



Visitors to School Property and School Events¹

As concerns over school safety increase, questions arise as to the extent of a school district's authority to restrict and control visitors to school property and events. This article explores several issues related to individuals who come on to school district property for various purposes.

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1. District Control

A school district has control over its own property.

A school board holds all rights and titles to the real property of the school district. Tex. Educ. Code § 11.151(c). Accordingly, a school district, through its school board, has the right to control its own property. In the words of the U.S. Supreme Court, “[t]he District, like the private owner of property, may legally preserve the property under its control for the use to which it is dedicated.” *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 390 (1993). Moreover, simply because the government owns property does not automatically open that property to the public. *United States v. Kokinda*, 497 U.S. 720 (1990).

In Texas, the board of trustees of a school district may authorize any officer commissioned by the board to enforce rules adopted by the board. Texas Education Code Chapter 37, Subchapter D, sets out state laws pertaining to a school district’s authority to protect district buildings and grounds. Nonetheless, the Subchapter is not intended to restrict the authority of each district to adopt and enforce appropriate rules for the orderly conduct of the district in carrying out its purposes and objectives or the right of separate jurisdiction relating to the conduct of its students and personnel. Tex. Educ. Code § 37.103.

¹ An electronic version of this document is available on TASB School Law eSource at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Community/documents/visitors-to-school-property-and-school-events.pdf.

A school district may take reasonable steps to protect students from suspicious or disruptive activity on or near school grounds.

A school district has the authority to control students and school personnel on school property. A district also has the authority and responsibility to ensure that parents and third parties conduct themselves appropriately while on school property. *Lovern v. Edwards*, 190 F.3d 648 (4th Cir. Va. 1999). “[N]o mandate in our Constitution leaves States and governmental units powerless to . . . protect the public from the kind of boisterous and threatening conduct that disturbs the tranquility of . . . buildings that require peace and quiet to carry out their functions, such as courts, libraries, schools, and hospitals.” *Gregory v. City of Chicago*, 394 U.S. 111, 118 (1969).

For example, an Indiana school district obtained a protective order, excluding a father from school grounds for two years, after the father staged a protest outside his daughter’s school. After discovering that his daughter had been molested by a former school employee, the father stood near the campus at arrival time wearing a visible sidearm and holding a sign stating that the school protected molesters. The superintendent, acting on behalf of the district, sought and obtained the protective order, and an Indiana state court of appeals upheld it. “As the recent tragic events in Parkland, Florida, have reminded us, some persons who might present a threat to a school have had a relationship with the school that school officials are in a unique position to identify. This would most often include students or former students who have a disciplinary history or have exhibited significant behavioral issues. We conclude that school [districts], through their officials, are permitted to act on behalf of their students to seek orders for protection against such threats.” *S.B. v. Seymour Cmty. Sch.*, 97 N.E.3d 288, 294-95 (Ind. Ct. App.), *reh’g denied* (2018).

Each situation presents unique circumstances when balancing the rights and interests of parents and other visitors against the need of the school districts to maintain order and security. The laws regarding access to and activity on school grounds are more numerous and complex than you might imagine. Be sure to consult your school attorney as you apply these legal principles in your school district.

2. Visitor Management Protocols

Visitor management protocols that control access to school buildings are an essential part of safety planning.

These days, a curious individual cannot just walk onto a school campus to take a look around. Visitor access control continues to be one of the top safety and security challenges faced by schools according to the U.S. Department of Education. In the 2015–16 school year, 94.4 percent of public schools reported that they controlled access to school buildings by locking or monitoring doors during school hours. U.S. Dep’t of Educ. National Center for Education Statistics, [School Safety and Security Measures](#) (2018).

In Texas, almost all school districts (94.8%) report completing safety and security audits for all of their facilities, including both instructional and non-instructional, within the district. Of the districts that report conducting safety and security audits for at least some of their facilities, the majority (72.1%) used the safety and security audit procedures from the Texas School Safety Center (TxSSC). The TxSSC audit procedures require an Intruder Assessment, which is conducted unannounced by an individual not known on the campus. The Intruder Assessment consists of documenting the date and time of the assessment, accessible areas of the school, amount of time before intruder was observed or approached, and an assessment of visitor procedures in use at the school. Texas School Safety Center, [K-12 School Safety and Security Audit Toolkit](#) (2018).

Visitor management protocols may call for simple sign-in procedures or more sophisticated software.

