

STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion from the
Stanley-Boyd Area Schools of
DAVID K [REDACTED],

ORDER DENYING MOTION
FOR TEMPORARY RELIEF
AND SCHEDULING ORDER

Appellant

Appellant has moved for a [stay] of the July 19, 1979 expulsion order of the Board of Education (hereinafter Board) of the Stanley-Boyd Area Schools (hereinafter Respondent) and for temporary reinstatement pendente lite. Relevant facts appearing of record are as follows:

FINDINGS OF FACT

On May 25, 1979, appellant and two companions [rode motorcycles through the main hallways of the high school and adjoining middle school.] This incident occurred at approximately 9:30 a.m. while school was in session and classrooms were occupied. At one point, a special education student was within a few feet of the passing vehicles. The cyclists were heard to shift gears and accelerated as they proceeded through the building. After due notice and hearing, the Board ordered appellant's expulsion on the grounds that the above at school conduct endangered the property, health or safety of others. The expulsion was limited to the first nine weeks of the 1979-80 school year. The Board further ordered "that during the period of expulsion, [appellant] shall be entitled to receive homebound instruction through the Stanley Boyd High School." See Board order of July 19, 1979.

CONCLUSIONS OF LAW

Section PI 1.09, Wisconsin Administrative Code, provides:

"PI 1.09 Temporary orders. The state superintendent may issue such protective order or grant such temporary relief as is necessary to preserve the rights of any party to a matter subject to this chapter prior to the issuance of a final decision or order."

The grant or denial of such temporary relief as contemplated by this provision and as sought by appellant is highly discretionary. Brown v. Milwaukee Board of School Directors, 83 Wis. 2d 316 (1978). At a minimum, a party seeking such relief has the burden of showing that he will be irreparably harmed if the relief sought is not granted, that he has no adequate remedy at law, and that there is a reasonable likelihood that he will prevail on the merits of the case. See generally Werner v. A.L. Grootemaat & Sons, Inc., 80 Wis. 2d 513 (1977), and cases cited therein.

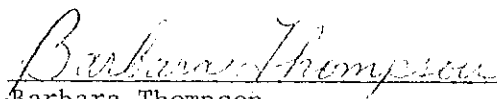
Appellant asserts that he will be irreparably harmed if the Board's order is not stayed and he is not temporarily reinstated to attendance pending the adjudication of this appeal. The manner in which it is contended that he will be so harmed is unstated; presumably, however, appellant believes that his continued exclusion from classroom attendance during the nine week period would so substantially interfere with his educational progress as to render futile any remedial order which may issue should he succeed on the merits of his case. This argument would be more persuasive if the record reflected that appellant had been denied instructional services during the period in question. However, the record does not so reflect and appellant has not suggested otherwise. Rather, the Board's July 19, 1979 order specifically directed that appellant be provided with a program of homebound instruction. As such, it must be assumed that the Board's mandate has been carried out, that the homebound program is comparable to the course of study offered in the classroom, and

that appellant will receive credit for such homebound studies as he successfully completes. To conclude otherwise in the absence of a contrary showing would require that this office ignore the presumptions of regularity in the conduct of governmental activities and good faith in the discharge of public responsibilities by governmental officials. Faust v. Ladysmith-Hawkins School Systems, 88 Wis. 2d 525 (1978).

IT IS THEREFORE THE ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION That the instant motion for a stay of the order for expulsion and for temporary reinstatement is denied.

IT IS FURTHER ORDERED That appellant's brief or statement of position as to the merits of this matter be served and filed no later than October 8, 1979. Respondent's reply brief or statement of position shall be filed no later than October 22, 1979. Appellant's rebuttal material, if any, shall be served and filed no later than October 29, 1979.

Dated this 21st day of September, 1979.



Barbara Thompson
State Superintendent