

## THE STATE OF WISCONSIN

BEFORE

## THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
 JAMES M. B [REDACTED] by the Westosha School  
 District Board of Education

INTERIM  
 ORDER

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## THE NATURE OF THE CASE

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the November 3, 1982 decision of the Westosha School Board expelling the appellant, James M. B [REDACTED], from school until the beginning of the 1983-84 school year. The immediate matter before the State Superintendent is appellant's motion for reinstatement pending final determination of the appeal. Having reviewed the hearing record and the arguments submitted by appellant and his parents, the State Superintendent of Public Instruction makes the following:

## FINDINGS OF FACT

James B [REDACTED], born December 8, 1966, is a 16 year-old sophomore at Central High School in the Westosha School District. The October 13, 1982 Notice of Expulsion Hearing sent to James and his parents contained the following alleged violations of school rules:

1. 11/17/81      Appeared before the board for involvement with controlled substances.
2. 9/17/82      Disrupting the normal procedures of the school; disturbance in study hall.
3. 9/20/82      Disrupting the normal procedures of the school; Physical Education Report.
4. 10/7/82      Disrupting the normal procedures of the school; Physical Education Report.

5. 10/11/82      Disrupting the normal procedures of the school; involved with controlled substances.

At his expulsion hearing on October 19, 1982, James admitted the correctness of the allegations against him.

The Board's decision to expel James was made on November 3, 1982. This appeal was filed on November 8, 1982. In it, James requested temporary reinstatement to school pending final determination of the appeal. The basis for this request is a claim that the penalty (expulsion through the end of the school year) is too harsh.

#### CONCLUSIONS OF LAW

Wis. Admin. Code s. PI 1.09, provides:

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. Browne v. Milwaukee Board of School Directors, 83 Wis. 2d 316 (1978). The Wisconsin Supreme Court has summarized the criteria for issuance of a temporary injunction as follows:

(T)his court has stated the following guidelines (for issuance of temporary injunctions): Injunctions, whether temporary or permanent, are not to be issued lightly. The cause must be substantial. A temporary injunction is not to be issued unless a movant has shown a reasonable probability of ultimate success on the merits. Temporary injunctions are to be issued only when necessary to preserve the status quo. Injunctions are not to be issued without a showing of a lack of adequate remedy of law and irreparable harm. . . .

Section 120.13(1)(c), Stats., specifies that school districts may expel students for repeated refusal or neglect to obey school rules. James has admitted the repeated violations of school rules charged in the notice of

expulsion. He bases his request for temporary relief on the alleged harshness of the penalty imposed. However, in a recent Court of Appeals decision, involving the State Superintendent's scope of review in an expulsion appeal, the following observation was made:

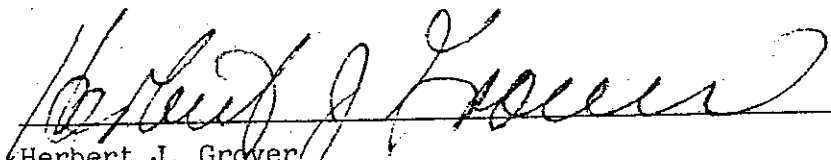
While our decision here is founded solely upon an error of law of the state superintendent, we point out, obiter dicta, that the superintendent's review of a board's expulsion hearing would appear to be limited by the statute which created that appeal, namely, sec. 120.13 (1)(c), Stats. The superintendent's review, then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc.

On the basis of the record before me at the present time, it cannot be said that the appellant has established a "reasonable probability of ultimate success on the merits." Consequently, the issuance of an order requiring appellant's temporary reinstatement in school pending a final decision on the merits of his appeal would be inappropriate.

IT IS THEREFORE ORDERED that appellant's request for reinstatement pending final decision of his appeal be and hereby is denied.

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 5, 1983. Respondent's reply brief or statement of position shall be filed no later than January 14, 1983.

Dated and mailed this 22 day of December, 1982.

  
Herbert J. Grover  
State Superintendent of Public Instruction