

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

JEFFREY S [REDACTED]

by the Riverdale School District  
Board of Education

DECISION  
AND  
ORDER

94/95-EX-4

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**NATURE OF THE APPEAL**

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the October 19, 1994 order of the Riverdale School District Board of Education to expel Jeffrey S [REDACTED] from the Riverdale School District through May 27, 1995. This appeal, dated November 1, 1994, was filed by Jeffrey's parents, Mr. and Mrs. Curtis S [REDACTED], and was received by the Department of Public Instruction on November 10, 1994.

In accordance with the provisions of sec. PI 1.04(5), Wis. Admin. Code, 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 sec. 120.13(1)(c), Wis. Stats. The State Superintendent's role is to ensure that the required statutory procedures were followed, that the school board's decision was based upon one or more of the established statutory grounds, and that the school board was satisfied that the interests of the school district demand that the student be expelled.

## FINDINGS OF FACT

The record contains a letter dated October 11, 1994 from the District Administrator of the Riverdale School District. The letter advised that a hearing would be held on October 17, 1994 concerning the proposed expulsion of Jeffrey S [REDACTED] from the Riverdale School District. The letter was sent separately to Jeffrey and his parents. A current copy of sec. 120.13(1)(c), Stats., was printed on the back of the letter. The letter alleged that Jeffrey 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 repeatedly refused or neglected to obey the school rules. The letter specifically alleged that on October 6, 1994 Jeffrey S [REDACTED]:

1. Grabbed a female high school student by the shoulders and pushed her into a brick wall.
2. Picked up a male high school student and his desk and flipped them to the floor.
3. Pushed Mr. Sanford Miller (the teacher) and placed one or more hands on Mr. Miller's neck in a violent manner.
4. Hit Mr. David McHenry (the principal) in the stomach.
5. Knocked books and papers around room #105.
6. Smashed a fire extinguisher protective glass with his fist.
7. Went to the parking lot and left school without permission at a high rate of speed.

The expulsion hearing was held in closed session on October 17, 1994. Jeffrey and his parents appeared at the hearing with their attorney, Paul Angel. At the hearing the school district administration presented evidence concerning Jeffrey's conduct on October 6, 1994, which had been outlined in the October 11, 1994 letter to Jeffrey and his parents. Jeffrey and his parents were given the opportunity to present evidence, to cross examine all witnesses and to respond to

the allegations. They did not dispute the allegations regarding Jeffrey's conduct on October 6, 1994. Instead, they pointed out that Jeffrey had been receiving special education in the district from 5th grade through 9th grade as a child with exceptional educational needs (EEN) due to his emotional disturbance (E.D.). They also pointed to a history of attention deficit disorder and hyperactivity. They presented a psychiatric examination of Jeffrey performed by Louis Fulton, M.D., dated October 14, 1994 which included a diagnosis of "Attention Deficit Hyperactivity Disorder resulting in explosive behavior." As a result of that evaluation, Jeffrey began a treatment regime which included medication and counseling.

According to his parents and the district, Jeffrey was in 10th grade and was not receiving special education in the fall of 1994 because his parents requested that he be placed in regular classes. According to the district's director of special education, the district agreed that it was appropriate to remove Jeffrey from special education in 10th grade based on his academic performance and lack of significant disciplinary problems. The district, however, did not perform a multi-disciplinary reevaluation of Jeffrey to determine whether or not he remained a child with EEN.

At the hearing, Jeffrey and his parents did not directly ask for a special education evaluation or for placement in special ed. They characterized Jeffrey's attention deficit disorder as a "mitigating" factor for the board to consider. Mrs. S [REDACTED] at one point during the hearing indicated that she wanted Jeffrey to return to school after a reasonable amount of time and indicated that a return at the beginning of the next semester may be ideal. It is unclear whether she anticipated that Jeffrey would continue his course work during his absence from school, but that is at least implied in her statements. She also indicated that she wanted Jeffrey to return to

school in a condition under which he could control himself and expressed confidence in his new treatment regime.<sup>1</sup>

The record indicates that Mrs. S████ contacted the district and asked for Jeffrey's records on October 13, 1994. She was sent Jeffrey's "cumulative file", but not his behavioral records. During the expulsion hearing, Attorney Angel asked the district's high school principal, Mr. McHenry, whether he had any record of any discipline problems involving Jeffrey during his 9th and 10th years in school. Mr. McHenry responded affirmatively and stated he had a "personal copy of a discipline card file that I have kept on Jeffrey." Mr. Angel indicated that he was not provided the card file prior to the hearing but did not pursue further questions regarding prior discipline. Likewise, neither the board nor the administration pursued the area. The record contains no discussion of what discipline issues were reflected on the principal's card file. It is also unclear from this record whether the card file was shared with the board, and, if so, whether and in what manner the board considered the information it contained. Mr. McHenry stated in earlier testimony that he "probably had minor disciplinary dealings with Jeffrey, but nothing major." Neither the card file nor other behavioral records were submitted as part of the record for review herein.

