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SSD

NO. 63001-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DONNA ELIZABETH GREEN,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

(King County Superior Court RALJ Decision No. 07-1-11787-0 SEA  
King County District Court Nos. 260349125 and 270040410)

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ORIGINAL

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**A. ISSUES PRESENTED**

1. May a school issue a trespass admonishment pursuant to RCW 28.605.020 limiting, a parent's access to their child's school after the parent has been repeatedly disruptive undermining school authority, placing a child at risk of potential harm, and ignoring repeated requests from school officials?

2. Does a parent have an absolute private interest in unfettered access to their child's school that cannot be limited without Due Process of the law?

3. If yes, did the issuance of a trespass admonishment by the school in this case comport with Ms. Green's Due Process rights?

4. Is there sufficient evidence to support a conviction for Criminal Trespass in the First Degree when all inferences are drawn in favor of the prosecution, the state proffered evidence that the defendant was lawfully trespassed from school grounds, and despite the trespass admonishment entered the school anyway?

**B. STATEMENT OF THE CASE<sup>1</sup>**

**1. PROCEDURAL HISTORY.**

The Appellant, Ms. Donna E. Green has been very disruptive over the years at the Carriage Crest Elementary School, where her son is a student. RP Vol. I, 90-91. Because of these disruptions she was initially limited from going directly to her son's teacher and was required to check in with the front office. Id. Then she was required to direct all her questions to the school's principal, Ms. Wick. RP Vol. I, 91. Soon Ms. Green overwhelmed Ms. Wick with questions and she was directed to contact the Assistant Superintendent, Dr. Haddock. RP Vol. I, 91.

Finally, on October 2, 2006, the Kent School District sent a letter to Ms. Green informing her that she was trespassed from the Carriage Crest Elementary School based upon her past conduct and based on two separate incidents that occurred in September 2006. CP 138. Despite the district's directive, Ms. Green continued to come upon the school property, and entered the school. RP Vol. I, 99-106, 167-69; CP 141. Ms. Green was cited and charged with

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<sup>1</sup> The Report of Proceedings has been incorporated into the Clerk's Papers at pages 280-708 by the Appellant. However, we will reference the Verbatim Record of Proceeds as RP. The trial was three days long and will be referenced as follows: RP Vol. I is August 27, 2007, and RP Vol. II is August 28, 2007, and August 29, 2007.

two counts of Criminal Trespass in the First Degree, occurring on November 21, 2006, and February 8, 2007. CP 198.<sup>2</sup> Ms. Green had a trial by jury in August of 2007, where she was found guilty of both counts of Criminal Trespass in the First Degree. RP Vol. II, 382. Ms. Green appealed her convictions to the Superior Court at RALJ, which affirmed her convictions. CP 711.

## **2. SUBSTANTIVE FACTS.**

Ms. Green has caused considerable disturbance at the Carriage Crest Elementary School over the past four years prior to September 2006; particularly when she would come to school unannounced and go directly to her child's classroom. RP Vol. I, 90. In the class room she would take up so much of the teacher's time in asking questions that the class was disrupted. Id. In November 2003, her class disruptions had become significant enough that the school district was forced to require her to come to the office rather than going directly to her child's classroom. RP Vol. I, 90-91. She was asked to direct all her questions to the principal. RP Vol. I, 91. Ultimately the principal became so overwhelmed with questions that Ms. Green was directed to

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<sup>2</sup> The Complaint for the February 8, 2007, was not included in the clerk's papers provided to the State.

address her questions directly to an Assistant Superintendent of the school district, Dr. Mark Haddock. Id.

In August, 2006, prior to the beginning of the school year, Ms. Green was reminded by Charles Lind, the School District General Counsel, to continue to direct her questions to Dr. Haddock. RP Vol. I, 122-23. Ms. Green responded in a written letter to Mr. Lind that "I basically will say what I want to say, to whom I want to say it, when I feel it appropriate to say it." CP 137.

Finally, after at least four years of tolerating Ms. Green's disruptions, on October 2, 2006, the Kent School District issued a trespass notice to Ms. Green. CP 138-40. This trespass notice cited past incidents but was mostly prompted by two recent incidents occurring on September 26, 2006 and September 29, 2006. Id.

The first incident cited in the trespass letter concerned Ms. Green's behavior at the school's "Curriculum Night" held on September 26, 2006. CP 138-39. The purpose of Curriculum Night is to provide an opportunity for the parents of students to come and learn about the school curriculum and to give the parents an opportunity to interact with their child's teachers. RP Vol. I, 81. The trespass letter told Ms. Green that she had created a

substantial disruption at Curriculum Night by repeatedly asking so many questions that she had monopolized and dominated the event to the point where no other parent was able to ask a question or make a comment to the teacher, even though some of them tried to do so. CP 138. In addition to her domineering behavior, Ms. Green made disrespectful comments toward school staff regarding curriculum, and inserted paperwork in the lesson plan book on the teacher's desk without prior permission. Id.