Almost all campuses have instituted some form of access control protocol, usually directing visitors to check in at the front office before walking through the building. The check-in process may be as simple as a sign-in book, but districts are also increasingly using more elaborate systems. Many schools require visitors to show identification and wear a visitor badge while on campus. Many electronic systems require a visitor to swipe his or her driver's license, which is then run through a public database of the sex offender registry and used to print a photo ID badge for use while the visitor is on campus.

Texas law specifically authorizes checking photo identification and an electronic database.

Under Texas Education Code section 38.022, a school district may require a person who enters a district campus to display the person's driver's license or another government-issued photo identification. A school district may also establish an electronic database for the purpose of storing information concerning visitors to district campuses. Information stored in the electronic database may be used only for the purpose of school district security and may not be sold or otherwise disseminated to a third party for any purpose. Using the database, school officials may verify whether a visitor to a district campus is a sex offender registered with the Department of Public Safety or other database accessible by the district.

Occasionally school visitors complain that these check-in procedures are intrusive. The Fifth Circuit Court of Appeals has ruled, however, that being asked to show one's driver's license in order to enter a public school building is not an invasion of privacy. A driver's license is a public record and can be required for numerous lawful purposes. In addition, both Section 38.022 and the Texas Public Information Act in Texas Government Code section 552.130(a) adequately safeguard driver's license information from re-disclosure. *Meadows v. Lake Travis Indep. Sch. Dist.*, 397 F. App'x 1 (5th Cir. 2010).

Visitors may be asked for identification while anywhere on school property, not just inside school buildings.

The authority of school officials to ask for identification and inquire about a visitor's purpose for being on campus is not limited only to school building check-in procedures. Identification may be required of any person on school district property. Tex. Educ. Code § 37.105(b).

Many campuses have a formal or informal manner of surveilling school grounds for unannounced visitors. Generally, school officials' interactions with visitors on the grounds amount to a friendly wave or assistance in locating the office. At times, however, a school resource officer or other appropriate school official may need to ask a visitor who they are and why they are on school property. On most public property, individuals do not expect to be required to identify themselves. For example, no one expects to show identification to walk through a public park. On school property during school hours, however, visitors may be held to a higher standard.

For example, Carlos Gonzalez was parked in a school parking lot waiting for his wife, who was an employee at the campus. A school district police officer arrived, after being told by the dispatcher about attempted vehicle burglaries in the area. He approached Gonzalez and asked for identification. When Gonzalez refused, the officer handcuffed him and detained him for over thirty minutes until Gonzalez's wife eventually appeared and confirmed his identity and purpose at the school. Gonzalez filed a Section 1983 claim against the officer, claiming violations of his civil rights. On appeal, the Fifth Circuit Court of Appeals affirmed a grant of qualified immunity to the officer. The court reasoned that his actions were based, at least in part, on his belief that Gonzalez was required to identify himself pursuant to the Texas Education Code. While prior U.S. Supreme Court cases have held that police may not detain an individual solely for refusing to provide identification, those cases did not involve incidents on school property. "This is no small distinction, as the Supreme Court has routinely reconsidered the scope of individual constitutional rights in a school setting." *Gonzalez v. Huerta*, 826 F.3d 854, 858-59 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 697 (2017). Because the prior cases did not give the officer notice that his actions would violate Gonzalez's rights, the officer was entitled to qualified immunity. *Gonzalez v. Huerta*, 826 F.3d 854 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 697 (2017).

School districts need to have clear protocols regarding who can visit and leave campus with a child.

As a corollary to campus procedures controlling access to school property, school districts also need clear and consistently enforced procedures regarding who may remove a student from school property. A tragic Mississippi case highlights why these procedures are essential. On six separate occasions between September 2007 and January 2008, a man, who was not related to a nine-year-old student, was permitted by school employees to check the student out from school without the knowledge or consent of her parents. Each

time he sexually molested her and returned her to school. On the first five occasions, the man claimed to be the student's father. On the final occasion, he signed her out as her mother. School officials allegedly released the student without verifying the man's identity or whether he was listed on her "Permission to Check-Out Form."

The child's parent and grandparent sued school officials, alleging claims under state and federal law. After rehearing *en banc*, the Fifth Circuit Court of Appeals ruled that compulsory school attendance laws did not create a special relationship between the public school and the nine-year-old student sufficient to impose a constitutional duty, enforceable under Section 1983, to protect the student from sexual abuse by a third party, even when considering the school's conduct in releasing her to the sole custody and control of her abuser. *Doe ex rel. Magee v. Covington Cnty. Sch. Dist. ex rel. Keys*, 675 F.3d 849 (5th Cir. 2012).

The case is a cautionary tale for every campus administrator about the need for consistent procedures, even when they seem tedious, to ensure that students are released only to authorized individuals.

3. Sex Offenders on Campus

In general, school districts have discretion to exclude sex offenders from school property.

A person subject to sex offender registration who enters the premises (including buildings and grounds) of any school in Texas during the school's standard operating hours must immediately notify the school's administrative office of the person's presence and registration status. This announcement is not required for a student enrolled at the school, a student from another school participating at an event at the school, or a person who has entered into a written agreement with the school that exempts the person from those requirements. Tex. Code Crim. Proc. Art. 62.064(a)-(c). The announcement requirement in Article 62.064 is in addition to any requirement associated with the imposition of a child safety zone on the person. For more information, see TASB Legal Services' memo on [Protecting Schools from Sex Offenders](#).

Each school board must adopt a policy regarding the action to be taken by the administration of a school campus when a visitor is identified as a sex offender. Tex. Educ. Code § 38.022(d). See board policy and administrative regulations at TASB Policy GKC. The administration may provide a chaperone to accompany the person while the person is on the premises of the school. Tex. Code Crim. Proc. Art. 62.064(b). Typical administrative regulations require a registered sex offender to have written permission from the campus administration to visit school property and require a chaperone at all times, even if the person is not subject to a child safety zone.

Even parents who are sex offenders may have their access to school facilities limited.

The parental rights of a person who is subject to registration as a sex offender do not grant the parent a protected right to come on school property and attend school events.

By analogy, a Michigan father who had been accused but found not guilty of indecent exposure on school property was completely barred from entering school property or attending any school function. He sued, claiming a violation of his fundamental right to participate in the education of his child. A federal district court rejected his claim, finding that, in order to preserve the school environment or protect students from harm, a school district may ban a person, including a parent, without violating any fundamental right to go onto or access school property. The court explained:

[A]s a practical matter, physical exclusion from school property does not preclude a parent from communicating with his child's teachers or school authorities about issues involving the child, nor does it hinder a parent's ability to make informed decisions relating to the child's education because there are always alternate channels of communication available, such as communication through a spouse . . . , telephone, e-mail, or notes to the teacher or administrators. It is probably true that the educational experience will be less enriching for both parent and child if the parent is barred from coming onto school property to attend or participate in the child's school-related activities or sporting events. Those concerns, however, do not raise a constitutional issue.

Mejia v. Holt Public Schs., No. 5:01-CV-116, 2002 WL 1492205, at *4-6 (W.D. Mich. Mar. 12, 2002) (not designated for publication).

In most Texas school districts, through TASB Model Policy GKC(LOCAL), school boards direct their superintendents to work with the administration at each campus to develop and implement procedures to address the following issues when a parent is a registered sex offender:

- parental rights;
- escort by district personnel;
- access to common areas of the campus;
- access to classrooms;
- drop off and release of students;
- eligibility to serve as volunteers; and
- any other relevant issues.

Typical administrative guidelines say that a person who is prohibited by a court order or condition of probation (child safety zone) or whose parental rights have been terminated may not come on school grounds. Any other parent who is a registered sex offender may come to school to vote; attend school board meetings; provide transportation for his or her child; pick up his or her child's assignments from the campus administrative office; attend scheduled meetings or conferences with school personnel to discuss matters related to his or her child; attend ceremonies, competitions, or performances in which his or her child is participating; and serve as a volunteer in his or her child's classroom under constant, direct supervision by school personnel. A district may, but is not obligated to, sign a written agreement with a parent who is a registered sex offender setting out the parameters for his or her presence on school property. Tex. Code Crim. Proc. Art. 62.064. See sample agreement at TASB Policy GKC(EXHIBIT).

4. Parental Rights

For students with divorced parents, school districts should have procedures that allow both parents to visit in accordance with the relevant court order.

Most of the time, divorced parents are both awarded the opportunity to attend school events, confer about educational decisions, access school records, pick their children up from school, and otherwise coexist in the school environment. Even though, in most divorce proceedings, a court order sets out specific times of "possession" or visitation for each parent, parents are permitted to be flexible and make arrangements among themselves, as long as they do so without conflict. Accordingly, school officials generally allow both parents the same opportunities to be present at school events, attend teacher conferences, pick their children up from school, and so forth, as long as everyone is getting along.

If parents are in conflict, however, school officials should follow the directives of the court order carefully. Generally, this will mean that each parent, during his or her periods of visitation, will have the exclusive right to visit the child at school, pick the child up from school, and determine who else (like a grandparent or a new love interest) may visit with or remove the child from school. That said, assuming the court order does not limit either parent's parental rights, both parents may choose to attend events that are open to the public or open to all parents, such as an athletic event or musical performance.

Occasionally a parent who is unhappy with the limitations of the court order or who is angry at the other parent will argue that the school district's attempt to remain neutral and follow the court order is somehow an intrusion on his or her parental rights or rights of free association with the child. Courts disagree. Given the special characteristics of the school environment and the school district's authority to prohibit activities that materially and substantially disrupt school operations, school officials are authorized to restrict a noncustodial parent's access to his or her child, if allowing access would be disruptive.

In the context of the “special characteristics of the school environment,” . . . the government [has the power] to prohibit . . . actions which “materially and substantially disrupt the work and discipline of the school.” . . . Associational activities need not be tolerated where they infringe reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other students to obtain an education.

Johnson v. Perry, 859 F.3d 156, 173 (2d Cir. 2017) (quoting *Healy v. James*, 408 U.S. 169, 189 (1972) and *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 513 (1969) in concluding that disruptive parent did not enjoy unlimited access to school grounds).

For example, one noncustodial father filed suit against a school district after complaining that his son was being bullied by other children and the school had failed “to adequately provide [the father] with notices, records, correspondence and other documents” that custodial parents receive. He had asked for more information and had even “provided the teachers . . . each with 100 self-addressed envelopes, to facilitate his receipt of all correspondence.” *Crowley v. McKinney*, 400 F.3d 965, 967 (7th Cir. 2005). After his son was again beaten up on the school playground, the father went to observe his son during recess and was told that he was not allowed to be there. After being turned away at other times, the father filed suit, claiming a constitutional right to participate in his child’s education. The court distinguished parents’ constitutionally protected right to opt out of public school from a perceived right to be present at and direct the activities of the public schools. “Schools have valid interests in limiting the parental presence—as, indeed, do children Imagine if a parent insisted on sitting in on each of her child’s classes in order to monitor the teacher’s performance or on vetoing curricular choices, texts, and assignments.” *Crowley v. McKinney*, 400 F.3d 965, 969 (7th Cir. 2005).

No parent has an unlimited right to visit during school hours.

Courts have consistently upheld the authority of school officials to control access to school property. In one case, a student’s mother came on campus to observe her son in class during the instructional day. One of the student’s teachers repeatedly asked the mother to leave after she had observed an hour of class. When the mother refused to leave the school premises, she was arrested for criminal trespass. The court held that the school district’s actions in asking the mother to leave and ultimately having her arrested did not violate the mother’s constitutional right to direct her child’s education. In its holding, the court noted that, “An exhaustive review of the case law pertaining to the constitutional right of the parents to direct the education of their children discloses no holding even remotely suggesting that this guarantee includes a right to access the classes in which one’s child participates.” *Ryans v. Gresham*, 6 F. Supp. 2d 595, 601 (E.D. Tex. 1998).

In another Texas case, Lake Travis ISD parents who refused to submit to the school's check-in procedures were not permitted to walk through the school without an escort. The parents filed suit in federal court, claiming essentially a constitutional right to be physically present with their children in the classroom to supervise their children's education. The Supreme Court recognized that parents have a liberty interest "in the care, custody, and control of their children," and the "fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000). However, the Fifth Circuit Court of Appeals has refused to acknowledge a parental right to access a child's classroom or other school areas while school is in progress and other students are present. *Meadows v. Lake Travis Indep. Sch. Dist.*, 397 F. App'x 1 (5th Cir. 2010). See also *Lovern v. Edwards*, 190 F.3d 648 (4th Cir. 1999) (rejecting claim that school officials must allow parents boundless access school property); *Frost v. Hawkins County Bd. of Educ.*, 851 F.2d 822 (6th Cir. 1988) (holding that parent who was arrested when she came on to school premises to give child a private reading lesson was not deprived of her freedom of expression or custody of her child without due process); *Rodgers v. Duncanville Indep. Sch. Dist.*, No. 3-004-CV-0365-D, 2005 WL 770712 (N.D. Tex. Apr. 5, 2005) (not designated for publication) (rejecting argument that parent had right of access to school after administrators banned parent from campus for repeatedly ignoring the administration's directives).

5. Non-School Uses of School Property

Many school districts permit non-school use of district property after hours.

A school district is not required to permit after-hours use of its property. Nevertheless, most Texas public schools open their doors for after-hours use by the public. School districts that permit community use of their facilities do so as a public service, in recognition of the community's contribution to the public schools. Once a school district has chosen by policy or practice to open its doors, the Free Speech Clause of the First Amendment to the U. S. Constitution limits the district's ability to deny access to community groups based solely on the content of their speech. To ensure uniform practices across the district, most districts adopt board policy and regulations at TASB Model Policy GKD.

Many school campuses are used as polling places, but electioneering may be regulated.

Texas law requires school districts to make school buildings available for use as polling places in any election that covers territory in which the building is located. Tex. Elec. Code § 43.031. Currently, no statutes address conducting background checks on individuals who come on school district campuses solely for the purpose of voting. To vote, a person must be a registered voter and present acceptable identification at the polling place. Election workers verify the qualifications and identification of persons who come on school property to vote. For more information about safety at polling sites, see TASB Legal Services' [November 6, 2018 Election Calendar and FAQ](#).

Electioneering, which includes the posting, use, or distribution of political signs or literature, may not take place within 100 feet of any outside entry to the building in which a polling place is located. An entity that owns or controls a public building being used as a polling place may not prohibit electioneering outside of the 100-foot distance marker; however, the entity may enact reasonable regulations concerning the time, place, and manner of electioneering. Tex. Elec. Code § 61.003.

In addition to establishing viewpoint-neutral, time, place, and manner restrictions on electioneering by third parties on school property, school districts must also ensure that school district funds are not used for electioneering. The Texas Election Code prohibits an officer or employee of a political subdivision from knowingly spending public funds for *political advertising*. Tex. Elec. Code § 255.003. The Texas Ethics Commission has indicated that using school facilities in the course of political advertising constitutes indirect spending of public funds. Op. Tex. Ethics Comm'n No. 443 (2002). In addition, the Texas Education Code provides, "Notwithstanding any other law, the board of trustees of an independent school district may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party." Tex. Educ. Code § 11.169.

In order to avoid violating these state-law prohibitions and to avoid the appearance of taking sides in election matters, some school districts choose to exclude political advertising, campaign communications, and electioneering from the limited public forum created by TASB Model Policy GKD(LOCAL). In these districts, campaign activities are not allowed on school property except when a location is being used as an active polling site.

On the other hand, some school districts choose to permit election-related uses of district facilities, as long as the use is a limited public forum open for community use. Due to the state laws discussed above, the district itself may not sponsor or use its facilities to support political advertising, campaign communications, or electioneering. Nevertheless, the Texas Ethics Commission has recognized that, under the First Amendment, a school district may open a forum for public use, which may include election-related communications. Op. Tex. Ethics Comm'n No. 443 (2002). Any regulation of political advertising and electioneering must be reasonable and viewpoint neutral.

For more information on political advertising and electioneering, see TASB Legal Service's memo on [Campaign Speech During Elections](#).

6. Prohibited Conduct and Contraband

State laws and local policies prohibit certain conduct and contraband on school property.

No criminal activity: The criminal laws of the state apply to the areas under the control and jurisdiction of the school board. Tex. Educ. Code § 37.101.

No smoking: All school boards are required to prohibit smoking and using e-cigarettes or tobacco products at all school-related or school-sanctioned activities on or off school property. School personnel must enforce these policies on school property. Tex. Educ. Code § 38.006.

No alcohol: School boards must also prohibit the use of alcoholic beverages at school-related or school-sanctioned activities on or off school property. Tex. Educ. Code § 38.007(a). A person commits a Class C misdemeanor if the person possesses an intoxicating beverage for consumption, sale, or distribution while on the grounds or in a building of a public school; or entering or inside any enclosure, field, or stadium where any athletic event sponsored or participated in by a public school is being held. Tex. Educ. Code § 37.122.

No fireworks: A person may not explode or ignite fireworks within 600 feet of any school unless the person receives authorization in writing from the school. Tex. Occ. Code § 2154.251(a)(1).

No motor vehicle violations: A school district may bar or suspend a person from driving or parking a vehicle on any school property as a result of the person's violation of any rule or regulation promulgated by the board or set forth in Subchapter D of Texas Education Code chapter 37. Tex. Educ. Code § 37.106. A person who violates a school district's rule regarding parking or operation of a vehicle on school property commits a Class C misdemeanor. Tex. Educ. Code § 37.102. In addition, the offense of *disruption of transportation* is a Class C misdemeanor. Tex. Educ. Code § 37.126.

No prohibited weapons: A person commits a third-degree felony if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife (having a blade of over 5 and one half inches), club, or prohibited weapon on the physical premises (building) of a school, any grounds or building on which an activity sponsored by a school is being conducted, or a school passenger transportation vehicle, unless pursuant to written regulations or written authorization of the school district or otherwise authorized by state law. Tex. Penal Code §§ 46.01(6), 46.03; Tex. Att'y Gen. Op. KP-50 (2015). It is not a defense to prosecution under this section that the person possessed a handgun and was licensed to carry a handgun under Texas Government Code chapter 411. Tex. Penal Code § 46.03(f). For more information about prohibited weapons on school district property, see [Firearms on School District Property](#) and [Knives on School District Property](#).

No disruption of classes: A person, other than a primary or secondary grade student enrolled in the school, commits a Class C misdemeanor if the person, on school property or on public property within 500 feet of school property, alone or in concert with others, intentionally disrupts the conduct of classes or other school activities. It is an exception to the application of the offense that, at the time the person engaged in the prohibited conduct, the person was younger than 12 years of age. Disrupting the conduct of classes or other school activities includes emitting noise of an intensity that prevents or hinders classroom instruction; enticing or attempting to entice a student away from a class or other

school activity that the student is required to attend; preventing or attempting to prevent a student from attending a class or other school activity that the student is required to attend; entering a classroom without the consent of either the principal or the teacher and disrupting class activities through either acts of misconduct or use of loud or profane language. Tex. Educ. Code § 37.124.

No disruptive activity: A person commits a Class B misdemeanor if the person, alone or in concert with others, intentionally engages in disruptive activity on the campus or property of a public school. Disruptive activity means obstructing or restraining the passage of persons in an exit, entrance, or hallway of any building without the authorization of the administration of the school; seizing control of any building or portion of a building to interfere with any administrative, educational, research, or other authorized activity; preventing or attempting to prevent by force or violence or the threat of violence any lawful assembly authorized by the school administration so that a person attempting to participate in the assembly is unable to participate due to the use of force or violence or due to a reasonable fear that force or violence is likely to occur; disrupting by force or violence or the threat of force or violence a lawful assembly in progress; or obstructing or restraining the passage of any person at an exit or entrance to the campus or property or preventing or attempting to prevent by force or violence or by threats thereof the ingress or egress of any person to or from the property or campus without the authorization of the administration of the school. The provision may not be construed to infringe upon any right of free speech or expression guaranteed by the constitutions of the United States or the state of Texas. Tex. Educ. Code § 37.123; Op. Tex. Att’y Gen. JC-504 (2002).

7. Exclusion or Removal from School Grounds

Visitors to school property may be excluded, removed, or banned from school property for a variety of reasons.

Reasons for excluding a person from school property include:

- Arrest or detention by a peace officer for alleged violation of applicable law;
- Criminal trespass pursuant to Texas Education Code section 37.107;
- Violation of a notice of trespass pursuant to Texas Penal Code section 30.05; and
- Refusal of entry or ejection pursuant to Texas Education Code section 37.105.

Only authorized visitors are permitted on school property.

An unauthorized person who trespasses on the grounds of any Texas school district commits a Class C misdemeanor offense. Tex. Educ. Code § 37.107. Like a private property owner, the board of trustees of each school district controls the use of school property, which it holds in trust for the benefit of the district. If an individual enters school property for a reason other

than an authorized, lawful purpose, the person may be denied entry, ejected, or charged with a violation of Section 37.107. Examples of individuals who have entered school property for reasons other than a lawful, authorized purpose include:

- A known car thief caught casing cars in the school parking lot;
- A former male student caught lurking in the high school parking lot attempting to pick up high school girls;
- A student serving a period of expulsion;
- An individual on campus after school hours violating clearly posted signs prohibiting skateboarding; and
- A transient discovered sheltering on school grounds.

In order for criminal trespass laws to apply, school districts must provide an individual advance notice of exclusion from school property in accordance with the Texas Penal Code.

After a district gives proper notice, a person can also be removed from campus based on the criminal trespass statute. Tex. Penal Code § 30.05. In order to commit a criminal trespass under this statute, a person must enter onto property without effective consent after the person had notice that the entry was forbidden. The notice that the entry was forbidden must be an oral or written communication by the owner of the property or by someone with apparent authority to act for the owner. Tex. Penal Code § 30.05(b)(2).

In the school district context, notice may be general, such as a sign at an outdoor athletic facility that states “No unauthorized persons after 10 p.m.” Notice may also be personal. Once school officials determine that a visitor’s behavior has been so disruptive or threatening as to warrant issuing a criminal trespass notice, the superintendent or designee, working with school district police or school district counsel, may send a letter to the individual. The letter will clarify that, because of the person’s prior actions, the district forbids the person from entering school property or attending school events for a reasonable time, e.g., the remainder of the school year. A copy of the letter should also be sent to the chief of police and the local district attorney. The letter will provide notice that the person is not permitted on campus and allow the district to pursue criminal trespass charges against the person in the future.

For example, Midland ISD sent a criminal trespass warning to the father of a former student. When the father objected to his removal from school property based on the notice, a MISD principal testified in court that the school’s staff had several problems with the father, including an argument with an assistant principal after the father refused to abide by the school’s policy requiring all visitors to wear a school-issued badge while inside the school building. School district police were summoned, and the father assured the chief of police that he would not come into the school building without first calling to set up an appointment with the assistant principal. After the father again came to campus without an

appointment, the MISD police department issued a criminal trespass warning. On the face of the citation, it stated that the father “must make arrangements prior to visiting any location” of MISD property. After the father again arrived unannounced, he was convicted of criminal trespass. *Parrish v. State*, No. 11-12-00058-CR, 2014 WL 709562 (Tex. App.—Eastland Feb. 21, 2014, no pet.) (mem. op.).

In a similar example, a Connecticut father was sent a trespass notice after he engaged in multiple confrontations with school athletic staff regarding his child’s playing time. The notice excluded him from school property and events until the time of his daughter’s graduation. The ban caused him to miss several significant student events. Nevertheless, the ban was upheld. *Johnson v. Perry*, 859 F.3d 156 (2d Cir. 2017).

Texas Education Code section 37.105 includes a process for ejecting or denying entry to a visitor who presents a substantial risk of harm or behaves in a manner inappropriate for the school setting.

Under Texas Education Code section 37.105, a school administrator, school resource officer, or school district peace officer may refuse to allow a person to enter on or may eject a person from property under the district’s control if the person refuses to leave peaceably on request and:

- (1) the person poses a substantial risk of harm to any person; or
- (2) the person behaves in a manner that is inappropriate for a school setting and:
 - (A) the administrator, resource officer, or peace officer issues a verbal warning to the person that the person’s behavior is inappropriate and may result in the person’s refusal of entry or ejection; and
 - (B) the person persists in that behavior.

A district must maintain a record of each verbal warning issued under Section 37.105(a)(2)(A), including the name of the person to whom the warning was issued and the date of issuance.

At the time a person is refused entry to or ejected from a school district’s property under Section 37.105, the district must provide the person written information explaining how to appeal. Each school board must adopt a policy that uses the district’s existing grievance process to permit a person ejected or denied entry under Section 37.105 to address the board of trustees in person within 90 days of the commencement of the appeal, unless the appeal is granted sooner. See TASB Policy GKA, FNG, and GF. Notice about the provisions of this section, including the appeal process, must be posted on the district’s website, as well as any campus websites.

The term of a person's refusal of entry to or ejection from a school district's property under Section 37.105 may not exceed two years. If the person who is ejected is a parent or guardian of a child enrolled in the district, the district must ensure that the parent or guardian may participate in the child's admission, review, and dismissal (ARD) committee or in the child's 504 team, in accordance with federal law. 19 Tex. Admin. Code § 103.1207.

Section 37.105 is not the sole means by which an individual can be excluded from school district property.

The complexity of the notice required to expel a visitor under Section 37.105 has caused some school officials to question its efficacy. Districts of Innovation may choose to be exempt from Section 37.105. For more information on [Districts of Innovation](#), see the TASB website.

In either event, Section 37.105 is not the sole means by which an individual can be excluded from school district property. The commissioner of education has concluded that school boards are not limited by Section 37.105, which applies only to administrators and peace officers. A school board holds all rights and titles to the real property of the school district. Tex. Educ. Code 11.151(c). The power to exclude others is an essential aspect of property ownership. *Severance v. Patterson*, 370 S.W.3d 705 (Tex. 2012). Consequently, a school board may act to exclude an individual without reliance on Section 37.105. *Salinas v. Webb Consol. Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 034-R10-08-2017 (July 6, 2018).

Similarly, Section 37.105 does not limit or impair school districts' use of the criminal trespass provisions in Texas Education Code section 37.107 or Texas Penal Code section 30.05. According to the Third Court of Appeals, Texas Penal Code section 30.05 and Texas Education Code section 37.107 are not on the same subject matter (*in pari materia*); therefore they do not need to be construed together. The criminal statute protects the safety of property. For example, a person who comes to school property with the intent to commit vandalism is not entitled to the procedural protections of Section 37.105. The Education Code provision, on the other hand, protects those who have come to school property for a legitimate purpose. *In the Matter of J.M.R.*, 149 S.W.3d 289 (Tex. App.—Austin 2004, no pet.).

Parental rights do not grant parents access to school property if they are excluded for disruptive or criminal conduct.

For the reasons explained above, a parent does not have a First Amendment right of unlimited access to public school property. In a leading example, the Fourth Circuit Court of Appeals affirmed the dismissal of a father's First Amendment claims, calling the father's assertion of a right of boundless access to school property "plainly insubstantial and entirely frivolous." *Lovern v. Edwards*, 190 F.3d 648, 656 (4th Cir. 1999). Lovern was the non-custodial father of a high school junior varsity basketball player. After the father argued numerous times with his son's coach and the school principal, the superintendent's office told him that his complaints were using too much staff time. Later, when his son was not

selected for the varsity basketball team, the father called the varsity head coach at school and at his home, called the principal's office multiple times, and confronted the coaches for 25 minutes at an evening practice. As a result, the principal wrote Lovern a letter pointing out that the student's mother, his custodial parent, had asked to be present at any of the school's discussions concerning her son's education; consequently, Lovern was required to schedule meetings in advance and was otherwise barred from the high school property, except for events open to the public. Lovern responded by spending months calling the superintendent and other officials, attending school board meetings, and accusing school officials of various crimes and cover-ups. The district eventually banned Lovern from all school district property. He sought a preliminary injunction to be permitted to return to the school, but his request was denied, and the court of appeals affirmed the lower court's dismissal of the case. *Lovern v. Edwards*, 190 F.3d 648 (4th Cir. 1999).

In a similar example from the Third Circuit, a parent sued for injunctive relief after he was barred from attending a home basketball game following several angry emails to the middle school staff. The court upheld the school district's action because the father had violated clear written team and parent guidelines by using incendiary language denigrating both coaches and other players. After a hearing, the district court denied preliminary injunctive relief, concluding the father was unlikely to prevail on his constitutional claims. The Third Circuit Court of Appeals upheld the judgment. *Blasi v. Pen Argyl Area Sch. Dist.*, 512 F. App'x 173 (3d Cir. 2013).

In *McCook v. Springer School District*, a student received a five-day suspension from school and school activities after downloading explicit material on the school's computer. His father brought him to school the next day anyway, so he could attend a pep rally. When the superintendent saw them and asked them to leave, the father got in a physical confrontation with the superintendent. The superintendent sent the parents a letter stating the suspension had ended but the father was not allowed on campus until further notice. The parents sued, claiming a deprivation of their First Amendment freedoms of association and assembly. The district court dismissed the case because the parents presented no authority establishing a constitutional right to go onto school property, and the Tenth Circuit Court of Appeals affirmed. *McCook v. Springer Sch. Dist.*, 44 F. App'x 896 (10th Cir. 2002).

In each of these cases, school officials prevailed because they had documented the parent's disruptive conduct, communicated clearly with the parents about their expectations for conduct on school property and toward staff, and gave fair warning that further disruption would not be tolerated. Because school districts have the authority to exercise control over their own property, their directives must be honored, even by concerned parents. Recognize, however, that absent extreme circumstances, a disruptive parent should still be allowed to attend school conferences by arrangement, public school board meetings, and events at venues open to the public, including on the property of a different school district. *See, e.g., Johnson v. Perry*, 859 F.3d 156 (2d Cir. 2017) (declining to grant summary judgment in favor of school official regarding parent's complaint about being excluded from viewing state championship game in location other than school property).

Conclusion

With ever-present concerns regarding school and student safety each school district should be well informed on the laws governing visitors to school property and events. For more information about visitors to school property, contact TASB Legal Services or your school district's attorney.

For more information on this and other school law topics, visit TASB School Law eSource online at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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