

Notice Against Trespass Orders What Schools Need to Know

Question: Can a school bar a person from school grounds using a notice against trespass/no trespass order?

Short Answer: A school should only use a notice against trespass order as a last resort. If utilized, it must provide exceptions permitting the person to attend public meetings and voting unless there is a specific threat of physical harm. Regardless, a school must provide the restricted person with notice of the basis for the restriction and the opportunity to challenge the restriction (i.e. due process).

Summary

This memorandum addresses the issue of whether a school may issue a notice against trespass/no trespass order to an adult when the person fails to meet expectations for civil behavior at school. Based on recent litigation, in most instances it is inadvisable to issue a blanket no trespass order. Absent a specific threat of imminent physical harm, a school should not issue a blanket notice against trespass barring a person from school grounds.

No trespass orders raise two issues that potentially violate a person's constitutional rights.

First, a person has a First Amendment right to attend meetings open to the public, including school board meetings. Schools are often the location for school board meetings and community voting. A broad notice against trespass with no exception to attend public meetings held on school grounds likely violates the person's First Amendment rights to share and receive information. While a recent court decision is limited to public meetings, *a broad no trespass order that prevents a person from voting on school grounds also likely violates his or her rights.*

Other public events on school grounds may or may not trigger similar rights, depending on the nature of the activity. The more the activity resembles a protected right, the more likely that due process is required in connection with a notice against trespass. It is likely that there is no right to generally visit schools while they are in session, but if a specific parent is singled out for a notice against trespass, it may trigger liability if appropriate procedures are not followed.

Second, since a notice against trespass may implicate constitutional rights, the school must provide the person with due process, meaning it must provide notice of the reason for the restriction and an opportunity to challenge the restriction. Failure to do so violates a person's



right to due process under the Fourteen Amendment. The school must provide the person subject to the restriction with this information at the same time it issues the notice against trespass.

Any school considering a notice against trespass should consult with legal counsel. Schools often seek advice about no trespass orders from law enforcement, who do not necessarily understand the legal ramifications. In two recent cases, the fact that law enforcement recommended the no trespass orders did not change the fact that the orders violated the rights of the restricted persons. Law enforcement personnel often use standard notice against trespass forms that are suited for broad restriction by private landowners, not public entities. These forms do not include notice and hearing provisions necessary for due process and do not account for the type of exceptions necessary for public meeting access. *Schools cannot rely on the use of standard form notices against trespass.*

While it is possible to draft a school notice against trespass that does not violate a person's rights, it should only be considered as a last resort. If the school reasonably believes that a person presents an actual risk of harm to students or school employees, administrators should immediately call the police. For difficult parents, or other persons who do not present an imminent risk of harm, sending a strongly worded written communication about expectations for conduct including potential consequences for violation of those expectations may be effective. It is always best to avoid the legal issues present with a no trespass order. Of course, if warnings are not sufficient to change disruptive behavior, a narrowly tailored notice against trespass is a legitimate option.

In the rare instance that the school issues a notice against trespass, it should be drafted in a manner that reasonably meets the concerns about behavior while maintaining a narrow scope and duration.

Advice to Members

1. Do not issue a notice against trespass without consulting your attorney to ensure that the order does not violate the person's constitutional rights.
2. Do not issue a notice against trespass without exceptions for the person to attend public meetings or public voting events on school property unless extreme circumstances are present.
3. Before issuing a notice against trespass, issue a written communication warning to the misbehaving person detailing behavior expectations and consequences.
4. Do not issue a notice against trespass without including the reasons why the person is being restricted. Provide a reasonably prompt opportunity for the restricted person to challenge the factual basis for the notice against trespass.
5. If there is a threat of immediate harm, call the police.