Ms. Green's behavior was so disruptive that some parents began to leave the classroom and complain to school staff members about her conduct. CP 138. Some of the parents at the Curriculum Night were so upset by Ms. Green's conduct that they wrote letters to the school district. RP Vol. I, 87.

The second incident cited in the trespass letter concerned an incident in the school parking lot on September 29, 2006. CP 139. The letter articulated that a student whose parent was driving in the parking lot to pick him up had been told by a school staff person and a parent volunteer to remain in the grassy waiting area until his parent drove up (instead of running across the busy parking lot to get to the car.) RP Vol. I, 88, CP 139. Ms. Green, who was in the

parking lot, told the student to go across the busy lot to his parents vehicle, in direct contradiction to the staff person's instructions to the child. Id.

The district concluded that Ms. Green was "having an adverse impact on other students and their families." CP 139. The letter also stated that the trespass of Ms. Green was the result of a culmination of other incidents regarding her conduct as follows:

In consideration of these new events and based on the totality of the events discussed in letters to you in 2003; February 9, 2004; December 14, 2005; and August 21, 2006, the Kent School District is formally notifying you that you are trespassed from the premises of Carriage Crest Elementary School until further notice.

CP 139.

Although the trespass letter limited access to the classroom, it still afforded Ms. Green access to the school so she could monitor her son's education. CP 139-40. Mr. Lind testified that the intent of the trespass letter was to create as "reasonable [a] balance as possible" between affording Ms Green access to the school and making sure the school operations could function efficiently. RP Vol. I, 93. Ms. Green could access the campus to pick up her child from school; she was allowed to contact the school office with questions about her child; she was allowed to set up parent child

conferences and attend parent child conferences at the school district's administrative center; and she could attend school events, with prior approval from the district administration. CP 140.

Mr. Lind also testified that in response to the trespass letter there was an administrative appeal process, in that Green could address the superintendent of Kent School District, or his designee, regarding the trespass admonishment. RP Vol. I, 94 - 95. She would also be able to address the School Board of Directors. Id. Mr. Lind testified that in fact, Green had written many letters to both the Superintendent and the board, dating back to 2004. Id. She had, in the past, also addressed the board in person. RP Vol. I, 95.

On October 24, 2006, 22 days after receiving the notice, Ms. Green entered the school without prior permission to attend her son's Boy Scout meeting. RP Vol. II, 257. She was approached by school security and told that she would have to leave the building. RP Vol. II, 256. The security officer showed Ms. Green the trespass letter from Mr. Lind referring to her restricted access to the school's campus, which Ms. Green acknowledged she had received. Id. Ms. Green refused to leave the campus. RP Vol. II, 258. The security officer subsequently called the King County Sheriff's Office. Id.

Deputy Sterling of the King County Sheriff's Office responded to the school. Once Deputy Sterling arrived on the scene he was shown a copy of Mr. Lind's trespass letter. RP Vol. II, 258-59. Deputy Sterling then issued Ms. Green a trespass letter from the King County Sheriff's Office and asked her to leave the school grounds. RP Vol. II, 256-58; CP 145. Ms. Green was not arrested nor charged for trespassing as a result of this incident. RP Vol. II, 258-59; CP 198.<sup>3</sup>

Following the incident, on October 24, 2006, Ms. Green wrote a letter to the school board requesting the opportunity to address the Board "as an agenda item in either a public forum or in executive session." CP 90. In this letter, Ms. Green also informed the board members that the letters from Charles Lind were included for review. CP 90.

On November 3, 2006, the school board responded to Ms. Green's letter stating,

Each of the Board members and the Superintendent has had an opportunity to review the material that you submitted at the last Board meeting. In that material you requested an opportunity in closed or open session to discuss the "no trespass" notice the district served to you.

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<sup>3</sup> Ms. Green was only charged with Criminal Trespass in the First Degree in relation to the incidents that occurred on November 21, 2006, and February 8, 2007.

It is the position of the Board that this is an administrative matter as outlined in Board policy and that further discussion at the Board level is neither required nor necessary. The Board expects that you will abide by this notice as outlined in Mr. Lind's letter to you.

CP 89.

Four days later, on November 7, 2006, Mr. Lind sent Ms. Green a letter repeating the conditions of the October 2<sup>nd</sup> letter, but lessening the restrictions in one regard. CP 135. Under the new conditions, Ms. Green could attend "non-school related events" held outside of school hours such as her son's Boy Scout functions and participation as a voter at that voting-precinct. Id.

