

STATE OF INDIANA)
)ss:
COUNTY OF MARION)

MARION SUPERIOR COURT
CIVIL DIVISION 10
CAUSE NO. 49D10-0301-PL-0097

SHANE DeWEESE, by next friend)
STACEY DeWEESE,)
 Plaintiff,)
)
 vs.)
)
METROPOLITAN SCHOOL DISTRICT)
OF WARREN TOWNSHIP,)
 Defendant.)

PRELIMINARY INJUNCTION

I. STATEMENT OF CASE

Plaintiff Shane DeWeese (“Shane”) by his mother Stacey DeWeese (“Mother”) seeks preliminary injunction compelling Defendant Metropolitan School District of Warren Township (“Warren”) to immediately re-enroll Shane and determine Mother’s “legal settlement,” according to an order of the Indiana State Board of Education (“State”).

Shane and Mother claim they reside in Warren’s school district boundaries, the State’s order should be enforced, and Shane should be re-enrolled. Warren claims Mother lives outside its boundaries, the State’s order is defective, and Shane should be enrolled elsewhere.

The Court issues a preliminary injunction enrolling Shane at Warren pending final determination of Shane’s declaratory, injunctive, and constitutional claims.

II. ISSUE

Does Shane meet all legal requirements for a preliminary injunction?

III. FINDINGS OF FACT AND PROCEDURAL HISTORY

During 1999-2002, Shane attended Warren's high school and qualifies as a senior for the current 2002-03 school year. He is a good student, and has no disciplinary problems. He earned a special curriculum at Warren in culinary arts. His friends are enrolled at Warren, and he wants to graduate on time with his class.

On August 9, 2002, Warren expelled Shane for one (1) year because Mother allegedly lived outside its boundaries. Warren cited Shane for student "misconduct" under its code of behavior. Warren did not immediately inform Shane or Mother that the expulsion was in effect for one (1) year, nor provide any notice of right of appeal under Indiana law, nor provide any other review of the expulsion to date. Warren instructed Shane and Mother to enroll in the Indianapolis Public Schools ("IPS") district where it believes they reside. They applied to IPS and were rejected. Since that time, Shane has been "home-schooled."

On November 12, 2002, after Shane's appeal, the State upheld part of Warren's determination that Mother had no legal settlement in Warren during the 2001-02 year, and found Mother owed tuition to Warren. But the State further found lack of legal settlement is neither "misconduct," nor a basis for a set term of expulsion. It ordered Warren to determine Mother's *current* legal settlement and enroll Shane if Mother resides in Warren's school district *now*.

On January 9, 2003, the State's order was made final. But Warren may seek judicial review of the order at any time up to February 10, 2003.

On January 17, 2003, Shane and Mother sued Warren here, and claim Warren violates Indiana law and Shane's constitutional rights. Ultimately, they seek a declaratory order and a *permanent* injunction. Their present motion for a *preliminary* injunction wants Warren to immediately re-enroll Shane and determine Mother's current legal settlement, as ordered by the State.

On January 24, 2003, the Court held its hearing on the Motion for Preliminary Injunction. The only evidence submitted were allegations and statements in Shane's verified complaint, and some facts agreed by counsel during oral argument.

IV. LAW

To obtain a preliminary injunction, the movant has the burden to show:

1. Whether there is a reasonable likelihood of success at trial by establishing a prima facie case;
2. Whether remedies at law are inadequate and irreparable harm will thus result pending final result, if injunction does not issue;
3. Whether harm to party seeking injunction outweighs any harm to the other party; and
4. Whether granting the injunction will harm the public interest.

Indiana Family and Soc. Serv. Admin v Walgreen (2002), Ind., 769 N.E.2d 158.

A likelihood of success exists if there is a “better than negligible” chance of succeeding on the merits. Indiana High School Athletic Assoc v. Martin (2002), Ind.App., 731 N.E.2d 1.

Under Article 8, §1 of the Constitution of Indiana:

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

Indiana law intends to provide an efficient and speedy means of insuring that children receive a proper education whenever it is reasonably possible. I.C. 20-8.1-3-1.

Indiana public school students have a property interest in a free public education and must be afforded due process under the United States Constitution and Fourteenth Amendment. Goss v. Lopez, 419 U.S. 565 (1975); I.C. 20-8.1-5.1 et. seq. seq.

Indiana students may be expelled for “misconduct” or “disobedience” with certain time limitations. I.C. 20-8.1-5.1-8; I.C.20-8.1-5.1-12 and 14. An expulsion more than 3 weeks before the second semester of the school year must be reviewed before the beginning of the second semester. I.C. 20-8.1-5.1-14 (b).

