

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

KENOSHA SCHOOL DISTRICT

and

KENOSHA EDUCATION ASSOCIATION

Case 161

No. 58874

MA-11088

(Ruffolo Grievance)

Appearances:

Davis & Kuelthau, S.C., by **Attorney Dan Vliet**, Suite 1400, 111 East Kilbourn Avenue, Milwaukee, WI 53202-6613, on behalf of the School District.

Mr. Robert Baxter, Executive Director, Kenosha Education Association, 5610 55th Street, Kenosha, WI 53144-2295, on behalf of the Association.

ARBITRATION AWARD

According to the terms of the 1999-2001 collective bargaining agreement between the Kenosha School Board (District) and Kenosha Education Association (Union or Association), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding a three-day suspension given to Grievant Angela Ruffolo. The Commission designated Sharon A. Gallagher to hear and resolve the dispute. Hearing was scheduled for July 25, 2000, but was later postponed to August 23, 2000. The hearing was held at Kenosha, Wisconsin, on August 23, 2000. A stenographic transcript of the proceedings was made and received by the undersigned on September 11, 2000. The parties agreed to file their initial briefs directly with each other postmarked October 6, 2000, with a copy to the Arbitrator. The parties reserved the right to file reply briefs. By November 29th, the parties advised that they would waive the right to file reply briefs, whereupon the record was closed.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

The parties stipulated that the following issues should be determined in this case:

Did the Employer have just cause to give the Grievant, Angela Ruffolo, a three-day suspension? If not, what is the appropriate remedy?

RELEVANT PORTIONS OF THE BOARD'S POLICIES AND RULES

POLICY 5471

CORPORAL PUNISHMENT/USE OF PHYSICAL FORCE

Students will not be subjected to the use of corporal punishment in any of its forms. District employees who violate this policy shall be subject to established disciplinary procedures.

Although school officials, employees, or agents are encouraged to use non-forceful control measures, school officials are not prohibited by the corporal punishment law from using reasonable and necessary force under the following specific circumstances:

1. To quell a disturbance or prevent an act that threatens physical injury to any person;
2. To obtain possession of a weapon or other dangerous object within a student's control;
3. For the purpose of self-defense or the defense of others, or for the protection of property in accordance with state statutes;
4. To remove a disruptive student from school premises, a motor vehicle, or a school-sponsored activity;
5. To prevent a student from inflicting harm on him/herself; and,
6. To protect the safety of others.

Incidental, minor, or reasonable physical contact designed to maintain order and control may be used in the District.

In determining whether or not a person is using reasonable and necessary force, deference shall be given to reasonable, good faith judgments made by an official, employee or agent of the District.

...

POLICY 4362

EMPLOYEE DISCIPLINE

Employees shall abide by District policies and procedures, applicable rules and regulations, local, state and federal laws and regulations, and the expectations set forth in employee position specifications.

It is the responsibility of the District's administrators and supervisors to discipline employees for violations of District policies and procedures, applicable rules and regulations and the expectations set forth in the position specifications.

Discipline will not be imposed arbitrarily or capriciously. Discipline may be imposed by oral reprimand, written reprimand, suspension with or without pay and/or discharge. Dismissal of any personnel shall be in accordance with established procedures and state law. Other forms of discipline may be imposed when appropriate. The concept of progressive discipline will be utilized, if appropriate.

Employees who have been disciplined have access to either the general employee complaint procedure in the policy manual or grievance procedures specified in employee bargaining agreements.

...

RULE 4362

EMPLOYEE DISCIPLINE PROCEDURES

Copies of a written employee reprimand will be distributed as follows: original to employee, copy to Superintendent of Schools, copy to employee's Central Office personnel file and a copy to employee's immediate supervisor.

Disciplinary measures, when warranted, may be implemented as follows:

1. All administrators and supervisors are authorized to reprimand in either oral or written form, or both.

2. All administrators are authorized to recommend employee suspensions to the Superintendent or designee.
3. Only the Superintendent or designee is authorized to suspend an employee with or without pay.
4. The Superintendent may impose all appropriate forms of discipline, except for discharge, of regularly employed certified employees. The Superintendent may discharge non-certified employees and substitute teachers [sic]
5. Discharge of regularly employed certified employees requires formal action by the School Board and shall be in accordance with established procedures and state law.