According to the trespass letters of October 2, 2006, and November 7, 2006, Ms. Green's parent-teacher conferences were to be held off-site at the District's Administrative offices. Mr. Lind stated this was done in an effort to avoid conflict at the school. RP Vol. I, 132. Ms. Wick, the principal of Carriage Crest Elementary, was going to handle the parent-teacher conference at the request of the teacher of Ms. Green's son. Id. Besides Ms. Wick, Dr. Haddock was also going to be present at

this conference. Mr. Lind stated that this type of situation was not completely unusual, but it was uncommon. Id.

Although Ms. Green's parent-teacher conference was scheduled at the administrative offices on November 21, 2006,<sup>4</sup> Ms. Green informed school officials that she was going to go to the school for the parent-teacher conference regardless of what she was told. RP Vol. I, 105.

In light of Ms. Green's refusal to abide by the school's conditions, Mr. Lind went to Carriage Crest Elementary on the date and time of the conference. RP Vol. I, 105-06. Ms. Green did appear at Carriage Crest Elementary on November 21, 2006, for the parent-teacher conference, and she was met by Mr. Lind and Security Officer Timothy Kovich. RP Vol. I, 106. Mr. Lind reminded Ms. Green that her appointment was at the school district office and not at the school and asked her to leave. Id.

As Mr. Lind was trying to speak to Ms. Green, she continued to speak over him, as she had repeatedly done with

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<sup>4</sup> In the letter dated November 7, 2006, subsection (1) states, "You may contact the Carriage Crest office to schedule parent-teacher conferences during the standard time when other parent-teacher conferences will be scheduled. The November 2006, parent-teacher conference will be scheduled for the Administration Center, located at 12033 SE 256<sup>th</sup> Street in Kent." CP 135.

others in the past. RP Vol. I, 106. Instead of leaving, Ms. Green asserted that she was going to attend the book fair at the school. Id. The police were called. RP Vol. I, 144. Ms. Green spent about five to ten minutes inside the school, and then she left and went to her car. RP Vol. I, 119.

When King County Sheriff's Deputy Tracy Moore arrived at the school, she was informed by Officer Kovich that Ms. Green had left the building. RP Vol. I, 147. Deputy Moore attempted to speak to all parties involved and contacted Ms. Green at her car. RP Vol. I, 156. Ms. Green was uncooperative, continually talking over Deputy Moore, refusing to listen to the questions the Deputy asked or what Deputy Moore was saying. RP Vol. I, 158-59.

During the investigation, Deputy Moore learned that Ms. Green had been issued a formal trespass letter from the sheriff's office. RP Vol. I, 161. In addition, Deputy Moore was provided with statements from Officer Kovich, Mr. Lind and school documentation showing that Ms. Green's access to school property was limited. Id. Based upon the information she obtained during the course of her investigation, Deputy Moore believed she had probable cause to issue Ms. Green a criminal

citation for trespass. Id. Ms. Green was later charged with criminal trespass in King County District Court for this incident. CP 198.

On February 8, 2007, Ms. Green was sent another letter specifically prohibiting her from attending the Science fair at the school. RP Vol. I, 110; CP 141. This letter memorialized a conversation she had with Mr. Lind earlier in the day on February 8, 2007, when that prohibition was articulated to her. CP 141. Ms. Green opted to attend this event in defiance of the conversation and the previous trespass admonishment. She signed a statement admitting to knowingly disregarding the trespass order. CP 146. This incident was the basis of a second charged count of Criminal Trespass in the First Degree, filed in King County District Court.

Ms. Green was tried by a jury on August 27-29, 2007, at the Southwest District Courthouse in Burien. Over this three day trial, the jury heard testimony from Charles Lind, Security Officers Timothy Kovich and Jason Arbogast, King County Sheriff's Deputies Tracy Moore, and Taylor Jermstad, and Ms. Green. RP Vol. I, 76-220; RP Vol. II, 239-349. On August 29<sup>th</sup>, the jury found Ms. Green guilty on both counts Criminal

Trespass in the First Degree. RP Vol. II, 382. Following the trial, Ms. Green appealed her convictions to the Superior Court on RALJ. On January 6, 2009, the Honorable Judge Laura Inveen heard oral arguments from the parties. After the arguments, the court affirmed Ms. Green's convictions. CP 711.<sup>5</sup>

**C. ARGUMENT**

**1. THE KENT SCHOOL DISTRICT'S LIMITATIONS ON MS. GREEN'S ACCESS TO THE CARRIAGE CREST ELEMENTARY SCHOOL WERE LAWFUL AND COMPORT WITH DUE PROCESS.**

The "primary obligation of school districts is to educate and protect children." Soter v. Cowles Publ'g Co., 131 Wn. App. 882, 905, 130 P.3d 840 (2006). In order for a school district to accomplish this goal it must be able to control access to its schools. Pursuant to Title 28A RCW, the legislature has empowered school districts to limit the access of students as well as parents when such access would create a threat to the safety of students or staff or is otherwise disruptive to the learning process.

