



School Law FYI

School Districts' Authority To Limit Access To School Property Upheld

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Most school districts are aware that school boards have a great deal of authority to take actions to promote the cause of education and to manage the property and affairs of the school district. The Wisconsin Court of Appeals recently reaffirmed that broad authority in *Klosterman v. School District of Omro*, 2022 WI AP 54. The court held that a school board's authority was broad enough to include banning a former employee from school district property indefinitely.

Facts

A male teacher was placed on administrative leave after repeatedly engaging in physical contact with middle school boys at work on district property and after expressing to the school's SRO that he would not stop engaging in such contact. As part of that administrative leave, he was banned from district property. The teacher eventually resigned his teaching position, and the district maintained his ban from district property despite multiple requests by the teacher to have the ban lifted. The only exception to the ban was if he obtained prior approval to come on district property from either the superintendent or human resources director.

Decision

The court observed there was no specific statutory authority which stated school boards could ban individuals from district property. One statutory provision, Wis. Stat. § 120.13(35), specifically provides a school board may adopt rules applicable to persons who enter or remain in a building, but the court noted that the board's ban here was broader by prohibiting the teacher from any district property.

Nevertheless, the court found sufficient authority for the district's actions in a number of other statutes including: Wis. Stat. § 120.12 which provides that school boards have the authority to manage "the possession, care, control and management of the property and affairs of the school district;" Wis. Stat. § 120.13 which states school board powers provide that a board "may do all things reasonable to promote the cause of education;" and, Wis. Stat. § 118.001 which provides "the statutory duties and powers of school boards shall be broadly construed to authorize any school board action that is within the comprehensive meaning of the terms of the duties and powers, if the action is not prohibited by the laws of the federal government or of this state."

Based on these broad grants of authority, and in the absence of any statute to the contrary, the court affirmed the board's decision to ban the teacher indefinitely from school property. The court also reviewed a number of prior court decisions dealing with school boards exercising various powers and determined those cases affirmed the broad power of a school board to act.

The teacher argued that the fact he had never been charged with any crimes and his teaching license had not been revoked by DPI weighed against him being banned indefinitely. However, the court held that the board does not need to wait until a person has been convicted of a crime, a license has been revoked, or until harm has already occurred before it takes action. The court reviewed the record in the case and determined there was sufficient evidence to justify the board's actions.

Despite this court decision, school boards should be aware that their authority to regulate individuals' presence on school property is potentially limited by other rights under laws and the state and federal constitution. For example, the public generally has a right to attend school board and other governmental meetings under the Open Meetings Law. Speakers during public comments at board meetings and other public forums may be engaged in protected First Amendment speech and trying to limit their access or rights may violate the First Amendment. Parents have the right to be involved in their child's education, including parent-teacher conferences, IEP meetings, and other activities involving their child. School buildings also sometimes serve as election polling places.

None of those specific rights or issues were raised in this case. The district did give the teacher the option to request permission to access property from the superintendent or the human resources director. However, the teacher apparently never made a specific request to enter school property. All he did was ask the board on numerous occasions to reconsider its ban in its entirety, and when he was repeatedly denied, he filed suit in this case.

Takeaway

Despite the court's broad decision affirming the rights of school boards to take appropriate action to protect students and operate the schools in a safe and efficient manner, as noted above, members of the public, parents, or others may have certain rights that might argue in favor of some access to school property. Before districts implement a broad comprehensive ban, they may wish to consider some of the other circumstances which might weigh in favor of limited access. School officials may not act arbitrarily or unreasonably when making these decisions. Any bans or restrictions should be based on circumstances that support reasonable decision-making, applied in a fair manner. If districts have questions regarding this issue, feel free to reach out to a member of the School Law Practice Group Team for guidance.

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