BACKGROUND

Angela Ruffolo, the Grievant in this case, have been employed by the Kenosha School District for 30 years. During the 1998-99 school year, Ruffolo was employed as a third-grade classroom teacher at Forest Park Elementary School in Kenosha, Wisconsin. Although the Union argued to the contrary, the following constitutes Ruffolo's disciplinary record from 1995 through 1997. The District, during this period of time, issued Ruffolo three written warnings and one one-day suspension. Ruffolo did not grieve any of these actions by the District. The relevant portions of each disciplinary action are as follows:

1. November 28, 1995, one-day suspension from acting Superintendent Mangi:

I have recently been informed of serious communication problems between you and parents of some of your students at Forest Park Elementary School. Several students in your classroom received failing grades in reading and other subjects for the first quarter; however, parents were not informed of their child's problems through a mid-term progress report or other communication.

During a meeting with Mr. Guttormsen and Ms. Neilson Euting, you were directed to contact parents of students who were failing prior to the parent-teacher conference so that they would be aware of the failing grade, and to inform them that the District would be providing resources to assist their child. You then left a cryptic message on one parent's tape stating that you had been "directed" to inform them of their child's failing grade. You also indicated in your log that you failed to notify some parents due to unlisted telephone numbers. Certainly, as a professional you should be aware of alternative means

of notifying parents such as sending a note home with the child asking the parent to contact you, sending a registered letter, asking the contact on the emergency card to notify the parent to call you, etc.

Additionally, when students were scheduled for remedial help with the reading teacher and educational assistant, you stated you would not release your students to receive this assistance. Refusing to allow your students to receive additional help as directed by the principal constitutes insubordination. Additionally, this action violates School Board Policy #5116 which states the following:

“Teachers shall make every effort to devote sufficient time and resources to assist every student to achieve success commensurate with the student’s ability.”

Angie, parents are rightfully upset regarding their perception of your uncaring attitude toward their children. Moreover, I can certainly understand why a parent might think you were unaware of her particular child’s needs when the comment on the report card referred to a child by a different name. It is not surprising that numerous parents are requesting that their children be removed from your classroom. I believe teachers can be empathetic and sensitive to student needs while maintaining high expectations for achievement, and that is my expectation for you.

Due to your unprofessional behavior in communicating with parents and your insubordination to your principal as evidenced by your statement that you would not release your students for remedial help, I am suspending you from all professional duties, without pay, on Thursday, November 30, 1995. You will return to work on Friday, December 1, 1995. I am also referring you to the Employee Assistance Program, and will check with Mark Hyde, EAP Manager, to verify your contact.

It is my hope that this discipline will conclude the matter; however, continued failure to demonstrate the professional behavior expected of you by the Kenosha Unified School District will result in further disciplinary action up to and including possible termination.

. . .

2. October 17, 1996, written documentation of the October 11, 1996, oral warning from Principal Soulek:

This memo is a follow-up to the conference held on Friday, October 11, 1996 at which time Mr. Gary Powell, you and I met to discuss an allegation you made toward Mr. Powell.

Mr. Powell indicated in the meeting that you came into the library, took some decorations off his bulletin board, and investigated them without his permission. He questioned you regarding the matter and you refused to discuss the situation with him. According to Mr. Powell he once again attempted to discuss this matter with you the following morning and you then told him that you didn't want to discuss this with him and that it wasn't worth discussing because he could lose his job. Mr. Powell felt threatened by the comments you made and definitely believed you were accusing him of stealing your bulletin board decorations as evidenced by the fact that you came into the library and started removing the decorations without any communication, written or verbal, to him.

