



# EDUCATION LAW NOTES

## Federal and Virginia Developments in School Law

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### Virginia Federal Court Upholds "No Trespass" Order Issued by School Principal Against Parent

On May 1, a federal court in Alexandria, Virginia ruled as constitutional certain "no trespass" letters issued by a Loudoun County elementary school principal against a student's parent. In *Davison v. Deborah Rose, et al.*, (May 1, 2020), Judge Anthony J. Trenga granted summary judgment in favor of multiple Loudoun County Public School ("LCPS") defendants – notably, former Seldens Landing Elementary School ("SLES") Principal Tracy Stephens. Stephens issued parent Brian Davison a no trespass letter, which prohibited his physical presence on SLES property and from attending any school-sponsored activity unless specifically authorized. Davison sought injunctive relief and monetary damages against Principal Stephens and others alleging First and Fourteenth free speech and due process claims and defamation.

Davison asserted the school defendants retaliated against him for his criticisms – at school board meetings, through e-mail, and on social media – of the LCPS leadership, including Stephens. In September 2015 Davison appeared at a Back-to-School night and a PTA meeting at SLES where, according to school administrators, teachers and other parents, his behavior, conduct, tone and demeanor prompted multiple complaints and raised safety concerns. He also emailed Stephens and SLES staff threatening to sue SLES staff members and the Loudoun County School Board ("School Board"). He directed his own children (who attended SLES) to distribute on school property during school hours flyers that Davison prepared, which contained Stephens' picture, his criticisms of

school policies, and alleged violations of federal law.

Stephens issued a no trespass letter to Davison on September 30, 2015 (later amended and supplemented with two more no trespass letters issued on behalf of the School Board), prohibiting his presence on all SLES property at all times, including nights and weekends. The letters cited Davison's behavior at (1) Back-to-School night during which he interrupted both of his children's teachers to raise non-germane questions, and (2) a Volunteer Breakfast and PTA meeting where he aggressively accused Stephens of violating the law and student privacy, aggressively saying: "Try me. Try me. You'll end up in Federal Court."

***issued a no trespass letter ... prohibiting ... presence on all (school) property at all times, including nights and weekends.***

Based on a perception that his behavior was not appropriate for an elementary setting, the ban prevented Davison from (1) attending any public events inside SLES that

were open to the public, including PTA meetings; (2) using any outdoor facilities such as the track or playgrounds, otherwise generally open to the public; or (3) dropping off or picking up his children without first obtaining written permission from Stephens. The initial letter advised Davison of his appeal rights – which he exercised. Ultimately, the School Board upheld the initial and subsequent no trespass directives.

After receiving the initial letter, Davison sent two emails to 38 SLES staff members complaining about a variety of matters unrelated to his children, including that

division leaders "are among the most hated." The emails frightened staff and caused considerable disruption to the daily functioning of SLES. In one he openly defied Stephens' previous restrictions as "null and void." A subsequent no trespass letter noted the ban was justified in light of his use of the term "SHOTGUN" in reference to a public meeting, another reference to "BE PREPARED," and the general aggressive and intimidating behavior he exhibited at SLES. SLES advised Davison that it would schedule quarterly telephone conferences regarding his children's progress. In addition to his unsuccessful appeal to the School Board, Davison also filed an appeal in state Court, which he later withdrew.

Applying well-established constitutional law principles, the Court easily dismissed Davison's motion for injunctive relief "[b]ased on the undisputed facts and in light of the breadth of the injunction sought, the absence of any currently operative no trespass letter against Davison [it had expired by the time the Court ruled], the absence of any demonstrable threat to Davison from any future issuance of a no trespass letter, his on-going abilities to exercise his First Amendment rights, the relative equities between the parties, the public interest, and the adequacy of avenues of review for Davison or any individual aggrieved by a LCPS no trespass letter... ." Recognizing Davison's liberty interest in participating in his children's education, the explanations of his conduct in the no trespass letters were "reasonably perceived as an ongoing threat, against which immediate measures were warranted." An adequate post-deprivation remedy for any due process claims he had existed in the internal appeal and appeal to court, both of which he exercised. He also had the ability to discuss the ban with Stephens and to come to SLES provided he first obtained consent from Stephens or her designee.

The Court also held the ban did not violate Davison's First Amendment rights. He claimed retaliation for his opinions and viewpoints about school leaders, but the Court

found the ban was imposed because of his *conduct*, not his views. The Court held the ban was viewpoint neutral and reasonable. "[T]he ban was not based on Davison's objections to the curriculum, school policy, or administration, but rather the perceived threat, accumulated over weeks of evidence, that Davison posed to the school, school staff, and potentially students, a threat that was reinforced by Davison's behavior after his initial receipt of the no trespass letter... ." The ban was limited in duration, spanning the remainder of the school year, and scope, providing an opportunity for Davison to visit the school if he had permission . . . In short, the no trespass letters were fashioned to ensure that Davison did not disrupt either during-school activities or any school-related functions and activities reserved for other parents, while continuing to provide an opportunity for him to engage as a parent."

The Court also granted Stephens and others what is known as "qualified immunity," noting that

"school officials have the authority to control students and school personnel on school property, and also have the authority and responsibility for assuring that parents and third parties conduct themselves appropriately while on school property."

Finally, Davison alleged that Stephens defamed him by falsely stating that he made threats against LCPS officials to justify the ban, and that she referred him to Child Protective Services based on false statements. The Court recognized that Stephens had a duty to report to CPS and her comments were made within the context of her school duties and without "malice."

This opinion bolsters school principals' authority to deal with aggressive parents. Important here were the supporting facts, the internal and external appeal rights and the parent's alternative means for participating in his children's education. Principals contemplating the issuance of no trespass letters are encouraged to confer first with division legal counsel.

***"school officials ... have the authority and responsibility for assuring that parents and third parties conduct themselves appropriately while on school property."***