

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from
the Merrill Area Public Schools of
SUSAN S [REDACTED],

DECISION
AND
FINAL ORDER

Appellant.

THE NATURE OF THE CASE

This is an appeal pursuant to sec. 120.13(1)(c), Stats., of a March 9, 1981 decision of the board of education of the Merrill Area Public Schools (hereinafter "the district") expelling appellant from school for the balance of the current school year. Having reviewed all matters of record in accordance with sec. P.I. 1.04(3), Wisconsin Administrative Code, the State Superintendent of Public Instruction now makes the following:

FINDINGS OF FACT

At the time of the events giving rise to this matter, appellant was a 15 year old sophomore at the district's high school. On the morning of February 27, 1981, she reported to a study hall on an in-school suspension (the reason for the suspension does not appear of record) and was assigned a seat by Ms. Vander Leest, the teacher in charge of the study hall. Sometime thereafter, appellant left her seat in order to deposit something in the wastebasket. In returning to her place, she managed to strike the metal chairs along the aisle, thus creating a disturbance. Upon taking her seat, appellant continued to disrupt the study hall by moving adjacent chairs about. In response to this behavior, Ms. Vander Leest approached her and

directed her to stop moving the furniture. Appellant responded, "Jesus Christ, I don't have to." Thereupon, the teacher gave her what was described as a "small" slap with an open hand. She did not sustain any injury as a result of this contact. Appellant's reaction to this means of discipline was to [strike Ms. Vander Leest in the face with a clenched fist, causing the teacher significant bleeding from the nose and a blackened eye.] Thereafter, Ms. Vander Leest was taken to the hospital and treated for these conditions.

Following due notice and hearing, appellant was expelled from school for the aforementioned conduct.

CONCLUSIONS OF LAW

Sec. 120.13(1)(c), Stats., authorizes the board of education to expel a student upon finding that he or she ". . . 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 determines that the interests of the school demand the student's expulsion. Appellant's conduct clearly endangered the health and safety of the teacher since injuries in fact resulted which required emergency medical treatment. However, in this appeal brought on her behalf, appellant's father argues that she acted in self-defense and thus cannot be expelled for striking Ms. Vander Leest. This office need not now decide the extent, if any, to which the privilege of self-defense applies in the context of an assault upon instructional personnel since the record in this case will not support a finding that appellant acted in self-defense.

In simplest terms, the privilege of self-defense absolves an individual from criminal or civil liability for the use of physical force against

another where (1) the individual reasonably believes that the other is about to make contact with his or her person and (2) such threatened contact is either unprivileged or unlawful (see generally sec. 939.48, Stats.). Neither element is satisfied under the facts of this case. At common law, Ms. Vander Leest, as a teacher, stands in loco parentis for the purpose of disciplining students in her charge. That such discipline may include the use of reasonable corporal punishment has long been recognized by the law and was reaffirmed by the U.S. Supreme Court as recently as 1977 in Ingraham v. Wright, 430 U.S. 651. Under the circumstances, the teacher was privileged to apply corporal punishment for appellant's disruptive and insubordinate behavior. Since its application was privileged, appellant had no right of self-defense. Moreover, even if the teacher had no such privilege, there is nothing of record to suggest that appellant reasonably believed she was under a continuing threat of force when she slugged Ms. Vander Leest. Rather, it is clear that this action was nothing more than retaliation.

The striking of instructional personnel is perhaps the most serious offense a student can commit. Such behavior cannot be tolerated if sufficient order to carry on the educational process is to be maintained in the schools. Due to the vicious nature of appellant's conduct, the district's board of education could reasonably conclude that the interests of the school demanded her expulsion for at least the period of time ordered.

This district is entitled to an order affirming its March 9, 1981 decision and dismissing the instant appeal.

BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: So ordered.

Dated this 13th day of May, 1981.

Barbara Thompson
Barbara Thompson
State Superintendent