In the conference you stated you didn't believe that you did anything inappropriate. You stated you were merely checking the decorations out to see if they were two sided because that's what yours were. You indicated in the conference you had never seen these decorations in the library in the past three or four years so you assumed they could be yours. You also made a statement about Mr. Powell's abilities as a librarian and said that if you were his immediate supervisor, you would fire him because in your judgment you didn't feel he did an adequate or professional job. For the record, you have no right to examine the property of another staff member without approval, nor is it your responsibility to evaluate co-workers.

In the same conference we discussed an alternative manner in which you might have resolved this issue. I suggested that it would have been more professional to have gone to Mr. Powell when no students or staff were present to discuss your concerns, and tried to resolve the matter between the two of you.

It is essential for staff members to work together and to communicate concerns in a positive, constructive and professional manner. To date, I'm aware of two other situations in which you and other staff members had confrontational exchanges resulting in negative relationships. I am also aware that acting superintendent, Mr. Joseph Magi, referred you to the Employee Assistance Program in a letter dated November 28, 1995. In checking with Mrs. Linda Neilson-Euting, Administrator of Human Resources, I learned that you did not comply with this direction. To assist you in dealing with your relationships with co-workers, I'm directing you to contact the Employee Assistance Program. This contact should be made by October 25, 1996. The District will contact the EAP Manager to verify your compliance with this direction.

As the newly appointed principal of Forest Park, I'm trying to establish good staff morale and a positive working environment. I'm sure you can understand that positive working conditions certainly contribute to our success and the success of our students.

Please understand that I am willing to sit down with you and any other staff member to discuss concerns that you may have relative to other staff members. I will always assist whenever I can in resolving any staff relationships. Again, please feel free to contact me at your convenience if you have any problems or concerns relative to this issue or any other matters. 1/

1/ In my view, this memo constitutes written documentation of an oral warning. No progressive discipline statement is made for future actions of a similar type.

3. December 18, 1996, written warning from Superintendent Johnson: 2/

. . .

I recently learned of inappropriate behavior demonstrated by you toward another staff member at Forest Park Elementary School. Specifically, you embarrassed and humiliated the computer lab manager in the presence of students by yelling at her regarding a number of issues, and telling her that she was only there to fix the computers. Additionally, after a meeting with your principal during which you were given specific direction regarding the appropriate manner in which concerns should be addressed, you went to the staff lounge and, once again, verbally abused the staff member publicly.

Due to your continuing problems with interpersonal relationships with your coworkers, I believe suspension without pay is warranted, and have seriously considered such action; however, I have decided to allow you to remain at work so that you will have every opportunity to improve your relationships with colleagues. I am also directing you to contact the Employee Assistance Program immediately for an appointment. It is further expected that you will follow through with their recommendations for assistance.

Finally, you must know that should a similar incident occur in the future, I will impose disciplinary action up to and including recommendation for termination of your employment with the Kenosha Unified School District.

2/ On December 16, 1996, Principal Soulek recommended that Superintendent Johnson discipline Ruffolo for her confrontation with the computer lab manager and also noted Ruffolo's non-compliance with a previous directive from the District that she seek help from the Employee Assistance Program.

. . .

4. November 17, 1997, written warning from Principal Soulek:

. . .

At the beginning of this school year I shared with you many written requests from parents which stated they didn't want their child [sic] in your classroom this year. The reason for the requests varied. Many said they didn't believe your attitude towards kids was positive, and that they didn't believe their children would be successful in your room. After sharing the written requests with you, I also shared several similar verbal requests I had received from parents.

At the time I told you that it was imperative to change the negative perception that students and parents have regarding your attitude and the manner in which you deal with people. When approximately one-third of the parents of our second grade students request not to have their children placed in your classroom, there is cause for concern. At the beginning of the year I recommended that your primary goal should address these perceptions. I also gave you specific suggestions regarding ways to change this perception. At that time you said, "I don't care how parents feel as long as kids are learning and I am teaching the Board approved curriculum."

To date, we have had four conferences with parents of students who are concerned about the manner in which you work with their children. Following are some concerns which were voiced by parents: 1.) You do not communicate with them until the problems escalate to a serious nature. 2.) Their children have not had significant disciplinary problems until this year. 3.) Your disciplinary measures are unfair and inappropriate. Additionally one parent insisted on having her daughter removed from your room because she was afraid of you, didn't want to attend school anymore, and said you made her feel stupid.

