

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from
the Schools of the Kenosha Unified
School District of RENEE S [REDACTED],

INTERIM ORDER

Appellant.

This matter is now before the State Superintendent on appellant's [motion for temporary reinstatement] pendente lite. The respondent district has filed objection to the motion asserting that there exists no reasonable likelihood of appellant prevailing upon the ultimate resolution of the merits of this appeal.

Appellant seeks to assign error to the Board on two points. Initially, it contended that appellant's case was prejudiced by the inclusion in the notice of hearing of an oblique reference to prior disciplinary action and the subsequent elicitation of specific testimony on that subject at the hearing. The notice of hearing is annexed hereto and incorporated herein by reference.

Sec. 120.13(1)(c), Stats., establishes a two part test for determining whether or not a student may be expelled from the schools of a district. The first part of the test is comparable to the guilt or innocence phase of a criminal proceeding and entails consideration of whether the student committed the specific offense charged in the notice of hearing and, if so, whether that offense falls within one of the substantive grounds for expulsion specified by the statute. The record under review more than amply supports the Board's finding that appellant [engaged in an at-school physical assault upon a teacher] as charged as well as the Board's conclusion that such conduct satisfied the statutory ground relating to conduct while at

school which endangered the health and safety of another person. While information as to her involvement in unrelated disciplinary matters has no relevance to a determination of her guilt or innocence of the specific conduct with which she was charged, such information remains highly material to a consideration of the second part of the test for expulsion.

Upon finding the student guilty of committing an expellable offense, the Board is then required by sec. 120.13(1)(c), Stats., to determine whether the interests of the school demand appellant's expulsion and, if so, for what period of time. This process is analogous to the sentencing phase of a criminal proceeding and entails consideration of broader policy questions surrounding the student's relationship to and her interaction with the school, its staff and her peers. Significant if not controlling factors to the policy consideration include issues such as the likelihood of involvement in future misconduct if the student were to be permitted to continue in attendance and the degree to which the student's presence at school has disrupted orderly school operations and the educational progress of fellow students. Information regarding the student's overall disciplinary record is highly probative and appropriate to the consideration of such matters. Indeed, it is difficult to conceive of how such questions could ever be resolved without the benefit of that information. Therefore, this office finds no error in the limited and non-specific reference to prior disciplinary action as set forth in the notice of hearing or in the Board's consideration of testimony as to such matters. Moreover, inasmuch as that testimony was elicited on appellant's behalf and over the objection of the district, she cannot now be heard to complain of the Board's consideration of evidence which she affirmatively undertook to bring to its attention.

Appellant's second assignment of error is equally without merit. On this point, appellant asserts that the Board erred in permitting Mr. Bisciglia,

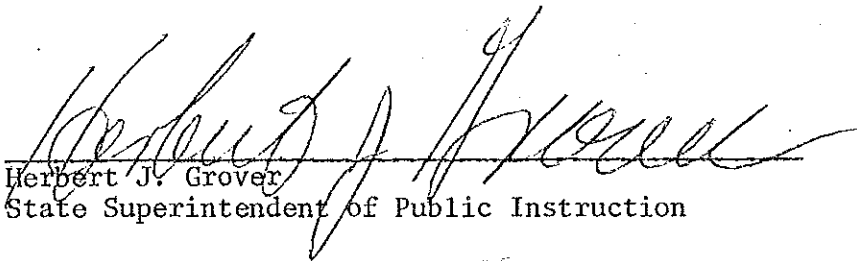
the junior high school principal, to offer expert testimony on the issue of whether or not the interests of the school demanded her expulsion. The record reflects that this witness did not observe the incidents giving rise to these proceedings; accordingly, in order for him to offer opinion testimony on such matters he would have to be established as an expert in the specialty area at issue, in this instance, educational administration and the control of student conduct. However, it is well settled that proof that an individual has greater knowledge of or familiarity with the specialty area than lay persons in general is sufficient to qualify that person as an expert. Obviously, a junior high school principal who is required by law to hold a license which is issued only to those completing a rigorous program of formal study in the field of education has a greater knowledge of matters of educational administration including student discipline than is possessed by the proverbial man on the street. As such, it must be concluded that Mr. Bisciglia was sufficiently qualified to offer expert testimony at the hearing. That his expert opinion testimony directly addressed an issue of ultimate fact is not itself grounds for objection to its admissibility. Sec. 907.04, Stats.

In light of the foregoing considerations, this office cannot conclude that there exists any reasonable likelihood of appellant prevailing on the merits of this appeal. Accordingly, the motion for temporary reinstatement is denied. Since appellant's motion for a de novo hearing is based on the same arguments, it is also denied.

Further proceedings on this matter will be conducted via a review of the record in accordance with Wis. Adm. Code s. PI 1.04(3). Appellant shall file with this office a brief or statement of position on the merits by February 1, 1982. Respondent shall file its reply by February 15, 1982. Appellant's rebuttal material, if any, shall be filed by March 1, 1982.

BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: So ordered.

Dated and mailed this 19th day of January, 1982.



Herbert J. Grover
State Superintendent of Public Instruction

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1

Kenosha, Wisconsin

November 25, 1981

TO:

NOTICE OF HEARING REGARDING POSSIBLE
EXPULSION OF STUDENT FROM SCHOOL

Notice is hereby given that on the 14th day of December, 1981, at 7:30 p.m., a hearing will be held by the BOARD OF EDUCATION OF THE KENOSHA UNIFIED SCHOOL DISTRICT NO. 1 in Room 308 of the Municipal Building, 625 52nd Street, Kenosha, Wisconsin. (Use the west entrance to enter building.) This hearing will be held for the purpose of finding whether or not Renee S [REDACTED]'s continued attendance in school would be harmful to the best interest of the school district. You are therefore advised that the hearing may result in the expulsion of Renee Stratman from school.

The Board's determination will be based on consideration of evidence presented relative to the specific matters detailed in the attached Exhibit A., which is attached hereto and made a part hereof.

The Board hearing will be closed to the public unless there is a request for an open hearing. You are informed you will be given an opportunity to present evidence in behalf of the student or to contradict by cross-examination or other means the evidence which will be presented by the school administration. You are also advised that Renee Stratman need not make any statements which would be inculpatory

and she may remain silent if she so desires. The student and her parents or guardian may be represented at the hearing by counsel.

You are hereby advised of Section 120.13 (1) (c), Wisconsin Statutes, which statute reads as follows:

(c) The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, or finds that a pupil knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives, or finds 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, or 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 others at school or under the supervision of a school authority, and is satisfied that the interest of the school demands the pupil's expulsion. Prior to such expulsion, the school board shall hold a hearing. Not less than 5 days' written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian, specifying the particulars of the alleged refusal, neglect or conduct, stating the time and place of the hearing and stating that the hearing may result in the pupil's expulsion. The pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel. The School Board shall keep written minutes of the hearing. Upon the ordering by the school board of the expulsion of a pupil, the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the expulsion to the state superintendent. An appeal from the decision of the state superintendent may be taken within 30 days to the circuit court of the county in which the school is located. This paragraph shall be printed in full on the face or back of the notice.


Superintendent of Schools

PAUL F. WOKWICZ
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Phone: 658-2181

EXHIBIT A

Re: Renee [REDACTED]

Renee S [REDACTED] is a fifteen year old ninth grade student in the Educational Support Program. She was a student at Lance Junior High School until early in October of this year. While at Lance Junior High School, Renee had numerous disciplinary referrals and she was placed in the Educational Support Program.

When she should have been attending classes at the Educational Support Program building, on October 12, 1981, Renee was in the Lance Junior High School building. Mr. David Gresch, a teacher at Lance Junior High School, informed Renee that she should not be in the building and that she should leave. Renee insisted on staying in the building and started to walk up the hall with another student. Mr. Gresch took her by the coat sleeve and suggested that she leave the building. Renee refused and slapped Mr. Gresch's hand. Mr. Gresch then called the office and told them that Renee was in the building.

Mrs. Hoffman, the assistant principal at Lance Junior High School, located Renee and told her she was in the building without permission and that she should leave. When Mrs. Hoffman attempted to lead Renee out of the building, Renee threatened to punch Mrs. Hoffman in her "fucking face". Renee then hit Mrs. Hoffman in the shoulder and attempted to strike her on the face. When Mrs. Hoffman threatened to call the police, Renee left the building. Mr. Gresch witnessed the assault by this student upon Mrs. Hoffman.

Because of this unprovoked assault upon a school district employee, it is recommended that this student be expelled from school.