After the hearing, the school board deliberated in closed session. The board found that Jeffrey's conduct in school on October 6, 1994 endangered the property, health or safety of others. The school board further found that the interests of the school demand the student's

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<sup>1</sup>Due to the particular issues raised, Mr. and Mrs. S████'s letter dated November 1, 1994 appealing this expulsion decision was also treated as a special education complaint under 34 CFR 300.660-662 of the regulations implementing the Individuals with Disabilities Education Act (IDEA) and secs. 115.77(3)(am) and 115.89(1), Wis. Stats. Further, in a letter dated November 28, 1994 Attorney Ronald Stadler requested a due process hearing under PI 11.10, Wis. Admin. Code, on behalf of the Steldts. The hearing request alleged violations of procedural and substantive requirements in state and federal special education laws with regard to Jeffrey's education and his expulsion. The department is holding in abeyance its complaint investigation of issues which are also the subject of the pending due process proceeding.

expulsion. The order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated October 19, 1994, was mailed separately to Jeffrey and his parents. The order stated Jeffrey was expelled through May 27, 1995.

### DISCUSSION

School districts are limited purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. *Iverson v. Union Free High School Dist.*, 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from sec. 120.13(1)(c), Wis. Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which must be followed in the expulsion process.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated that the scope of the State Superintendent's review is limited to that set out in sec. 120.13(1)(c), Wis. Stats. In *Racine Unified School Dist. v. Thompson*, 107 Wis. 2d 657, 667, 321 N.W.2d 334 (1982), the court of appeals *in dicta* stated: "The superintendent's review, then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc." *Id.* It is therefore incumbent upon the State Superintendent in reviewing an expulsion decision to ensure 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 interests of the school district demand the pupil's expulsion.

The S■■■■s focussed primary attention at the expulsion hearing and in this appeal on issues related to Jeffrey's history and current diagnosis of attention deficit disorder, as well as his

prior identification as a child with EEN and placement in special education classes. As indicated in footnote 1, above, the S■■■■s have now requested a special education due process hearing. In that hearing request, the S■■■■s have challenged Jeffrey's expulsion and raised issues regarding the propriety of his education before and after expulsion. Issues involving the evaluation of the pupil's known or suspected handicapping condition(s), the relationship, if any, of such condition(s) to the pupil's misconduct, the propriety of the education offered to the pupil before and after expulsion, as well as the appropriate educational placement during the pendency of the due process proceeding are all subjects pending before and within the proper domain of the special education hearing officer. These issues are accordingly beyond the scope of this appeal. See, e.g., *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993).

The other primary argument raised in this appeal involves the district's failure to provide the pupil's behavioral records to Mrs. S■■■■ prior to the expulsion hearing. In particular, the S■■■■s object to the principal's "card file" on Jeffrey which they were unaware of until the hearing. However, it is unclear from the record whether the principal's card file or any other prior disciplinary records were actually received by the board. They were not provided as part of the record in this appeal.

If the school board did receive such records, there is no indication that the board considered them in any manner. The school district administration did not describe the nature or extent of prior disciplinary problems with Jeffrey beyond indicating that they were "nothing major." The school district administration clearly did not rely on prior disciplinary problems in support of the request for expulsion. Similarly, the board made no reference to prior disciplinary

issues in its minutes, findings or order. The board's findings related strictly to the misconduct which occurred on October 6, 1994.

The S■■■■s argue that the board did in fact consider prior disciplinary issues. They point to the notice of expulsion and argue that the notice states that in considering whether to expel Jeffrey, the board "would" consider the complete academic and disciplinary records. However, the expulsion notice actually states that the board "may" consider those records. The notice therefore is not proof that the board did consider other disciplinary records.

The State Superintendent will reverse an expulsion decision if the notice of expulsion failed to "specify the particulars of the alleged refusal, neglect or conduct" upon which the proposed expulsion was based, as required by sec. 120.13(1), Wis. Stats. See, e.g., *Joseph F. v. Almond-Bancroft School District Board of Education*, Decision and Order No. 191 (May 13, 1992). The required statutory notice is intended to ensure that the student is sufficiently apprised of all the charges in order to adequately defend against them. *Kevin M. v. Oak Creek-Franklin School District Board of Education*, Decision and Order No. 181 (September 13, 1991). Upon review of this record, I find that the pupil was sufficiently apprised of all the charges considered by the board. (Compare *Jennifer P. v. Waukesha School District Board of Education*, Decision and Order No. 226 (April 18, 1994), in which the school administration submitted detailed evidence of incidents of misconduct not contained in the expulsion notice and referred to those incidents in support of its request for expulsion throughout the hearing.)

In their appeal letter the S■■■■s also object to the period of expulsion as unduly harsh. The district has correctly pointed out that I am not authorized to address that issue in the context of this appeal. See, e.g., *Lavell A. v. Kenosha Unified School District Board of Education*, Decision and Order No. 147 (January 27, 1987).

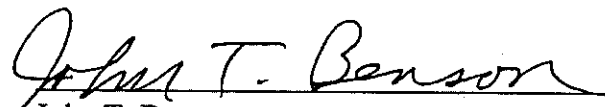
## CONCLUSIONS OF LAW

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 sec. 120.13(1)(c), Wis. Stats.

## ORDER

IT IS THEREFORE ORDERED that the expulsion of Jeffrey S. [REDACTED] by the Riverdale School District Board of Education is affirmed with regard to the procedural requisites set out at sec. 120.13(1)(c), Wis. Stats. This order does not address the particular considerations and requisites under special education laws which are subject to a pending due process hearing before a hearing officer, as well as a pending complaint before this agency.

Dated this 9th day of January, 1995.

  
John T. Benson  
State Superintendent of Public Instruction