Finally, in the conference with Brandon _____'s 3/ mother on Thursday, November 6, 1997, you gave the impression that this was your preparation time, that you shouldn't have to be there, and that the conference was a waste of your time. You certainly did not demonstrate care and concern for her son. Actions such as these contribute to the negative perception parents have regarding your attitude and the manner in which you interact with children and parents.

Angie, you must communicate with parents, students and staff in a positive manner. This has been pointed out to you by previous administrators as well as myself. If the type of behaviors delineated continue, I will recommend disciplinary action to the superintendent.

Please know I am willing to discuss concerns and to assist you in working cooperatively with students, parents and staff. 4/

3/ *Brandon's last name has been shielded to protect his identity.*

4/ *In a handwritten responsive memo, Ruffolo stated:*

The accusations are untrue. I run an orderly and productive classroom. Children need to work hard. Observations in the hall are useless. Parents who want to evaluate my work need to come and sit, if they have children enrolled in my class. PS. Perhaps my attorney can draft a letter to the gossips!

Principal Soulek advised Ruffolo that such a letter from her attorney would not be appropriate. Ruffolo never sent letters to any parents as a result of the approximately 26 parents who wrote letters requesting that their children not be placed in Ruffolo's class.

Each of these disciplinary actions was placed in Ruffolo's personnel file and Ruffolo failed to grieve any of these actions by the District.

FACTS

On March 10, 1999, Ruffolo had 25 eight-year-old students in her class, one of whom shall be known as David. 5/ On the morning of March 10th, a student came in from the playground bleeding (apparently from her head) with blood on her hands, face and clothes. Ruffolo immediately turned her attention to this student. Ruffolo took this student to the sink, wiped her face and hands but she could not find a wound. Several of the children became agitated at this time, having seen the blood on the student. David began screaming words from the TV show "South Park," such as "blood, gore and kill Kenny." As the students were going to take the third-grade state reading test that morning, Ruffolo separated their desks and placed David at a desk very close to her own, a distance from the other students. David continued to be disruptive, but he then settled down long enough to take the third-grade reading test. However, after the third-grade reading test was completed, David began yelling and screaming and laid down on the top of his desk kicking his legs and waiving his arms. Ruffolo stated that while David was being disruptive, she told him several times to sit down and quiet, but David did not do as he was told. When Ruffolo saw David on his stomach on top of his desk kicking, screaming and waiving his arms, she took him by the arm, pulled him down off his desk and swatted his bottom once and told him to sit down. Ruffolo stated that she did not intend to punish David by swatting him on the bottom; that it was a "reactive kind of thing. But I was not out of control . . . I could have stopped myself had I chosen to at that point . . . I don't believe in corporal punishment at all. And why that happened to me, I don't honestly know."

(Tr. 71) Ruffolo stated that after she swatted David on the bottom, David sat down and was quiet, but that he later became disruptive again. Ruffolo then sent David to the office to be disciplined by the Principal for being disruptive.

5/ David's last name will be shielded to protect his identity.

When David came to Principal Soulek's office, David told the Principal he was sent to the office because he had been disruptive. The Principal then decided that a meeting with Ruffolo, Soulek and David's mother later that day would be appropriate. Soulek called David's mother and arranged for her to come to school at approximately 1:40 p.m. on that day. During the conference with David's mother, Ms. Ruffolo admitted that she had swatted David on the bottom in class. David's mother became very upset, stated that she would leave, that she had had enough and that she wanted David out of Ms. Ruffolo's class. At this point, David's mother left Ruffolo's classroom with David and again stated that she wanted David out of Ruffolo's classroom. At this point, Ruffolo came out of her classroom into the hallway and told David's mother she could take David out of public school and put him in parochial school. At this point, Mr. Soulek told Ruffolo to return to her classroom and he accompanied David and his mother to the office where David's mother wrote a request requesting that David be removed from Ruffolo's class.

