

NO. 63001-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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DONNA GREEN,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

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BRIEF OF PETITIONER

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## **I. INTRODUCTION**

Green was convicted of two counts of Criminal Trespass in the First Degree contrary to RCW § 9A.52.070.<sup>1</sup> The trespass was predicated on violation of a Trespass Notice issued by the Kent School District. The Trespass Notice, depriving Green of her constitutional and statutory right as a parent to be present on school property, was issued in violation of Green's right to due process. The notice – and Trespass Warning Letter issued by the Sheriff's Office to enforce the notice – is invalid and cannot be used as a predicate to Green's criminal convictions. Insufficient evidence exists to support Green's convictions. To the extent that the Trespass Warning Letter prohibits future lawful conduct it is outside the scope of police authority and violation thereof cannot, in itself, establish criminal trespass. Moreover, Green had a complete defense to trespass as provided by RCW § 9A.52.090(2) as no trier of fact could find that Green was acting unlawfully at the time of alleged trespass. For these reasons, the court should reverse Green's convictions and dismiss with prejudice.

## **II. ASSIGNMENT OF ERROR**

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<sup>1</sup> The statutes cited herein are provided in full in Appendix A.

1. The trespass admonishments issued by the Kent School District and the King County Sheriff's Office violated Green's right to procedural due process.
2. The trespass admonishments violated Green's due process right to be free from arbitrary enforcement of the law.
3. The trespass admonishments were issued without authority of law and in violation of Green's constitutional rights; as such they cannot serve as a predicate to Green's criminal trespass convictions.
4. Insufficient evidence exists to support Green's convictions for criminal trespass as no reasonable trier of fact could find that her conduct at the time of the trespasses was unlawful, thereby entitling her to a complete statutory defense under RCW § 9A.52.090(2).

### **III. ISSUES PRESENTED**

1. Green's constitutional right to the care, custody and control of her child encompasses an implicit right to access public school property. RCW § 28A.605.020 explicitly confers upon Green the statutory right to access public school property. The Kent School District issued a Trespass Notice immediately and indefinitely

banning Green from entering public school property, limited only by the arbitrary discretion of school officials to grant Green permission to enter on a case-by-case basis. The Trespass Notice was issued without prior notice or an opportunity to be heard. The Trespass Notice failed to provide Green with notice of her statutory right to appeal an adverse decision by a school board pursuant to RCW § 28A.645.010. Although Mr. Charles Lind – general counsel for the school board and the individual issuing the Trespass Notice – testified at trial that Green could have appealed the decision informally through various officials, she was not provided any method of independent review. Instead, when Green asked to be heard in front of the school board regarding the Trespass Notice, the school board issued a letter denying a hearing and instructing her to comply with the notice. At the request of the school, the Sheriff's Office issued a Trespass Warning Letter for the sole purpose of enforcing the prior Trespass Notice. At no time did law enforcement officials observe Green engage in unlawful conduct. Washington law does not provide police with the authority to grant trespass admonishments. Law enforcement officers can neither prohibit future lawful conduct nor authorize arrests without probable cause. Did the Trespass Notice and the

subsequent Trespass Warning Letter violate Green's right to due process by depriving her of a vested interest in accessing her child's public school without notice, an opportunity to be heard or notification of her appellate rights?

2. RCW § 28A.635 makes it unlawful for an individual to disobey a school official's order to vacate the premises where that individual is engaged in "disruptive" behavior under a wide variety of circumstances. The statute allows for unfettered discretion on the part of school officials and, with no policy in place establishing guidelines for enforcement, results in arbitrary enforcement of the law. The derivate trespass order issued by the Sheriff's Department is issued at the request of the school district and serves only to enforce the school district's exclusion order. Does RCW § 28A.635, as applied to Green's case, violate her due process right to be free from arbitrary enforcement of the law where the statute provides no notice as to what type of conduct is prohibited and no policy exists to guide its enforcement?
3. Can the trespass notifications serve as a predicates to Green's criminal trespass convictions as they were issued without authority and in violation of her constitutional rights?

4. To convict an individual of criminal trespass, the prosecution must prove the absence of any statutory defenses. RCW § 9A.52.090(2) provides a complete defense to criminal trespass where an individual is on public property and is not acting unlawfully. All evidence presented at trial demonstrated that Green acted lawfully at the time of the alleged trespasses. Did sufficient evidence exist to support Green's convictions as no rational trier of fact could find that the State proved the absence of the public premises statutory defense beyond a reasonable doubt?

#### **IV. STATEMENT OF THE CASE**

Donna Green was charged with two counts of Criminal Trespass in the First Degree, alleged to have occurred on February 8, 2007, and November 21, 2006, in violation of RCW § 9A.52.070. CP 198; CP 757. The complaints alleged that on the above dates Green "enter[ed] or remained unlawfully in a building located at 18235 140 Ave. SE in King County. CP 198; CP 757. The cited property was Carriage Crest Elementary School, in the Kent School District, where Green's son was enrolled as a sixth-grader. CP 539. Green's son had attended Carriage Crest since the first grade. CP 539. On September 26, 2006, Curriculum Night was held at Carriage Crest. *E.g.* CP 138. Green had been invited to

Curriculum Night via school papers and fliers sent home with her son. CP 541. At a prior Open House held at the school, Green was instructed that Curriculum Night would be an appropriate place to ask questions regarding her son's education. CP 541. Green testified at trial that she attended the Curriculum Night and, after a presentation by her son's teacher, asked questions for approximately "five to seven minutes[.]" CP 543. At no time was she asked to leave the Curriculum Night. CP 545. At no time was Green contacted about the events of Curriculum Night. CP 551.

