 2023. The pupil, her mother, her mother's fiancé and the pupil's boyfriend appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 that endangered the health and safety of others at school and that her conduct constituted a repeated refusal or neglect to obey school rules. The school board further found that the interest of the school demands the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated May 30, 2023, was mailed separately to the pupil and her mother. The order stated the pupil was expelled until her 21st birthday. 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 several issues which require consideration. Appellant notes that the pupil was expelled for two incidents and complains that there were actually three incidents but that the district has refused to consider the first incident. Appellant states that in the first incident, which occurred at the beginning of the school year, the pupil was accused of vaping in the bathroom but the district found nothing when they searched her person, her backpack and her locker. Appellant claims that the pupil gave a false confession and was suspended for five days even though there was no evidence. The minutes of the expulsion hearing reflect that appellant provided this information to the board and was told that the board was not considering any incidents from early in the school year. Appellant also complains that the district did not tell the school board that a friend admitted giving the pupil the alcohol or that the friend was allowed to go back to class. The expulsion hearing was the pupil and appellant's opportunity to challenge the evidence presented by the district and to present any additional evidence that the pupil or appellant wanted the board to consider. New evidence may not be submitted for the first time on appeal. *Loyal Sch. Dist. Bd. of Educ.*, Decision and Order No. 822 (Dec. 6, 2022).

Appellant complains that other students, such as the one who allegedly admitted giving the pupil alcohol, were allowed to go back to class. 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). 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. *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); *J.H. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 721 (Aug. 18, 2014).

Appellant describes various diagnoses the pupil has received, including depression, anxiety, possible post traumatic stress disorder and, on the date the appeal was filed, ADHD. To the extent appellant is suggesting that the pupil's expulsion violated special education laws, 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); *Middleton-Cross Plains Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 794 (June 26, 2020). Any challenges to the district's compliance with special education procedures may be addressed using the special education appeal process. To the extent appellant is providing the information as mitigation evidence, appellant provided much of the information to the board at the expulsion hearing. Therefore, the board was able to consider that information when deciding whether to expel the pupil. Although the board could have chosen not to expel the pupil, or could have chosen to expel the pupil for a shorter time period, I cannot say that the expulsion was so extraordinary that it requires reversal.

Appellant contends that only the alcohol infraction should be considered against the pupil because it is "the only incident that actual hard proof was found." Arguments concerning the

sufficiency of the evidence are generally beyond the scope of review. *T.S. v. West Allis-West Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 684 (May 20, 2011); *A.D. v. Silver Lake JI Sch. Dist. Bd. of Educ.*, Decision and Order No. 665 (June 28, 2010). 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). At the expulsion hearing, the district introduced an Agreement to Stay Expulsion Proceedings, signed by the pupil and her mother on February 20, 2023, in which the pupil and appellant admitted that the pupil smoked marijuana at school on February 13, 2023. This is sufficient evidence to support the board’s finding that the pupil was in possession of marijuana at school on February 13<sup>1</sup>, 2023.

Finally, appellant contends that expulsion until age 21 is unnecessary and notes that the pupil is only 14 years old. 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

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<sup>1</sup> The minutes of the expulsion hearing are clear that the marijuana allegations involved conduct on February 13, 2023 and include the statement that following deliberations, “[t]he Board agreed that [the pupil] had engaged in the conduct alleged in the notice of pupil expulsion hearing in that she threatened the health and safety of others at school by being in possession of marijuana and alcohol at school on February 13, 2023, and May 8, 2023, respectively...” The Findings of Fact state that the pupil was in possession of marijuana at school on February 3, 2023. Because the minutes make clear that the board found that the marijuana possession occurred on February 13, 2023, this typographical error is not a basis for reversal of the expulsion.

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).

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.

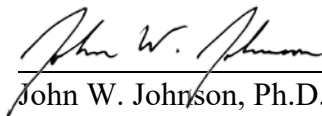
### CONCLUSIONS OF LAW

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 River Valley School District Board of Education is affirmed.

Dated this 21st day of July, 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]

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**COPIES MAILED TO:**

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