Ruffolo stated that she believed that she complied with the District's policy regarding corporal punishment in swatting David on the bottom on March 10, 1999. 6/ Ruffolo stated that she swatted David because he was obnoxious and was yelling, disrupting her classroom. Ruffolo stated that the swat appeared to stun David, that David accepted the swat, did not complain of any pain and it seemed to help him calm down. Ruffolo stated that she swatted David to stop his words, but that she did not swat him to keep him from hurting himself or in order to defend herself. Ruffolo did not deny that during the District's investigation of the incident, she told District representatives that she "lost it" and was completely frustrated when she swatted David on the bottom.

6/ Ruffolo also stated that there was a split second when "I could have stopped. But I didn't; I swatted him. It's just human" (Tr. 92)

It is undisputed that Board policies and rules are distributed to teaching staff by means of their personal mailboxes and school bulletins. These items are also kept for reference purposes at the office. Staff meetings are also regularly conducted regarding Board policies and rules. Ruffolo admitted that she was aware of the Board policy regarding corporal punishment, applicable in this case.

After conducting an investigation of Ruffolo's conduct and receiving a recommendation from Principal Soulek that discipline should be meted out against Ruffolo, Superintendent Johnson issued the following suspension letter on March 18, 1999:

. . .

This letter is to inform you that you are being issued a three-day suspension without pay. This [sic] dates for this suspension are Monday, March 22nd through Wednesday, March 24th. You are to report back to work on Thursday, March 25th.

This disciplinary action is based on your conduct in an incident on Wednesday, March 10, 1999. On that day and by your own admission, you forcibly grabbed a child's arm in your classroom and spanked the child. This unwelcome contact is in violation of Board Policy #5471, Corporal Punishment.

Your conduct has the potential of severely diminishing the public's confidence and respect for the Kenosha Unified School District and the teachers employed by it. Your conduct demonstrates a lack of sound judgement in the discharge of your instructional duties.

It is hoped that this letter of reprimand will allow you to reflect on your duties as a teacher in this District and the importance of exercising [sic] sound and careful judgment as you work with the students under your charge. You are warned that in the event of further disregard for your duties as a teacher, you will be subject to further discipline, up to and including discharge.

You are reminded that the District's Employee Assistance Program (652-7000) is available to assist you with any personal problems that you may have that may be impacting your ability to carry out your work duties. 7/

. . .

7/ Ruffolo did not deny the facts as recounted in the District's letter of suspension to her.

The Union then filed the instant grievance on Ruffolo's behalf which was processed through the grievance procedure to arbitration. The Union submitted evidence herein regarding events which occurred since the filing of the grievance. Although the Arbitrator took this evidence as an offer of proof, the proffered evidence is irrelevant to this case, as it relates to events and circumstances which were neither a part of the factual scenario leading up to this grievance nor were considered by the District in its decision to suspend Ruffolo for three days for her activities on March 10, 1999. Therefore, this evidence has not been considered in this case.

POSITIONS OF THE PARTIES

The District

The District argued that its actions in suspending Ruffolo were entirely reasonable and supportable. In this regard, the District noted that Ruffolo not only had notice that her activities would be disciplined, but that she was aware of the reasonable rules of the District and its policies. The District urged that it had conducted a fair investigation of the March 10th incident. In addition, the District argued that it had offered substantial proof of Ruffolo's wrong-doing, including her own admissions; that there was no indication that the District had failed to treat Ruffolo fairly and equally; and that a three-day suspension was a reasonable penalty considering the activity that Ruffolo engaged in. The District noted that since at least 1995, Ruffolo had been given notice that her abusive relationships with students and staff would result in further discipline (when she was suspended for failure to notify parents that their children had failing grades). Ruffolo was also warned regarding her refusal to release her students for remedial reading help in direct violation of the Principal's orders. Ruffolo was also warned in writing regarding her reference to a student by the wrong name on a report card. In addition, in 1996, Ruffolo was involved in abusive relationships, according to the District, in which she criticized the computer aide in the library and accused the library aide of removing her posters from her classroom. For both of these instances, Ruffolo received a written warning. Also during the 1996-97 school year, 26 parents indicated that they did not want Ruffolo to teach their second-grade children and the Principal verbally warned Ruffolo regarding her relationships with parents and students as a result. During the 1998-99 school year, the Principal stated herein that more parents requested their children be removed from Ruffolo's classroom and complained about her teaching; and that Ruffolo sent students to the office more frequently than other teachers in the building.