On October 2, 2006, Mr. Charles Lind, General Counsel for the Kent School District, sent Green a "Trespass Notice . . . trespassing [Green] from the premises of Carriage Crest." CP 138 [hereinafter "the Notice"]. The Notice cited two incidents as a basis for this exclusion. First, the Notice alleged that Green "created a substantial disruption at Curriculum Night." CP 138. The Notice described her behavior as follows:

It is reported that you went to Ms. Eusebio's class for parents of students in the 5<sup>th</sup> and 6<sup>th</sup> grade combination class and, following Ms. Eusebio's presentation, you began to ask her questions about the curriculum, district policies, curriculum guidelines, the spelling book, the grammar book, the location of the section of the math class, and the teacher's lesson plans. Your dialogue with Ms. Eusbio – sometimes repeating the same questions at different times – so monopolized and dominated the event that no other parent was able to ask a question or make a comment to the teacher,

though some apparently tried to do so. Even when your questions were answered by Mrs. Fish, Literacy Coach and/or Mrs. Wick, Principal, who joined the classroom, you continued asking the same questions and making disrespectful comments toward school staff regarding the curriculum.

CP 138. The Notice also complained that Green's questions were regarding issues that she had previously been instructed to direct to Dr. Haddock, the Assistant Superintendent. CP 139.

The second incident cited in the Notice alleged that on September 29, 2006, Green told a student to cross the school parking lot where his parent's vehicle was waiting. CP 139. This was apparently contradictory to instructions issued by school staff for the student to wait in a "grassy waiting area" until his parent drove up to the school. CP 139. At trial, Green testified that she did not contact any students in the parking lot that day. CP 547. Instead, a friend of her son said hello to her, told her he was tired of waiting for his parent's van and then ran off. CP 547-48. At trial, Mr. Lind was the only witness that testified to the cited events; he was not present at either incident.

While the Notice allowed Green to attend a parent-teacher conference and to enter the parking lot for the purpose of picking up her son from school, the Notice clearly stated that "AT ALL OTHER TIMES AND IN ANY OTHER MANNER, YOU ARE PROHIBITED FROM ENTERING OR BEING ON THE PREMISES OF CARRIAGE CREST

ELEMENTARY SCHOOL. ANY VIOLATION OF THIS TRESPASS NOTICE MAY RESULT IN CRIMINAL PROSECUTION UNDER RCW 9A.52.070 AND 9A.52.080.” CP 140.

On October 24, 2006, the Cub Scouts, to which her son belonged, held a Halloween event at Carriage Crest. CP 554. As Green was observing the meeting, she was approached by a school security officer and asked to leave the premises. CP 555. Green did not engage in disruptive behavior at the meeting. *See* CP 555-56. When she refused to leave, arguing that the Cub Scouts were a separate entity from the school and that she had a parental right to attend, the security officer called the Sheriff’s Department. CP 556, 558. Upon arrival, a Deputy from the Sheriff’s Office issued a “Trespass Warning Letter.” CP 145 [hereinafter “Warning Letter”]. The Warning Letter, signed by Green, stated

I, Donna E. Green have been advised by King County Sheriff’s Deputy and/or Property Owner Representative David [ILLEGIBLE] of the Washington State Trespass laws RCW 9A.52.070 and RCW 9A.52.080, and I have been informed that I am no longer allowed to come on to the property/business located at 18235 140 Av SE. I understand that I will be arrested for Trespass if I am found at this location again after receiving this warning.

CP 145.

The next day Green wrote a letter to the school board requesting an opportunity to be heard on the issue of the trespass. *See* CP 89. On

November 3, 2006, Green received a response from Lisa Holliday, the School Board President, denying her request to be heard and summarily instructing her to comply with the Trespass Notice. CP 89. Neither the Trespass Notice nor the letter from the school board advised Green of her right to appeal adverse decisions by the board pursuant to RCW § 28A.645.010.

On November 7, 2006, Green received a second letter from Mr. Lind amending the terms of the Trespass Notice to allow Green to attend non-school related activities held on school grounds and to access Carriage Crest as a polling place on election days. CP 135-36. The letter also designated the location of Green's parent-teacher conference as the Administration Center at 12033 SE 256<sup>th</sup> Street in Kent. CP 135.

On November 21, 2006, Green reported to the Carriage Crest office for the parent-teacher conference. CP 567-68. When she arrived, Mr. Lind told her that the meeting was not taking place at the school. CP 570. Green stated that she had gone through the proper channels and had received the date and time from the school. CP 570. Security had previously been called and Mr. Lind asked Green to leave the school. CP 143. Green told Mr. Lind that she needed to pick up her son at the book fair being held in the school auditorium and she would then leave the school grounds. CP 570. Green proceeded to the book fair for

approximately 10 minutes and purchased a book for her son prior to exiting the school. CP 575-76. When Green arrived in the parking lot a Sheriff's deputy was blocking her car. CP 576. The deputy issued Green a citation for trespass. *See* CP 143-44.

On February 8, 2007, Green received a fax from Mr. Lind regarding a Science Fair being held at Carriage Crest that night. CP 141-42. The fax memorialized a phone call between Green and Mr. Lind occurring that morning during which Green requested to attend the event. CP 141-42. The fax prohibited Green from accessing the school during the event:

**YOU ARE NOT PERMITTED TO ATTEND THIS EVENT  
NOR BE ON CARRIAGE CREST ELEMENTARY  
PROPERTY DURING THIS EVENT ON FEBURARY 8,  
2007.**

**IF YOU ARE ON CARRAIGE CREST ELEMENTARY  
SCHOOL PROPERTY DURING THIS EVENT YOU WILL  
BE IN VIOLATION OF THE DIRECTIVES OF THE KENT  
SCHOOL DISTRICT AND IN VIOLATION OF THE  
TRESPASS ADMONISHMENT GIVEN TO YOU IN  
PERSON BY A DEPUTY FO THE KING COUNTY  
SHERIFF'S OFFICE. ENTERING THE PROPERTY OF  
CARRIAGE CREST ELEMENTARY WHEN YOU ARE  
NOT PRIVILEGED TO DO SO IS A VIOLATION UNDER  
RCW 9A.52 THAT COULD RESULT IN YOUR ARREST IN  
CRIMINAL PROSECUTION.**

CP 141-42. The science fair is put on by the Parent Teacher Student Association (PTSA) and is not assigned as class work. CP 579-80. On

February 8<sup>th</sup>, at the end of the fair, Green went to the school to pick up her mother and her son and to help pack up her son's science project. CP 581-82. During that time she videotaped her son for approximately 10 minutes. CP 582. When school security asked her to leave, she agreed to do so as soon as she helped her son put away his project. CP 582. After assisting her son, Green used the restroom and the family left the school. CP 583-84. She was again stopped in the parking lot by school security who told her to wait as a Sheriff's Deputy was approaching. CP 584-85. The responding deputy issued a second citation for trespass to Green. *See* CP 146.

