

# Racine district to appeal order to readmit student

School lawyer says permanent expulsion for knife attack is legal

By DAVE DALEY  
of the Journal Sentinel staff

The Racine Unified School District board voted unanimously Tuesday night to appeal a court order forcing the school district to readmit a student this fall who had been permanently expelled after a 1994 knife attack on another student.

Board President Linda Flashinski said board members voted, 8-0, at a closed hearing to authorize the school district's attorneys to appeal a preliminary injunction, issued orally last week by U.S. District Judge John Reynolds, that requires the district to take the student back.

"We cannot state strongly enough our objection that we have not been given the opportunity to determine the readmittance of this student at the district level," Flashinski added. "The family of the student has not appealed to the Board of Education for reinstatement and so has not exhausted the proc-

ess at the district level."

Frank Johnson, the Racine school district's in-house lawyer, said Tuesday the parents of the expelled student, a girl now 16, went straight into federal court in Milwaukee with a request for a preliminary injunction without first asking the district to readmit the girl.

Johnson said Reynolds still has not issued a written order in the case, decided orally Aug. 7, but said both he and the school board's outside lawyer think the district has a good chance of winning on appeal.

"We believe that you can permanently expel a student," Johnson said. The school board vote Tuesday night authorizing an appeal is contingent on Reynolds' written order also requiring the district to readmit the expelled student.

Johnson said the expelled girl, identified only as "R.T." in court documents, slashed another girl, age 12, so badly during the attack that the victim required more than 300 stitches to close wounds on her upper lip, ear and left arm, and later also had to have plastic surgery.

R.T., a 13-year-old seventh-grader at Racine's Mitchell Mid-

dle School at the time of the January 1994 attack, was ordered into juvenile detention at Lincoln Hill School in Irma. In March 1995, she was placed in a juvenile facility in Racine, court records show.

On March 27, 1995, after a hearing, the Racine school district ordered R.T. permanently expelled from the district's schools and based the decision on Wisconsin law, the court records show.

But Madison lawyer Willie Nunnery, representing R.T. and her parents, is now arguing in federal court that the permanent expulsion is unlawful and violates R.T.'s "constitutional right to an education at public expense."

But Johnson said the Racine school district is still unsure whether R.T. represents a danger to other students if readmitted and wants a determination on that issue before allowing the girl back.

"This was her second knife attack," Johnson said, adding that the Racine school district is also concerned about being forced to put R.T. back in the same school as her 1994 victim.

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vere allowed to use that to care or their children, then 80% of parents would be able to meet their sick-child-care needs.

"We wouldn't have solved the problem, but we would have made very significant headway," she said.

In the 1985-'90 period, 27% of poor families averaged three weeks or more of family illnesses, the number of days both children and parents were ill. For non-poor families the figure was 23%.

The study defined poor as a family with income of 125% of the federal poverty level. That works out to \$16,700 annual income for a family of four.

The Family and Medical Leave Act, passed in 1993, is no help to most parents because it involves unpaid time off and covers only major illnesses that typically require a hospital stay, he researchers said.

In most cases, children do not need hospitalization but instead have frequent routine illnesses, he researchers said.

Another problem is that the law covers only those workers who have completed a year of employment at companies with at least 50 people. Workers who meet the requirements can take up to 12 weeks of leave for family medical emergencies or for a new baby.

The researchers culled their conclusions from existing data. Some of the data involved fathers, but most involved only mothers, Heymann said.

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of  
REBEKAH T [REDACTED]  
by the Racine Unified School District  
Board of Education

DECISION AND ORDER  
95/96-EX-23

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 April 12, 1995 order of the Racine Unified School District Board of Education to permanently expel Rebekah from the Racine Unified School District. This appeal, dated February 12, 1996, was filed by Rebekah's parents and was received by the Department of Public Instruction on February 19, 1996.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. 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 interest of the school district demands that the student be expelled.

## FINDINGS OF FACT

The record contains a letter dated April 4, 1995 from the Assistant Superintendent for Student Services of the Racine Unified School District. The letter advised that a hearing would be held on April 11, 1995 concerning the expulsion of Rebekah from the Racine Unified School District. The letter was delivered separately to Rebekah and her parents. The letter alleged that Rebekah 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 letter specifically alleged Rebekah was involved in an incident on January 12, 1994 where she used a knife to cause bodily harm to another student. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The record also contains various exhibits as well as an audio tape of the expulsion hearing.

The hearing was held in closed session on April 11, 1995. Rebekah and her mother appeared at the hearing. They were represented by counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Rebekah and her mother were given the opportunity to present evidence, to cross examine all witnesses and to respond to the allegations. The school board policies concerning weapons, physical assault and dangerous student behavior were also admitted into the record.

After the hearing, the school board deliberated in closed session. The board decided to expel Rebekah permanently. A letter dated April 12, 1995, sent separately to Rebekah and her parents, advised them of the board's decision.

## 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 District*, 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 District 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.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 543 N.W. 2d 843 (1995). 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.

No briefs were filed by either party in this case. Because the board failed to comply with the statutory requirements, I am compelled to reverse this expulsion decision. The record in this case fails to reflect the finding by the board that the interest of the school demands the pupil's

expulsion. No where in the record does it indicate the board made this necessary finding.<sup>1</sup> This omission requires reversal. *Elena C. v. Janesville School District Board of Education*, Decision and Order No. 265 (December 12, 1995); *Mark P. v. Marinette Janesville School District Board of Education*, Decision and Order No. 236 (August 26, 1994); *Michael S. Milwaukee Public Schools Board of School Directors*, Decision and Order No. 128 (May 10, 1985).

It may be possible for the board to correct the omission without completely rehearing the case. See decisions in *Nicole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992) and *Nicole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

I reverse this expulsion with great reluctance. This case involved a vicious assault with a knife on another pupil on school premises resulting in serious physical injury. This conduct is extremely dangerous and I am in no way depreciating the seriousness of the conduct by this decision. However, I must comply with the requirements of the statutes in these matters and reversal in this case is mandatory.

#### 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 failed to comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

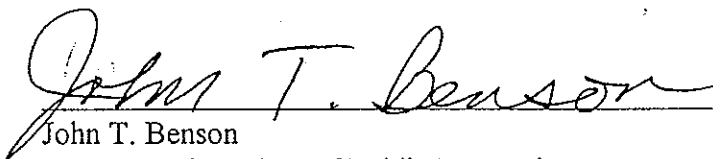
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<sup>1</sup> Following the Department's receipt of the official record from the school district, my staff made at least three separate contacts with the district to clarify whether any documentation which might have included this necessary finding was missing from the materials submitted. The additional information received from the district likewise did not include this board finding.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Rebekah T. [REDACTED] by the Racine Unified School District Board of Education is reversed.

Dated this 18th day of April, 1996.

  
John T. Benson  
State Superintendent of Public Instruction