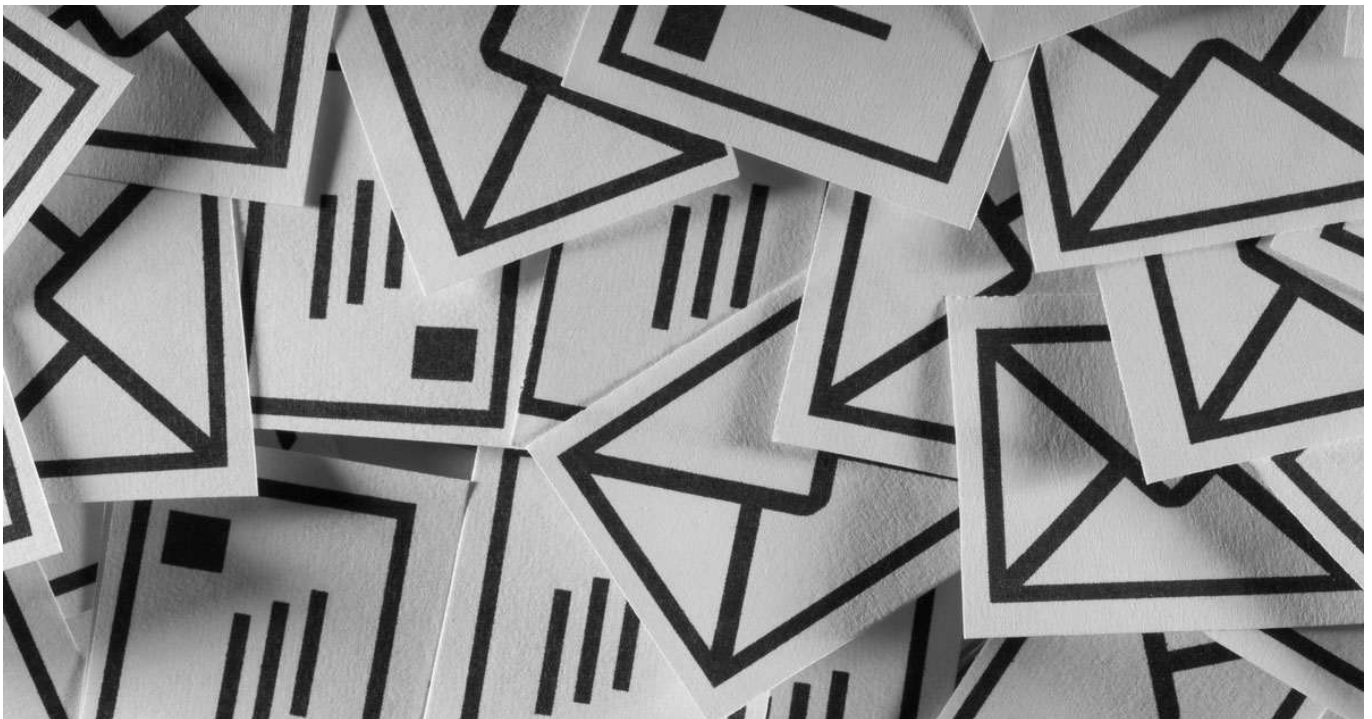



SCHOOL LAW

Emerging School Law Issues

CAS Legal Mailbag – 3/9/23



By Thomas B. Mooney on March 13, 2023

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Dear Legal Mailbag:

A parent of one of the students in my school is frightening me. He has always been irascible, but his aggression is getting worse and worse. Last week, the School Resource Officer asked him politely at dismissal time to move his car because it was protruding into

the bus lane. This simple request set the parent off, and he confronted the SRO, challenging his authority in vulgar and loud terms. He continued his rant despite the SRO's efforts to deescalate the situation, which caused a spectacle that ended with his arrest for breach of the peace.

