Overview

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Property Generally

• Public property is property.

• The government, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. Gilles v. Blanchard, 477 F.3d 466 (7th Cir. 2007).
Property Generally

• School officials have the authority to control students and school personnel on school property.

• They also have the authority and responsibility for assuring that parents and third parties conduct themselves appropriately while on school property.

• School officials should never be intimidated into compromising the safety of those who utilize school property.

Property Generally

• Parents, community members, students, and employees often access school property for different events and purposes.

• Certain laws and constitutional provisions provide protections for such access; however, there are limitations.

• Building administrators must proceed with caution in this area, however, in order to avoid violating the law and/or the constitution.

Reasons for Restricting Access

• School officials must generally provide for safety and security of students and others who enter the school.

• A school district may also be held liable for injuries caused when a school district employee negligently fails to follow an established student-safety policy. *Enright v. Milwaukee School Directors Board*, 133 Wis. 2d 479 (Ct. App. 1986) (claim related to injury caused by loitering individual on school grounds).
Reasons for Restricting Access

• Schools may face liability for injuries for negligence occurring at school.

• A school district and its agents and employees have the duty to exercise reasonable care in supervising students in school activities conducted on campus. *Severson v. Beloit*, 42 Wis. 2d 559 (1969) (court found teacher liable when he failed to warn students of dangerous machinery in shop class).

Reasons for Restricting Access

• Schools may face liability for injuries caused by dangerous visitors.

• A school may be liable if it has knowledge that a visitor poses a danger to its students, staff, or other building users and fails to take reasonable steps to protect against such danger. *Sharkey v. Board of Regents*, 260 Neb. 166 (2000) (court found that student stabbing of another student was a foreseeable act of violence).

Limiting Access to Property

• The law of trespass protects public property, as it protects private property, from uninvited guests.

• Wis. Stat. s. 120.13(35). Allows boards to adopt rules applicable to persons who enter or remain in a building operated by the school board.

• Wis. Stat. s. 943.13(1m). Prohibits individuals from entering or remaining on any land of another after having been notified by the owner or occupant not to enter or remain on the premises.
Limiting Access to Property

• Courts have given schools wide latitude in establishing the grounds on which to ban a disruptive individual.
• Disruptive individuals should be informed of the policies when the disruption first occurs.
• Policies must be applied in a nondiscriminatory manner.

Limiting Access to Property

• Document all instances where disruption occurs.
• If individual continues to be disruptive, the school may indicate in writing that the individual is prohibited from being present on school grounds with the threat of prosecution for criminal trespass and pursuing an injunction.
• Such letters must be carefully worded to ensure legally defensible.
• Involve law enforcement as necessary.

Limiting Access to Property

• Challenges to bans have occurred.
  • Terminated teacher banned from school property. Teacher brought First Amendment complaint. Court upheld district action. Vukadinovich v. Bd. of Sch. Trustees, 978 F.2d 403 (7th Cir. 1992).
  • Parent brought action after board banned her after altercation between mother and volleyball coach. Court upheld ban. Nichols v. Western Local Bd. of Educ., 805 N.E.2d 206 (Ohio 2003) (no constitutional right for parent to attend school events).
**Limiting Access to Property**

- Different parties may be subject to bans.
  - Parents
  - Former employees
  - Students and former students
  - Spouses of employees
  - Citizens
  - Board members
  - Media
  - Political activists
  - Vendors
  - Sex Offenders

**Limiting Access to Property**

- Restraining Orders
  - When a person applies for a temporary restraining order, the petitioner must allege the actions which form the basis for granting the injunction.
  - If a temporary restraining order is issued, the court will also typically order a hearing to be held to determine whether a retraining order should be issued.
  - Types of restraining orders include (1) domestic abuse; (2) child abuse; and (3) harassment. See Wis. Stat. s. 813.12, 813.122, 813.125.

**Monitoring Access to Property**

- Check in procedures
- Law enforcement presence
- Surveillance video
  - Can not only be used for student activity, but also to monitor third party activity.
  - Access may be limited due to state and federal confidentiality laws.
  - Security measures should include deciding who will have access to reviewing video of premises.
Limiting Weapons On Campus

  • Law places certain restrictions on individuals possessing firearms while on or around school grounds.
  • Law also restricts individuals from discharging or attempting to discharge a firearm on or around school grounds.

• Wis. Dangerous Weapons Law. Wis. Stat. s. 948.61.
  • Law restricts individuals from possessing a dangerous weapon on school premises.

