

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
Michael P [REDACTED] by the Board of
Education from J. I. Case High
School District of Racine,
Wisconsin.

ORDER

Background

Pursuant to an Order entered by the State Superintendent of Public Instruction on September 24, 1979, the appellant, Michael P [REDACTED], was [readmitted] to J. I. Case High School in Racine, Wisconsin until further order of the State Superintendent. On the same date, an Order was entered appointing a hearing examiner to preside over a hearing limited to the single [issue of whether cause exists to quash the temporary order.] The hearing was held on October 12, 1979. Relevant facts appearing of record and stipulated by the parties are as follows:

Findings of Fact

On September 5, 1979, Sergeant Willing of the Racine County Sheriff's Department observed Michael P [REDACTED], along with other students, in a car in the parking lot of Case High School at approximately 7:30 a.m. Sergeant Willing observed Michael pouring water onto the pavement from a pipe commonly used for smoking marijuana. Sergeant Willing thereupon confronted Michael, who voluntarily handed Sergeant Willing a plastic bag containing a small amount of marijuana. Michael was then escorted to the high school principal's office where he admitted [possession of marijuana and the pipe] and was summarily suspended from school and referred to the Department of Pupil Personnel.

There was no allegation or proof that Michael used marijuana, provided it to others or intended to transport marijuana into the school building.

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 has demonstrated and respondent has conceded that he has no adequate remedy at law and that he will be irreparably harmed if temporary relief continuing his attendance in school is denied. The only issue argued at the hearing and in the briefs is the likelihood that appellant will prevail on the merits of his case.

While the respondent had previously relied on repeated violations of school rules as a basis for its expulsion of appellant, it has chosen to abandon that claim for the purposes of this determination. Consequently, the respondent's argument is based solely on the claim that appellant's conduct endangered the health or safety of others in such a way that the school's interest demanded appellant's expulsion.

It is my conclusion that appellant has demonstrated the reasonable likelihood that he will prevail upon the merits of his appeal. Previous orders of the State Superintendent dated April 18, 1975, January 12, 1979 and July 6, 1979, have overturned expulsions by the respondent school district based solely on the possession of marijuana. In an expulsion case the school's interest in expelling a student for allegedly dangerous conduct must be balanced against the student's statutory and constitutional rights to an education. Consequently, the State Superintendent's previous decisions have held that simple possession of marijuana is insufficient as a matter of law to constitute such a danger to the property, health or safety of others as to warrant expulsion.

IT IS THEREFORE THE ORDER OF THIS HEARING EXAMINER that the September 24, 1979 ex parte Order of the State Superintendent readmitting appellant P [REDACTED] to J. I. Case High School be continued pending a final decision on the merits of this appeal.

IT IS FURTHER ORDERED that appellant's brief or statement as to the merits of this matter be served and filed no later than January 8, 1980. Respondent's reply brief or statement of position shall be filed no later than January 22, 1980. Appellant's rebuttal material, if any, shall be served and filed no later than January 29, 1980.

Dated this 19th day of December, 1979.

Mary Brooks Fraser
Mary Brooks Fraser
Hearing Examiner