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<sup>5</sup> The Superior Court ruling on RALJ is attached to the Appellant's Notice for Discretionary Review. The court made the following findings: (1) that State v. Shelby controls the issue as to general/specific statute application. The general Criminal Trespass statute 9A.52.070 was properly charged; (2) There was sufficient evidence to find that the defendant was unlawfully present when viewed in light most favorable to the State; and (3) No evidence that the defendant was deprived of fundamental right to parent. School district not obligated to give notice of hearing. Mathews v. Eldridge was satisfied; (4) No evidence in the record of insufficient counsel. CP 711.

- a. A School District Has The Authority To Restrict The Access Of A Disruptive Parent To The School Or School-Related Activities.

The parents of students have been granted access to their child's classroom pursuant to RCW 28A.605.020. However, this access is not limitless. Specifically, RCW 28A.605.020 entitled: "Parents' access to classroom or school sponsored activities - Limitation" reads:

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). This statute, by title and text, makes it clear that a parent's access to their child's school may be limited if the parent is **disruptive**. The intent of the legislature was to provide parents with insight into the learning atmosphere that their child is involved in. However, in giving parents this access, the legislature took steps to ensure that a school district may act when necessary to preserve a secure and productive learning environment.

Additionally, RCW 28A.635.020 entitled, "Willfully disobeying school administrative personnel or refusing to leave public property, violations, when -Penalty," also provides a school district with the authority to expell individuals from its property. Specifically RCW 28A.635.020(3) reads:

(3) Nothing in this section shall be construed to prohibit or penalize activity consisting of the lawful exercise of freedom of speech, freedom of press and the right to peaceably assemble and petition the government for a redress of grievances: **PROVIDED, That such activity neither does or threatens imminently to materially 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:** PROVIDED FURTHER, That such activity is not conducted in violation of a prohibition or limitation lawfully imposed by the school district upon entry or use of any motor vehicle, building, grounds or other property which is owned, operated or controlled by the school district.

RCW 28A.635.020(3) (emphasis added). These statutes taken together provide clear evidence that a school district can limit the access of anyone, including the disruptive parent of a student.

Ms. Green argues that there are no guidelines provided to the school district with regard the trespass of a parent. Br. Of App. at 35. She argues specifically that RCW 28A.635.020 is subject to arbitrary enforcement. Id. This argument fails because school

officials have been given statutory authority to restrict parental access when a parent is **disruptive**. RCW 28A.605.020.

In this case, there was ample justification that supported the school district's action. Ms. Green has had a documented history of incidents with the Carriage Crest Elementary School as stated in the October 2, 2006, letter. CP 138. Moreover, this action from the school was not a total trespass; it simply restricted her access to the school, which the legislature has given the school board the authority to do. RCW 28A.605.020, RCW 28A.635.020(3).

The school district provided Ms Green with access to the school necessary to monitor her child's education, while still maintaining an atmosphere that was conducive to learning and safety.

b. A Disruptive Parent Does Not Have A Constitutional Right To Unfettered Access To Their Child's School.

The Federal and Washington State constitutions both provide that no person may be deprived of life, liberty, or property without due process of law. In re Davis, 109 Wn. App. 734, 743, 37 P.3d 325 (2002); U.S. Const. Amend XIV; WA Const. Art. I, § 3. The essence of due process is to ensure that a person in jeopardy of serious loss be afforded notice of the case against him and an

opportunity to contest. Mathews v. Eldrige, 424 U.S. 319, 349, 96 S. Ct. 893 (1976).

To prove a violation of due process, Ms. Green must establish that the government's action resulted or would result in a deprivation of an individual's property or liberty interest protected by the 14<sup>th</sup> Amendment of the U.S. Constitution. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 569-70, 92 S. Ct. 2701, 33 L. Ed. 2d. 548 (1972); In re Cashaw, 123 Wn.2d 138, 143, 866 P.2d 8 (1994).

Due process of law does not require a hearing in every conceivable case of government impairment of private interest. Stanley v. Illinois, 405 U.S. 645, 650, 92 S. Ct 1208 (1972), citing Cafeteria and Restaurant Workers Union etc. v. McElroy, 367 U.S. 886, 894, 81 S. Ct. 1743 (1961). Relevant to the inquiry of determining what, if any, process is due requires identifying the precise nature of the government function involved as well as the private interest that has been affected by the governmental action. Stanley v. Illinois, 405 U.S. at 645.

The law recognizes that a student has a property interest in obtaining an education that cannot be taken away without minimal due process procedures. Stone v. Prosser Consolidated School

District No. 116, 94 Wn. App. 73, 76, 971 P.2d 125 (1999) (citing Goss v. Lopez, 419 U.S. 565, 574, 95 S. Ct. 729 (1975)). In Goss, nine students were suspended for a 10-day period without being provided a hearing to determine the operative facts underlying the suspensions. Goss, at 569-71. The United States Supreme Court held that the students were entitled to due process of law and since they were not provided with a hearing to address the suspensions, the suspensions were invalid. Goss, at 584.