In these circumstances, the District argued that it was entirely justified in issuing Ruffolo a three-day suspension for the March 10, 1999 incident, in which Ruffolo admittedly grabbed a student by the arm and spanked him on the bottom during class. In this regard, the District noted that the force used by Ruffolo was not incidental, minor or reasonable. Rather, the force Ruffolo used was excessive and unnecessary to remove the child from the top of his desk and to get him to settle down. Indeed, the Grievant failed to prove that there was anything reasonable or necessary about her actions on March 10th. During the investigation of her actions, Ruffolo admitted that she had swatted David on the bottom in order to maintain control of the class and that she had "lost it." The District therefore urged that Ruffolo violated the Board's corporal punishment policy and State statutes when she punished David on March 10th.

The District noted that Article XII of the contract, states that the District can discipline teachers who willfully and repeatedly violate District policy. The District argued that Ruffolo's work record demonstrated that she willfully and repeated violated District policies regarding the proper relationship of teachers to staff and students. The District further urged that Ruffolo endangered David's safety and the safety of the other children in the room by her actions on March 10th.

Even without consideration of Ruffolo's prior misconduct, the District contended that spanking a child should be cause for a three-day suspension. The District noted that Ruffolo had other options available to her. These included using the intercom to call for assistance or sending David to the office sooner. In any event, the District urged that the undersigned should give deference to the District's decision to discipline Ruffolo at the level of a three-day suspension. As Ruffolo failed to credibly demonstrate that her actions were justified and not excessive or that she made a reasonable decision as to the extent of the threat that David posed, the District urged that Ruffolo's three-day suspension should stand and that the grievance be denied and dismissed in its entirety.

The Union

The Union argued that the District did not have just cause to give Ruffolo a three-day suspension. In this regard, the Union noted that Ruffolo did not intend to punish David when she spanked him on March 10th; that she was not angry with her students at the time she spanked David; and that she hit David because she was concerned about herself and getting David off his desk without his being harmed. Therefore, Ruffolo complied with the District's corporal punishment policy, which states that teachers can use corporal punishment "to quell a disturbance" or "prevent an act that threatens physical injury to any person."

The Union argued that Ruffolo acted appropriately on March 10th. In this regard, the Union noted that Ruffolo had tried to correct David's behavior with verbal directives and that these directives failed. Ruffolo ended up spanking David to get his attention and control his behavior and this resulted in the immediate quelling of the disturbance that David was making.

The Union asserted that the Districts' arguments regarding Ruffolo's prior work record are irrelevant to this case. In this regard, the Union urged that the letter of discipline refers only to the March 10th incident as grounds for the three-day suspension at issue herein. Thus, the District's attempt to use prior disciplinary actions against Ruffolo should not be allowed. Indeed, the Union noted that none of the prior disciplinary actions against Ruffolo involved corporal punishment. Furthermore, some of the "disciplinary actions" (Exhibits 4 - 7) were not disciplinary in nature, according to the Union. As the District failed to call any supporting witnesses with direct eye witness testimony regarding any of these prior disciplinary actions, the Union urged the Arbitrator to conclude that use of these prior disciplinary actions would violate Ruffolo's due process rights. In addition, the Union noted that the first time the Board raised Ruffolo's prior disciplinary record was at the Board hearing in this case, implying that this approach was unfair.

As the District failed to meet its burden of proof to show that it had just cause to suspend Ruffolo for three days and as it failed to prove that Ruffolo actually violated its corporal punishment policy, the Union requested that the grievance be sustained, that Ruffolo be made whole and her employment record be expunged.