In Indiana, school districts are required to enroll students in their attendance area. I.C. 20-8.1-3 et. seq. The “legal settlement” of a student is “where the student’s parents reside.” I.C. 20-8.1-6.1-1 (a) (1). A student may be “expelled” if legal settlement is not in the attendance area of the school where the student is enrolled. I.C. 20-8.1-5.1-11. A school may also accept a student without legal settlement, but the student must pay tuition. I.C. 20-8.1-6.1-3.

Under I.C. 20-8.1-6.1-10 and 11, the State has authority to determine legal settlement and enforce transfer tuition for public schools.

Under I.C. 20-8.1-5.1-15, only an expulsion upheld by the State can continue during judicial review.

V. ANALYSIS

The State’s order against these parties is not effective until at least February 10, 2003. If Warren seeks judicial review, then the order may be stayed indefinitely. On the other hand, Warren may elect to follow the State’s order now, determine Mother’s legal settlement, and further proceedings could challenge that determination. Regardless, our strong public policy to provide public education allows the Court to now consider whether to re-enroll Shane pending final resolution of all claims.

Shane and Mother have a Reasonable Likelihood of Succeeding on the Merits

Ultimately, Shane and Mother will ask the Court for an order: a) declaring Warren violates Indiana law by not obeying the State’s order, determining Mother’s legal settlement, and failing to enroll Shane; and b) declaring Warren violates Shane’s constitutional rights by denying him due process during the expulsion procedures, and a free education.

The parties agree the central issue is whether Warren can now expel Shane for one year because his Mother lived outside its boundaries in the past, regardless of whether or not they live inside its boundaries now.

The limited evidentiary record at this time shows a better than negligible chance that Shane may prevail on these claims, and thus a prima facie case.

First of all, one Indiana statute allows Warren to expel Shane if *Mother's* legal settlement is outside its boundaries. I.C. 20-8.1-5.1-11. But Warren expelled Shane for *his* "misconduct," under a completely different statute, I.C. 20-8.1-5.1-8, although Shane is undisputedly a good student. There is no argument or evidence that Shane committed any "misconduct" allowing expulsion under I.C. 20-8.1-5.1-8, and the State found likewise. Shane's expulsion is authorized, or not, only by Mother's residency. While the language and authority under I.C. 20-8.1 et. seq. allows Warren to expel Shane if and when his Mother is not a resident, by the same token it must logically be construed to require Warren to enroll Shane if and when Mother is a resident. Otherwise, public education is eliminated for any student whose parents move into a new district for any reason.

In addition, Warren is required to provide Shane and Mother with notice of rights to appeal the expulsion, and to review it before the start of the Spring 2003 semester. The record shows, so far, that these due process procedures never took place.

Finally, Warren claims Shane can be expelled *this year*, regardless of whether Mother now lives in its boundaries, because she lived outside the boundaries *last year*. Again, there is no authority to support such a position, and it appears to directly conflict with longstanding public policy to keep students in school whenever and wherever possible during disputes over eligibility or residency.

Shane and Mother Have No Adequate Remedy At Law
And Irreparable Harm Will Result

Shane seeks to get back into his senior class and graduate this year. On one hand, he could lose this case – so if he is not re-enrolled now, there is no harm. On the other hand, he may win this case, as noted above – if he is not re-enrolled now, there is harm that can never be repaired, that is, losing his senior year with his class and his special curriculum. He simply cannot get what he seeks, even if he wins the case, unless he is re-enrolled pending its outcome.

The Harm to Shane Outweighs Any Harm to Warren

As shown above, Shane's harm, that is, losing his senior year, cannot be replaced without a preliminary injunction pending the final outcome. But Warren, and its taxpayers, will never be without a remedy, even if Shane is re-enrolled and ultimately loses the case. They can collect transfer tuition, as the State already ordered for the 2001-02 school year. So, if Warren is successful, its harm - the expense of educating Shane - will be remedied by transfer tuition. The loss of a whole school year for Shane is a harm that clearly outweighs the temporary expense for Warren to re-enroll and educate him until this case is finally resolved.

The Public Interest Is Not Harmed By Re-Enrolling Shane

Indiana law has always spoken loudly and clearly about the great value and necessity of public education. As the framers of our Constitution wrote:

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

Art. 8, § 1, Constitution of Indiana

The public interest is never harmed when a child goes to school.

VI. CONCLUSION

Shane and Mother have met all legal requirements for a preliminary injunction pending final determination of their claims.

VII. ORDER

Warren shall immediately re-enroll Shane, and is enjoined from taking any action affecting his enrollment without further order from this Court.

No bond ordered.

Dated this 27th day of January, 2003.

David J. Dreyer, Judge
Marion Superior Court