

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of



by Tomahawk School District  
Board of Education

DECISION AND ORDER

Appeal No.: 23-EX-19

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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 Tomahawk School District Board of Education to expel the above-named pupil from the Tomahawk School District. This appeal was filed by the pupil’s parents and received by the Department of Public Instruction on November 27, 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 letters entitled “Notice of Expulsion Hearing,” dated October 12, 2023, from the district administrator of the Tomahawk School District. The letters advised that a hearing would be held on October 23, 2023 that could result in the pupil’s expulsion from the Tomahawk School District through his 21st birthday. The letters were sent separately to the pupil and his parents by certified mail. The letters alleged that the pupil was guilty of repeated refusal

or neglect to obey the rules, 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 and that the pupil engaged in conduct which endangered the property, health or safety of an employee or a school board member of the school district. Specific allegations contained in the letters include that on October 9, 2023, during a search performed following a report that the pupil was vaping in the boys' bathroom by the multi-purpose room, a bottle of Jack Daniels was found in the front zipper pocket of the pupil's backpack in his locker. The pupil "denied that it was his and he stated that he was holding it for a friend. [The pupil] was asked to identify the owner of the Jack Daniels and he refused." The pupil

was seen on video getting a water bottle from another student in the hallway prior to 4<sup>th</sup> hour. He then goes to his locker with the bottle and appears to place something in his pocket. Instead of reporting to his ELA class, he takes that water bottle to the water fountain outside of the bathroom where the initial vaping accusation took place and appears to add water. After stopping at the water fountain, he goes into the bathroom with the water bottle. Both a student and a staff member who were in the bathroom immediately after [the pupil] left, said that it smelled "fruity" and that is what resulted in the vaping report. [The pupil] is then seen taking the water bottle to his ELA class. When he is pulled from the class to be brought to the office by Mrs. Nieman [at approximately 11:20 am], [the pupil] leaves the bottle in Mrs. L'Esperance's classroom. When [the pupil] does not return by the end of class, the bottle is picked up by another student and taken to a different student's locker. Upon interviewing the student who took the water bottle, they stated that they were aware that the water bottle contained alcohol.

The notice also stated that the expulsion proceedings were based on the pupil's failure to fulfill the terms of the Voluntary Pre-Expulsion Agreement dated September 18, 2023.

The hearing was held in closed session on October 23, 2023. 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, 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 repeatedly refused or neglected to obey school rules, engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others and “engaged in conduct that endangered the property, health or safety of (an employee) (school board member) of the school district in which the pupil is enrolled.” 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 23, 2023, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the age of 21, with eligibility for early reinstatement at the beginning of the 2026-2027 school year if he met certain early reinstatement conditions. Minutes and an audio recording 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 one issue which requires consideration. Appellants contend that the district failed to identify the pupil as a child with a disability and failed to implement an individualized education plan (IEP) or behavior modification (Section 504) plan. Appellants state that the pupil was diagnosed in March 2023 with attention deficit hyperactive

disorder and oppositional defiance disorder, and that they asked the middle school principal about the process for an IEP or Section 504 plan at the start of the 2023-2024 school year. Appellants contend that the school was looking for reasons “to get rid of” the pupil and that “had earlier interventions had been implemented, we could have avoided the downward spiral that ultimately led to his expulsion.” In its response brief, the district asserts that it has no records indicating the pupil’s diagnoses and that he was diagnosed during a time when he was not being serviced by the district. The district further contends that regardless of the pupil’s diagnoses, no evidence presented by the pupil or in his educational record supports the conclusion that his diagnoses adversely affected the pupil’s educational performance.

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, as is the case here, 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 (Feb. 25, 2015).

An issue not raised by appellants merits mention. Among other things, the notice of expulsion hearing must state “[t]he specific grounds, under [Wis. Stat. § 120.13(1)(c)] subd. 1., 2. or 2m, and the particulars of the pupil’s alleged conduct upon which the expulsion proceeding is based.” Wis. Stat. § 120.13(1)(c)4.a. Where a school board relies on multiple grounds in

reaching its expulsion decision, the pupil must be fairly and specifically notified of the underlying conduct supporting each ground. *Somerset Sch. Dist. Bd. of Educ.*, Decision and Order No. 807 (Feb. 7, 2022); *Joseph F. v. Almond-Bancroft Sch. Dist. Bd. of Educ.*, Decision and Order No. 191 (May 13, 1992). The notice of expulsion hearing states three bases for expulsion:

you are guilty of REPEATED refusal or neglect to obey the rules;

...

you engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others;

...

you engaged in conduct which endangered the property, health or safety of an employee or a school board member of the school district.

The board cited the same three bases in its conclusions. Only the first two are grounds for expulsion under Wis. Stat. § 120.13(1)(c)1. Wis. Stat. § 120.13(1)(c)1. also allows for expulsion where a school board “finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which ... endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled.”

(emphasis added). However, neither the notice nor the evidence at the hearing suggested that expulsion was being sought for any misconduct that the pupil may have engaged in while not at school and not under the supervision of a school authority. Because one ground for expulsion was accurately stated in the notice and a reasonable view of the evidence supported the board’s finding that the pupil engaged in conduct while at school which endangered the property, health or safety of others, the expulsion will not be reversed on this basis. *Slinger Sch. Dist. Bd. of Educ.*, Decision and Order No. 839 (Aug. 9, 2023).

With respect to the first basis for expulsion, repeated refusal or neglect to obey school rules, the notice of expulsion hearing failed to include the particulars of the pupil's alleged conduct that would support a finding of such violation. Instead, the notice described the pupil's alleged misconduct on October 9, 2023. In order to support a finding that the pupil was guilty of repeated refusal or neglect to obey school rules, the notice must describe the incidents that the district believes together constitute repeated refusal or neglect to obey school rules. *Somerset Sch. Dist. Bd. of Educ.*, Decision and Order No. 807 (Feb. 7, 2022) (concluding that fact that student sent multiple messages in a group chat did not make her participation in the chat a repeated refusal to follow school policy). The evidence introduced at the hearing suggested that the district's allegation that the pupil engaged in repeated refusal or neglect to obey the rules was based on his significant disciplinary history over several years. However, that disciplinary history was not described in the notice of expulsion hearing and was mentioned in the notice solely as something that might be considered by the board after the misconduct specified in the notice was proven when determining whether to expel and for how long. Although the notice of expulsion hearing did state that "[t]he expulsion proceedings are based upon your failure to fulfill the terms of the Voluntary Pre-Expulsion Agreement dated September 18, 2023," the notice did not describe the conduct that led to the Voluntary Pre-Expulsion Agreement or any other incidents of repeated refusal or neglect to obey the rules. Thus, the expulsion cannot be affirmed on the ground of repeated refusal because the pupil did not receive prior to the expulsion hearing the statutorily-required notice of the particulars of his alleged conduct that would support a finding of repeated refusal. Because one ground for expulsion was accurately stated in the notice and a reasonable view of the evidence supported the board's finding that the

pupil engaged in conduct while at school which endangered the property, health or safety of others, the expulsion will not be reversed on this basis.

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.

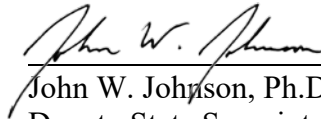
### **CONCLUSIONS OF LAW**

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 Tomahawk School District Board of Education is affirmed.

Dated this 11th day of January, 2024



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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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