The Washington Administrative Code (WAC) establishes procedures that must be followed before a student is restricted from a school. "No student shall be deprived of the right to an equal educational opportunity in whole or in part by a school district without due process of law." WAC 392-400-215(5). Prior to a suspension or expulsion, a student may have a hearing and challenge the proposed school action.<sup>6</sup> However, schools are granted authority to execute "Emergency Expulsion" of students who "pose[] an immediate and continuing danger...or an immediate and continuing threat of substantial disruption of the educational process." WAC 392-400-295.

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<sup>6</sup> See, WAC 392-400-250 (short-term suspension); WAC 392-400-265 (long-term suspension); and WAC 392-400-280 (expulsion).

Moreover, students may appeal a long-term suspension, expulsion or emergency expulsion to the school board. WAC 392-400-310. The appeals process for a student-expulsion provides the board with options: (a) Study the hearing record or other material submitted and render its decision within ten school business days after the date of the informal conference; (b) Schedule and hold a meeting to hear further arguments based on the record before the board or council and render its decision within fifteen school business days after the informal conference; or (c) Schedule and hold a meeting within ten school business days after the date of the informal conference for the purpose of hearing the case de novo. WAC 392-400-313(1).

There are no provisions in the WAC regarding a parent's right to a hearing prior to having limits placed on their access to school grounds, because the law does not recognize that a parent has an absolute right of unfettered access to their child's school that must be constitutionally protected. Ms. Green has cited no legal authority that provides that a parent has an exclusive property interest in unregulated access to their child's school. Ms. Green contends that the fundamental right to parent includes a parent's unfettered access to their child's school. This is not accurate. No

parent has the right to *unfettered* access to their child during school hours, especially a right to disrupt other children's education.

The fundamental right to the care, custody and companionship of one's child is distinguishable from access to a school. Ms. Green was not deprived of the companionship of her child, nor was she denied care and custody of her child; nor was she denied participation in the educational decisions concerning her child.

The trespass admonishments issued to Ms. Green on October 2, 2006, and November 7, 2006, only *restricted* her access to the school, they did not *ban* her from the school or her child. These trespass admonishments did not amount to an absolute bar of Ms. Green from the Carriage Crest Elementary School. Ms. Green was still permitted to drop off and pick up her child from the school, inquire about her child's learning, have parent-teacher conferences, attend non-school related events at the school, and otherwise visit the school with prior approval from the principal. CP 135, 140.

Even though Ms. Green was required to seek permission to attend school events, this cannot be viewed as preventing her from exercising her fundamental parenting rights. RCW 28A.605.020

provides parents with “limited” access to the school, nowhere in that statute nor any statutes within that chapter are parents provided with unfettered access to their child’s school. The access Ms. Green was entitled to under the statute was not substantially revoked by way of the trespass admonishment.

Ms. Green fails to meet her burden of establishing a nexus between her limited trespass admonishment and a recognized constitutional right. The Kent School District’s issuance of the admonishment did not deprive Ms. Green of a fundamental liberty or property interest. Therefore, Ms. Green was not entitled to due process of law prior to or after the issuance of trespass admonishment from the Carriage Crest Elementary School.

- c. Assuming *Arguendo* That Ms. Green Did Have A Constitutionally Protected Right To Unfettered Access to Her Child's School, The School District's Actions Did Comport With Due Process.

Even if this Court were to find a protected interest in Ms. Green's unfettered access to her son’s school, the district’s trespass admonishment still satisfies due process requirements. Due process, “is not a technical conception with a fixed content unrelated to time, place, and circumstances.” Gilbert v. Homar, 520 U.S. 924, 930, 117 S. Ct. 1807 (1997). Rather, “due process is

flexible and calls for such procedural protections as the particular situation demands." Id. Thus, analysis of the adequacy of due process must take into account the factual circumstances involved.

The United States Supreme Court set forth the test to analyze the adequacy of due process in Mathews v. Eldridge, 424 U.S. 319 (1976). Mathews v. Eldridge detailed three factors to balance:

(1) the private interest of the individual that will be affected by the action in question; (2) the risk of erroneous deprivation and the potential value of any additional or different procedures; and (3) the State's interest in taking the action in question and the potential burdens of any additional or different procedures.

Id. at 335. Under a Mathews v. Eldridge analysis, the school district's procedures met due process by providing Ms. Green with notice (the letters), an opportunity to be heard (advising her that she could challenge the school's action by inquiring of Assistant Superintendent Dr. Mark Haddock) and notice of a right to administratively appeal (to the Superintendent or the School Board).

- i. The first Mathews v. Eldridge factor is satisfied because the limitation on Ms. Green's access is narrowly tailored to prevent disruption.

Analysis of the first factor under Mathews v. Eldridge requires review of the effect of the State action on the individual interest. The State action in question in this case is, if anything, a narrowly-tailored limitation of the Ms. Green's right to engage in her son's education. The facts do not support Ms. Green's argument that her ability to "parent" was significantly impaired by the school district's trespass admonishments. The letter sent by Mr. Lind explicitly allowed Ms. Green to schedule off-site parent-teacher conferences, communicate with Dr. Haddock regarding curricular and other specific questions about her son's schooling, transport her son to-and-from school, and attend non-school related activities. CP 135, 140.

The limitations posed by the admonishments presented to Ms. Green were minimal. She was not unconditionally barred from engaging in her son's education, nor was she prohibited outright from engaging with teachers regarding her son's educational progress.

- ii. The second Mathews v. Eldridge factor is satisfied because risk of erroneous deprivation, even without a pre-deprivation hearing, is low.

In any act in which a person is deprived of an individual interest, there is always some risk of erroneous deprivation. The question to be asked in the context of a due process analysis, however, is the relative likelihood and magnitude of the risk.

For example, in Eldridge, George Eldridge's disability benefits were terminated by a state agency after it determined that he was not disabled, and the determination was accepted by the Social Security Administration (SSA). 424 U.S. at 324. The SSA notified Mr. Eldridge that his benefits would terminate and also advised him of his right to seek reconsideration by the state agency of this initial determination, within six months. Id.

In lieu of seeking reconsideration, Mr. Eldridge challenged the constitutional validity of the administrative procedures which revoked his benefits and sought to have his benefits reinstated pending a hearing on the issue of his disability. Id. at 325. The District Court held that prior to the termination of benefits Mr. Eldridge was entitled to an evidentiary hearing. Id. at 326. The

Court of Appeals for the Fourth Circuit affirmed the District Court's ruling. Id.

In reversing the lower courts, the United States Supreme Court found that the pre-deprivation hearing was not required, comparing the plight of a disability recipient with that of a welfare recipient:

[T]he hardship imposed upon the erroneously terminated disability recipient may be significant. Still, the disabled worker's need is likely to be less than that of a welfare recipient. In addition to the possibility of access to private resources, other forms of government assistance will become available where the termination of disability benefits places a worker or his family below the subsistence level. In view of these potential sources of temporary income, there is less reason here...to depart from the ordinary principle...that something less than an evidentiary hearing is sufficient prior to adverse administrative action.

424 U.S. at 342-43. The Supreme Court ultimately decided that even though there may be a significant consequence, the risk of erroneous deprivation was low enough not to require a pre-deprivation hearing. The court's analysis under Mathews v. Eldridge shows that this second factor must be analyzed on a case by case basis.

Similarly, the U.S. Supreme Court has found under certain circumstances that the risk of erroneous deprivation was minimal in terminating parental rights. See Lassiter v. Dep't of Social Servs of Durham County, North Carolina, 452 U.S. 18, 101 S.Ct. 2153 (1981).

In Lassiter, Abby Lassiter's infant child was taken from her custody based upon allegations of neglect in the spring of 1975. 452 U.S. at 20. A year later, Lassiter was convicted of Second Degree murder and sentenced to 25 to 40 years imprisonment. Id. In 1978, the Department of Social Services (DSS) petitioned the court to terminate Lassiter's parental rights because she had not had any contact with her child since December of 1975, had not taken any substantial steps to correct the conditions that led to her child's removal, and had not followed through with planning for the child's future. Id. at 21.

Ms. Lassiter was served with the petition and with notice that a hearing would be held. Id. 21. On August 31, 1978, the hearing was held. Although Lassiter failed to obtain counsel, the court did not delay the proceedings finding that she had ample time to obtain counsel, and her failure was without cause. Id. At the hearing a social worker from DSS testified regarding the basis for the removal

of Lassiter's child from her home, the lack of contact between Ms. Lassiter and her child, and the inability of Ms. Lassiter's mother to care for the child if placed with her. 452 U.S. at 22.

Ms. Lassiter was given the opportunity to cross-examine the DSS representative, and she testified herself. Id. at 23. Ms. Lassiter's mother also had an opportunity to testify at the hearing. Id. The trial court terminated Ms. Lassiter's parental rights finding that she failed to maintain concern or responsibility of her child, and that termination was in the child's best interest. 452 U.S. at 23-24.

The U.S. Supreme affirmed the lower court's finding:

While hearsay evidence was no doubt admitted, and while Ms. Lassiter no doubt left incomplete her defense that the Department had not adequately assisted her in rekindling her interest in her son, the weight of the evidence that she had few sparks of such interest was sufficiently great that the presence of counsel for Ms. Lassiter could not have made a determinative difference.

452 U.S. 33.

Both of these cases dealt with complicated issues which, at first glance, are not susceptible to scrutiny. In Matthews v. Eldridge, we have a thorough process dealing with the physical ability of an individual and his eligibility to collect benefits. In Lassiter, we have the revocation of a

parent's right to the custody of their child, one of the most cherished of fundamental rights. Even though these issues were not simplistic, the U.S. Supreme Court deemed the risk of error was low.

Comparing those cases to the present case, the issue of limiting a disruptive parent's access to her child's school is not complicated. The facts of this case illustrate that great consideration was taken by the School District prior to the decision to conditionally limit Ms. Green's ability to come to the school whenever she wants.

Indeed, the school sought to handle Ms. Green's pattern of behavior over the years with minor directives such as, not going directly to the classroom unannounced, checking in with the front office first when arriving at school and directing questions to Assistant Superintendent Dr. Haddock.<sup>7</sup> RP Vol. I, 90-91. However, these efforts were futile. Based upon her continued disruptive and detrimental behavior, i.e., "Curriculum Night," and the parking lot incident, the school district realized it had no option left except to limit her access to the school.

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<sup>7</sup> Mr. Lind even sent Ms. Green a letter prior to the beginning of the 2006 school year reminding her to direct her questions to Dr. Haddock to which she replied, "I,

The trespass admonishments did not prohibit her from taking an active role in her son's education. This limitation was a tool the school district had to utilize to maintain a productive educational environment. In this case there were no scientific issues presented; there were no financial details to gather and weigh; there was no need for expert testimony. Thus, the risk was low that the district would erroneously find her to be disruptive, and thereby limit her access to the school.

Moreover, there were avenues of administrative and court review that lowered the risk of erroneous deprivation, and Ms. Green was intimately familiar with the processes for addressing perceived grievances with the school district.<sup>8</sup> In response to the trespass letter from the school district, Ms. Green submitted a letter to the School Board asking them to review the matter. CP 90. The School Board reviewed all the materials provided by Ms. Green but stood by the school district's decision to limit her access. CP 89.

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basically, will say what I want to say, to whom I want to say it, when I feel it is appropriate to say it." CP 137.

<sup>8</sup> Charles Lind testified that over the past four years, Ms. Green had taken issues to the Superintendent, directly to the school board, and had utilized the Ombudsman service. RP Vol. I, 90-91.

Additionally, Ms. Green could have sought review from the Superior Court pursuant to RCW 28A. 645.010 which reads:

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.

RCW 28A.645.010(1). However, for reasons unknown, Ms. Green did not seek review from the Superior Court following the decision of the School Board. Ms. Green contends that the School Board had a duty to inform her that she could seek review of their decision by the Superior Court. However, she cites no legal authority to support this position. Since the interest involved is minimal, and the risk of error is low based on the straightforward nature of the inquiry, there was no requirement that the school district conduct a pre-deprivation hearing prior to limiting Ms. Green's access to the school.

- iii. The third Mathews factor is satisfied because the school district has an interest in providing safe and effective educational opportunities to its students and the burden of additional or different procedures allowing unfettered access by parents to the school and staff is high.

(A). Interest of the school district.

Ms. Green argues that the school district's interest in keeping a disruptive person off of school grounds is lower than the interests of a parent to enter or remain on school grounds at will. This argument completely disregards the fundamental responsibility of a school: to provide a *safe* and fulfilling learning environment for all its students. As discussed above, Title 28A RCW makes clear the Legislature's desire to provide school officials sufficient discretion to eject disruptive persons and discourage behavior detrimental to a safe and constructive learning environment.

Ms. Green, in essence, argues that a parent's right to enter or remain at the school is paramount, and cannot be withheld or curtailed. As a matter of policy this argument leads to absurd results. The interests of the School District in providing adequate discretion to its officials by allowing them to take action to respond to conduct detrimental to the learning environment are significant.

Such authority fully comports with the clear mandate of the Legislature that schools remain open to visitors, but not to the detriment of a safe learning environment. It is the School District's interests in this respect on behalf of all students that are paramount, not of a lone individual, regardless of his or her relationship to the school or its students.

(B). The burden of additional or different procedures is high.

To effectively accomplish the goal of creating a safe learning environment, it is crucial that school officials be able to act effectively and quickly. In the context of a school, where the primary focus is to provide safe and effective educational opportunities, a pre-deprivation proceeding would be disruptive, risk safety in some circumstances, and totally defeat the Legislature's clear mandate of ensuring school safety and order. Not only would such measures be burdensome, but they are incongruous with a school setting.

These types of hearings would require the time of school administrators, staff, and teachers and result in limitation of all students' access to these influential and significant educational professionals. With regard to a child's education, this cost far

outweighs the value any parent may gain. While additional procedures are available to students pursuant to RCW 28A.600.015 to provide a pre-deprivation review hearing, such measures are not feasible or necessary for visitors who are ejected based on their conduct, especially when the visitor may appeal administratively or to the courts.