DISCUSSION

The initial question in this case is whether Ruffolo violated the District's Corporal Punishment Policy on March 10, 1999. In the Arbitrator's view, the record supports a conclusion that Ruffolo violated this policy on March 10th. The Union argued that Paragraph 1 of the Policy was applicable to the March 10th situation and that Ruffolo followed the policy on this point. In this regard, the Union urged that Ruffolo spanked David in order to "quell a disturbance or prevent an act that threatened physical injury to any person." However, by her own admissions both during the investigation of the incident as well as during her testimony herein, Ruffolo's primary motivation in taking hold of David, pulling him off his desk and spanking him on March 10th was not to quell a disturbance or prevent injury to anyone. Indeed, Ruffolo never directed David to get off his desk and sit down before she spanked him. Rather, as she stated, she "lost it," meaning that she was so angry that she took hold of David and struck him. Ruffolo further admitted that she could have stopped herself before she hit David but that she did not know why she failed to stop. Thus, Ruffolo's actions as well as her statements herein demonstrate that Ruffolo lost her temper, that she intended to punish David and that she did in fact punish him by spanking in front of the entire class on March 10th.

The record contains no evidence to support a conclusion that Ruffolo spanked David to avoid David's injuring Ruffolo or others. Rather, the evidence showed that before the State Reading test began, Ruffolo moved David's desk away from the desks of the other students. Therefore, it was very unlikely that David could have injured any students by his actions on March 10th. As Ruffolo chose to approach David to remove him from his desk and to spank him, Ruffolo could not have felt that she was then in any danger of being injured by David. 8/

8/ I note that Ruffolo stated herein that she had injured her back at work previously and that she was thereafter careful not to put herself in physical jeopardy.

The Union also argued that Ruffolo spanked David to get his attention and to control his behavior. In the Arbitrator's view, it was unnecessary to spank David to achieve these goals: Ruffolo could have ordered David to sit down, she could have called the office on the intercom for assistance or she could have sent David to the office immediately. If teachers regularly used corporal punishment whenever then needed to get their students' attention or to control their behavior, schools would become violent places where fear and embarrassment would make learning very difficult.

Further analysis of the District's Corporal Punishment Policy indicates that Paragraphs 2 through 6 do not apply to the March 10th incident. Paragraph 3 of the policy does not apply as David was not physically assaulting anyone by his conduct and self-defense or defense of others never came into play. From her testimony, as analyzed above, it is clear that Ruffolo was not truly concerned about David injuring himself or other students on March 10th when

Ruffolo spanked him. Therefore, the record does not otherwise support a conclusion that Ruffolo's March 10th conduct was privileged under Paragraph 1, 5 or 6 of the District's policy.

The Union argued that because the District's March 18th letter of suspension mentions only the March 10th incident as a basis for Ruffolo's suspension, it would be unfair for the District to raise Ruffolo's prior disciplinary record (which did not involve corporal punishment) as a basis for sustaining the discipline in this case. I agree with the Union on this point. The discipline which Ruffolo received from 1995 through 1998 was too dissimilar to the discipline in dispute in this case to be applicable herein for purposes of determination of whether the discipline was progressive or (as the District has argued) that a pattern of conduct on Ruffolo's part existed.

However, the conduct that Ruffolo engaged in on March 10th was serious and of a type that would privilege the District to apply a more severe penalty than progressive discipline would normally allow. It cannot be ignored that Ruffolo took an eight-year-old child by the arm, removed him from his desk and struck him on his bottom, demeaning him in the presence of all his peers. It is neither arbitrary nor unreasonable for the District to conclude that Ruffolo's actions constituted a serious offense requiring a three-day suspension for this first offense. I note that the District followed its employee policy (quoted herein) in giving Ruffolo a three-day suspension in this case, there being no absolute requirement that discipline be progressive in the District under this policy.

Based upon the relevant evidence and arguments herein, I issued the following

AWARD

The District had just cause to give Grievant Angela Ruffolo a three-day suspension for her actions on March 10, 1999. The grievance is, therefore, denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin, this 20th day of December, 2000.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator