

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CHILTON EDUCATION ASSOCIATION

and

CHILTON SCHOOL DISTRICT

Case 14

No. 54991

MA-9857

Appearances

Cullen, Weston, Pines & Bach, by **Attorney Gordon E. McQuillen**, 20 North Carroll Street, Madison, WI 53703, appearing on behalf of the Grievant.

Davis & Kuelthau, by **Attorney Paul C. Hemmer**, 605 North 8th Street, #610, P.O. Box 1287, Sheboygan, WI 53082, appearing on behalf of the District.

ARBITRATION AWARD

The Association and District named above are parties to a 1995-97 collective bargaining agreement which provides for final and binding arbitration of certain grievances. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to hear and resolve the grievances of Russell Sarasin. The undersigned was appointed and held hearings in Chilton, Wisconsin on October 13, 14, 15, 16, 17 and December 16, 17, all in 1997. The parties completed filing briefs by June 1, 1998.

ISSUES

The parties stipulated that these are the issues to be decided:

Did the School District have just cause to suspend Russell Sarasin for three days as a consequence of his conduct during second hour art class on January 7, 1997? If not, what is the appropriate remedy?

Did the School District have just cause to non-renew the individual employment contract of Russell Sarasin for the 1997-98 school year? If not, what is the appropriate remedy?

BACKGROUND

The Grievant is Russell Sarasin, a 59 year old art teacher who has been employed at the District since August 15, 1982, when he was hired for part-time employment. He became a full-time teacher on August 21, 1984 through the school year of 1996-97, when his employment contract was not renewed by the District. The parties agreed to combine two grievances -- the non-renewal action and a prior suspension -- and have the Arbitrator resolve both of them. There are no procedural issues, but the merits are lengthy. Much of the record involves the high school principal, Timothy Schaid, who started his duties on July 1, 1990, and was the immediate supervisor of Sarasin when Sarasin was at the high school. Sarasin had four class periods at the high school and two at the elementary school. Richard Appel is the elementary school principal and Sarasin's supervisor there. The District Administrator is Dr. W.I. DeMaster.

The Potter's Wheel Demonstration

Sarasin was suspended for three days for an incident in the classroom on January 7, 1997. Schaid was making rounds and stopped in the classroom, second hour arts and crafts period, on that date. What Schaid saw and heard is a matter of considerable debate and interpretation. Schaid walked by the art room and noticed a demonstration going on, and he went in to observe it. Sarasin had the students lined up in a semi-circle so they could all see him -- there are about 19 students in the class. Sarasin was demonstrating the way to work with clay on a potter's wheel. Schaid stood about 15 feet away with the students and was able to see and hear Sarasin. Sarasin saw his pants and feet and knew immediately that Schaid was in the room. However, Schaid did not believe that Sarasin knew that he was in the room until after he made a comment that resulted in the three-day suspension. What Schaid saw and heard is described in his January 10, 1997, letter to Sarasin which is a notice of disciplinary suspension:

On Tuesday, January 7, 1997, I visited the art room during your 2nd period Arts & Crafts class. Your students were gathered around the Potter's Wheel and you were engaged in a demonstration as to how to appropriately prepare a mound of clay for modeling. You proceeded to work with the clay, keeping it wet, then grasping it with your hands and drawing up on it making it into a shaft of clay, about a foot in length from top to bottom. You described to your class how this was the first step in preparing the wet and softened clay. You then began to rotate your thumbs around the tip of the shaft of the clay and said, "now boys like to play with the end of this, I don't know why," after which you looked up to the class with a smile. Some of the class members were shocked and embarrassed, and others began to chuckle and giggle.

During the course of subsequent interviews with separate individuals who were present during this class, it became apparent that your comment, along with the simultaneous motion of your thumbs and subsequent smile, was perceived by those present to have inappropriate sexual overtones and innuendo. That clearly was my observation, as well.

In the course of the conference you and CEA Representative Fred Klaeser had with me on Wednesday, January 8, 1997, at 2:40 p.m., you acknowledged:

- 1) That you "probably" made the comment as referenced in paragraph one, above.
- 2) That you referred to "playing with the end of it" with your thumbs on more than one occasion in your attempt to explain your actions as referenced in paragraph one, above.
- 3) That you stated the students "thought they were being sexually harassed".
- 4) That in addition to your actions and comment in the course of preparing the clay, your statements in the course of instruction had strong and inappropriate sexual connotations, which were clearly unnecessary.
- 5) That you attempted to diminish the severity of the reprimand which you received on May 8, 1992, for telling inappropriate sexual jokes.

In addition to the philosophy of the School District of Chilton as outlined in Board Policy 311, Board Policy numbers 532.3,a,e.; 532.32,a,b.; and 532, c.,d.,i.,l.,x., all charge you with the responsibility of utilizing the best possible teaching techniques to provide for the positive social, ethical, and moral growth of the students of the School District of Chilton. Additionally, Board Policy 423 clearly shows that Harassment, be it sexual or otherwise, will not be tolerated on the part of anyone employed by or in attendance to the School District of Chilton. A review of your Personnel File shows you have engaged in this type of conduct in the past. This is well documented, and has been thoroughly discussed with you. You have once again violated the expectations and requirements as outlined Board Policy. The use of sexual comments, gestures, overtones, and innuendo, no matter how intended, either verbally or non-verbally, is unacceptable and will not be tolerated. This is particularly true with respect to instruction.

Therefore, on the basis of your conduct on January 7, 1997, you are hereby suspended from employment, without compensation, for three (3) working days beginning with Monday, January 13, 1997. You may resume your contractual duties

on Thursday, January 16, 1997. You are also warned and advised that any future conduct of this type will result in further and more severe disciplinary action to include dismissal from your employment or non-renewal of your employment contract. Govern your actions accordingly.

Schaid and Sarasin had a conference the following day. Sarasin brought in Frederick Klaeser as an Association representative, and Schaid asked the middle school principal, Robert Knadle, to sit in and take notes. The meeting was also recorded on audio tape. When Schaid asked Sarasin for his comments, Sarasin told Schaid that he did not hear the instructions before or after and was there for only a few minutes. Sarasin told Schaid that the particular group of students in that class is lucky if anyone can get a "C" grade, so he tries to break the exercise down into simple language. Out of the 19 students in that class, 10 had exceptional educational needs, some were LD, some were ED. Sarasin sometimes tells students that the clay has two parts -- the rough, macho part, the stuff that make it stand, and the girl part that is smooth, silky and slippery. Sometimes he refers to the parts of clay as oil and motor. Sarasin told Schaid that if he tried to tell the students that clay is made of silica, water, bentonite, brominime, talc, redart and rogart, they would not have the slightest idea what he was talking about.

Sarasin referred to Nelson's Pottery Book, which says that you press down and push in at the same time. He said that the kids never understood that method, but they understand when he explains that he has to put his thumbs over the center, right on the end and push it down and away from you. Schaid and Sarasin disagreed on whether Sarasin was rotating his thumbs on the end of the clay or not. Sarasin told Schaid that he wanted to be sure that the students crossed their thumbs on the top, but not to rotate them. Sarasin told Schaid that Schaid was getting sex mixed up with clay, and when Schaid told him that four individuals felt -- (Schaid gave a long pause here) -- Sarasin supplied the words "sexually harassed," with some exasperation. Schaid told Sarasin that one student though Sarasin was talking about a penis, or some guy's "ding dong," and another that he was talking about "a guy jacking off." Sarasin said it wasn't meant that way, it was simply meant to bring the clay up and push it away from you and down. He told Schaid that he was making a mountain out of a mole hill. Schaid brought up a reprimand of Sarasin in 1992 for a joke with sexual innuendo, and Sarasin told Schaid that he hasn't told a joke since then. Sarasin told Schaid that he was not talking about boys having to play with the "end of it" but that he was talking about the clay end, and he was sorry if Schaid got a different connotation of it. Schaid told Sarasin that students were uncomfortable about the comments in the classroom, but he refused to tell Sarasin who they were or when he had talked with them. Sarasin asked Schaid if he interviewed a student that Sarasin had kicked out of class but Schaid refused to tell him.

Klaeser testified that he felt a little "bushwhacked" at the meeting, that he thought they were going in to get the facts straight and hear Sarasin's side of the story, and he did not expect to see a tape recorder. Klaeser stated that Sarasin used the words "sexually harassed" in a tone of exasperation but not as an admission of anything. Klaeser was also running a tape of the meeting with a pocket tape recorder.

The following day, Sarasin told Schaid that he wanted to give him a letter of explanation that should clear up the matter, which Schaid received on February 3, 1997, the same day that the Board was meeting to consider his non-renewal. Sarasin's letter (dated January 31, 1997) states:

At the meeting, discussed in the memo, I was asked strange questions and later even stranger accusations were implied. The statements that you alleged were taken out of context and misinterpreted.

I want to make it very clear. I was demonstrating to students how to center clay on a potters wheel. I have done this for twenty years, the same way. Somehow Mr. Schaid got the opinion that I was demonstrating some sort of sexual activity. He was very, very wrong.

Pottery is as difficult as learning how to balance a bike, play an instrument, or cast a fly. Students need to see the centering process in slow motion so they can emulate the same action when they take my place behind the wheel. I wanted students to pay close attention to the placement of my hands, not the clay. I instruct them to pull the clay to a 12 inch shaft, cross their thumbs over the end of the shaft, push away, press down, and release the clay easy. When I center the clay, for student understanding, in slow motion the task becomes more difficult to handle. These are some of the technical problems that were occurring. The clay was not wedged well, the consistency became too moist, the body was spent because of the demonstration, the clay had become undercut, and was beginning to wobble out of control. A small foreign piece of metal was clicking my forefinger, which had to be removed from the top of the shaft. I was struggling to get the clay under control. During the struggle some comments were made to explain what was happening to the clay. None of which were ever meant to be sexual and my intent was never sexual.

The terms I used in my comment were:

***Boys** - My hands are the boys and are referred to as the boys. The boys have to work together like a team.

***Like to play** - This is a causal terms used in the arts. Play with the design, Play with the paint. Play with the clay.

***With the end of this** - This was referring to the most important spot to place your hands when centering clay.

***I don't know why** - I was challenging my students to discover the technique of centering clay.

***The smile on my face** - I had been able to recontrol the clay. I won the battle. It was a smile of self satisfaction.

You state that I admitted to sexual harassment. I have never done so; again you have twisted my words.

I use many examples of comparison to help my students to understand what makes the clay work: water from an icicle, oil in a motor, water on the floor, grease on an axle, nothing is ever meant to be sexual in the classroom.

Further, I have never diminished the fact of the severity of the reprimand for sexual harassment I received in 1992.

In fact, I was well aware that you were observing in my classroom. Why would I put myself in jeopardy at this time? To reiterate, I deny the statements that you allege that I said in your memo of January 10, 1997. It was not what was said, nor what was meant.

I hope this will straighten out this matter. In fact you may check with Fred Klaeser to confirm my version of the meeting.

Schaid testified that when he was observing Sarasin in the classroom, he never saw him refer to a foreign object in the clay or lift some off and set it aside or see him struggle to get the clay under control. Schaid believed that Sarasin smiled because he was being clever or sly. Schaid stated that Sarasin's rotation of his thumbs, the comment about the boys like to play with the end of this, and his smile were all tied in together and created a sexual image, particularly because the clay looked like a penis to Schaid. Schaid testified that Sarasin stopped smiling when he looked up and saw him standing there.

In a private conference conducted before the Board on February 3, 1997, Sarasin played a videotape to demonstrate how he teaches kids to work with clay on a potter's wheel. In the videotape, he referred to his hands as "boys" -- a left boy, a right boy, how the "boys" need to work together like a team, crossing their thumbs and pushing away and down at the same time. Sarasin explained in the videotape that to "play" with clay means to "work" with clay. He also pointed out how the clay, when brought up for shaping, would look phallic from one point of view. He stated that there was a saw blade at the tip of the clay. The shape of the clay as it was brought up in the tape was not as tall as that which Schaid saw on January 7, 1997. Schaid did not see Sarasin rotate his thumbs on the videotape in the same manner as he saw in the classroom. Schaid also did not hear Sarasin call his hands "the boys" in the classroom demonstration or refer to "left boy" and "right boy."

Schaid testified that the DPI guide for curriculum planning in art education makes no sexual references in the curriculum about ceramic instruction. The end of the curriculum guide also states: "The arts sometimes raise issues of sexuality that can either be ignored or addressed as they arise. . . ." and it goes on to suggest how such matters be handled. The District's local curriculum document has no sexual references. Schaid also looked up a copy of the 5th edition of Nelson's book called Ceramics, A Potter's Handbook which was in the art room of the high school and found no sexual analogies or references in it.

Schaid said that he would expect one or two students with exceptional education needs to be in Sarasin's arts and crafts class. However, Sarasin stated that there were 10 out of 19 in that class that had exceptional educational needs, some LD, some ED.

For the purpose of the arbitration hearing, the District sought out an associate professor of art at the University of Wisconsin - Stevens Point, Anne-Bridget Gary. She has taught art for 15 or 16 years, including elementary students for a couple of years while a substitute teacher but not students with exceptional education needs. Her current field is primarily in ceramics and art education. The District asked her to review the local and state curriculum, the ceramics chapter from the Nelson text, and a videotape that Sarasin prepared to demonstrate his technique in working with clay. Gary prepared a report for the District and also sent a video created by herself demonstrating her throwing of clay on the potter's wheel. One of the statements in her report is the following:

Sexual analogies used by the instructor in the classroom are never appropriate teaching tools. A very tall cone made during the centering process is unnecessary -- it is rather showy, in effect, not good or proper technique. Using the thumbs in the way Mr. Sarasin used them in the videotape does not seem, in my professional opinion, appropriate. . . . "Male/Female" references are never necessary in showing appropriate "technique."

Gary also testified by telephone at the arbitration hearing and said that Sarasin's videotape showed that he had too much water and clay to begin with, unless someone was very skilled. She stated that the way that Sarasin created the cone of clay and raised it and pushed it back down was not necessary, although she knew some potters might do that.

Sarasin was using ten pounds of clay, while Gary used a two-pound ball of clay. He testified that if he used a clay ball as small as Gary's, the group of students would not see what he was doing, so he over-emphasized what he was doing. Sarasin testified that the small amount of clay Gary used was fine for an individual camera or an individual sitting right in front of it, but not for 19 or 20 people gathered around. Sarasin said he has the skill to handle up to 50 pounds of clay. The amount of clay being used made a difference in how tall the cone or shaft is made. Sarasin said that when potters first start, they bend their thumbs down and dig a hole into the clay, so he tries to teach that you use your thumbs up and put one thumb on top of the other. He calls his hands "the boys" because they have to work together like a team, and that's an analogy he has used in previous classes. He noted that Gary used her hands and thumbs just as he did, only with a smaller size clay ball. He noted that Gary talked about children creating and playing with the clay, and that was what he meant when he was talking about playing with it.

Sarasin testified that it was not unusual for him to find foreign objects in the clay body, such as the piece of a jewelry saw blade that he found the day of the demonstration that Schaid saw. He did not make a big deal out of it in class, and he testified that a casual observer would not likely know that he was about to lose control of the clay, something he did not want to happen in front of students.

Sarasin stated that when he had the conference with Schaid, in Klaeser's presence, he used the words "sexually harassed" in a frustrated tone of voice, because every time he has gone into Schaid's office since 1992, he has been accused of sexually harassment or reminded that he told three jokes in 1992. His words, spoken in frustration in that conference, were not an admission to having sexually harassed students.

Other Prior Discipline

There are four prior disciplinary actions in Sarasin's record over which there is no real dispute. These were not grieved and were clearly noted as disciplinary actions, unlike other notices to be discussed later. There was a reprimand in 1992 for telling lewd jokes, a reprimand in 1992 for inappropriate discipline of a student, a reprimand in 1996 for inappropriate language with elementary students, and a one-day suspension in 1996 for swearing at a student.

The first reprimand was on May 8, 1992. Schaid sent Sarasin the following letter:

On April 29, 1992, I received a report from another staff member indicating that a call had been received from a parent of one of your students expressing concern about your demeanor in your 5th period Drawing and Painting Class. The allegations were as follows:

- 1) That you had been making lewd and vulgar jokes and/or comments in class.
- 2) That you had been making statements with sexual overtones and/or inferences in class.

During the course of subsequent investigations, which included separate discussions with individual students and others, I was able to conclude and verify that there was substance to the above allegations. My investigation also showed that similar comments have been received in the past that would suggest these allegations not to be a new phenomenon.

You will recall from the conference you and Dale Voskuil, CEA Representative, had with myself on May 5, 1992, at 3:20 p.m., that you admitted to the following specific allegations.

- 1) That you have told "Blond" jokes in class.
- 2) That you did tell the following joke: "How does a Blond part her hair? She squats."
- 3) That you did make the following statement about an art student's carving of a Beaver, and understood the inference that could be perceived: "Yes, I always tell (Student's Name) that I like her Beaver."

4) That you avoided the implementation of any disciplinary measures with a specific student when called a "Fucker" by that specific student after you allegedly offended her with a comment.

In addition to the philosophy of the School District of Chilton as outlined in Board Policy 311, Board Policy numbers 312,b.,d.,F.; 313,b.,c.,d.,k.,l.; and 321.1,d., and F., all charge you with the responsibility of utilizing the best possible teaching techniques to provide for the positive social, ethical, and moral growth of the students of Chilton Public School. Furthermore, Board Policy 532.3,a.,e.; 532.31,a.; 532.32,a.; and 532.33, c.,d.,i, and e, indicate that your role, duties, and responsibilities as a teacher for the School District of Chilton include the development of just and courteous relationships with students, that you show no prejudice or partiality when dealing with students, that you be responsible for the care and discipline of students, and that you have the welfare and development of students as your first concern in all work performed for the school district. Finally, Board Policy number 533.901 indicates that discrimination on the basis of sex is not to be condoned by the School District of Chilton. It is clear that the allegations to which you admitted show that your performance has deviated from these expectations as outlined in the above cited sections of Board Policy.

The use of lewd and vulgar jokes and/or comments, the making of comments with sexual overtones and/or inferences, and/or the failure to implement consistent disciplinary measures as identified in your current faculty handbook, is unacceptable and will not be tolerated on the part of employees of the School District of Chilton. Therefore, you are hereby reprimanded for engaging in these behaviors and are further advised and warned that any future acts or conduct as described above will result in further and more severe disciplinary action, which could include, but is not limited to, non-compensated suspension, dismissal, or non-renewal of your contract.

Should you need assistance in your efforts to rectify these shortcomings, please know that I will make myself available upon your request.

The faculty handbook includes a policy statement on sexual harassment. It defines sexual harassment as, among other things, verbal abuse or joking that is sexually oriented and considered unacceptable by another individual, telling dirty jokes that are clearly unwanted and considered offensive by others, or tasteless, sexually oriented comments, innuendoes or actions that offend others. The handbook also refers to the relationship between students and teachers, and that teachers and students are not equals, that teachers are not the students' buddies.

Regarding the fourth allegation in the letter of reprimand -- that Sarasin did not implement any disciplinary measures when a student called him a "fucker" -- Schaid testified that Sarasin told the student he could have her sent to the office for disciplinary measures if he wanted to, and she then replied that she had plenty to tell the office herself.

Sarasin received another reprimand on November 30, 1992, from Schaid, regarding his discipline of a student. Schaid testified that a student came to his office crying and upset over a verbal chastisement and confrontation that she had with Sarasin, who was angry with her for getting yellow oil paint all over a sink and a sponge. A day later, Sarasin came to Schaid and acknowledged that he had accused the wrong student. Schaid felt that Sarasin had violated Board policies as well as policies contained in the Faculty Handbook. Schaid sent the following letter:

On November 24, 1992, I received a report from a student regarding an incident that occurred between the two of you at the beginning of your 3rd period class on the same date in question. You will recall that you and I conferred about this incident both on the date in question and on November 25, 1992. I have also had the opportunity to interview two students who were present during the above referenced incident.

I am very disturbed by both the actions you took during this incident, and the initial attitude you displayed over the issue as is well documented from the first of our two conferences as mentioned above. It has been determined and substantiated that the actions you took during this incident were as follows:

- 1) You lost control of your temper and emotional state of being as you attempted to resolve a disciplinary situation in your classroom.
- 2) You verbally berated and demeaned a student in a disciplinary situation, by vigorously chastising her in the presence of other students in the class.
- 3) You did not act with prudence over this situation, jumping to a conclusion instead of taking the necessary time to obtain the facts.
- 4) You showed no regard for the well-being of a pupil in your attempt to resolve a disciplinary issue that frustrated you.

As a result of these actions you:

- a) Did not model what is regarded as appropriate and rational behavior and in accordance with the goals and philosophies of the School District of Chilton.
- b) May have tarnished an individual's self-esteem, your own professional reputation and that of the school's, and the Art Program of Chilton High School.

These actions and potential consequences are clearly in violation of Board of Education policy as attached and highlighted, and will not be tolerated on the part of any employee of the School District of Chilton. Therefore, you are hereby

reprimanded for the actions taken by you with regard to this incident and are hereby advised to take what steps are necessary to immediately rectify these shortcomings, including but not limited to the following:

1. You are to maintain an emotionally detached state of being when dealing with difficult situations.
2. Keep the worth and dignity of every student in the forefront of your mind as you decide upon all actions to be taken with and for students.
3. Prior to reaching a conclusion with regard to student disciplinary situations, conduct an exhaustive investigation to obtain all facts associated with the incident(s).
4. Read, understand, and adhere to all Chilton Board of Education Policy, paying particular attention to the attached highlighted portion of that policy (policy omitted in this Award), of which your actions of 11/24/92 were in violation.
5. Read the book entitled, "Assertive Discipline, A Take-Charge Approach for Today's Educator," by Lee Canter, which is available for checkout from my office, and develop a disciplinary plan for your classroom which is to be presented to me by December 11, 1992, at which time we will discuss the implementation of such and timeliness for monitoring progress. It is also suggested that you enroll in an Assertive Discipline course next summer.

Failure to rectify these short-comings and adhere to the above expectations will result in further and more severe disciplinary actions to include, but not limited to, non-compensated suspension, dismissal, or non-renewal of your contract.

Should you need further assistance in your efforts to rectify these shortcomings, please know that I will make myself available upon your request.

Another reprimand was given to Sarasin on January 16, 1996, by the current elementary school principal, Richard Appel. The letter of reprimand states:

On January 11, 1996, I received information from both parents and students that an incident occurred on Wednesday, January 10, 1996, during your art class with Mrs. Watkins' class. I discussed this incident both with the parents that raised some concern along with many children from the class. In addition, I also sat down and discussed the incident with yourself on Friday, January 12, 1996. You admitted that the incident did in fact take place and that you were sorry that it had gone this far. I have further looked at you personnel file which indicates that this type of behavior has been noted on two other occasions.

I am extremely disturbed that this incident took place. The action that you took in handling your class was inappropriate and unprofessional. The following information has been gathered during my questioning with yourself and other parties involved:

- 1) You used an extremely graphic story to try and prove a point to your students not to run with a pencil. (A boy who poked his eye out by running and stabbing a pencil into his eye). This was used as a scare tactic to keep kids from breaking the rule.
- 2) You told the students that their (sic) was a special potion that was on the piranha teeth that you had hanging around your neck. You stated that they would all die if they touched these teeth. Again you used a scare tactic to try and get your students to try and follow your rules.
- 3) You told the class that their last teacher was going to be Mrs. Watkins because they were all going to die. The students were extremely confused over this comment and were quite upset.
- 4) You began the class in a very bad mood that was quite apparent to your students. Students immediately received their names on the board for talking to one another. I have been in your classroom and have not seen this "no talking" expectation addressed or enforced in your classroom prior to this. Students need consistency and structure and I feel that with your mood and swift discipline that you displayed these students saw neither.

As a result of these actions you:

- a) Did not exhibit professional judgment or behavior in accordance with the goals and philosophies of the School District of Chilton.
- b) I am concerned for the students' self esteem that your comments may have damaged during your class with this second grade, the outlook that they have on you as a teacher/person, your art program as a whole, and the reputation of yourself and this school district.

These actions and potential consequences are clearly in violation of the Board of Education policy as attached and highlighted, and will not be tolerated on the part of any employee of the School District of Chilton. Therefore, you are hereby reprimanded for the actions taken by you with regard to this incident and are hereby advised to take what steps are necessary to immediately rectify these shortcomings, including but not limited to the following:

- 1) Immediately apologize to the entire class for your inappropriate behavior and poor judgment in using sarcasm and humor that was not age appropriate or suitable to be used in the classroom.

- 2) Cease using inappropriate sarcasm or humor in your classrooms. You must understand the age level of your audience and adjust your lessons accordingly.
- 3) You must treat each and every student with respect and care. Students must be dealt with honestly and it is vital that all students know their consequences before their action even takes place.
- 4) Read, understand, and adhere to all Chilton Board of Education Policies, paying close attention to the attached highlighted portion of that policy, of which your actions of 1/10/96 were in violation.

Failure to rectify these short-comings and adhere to the above expectations will result in further and more severe disciplinary action to be taken against you to include, but not limited to, non-compensated suspension, dismissal, or non-renewal of your contract.

Should you need further assistance in your efforts to rectify these shortcomings, please see me.

Appel said the second grade teacher came to him with some concerns after she heard from a parent, and he called in four students and their parents. He found that the students were confused by Sarasin at the start of the class because he was agitated and he put their names on the board for talking. Sarasin had been to South America over Christmas vacation and brought back some piranha teeth on a necklace for a discussion. Sarasin was talking about hunting, using a blow gun, dipping a dart into poison for hunting, poison that killed missionaries, etc. He testified that he did not tell the students that there was poison on the teeth or the blow gun dart or that they would die if they touched the teeth. He passed the teeth around for the children to look at them. According to Appel, Sarasin said that Mrs. Watkins would be their last teacher because they were going to die if they touched the piranha teeth. According to Appel, a child then touched the teeth and Sarasin went to the phone and simulated dialing 911. Appel testified that Sarasin never mentioned the blow gun dart to him. Later in the class, a child was twirling a ruler on a pencil and started to go toward the pencil sharpener. Sarasin said that he told the student, "Don't run, you'll poke your eye out." He told Appel that when he was in third grade, he knew a boy who poked his eye out while running with a pencil, but he did not tell that story to the students. Sarasin apologized to the class in front of Appel. Sarasin stated that he frequently used the system of putting kids' names on the board for talking. Appel agreed that it was an appropriate disciplinary technique.

Sarasin received a one-day suspension to be served on May 8, 1996, for his conduct with a student. The notice of the suspension states:

It was reported to me that your behavior during an incident with a student from your 3rd period class on May 2, 1996, may have been questionable. A subsequent investigation into this matter led to some serious concerns regarding your professional behavior. You will recall we discussed the specifics of these serious concerns during the conference we had over this matter on Friday, May 3, 1996.

Your actions with this student in an attempt to discipline her for being out of your classroom, and the subsequent discussions you had regarding this incident in your 4th period class on the date in question disturb me greatly. It has been determined and substantiated that the following did occur:

- 1) In an effort to intervene with a student who was out of your classroom during the instructional period, you chose to inappropriately verbally berate her with socially unacceptable language, saying to this student, "what the hell are you doing in the hall, get your god damn ass back in the classroom."
- 2) During your subsequent 4th period art class on that day, you chose to share with your students the details of the incident, the name of the student involved in the incident, and your disposition over the incident.

These types of actions on your part have occurred in the past, are well documented, and have each been thoroughly discussed with you along with methods presented to assist you to correct the identified shortcomings. Your actions in this matter have once again violated the policies of the Board of Education. The use of inappropriate methods and language to discipline students will not be tolerated on the part of any employee of the School District of Chilton. Additionally, the School District of Chilton expects its employees to maintain confidentiality regarding the behavior, academic, and health records of all students.

On the basis of your conduct on May 2, 1996, you are hereby suspended from employment, without compensation, for one (1) working day on Wednesday, May 8, 1996. You are hereby warned and further advised that any future use of inappropriate methods and language to discipline students will result in further and more severe disciplinary action to include dismissal from your employment or non-renewal of your employment contract. Govern your actions accordingly.

Schaid testified that the student involved came to the office and told the assistant principal about the incident, and he in turn told Schaid about it. Schaid's investigation of the matter showed that when Sarasin swore at the student, she told him to "get fucked." Sarasin was agitated about the incident and told his next hour class the name of the student, what she said to him, and that he was going to see that she was kicked out of art class with no credit.

Sarasin had sent the student to the kiln room upstairs, and she didn't come back to his room but went to the physical education lockers and stole some money. The office told him never to let that student out of his room again, even with a pass. He stated that as a reward, he sometimes lets his kids out ahead of the physical education class to go to lunch, and he saw this particular student coming from the locker area. He told her to come here, but she kept walking away from him. Sarasin testified that he blew it, lost his temper, and told her to get "her god damn ass back in here" to his room. He tried to talk to her about the rules she was to follow, but she told him that he had no more authority over her, that she "was fucking out of here". He was still angry when his next class started and he told the students what she had said to him. Sarasin expected some support from the office -- the student eventually got one or two hours of detention and apologized to Sarasin for getting him in trouble.

Other Incidents

On October 21, 1992, the former elementary principal, Robert Garfield, set out in writing his concerns over an incident between Sarasin and another teacher, Miss Arnevik. The incident occurred a few days before when Arnevik held some students in after class to finish a math test, and they missed the first part of Sarasin's art class. Sarasin said that students kept trickling into his class and he had to reintroduce the lesson three times. He sent the students back to Arnevik's class with the message that she should bring her entire class to him. Garfield's letter addresses his concerns, which included putting students in the middle of a disagreement between staff members, the angry confrontation between Sarasin and Arnevik in front of students, using students to carry angry messages, the loss of instructional time as well as Arnevik's prep time, and the unprofessional conduct.

Sarasin took issue with Garfield's letter, the tone and threat of non-renewal, and wrote him back on October 26, 1992, pointing out that he did not know the school had a policy that allowed one teacher to keep students from coming to art class without mutual agreement between the two staff members. He refused to take all the blame, and stated in his letter that Garfield and Arnevik were partially to blame for the incident. Sarasin testified that Arnevik had kept kids back in her class, sending part of the class to him, four or five times in the past and he wanted that practice to stop. Sarasin had never heard that the District's priority was reading and math, and he considered art to be as important as other areas.

Garfield responded to Sarasin's letter with another one of his own, stating that he thought that Sarasin missed the main point which was that disputes among teachers in the presence of students or laymen were unjustifiable. He also attached some Board policies and again warned that a lack of compliance with Board policy would result in discipline.

While Schaid agreed that Garfield's letter was not a reprimand, he also testified that he thought it was disciplinary and it could have been grieved under the collective bargaining agreement.

On February 7, 1994, Sarasin dismissed a student from art class and spoke with Schaid about it the next day. This resulted in Schaid placing another letter in Sarasin's file regarding swearing and the use of socially unacceptable language in the presence of students, and telling Sarasin to refrain from using such language immediately. The student came to the office to complain. Schaid testified that Sarasin told him that he told the class that he and his wife had taken a trip to Jamaica and that he found and kept a small portion of marijuana, and that he meant this in a joking way. Sarasin admitted swearing at the student and saying, "I'm tired of your shit and I'm sick of your bullshit," in an attempt to discipline the student. Sarasin agreed with Schaid later that this was unprofessional. Sarasin testified that when he talked to Schaid about this student, Schaid said that this student would drive anybody nuts or something to that effect.

On May 31, 1994, Schaid sent a hand written memo to Sarasin stating the books of passes were laying on the students' tables when he came in at the end of the 3rd period. Schaid criticized that because the passes were too accessible to the students, and he asked that Sarasin keep the passes with him or put them in his desk. He also noted that there were seven to nine minutes left when he came into class but a lot of students were "off task." He asked that Sarasin have activities planned for all the time.

Since the date in question was May 31st, it was likely that those students "off task" had finished art projects for the end of the year. Sarasin thought they were looking at magazines, something he has them do in order to be able to draw certain things without having the objects in front of them. Sarasin does not believe that Schaid would be able to tell whether or not art students were "off task" or not. Sarasin could not recall exactly what students were doing this day by the time of the hearing.

On November 4, 1994, Sarasin reported to Schaid that he had loaned his keys to two students to get gas from the shop. The students gave the keys back to Sarasin, but he lost them and thought that the students had not returned them. Sarasin later found the keys, but Schaid put a letter in file on November 23, 1994, regarding lending keys to students. Schaid stated that he was deeply disturbed by Sarasin's actions, which were not in accordance with Board policy, and that any problem in the future would result in disciplinary action. Schaid had the custodians change the lock on the back entrance to the building as a result of the lost keys, although Sarasin said he never got any new keys. Schaid testified that his memo "warned" Sarasin that future difficulties would result in "more" severe disciplinary action, that he intended it to be disciplinary in nature, to call Sarasin's attention to the regulations. Sarasin never loaned his keys to students again.

On December 1, 1995, Schaid sent Sarasin a handwritten note regarding assessment forms, which are mid-quarter reports for students. A parent told Schaid that Sarasin was allowing students to complete their own forms, which are to be completed by teachers. Schaid told Sarasin that it was his obligation to evaluate students. Sarasin often had students grade their own work, to assess their art work, then went over it with them. After getting this note, he stopped the practice.

On February 13, 1996, Schaid sent Sarasin a note stating that Schaid was disappointed to find him giving instructions during the daily announcements in the second period that day, since the second and fifth periods have minutes added to them to accommodate daily announcements and teachers are to have students pay attention to them. In this instance, Schaid said that Sarasin should not have been teaching but had students listening.

Later that year, Schaid sent Sarasin a memo on April 18, 1996, based on what the District Administrator DeMaster reported to him, that several students were not doing anything during the first period in art class, and that Sarasin was not teaching or discussing anything with those students who were not engaged in any art learning or instruction. Schaid reminded him that he should be using all instruction minutes for teaching and learning. Schaid said Sarasin never spoke to him about this memo. Sarasin said that he spoke with Schaid, that Schaid said that DeMaster was just having another PMS day.

On November 21, 1996, Schaid sent Sarasin a memo regarding three matters. First, he told Sarasin that his attendance sheets were not being picked up by the runner because they were not on the attendance clip when the runner came by. Schaid noted that Sarasin was to take attendance at the start of the period and place the sheet on the clip right away. Secondly, Schaid noted that he found two students in the halls at the end of the fourth hour -- one of them was to take the attendance sheet to the office and the other was to deliver something. Schaid noted that deliveries should be made after class, and there would be no need to run the attendance sheet to the office if he had done it as noted previously. Finally, Schaid stated that he frequently saw Ian Geiser, a former student, in the building and was told that he may have been installing non-district software on their hardware. He told Sarasin that visitors must be arranged in advance and not be visiting during class time. Geiser had signed the visitors log in accordance with visitors' procedures. Sarasin told Schaid that he made arrangements in advance for Geiser to visit, that Geiser had signed in, and that Geiser was not loading anything inappropriate onto the District's computer. Schaid did not have knowledge to accept or dispute Sarasin's response.

On December 18, 1996, Appel called Sarasin to his office for a discussion regarding a meeting the day before when Sarasin fell asleep. The meeting was held after classes, about 3:15 p.m., and Sarasin fell asleep mid way through it. Sarasin told Appel that he did not know about the meeting until that day, and that he had taken a medication -- Sudafed -- beforehand which made him sleepy. Appel told him that he didn't "buy that" because Appel did not believe that Sudafed would make someone sleepy. Sarasin mentioned how hard he works, that he was 58 years old and Appel told him if the job was too demanding, he should get out, quit or retire. Sarasin told him that he had five more years until that would happen. Sarasin would have had a notice of the meeting in his mailbox, which he shares with his wife, who is the department head. The notice of the meeting was issued 10 days in advance of the meeting. Sarasin also takes dilantin and phenobarbital because he has had epilepsy since he was 22 years old, and he told Appel that he had epilepsy.

The Chalk Incident

The chalk incident is in a class of its own. It is unclear whether this incident ever resulted in discipline or not, much like other memos that will be discussed later, particularly in the "Discussion" section of this Award. The incident is better explained by taking it out of chronological order, with Sarasin's letter to Schaid first:

I am writing in response to the letter you wrote to me on May 4, 1993, regarding the sign-painting/chalk-pastel drawing incident.

I was given a directive by you to have the school sign painted by May 19, 1993. I waited for a sunny dry day for painting, and one that was predicting rain for the following day so that the chalk pastel would wash off the sidewalk. I could not put this in my lesson plan, since I could not predict the weather a week in advance. On Friday, April 23rd, I took my entire class outside to paint the sign. My classes have painted the sign three times before. Past experience has taught me that an entire class of high school students cannot paint the sign at the same time without having paint dripping all over the students clothing and paint accidentally spilling on the ground. I did exactly the same thing when we painted the sign in 1987; part of the class painted the sign and others did a cooperative chalk-pastel drawing of a friendly dragon. Chalk-pastel drawing is in our art curriculum, under drawing enabling learner expectations, p. 14. Repainting signs is not in our art curriculum, but I have always been more than willing to assist the school in such activities. Little did I think doing the school district a favor would result in a letter in my personnel file.

On the afternoon of April 23rd, I went over to the elementary school to finish my contract obligations of teaching two elementary art classes. While I was teaching my class, I was interrupted to take a telephone call from you. You asked me who did the chalk pastel drawing on the sidewalk. I told you that I instructed students to do so, while the other students painted the sign. Ten minutes later I was interrupted again to take a telephone call from you. During this conversation you wanted me to come over to the high school and wash off the chalk drawing. I said no I can't, that I have a class; you said, "Are you refusing me? Let me get my pad and pencil." Again, I said I have a class and you slammed the phone down. I believe I was unfairly judged. I was not confrontational because of voice inflections, and being insubordinate because I chose to continue teaching my elementary students. In my mind I'm here to professionally serve my students and will continue to carry out that duty to the best of my ability.

It's my belief I had the following three choices:

1. Cancel Miss Arnevik's class and send them back to her. I decided to send her class back once before and I got a letter in my file from Mr. Garfield reprimanding me for the loss of some of her prep time. I decided this wasn't a good choice.

2. I thought about getting one of the elementary secretaries to watch over my class while I went back to the high school and washed off the chalk drawing, but then I remembered I recently had gotten a letter in my file from you, Mr. Schaid, in reference to using secretaries to monitor my class while I attended to the kiln. This is a quote from your letter. "I am concerned because these absences place a non-certified individual in charge of a class, a violation of D.P.I. licensing regulations. In addition, the loss of valuable instructional time is phenomenal." I decided this also wasn't a good idea.

3. I, thinking to myself while I'm on the phone with you, what is so offensive about a chalk pastel drawing of a friendly dragon on a sidewalk? Why are you being so insistent that it get washed off now, when it was predicted to rain, and it did, the following day. I chose to stay with my students. I immediately went to the high school after I dismissed my elementary students at 3 o'clock. I had a short conversation with you. I indicated I really did not want to wash the drawing off while the entire student body were being dismissed, you said to me that you did not expect me to do that. Even though our contract states we are free to leave at 3:10 on Fridays, I remained until I had finished washing off the chalk pastel drawing. I completed this task as you requested by 3:40 p.m. on May 23, 1993.

This was an activity that we had done in the past, without any complaints. I was maximizing instructional time while the other students were painting the sign. Other teachers have been featured on TV and in the newspaper for doing the same activity. Many students, teachers, and even a board member commented on what a great job the kids did on the chalk pastel drawing. Dr. DeMaster sent a note regarding the school sign and said it looked great. At least a few positive things came out of this incident.

In summary I believe I was unfairly judged. I have always tried my best to follow school rules, and respect authority figures.

Schaid was coming back from lunch when he saw the chalk pastel drawings on the sidewalk in front of the school. He was concerned because one of the drawings was a large can with the word "BEER" on it and underneath, the words "Purely root." He also saw a snake, not a dragon, and he called the drawings "graffiti" and was concerned about how these drawings got there. His staff told him that Sarasin's third hour class was out in front that morning and created the drawings on the sidewalk.

Schaid called Garfield, then the elementary principal, and asked Garfield to cover Sarasin's class so that he could ask Sarasin about the drawings. Schaid then spoke with Sarasin and told him that there was graffiti on the sidewalks, that it was not fair for the custodial staff to have to remove it, that a weekend was coming up and graffiti would breed more graffiti or entice others to engage in

more acts of vandalism. Sarasin told Schaid that he had his class out there, that part of his class painted the school sign and the rest engaged in chalk pastel drawings. Schaid closed that conversation and deliberated over the matter a little, then called Garfield back and asked him to tell Sarasin that he wanted the drawings removed before Sarasin left for home that evening.

Garfield thought Sarasin was scheduled to conclude his teaching assignments at 2:30 p.m. that day. Schaid first called Garfield at 11:30 p.m. and called Garfield back at 1:40 p.m. Then at 1:45 p.m., Sarasin called Schaid back and was angry and said that he could not remove the drawings because he taught until 3:00 p.m. Garfield may have been wrong about the time that class ended. Schaid wanted to deal with the matter right away because the labor contract says that teachers are free to leave at 3:10 p.m. on Fridays (and certain other days).

Schaid asked him to make sure that the drawings were cleaned off before he departed for the day, and Sarasin told him that if he wanted them removed, he should do it himself. At that point -- Schaid said -- "Are you refusing? Let me get my pad and pencil," because he was going to document this conversation. Schaid felt that Sarasin was being insubordinate and confrontational.

Sarasin testified that there was no snake in the drawing, just a green dragon. The students had already drawn a can with "BEER" on it and he told that them they had to get the alcohol out of the beer. So they added "one hundred percent root." Sarasin said three board members rode past the drawing and congratulated him on it. He had done this project in the past, and no one referred to it as graffiti.

Sarasin washed the chalk off after the buses left at 3:20, and it took him about 10 to 20 minutes to do this. It rained later that night.

Schaid's letter to Sarasin was written May 4, 1993, regarding the chalk incident:

This shall serve as a follow-up to our discussions regarding the incident of April 23, 1993, when you had several students do some chalk sketching on our sidewalks, and my request that you have such removed prior to your dismissal on that day. We reviewed verbally on that day my reasons for wanting the sketches removed and how we will proceed in the future for all out of classroom art experiences. They are summarized as follows:

- 1) Ensure that all art activities remain congruent with your weekly lesson plans and the Board approved curricular Scope and Sequences for the Art Program.
- 2) Obtain advance approval from the Principal for all activities planned outside of the classroom, and for any project that will either temporarily or permanently alter the appearance, shape, etc., of our building and/or grounds.

However, even though you complied with my request of you to remove the sketches prior to your departure on that day, I am deeply concerned about the unprofessional disposition you assumed during the process of my making the said request of you. Both the tone and nature of your verbal contributions to our dialogue were confrontational and insubordinate. A review of your file indicates that this type of behavior has occurred on several occasions in the past.

We will no longer tolerate such behavior in the future. Disagreements will naturally occur in our business, but I expect such to be resolved in a professional manner. In addition, if an administrative directive is to be given, it is to be adhered to without question.

Please be advised that such behavior in the future will result in severe disciplinary actions to be taken against you, including, but not limited to non-compensated suspension, dismissal, or non-renewal of your contract.

Please review the following suggestions I have to assist you in preventing such from occurring again.

- 1) When faced with a situation that you feel is escalating to a point that may cause you to react in an unprofessional manner, politely excuse yourself, if possible, to give you an opportunity to compose yourself.
- 2) Review the attached copy of "The Master Teacher", Volume 21, Number 12, entitled, Professional Guidelines For Doing The Right Thing. The components and techniques presented here can apply to a variety of stressful situations in which you may find yourself.
- 3) Seek professional counseling to work on the development of a more "emotionally detached" state of being when engaged in situations you perceive as stressful.

Should you need further assistance or have any questions, feel free to contact me at your earliest convenience.

Schaid testified that his May 4, 1993, letter was a letter of warning because Sarasin was initially insubordinate to him by refusing to follow his direction, that it could be grieved, that any time something is submitted to the personnel file, employees can grieve the fact that it's been submitted. Schaid never told Sarasin that this was a disciplinary action. There is nothing in the document that specifically states that it is a disciplinary action.

Student Supervision

Schaid noted that on a couple of occasions, Sarasin was late for his class. Schaid sent Sarasin a memo on October 26, 1992, regarding supervision of class, and stated that he was expected to be in the classroom by 7:50 a.m. each day. Sarasin was absent for the first four or five minutes of his first period class on October 25, 1992. Schaid also stated in his memo that if an exigent circumstance arose which would force Sarasin to leave or be tardy, he should elicit another staff member, and Schaid stated that Mrs. Hedrich, Mrs. Bartell or the office would be his most logical choices.

The above memo was not a disciplinary action. Despite the fact that Schaid specifically told Sarasin that the office personnel would be a logical choice if he should have to be absent, Schaid became unhappy when Sarasin used the office secretaries to monitor the class while he went to attend to the kiln which is located quite a distance from his classroom, up the stairs and down the hall. Schaid sent Sarasin another memo regarding class supervision on February 15, 1993, noting that he asked secretaries to monitor his class for 15 minutes on one occasion, 10 minutes another time, and 35 minutes another time. Schaid said that his prior memo referring to "exigent circumstances" meant sickness or emergencies. Schaid's memo stated that failure to rectify these shortcomings by providing effective and consistent student supervision would result in disciplinary action taken against him.

Schaid testified that his secretarial staff complained that it was the third day in a row that they had been asked by Sarasin to supervise his class while he attended to the kiln. Schaid felt that Sarasin could have done his work in the kiln room before or after class periods. Schaid also thought that Sarasin should understand that by asking "the office" to supervise his class, he meant himself or a staff member, not a secretary. Schaid testified that the memo was not disciplinary in nature. Sarasin said he thought he was following the rules, that he called the office and a secretary came down.

On February 19, 1993, Schaid sent a hand-written memo to Sarasin to say that he was concerned that Sarasin was 10 or 15 seconds late to his first hour class. Schaid had no knowledge of whether Sarasin had already been in the building. The contractual day runs from 7:50 a.m. to 4:00 p.m. Sarasin recalled that he had to go to the bathroom.

The following incident refers to two situations -- one, where students are tardy, and two, where a student injured another student. Sarasin and Schaid exchanged memos on this, starting with Schaid's memo on February 2, 1995:

As a follow-up to the conversation and discussion we had on Wednesday, February 1, 1995, we ask that you immediately take the necessary steps to adhere to the following expectations:

1. Classroom Tardiness -- All students who are tardy to class must be intervened with by you. The system that has been established by our staff is as follows:

- a. First Tardy = Warning
- b. Second Tardy = Detention/Parent Contact
- c. Third & Subsequent Tardies = Office Referral to Discipline System

You must be sure that you effectively monitor your classroom on a consistent basis. Having a parent relay to me that his/her student has suggested that it is easy for a student to sneak into your classroom unnoticed is of great concern. Although you have told me you doubt that this has occurred, we must realize that if indeed this is a reality you would not be in adherence to both Board of Education Policy (532.33, Responsibility of Teachers), and Administrative Expectations (C. Classroom Environment, 2.) as listed in your Faculty Handbook.

Some suggestions:

- a. Close your classroom door after class begins. It would be hard for a student to enter your classroom unnoticed if he/she needs to open your classroom door.
- b. Do a visual scan of your classroom at regular intervals, especially when you are working 1 on 1 with a student. Check the class count and compare to the initial count at the start of the class. Remember who was marked absent at the start of class and take note if that person is in attendance later.

2. Classroom Behavior -- The fact that you had a student who was injured yesterday due to another student throwing an object in class causing the injured student to have to receive 5 stitches to the head and when questioned about the incident you indicated you never saw it occur, nor had you done anything to intervene with the student who threw the object that caused the injury is of great concern to us. You are responsible for the safety and well being of the students in your care, and must take every precaution and proactive intervention possible to assure that your classroom environment is conducive to such. This is an expectation of Board of Education policy (532.33, Responsibility of Teachers).

Suggestion (b.) above would be in order here for improvement. Also, be sure students are well instructed in the safety precautions for your teaching area (walking, no throwing objects, safety glasses, etc.) as well as the normal school expectations for deportment (keep hands to self, no fighting/violence, etc.) as found in the Student Handbook.

Failure to adhere to the above, Randy, will result in further and more severe disciplinary actions to include non-compensated suspension, dismissal, and/or non-renewal of your contract. Should you have any questions or be in need of further assistance, please do not hesitate to contact me at your earliest convenience.

Sarasin responded with a letter to Schaid on February 8, 1995:

You make this incident appear that I lack care and concern for the safety of my students. This is totally untrue. I realize that I am responsible for the safety and well being of all my students. I believe I do take precautions to assure a safe classroom environment. In my opinion I did act in a responsible manner in reference to the accident that occurred on February 1, 1995. Details of what happened that day are as follows:

1. I was in my 4th hour art class, visually looking at another student's art work and helping him evaluate some of the problems he was experiencing. Out of nowhere, an odd noise occurred. I looked up and discovered Grant had an injury to his head.
2. I immediately called the office. I stated that I had a medical emergency and that the student was bleeding from the head. I assisted Grant with his injury. I also found out that Grant had been injured to his head by a roller brush which Mike had thrown. Mike and Grant have always been friendly toward each other and this was abnormal behavior for them.
3. After waiting five to ten minutes, no help appeared. I then removed all students from my classroom to the hallway and accompanied Grant to the office. At that point you and Mr. Gillig took over. I returned to my classroom.
4. I started to investigate this incident further. I talked to Mike, the student who did the throwing. He was remorseful for his actions. You buzzed my room and asked me to see you during my noon hour. I spoke to you briefly during my lunch period. I explained to you that I did not actually see Mike throw the brush/roller because my eyes were focused down on another student's art work. I told you I wanted to investigate this further and I would get back to you. I again talked to Mike and Grant during my noon hour. I talked with Mike on how very inappropriate his actions were and how this was a very poor way to vent frustration. Basically what happened was that Mike, an eighteen-year-old senior, was frustrated because his painting wasn't coming together as well as he anticipated. Out of frustration, he threw his brush roller and Grant was accidentally hit in the head. I do not believe that I am at fault for Mike's actions. For the record, I had worked with Mike about five minutes prior to the incident occurring. Mike gave no indication that he was going to throw something. I am not a mind reader; I had no way of knowing what Mike was thinking. I have worked with Mike the past four years, and this action is unlike his character. Hopefully this incident will be a learning experience for Mike's future. As unfortunately as it was, I have a 12:30 elementary class and I had to quickly get to the elementary school.

5. At 2:50 I returned from my elementary classes to the high school. I again counseled Mike on his inappropriate behavior and checked to make sure Grant was still doing okay. I went to your office and told you everything I knew about the accident. I also filled out an accident form. I then attended the staff meeting held after school. In the morning I talked to Steve Stuebbe and asked him if there was anything formal I had to fill out for him. He told me no, and that he had suspended Mike for one day.

Again I believe I acted in a responsible manner.

Schaid stated that Sarasin continued to leave his classroom door open until two years later, March of 1997, after he had been issued a letter of non-renewal. Other teachers often leave their doors open. Regarding the injured student, Schaid testified that Sarasin was so indifferent about classroom management that it creates an atmosphere conducive to these types of situations occurring with students being injured. Schaid also stated that the failure to discipline the student who threw the roller sent a message to other students about the laxness in the classroom. Schaid stated that Sarasin missed the point in his response -- the point being that Schaid wanted Sarasin to tighten the ship and be fair and consistent with students. Schaid sent a memo back to Sarasin on February 9, 1995, noting the receipt of his response and that he expected Sarasin to take steps to adhere to the expectations identified regarding classroom tardiness and behavior. On February 15, 1997, DeMaster sent Sarasin a memo stating that from his perception, the issue was not that Sarasin lacked care and concern for the safety of his students, but that his classroom management skills allowed the behavior associated with this incident to take place in his room.

Schaid testified that the February 2, 1995, memo was discipline, that it called his attention to rules and regulations and asked him to adhere to them.

On February 9, 1995, Schaid sent Sarasin a memo in response to a complaint by another teacher that exhaust fumes from the kiln were coming in her classroom, which is adjacent to the kiln room. Schaid went to investigate and found students using the kiln unsupervised. Schaid asked Sarasin about the kiln's exhaust system, and Sarasin told him it was not operating properly. Schaid told him that he should fill out a form for maintenance service. Schaid's memo states that the kiln is to be used only by Sarasin or under his supervision, the exhaust system is to be on, and requests for maintenance services are to be reported to him. The kiln was probably not on when Schaid saw students using it -- they were just putting pottery on shelves or taking pottery off shelves. Due to the location of the kiln, up one floor from the art room, Sarasin said he could not watch students in both places. Loading the kiln is part of the curriculum. He also has a dark room and the entire class cannot fit in it.

Later that month, on February 22, 1995, Schaid sent Sarasin another memo stating that he saw three students working with the kiln without a pass from Sarasin and without his direct supervision, in contradiction to his prior memo. Schaid reminded Sarasin that students have to have passes at all times when traveling during instructional periods and the kiln is to be used only by him

or under his supervision. Schaid stated in his memo that he knew Sarasin was very busy preparing last minute details for an upcoming conference art show, which involved eight schools where students submit work to be judged. The memo included language that failure to adhere to expectations would result in further and more severe disciplinary action.

Schaid considered the above memo to be a warning, due to the language in the next to last paragraph about failure to adhere to expectations would result in more severe disciplinary actions. Sarasin responded with a memo dated February 28, 1995, in which he informed Schaid that the kiln was not being operated, but that it was warm from the night before and students were assigned to take a project there and leave it there to dry. Sarasin also stated that Bergman let the students into the room because it was locked, and that the students were supposed to do this during a passing period, that the task should have taken no longer than returning a book to the library and was no more dangerous than that. Sarasin asked the technical education teacher to make some wooden passes to use when going to the kiln room.

Schaid said that Bergman's presence in the area was not adequate supervision, that she does not have time to worry about other students entering her room to use the kiln, that she would have had no knowledge that these students were coming to her for her supervision. He noted that she was in another room when he saw the students in the kiln room. Schaid sent a memo to Sarasin on March 1, 1995, acknowledging his response and stating that he wanted to see steps taken to adhere to the expectations identified regarding the use of the kiln and student hall passes. He felt that Sarasin has missed the point of his prior memo by not addressing the fact that students were left unsupervised and without a pass. Schaid never saw any problems with students using the kiln after this. Sarasin said he sent the students to put pottery in the kiln room during their passing time, leaving his room with some class period time left.

On December 13, 1995, Schaid sent Sarasin a memo noting that John Johnson was out of his classroom without a pass or permission, that students were generally off task, reading magazines and talking. He reminded Sarasin to issue hall passes and maximize every available instruction minute, stating: "...students are to be on task throughout the entire 51 minute period." His memo asked Sarasin to rectify those shortcomings. Schaid had found the student in the hall without a pass and escorted him back to Sarasin's classroom. Sarasin said that John Johnson was coming from shop and hadn't been to the art room yet when Schaid saw him, so Sarasin could not have given him a pass. He also said that Schaid would not know when art students were on or off task. Sarasin assigns them a task to look at pictures in magazines for certain material.

On January 9, 1996, Schaid observed Sarasin arriving late by one minute to his first hour class and wrote him a memo about it. He told him that he should be in the classroom well ahead of this students and the 8:00 a.m. start time, and that he arrived at 8:01 a.m. Sarasin could not recall on this instance whether he had been in the bathroom, in the kiln room or the library.

Classroom Cleanliness

On July 27, 1993, Schaid sent Sarasin a memo regarding the conditions of his classroom. He asked that Sarasin address his concerns regarding general disorderliness. Schaid described such disorderliness as the storage room, photography darkroom cupboards, counters and shelves as well as the classroom itself being disorganized and cluttered. He objected to the way equipment and supplies were organized. He also noted damage and excessive wear -- such as marks, writings, clay, grime, paint -- found on the walls, floor, shelves, counters and sinks.

Sarasin sent a response on September 7, 1993, pointing out that the middle school and elementary school rooms are different, newer and not used with the same depth of programs and materials or equipment. He noted that there would be wet ongoing projects sitting around, and he did not consider them clutter. Sarasin also stated in his letter that the MacNeil environmental people advised them not to have students sweep the art room floors when working with clay, because silica could cause a disease known as silicosis. He closed by saying that he would try to be more orderly but did not want a sterile, unproductive classroom.

By October 7, 1993, Schaid acknowledged that improvement had been made. He and Sarasin had a discussion about daily house cleaning efforts by students and the teacher. On January 30, 1995, Schaid sent a memo to Sarasin stating that "it was reported" that the art room had not been appropriately cleaned up after student use each day, and that it was expected that the students would spend the last few moments of each class period to clean and organize the art room. This memo was copied to Wally Mittag, the Director of Buildings and Grounds.

The two letters and one memo from Schaid regarding cleanliness and classroom conditions were not disciplinary but were part of the total record considered by the Board in its decision to not renew Sarasin's contract.

Similar letters regarding cleanliness and housekeeping were issued to the head of the PE department at the high school, the agricultural education instruction, and the head of the technical education department. Schaid had made building orderliness and maintenance one of his personal goals for the 1993-94 school year.

On January 30, 1995, Schaid sent a handwritten memo to Sarasin that noted that it was reported that the art room had not been appropriately cleaned up after student use recently, and that it was expected that he have students spend the last few moments of each period to clean and organize the room. Mittag was again copied on the memo. When asked whether this memo was disciplinary, Schaid testified that it was "borderline disciplinary."

Students may be used to help clean up their work during the end of the class period, and it is considered part of the lesson in laboratory type classes. Sarasin testified that he frequently washed the floors himself, that the custodial staff did not wet mop the floors except on rare occasions, such as Easter and Christmas breaks. Sarasin noted that sometimes the technical school left clutter behind when it used his classroom for refinishing old furniture.

Schaid was aware that the custodians were not mopping the art room on a regular basis.

The Sparex Incident

This incident is unusual -- it appears as if the District held Sarasin responsible for an incident that happened when he was not there and a substitute teacher was in charge of his class. Schaid's January 31, 1996, memo to Sarasin states:

On Friday, January 19, 1996, a day on which you were absent due to illness, a student in your third period class used a chemical solution which had been placed in a secondary container, apparently to rinse a piece of jewelry on which she was working. A vapor emitted itself from the solution which was inadvertently inhaled by the student, causing an irritation to her mouth, nose, and eyes. We did not find an appropriate label on this secondary container, making it impossible for us to identify the solution and its MSDS so that proper medical attention could be obtained for the student.

A review of our records indicate that you attended a training session conducted by MacNeil Environmental, Inc., on March 6, 1995. Included in that training session was the process employees are to use for labeling potentially hazardous materials when transferred to a secondary container.

At our conference regarding this matter which was held on January 30, 1996, you informed me that this secondary container did have the appropriate labels on it, however, the chemical solution (Sparex No. 2) transferred to it destroyed the label. Therefore, you scratched the name of the product into the underside of the secondary container. You also showed me the product we should purchase that is made for use with this product, i.e., an "Electric Pickler," as it could be permanently labeled without fear of damage by the chemical solution. You informed me that you thought about requisitioning for this container after the 1995/96 requisition process had been completed and submitted.

A review of the MSDS for the chemical solution, Sparex No. 2, which you provided me indicates some safety items which are to be worn when using the product. The items are a) use of protective rubber or plastic gloves; b) use of appropriate eye protection such as safety goggles or a full face shield; c) assurances that clothing completely covers skin to avoid contact or the use of a shop coat/smock that provides this protection; and d) the provision of forced draft ventilation or the use of a gas mask. I am concerned because I do not see these items as being used as the MSDS requires. This raises the question as to how many other products are being used by students in the Art Studio not in accordance with the requirements of the MSDS for each product.

Therefore, I am expecting you to take necessary steps to meet the following expectations immediately:

- 1) Cease all use of the product, Sparex No. 2, until the safety items identified on its MSDS (paragraph 4 above) are acquired. Additionally, use of this product is not to occur until an "Electric Pickler" has been acquired and appropriately labeled as per the labeling requirements identified for you in the training session you attended in March, 1995.
- 2) Assure that all products transferred to secondary containers are appropriately labeled as per the labeling requirements identified for you in the training session you attended in March, 1995.
- 3) Research and review all MSDS's for products used in the Art Studio and take the appropriate measures to assure that all safety and emergency response items identified for each product are acquired and/or in place and/or in use in accordance with each MSDS for each product. Cessation of use of each product is to occur until this expectation has been completed.
- 4) Research and review the MSDS's for all newly acquired products in the future to assure that all safety and emergency response items identified for each product are acquired and/or in place and/or in use prior to any use of any such product.

Failure to adhere to these expectations, Randy, both now and in the future puts yourself and the school district in legal jeopardy, and will result in disciplinary action to be taken against you including, but not limited to, non-compensated suspension, dismissal, or non-renewal of your employment contract. Should you have any questions, or be in need of assistance in meeting these expectations, please contact me immediately.

MSDS refers to material safety data sheet, dealing with the handling and use of hazardous substances. Classrooms using such substances are to maintain a three-ring binder containing MSDS sheets, and in the event of an injury, the sheet tells what medical treatment is needed. While the MSDS sheets were in the classroom, the substitute teacher could not identify the chemical that the student was using. The substitute teacher was certified to teach, although not certified in art and was not trained about hazardous substances. The student was not using any protective or safety items such as goggles, a full face shield, a shop coat or a gas mask. There were no gas masks available for students. Schaid testified that the student should not have been using the chemical under the circumstances.

During the incident described above, the elementary art teacher (Sarasin's wife) called Sarasin at home, and the two of them were able to determine that the product was Sparex No. 2. No one looked at the bottom of the container where Sarasin had scratched the name. Schaid did not know when the product was purchased but assumed that Sarasin had requisitioned it.

Sarasin had left lesson plans for the substitute teacher, and the substitute teacher should not have been making jewelry or near the pickling compound. He noted that a gas mask would not filter out these fumes, and there is no forced draft ventilation in the art room because it is completely surrounded. Sarasin had raised the ventilation issue earlier with the administration because he wanted to teach silk screen but it needed ventilation.

Schaid testified that the letter he sent to Sarasin was discipline.

Testimony of Students

Several of Sarasin's former students testified at the hearing -- John Austin, Timothy Schomer, Jesse Schuknecht, Sharon Hephner, Tracy Christopherson, Melissa Meyer and Elijah Shaver.

John Austin is now a freshman in college majoring in industrial design. He took classes for four years from Sarasin, and got a merit award for a drawing in a regional art show. During his final year in high school, the 1996-97 school year, Schaid called him to the office and asked him if Sarasin told a joke in class. Austin had heard the joke but on a ski trip, not in class. Austin testified that he never heard any comments regarding sexual connotations or inferences in Sarasin's class or heard Sarasin tell lewd, vulgar or sexual jokes. He did not see any inappropriate discipline of students or hear Sarasin use swear words, except "hell" once in a while. Austin had seen students sneak out of Sarasin's classes well as other classes. He also heard other teachers, including teachers in English and physical education, use swear words. Sarasin was instrumental in getting Austin into the industrial design field.

Timothy Schomer is also a college freshman who took art from Sarasin for four years in high school. His major is graphic design and Sarasin played a big part in his choice of art as a major. Schomer called the classroom atmosphere in Sarasin's room as being very loose, similar to a college art classroom where one is given a project and works on it with a teacher there for guidance. He was also asked by Schaid if Sarasin told any dirty jokes, and he said no. He never heard Sarasin tell lewd or sexual jokes or make sexual comments or fail to supervise students. He had heard Sarasin swear, and heard other teachers and coaches use swear words. He had also seen students sneak out of classes, including Sarasin's classes.

Jesse Schuknecht is majoring in theater in college and took art classes with Sarasin in elementary and high school. Schuknecht received about four awards for his work at the conference art shows. He stated that he never heard Sarasin use inappropriate sexual references, tell sexual jokes, or use inappropriate disciplinary techniques with students. Sarasin's classes were not as formal as other classes, but Sarasin had rules about safety, especially with gas tanks or oxygen tanks used for jewelry and metal work. Students were required to wear safety goggles and gloves when working with the torches. Schuknecht had to wear goggles and keep a protective cover over a saw blade that was used as a rock cutter. He had heard Sarasin and other teachers and coaches swear in class and seen other students sneak out of classes. His father also teaches at the District.

Sharon Hephner is now studying interior design at a technical college and took art from Sarasin for three years. She considered Sarasin to be one of her top teachers who helped prepare her for college and her life in art. She stated that he helped prepare students for lab settings that they saw in college and related well to students, even though he often had some of the more difficult students. She never heard Sarasin say anything offensive or use sexual connotations or innuendoes, although she said that was not true of all her teachers. Hephner testified that labels were a big thing and on everything in Sarasin's classroom, even a bigger deal than where she works at a hardware store. She said that Sarasin used some minor swear words, but not as much as coaches. It was common for students to sneak out of gym class, she noted, or when people went to the library to study. When her mother died during her senior year, Sarasin went to the wake, sent roses and said that she should have said something sooner because he would have been there for her.

Tracy Christopherson is also studying at a technical college now, in computer programming analysis. She took art from Sarasin for two years, including studio arts. When Sarasin demonstrated making pottery, she said, he referred to his hands as "the boys" and explained that they needed to work together to control the way the clay is developed, that they have to work as a team. She also heard Sarasin refer to the outer layer of clay as silky, or feminine, and the harder part of clay as being masculine. She did not take offense at that or view it as being sexual. Christopherson got a first place medal for her teapot made of clay in the conference art show. She never heard Sarasin make inappropriate statements with a sexual content or use inappropriate disciplinary techniques. She had heard Sarasin as well as other teachers use swear words, and she left art class, English class and gym class without a pass on occasion to go out and smoke. She stated that Sarasin emphasized keeping the room clean and labeling everything, and he would get upset if the room wasn't clean. After Sarasin was non-renewed, she was called to the office and Schaid asked her if Sarasin used any sexual comments toward her or other students. She told him no. Christopherson wanted to do something about Sarasin's non-renewal and helped write up a petition that a couple of hundred students signed along with some parents. She took it to a school board meeting and presented it there.

Melissa Meyer took art classes from Sarasin for two years. Like the other students, she never heard Sarasin make sexual comments or use inappropriate disciplinary techniques with students. She recalled hearing "dumb blonde" jokes one year in school from both students and Sarasin, but no lewd, vulgar or sexual jokes. The only time that he failed to supervise the classroom, in her opinion, was when he went to the darkroom off the classroom for a short period of time. Photography was part of the work in art class. Meyer stated that safety was a big issue with Sarasin. She considered him to be a mentor and regarded him highly as a teacher. She heard Sarasin and other teachers swear, including Fred Klaeser who had to apologize to his class about swearing and give a written apology to three students for his outburst at them.

Elijah Shaver is in college and took art from Sarasin for four years. He learned computer art in Sarasin's classes and uses it in his summer work as a structural steel detailer working on a CAD (computer aided design) program. He took a ceramics class at UW-Madison and found that his experience in high school put him far ahead of other students in that class. Shaver testified that Sarasin's classroom was much cleaner than the pottery room at Madison. He never heard Sarasin

make inappropriate sexual statements or use inappropriate discipline. Sarasin eliminated leaded glazes from their classroom because of the poisonous gases that can be emitted when heated, and educated the students on why not to use such leaded glazes for their own use outside of the classroom. Also, Shaver noted that students mopped the classes and wiped down tables instead of just sweeping because the clay dust could be harmful to students' lungs. He said that Sarasin allowed him to use his keys during Shaver's sophomore year to get the gas blow torch or gas acetylene tank out of the shop. However, that practice stopped and the entire class had to walk to the shop and bring the gas back with Sarasin unlocking the door. Sometimes Sarasin had the equipment waiting for the class when it arrived. Other teachers had given Shaver keys to unlock the library while he was working on the newspaper or to get audio visual materials. Coaches also loaned him keys a number of times. After Shaver was graduated from high school, he visited by checking in at the office, getting a visitor's sticker, although he was visiting so often that he just signed the book after awhile. Schaid once found him without a sticker and asked him to pick one up at the office.

Testimony of Other Teachers

Pamela Schuster is the kindergarten teacher in the District for 13 years. She has seen people coming into the school without permission from the office. Parents are supposed to sign in at the office but some do not realize they need to sign in every time. Schuster stated that she often would not notice whether or not people have signed in. The school has bathroom and library passes, and it just started to use telephone passes in the 1997-98 school year, but students have not always needed passes for every place they might go. Schuster took her kindergarten class to the art room for art because it had a linoleum floor. She always found it to be clean, and Sarasin was always cooperative and professional with her. She has told her kids not to run with scissors, that they might poke out their eyes. Schuster has served as the Association president, vice-president and treasurer in the past.

Scharleen Schmahl has taught in the District for 33 years, currently teaching fourth grade. Sarasin's room was across the hall from hers for five or six years. Schmahl has no door on her room, and since Sarasin's door was usually open, she could hear his class being conducted at times. She noted that the disciplinary system used for students in the elementary school is that for the first offense, the name goes on the board. A second offense gets a check mark up to three checks, and then the student gets a detention. Schmahl stated that this is the system that is supposed to be used in the elementary school and has been in effect for several years. The computer lab is next door to Schmahl's room, and she will send students to work in the lab and walk back and forth between the two rooms, which leaves students unsupervised at times. She also used the art room for kids to work on a small newspaper and she was not always in there with them. She saw another teacher send kids to work in the art room while no certified teacher was present. She had not seen Sarasin leave his students unsupervised.

Brad Randall is the general and vocal music teacher in the District and has been there for nine years. His room is upstairs from Sarasin's, on the same level as the kiln room. He has seen Sarasin's art students come upstairs and pass his classroom while going to the kiln room, usually

without Sarasin. He has sent students to the copy room or the office to run errands, and also sent students out to practice on their own. Randall had loaned keys out to students in the past but was told that such practices were not acceptable anymore. He was not sure whether he was given a formal reprimand or not, and did not file a grievance over it or believe that it was a grievable issue. The drama teacher, Dee Gillig, worked on a musical with Randall, and she often asked students to run up to her room and gave them the keys. Schaid took part in the musical, but Randall never saw Gillig stop that practice. Schaid said he talked with Gillig and told her not to do that but agreed that she could continue to loan a key to the assistant director of the play. Randall said that coaches frequently gave keys to students, and he described the practice as so common that he could not recall anyone who had not done it. When he told others that he had been reprimanded for it, people were surprised. He has also sent students out of class without passes, but in the last couple of years has made an effort to change that because he is aware that it "rankles" Schaid. The District has tightened up on visitors in the last couple of years, also, and many of Randall's former students come back to see him. He was told that if someone showed up without a sticker or patch, he should make sure that person checks with the office. Schaid told Randall to make sure that someone in his classroom checked out of the office, but he did not know if Schaid made a note of that for his own files. Randall testified that he never saw Sarasin being insubordinate; instead, he clearly heard Sarasin tell Schaid, "Tell me what you want me to do and I'll do it. If you tell me to do this, it will be done." Randall believes that statement was made a couple of years ago when Sarasin was reprimanded for telling inappropriate jokes. Randall had not seen Sarasin act unprofessionally with his colleagues or tell lewd, vulgar or sexual jokes to his students.

Randall has been disciplined in the past. He recalled an issue of the use of his sick leave in 1992 and believes he got a written reprimand for that. Also in 1992, he was giving lessons before classes, starting about 7:30 a.m. There were times he would not get to the middle school by 7:50 a.m. He never got there past 8:00 a.m., when classes started, but got there at 7:55 a.m. and was reprimanded for not being at the site by 7:50 a.m. Randall grieved the reprimand but it stayed in his file. In April of 1996, he got in trouble for putting a colleague in a difficult position over his choir tour. Students going on trips had to be passing all their classes at the time of the trip. Some students were concerned that they had paid for the trip but might not be able to go when it came for the time of the trip. So they asked teachers what they could do to be passing. Randall received a written reprimand about that. Randall got into trouble following a trip to New York -- when they got back, there wasn't enough money to pay for all the expenses because he had not charged students enough. There is a rule that the trip should be paid in advance, and he was disciplined for it. He also filed a grievance in 1994 after an incident where a student tripped on a step and damaged a tooth. The result of the grievance was that part of it was dismissed. Randall did not recall getting a reprimand for not having students on task all the time, but he recalled the issue in 1993 where the goal was to teach as many minutes of the class period as possible. He considered it a very high goal and did not know if anyone could achieve that. He had observed students standing in the doorway waiting for the bell in other classrooms. He recalled getting a reprimand for canceling a lesson with student. Randall had been called away when the student stopped and she left a note, which was seen by Schaid who then reprimanded him before talking to him about it. Some teachers have called Schaid's style for observing them "snoopervision," and Schaid is aware of it. Randall has been involved with grievances for other faculty members over disciplinary issues.

Dale Voskuil is the physics and math teacher at the District and been there 30 years. He was the grievance chair when Sarasin was disciplined for telling sexual jokes, and he recalled that after meeting on the issue, he told Sarasin to just cut it out. He never heard of anything that Sarasin did wrong after that, as far as making any lewd, vulgar or sexual comments or jokes. Voskuil loaned his keys to a student last year and noted that when he was a coach, it happened all the time. He stated that it is not possible to having meaningful, on-task instruction for every minute in a lab setting, where the teacher has to divert his attention away and trust the students to work. When students complete their work before the end of a class period, he tries to give them something to do, but he stated that it is just not possible to monitor them all at the same time. Schaid mentioned to him once that he had finished about five or six minutes early and kids were sitting around talking. Voskuil has sent students out of the class on specific projects without adults, because he was able to trust them to do what was asked of them. He tries to make judgments about the students when deciding whether to disrupt his own dialogue and give them passes or not. The school started using pass books during 1997-98 school year, and a teacher can just quickly initial a pass now.

Voskuil swore at a student one time when he took students out to the fairgrounds to shoot off rockets, and one of them put firecrackers in a rocket. He told him it was a "dumb ass thing to do," and he meant it at the time but probably would not have said that if he reflected on it. He has had former students visit without a pass and does not want to discourage visitors, since it's a compliment to a teacher when a former student visits. Voskuil said he had never been reprimanded, although he had probably violated lots of rules.

David Vande Voort is a technical education teacher in Sheboygan and was formerly a teacher at Chilton. He left the District in 1995 after 22 years, after a situation in May of 1995 where Schaid referred to technical education as a glorified birdhouse building program. Vande Voort took offense to that and interviewed with the Sheboygan schools and took a position there. Another instructor, Mr. Shefcheck, also left and went to Luxemburg-Casco. Vande Voort stated that he loaned keys to students while he was a basketball coach, and sometimes in class to have a student get equipment or materials. He admitted that he had sworn at students, reacting to something they had done with machinery that was irresponsible. He also had students injured in class, but was not disciplined for it. He noted that it was not possible to watch all students when assisting one student with a project. Students have different abilities and some finish projects ahead of others, and Vande Voort tried to fill the time at the end of class when some were done early. Custodians were assigned to clean his area and sweep up sawdust. Vande Voort never used a MSDS label. A custodian told him that the glue they used should have a label on it and be in a different container. He stated that he had visitors and former students stop by without visitor stickers, and that the real impetus for visitors' passes came in the last year that he taught at Chilton.

Susan Kleinhans was the elementary physical education teacher in the District but is not working now. She left the District about March of 1993 for surgery and is permanently disabled. The teachers' workroom was next to Sarasin's art room, and Kleinhans was very impressed with what she saw in his class. She stated that the children really loved him, and she felt he had a real gift working with young children. She said that one has to think hard when talking to children and use different language for different ages, being careful to pare it down. Kleinhans wanted everyone

quiet at times, so she would have the students put the balls they were using, whether footballs or basketballs or any equipment, between their feet. The boys would start giggling when she said, "Put your balls on the floor," or "Put your balls between your feet". She ignored the giggling and hoped it would die down before the class got out of control. She often loaned keys to students if she needed equipment out of a locked room or was on the field with children and needed something from the building. Since students often worked in groups, there was no way she could keep an eye on every student in a gymnasium or out on a soccer field or fitness course, she noted. There were accidents and injuries while she was teaching, although she was not disciplined for them. While Kleinhans did not use swear words while coaching varsity sports, she heard other teachers and coaches swear. One time, she buzzed the office when a parent refused to get a visitor's pass, but no one from the office came down.

Clarence Scherer, now self-employed, worked for the District teaching technical education for 27 years. He resigned in 1994 after being given an ultimatum to resign or go before the Board for a non-renewal. He had physically grabbed some students who reported it to the office. Scherer was given classroom management techniques to follow, and Schaid called him in a week or two later and asked how it was going. Scherer loaned keys to students to unlock the area where acetylene tanks were kept. He recalled that his shop rooms were cleaned by custodians, usually every night, even though students cleaned them after classes. He received a letter from Schaid about keeping the rooms clean. Scherer stated that it was not possible to keep an eye on students at all times, although he had discussions with Schaid about that. He had students injured in class but was not disciplined for it.

John Zagrodnik taught social studies for 27 years and left the District in 1993. He recalled that DeMaster took some students out his class one time because they had finished a test and put their heads down. He was working at his desk and didn't know they were gone. Later Schaid called him into the office and asked him if he allowed people to sleep in his classroom. He replied no, and Schaid accepted his explanation. He loaned keys to students when he coached baseball, and saw it happen often on the football field.

Linda Rohrer is the art teacher at New Holstein High School, a nearby school that participates in the conference art show. She has been there eight years and knows Sarasin from the art show. She stated that she was jealous of his students' work in the display, that it probably exceeded what one would see in most colleges. Chilton usually walked away with the majority of awards. She was in Sarasin's room once, and it looked much like other art rooms. She said that she was happy if students don't throw clay at the walls, and she acknowledged that it is hard to keep the room clean when being creative and letting students work with clay and paint. When Rohrer studied pottery in college, there was clay spattered on the walls, on the floors and on the people. The custodians rarely mop her classroom. She used to work with jewelry and has a pickler or acid in the room labeled acid but it does not have a label that says "hazardous material" on it. It has the original label on it. She said that once it is mixed with water, it could have offensive fumes but not unless you held it right up to your face. Her kiln is located in a room next to her classroom, and she takes a few students in there at a time to explain how to load the kiln or take things out. No one is watching her students in the classroom when she does that. Rohrer stated that she had heard others refer to

clay as having a male and female part, and she has not used those terms, but whether it would be appropriate would depend on the students. She noted that in centering clay, one works it into a cone shape if the object is to be tall, one brings it up until it gets tall and then squashes it back down and brings it up again. It depends on the amount of clay one is using because all projects are centered in the same way.

James Skarda was the high school principal for 20 years until 1990 and knew Sarasin well. He supervised him, going to this classroom without first informing him. He never heard or knew of Sarasin using inappropriate statements with sexual content or using inappropriate disciplinary techniques. He had never seen volatile substances stored or handled inappropriately in Sarasin's classroom. In a formal evaluation that Skarda made of Sarasin in 1994, he noted that he was extremely pleased with the physical appearance of the art area since Sarasin's arrival. He also found Sarasin to be vitally interested in his field, talented and in complete charge of the classroom. Skarda never noticed any eccentric behavior from Sarasin, although he thought that artists by their nature do not march much in step in everything in life. Skarda's grandson took art from Sarasin and majored in art in college.

Frederick Klaeser is an English teacher and has been at the District for 25 years. He has three sons who all took art from Sarasin. His sons never told him that Sarasin had made any comments with a sexual connotation or innuendo. Klaeser received a letter from the assistant principal in 1984, Charles Schuknecht, regarding swearing at a student. Klaeser did not recall an incident in 1985 that led to Skarda writing a letter to him about swearing in class. Skarda noted that Klaeser was going through an extremely difficult time in his personal life, but they counseled and worked with him and he turned out to be an extremely fine teacher. He was not non-renewed. Klaeser was given a notice of disciplinary suspension on March 30, 1995, for excessive physical force with a student. Klaeser recalled that in the 1995-96 school year, he had several incidents, one involving the use of swear words. He got upset when some students were talking in the back of the room and said, "What the hell is going on back there?" Schaid called him in and Klaeser apologized to the class. Later that year, there were two incidents involving profanity and Schaid wrote him a letter saying that he was going to suspend Klaeser. Klaeser asked him for a little more compassionate approach, such as seeking anger management. Klaeser received counseling over the summer of 1996 and was diagnosed for an explosive disorder and medication was prescribed. The suspension was not imposed. On one occasion, Klaeser was teaching Greek mythology and talking about cultures that were driven by magic, where a virgin would be thrown into a volcano to stop its eruption. He made a joke about a five-virgin volcano, like something on the Richter scale. Schaid cautioned him about such a reference. There was also a prior suspension but Klaeser was permitted to work that day. Schaid has also given Klaeser positive evaluations for his teaching.

Klaeser has served as a grievance chairman from time to time. Klaeser and Schaid had words over an incident at a faculty meeting when Klaeser raised a question about what a teacher would receive for being the teacher on a television program. Schaid called Klaeser into his office and told him that he was grandstanding a union issue at a faculty meeting, and that he could lead, follow or seek employment elsewhere. Klaeser objected to having a former student, Elijah Shaver, in the hallway when he visited his girlfriend without a visitor's pass and brought it to the attention of

the vice-principal. He didn't know if any action was taken about that. Schaid testified that he asked Shaver to follow the visitor's procedure by signing in and out at the office, but Shaver was allowed to come in and out without a sticker. Schaid was not aware of Klaeser's concern, and Klaeser would not have known that Shaver was allowed to be in the building without a sticker. Schaid placed great emphasis in faculty meetings on the teachers making sure that visitors had passes.

Charles Schuknecht has taught social studies, history, government and economics at Chilton for 33 years. In addition to his son Jesse who testified at the hearing, he has three other children who also had taken art from Sarasin. Both his twin sons were graduated from college with art majors, and Sarasin stayed in contact with them through their college years with phone calls, conversations and their visits to his classroom. One son invited Sarasin to his senior show at UW-Milwaukee. None of his children reported hearing Sarasin use inappropriate language or inappropriate disciplinary techniques. Schuknecht never heard that Sarasin told lewd, vulgar or sexual jokes or make lewd, vulgar or sexual comments. Schuknecht coached for 30 years, used some minor swear words himself and heard others use swear words on occasion. In 1993, he received a memo from Schaid who saw a student sleeping in study hall and asked him to intervene or correct it.

Testimony of Parents

Carol Austin, whose son John testified in this hearing, also had a daughter, Jessica, that had Sarasin for a teacher. Neither of her children ever complained about any inappropriate language, conduct or methods that Sarasin used. She stated that her son struggled a lot through school, had dyslexia, and got discouraged because of his grades and thought he would not be successful in his life. She said that Sarasin supported him and told him he was very talented, that he would be very successful, that he had to apply himself in art and other classes. The guidance counselor was not supportive about John going on to school, but Sarasin supported him and wrote a nice letter. Another teacher, Charles Schuknecht, also wrote a supportive letter on John's behalf.

Patricia Gash has two children that took art from Sarasin. She also substituted for handicapped aides and worked in Sarasin's classroom. She helped Sarasin with a field trip seven years ago when they went to the art museum in Milwaukee. One of Sarasin's former students, James Barany, gave them a tour and the students were on their own. She said that every time she came around a corner, she saw Sarasin with a group of kids. She was impressed with how much the students appreciated the field trip and how they talked about a photo exhibit of AIDS patients. Gash stated that she also visited Sarasin's room on occasion. She never heard Sarasin make inappropriate statements, tell lewd, vulgar or sexual jokes, or use inappropriate discipline with students. She knew that Sarasin's class was informal, that the students and Sarasin told jokes, but not sexual jokes.

Deborah Reinhart has three children in the District, one of whom is Ian Reinhart Geiser. Ian took art from Sarasin, and Reinhart frequently visited to look at the art work or see what was happening in class. She said she scooted in the back door, not realizing that it would get Sarasin into trouble. She never saw or heard Sarasin use inappropriate sexual comments, tell sexual jokes or use inappropriate discipline with students. She stated that her son Ian was gifted and very bright

but labeled with attention deficit disorder in third grade. During his junior year in high school, one of his best friends committed suicide, and Ian was quite depressed and hospitalized by December of his senior year. Reinhart spoke with Schaid because she was concerned that there had been several teenage suicides in school, but she felt she got no support. Ian had missed a week of school and was in an accelerated academic track, and he was struggling to get his school work done. However, Sarasin was one of three teachers who reached out to Ian, visited him in the hospital and were supportive and made themselves available to him. She said that Sarasin tried to help Ian focus on his work, tried to accommodate his illness and help him stay up to speed with his classroom activities. She stated that Sarasin is one of the reasons her son is alive and blossoming today. He is now a junior in engineering school, an honor student. Reinhart knew that there was a community-wide suicide prevention coalition, but did not personally know whether or not Schaid organized it.

Miscellaneous

Schaid stated in his testimony that Sarasin would not conform to the policies, procedures, rules, and regulations of the Board or the District, that his conduct was willful, and that he continued to find new ways to willfully disregard or violate the policies, procedures, rules or regulations, or that he had a willful disobedience to adhere to expectations. Sarasin did not repeat the behaviors for which he was disciplined or corrected, although Schaid views Sarasin's actions as often being insubordinate to his directions.

Most of the evaluations in Sarasin's file were done by Garfield. Schaid evaluated him once, Appel once or twice. Teachers are supposed to be evaluated once every three years. Sarasin's evaluations were generally positive, with only minor concerns raised by the administrators. In 1995, Sarasin was given an award by the FFA Alumni as the outstanding teacher of the year. Garfield and DeMaster sent him congratulatory notes on the award. Sarasin did not recall if Schaid sent him a note.

Several of Sarasin's former students have gone on to study and work in the art world. James Barany (Skarda's grandson) was getting a masters in fine arts at UW-M and was quoted in an article to say that he gave direct credit for his work to his high school teacher, Randy Sarasin, who opened the door for him and was an inspiration to many who went into art as a career. Some of his students now teach art, some are commercial and computer artists, some are designers. Sarasin stays in regular contact with many of his former students.

In regard to the discipline of other teachers, Schaid testified that one teacher was suspended for ten days without pay after kicking a student in the groin and causing damage to his testicles. It was a second or third incident of inappropriately disciplining a student. The teacher agreed to resign instead of face a non-renewal action, and the parties agreed that if any further assaults took place, he would be immediately dismissed. Another teacher received a one-day suspension which was held in abeyance while that teacher got counseling, after showing an inability to cope with students. Another teacher was suspended for one day for physically touching a student. Another teacher who was suspended once or twice for being physically aggressive with students and verbally abuse with colleagues also resigned after the District started a non-renewal action.

The District's records include other disciplinary actions or letters of correction to other employees. In 1991, Schaid sent a letter to Todd Zuberbier following a conference about physical contact, abusive language, and escalations in temperament in serving as a gymnastics coach. Schaid considered the letter to be a disciplinary notice, although the letter does not contain any statement that Zuberbier is being disciplined. The letter contained a statement that the District values the person's service and "would hate to see anything stand in the way of your continued employment". On February 14, 1992, Schaid sent a letter to Jim Ronk, a basketball coach, about language choice and temperament when dealing with students. Schaid considered this to be a disciplinary notice, and the letter contained the same language regarding the value of his service and hating to see anything standing in the way of his future employment. Neither Zuberbier nor Ronk were faculty members but were community people filling coaching slots.

On August 26, 1993, Schaid sent a letter to Ray Mlada about missing a staff meeting and students having open sodas in class. Schaid did not consider this to be discipline, but that it was raising an expectation, what he called "first level of discipline." On December 4, 1995, Schaid sent Mlada another memo regarding choices of language and losing his cool, breaking a blackboard. The memo noted that the issue had been addressed in the past and further problems will result in disciplinary action. Schaid considered the 1995 memo to be discipline. On December 18, 1995, Schaid sent another memo to Mlada, this time for giving a security pass code to another teacher, and for contacting him late when he was sick. Schaid also considered this memo to be discipline.

On January 5, 1995, Schaid sent a letter to Dale Forstner, a basketball coach, about the use of his language and his discipline and motivational techniques. The letter included a statement that non-adherence to expectations may lead to the discontinuation of his employment with the District. Schaid considered the letter to be disciplinary. Forstner was not a faculty member.

On March 24, 1995, Schaid sent three physical education teachers a memo about visitors without passes or permission. He was concerned that people were using the gym without authorization or following procedures. He did not consider his memo to be disciplinary, but that it was meant to raise the expectations of teachers, a cautionary memorandum. He also stated that when he has to reduce something to writing, it moves up on the scale of leading to more severe discipline.

On April 21, 1995, Schaid sent a memo to Dawn Doll after he observed her discussing some past sexual activities. His memo referred to the professional line between teachers and students and asked her to review a portion of the faculty handbook. He considered this memo to be discipline -- a warning -- although it contains no language to that effect. Schaid testified that the person receiving it would know that it was discipline because it was reduced to writing, but added that everything that was reduced to writing was not necessarily discipline.

The District's computer coordinator, Paul Schwartz, testified that he had been in Sarasin's classroom many times because of problems with the computer. He said that students had altered data on the hard drives, deleted programs, renamed programs, and played havoc with the machines. Sarasin told Schwartz that Ian Geiser had given him software, and Sarasin asked Schwartz to set

the programs up and configure them. Schwartz told Sarasin that no outside entity should use the District's computers in order to maintain the system's integrity. Sarasin's computer is not connected to the District's network. Schwartz is also a tennis coach, and testified that during a match in April of 1997, John Austin and Tim Schomer were seated next to him on the bus traveling to Sheboygan Falls. Schwartz testified that Austin and Schomer were upset that Sarasin was non-renewed, that they thought he was getting a raw deal, and that they liked him because he told jokes, smoked with students, and was a great guy to hang around with. Schwartz stated that the students said that Sarasin made a reference in class about the size of his wife's breasts.

Schwartz also testified that Sarasin told him students had made offers to dispose of Schaid or to have him shot, and Schwartz told the principals about that comment. Police investigated the matter, and Sarasin provided the names of the students to his Association representative who gave the names to the police.

At the conference with the Board over the non-renewal, Schaid presented a list of 29 incidents, some with exhibits that were previously noted in the above sections, some were not. The third and fifth incidents referred to lesson plans not submitted on time, but the record does not show when they were submitted. Schaid submitted to the Board certain exhibits in which he sent Sarasin a letter but did not include Sarasin's response. Schaid testified that Sarasin had success with students in his art program, but he did not discuss Sarasin's evaluations or classroom performance, other than supervisory problems, with the Board.

The Board's letter dated February 24, 1997, advising him that the full membership of the Board decided not to renew his employment contract, states that the decision was based on the following 14 reasons:

- (1) Inappropriate statements made to students in class, having sexual connotations and innuendo.
- (2) Use of inappropriate disciplinary technique and measures with regard to students.
- (3) Non-compliance with hazard and safety protection procedures.
- (4) Use of inappropriate teaching technique involving stories told to elementary students that included the use of graphic violence, intended to threaten and intimidate.
- (5) Failure to supervise students and follow School District procedures in this regard.
- (6) Failure to implement appropriate classroom management techniques.
- (7) Lending School District keys to students.
- (8) Insubordination toward Administrators.
- (9) Unprofessional behavior with colleagues.
- (10) Telling of lewd, vulgar, and sexual jokes to students.
- (11) Directing lewd, vulgar, sexual comments toward specific students.
- (12) Failure to adhere to administrative requirements, including those related to lesson plans, student attendance, hall passes, visitors, and classroom maintenance.

(13) General failure to adhere to Board of Education policy.

(14) General failure to adhere to the standard of professionalism otherwise reasonable expected of member of the faculty.

After the Board decided not to renew Sarasin's contract, Schaid reprimanded Sarasin on March 6, 1997, for allowing a student to wear a stocking cap in class. The memo states that it is a "Notice of Reprimand," and the content includes a statement that Sarasin was thereby reprimanded. The policy that students are not to wear hats in classrooms had previously been addressed at faculty meetings and in the handbooks.

On May 27, 1997, Schaid sent Sarasin a note to see him before noon about the art show on awards night, which occurred a week before. The following day, Schaid sent Sarasin a note because Sarasin did not meet with him as he asked. Sarasin sent a note back the same day, May 28, 1997, stating with precision the minutes during which he tried to contact Schaid but found him unavailable before noon. On May 29, 1997, Schaid sent Sarasin a memo about not taking additional steps beyond submitting a work order to the custodians to make sure that the art work would be properly displayed. Sarasin had reminded the custodians to put up tables and choral risers in the gym but they had not done it by 8:00 a.m. as requested. When Mittag showed up just before noon, Sarasin told him it was too late. Schaid took exception to the art work being displayed on the floor, and to Sarasin's note criticizing him for not publicizing the art show. The two of them wrote each other once more regarding the circumstances.

Other details of this case may be discussed by the parties or in the Discussion section. There are thousands of pages of transcripts, exhibits and briefs, and the above background presents only the main portions of the transcript and exhibits.

THE PARTIES' POSITIONS

The following section describes only some of the arguments that the parties have made in this case, and the parties have written much much more in their briefs and reply briefs. The Arbitrator does not attempt to summarize every argument or point being made, only some of them. However, she has considered all of their statements, arguments and positions in her deliberations of this case.

The District

The District asserts that it had just cause to suspend Sarasin for three days for his misconduct on January 7, 1997, in the course of demonstrating working with clay at the potter's wheel. When Sarasin prepared a video tape that was supposed to be an exact reproduction of his demonstration, it was taller than what Schaid had seen on January 7th and he moved his thumbs on the top of the shaft in a different manner. Sarasin even volunteered on the video tape to say how phallic it looked. During Schaid's conference with him, Sarasin admitted that he said that "boys

liked to play with the end of this," while at the arbitration hearing he said "the boys like to play..." In the private conference with the Board, he did not say "the boys". The District states that the dispute centers on what Sarasin meant, and the Arbitrator is not required to make any credibility findings.

The explanations offered by Sarasin are not believable, the District argues. First, he said he was teaching about clay body through gender and sexual analogies, that he tried to teach the technique in Nelson's book without success, and so he adopted the approach that Schaid saw. Sarasin volunteered the statement that the students that Schaid interviewed felt "sexually harassed". There is no requirement to center clay in the course, which raises the question of why Sarasin demonstrated the technique at all, other than to make another one of his jokes. In the private conference before the Board, Sarasin denied using sexual references and analogies and offered another explanation, saying that he referred to clay as oil in the motor. The District notes that Associate Professor Gary testified that there is no reason to use sexual references in teaching the centering technique. The DPI curriculum guide discloses no sexual references, and neither does the local curriculum developed in part by Sarasin. The District states that Sarasin was not in fact demonstrating a centering technique, but this was nothing more than drawing up a shaft of clay, rubbing the clay, and making a clever remark containing innuendo, another of Sarasin's many jokes. The District states that Sarasin even admitted that the height of the shaft of clay has nothing to do with centering. Thus it states that his intent was sexual innuendo from the onset, but he did not know that he was being observed by the principal. The phallic symbol created by Sarasin and the comment he made was intended to refer to boys playing with a penis. His claim of instructional technique is false.

The District notes that in his second explanation, Sarasin claimed that his reference to "boys" meant his hands, that he did not know what was being discussed in the January 8, 1997, conference, even though Schaid provided a detailed explanation of his observations at the start of the meeting. Sarasin did not present his letter of explanation until the private conference on February 3, 1997, which was 23 days after the January 9th hallway conference when he asked Schaid to submit a letter. The reference to "boys" as his hands appears in his videotape, and while this assertion is as ridiculous as it sounds, it was advanced for the first time in the private conference. Even if the teaching point was teamwork by hands, the statement at the end, "I don't know why," makes no sense. In cross examination, Sarasin said he was being facetious, joking with the students. The District asserts that this is probably more forthright, and the entire demonstration was intended as another of his sexual jokes. Sarasin asserted that a small metal piece was clicking against his forefinger and had to be removed from the top of the shaft of clay, but he made no prior reference to it and Schaid never saw him lift it off and set it aside. On January 31, 1997, Sarasin said he was struggling to get the clay under control and smiled when he won the battle. Schaid never saw Sarasin struggle with the clay, and the smile about winning the battle is contrived and not to be believed. Sarasin presented the pieces of bell wire on January 10, 1997, but not a broken piece of saw blade as he later asserted. The District also relies on Gary's testimony concerning the use of the word "play" and discounts Sarasin's use of the word as a casual term in the arts. Again, it finds the reference to "play" as sexual innuendo.

Moreover, the District argues that Sarasin has a history of inappropriate innuendo with students as well as sexual jokes and comments in class. Sarasin was given a written reprimand in 1992 for telling crude blonde jokes. He was warned on February 9, 1994, for inappropriate innuendo related to illegal drugs. He was reprimanded on January 16, 1996, for inappropriate sarcasm and language with elementary children. Although he was warned in 1992 to stop telling blonde jokes, he was still telling them in 1995-96 as Meyer testified. He admitted telling blonde jokes since 1992. Schwartz testified about the crude sexual comment Sarasin made about his wife's breasts. Sarasin was provided with clear notice as to District rules against sexual comments, jokes and innuendo along with notice of the consequences. The Faculty Handbook includes the District policy on sexual harassment. The District contends that it had just cause for the three day suspension, which was preceded by 25 prior warnings, reprimands and a suspension. The District used progressive discipline.

The District also argues that the Board had just cause to non-renew Sarasin's contract on the basis of his repeated failure to adhere to District policies, rules and expectations. A review of his record shows that he got 28 different written warnings, reprimands and suspensions without pay as a result of unacceptable work performance and misconduct, from May of 1992 through June 30, 1997. The District has given Sarasin every opportunity to conform his conduct, but he failed to do so. With the exception of the three-day suspension in this grievance, every instance of prior discipline has not been contested, and the underlying incidents must be accepted by the Arbitrator without further inquiry. Sarasin was afforded fair notice of all the entries, each of which could have been grieved but was not. Twenty-seven of the 28 disciplinary entries must be accepted by the Arbitrator on their face and applied against Sarasin as stated.

The District asserts that Sarasin's conduct has been harmful to the physical, emotional and educational interests of students. One student was so troubled by his conduct that she complained to her parents and her guidance counselor, and she dropped out of art class. In the confrontation with Arnevik in 1992, elementary students were subjected to the angry confrontation started by Sarasin. Also in 1992, Sarasin falsely accused a student of spreading oil paint around the sink, and the student ended up at the office crying and very upset about Sarasin's conduct toward her. Later he said he accused the wrong student, and her parent asked that she be allowed to withdraw from the class. In 1994, Sarasin directed profanity at a student. In 1995, one student was hit on the head with a paint roller by another student, because Sarasin's classroom management was so lax as to be indifferent and allow these things to happen. In 1996 Sarasin was reprimanded for inappropriate use of graphic and threatening language with seven year old students. Also in 1996 a student inhaled the contents of an unlabeled container in the classroom, which made it necessary to convey her to a hospital. Sarasin was responsible for properly labeling the container. Later in 1996 he was suspended for one day for verbally berating and directing profanity at a student while disciplining her. In May of 1997, Sarasin did not coordinate the setup of tables for a display of students' art work, and a parent had to crawl on the floor to see his daughter's art work. The failings of Sarasin had real consequences, resulting in harm to students in a number of ways, from physical injury to emotional trauma, as well as dropping classes. No employer should have to tolerate this type of conduct, the District states.

The District further claims that Sarasin has a record of failing to adequately supervise students, contrary to District policy and rules. On October 26, 1992, he was warned about being on time for class while Schaid supervised the class the prior day in his absence. On February 15, 1993, he was again warned about extended absences from the classroom. He asked the secretaries to supervise his classes, contrary to a directive earlier provided, and gave no explanation for the absences. Again in February of 1993, he got another warning for a late arrival to class. On May 31, 1994, Sarasin was warned about having student passes in the open. On February 2, 1995, he was warned about enforcing rules about tardy students. On February 9, 1995, he was warned that students were to use the kiln only under his direct supervision, and 13 days later, students were again seen working in the kiln room without any supervision. On December 1, 1995, Schaid warned Sarasin about permitting students to complete their own quarterly self-assessment forms. On December 13, 1995, Schaid found a student in the hallway without a pass and told Sarasin to be aware of the whereabouts of students. On January 9, 1996, Sarasin was again warned about being late for class. On April 18, 1996, Sarasin was warned that students were not on task. Then Sarasin got a one-day suspension on May 6, 1996, for failing to act appropriately in disciplining a student. On October 21, 1996, Sarasin was reminded that students are to make deliveries after class. On March 6, 1997, Sarasin received a written reprimand for failing to enforce the rule about not wearing hats in class.

Further, the District states that Sarasin has a record of failing to maintain appropriate standards of classroom management and student discipline. One student called him a "fucker" and he never referred her to the office. As previously noted, he berated and demeaned the student whom he falsely accused of placing oil paint in a sponge. On February 7, 1994, he swore at a student in the course of disciplining that student. He took no action regarding the student that threw the paint roller and hit another student until being directed to do so. On May 2, 1996, Sarasin swore at a student in the hallway and told her to get her "god damn ass" back in the room, and later told the next class that he was going to see that the student was kicked out of his class with no credit. Schwartz testified that the computer in Sarasin's classroom was the only one of 475 machines in the District with continuing problems. It is no wonder that Sarasin had the fewest number of students enrolled in art in the conference.