A jury trial was held in Green's case on August 27<sup>th</sup> – August 29<sup>th</sup>, 2007, after which the jury found Green guilty on both counts. CP 6-11. A judgment and sentence was entered on October 17, 2007. CP 12. On November 13, 2007, Green filed a Notice of Appeal. CP 12. On January 6, 2009, the Superior Court affirmed Green's convictions, finding that the Trespass Notice did not violate Green's constitutional rights as a parent, the school district was not required to provide notice and a hearing under *Matthews* prior to issuing a Trespass Notice and that sufficient evidence existed to support a finding that Green's presence was unlawful at the time of the charged trespasses. CP 711. Green filed a Notice for Discretionary Review in this court on January 28, 2009. CP 709-10.

## V. ARGUMENT

This court should reverse Green's convictions for Criminal Trespass in the First Degree as the Trespass Notice and Trespass Warning Letter upon which the convictions were predicated were issued in violation of her constitutional right to due process. Moreover, the Trespass Warning Letter issued by the Sheriff's Department exceeded the scope of police authority and the violation thereof is insufficient to establish unlawful presence. The unlawful trespass orders cannot serve as a predicate for Green's criminal trespass convictions. This court should also reverse Green's convictions and dismiss with prejudice as no rational trier of fact could find that the State proved the absence of the public premises defense provided for in RCW § 9A.52.090(2) beyond a reasonable doubt.

### A. **The Trespass Admonishments Issued by the Kent School District and the King County Sheriff's Office were Issued Without Notice or an Opportunity to be Heard in Violation of Green's Right to Due Process**

Green is the single parent of a young African-American boy who is enrolled at the Carriage Crest Elementary School. As the parent of an enrolled public-school student, Green has a vested right to enter and remain on Kent School District property. The school district cannot deprive Green of this right without prior notice and an opportunity to be

heard. The school district must also inform Green of her statutory right to appeal adverse decisions by the school board pursuant to RCW § 28A.645.010. The Trespass Notice issued by Mr. Lind constituted an arbitrary, immediate and indefinite deprivation of Green's right to be present on public school property and to participate in her child's education. The Notice was issued without prior notice or an opportunity to be heard and without notice of Green's appellate rights. The School Board explicitly denied Green's request to be heard on the issue.

The Sheriff's Department, relying solely on the Kent School District's Trespass Notice, independently issued an immediate one-year criminal trespass admonishment against Ms. Green. The Warning Letter was issued without notice and an opportunity to be heard and without any evidence that Green was engaged in disruptive or unlawful behavior. In fact, the evidence was to the contrary. On each of the three dates that the Sheriff's Department was called, Ms. Green was engaged in lawful behavior. The admonishments prohibited all future lawful behavior on school property. The admonishments were issued without notice or an opportunity to be heard. No appeal process is in place to challenge the validity of either order.

The school district's Trespass Notice and the Sheriff's Department's Trespass Warning Letter were issued in violation of Green's

right to due process and, as such, cannot serve as a predicate for Green's Criminal Trespass convictions.

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). "[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168, 71 S.Ct. 624 U.S. (1951) (Frankfurter, J., concurring). While "[d]ue process is flexible and calls for such procedural protections as the particular situation demands, *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593 (1972), the fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187 (1965). Meaningful notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950); *see also Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940); *Grannis v.*

*Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 58 L.Ed. 1363 (1914); *Priest v. Board of Trustees of Town of Las Vegas*, 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751 (1914); *Roller v. Holly*, 176 U.S. 398, 409, 20 S.Ct. 410, 44 L.Ed. 520 (1900).

In *Mathews v. Eldridge*, the Supreme Court laid out a three-pronged balancing test to determine the requisite due process in various governmental actions:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. at 335, 96 S.Ct. 893, 47 L.Ed.2d 18; *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633 (2004). The *Mathews* Court sought to determine whether the procedure used by the Social Security Administration (SSA) in denying disability benefits satisfied due process. *Mathews*, 424 U.S. at 323, 96 S.Ct. 893, 47 L.Ed.2d 18. Under the established procedure, after a state agency made a final determination to terminate a recipient's benefits, the case would be referred to the SSA.<sup>2</sup>

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<sup>2</sup> Prior to its final decision, the state agency would provide the recipient with notice of its tentative decision, a basis therefore and provide an opportunity for the recipient to review the agency's files and to submit additional evidence. *Id.* at 337-38, 96 S.Ct. 893, 47 L.Ed.2d 18.

*Id.* at 338, 96 S.Ct. 893, 47 L.Ed.2d 18. The SSA would review the case and, if in agreement with the state agency, would notify the claimant regarding the termination of benefits and his right to de novo review by the state agency. *Id.* Should the state agency continue to deny his claim, the recipient was notified of his right to a hearing in front of a SSA administrative judge, and then of judicial review. *Id.* at 339, 96 S.Ct. 893, 47 L.Ed.2d 18. Finding that the agency’s policy comported with due process, the Court ruled that no evidentiary hearing was required prior to the initial termination by the SSA. *Id.*<sup>3</sup>

In its decision, the Court emphasized that a recipient of disability benefits was entitled to “full retroactive relief if he ultimately prevails,” taking care to distinguish the denial of disability benefits from the denial of other statutory rights. *Matthews*, 424 U.S. at 340, 96 S.Ct. 893, 47 L.Ed.2d 18. Specifically, the Court acknowledged the strong individual interest in cases where the deprivation of a statutory right significantly

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<sup>3</sup> As used in *Matthews*, “evidentiary hearing” refers to a proceeding including the following elements:

- (1) “timely and adequate notice detailing the reasons for a proposed termination”;
- (2) “an effective opportunity (for the recipient) to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally”;
- (3) retained counsel, if desired;
- (4) an “impartial” decisionmaker;
- (5) a decision resting “solely on the legal rules and evidence adduced at the hearing”;
- (6) a statement of reasons for the decision and the evidence relied on.

*Id.* at 325 fn. 4, 96 S.Ct. 893, 47 L.Ed.2d 18 (citing *Goldberg v. Kelly*, 397 U.S. 254, 266-71, 90 S.Ct. 1011, 25 L.Ed. 287 (1970)) (welfare recipient entitled to both notice and an evidentiary hearing prior to the termination of benefits).

impacted a claimant during the appeal process. Thus, the individual interest of a welfare recipient, as compared to the recipient of disability benefits, demanded more stringent procedural safeguards as the “termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits.” *Id.* (citing *Goldberg*, 397 U.S. at 264, 90 S.Ct. 1011, 25 L.Ed.2d 287). Applying the three-pronged balancing test, the Court found that not only was the individual right of a welfare recipient more compelling, the risk of erroneous deprivation was lower in disability actions given the nature of the claims and administrative procedures in place and the financial burden associated with an evidentiary hearing significant. *Matthews*, 424 U.S. at 343-49, 96 S.Ct. 893, 47 L.Ed.2d 18.

There can be no doubt that Green has a right to be present on Carriage Crest property. *Haberman v. Washington Public Power Supply System*, 109 Wash.2d 107, 142, 744 P.2d 1032 (1987) (“A claimant alleging deprivation of due process must first establish a legitimate claim of entitlement. Legitimate claims of entitlement entail vested liberty or property rights.”) (citations omitted); *see also State v. Melos*, 42 Wash.App. 638, 642, 713 P.2d 138 (1986) (“[D]ue process of law is not applicable unless one is being deprived of something to which he has a right.”) (citing *Yantsin v. Aberdeen*, 54 Wash.2d 787, 345 P.2d 178

(1959)). The liberty and privacy protections of the due process clause of the Fourteenth Amendment establish a parental constitutional right to the care, custody, and companionship of the child. *See, e.g., Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1971); *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923); *In re Myricks*, 85 Wn.2d 252, 253-54, 533 P.2d 841 (1975). This constitutionally protected interest of parents has been described as a “sacred right,” *Moore v. Burdman*, 84 Wn.2d 408, 411, 526 P.2d 893 (1974), which is “more precious... than the right of life itself.” *In re Myricks*, 85 Wn. 2d at 254, 533 P.2d 841.

Furthermore, as with welfare benefits, Washington law explicitly vests parents with a statutory right of access to a child’s public school:<sup>4</sup>

Every school district board of directors shall, after following established procedure, ***adopt a policy assuring parents access to their child’s classroom and/or school sponsored activities*** for purposes of observing class procedure, teaching material, and class conduct: PROVIDED, That such observation shall not disrupt the classroom procedure or learning activity.

RCW 28A.605.020 (emphasis added). Once granted, the deprivation of this right requires due process. *Goldberg*, 397 U.S. at 261-262, 90 S.Ct. 1011, 25 L.Ed.2d 287 (“[Welfare] benefits are a matter of

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<sup>4</sup> While it is Petitioner’s position that a parent’s right to be present at a child’s school is encompassed within the constitutional right of care, custody and companionship of one’s child, RCW § 28A.605.020 is unequivocal in conferring a statutory right of access.

statutory entitlement for persons qualified to receive them. Their termination involves state action that adjudicates important rights. The constitutional challenge cannot be answered by an argument that public assistance benefits are “a ‘privilege’ and not a ‘right.’” (citations omitted). “Property interests for federal due process purposes are not created by the United States Constitution, but instead stem from independent sources such as state law.” *Haberman*, 109 Wash.2d at 143, 744 P.2d 1032 (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)); *see also Asche v. Bloomquist*, 132 Wash.App. 784, 797, 133 P.3d 475 (2006) (“A property right is protected by the United States Constitution when an individual has a reasonable expectation of entitlement deriving from existing rules that stem from an independent source such as state law.”); *Buffalo Woodworking Co. v. Cook*, 28 Wash.App. 501, 504-05, 625 P.2d 703 (1981) (“Property interests ‘are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.’”) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)).

Having established Green's vested interest, deprivations thereof are subject to the due process analysis under *Matthews*. The Kent School District and the King County Sheriff's Department permanently deprived Green of this interest with absolutely no process. The trespass admonishments are invalid and Green cannot be held criminally liable for a failure to comply.

1. The Kent School District's Trespass Notice violated Green's right to due process

The due process afforded to a parent excluded from school property is an issue of first impression in Washington.

i. The Kent School District's Trespass Notice did not provide prior notice or an opportunity to be heard

Where a school board seeks to deprive a parent of her right to access school property, due process requires the board provide prior notice and an opportunity to be heard. Petitioner submits that the school board's decision to permanently ban Green from the property is analogous to the act of expelling a student and that such cases are instructive in resolving Green's claim.

In *Goss v. Lopez*, the Supreme Court affirmed the interest of a student to attend school as conferred by statutes providing for public education. 419 U.S. 565, 574, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975).

Having established the vested interest, the Court sought to determine the level of due process required prior to the issuance of a 10-day suspension. As an initial matter, the Court noted that a 10-day suspension is not a minor matter, but rather an action which could have serious ramifications on a student's standing as well as future educational and employment opportunities. *Id.* at 574-75, 95 S.Ct. 729, 42 L.Ed.2d 725. While the Court rejected the State's characterization of such a suspension as de minimis, it emphasized that "[i]n determining 'whether due process requirements apply in the first place, we must look not to the 'weight' but to the nature of the interest at stake.'" *Id.* at 575-76, 95 S.Ct. 729, 42 L.Ed.2d 725 (quoting *Roth*, 408 U.S. at 570-571, 92 S.Ct. 2701, 33 L.Ed.2d 548). Thus, the gravity of the government action is irrelevant as it affects only the form of the hearing and not the fundamental right thereto. *Goss*, 419 U.S. at 576, 95 S.Ct. 729, 42 L.Ed.2d 725 (citing *Fuentes v. Shevin*, 407 U.S. 67, 86, 92 S.Ct. 1983, 1997, 32 L.Ed.2d 556 (1972)). Given a student's property right, and the fact that the suspension was not de minimis, due process was applicable; students were entitled to the minimum requirement of notice and an opportunity to be heard. *Goss*, 419 U.S. at 576, 579, 95 S.Ct. 729, 42 L.Ed.2d 725. Hesitant to prescribe a specific procedure for all schools, the Court established the baseline as either oral or written notice to a student of the alleged misconduct and an

opportunity for the student to explain his side of the story to the disciplinary officials. *Id.* at 581, 95 S.Ct. 729, 42 L.Ed.2d 725. Because the hearing could occur directly after the notification, schools were expected to provide this process prior to issuing a suspension. *Id.* at 582, 95 S.Ct. 729, 42 L.Ed.2d 725. Only in cases where a student posed a continuing threat to the student body or learning process could a school postpone the hearing until after the student's exclusion. *Id.* "In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable[.]" *Id.* at 582-83, 95 S.Ct. 729, 42 L.Ed.2d 725.

A student's right to due process was again examined in *Stone v. Prosser Consol. School Dist. No. 116*, 94 Wash.App. 73, 76, 971 P.2d 125 (1999). In *Stone*, the Court of Appeals, Division Three, applied the three-prong *Matthews* test to determine the scope of due process in expulsion hearings – specifically, whether students were entitled to cross-examine adverse witnesses at such proceedings. The court found that, given the long-term impact of expulsion, the action significantly impacted a student's educational interests. *Id.* at 77, 971 P.2d 125. Moreover, the risk of erroneous deprivation where a school official vouched for the credibility of hearsay statements by other students was "compelling." *Id.* at 78, 971 P.2d 125. Given the already-established administrative right to cross-examine witnesses at expulsion hearings, the court concluded that

the burden was not so great as to justify denial of that right absent a showing that the witness's appearance was "not possible or advisable." *Id.* at 79, 971 P.2d 125. Because a school official simply attested to the content of his interviews with the student-witnesses, the hearing violated Stone's right to due process. *Id.* at 79-80, 971 P.2d 125. "It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution." *Goss*, 419 U.S. at 575, 579, 95 S.Ct. 729, 42 L.Ed.2d 725.

Green's interest in accessing her son's school is not de minimis. Like the property right identified in *Goss* and *Stone*, Green's right is conferred by statute. Like the government action addressed in *Goss* and *Stone*, the impact of the Trespass Notice on Green's right is substantial. Ms. Green has constitutional and statutory rights to rear, educate and control her child. The right to education necessarily requires the right to participate, direct, and engage in her child's education. Entering the public property where her son is educated is a necessity to this participation. There are few rights more fundamental to a free society than that of a parent to participate in their child's life. It also completely abrogates Green's statutory right, allowing no access to the school grounds. Moreover, the duration of the Trespass Notice, like expulsion, is

permanent – a significant factor in both *Goss* and *Stone*. Given the significance of the individual interest, due process is applicable.

The risk of erroneous deprivation – the second prong of the *Mathews* test – is high whenever a procedure forbids a person from presenting exculpatory evidence, an excuse, or defense. Here, no process existed for Ms. Green to challenge the trespass order. Ms. Green had no opportunity to explain her side of the story or to present exculpatory evidence. In this case, the risk of erroneous deprivation is particularly high because the deprivation relied entirely on the arbitrary determination of the school officials each time Ms. Green sought permission to access her son’s public school.

The third factor in the *Mathews* test, the burden on the government to comply with a proposed procedure, would likely be negligible. While the baseline of due process requires notice and an opportunity to be heard, the exact format of such a hearing need not be established in the case at hand. There can be no doubt that the School Board’s action permanently trespassing Green from school property absent case-by-case permission from school officials violated Green’s right to due process. The School Board provided *no process*: There was no notice. There was no opportunity to be heard prior to deprivation. The Trespass Notice was issued in violation of Green’s right to due process and, as such, is invalid.

- ii. The Kent School District's Trespass Notice did not advise Green of her right to appeal adverse decisions

Where a school board seeks to deprive a parent of her right to access school property, due process requires the board provide include notice of the parent's statutorily-granted appellate rights. RCW 28A.645.010 provides in pertinent part that,

Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school official or board, ***within thirty days after the rendition of such decision or order***, or of the failure to act upon the same when properly presented, ***may appeal the same to the superior court of the county in which the school district or part thereof is situated***, by filing with the secretary of the school board if the appeal is from board action or failure to act, ***otherwise with the proper school official***, and filing with the clerk of the superior court, a notice of appeal which shall set forth in a clear and concise manner the errors complained of.

(Emphasis Added).

At no time was Ms. Green ever given notice of or provided with a copy of the formal appeals process available to her pursuant to state law. Instead, Mr. Lind's testimony seemed to suggest that there was no specific official to whom she could appeal; rather, that Ms. Green had various options that she should have known about by virtue of their positions.

Vol. I, VRP 94.

There's sort of an administrative appeal process. In other words, she could go to the superintendent about my letter, to Dr. Haddock, or to any other designee of the

superintendent. She would be able... as she did in the past. I mean, she's... exercised that option. She's written letters to Dr. Grohe, who is the superintendent, Dr. Barbara Grohe. She would be able to address the Board of Directors who are... obviously are my boss.

Vol. I, VRP 94-95.

We have an ombudsman services. She used the ombudsman services. She took matters directly to the superintendent. She took matters directly to the school board over the last four years, all of these various avenues. I do not know whether she exercised her rights under the Title 9 officer about complaints of discrimination or unfairness; I don't know.

Vol. I, VRP 98.

Despite this sentiment, Ms. Green was denied a formal hearing or any opportunity to be heard before the school board, which summarily instructed her to comply with the trespass order. Thus, even under the ad hoc process described by Mr. Lind, Ms. Green was denied any opportunity to challenge the school district's arbitrary, immediate, and indefinite trespass order. The school district's informal appeals process is insufficient to comply with due process. There was no legally cognizable process in place for Ms. Green to challenge the school district's immediate and indefinite trespass order.<sup>5</sup>

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<sup>5</sup> Even had the process described by Mr. Lind been formalized, it would still be problematic as it requires Ms. Green to appeal the trespass order to the very people who excluded her in the first place.

The State will likely argue that the school district had no obligation to inform Ms. Green of her statutory right to a formal appeal through the superior court. Even assuming *arguendo* that a school board need not inform a parent regarding relief from an adverse decision, a school board clearly violates due process when it creates an informal appeals process, arbitrarily denies a parent an opportunity to be heard through that process and then summarily instructs the parent to comply with its order. In so doing, the school board essentially misdirects a parent away from the appropriate appellate process, thereby eliminating any possibility of other options available to her. It is fundamentally unfair to deny a parent the right to be heard through the very process the parent was instructed to utilize.

The government burden of notifying Green of her statutorily granted appellate rights cannot outweigh Green's substantial private interest.<sup>6</sup> This is compounded by the high risk of erroneous deprivation inherent in a procedure which directs a parent away from her right to appeal and towards an inchoate process which itself denies a parent an opportunity to be heard. The failure to properly advise Green of her right to appeal the board's decision depriving her of her interest violated her

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<sup>6</sup> In fact, the ad hoc process created by the school board appears to be significantly more onerous than simply including a citation to RCW § 28A.645.010 in its initial letter.

right to due process. The trespass order is invalid and Green's violation thereof, in itself, cannot be considered criminal conduct.

2. The Trespass Warning Letter issued by the King County Sheriff's Department violated Green's right to due process

For all of the same the reasons cited above, the trespass admonishment issued by the Sheriff's Department violated Green's right to due process.

It is unquestionable that the Sheriff's Department is a state actor whose actions are within the scope of *Matthews*. As discussed, Green, like all parents, has an important interest in accessing her son's school. This interest is both conferred by statute and implicit in her constitutional right to participate in her child's education.

Moreover, the risk of erroneous deprivation under the procedure utilized by the Sheriff's Department is considerable. Importantly, the issuing deputy neither observed nor had information alleging any criminal conduct. Thus, instead of issuing the trespass based upon an independent belief that Green was acting unlawfully, the Sheriff's Department simply issued a derivative trespass order at the arbitrary direction of the school district. That the school district's decision to trespass Green was the sole basis for the immediate, one-year trespass order issued by the Sheriff's Department is clear from Deputy Jermstad's testimony at trial.

Specifically, the deputy identified the Trespass Warning Letter issued by the Sheriff's Department as a "trespass letter that we issue to *people that have been trespassed when we're asked by a business owner or somebody to issue it*. This is one of our trespass letters that we use to trespass people from premises." CP 485 (emphasis added).

The risk of erroneous deprivation resulting from this derivative process is compounded by the fact that Green had no opportunity to explain her side of the story, to present exculpatory evidence or seek review of the decision. The Sheriff's order simply enforced the unconstitutional Trespass Notice issued by the school district. Without any notice, opportunity to be heard or appellate rights it was issued in violation of Green's right to due process.

Finally, the governmental burden of comporting with due process is negligible. In order to do so, the government need only refrain from issuing orders already outside the scope of their given authority. This is because the trespass admonishment was issued without express authority, prohibits future lawful conduct and authorizes illegal arrest.

No provision of Washington law authorizes the issuance of trespass orders by law enforcement officers.<sup>7</sup> It is self-evident that government agencies cannot prohibit individuals from engaging in lawful

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<sup>7</sup> Notably, the seemingly formal "Trespass Warning Letter" issued by the Sheriff's Department does not include any citations authorizing its distribution or enforcement.

behavior. Just as self-evident is the tenet that law enforcement officers cannot authorize illegal arrests, i.e. those effectuated without probable cause. Despite these fundamental legal principles, that is exactly what the Sheriff's Warning letter seeks to do. Under RCW § 9.52.090(2), it is a complete defense to Criminal Trespass in the First Degree where "[t]he premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises." Thus, regardless of the school district's decision to trespass Green, it is completely legal for her to enter the premises as long as she is acting in a lawful manner. In summarily excluding Green, the Warning Letter exceeds police authority by preventing future lawful conduct.

Through its complete disregard of the statutory defenses for criminal trespass, the Sheriff's trespass letter also authorizes arrest for future, completely lawful, activity. Where an individual is engaging in lawful activity, there can be no reasonable belief that an individual is in the process of committing a crime. Thus, there can be no legal basis for arrest. The blanket statement in the Warning Letter that Green will be arrested simply by future presence on the school property authorizes arrest without probable cause and is clearly outside of the Sheriff's authority. As there can be no government interest in exercising unlawful authority,

the “burden” associated with its cessation cannot constitute an obstacle to enforcing Green’s right to due process under the law.

**B. The Trespass Admonishments Allow for Arbitrary Enforcement in Violation of Green’s Right to Due Process**

RCW § 28A.635.020 is subject to arbitrary enforcement as it provides no clear guidelines for school officials to trespass parents of enrolled students. Moreover, the statute fails to provide parents with any type of notice as to what behavior will result in exclusion from school property. Under RCW § 28A.635.020 it is unlawful for an individual to willfully disobey a school official’s order to leave the school where the person

is committing, threatens to imminently commit or incites another to imminently commit any act which would disturb or interfere with or obstruct any lawful task, function, process or procedure of the school district or any lawful task, function, process or procedure of any student, official, employee or invitee of the school district.

The terms used are fundamentally vague leaving school officials with enormous amount of discretion in determining whether an individual, in this case a parent, should be excluded from the property.

Due process demands that criminal statutes both (1) adequately specify what conduct is proscribed such that ordinary people are afforded

fair notice and (2) “provide ascertainable standards of guilt to protect against arbitrary arrest and prosecution.” *State v. Baldwin*, 150 Wn.2d 448, 458, 78 P.3d 1005 (2003) (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156, 168, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972); *City of Spokane v. Douglas*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990)).

Inherently subjective standards render laws unconstitutionally vague. *See, e.g., City of Bellevue v. Lorang*, 140 Wn.2d 19, 31, 992 P.2d 496 (2000) (invalidating telephone harassment statute based upon subjectivity of assessing “without purpose of legitimate communication”); *State v. Williams*, 144 Wn.2d 197, 205, 26 P.3d 890 (2001) (invalidating criminal harassment statute based upon subjectivity of assessing “mental health”).

Laws may not . . . delegate ‘basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application’.

*Lorang*, 140 Wn.2d at 30, 992 P.2d 496 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108-09, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)). Because the school district has no authority to issue an arbitrary trespass notice to parents of enrolled students, the Sheriff Department’s order enforcing the school district’s decision is similarly tainted. Police may not arbitrarily enforce laws at the

request of, or pursuant to an agreement with, a second party.

*Shelley v. Kramer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948)

(State may not use police power to enforce racially discriminatory private agreements).

The Carriage Crest School is a public area. *See State v. Allen*, 90 Wash.App. 957, 955 P.2d 403. Moreover, parents of enrolled students have a specific statutory right to enter the school, including the classrooms. RCW § 28A.605. Once on school property, the school district cannot exclude the parent in an arbitrary or capricious manner. Where exclusion is arbitrary, the police are prevented from enforcing the unlawful eviction. In Green's case, the school had no concrete policy for excluding parents. This left parents and school officials left in the dark about the exact nature of the prohibited conduct. Similarly, without an established policy, no standards or method existed to provide guidance to school officials in trespassing a parent. The potential for this ad hoc process to result in arbitrary enforcement could not be more evident than in Green's case. While Green was never asked to leave during Curriculum Night or from the school parking lot, she received a notice trespassing her from further contact with the school. In contrast, Green was asked to leave the school without exhibiting any disruptive behavior, instead observing her son or attempting to pick him up from school. The trespass

order was so vague that Green had no guidance about whether she was allowed to attend non-school related activities, such as Halloween Night, held on school premises. Even after a second Trespass Notice was issued to Green clarifying the scope of the School's intended order, a limited exception remained for Green to access the school on a case-by-case basis upon request to unspecified school officials. The result being that Green was subject to the whims of various individuals at various times in various circumstances. These decisions were particularly arbitrary as no standards existed to guide school officials in their case-by-case determinations. No evidence existed that other parent had ever been trespassed by the school.

The derivative trespass order issued by the Sheriff's Department served only to enforce this arbitrary procedure. Both the document on its face and the testimony by Deputy Jermstad established that the order was issued at the request of the school and without any independent evaluation or determinations by the deputies. Thus, the Sheriff's Department exercised its authority based solely upon the unfettered discretion of the school officials, whose decisions were exercised without the guidance of school policy. The trespass order was issued in violation of Green's due process right to be free from arbitrary enforcement of the laws and, as such, cannot serve as a predicate for her criminal trespass convictions.

**C. The Trespass Admonishments Cannot Serve as a Predicate for Green's Criminal Trespass Convictions**

Because the school district's issuance of an arbitrary, immediate, and indefinite, trespass order and the derivate order issued by the Sheriff's office violated Green's constitutional right to due process, they cannot serve as a predicate for her criminal trespass convictions.

In *State v. R.H.*, the Court of Appeals, Division One, reversed R.H.'s conviction for criminal trespass. In *R.H.*, police issued an oral criminal trespass notice to several youths in the parking lot of a fast-food restaurant at the request of the restaurant manager. While the adjudicating commission found that the evidence established R.H. was rightfully on the premises, the commissioner found that R.H. was nevertheless guilty of criminal trespass as he believed that he was not lawfully allowed to return to the property. The Court of Appeals explicitly rejected the notion that the apparent validity of an otherwise invalid trespass order could predicate a criminal conviction. In so holding, the court reasoned that "[u]nder this analysis, one would be guilty of trespass by returning to property after being unjustly ordered to vacate it. That, the law does not condone." (citing *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965)).

The trespass admonishments unjustly vacated Green from school property. As a parent, Green had a constitutional and statutory right to access the school property. The admonishments deprived Green of this vested right without due process of law. Without a proper basis for excluding Green, she was not required to vacate the school premises. Under these circumstances, there can be no basis for a jury to find she was engaging in criminal trespass. Green's convictions should be vacated and dismissed with prejudice.

**D. Insufficient Evidence Exists to Convict Green of Trespass in the First Degree**

The Superior Court erred in finding sufficient evidence existed to support Green's conviction. CP 711. In evaluating a sufficiency of the evidence claim, the relevant test is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (court's emphasis) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L.Ed.2d 560, 99 S.Ct.2781 (1979)). The reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the government's case. *State v. Galisia*, 63 Wn.App. 833, 838, 822 P.2d 303, *rev. denied*, 119 Wn.2d 1003 (1992).

Circumstantial as well as direct evidence may support a conviction. *State v. Delmarter*, 94 Wn.2d 634,638, 618 P.2d 99 (1980). But the existence of a fact cannot rest upon guess, speculation, or conjecture. *State v. Hutton*, 7 Wn.App. 726, 728, 502 P.2d 1037 (1972). An accused whose conviction had been reversed due to insufficient evidence cannot be retried. *State v. Anderson*, 96 Wn.2d 739, 742, 638 P.2d 1205 (1982).

A simple violation of the Sheriff's Trespass letter is insufficient, in itself, to establish criminal trespass.<sup>8</sup> Rather, to convict an individual of Criminal Trespass in the First Degree, the prosecution must establish not only that the individual knowingly entered or remained unlawfully in a building as provided in RCW § 9A.52.070, but also that none of the statutory defenses to trespass as provided in RCW § 9A.52.090 existed in the defendant's case. "Statutory defenses to criminal trespass negate the unlawful presence element of criminal trespass and are therefore not affirmative defenses." *City of Bremerton v. Widell*, 146 Wash.2d 561, 570, 51 P.3d 733, *cert. denied*, 537 U.S. 1007, 123 S.Ct. 497, 154 L.Ed.2d 407 (2002) (citing *State v. R.H.*, 86 Wash.App. 807, 812, 939 P.2d 217 (1997)). "Further, the burden is on the State to prove the absence of the defense when a defendant asserts his or her entry was permissible under

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<sup>8</sup> This is not only because the order itself is invalid as a violation of due process and a unlawful exercise of police authority, but also because it is insufficient under RCW § 9A.52.070 to establish the elements of criminal trespass.