Limiting Weapons On Campus

• Wisconsin Conceal Carry Law. Wis. Stat. s. 175.60. Law allows qualified persons to carry concealed weapons in public.
  • Certain exceptions apply to gun-free school zone law and dangerous weapons law, but individuals who are authorized for concealed carry still restricted by these laws.
  • Posting restricting concealed carry may be required in certain instances.

Use of School Property

Wisconsin Statute s. 120.13(17).

• A school board of a common school district may grant the temporary use of school grounds, buildings, facilities, or equipment, upon such conditions, including fees not to exceed actual cost, as determined by the school board, to any responsible person for any lawful, non-school purpose if such use does not interfere with the use for school purposes or school related functions.
Use of School Property
Wisconsin Statute s. 120.12(9).

• A school board shall, upon the written application of one-half of the electors of the school district, allow the use of the school buildings or grounds for the free discussion of public questions so far as such use does not interfere, in the opinion of the school board, with the prime purpose of the school buildings or grounds. A school board may not charge a rental fee for the use of school facilities under Wis. Stat. s. 120.12(9).

Use of School Property
Wisconsin Constitution

• Every person may freely speak . . . and no laws shall be passed to restrain or abridge the liberty of speech. Wisconsin Constitution, Article 1 Section 3.

• The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed . . . nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries. Wisconsin Constitution, Article 1 Section 18.

• Nothing in the constitution shall prohibit the legislature from authorizing, by law, the use of public school facilities by civic, religious or charitable organizations, during non-school hours upon payment by the organization to the school district of reasonably compensation for such use. Wisconsin Constitution, Article 1 Section 24.

Use of School Property

• The school board has broad discretion to control access to and use of school property or events because schools are not traditional public forums.

• However, if a school district determines it will open its schools to limited public access, it may not do so in a discriminatory manner.

• If a school district creates a limited public forum, it must administer the forum in a viewpoint-neutral manner.
Use of School Property

- The most common claim of viewpoint discrimination comes from students or community members that allege religious discrimination in access to school resources.
- The doctrine of viewpoint neutrality applies to any form of viewpoint discrimination. A district could not allow one political organization access to school resources while denying access to a political organization with differing beliefs.
- If a district allows community groups to show films in the school auditorium, a district may not disallow community groups from using the facility just because they wish to show a movie that includes religious content.

Use of School Property

- See also Fairfax Covenant Church v. Fairfax County School Board, 17 F.3d 704 (4th Cir. 1994) (a church was treated differently than other non-profit organizations in the assessment of rental fees).
- See also Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015) (government has no power to restrict speech based on content unless the government can prove that the restriction passes strict scrutiny).

Use of School Property

Establishment Clause

- School districts must also consider whether allowing a religious group to use school facilities is an endorsement of religion that violates the Establishment Clause.
- A church requested that it be permitted to use school premises to show a film series on family values. The school district denied the request. The Supreme Court held that the school district’s policy for religious purposes discriminated on the basis of viewpoint. However, there was no Establishment Clause violation because the film would not have been shown during school hours or sponsored by the school district. Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist., 508 US 384 (1993).
Use of School Property

Equal Access Act

- The Act requires schools to treat all noncurricular student groups equally, regardless of their religious, political, philosophical or other content-related affiliation.
- The Equal Access Act applies to all secondary schools that receive federal financial assistance and have created a limited public forum by allowing at least one student-led, noncurricular club to meet outside class time.
- School officials may monitor meetings, require that the groups follow certain rules, regulate the groups in terms of meeting times and locations or prohibit members of the community from participating in the clubs.

Although the Equal Access Act was intended to facilitate formation of religious student groups, the Act has also been used by students attempting to form other politically unpopular groups, including gay-straight alliances.

Courts have held banning gay-straight alliances violates the Act where a school district is engaging in viewpoint discrimination.

Use of School Property

Policy Review

- Review facility use policies to determine if any categories of use constitute content-based restrictions.
- Review the pricing structure for school facility rentals if the school district establishes rental rates based upon the nature of the expressive activities at an event.
- Policies may limit areas within the school available for rent.
- Policies may limit access based on risk management considerations.
Use of School Property

Policy Review
• Consider an appeal process to apply in circumstances where a request is denied.
• May include appeal to superintendent or board within a specified time.
• May indicate instances where there will be serious dispute.

Conclusions
• Check board policies on visitors and access to district property.
• Work with law enforcement to address issues that may arise with disruptive or uncooperative citizens.
• Develop protocol for addressing any concerns with use of school property.
• Ensure that allowing access to school facilities on a legal basis.

Questions
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