Yesterday, I had a similar (or perhaps worse) experience with him. He showed up at school an hour before dismissal and demanded that he be allowed to pick up his daughter. I asked him to sit down in the outer office while we sent word to his daughter's classroom. Rather than cooperate, however, he started to go down the hall to his daughter's classroom. In my best principal's voice, I told him that he was not allowed to roam the halls during school hours. He turned around and came toward me with murder in his eye. He asked me who I thought I was and he even gave me a shove. Fortunately, the SRO had come running when he heard the commotion, and he got between me and the angry parent.

Fortunately, it did not come to blows, and the father eventually calmed down and left with his daughter. But I am still shaken by the incident, and thus my question: can I inform this parent that he is not allowed on school property unless upon his prior request I grant him permission to enter school property for a limited time and purpose. I know that schools are public property, but I would feel better if I could establish limits for this fellow.

Signed,
Better Safe than Sorry

Dear Safe:

You certainly can. Schools are indeed public property, but they are places of business, and those in charge can decide whether and when people can enter school property. When school officials ask a parent to leave, for example, the parent must comply or he or she will be subject to a charge of trespass.

You have suggested a reasonable course of action, given this parent's failure to behave appropriately at your school. Legal Mailbag suggests that you describe your concerns in an email to him, conveying your decision to require that he provide advance notice and obtain permission to enter school property for specific reasons. You should warn him that entering school property without following these procedures will be considered trespass. However, you may also wish to include a statement in your email that you will be reviewing this

arrangement at the end of the school year in light of his conduct to see if these restrictions can be lifted.

This moderate approach may work, and the parent may even rehabilitate himself by comporting himself appropriately while on school property. However, Legal Mailbag also recognizes that he may continue to be belligerent and uncooperative. If his aggressive behavior continues and you need to take action, you will stand on firm ground because you will have clearly established when he will be permitted on school grounds and when he will be considered to be trespassing.

The Second Circuit Court of Appeals dealt at length with the question of parent access to school property in a case decided in 2017. **Johnson v. Perry**, 859 F.3d 156 (2d Cir. 2017). There, a principal banned a parent from school property and even from school activities that took place off school property. The parent sued, claiming that the principal's actions violated the First Amendment because they were retaliation for the parent's complaints about the principal. The principal's lawyers moved to dismiss the parent's claim on the theory that he, as principal, had the absolute right to exclude parents from school property as he saw fit.

The court denied the principal's motion, stating that additional facts were necessary before it could make a decision. In so doing, the court gave us helpful guidance on the applicable rules by differentiating between access to school property in general and access to events on school property to which the public is invited:

Johnson [the parent] has not called to our attention any case in which a parent has been held to have a First Amendment right to unlimited access to school property. Given the responsibility of school officials to prevent "the kind of boisterous and threatening conduct" that would interrupt the "peace and quiet" and "disturb [] the tranquility" required for the academic aspects of a school's functions [citation omitted], we cannot conclude that a parent has a general and unlimited First Amendment right of access to school property. To the extent that Perry banned Johnson from Capital Prep property for purposes other than attendance at sporting events, we conclude that Perry should have been granted summary judgment on the basis of qualified immunity for that aspect of Johnson's First Amendment claim.

The court also addressed the parent's claim that Perry violated his First Amendment rights by banning him from sporting events held on school property, events that were open to the

general public. There, the court ruled that Perry would need a reasonable and content-neutral basis for the ban, which was a factual question that could be determined only through trial:

[U]nless there is a clear and present danger of disruptions such as disorder, riot, obstruction of the event, or immediate threat to public safety, the school may regulate access to its gymnasium when it is being used as a limited public forum only if its restrictions are reasonable and viewpoint-neutral.

When principals limit parent access to school property based on what parents have done (as opposed to what parents have said), they are properly exercising their authority over school property.

Legal Mailbag understands that you will be dealing with this parent step by step. We may hope that the parent cooperates, asks for permission to go to a school event or to pick up his daughter, and behaves appropriately when he is permitted to do so. But if the parent does not follow your directive and/or continues to be disruptive or threatening, you are free to ban him from school property completely and call upon the police to enforce your ban.

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