RCW 9A.52.090(2) because that defense ‘negates the requirement for criminal trespass that the entry be unlawful.’” *Widell*, 146 Wash.2d at 570, 51 P.3d 733 (quoting *State v. Finley*, 97 Wash.App. 129, 138, 982 P.2d 681 (1999)).

Under RCW § 9A.52.090(2), an individual is not guilty of criminal trespass where the trespassed property was open to the public at the time of the alleged conduct and where the individual was complying with all lawful conditions imposed on accessing and remaining on the property. In *Widell*, the court applied this concept to two individuals trespassed from public housing property. The police department had an arrangement with the public housing authority to issue trespass notices to individuals caught fighting or engaging in otherwise unlawful behavior on the premises. *Widell*, was arrested for entering the premises after receiving a trespass notice. The Court reversed, finding that, at the time of the alleged trespass *Widell* was invited to the premises by his fiancé and that he had not exceeded the scope of the invitation, nor was he acting unlawfully at the time of his arrest. As a result, the prosecution could not prove the absence of the public premises defense beyond a reasonable doubt.

The State similarly failed to meet its burden of proving the absence of RCW § 9A.52.090(2) beyond a reasonable doubt in *Green*’s case. School district property is generally open to the public and is undoubtedly

open to parents during a book fair and a science fair. RCW § 28A.605; *See State v. Allen*, 90 Wash.App. 975, 955 P.2d 403. In fact, such events are particularly public as the events are advertised – through fliers sent home with students – and non-students are explicitly invited onto the school premises. While access is limited in some instances, school property is undoubtedly open to parents given their statutory right to enter under RCW § 28A.605.

No evidence was presented that Green was acting unlawfully at the time of the alleged criminal trespass. More specifically, Green was not in violation of RCW § 28A.635(1) and (2), prohibiting individuals from disobeying orders to leave school property. RCW § 28A.635 requires both that (1) an individual disobey the school's order, and (2) that the individual be engaging in the prohibited conduct. These elements were not established in Green's case. During the two incidents in which Green was allegedly disturbing school functions – Curriculum Night and in the parking lot – she was never ordered to go and could not therefore be in violation of RCW § 28A.635. During the incidents in which she was allegedly trespassing on school property, her behavior was not within the scope of the statute. Rather, all evidence presented established that she was in compliance with all lawful conditions imposed on general access to the property. She was never witnessed engaging in harassing, assaultive

or even disruptive behavior at the time of the alleged trespass. In both instances she indicated she was leaving and remained only for the time required to locate and assist her son in leaving the school. In both instances Green was already outside and preparing to leave as asked when the deputy arrived. Under this set of facts, no rational trier of fact could find that the State proved beyond a reasonable doubt that Green was acting unlawfully at the time of the alleged trespass. As such, Green's conduct was not criminal under RCW § 9A.52.070. This court should reverse Green's convictions and dismiss with prejudice.

## **VI. CONCLUSION**

Donna Green was trespassed from her son's public school in violation of her right to due process. Despite having a vested interest in accessing her son's school, the Kent School District issued a indefinite and immediate Trespass Notice denying her access thereto. The Sheriff's Department issued a derivative Trespass Warning Letter prohibiting Green from returning and authorizing arrest for any future presence on the property. Neither trespass admonishment was issued with prior notice or an opportunity to be heard. The school district Trespass Notice did not advise her of her statutory right to appeal adverse decisions. The Sheriff's Warning Letter appears to have no review process in place. Moreover, the

Sheriff's Warning Letter constituted an unauthorized exercise of police authority, prohibiting future lawful conduct and allowing for future arrests without probable cause. The admonishments are invalid and cannot be predicates for a criminal trespass conviction.

Insufficient evidence exists to support Green's convictions for criminal trespass as the State failed to prove the absence of the public premises defense beyond a reasonable doubt. All evidence demonstrated that Green was acting lawfully while on public school property. Under these circumstances, this court should vacate Green's convictions and dismiss with prejudice.

DATED this 20<sup>th</sup> day of July, 2009.

**THE DEFENDER ASSOCIATION**

A handwritten signature in cursive script, appearing to read "Devon Knowles", written over a horizontal line.

Twyla Carter, WSBA No. 39405  
Devon Knowles, WSBA No. 39153  
Attorney for Appellant

# **APPENDIX A**

**RCW §9A.52.070**

**Criminal Trespass in the First Degree**

(1) A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a building.

**RCW §9A.52.090(2)**

**Criminal Trespass – Defenses**

In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a defense that:

(2) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

**RCW §28A.605.020**

**Parents' Access to Classrooms or School Sponsored Activity – Limitation**

Every school district board of directors shall, after following established procedure, adopt a policy assuring parents access to their child's classroom and/or school sponsored activities for purposes of observing class procedure, teaching material, and class conduct: PROVIDED, That such observation shall not disrupt the classroom procedure or learning activity.

**RCW §28A.645.010**

**Appeals – Notice of – Scope – Time Limitation**

Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school official or board, within thirty days after the rendition of such decision or order, or of the failure to act upon the same when properly presented, may appeal the same to the superior court of the county in which the school district or part thereof is situated, by filing with the secretary of the school board if the appeal is from board action or failure to act, otherwise with the proper school official, and filing with the clerk of the superior court, a notice of appeal which shall set forth in a clear and concise manner the errors complained of.

**CERTIFICATE OF SERVICE**

I, Devon Knowles, certify under penalty of perjury under the laws of the State of Washington that I am the counsel for defendant herein and that on 7/20/09 I caused to be served on the person listed below in the manner shown.

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Peter Lewicki  
Deputy Prosecuting Attorney  
Office of the Prosecuting Attorney  
900 Fourth Avenue, Room 1000  
Seattle, WA 98164  
Tel: 206-296-9540  
Fax: 206-296-2901

- United States Mail, First Class
- By Legal Messenger
- By Facsimile
- In person

Dated this 20<sup>th</sup> day of July, 2009.

Devon Knowles  
Devon Knowles, WSBA No. 39153

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