The District asserts that Sarasin's conduct proved harmful to the District's property interests. The technical college complained about the state of the classroom. Sarasin was directed to keep it orderly and clean. The custodial staff mopped only periodically because of the debris left on the floor. Sarasin also loaned his school keys to students and he reported that the keys were lost, although they were found a week later. Sarasin received a written warning on May 4, 1993, for his insubordinate conduct toward Schaid after being told to clean up student chalk drawings on a sidewalk at the school, because Schaid thought the chalk drawings might be viewed as graffiti and result in more graffiti or vandalism to the buildings over the weekend. Sarasin showed the same indifference toward the District's property as he did toward classroom management.

The District further contends that Sarasin is contemptuous of District policies, rules, and expectations. Sarasin did not know where the policies were located, and called them "junky little things." Teachers are required to acquaint themselves with policies and to comply with them.

There is a complete set in the faculty handbook. Sarasin also called instructional time "so-called precious time," and ridiculed the importance of it. He characterized supervision of students in the kiln room as "holding kids' hands" and "Mickey Mouse stuff." He dismissed the severity of the 1992 reprimand regarding sexual jokes as a "big deal." Sarasin has not and will not learn anything from his mistakes, and attributes the District's non-renewal to "screwing him" for 15 years.

Sarasin was not singled out for disciplinary action, and the District's policies and rules have been applied to all employees on a consistent basis, the District asserts. Teachers who have physically disciplined students have received discipline themselves. One was warned about his attempt at a joke and the use of the term "virgins." One was reminded that students are to be on task. Warnings were given to several coaches and faculty members for physical contact, swearing, loss of emotional control, inappropriate disciplinary and motivational techniques, etc. One was cautioned about missing staff meetings and supervising students. Three faculty members were warned about having visitors report to the office to get a pass. A teacher was warned about discussing past personal sexual conduct with students. Another received a reprimand for loaning keys to students, excessive sick leave usage, being late to class, and various other infractions. Unlike the Grievant, when other teachers were disciplined, they either conformed or resigned. Schaid testified that he has not previously disciplined any other teacher for a pattern of misconduct, involving repeated violations of school rules, of the number and variety found in Sarasin's record. He believed that the pattern would continue. Sarasin has not made a commitment to adhere to school rules, the District claims.

Finally, the District argues that Sarasin has been provided specific notice of the consequences of failing to adhere to policy, rules, and expectations. It cites 12 written documents which have language regarding the consequences of further incidents or acts or conduct. He has been warned, reprimanded and suspended, and yet the violations continued. The District states that the Grievant came to school to put in time and have fun, and the circumstances in which he finds himself are of his own making. The District has been patient, used progressive discipline, warned him in conformance with the labor contract and advised him of actions he could take. The District has just cause for non-renewal of Sarasin's individual employment contract, and this grievance should be dismissed.

The Association

The Association cites the seven tests of just cause as articulated by Arbitrator Carroll Daugherty in Enterprise Wire Co., 46 LA 359 (1966), and argues that to the extent that these tests are not enumerated in Article VIII, they are implicit in the just cause standard that the parties stipulated applies to this case.

The Association asserts that the District did not have just cause to suspend Sarasin for three days for the potter's wheel incident. The District has no evidence that Sarasin engaged in conduct similar to his 1992 behavior between May 1992 and the 1997 incident. The Association agrees that Sarasin has made references to gender in numerous contexts but to suggest that gender references

are per se inappropriate begs that question as to how a teacher would know that from the District's policies. The absence of sexual analogies in state and local curriculum guides does not mean that all such references are improper and may result in discipline. The May 1992 letter cannot stand as a forewarning to Sarasin that his 1997 conduct might result in discipline. The latter conduct is significantly different in nature and remote in time. The Association notes that Klaeser was given a one-day suspension for inappropriate language in the classroom but it was suspended when the District gave him a chance to redeem himself by taking a class, even though Klaeser had been warned earlier about the use of inappropriate language. Mlada also received a note about the use of inappropriate language and had been previously cautioned, but received no other discipline.

The District has been ambiguous about the allegations against Sarasin and it is not possible to say that the rules and orders allegedly violated are reasonable, the Association argues. The Board's policy that was supposedly violated is a statement of some philosophical ideals, not a prescription for conduct. Sarasin was charged with violating Board philosophy, but as a work rule, it is not reasonable as it cannot be followed and has many meanings. Other policies cited -- such as maintaining just and courteous relationships or placing the welfare of children as the first concern -- are not a basis for suspending a teacher for some wrongdoing. Schaid fails to note in the suspension how Sarasin violated Board policy #423 regarding harassment, and the policy is overly broad because it seeks to encompass everything conceivably sexual in nature, and this overbreadth makes it unreasonable.

The District's investigation into the January 7, 1997, incident was unfair and incomplete, the Association claims. It talked to four students out of 20 in the room, one aide, and reviewed materials about pottery. When a teacher's career is on the line, he deserves more than this. Moreover, all just cause analyses call for a fundamentally due process before discipline is imposed. Schaid acted as both accuser and investigator. There are no statements from anyone, students or staff other than Schaid, who was in the classroom that day. It appears that Schaid interviewed only students who were likely to be against Sarasin, and Schaid hand picked them. The District's "expert" witness, Associate Professor Gary, was hired to explore the specific defects that the District had discussed with her. During the interview of Sarasin by Schaid, Schaid refused to divulge any information he received from others in the classroom and he misinterpreted some of Sarasin's responses. Most important for this case, Schaid deliberately misstated Sarasin's "admission" that some of the students in the room felt "sexually harassed" because of Sarasin's language and gestures. The testimony of Sarasin, Klaeser and the tape itself show that Sarasin uttered the phrase "sexually harassed" out of frustration about the way the interview was going.

The Association further argues that the District failed to provide substantial evidence that Sarasin violated the policies as described in the letter of suspension. The allegation that Sarasin said: "Now, boys like to play with the end of this, I don't know why," is inaccurate. Sarasin used the term "my boys," not merely "boys." The term "my boys" referred to his hands working together as a team, and Tracy Christopherson heard Sarasin use those terms every time he gave a pottery demonstration. Sarasin used the term "playing with it" in reference to the clay. The only person who thought that Sarasin's terminology was sexual was Schaid, no other person came forward to say that they found the term offensive or suggestive. Even Gary used the term "play" in describing the

use of art materials. Sarasin's testimony that he meant that a potter needs to play with the top of the clay body to keep it under control ought to be fully credited. Moreover, the only evidence that Sarasin tried to diminish the severity of the 1992 reprimand exists only in Schaid's mind, and the reference in the suspension is gratuitous and not a basis for the suspension. The District failed to prove that Sarasin was guilty of the allegations.

Further, the Association maintains that the District has not applied its rules or orders fairly and without discrimination. No other teacher has been suspended for the inappropriate use of language. Sarasin's punishment would be the largest suspension ever imposed by the District if the penalty is sustained, and he has been treated more harshly than other teachers. Finally, the discipline does not reasonably relate to the seriousness of the alleged violation and to Sarasin's record of service with the District. Sarasin has shown that past reprimands or warnings have had their desired effect and he conformed his behavior to the District's expectations. The fact that Sarasin had no significant discipline since the suspension for one day five years ago should have a mitigating effect on any penalty that is warranted here. And no penalty is warranted.

Turning to the non-renewal grievance, the Association first asserts that the District did not have just cause and there is no defining moment in the determination to recommend Sarasin for non-renewal. Sarasin could not have been on notice that any of the 29 elements presented against him at the non-renewal private conference would form that basis for such an action. The letter of suspension warned that a repetition of the conduct might result in non-renewal, but nothing more occurred after he served the three-day suspension. The other most recent "disciplinary" action was when Sarasin fell asleep during an in-service meeting. No discipline was imposed, Sarasin was merely counseled. Before that, there was an incident where Sarasin was late in submitting his lesson plans. The Association looks through Schaid's 29 points and finds a reprimand with a one-day suspension on May 2, 1996, with the cautionary language that if Sarasin again used inappropriate methods and language to discipline students, he might be more severely disciplined, including non-renewed. Sarasin did not use any inappropriate methods of discipline after that. One needs to go back five years to 1992 to find any warnings in the record regarding inappropriate language with any sexual connotations. Then follows five years during which Sarasin is never again accused of using inappropriate sexually related language. There is nothing in the record that indicates that he was forewarned that his conduct over the past five years would reach a critical mass with the District's administrators. The 1997 three-day suspension warned that further conduct of that nature might lead to non-renewal. The same incident cannot stand as the basis for two separate disciplinary measures.

The Association complains that the District has not said what with specificity what led to the non-renewal. Many of the instances of "discipline" claimed by the District were Schaid's uncorroborated personal, anecdotal notes. The Association reserves the right to address some of the issues in the reply brief, once it sees how the District will try to prove it had just cause to non-renew Sarasin's contract. Over the 15 years that Sarasin taught in the District, all the alleged wrongdoings began in 1991, coincident with the arrival of Schaid. The Board has 14 reasons for non-renewal without drawing any correspondence between the charges and the result. The Association presumes

the District believes that all of these 29 incidents make up the basis for the non-renewal. However, Schaid acknowledged at the arbitration hearing that many of the documents backing up the 29 incidents did not represent discipline. Once those incidents are eliminated from the equation, it is no longer possible to say what the Board would have done.

The Association's summary and argument will not be repeated for all the 29 incidents here -- just some of them. The first one -- the potter's wheel incident -- has already been mentioned. Number 2: falling asleep in an in-service meeting -- the Association notes that Appel's refusal to accept Sarasin's explanation for falling asleep is consistent with the administration's refusal to accept any of Sarasin's explanations. This incident did not constitute discipline. Number 3 & 5: the District had no evidence about these incidents at the arbitration hearing and these are irrelevant to this proceeding. Number 4: Schaid said that this memo about not following student attendance taking procedures, having students in hall from art class, and having visitors to art class was not discipline. Schaid admitted that he did not have the evidence to support the allegations in the memo, but he wrote it and presented it to the Board as a basis for the non-renewal. Number 6: the Association accepts the facts as asserted regarding the 1996 one-day suspension for inappropriate discipline of a student, and notes that Sarasin never repeated the conduct.

Number 7 & 8: students off task and giving instruction during the announcements -- nothing here is discipline. Number 9: non-compliance with hazard/safety protection procedure-- it is unclear whether this was discipline or not. The Association points out that Sarasin was not present when the incident occurred, that Rohrer negated Schaid's concerns about the dangers of Sparex #2, that Sarasin did not know why the MacNeil service never cited the missing label on the Sparex, that Sarasin made efforts to comply with labeling requirements, and that the incident should never have occurred because the substitute's lesson plans indicated that the student should never have been using Sparex. Students testified that Sarasin was concerned about safety, cleanliness and labeling of materials, that it was a big issue in the art room. The District's response is classic overkill without any particular investigation into what really happened, and the student suffered no harm.

Number 10: the Association accepts the facts to be proven as Sarasin did not file a grievance. Sarasin has taught elementary kids throughout his career with the District, and to suggest that this incident forms part of the basis for the non-renewal action borders on the absurd, the Association asserts. Number 11: late to first hour class -- this cannot be discipline, and is another example of Schaid's use of his anecdotal file to accumulate dirt on his staff without telling them that he was doing so. Number 12: students out of class without pass and students off task in class -- this also is not discipline and is irrelevant. Number 13: the assessment forms -- again, not discipline in nature. The Association notes that a curious part of Schaid's testimony is his insistence that Sarasin's conduct was "willful," a term he declined to define. Sarasin's union representative at the private conference, Clyde Clauson of WEAC, called Sarasin "unorthodox" but never said that Sarasin disagreed with the District's rules. Sarasin abandoned the teaching technique after being criticized by Schaid.

Number 14: the Association notes that this incident regarding failure to supervise students and follow hall pass expectations is not discipline, but it shows that each time Sarasin tried to rebut allegations, Schaid ignored him and issued another memo. The Association points out that Schaid chose one of the busiest times of the year, during the preparation for the conference art show, to raise the issue with Sarasin, even though the practice had been going on since at least 1988, seven years before Schaid raised it as a problem. Number 15: not implementing appropriate classroom management techniques -- this again is not discipline, though it contains some threat of future discipline. The Association believes that Sarasin's attempt to work within the system was spun awry by the administration that had an agenda not dependent on facts. Number 16: room cleanliness -- Schaid called this "borderline discipline," and the Association only notes that Sarasin repeatedly swept his art room and spent money on brooms for cleaning, rather than disregarding District policy.

Number 17: lending District keys to students -- while this is not discipline, it again contains a threat of discipline, and the parties differ over the facts. The Association states that Schaid overlooked the fact that Sarasin never lost the keys. Regardless of the widespread past practice of teachers loaning keys to students, Sarasin stopped the practice, thereby showing that he was not willfully disregarding District policies. Number 18 & 19: students off task and visitor allowed in class -- these were not discipline. Number 20: verbal insubordination to Schaid -- the Association finds this an absurd piece of quasi-discipline, and finds Schaid's reference to the chalk drawings as graffiti to show an ignorance about art and artists. However, Schaid testified that he had not intended the letter to be discipline, and the Arbitrator should not consider it as part of progressive discipline. Number 21: left classroom unsupervised -- this is stale and non-disciplinary, but remarkable for coming on the heels of an earlier memo which left Sarasin in the role of damned if you do, damned if you don't.

Number 22: swore at student, and used inappropriate innuendo -- the Association asks that this non-disciplinary memo be disregarded, and reviews the contradictory evidence in the record, such as the testimony from students, teachers and parents. Number 23: the Association did not address this. Number 24: late to class -- this was not disciplinary. Number 25: verbal berating of a student -- a stale incident from 1992. Sarasin took the reprimand to heart and there are no other references to this event in his work history. This was an isolated incident and should not be even a small basis for the non-renewal action. Number 26: late to class -- another stale incident, and not disciplinary. Number 27: unprofessional behavior with a colleague -- if the Arbitrator thinks this incident is relevant at all, she should credit Sarasin's direct testimony over the hearsay evidence offered by the District. Number 28: making lewd/vulgar/sexual jokes/comments to students -- the Association states that Sarasin admitted his mistakes and did not repeat that behavior. The District cannot use a five-year-old incident to springboard to non-renewal from a letter of reprimand. Number 29: visitors to classrooms -- this is too remote in time, too trivial to document.

The Association argues that the District has not applied its rules or order fairly and without discrimination against Sarasin. Other teachers used inappropriate language with students. Other teachers engaged in some of the other conduct for which Sarasin has been cited, if not disciplined.

Because of the evidence and the way the District has presented it, no one can say whether Sarasin has been treated fairly, but the burden is on the District to show that its treatment of Sarasin was evenhanded and it did not carry that burden. Finally, the Association asserts that the non-renewal was excessive, given Sarasin's long tenure with the District.

In Reply - the District

The District first objects to the Association's definition of just cause articulated in the Enterprise Wire Co. case, and points out that the parties have negotiated and agreed upon a standard of just cause. Article VIII, Section B of the collective bargaining agreement details the procedures to be followed before an employee is subject to discipline or non-renewal, and this procedure controls and renders the criteria set forth in the Enterprise Wire Co. case inapplicable. The District notes that the Association believes that Sarasin must receive a document which is specifically characterized as "discipline" in order to be held accountable. However, the bargaining agreement only charges the District with providing appropriate warning, oral or written reprimand, and Sarasin was provided with multiple warnings as well as oral and written reprimands. Schaid explained the term discipline to encompass reprimand, suspension, discharge or non-renewal, and he explained the progressive discipline approach which is founded upon warning employees to correct conduct before punitive disciplinary action is needed. The District asserts that Schaid's characterization of exhibits as disciplinary or non-disciplinary is irrelevant and the characterization is not required under the negotiated disciplinary procedure. If an employee is criticized or rebuked by a supervisor regarding misconduct or unsatisfactory work performance and told not to repeat it, no reasonable conclusion can be reached other than the employee has been disciplined and clearly warned. An employee ignores an action of this type at his or her peril, the District states.

The District also takes issue with the Association's suggestion that Sarasin did not have fair notice of the consequences of his misconduct regarding the potter's wheel incident. Sarasin never asserted that he did not expect to be disciplined if he again engaged in sexual innuendo and jokes in class, and the Association advances this position for the first time in its brief. Sarasin was clearly warned in 1992, and the warning could not become stale. The passage of time afforded no latitude and did not diminish the warning. He cannot escape accountability on the premise that he forgot the prior warning. Although Sarasin was given a specific directive not to tell blonde jokes, he acknowledged doing so and Meyer confirmed it. Also, the District asserts that the terms of the faculty handbook provide clear notice as to standards of conduct, and the provisions are neither vague nor overly broad. This is not a criminal case and the terms of the handbook are not subject to a criminal standard of assessment. The Board's policy on sexual harassment provides clear notice of the prohibition against the conduct which the Grievant engaged in on January 7, 1997. The Association did not present a question with respect to the terms of the handbook and Sarasin may not now challenge its terms at this date. Contrary to the Association's assertion, an employee may not request and be granted a hearing with the Board, and the hearing is to be conducted by the Employer which includes the school administrator.

The District finds it remarkable that the Association complains about too much documentation. The District also asserts that contrary to the Association's claim, Schaid provided Sarasin with a comprehensive description of the purpose of the January 8, 1997, conference. It also believes the credentials and expertise of Gary far exceed those of Sarasin and Rohrer. The District argues that the comments of Tracy Christopherson regarding "the boys" must be discounted. Her assertion that Sarasin used "the boys" reference every time he demonstrated how to work with clay cannot be believed, as Sarasin did not advance that explanation until the private conference. The District notes that Christopherson circulated a petition to renew Sarasin's contract without knowing the reasons for the non-renewal, and that she admitted sneaking out of class to smoke. The District also disputes the Association's assertion that Sarasin used the term about sexual harassment in frustration, and believes that he was sarcastic and defiant and knew what he had done, that it was sexual in nature and directed to students. The District decided not to involve students or faculty members in the arbitration hearing, and the Arbitrator is not required to verify what happened through other witnesses or make a credibility determination. It is only Sarasin's explanation that is in dispute. If the Association thought that the students' testimony would destroy the District's case, it could have subpoenaed them to appear.

Regarding the non-renewal action, the District argues that the Association has presented an array of shallow arguments which have no merit. Sarasin never filed a grievance or challenged the District about the prior warnings, reprimands or suspensions up until the three-day suspension in this case. Over five years, he was repeatedly warned that his conduct would result in non-renewal of his contract. The administrative team reviewed his record and decided to recommend non-renewal. The events of January 7, 1997, were the final straw, but even without the three-day suspension, there is ample evidence of just cause for non-renewal. The Association advances no legal authority for its position that Sarasin has a license to violate a rule, policy or expectation because that he may not be held accountable until he repeats the violation. This is not recognized under any principle of labor or employment law. Even after the non-renewal private conference, Sarasin disregarded the District's rule on students wearing hats in classrooms and failed to coordinate the art work presentation. This shows he is unwilling or unable to conform his conduct or both, and there is reason to believe that the pattern will continue. The District objects to the Association's assertion that conduct for which Sarasin was suspended cannot also be a basis upon which to non-renew his contract, or an employment contract could never be non-renewed. Where the repeated failure of a teacher to adhere to rules, policies and expectations is the basis for non-renewal, the decision is necessarily based upon the complete employment record.

The District then states that there is no evidence to suggest that the student injured from inhaling Sparex did so intentionally, and contrary to the Association's brief, the student was harmed and conveyed to the hospital for treatment. Sarasin is responsible for labeling the container and cannot shift responsibility onto the substitute teacher. The District asserts that the inappropriate graphic comments and innuendo with elementary school students on January 10, 1996, is a basis for non-renewal. Sarasin was warned on February 9, 1994, regarding innuendo, and the District has a significant interest in preventing inappropriate innuendo. The whole series of incidents goes to the essence of the District's basis for non-renewal.

The Association's suggestions that Sarasin should not be accountable for unsupervised use of the kiln because it happened at a busy time of the year is outrageous, the District states. The Wisconsin Supreme Court has stated that a teacher has no greater responsibility than to supervise students. Sarasin could have taken a few minutes before or after classes to move students' projects to the kiln room. The District also asserts that there is no widespread past practice of permitting teachers to loan keys to students, and it was corrected every time it came to the attention of administrators. The incident of insubordination for refusing to remove chalk drawings was not "quasi" discipline -- Sarasin was clearly advised on the insubordinate character of his conduct and of its consequences, and Schaid did not testify that he did not intend the letter to be disciplinary. The District also takes issue with the Association's claim regarding Hephner's testimony, and there is evidence that when inappropriate comments regarding sexual matters were made by Klaeser and Doll, corrective measures were promptly taken in writing. The Association must know its presumption that every teacher has a number of citations in the personnel record is not true, and Sarasin's record is unprecedented. The District asks that both grievances be dismissed.

In Reply - the Association

The Association takes issue with the District's assertion that there is no substantive dispute as to Sarasin's conduct, and argues that nothing could be further off the mark. The District believes that Sarasin did not see Schaid come into the room during the demonstration at the potter's wheel, but Sarasin testified just the opposite, that he recognized Schaid's shoes. The Association takes issue with the words that were said, regarding boys like to play with this. The District failed to call any students or the other adult in the room who observed the demonstration. Moreover, it was conjecture on the part of the District to claim that Sarasin realized that Schaid was in the room for the first time when he looked up. Schaid's claim that Sarasin looked surprised came up for the first time at the arbitration hearing and this testimony is very suspect. The Association also notes that the shape of the clay was in a cone, not a shaft, as noted by the video tape, and the difference in the shape is significant. The suggestion by the District that the Arbitrator can simply adopt the Employer's proposed findings of fact makes little sense, and the Arbitrator needs to consider all the evidence and draw her own conclusions. If the District's version of events should be more credible, it would have made sense for the District to call the four students and aide as witnesses. Apparently they would not support the administration's rendition of the classroom demonstration. Either none of the other witnesses support Schaid's view, or some of them would and some would not, or one or more of them agreed with Sarasin or at least did not find his behavior offensive in any way.

The Association also disputes other facts that the District has asserted, such as Sarasin's "admission" that he sexually harassed his students. The District has ignored the testimony of Sarasin and Klaeser on this issue. Further, Sarasin did not use sexual references to describe the properties of clay. Rather, he made gender references and characteristics that are stereotypical but reasonably accurate. The Association says that the District makes a weird leap to conclude that the only reason Sarasin was demonstrating the centering of clay in the first place was to make another

of his jokes. First, it's not possible to throw anything on a potter's wheel without first centering the clay. Secondly, the assumption the District makes about Sarasin's continuing pattern of offending jokes has no foundation. All of the District's references to sexual connotations come from unreliable hearsay comments and cannot stand.

The Association argues that if Sarasin did in fact engage in conduct as alleged, then how could the District bootstrap from the three-day unpaid suspension to a non-renewal in the absence of any additional conduct? The Association finds the District's reliance on Gary to be remarkable. Gary had a sterile laboratory setting to give a demonstration. Sarasin had a classroom with many students with exceptional educational needs. Also, the District attacks Sarasin's defense of the term "the boys" on the basis that he knew from the outset of the investigatory interview that Sarasin knew what Schaid was talking about, but the interview shows that Schaid was not clear as to what he was talking about at the beginning of the meeting. The District fails to note that Schaid was not present at the start of the demonstration, when he would have heard Sarasin refer to his hands when he was talking about teamwork. The Association disputes the District's statement that teaching teamwork and pottery have little, if any, correlation, and points out that Gary used her hands together during her demonstrations. Also, the District's assumption that the clay is kept in a pristine condition in the classroom is contrary to the testimony that students sweep it up and put it back into the barrel to be re-mixed. Although the District faults Sarasin for different explanations for his use of the word "play," Sarasin probably did not even recall using the term and offered the best recollection he could. The District also refers to a nude or semi-nude sketch of a student, but the 1992 reprimand has no reference to any such drawing. It is impermissible to create something new and claim that it is related to the earlier incident. The Association notes that the District's rule that prohibits unacceptable joking is fine but no one ever came forward to claim that he or she was offended by anything Sarasin said or did in 1997, except Schaid.

Regarding the non-renewal portion of this case, the Association finds it curious that the District calls items 2, 3, 5-15, 17-19, 22 and 24 warnings. Schaid testified as to most of these so-called warnings and said they were not intended as discipline when they were issued, although the District was able to get Schaid to claim they were discipline on re-direct examination. The District's argument that the sheer weight of prior discipline in and of itself warrants non-renewal must fall. Additionally, the Association points out that the District has not shared with it the formula it used in reaching the decision to non-renew Sarasin's contract. Two of the so-called prior disciplines actually occurred after the non-renewal decision. Why should Sarasin be held responsible for not responding or grieving prior incidents when Schaid did not think they were discipline at the time? The Association also finds the District's rendition of the Sparex incident to be exaggerated, with terms such as "discomfort" and or "injury," while it overlooked the fact that Sarasin directed the substitute teacher not to allow students to work with jewelry that day when he was absent. The District's exploration of the art show in May of 1997 is post hoc rationalization and cannot be allowed by the Arbitrator.

The Association argues that the District ignores the fact that the most recent discipline Sarasin received for inadequate student supervision was in 1995. The District stretches its definition of student supervision when it refers to Sarasin's decision to allow students to complete

their own quarterly self-assessment forms, when a student coming from another class was in the hall without a pass, and when Sarasin was warned about being late for class. The District also engages in globalization of behaviors and conduct with no sense of proportion, especially when it cites seven incidents about classroom management and student discipline, none of which were discipline, over 17 years with the District. Then the Association calls the District's statement that Sarasin's behavior is responsible for low enrollment in art to be stunning, and doesn't even know where this blindside came from. The District has singled out Sarasin when it uses the incident about the keys, and its spin on the sidewalk incident is interesting because it shows that Schaid was incapable of viewing Sarasin's projects as having value. The District asserts that there are risks to students in the kiln room but fails to reveal what those risks are or note that students were in there when the kiln was off and cool.

The Association also disputes the District's forewarnings that Sarasin might face non-renewal. The same phrase was repeated over and over in the memos sent to Sarasin. It appears that either the District was simply appending the phrase to everything, or it was cautioning him that repeated behavior of the same sort would result in more severe discipline but the current conduct did not warrant more severe discipline. The last document before the notice of intent to non-renew notified Sarasin that any future conduct would result in more severe discipline, but he never engaged in any future conduct of that type. The meaningless warnings of the language were underscored by the warnings given after the non-renewal.

The Association disputes the District's statement that it was patient with Sarasin, and states that the evidence shows just the opposite. Sarasin was an excellent art teacher, if a bit quirky in his methods. The Association says that Schaid was angry, testy, mean spirited, hostile and constantly finding fault with Sarasin.

DISCUSSION

The collective bargaining agreement provides in Article VIII, Teacher Rights, the following:

B. Before a teacher is subjected to documented disciplinary procedures, reduction in rank or compensation, dismissal or non-renewal, the following procedures will be followed:

1. The employee has been informed of organizational rules related to the orderly, efficient and safe operation of the school district.
2. The employer shall provide appropriate warning, oral or written reprimand.
3. Specific charges leading to such action shall have been made in writing to the employee.
4. An investigation shall be conducted to determine the accuracy of the allegations made to or by the employer against the employee.

5. The employee may request and shall be granted a hearing with the employer regarding such charges. The employee shall have the right to counsel representation at the hearing and the right to grieve any decision and/or action of the Board at the conclusion of the hearing.
6. The employer has disciplined the employee in a non-discriminatory fashion appropriate to the documented/substantiated offense.
7. Grievances filed under this provision of the Agreement shall commence with the Arbitration step of the Grievance Procedure.

The Arbitrator will consider the grievance involving the suspension before determining the grievance involving the non-renewal of the Grievant's individual employment contract.

The Three-Day Suspension

It is the District's burden to show that it has just cause for the three-day suspension for the potter's wheel incident on January 7, 1997. The burden is not the criminal standard of beyond a reasonable doubt, but it is more than just the preponderance of the evidence, the tipping of the scales, where the allegations involve such serious charges as sexual comments and gestures in the classroom. I find that the District has not carried this burden and has not clearly demonstrated that it had just cause for the suspension. The record does not support the District's position in many respects.

The District has an extraordinary view of what happened on January 7, 1997, in the second hour of Sarasin's art class. The District suggests that Sarasin was making sexual innuendoes while centering clay on the potter's wheel. While anyone could make the illusion of a phallic symbol when clay is brought up into a shape of a shaft or cylinder or a cone, Schaid saw it as the shape of a penis. Schaid further saw the demonstration of Sarasin's hands as an analogy to masturbation, particularly when Sarasin said something about "The boys like to play with this, I don't know why".

The District takes a further extraordinary position when it believes that Sarasin's only purpose in the demonstration was to make one of his jokes. Does the District seriously believe that the centering of clay on the potter's wheel was done so that Sarasin could have a laugh and show students an illusion of masturbation? There is simply no evidence to support such a position.

I credit Sarasin's testimony that he knew Schaid was in the room watching the demonstration. There is no reason to discredit that statement. The students were in a semi-circle around Sarasin, and Sarasin could have easily spotted someone's shoes and pants joining the class. Schaid would not be able to tell whether or not Sarasin had spotted him. Accordingly, with the principal in the room watching the demonstration, it is not likely that Sarasin started to demonstrate masturbation using the clay.

One can understand how Schaid got an erroneous impression by Sarasin's odd-ball term of his hands as "the boys". As one of the Board members noted, why not just call his hands "the hands"? However quirky this is, the students apparently knew that Sarasin meant his hands when he

referred to them as "the boys". The District urges the Arbitrator to reject Christopherson's testimony in this respect, but Christopherson and all the former students were quite credible in their testimony. Christopherson even helped the District slightly here by also testifying that Sarasin used feminine and masculine gender references to describe the clay properties, something else that is apparently objectionable to the District. One of the problems in this case is that Schaid makes up his mind in advance of any investigation, and no matter what reasonable explanation is given, Schaid disregards it without any factual basis to do so.

Obviously, it is possible for students to take any innocuous or inopportune statement the wrong way. The former physical education teacher, Kleinhans, noted that she asked students to put their balls between their feet or put their balls on the floor when they were to sit and listen, and that comment always got a little giggle from the elementary level boys. However, the record -- despite its length -- does not show whether the students actually took Sarasin's remarks in a sexual context, or whether it was only Schaid's impression.

Schaid's view of Sarasin's conduct is colored by an obvious dislike and history with Sarasin, more of which will be noted later. Schaid's view of the demonstration was a brief snapshot, without hearing the whole explanation of the demonstration. Schaid and Sarasin also see things in a whole different light, such as in the chalk drawing incident, where Sarasin saw the drawing as a friendly dragon and Schaid saw it as a snake and graffiti.

Beauty is in the eye of the beholder, and apparently, so are phallic symbols. When working with clay and bringing the clay up to start to shape it, some will see a cylinder, some will see a cone, some will see a shaft, some will see a penis. The illusion to the phallic symbol is only how some see the shape, not everyone. Many people see the potter's work as having a hypnotic and beautiful effect.

The Association is correct in its position that if the District wanted to show that students were offended by Sarasin's demonstration and comment, it could have brought them forward to testify. The Arbitrator cannot rely on hearsay evidence for such an important determination. The other problem regarding the students in the class is that Schaid relied on them to investigate Sarasin's conduct, but he subsequently refused to tell Sarasin who those students were. Sarasin suspected that one of them might have been a student that Sarasin suspended previously, and therefore had an ax to grind. There is nothing in the record to determine whether or not Schaid's investigation was fairly conducted. We will never know whether any student saw a sexual reference, and if so, was it because of Sarasin's actions or Schaid's suggestion.

The investigatory interview with Sarasin is on audio tape and was entered into evidence. The tape confirms the Association's position that Sarasin never admitted that he sexually harassed students, and the statement was made out of frustration or exasperation. This was also confirmed by the testimony of Klaeser.

It is worth noting that when Schaid objected to Klaeser's remark about sacrificial virgins, there was no disciplinary action but only an objection raised on the evaluation as a "cautionary suggestion." This would have certainly been a more appropriate route -- to suggest that the teacher be "circumspect" about the language, rather than jumping to a three-day suspension. The District has argued that the potter's wheel incident is part of a continuing pattern of sexual innuendo and jokes by Sarasin for which he was reprimanded in 1992, five years earlier. However, there is no evidence that Sarasin kept on telling sexual or vulgar jokes or made such comments to students in the interim. The District also asserts that Meyer's testimony confirms that Sarasin continued to tell vulgar jokes. However, she only testified that he told dumb blonde jokes, not lewd or vulgar jokes, and she testified that he never used any lewd, vulgar or sexual comments with students.

The record instead shows that Sarasin stopped the conduct for which he was reprimanded in 1992 and adhered to Schaid's directive. There is every indication, despite the District's suspicions, that Sarasin tried to conform to the District's expectations. No other teachers, students, parents or administrators came forward to testify that Sarasin continued to use inappropriate sexual language or innuendo after he was reprimanded in 1992. Those who came forward testified that he never used inappropriate sexual language or innuendo. The District has its suspicions, but that is not enough to carry the day here.

The District makes too much out of the words "play with the end of it." It is logical to talk about playing with clay, maneuvering it with one's hands, etc. The end of "it" referred only to the top of the clay form. There was nothing in the demonstration that actually looked like male masturbation, and the District knows it. The charge is that there were sexual comments, gestures, overtones and innuendo. There were no sexual comments in the context in which the statements were intended. There were absolutely no sexual gestures. Crossing thumbs and pushing down on clay? How is that sexual? The overtones and innuendo are only in Schaid's mind, and there was no intent for the demonstration to have any sexual overtones.

The District could -- if it chooses -- demand that all gender references be eliminated in any class. The so-called notion of political correctness may have spun out of control when a teacher cannot refer to sacrificing virgins in the context of talking about mythology. However, the District can determine the standards it wants. But it lacks just cause for discipline when it takes something out of context, refuses to accept the proffered explanation, and makes some leap of imagination to accuse an employee of such serious misconduct. If Sarasin's intent was to create a sexual image, he certainly would not have done so or said anything when Schaid was in the room. Despite the District's assumption that Sarasin did not see Schaid in the room and that Sarasin gave varying explanations at different times, Sarasin always asserted that he knew that Schaid was in the room.

The evidence simply does not clearly show that Sarasin was using sexual innuendo or comments or gestures or doing something offensive in the classroom. The record rests on Schaid's impressions and testimony versus Sarasin's testimony. For the reasons stated above, I credit

Sarasin's testimony on the major findings here -- namely, that he knew Schaid was in the room, that he frequently called his hands "the boys," that he had no intent to create a phallic symbol, that his intention was to show students how to center clay. Sarasin's conduct does not warrant a three-day suspension.

The Non-Renewal of Sarasin's Contract

The non-renewal of Sarasin's individual employment contract is largely contingent upon the three-day suspension for the potter's wheel incident, because even the District admits that the potter's wheel incident was the "final straw." It's really more than that, however -- it's the foundation for the whole hay stack which falls apart pretty quickly when most of the pieces are things that were not disciplinary or could not withstand disciplinary actions in the first place.

There is no dispute over four prior disciplinary actions that were not grieved. Those are the 1992 reprimand for telling lewd and vulgar jokes, the 1992 reprimand for chastising the wrong student in the yellow oil paint incident, the 1996 reprimand for graphic language with elementary children (the piranha teeth incident), and the 1996 one-day suspension for swearing at a student who was out of the classroom.

Out of the 29 so-called incidents that Schaid presented to the Board, two were not mentioned at the arbitration hearing -- those being late lesson plans. Four were clearly discipline, and the other 23 fall in some no-man's land category, not being clearly disciplinary, some containing some threat of future discipline, and some nothing more than hand-written notes kept by Schaid. Seven have the potential to be called "warnings" on some level, but more will be noted about that later.

The record shows some strange attempts to chastise or discipline Sarasin, to say the least, such as the time that Sarasin was "disciplined" for what a student did to another student, and for what happened in his classroom on a day that he was not even there. Those so-called disciplinary incidents add strength to the notion that Schaid was determined to remove Sarasin from the staff. While the Arbitrator understands that the paint roller incident -- where one student hit another with the paint roller -- was blamed on Sarasin for his "lax" classroom management style, even teachers watching every student with eagle eyes cannot prevent the conduct of student-on-student mischief all the time. As far as being "disciplined" for an incident in which a teacher is not even there, it should go without saying that one must cast a skeptical glance on such a disciplinary measure.

Then there are the incidents in which Sarasin can do no right, no matter what he does. If he leaves students alone in the classroom while going to the kiln, he is told to call for help from the office. When he complies and calls for help from the office, he is told not to disrupt the secretaries in the office anymore. If students have finished their projects for the year, he is told that students are to be on task at all times. If Sarasin uses the time set aside for daily announcements to start his lesson, he is told to let students listen and not use that time as instructional time. When Schaid is told by another administrator that he saw something in Sarasin's classroom, Schaid writes a memo

without having any other knowledge of it or even speaking to Sarasin about it first (that was incident #7 taken to the Board as part of the group of 29 incidents for non-renewal). If Sarasin explains that his visitor was approved to come into his class and that no one put things on the computer that were inappropriate, Schaid does not accept the explanation.

The chalk incident is illustrative for several reasons. It is unclear whether this incident ever resulted in discipline or not. Schaid thought Sarasin was being insubordinate, but his letter does not indicate that Sarasin was being given a reprimand. Schaid's letters often threaten future discipline and an expression of his "deep concern." However, this does not make them disciplinary in fact. But what is interesting about the chalk incident is how Sarasin and Schaid perceive things. Sarasin saw the chalk drawing as a friendly dragon. Schaid saw a snake. Sarasin saw the kids having fun with writing "Purely Root" under the letters "Beer" on the can. Schaid saw "Beer" and graffiti and destruction of property. These are two people who could not agree on the time of day if they were sitting on top of Big Ben.

While Schaid had previously expressed his concern over a loss of instructional time, in this incident he somehow felt compelled to interrupt the instructional time to have it out with Sarasin. Schaid could have waited until Sarasin completed his classes. Schaid had previously suggested that such time could be used for kiln room work instead of Sarasin wasting class time.

The Arbitrator is puzzled as to why this became a big thing in Schaid's mind. If it only took 10 or 20 minutes to wash it off, why couldn't Schaid ask a custodian to do it? A custodian had to help Sarasin hook up the hose anyway. Moreover, Board Exhibit #14, Schaid's anecdotal notes of his conversation with Sarasin, shows that Sarasin told him that the weekend rain would wash it off. If the forecast were wrong, it could have been washed off on Saturday.

However, the most disturbing aspect of the chalk incident, at least for the result in this arbitration, is the vagueness of disciplinary actions. It is unclear in this instance, as well as others, exactly what is discipline and what is direction or correction. This is an important point, because not every direction and correction that an employer gives an employee is discipline. Not every direction that is later documented is discipline. However, the District, and Schaid in particular, seem to assert that things that have been called to an employee's attention and then documented are fair game in the disciplinary picture. That is not so. Disciplinary actions need to be clearly defined. An employee needs to know first of all that he is indeed being disciplined and what the discipline is for. The employee needs to have a chance to grieve it if he or she so chooses or to respond with an attachment to his or her personnel file or even ignore it. It is a lack of due process to later claim that something is disciplinary when it is not clear that it was ever intended to be a disciplinary action at the time that the employee could have done something about it. Schaid even called one memo, from January 30, 1995, regarding cleanliness, "borderline disciplinary." Now, it either is or it isn't.

In the chalk incident, Schaid said his memo was a letter of warning, because Sarasin was initially insubordinate to him by refusing to follow his direction. Insubordination has been defined as the refusal to obey an order from proper authority and a willful disregard of the express or

implied directions of the employer. Napoleon Board of Education, 74 LA 303, 306 (Roumell, Jr., 1980). Sarasin never got as far as actually being insubordinate, although he may have been heading that way until Schaid said, "Let me get my pad and pencil," indicating that he was about to write him up. Sarasin's initial refusal to wash the sidewalk had more to do with the timing. Schaid thought that Sarasin was done teaching at 2:30 p.m., which was probably an error made by Garfield. Sarasin knew he had to teach until 3:00 p.m., and that since it was Friday, he could leave at 3:10 p.m. However, Sarasin agreed to wash off the sidewalk after the busses left, which was acceptable to Schaid. So even if the letter regarding the chalk incident were to be established as discipline, what was Sarasin being disciplined for? His attitude? More importantly, the letter given to Sarasin was not clearly identified in any manner as being discipline. Schaid testified that if Sarasin assumed that it was discipline, he could have grieved it (TR - p. 205) or if he perceived it to be disciplinary (TR - p. 228). When a supervisor hands out a disciplinary measure, it should be clear enough that the person receiving it does not have to guess as to whether or not he has been disciplined.

Another example of the lack of clarity of disciplinary actions is when Schaid testified about Garfield's letter to Sarasin regarding the dispute between Sarasin and Arnevik over not sending students to art class. Schaid stated that Garfield's letter was NOT a reprimand, but then went on to say that he THOUGHT it was disciplinary, that it could have been grieved. How could it have been grieved if it was not a reprimand? What is it? There is no clear indication in the letter itself (Garfield did not testify) that it is a disciplinary action. There is the veiled threat of future action, but the letter has no indication in and of itself that it was a disciplinary action, that Sarasin should consider himself to have been reprimanded or disciplined. The letter only states that the author is writing to express concerns.

Another example -- the February 15, 1993, letter states in it: "Failure to (rectify shortcomings) will result in disciplinary action being taken against you." Schaid testified that this memo was not discipline. However, the February 22, 1995, memo which also included language that failure to adhere to expectations would result in further and more severe disciplinary actions, and Schaid considered that memo to be a disciplinary measure -- a warning, due to the language about failure to adhere to expectations would result in more severe disciplinary actions. While the District now asserts that all the memos that contained some boilerplate language about future disciplinary actions (and some that didn't) should be considered disciplinary at this point in time, if they were not disciplinary in the first place, why should they have become disciplinary now? The short answer, of course, is that they are not discipline, were not intended to be, and cannot be now.

The failure to clearly identify what is disciplinary action and what is not results in a determination in this award that those incidents which are not clearly identified as discipline will not be considered as discipline. This is a fair result, because no one can go back in time to say what would have happened if certain memos had been clearly identified as discipline. There should be no ambiguity in this area. It is fundamentally unfair to load up a record with matters that were not considered disciplinary actions at the time and to now characterize everything as discipline, or borderline discipline, or cautionary disciplinary actions, or a warning because it was called to one's attention. This is a fundamental flaw in the District's case.

The need to clearly state a disciplinary action comes as no surprise to the District. In fact, when it wants to clearly identify disciplinary action, it has done so. For example:

1. The May 8, 1992, letter regarding jokes states in the last part of the letter: "Therefore, you are hereby reprimanded for engaging in these behaviors. . . "
2. The November 30, 1992, letter for disciplining the wrong student states: "Therefore, you are hereby reprimanded for the actions taken by you . . ."
3. The January 16, 1996, letter from Appel states in the body of the letter: "Therefore, you are hereby reprimanded for the actions taken by you . . ."
4. The May 6, 1996, disciplinary action states under the address: "Re: Notice of Disciplinary Suspension." Also, it states within the letter: "On the basis of your conduct on May 2, 1996, you are hereby suspended from employment, without compensation, for one (1) working day . . ."
5. The three-day suspension of 1997, where the heading clearly states, right under Sarasin's address: "Re: Notice of Disciplinary Suspension," and in the body of the letter dated January 10, 1997, it further states: "Therefore, on the basis of your conduct on January 7, 1997, you are hereby suspended from employment, without compensation, for three (3) working days . . ."

Similarly, the March 30, 1995, letter for the suspension of Klaeser starts with "Re: Notice of Disciplinary Suspension, " and later in the letter, states: ". . . you are hereby suspended from employment. . ." (Bd. Ex. #40)

Contrast those with District Exhibit #43, letters to coaches (some were community members, not faculty) and teachers. Schaid called these discipline, but there is no language about what happens in the future except some veiled threat about hating to see anything stand in the way of continued employment. Would a reasonable person know that a disciplinary action has been taken against him or her, that strike one has passed? Not likely.

Schaid reserves his options to call something discipline or not. He called one memo to some physical education teachers a cautionary memorandum (Bd. Ex. #43, p. 6, TR. p. 1156,-1157) and noted that once he has to reduce something to writing, it moves up on the scale of leading to "more severe discipline." It either is discipline in the first place or it isn't, and if it is, the party receiving it needs to know it. There is no way that the people receiving this memo would have known that they were in a cautionary-quasi-preliminary-borderline-disciplinary action. Look at the memo to Doll -- Schaid called it discipline, but there is nothing in the memo itself that would indicate that it is. On cross examination over Board Exhibit #43, page 7 (the memo to Doll), Schaid was asked if everything that was reduced to writing constituted discipline (TR - pages 1181-1184):

A: Not necessarily.

Q: How would the person know just because it was reduced to writing that it was discipline?

A: Because of the nature of the conference that I had with her.

Q: Did you tell her that you were going to issue her a disciplinary memorandum?

A: I can't recall if I told her that or not.

Q: Then what did you mean when you said because of the conference you had with her?

A: Because she knew that I had great concern over the issue that was observed. She had great concern over it as well. She knew I would take exception to that. She came to me wanting to start the conference sooner than I had planned.

Q: So great concern rises to the level of discipline in your mind?

A: Yes.

Q: And you've told the faculty that I take it?

A: In general terms, yes.

Q: So --

A: They know, they know. I've told the faculty that if I see something that I feel needs to be corrected, the initial step is going to be, unless it's of a real serious magnitude, I tell the staff don't do dumb things, don't hit a kid, that would be bad, that would not be good, but if there are things that need to be corrected, we'll talk about it first. I've told the teachers repeatedly in disciplinary situations, you know when we're all said and done with a particular disciplinary situation with a student, I mean classroom misconduct, we may talk about afterwards and talk about how we could have done that better, and they are well aware that if we have repeated situations such as that, that the next step is to reduce it in writing and then the reprimand.

Q: They know that's a discipline then?

A: I believe so, yes.

Q: And how would they know that?

A: Because of what I just testified, I've told them that.

Q: You didn't say at any point that you told them this would be the first step in discipline or words to that effect?

A: The process that we used with correcting negative behavior or inappropriate behavior or behavior that's not in line with the rules of the school is we talk and reduce to writing and then we reduce to writing and go on down the line.

Q: Is page 7 a warning?

A: It's calling to her attention the fact that this misconduct is not to occur again.

Q: Is it a warning?

A: I think I've answered the question. It depends how you define warning. In my mind, yes.

Q: What does it warn her of?

A: It warns her to be consistently, constantly aware of the professional line that must exist between teachers and kids, and it warns her that she is expected to review the procedures on controversial issues in the faculty handbook and be sure to consult with me whenever she sees a controversial issue coming forward.

Q: Is there anything in there that says she's likely to face discipline if she does not do that?

A: No.

In addition to the confusion of when something is reduced to writing and what its effect is, Schaid enunciated two other standards of discipline in that exchange -- one, when he has great concern, and two, when he calls something to one's attention. In another instance regarding the students using the kiln without supervision, Schaid said that Sarasin could conclude that he had been given a warning because the memo was copied to the personnel file.

There is nothing wrong with a supervisor calling something to an employee's attention. There is nothing wrong with a supervisor expecting more out of employees and letting them know that he or she has raised the expectation of performance. It is normal and usual for supervisors to correct, direct, lead, counsel, do all those things -- and even document them. However, these are not usually considered to be disciplinary actions by most employers. Indeed, it would reduce the effectiveness of supervisors if every time a supervisor corrected or directed an employee, it was considered a disciplinary action.

Schaid understands the difference between clearly giving someone a reprimand or not. (See his testimony regarding the November 20, 1992, reprimand on page 435 of the Transcript.) He has always understood the importance of clearly stating a disciplinary action. He pointed out to counsel for the Grievant that the November 30, 1992, reprimand was in conformance with the contract and it says, "Therefore, you are hereby reprimanded."

A review of the so-called 29 incidents taken to the Board by Schaid reveal the following things noted by the Arbitrator:

1. The three-day suspension for the potter's wheel incident (which has been noted above as not being for just cause);
2. Falling asleep during teacher in-service meeting -- no indication that this was a disciplinary action;
3. Past due lesson plans -- nothing noted in the arbitration hearing about this matter, not considered discipline;
4. Not following student attendance procedure/students in halls/visitors to art class -- nothing disciplinary about this, matter of procedural items to be clarified, minor corrections and direction;
5. Past due lesson plans -- nothing noted in the arbitration hearing about this, not considered discipline;
6. Swearing at student -- one-day suspension; clearly disciplinary;

7. Students off task/teacher off task during instructional time – this was reported to Schaid by another administrator (DeMaster); the evidence is mixed as to whether or not Schaid and Sarasin ever spoke about this, with Schaid denying it and Sarasin asserting that they did and that Schaid made light of DeMaster's comments; not discipline;
8. Giving instruction during daily school announcements -- not discipline, only minor correction and direction;
9. Non-compliance with hazard/safety protection procedure -- Sarasin not even at school on this day, substitute teacher inappropriately allowed student to use the container which had no front label; no evidence on record that Sarasin was not following safety procedures, and Sarasin's responsive memo was not attached to the exhibit for the Board; Schaid called the memo discipline, not clear that Sarasin was told that he was being disciplined;
10. Telling inappropriate graphic violence stories to elementary students -- written reprimand given, clearly disciplinary action;
11. Late to first hour class -- nothing disciplinary about this, memo states that Sarasin was one minute late;
12. Student out of art class without pass/students off task -- Sarasin explained that the student was coming from another class and hadn't been to art class yet, but Schaid made no note of that; nothing disciplinary in this matter;
13. Quarterly assessment forms -- Sarasin told not to allow students to make self-assessments, correction or direction given but no discipline;
14. Failure to supervise students and follow hall pass expectations -- not clearly identified as being disciplinary in nature, although memo contains some threat of future discipline; Schaid testified that Sarasin could conclude that this was a warning because a copy was sent to his personnel file;
15. Student injured by another student -- again, not clearly disciplinary in nature although memo contains a threat of future discipline; Schaid is vague about precise nature of memo, called it discipline, also said it may be a warning, considered it discipline because it called Sarasin's attention to rules and regulations and asked him to adhere to them; nonsensical to chastise or discipline the teacher for the conduct of the student; Sarasin had worked with the student who threw the roller brush five minutes before he threw it; he could hardly watch everyone all the time and help them with art projects too; no pattern of injuries on his watch;
16. Room cleanliness or orderliness -- nothing disciplinary here; Schaid called his memo "borderline disciplinary" at the arbitration hearing, something previously noted;
17. Lent District keys to students -- not clearly disciplinary, although memo warns of future discipline; no evidence that Sarasin ever loaned keys to anyone again; evidence shows practice was wide-spread in the school but no evidence that anyone else was disciplined about it;

18. Potential pass abuse/students off-task -- note the "potential" in this incident, no showing that there was any abuse by students when Sarasin left the book of passes on a work table, and no real evidence that students were off task; not intended to be discipline;
19. Visitor allowed in class without signing in at office -- minor correction and direction, not discipline;
20. Verbal insubordination to administrator -- the infamous chalk incident, noted above as probably not disciplinary, suspect if it were because Sarasin followed the order to wash the chalk off the sidewalk; Schaid characterized this memo as a warning, but nothing shows that he told Sarasin it was disciplinary; he also said that Sarasin could grieve it if he assumed it was disciplinary; must be more clear than to let the person receiving discipline have to make assumptions one way or the other;
21. Left classroom unsupervised -- this is an unfair characterization of what happened, since Sarasin asked the office to monitor his class and secretaries came down and monitored it; fact that secretaries were not certified to teach is hardly fair to say that the class was not supervised at all; Schaid agreed that this was not disciplinary although language in memo contains threat of future disciplinary action;
22. Swore at student -- nothing disciplinary here;
23. Room condition/cleanliness/organization -- nothing disciplinary, improvement noted;
24. Late arrival to class -- the record does not show whether Schaid told the Board that this late arrival was 10 or 15 seconds and that Schaid had no knowledge of whether Sarasin had already been in the classroom but attempted to use the bathroom before the start of class; not discipline;
25. Verbal berating of student -- this was the yellow oil paint incident for which a written reprimand was issued, clearly disciplinary;
26. Late arrival to class -- Schaid saw Sarasin enter bathroom two minutes after class started, not disciplinary;
27. Unprofessional behavior with colleague -- the dispute between Arnevik and Sarasin over sending students in late from math class; this incident is old, neither Arnevik nor Garfield testified about it, not clearly disciplinary in nature, no evidence that it was disciplinary when issued despite language in memo regarding what should happen in the event of another incident of unprofessional conduct, but just says that the author is writing to address concerns, no evidence of any repetition;
28. Lewd/vulgar/sexual jokes/comments to students -- this was clearly disciplinary with a written reprimand, no dispute about this one; no evidence of repetition;
29. Visitors to class without passes -- nothing disciplinary, correction and direction given.

There are four disciplinary actions in the record over which there is no dispute. Those will be noted separately in short order. There are also seven other incidents which the District claims are disciplinary, mainly because they contain language in memos about the possibility of future discipline or more severe action, such as suspension, dismissal or non-renewal actions, should the conduct being noted be repeated. The other 18 incidents cannot be characterized as disciplinary in

any fashion. The seven incidents that are questionable are numbers 9 - 14 - 15 - 17 - 20 - 21 - and 27. The Arbitrator would ordinarily agree with the District that when someone is given memos such as these, reasonable employees would consider themselves to have been disciplined or warned. The problem is that the District has been inconsistent and unclear. For example, despite the language threatening future discipline in #21, Schaid testified that it was **NOT** disciplinary. On #27, there is nothing to show that it was discipline or that it was intended to be so. And on #15 – Schaid said this was disciplinary because it called Sarasin’s attention to the rules, and that it **MAY** be a warning. On #14, Schaid said it was disciplinary, that Sarasin could conclude that this was a warning because it was copied to the personnel file.

Disciplinary actions must be known to the individual being disciplined, not just the person who is doing the disciplining. Discipline cannot be secret. And if one even has to ask the question about whether or not it is a disciplinary action at some later date, the action is too ambiguous.

The disciplinary actions in Sarasin's record are accordingly the following:

May 1992 - told lewd jokes -- written reprimand
November 1992 - berated wrong student -- written reprimand
January 1996 - scared elementary students -- written reprimand
May 1996 - swore at student -- one-day suspension
January 1997 - the potter's wheel incident -- three-day suspension

That's all there is in the record that is clearly disciplinary, before the non-renewal -- those five events -- two of them going back five years before the non-renewal, a gap of four years with no discipline documented, and one incident the month before the non-renewal. The weight of the 1992 disciplinary actions are diminished by being more remote in time, but more importantly, by the fact that Sarasin did not repeat such behaviors. Given the fact that January 1997 suspension cannot withstand the test of just cause, there are only four things to look at -- the two in 1992 and the two in 1996. It quickly becomes obvious that a non-renewal action would be a very excessive penalty.

While Schaid believes that Sarasin intentionally or willfully finds new ways to violate the policies and rules, it is just as likely that Schaid continually finds new ways to chastise Sarasin -- or call his attention to his flaws. If Sarasin reports that a student hit another student, it is somehow Sarasin's fault. If a student is injured when Sarasin is not even there, it is still Sarasin's fault. As noted previously, these are two smart people, both capable in their own ways, even capable of doing all the things of which they accuse each other, but they are so very different in their style. However, the non-renewal of a teacher's contract is a supreme penalty to pay for not marching in step to the principal's tune all the time. The District sets the rules and Sarasin must follow them. The record clearly shows that Schaid set out personal goals, such as cleanliness of classrooms, and ran a tighter ship than his predecessor in some areas, such as hall passes and visitors' passes and lending keys to students. There is nothing wrong with changing the rules or enforcing the rules that are in effect. When Schaid asked Sarasin to tighten up the ship, Sarasin did. He stopped many of the things that

he had previously done, such as letting students take their projects to the kiln room during class time, or lending keys to students. Sarasin understands that Schaid gives the orders and he is to follow them. He has tried to conform to Schaid's demands. There is nothing in the record to show that Sarasin cannot be rehabilitated to meet the District's needs.

There is some disparate treatment in the incident of the student hit by another student. Other students were injured in gym and technical education, without any discipline of the teacher. In Sarasin's case, the injury to a student was caused by another student, and Sarasin was criticized for not keeping an eye on the student who threw a roller brush. All the teachers who taught in laboratory settings or shop settings agreed that it was impossible to keep all students in their line of sight at all times. While Schaid believes that Sarasin's loose classroom management style allows students the freedom to throw things, there is no evidence to that. This was an isolated incident, perpetrated by one student on another student, and the student who threw the roller brush was a student who had not been a problem in the past.

The more glaring example of disparate treatment is that when Sarasin reprimanded a student and swore at her, he was given a one-day suspension. When Klaeser swore at students, he was told to apologize to the class. When he continued to use profanity (two incidents), he was given a suspension but allowed to teach and get counseling for anger management, and the suspension was never imposed. There were no options for Sarasin's use of profanity directed toward a student. Other teachers have sworn at students, and they admit that in the heat of the moment, it comes out, but they would not have used such language upon reflection (example -- Voskuil and the student with the rocket). Other teachers have also loaned keys to students, left certain students unsupervised at times, had students "off-task" at times, let students go some places without passes, and had visitors without passes.

The only other potential non-renewal actions that were being contemplated by the District involved teachers who had physically hurt students. One kicked a student in the groin and damaged his testicles, another was physically aggressive with students. Both resigned rather than face a non-renewal action. Whatever Sarasin's deeds or misdeeds, nothing rose to the level of physical abuse. Klaeser got suspended in 1995 for excessive physical force with a student, and had continuing problems involving profanity, but he was allowed to get counseling and one suspension was not imposed.

The Association is correct when it states that it is not possible to say what the Board would have decided if it understood that most of the 29 incidents brought to its attention were not disciplinary actions but only correction or direction, or that it would be unclear to an employee whether or not some of those were discipline. Also, the Board had Schaid's attached letters without all of Sarasin's responses. The process before the Board itself lacked elements of fundamental fairness. When one looks at the whole record, it should look at the whole record, including the employee's side of a dispute. The record is not just the incidents that Schaid wishes to note, but it is also 15 years worth of service. It is a successful art program taught by a talented and gifted teacher who can inspire young people into a career path they may never have seen before. If Sarasin appeared late to class (by a few seconds) on a couple of occasions, was he generally on time, five

days a week, for the last 15 years? If Sarasin turned in lesson plans late a couple of times, was he generally on time, for 15 years? There were no injuries to students under his watch because of him -- the record shows that one student hit another with a roller brush, and one student sniffed some Sparex fumes on a day when Sarasin wasn't even there and a substitute teacher should not have let the student use Sparex. These are not the signs of a reckless, careless, indifferent teacher. There was plenty of testimony that Sarasin was careful and made students very aware of any potential danger.

The record does not show the kind of proven and serious misconduct that would warrant the severe disciplinary action of non-renewal of a teaching contract. The two disciplinary actions from 1992 and the two from 1996 would not give the District just cause to non-renew Sarasin's employment contract. Accordingly, the District did not have just cause for the non-renewal action.

Nothing in this Award should be interpreted to say that Sarasin has carte blanche to disregard Schaid's orders. These are both clever people capable of driving each other crazy. They are also both capable of performing their respective positions with great competence. Whether they can work together in the future is questionable. However, the Grievant is entitled to a make whole remedy where the District lacked just cause to suspend him for three days and to non-renew his individual employment contract, and such a remedy will be ordered.

AWARD

The grievances are both sustained. The District did not have just cause to suspend Russell Sarasin for three days as a consequence of his conduct during second hour art class on January 7, 1997. The District did not have just cause to non-renew the individual employment contract of Russell Sarasin for the 1997-98 school year.

The District is ordered to immediately offer to Russell Sarasin reinstatement to his former position or a substantially equivalent position and to make him whole for all lost wages and benefits by paying to him a sum of money that he would have earned but for the three-day suspension and non-renewal of his contract, less any amount of money that he earned elsewhere.

The Arbitrator will retain jurisdiction over this matter until October 30, 1998, solely for the purpose of resolving any disputes over the scope and the application of the remedy ordered.

Dated at Elkhorn, Wisconsin this 30th day of July, 1998.

Karen J. Mawhinney /s/

Karen J. Mawhinney, Arbitrator