- (C). A balancing of the Mathews factors weighs in favor of finding the trespass admonishments constitutional.

In considering the sufficiency of process provided, the Mathews analysis is a test that requires balancing the three factors discussed above in the context of all of the circumstances presented by a given case. First, the private interest of "parenting" is limited or curtailed very minimally by the School District conditioning Ms. Green's ability to enter or remain on the Carriage Crest campus. In no way does this admonishment prevent her from being a part of her son's education; rather it recognizes her record of obstructionist behavior and sets conditions for her presence at the school.

Second, the risk of erroneous deprivation is low. As mentioned above, school officials had been documenting Ms.

Green's behavior for quite some time. The admonishment issued by the School District through Mr. Lind was not based upon unreliable information. The inquiry was clear, and uncomplicated. The interests of the School District are substantial, as the district is charged with the duty of educating students in a safe and conducive environment. School officials are granted statutory authority to use discretion in determining whether a "visitor" is acting inappropriately and, if so, are granted similar authority to order that person leave and not return.

The Mathews v. Eldridge balancing test reveals that the private interest concerned is minimal, the risk of erroneous fact-finding is low, the burden of providing additional process is great, and is far outweighed by the substantial state interest in maintaining a safe school environment. The procedure employed by the Kent School District is constitutional.

**2. THERE WAS SUFFICIENT EVIDENCE  
PROFFERED AT TRIAL TO CONVICT MS. GREEN  
OF CRIMINAL TRESPASS IN THE FIRST DEGREE.**

The Superior Court was correct in its finding that there was sufficient evidence to support the conviction of Ms. Green. CP 711. In determining if there was sufficient evidence to justify a conviction, the test is "whether after viewing the evidence in the

light most favorable to the prosecution, any rational trier of fact could have reasonable doubt.” State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)).

In a prosecution for Criminal Trespass in the First Degree, the state must prove beyond a reasonable doubt the following elements: (1) on or about a date certain; (2) the defendant did knowingly enter or remain unlawfully in a building; and (3) the act occurred in King County, Washington. Ms. Green was given notice on October 2, 2006, by the Kent School District via letter sent by Charles Lind that she was trespassed from Carriage Crest Elementary. RP, Vol. I at 88-89. On October 24, 2006, Ms. Green was also served a trespass warning letter from the King County Sheriff's Office, which she signed. CP 145.

Ms. Green also received a letter dated November 7, 2006, from Mr. Lind that reiterates the trespass admonishment along with modified conditions of the trespass. CP 135. On November 21, 2006, after being duly notified that her presence at the school was not permitted, Ms. Green entered the school in defiance of the trespass admonishments. RP, Vol. I at 100-106.

The record also indicates that on February 8, 2007, Ms. Green again entered the Carriage Crest Elementary School despite Mr. Lind advising the defendant over the phone and by fax that she was not permitted to attend the event being held at the school on that date. RP, Vol. I 109-110, 167-177. There was also a signed statement by Ms. Green stating she was aware she was not supposed to be on the premises on February 8, 2007. CP 146.

Ms. Green contends that under RCW 9A.52.090(2) a person cannot be found guilty of criminal trespass where the trespassed property is open to the public at the time of alleged conduct and where the individual was complying with all lawful conditions imposed on accessing and remaining on the property. Brief of Appellant, at 42. One of the cases Ms. Green relies upon is State v. R.H., 86 Wn. App. 807, 939 P.2d 217 (1997).

In R.H., a restaurant manager summoned police to disperse a crowd of youths that were loitering and engaged in recreational skateboarding. R.H., at 809. When police arrived they told the group that if they did not leave they would be arrested for criminal trespass. The defendant did not believe this warning applied to him since he had planned to patronize the restaurant and was just waiting for a friend. Id. After leaving the premises, the defendant

skateboarded through the parking lot looking for his friend, however, he did not find him and was subsequently arrested for criminal trespass. R.H., at 810.

At trial, the manager testified that if the defendant had planned to eat at the restaurant and was waiting for a friend that he would have had permission to remain on the property. R.H., at 809. The appellate court applied the public premises defense<sup>9</sup> and reversed R.H.'s conviction, holding that no rational trier of fact could conclude that the defendant had not complied with all the lawful conditions of access, i.e., no loitering and no recreational skateboarding. R.H., at 812.

In contrast, in the present case, Ms. Green was not in compliance with the conditions of access imposed by the school district. Unlike the defendant in R.H., the her presence at the school was unlawful based upon the prior trespass admonishments. Thus there was no lawful conduct that would excuse her presence.

Ms. Green also contends that her conduct on November 21, 2006, and February 8, 2007, lawfully complied with conditions of

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<sup>9</sup> RCW 9A.52.090(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."

general access to the school based upon RCW 28A.635, and therefore the public premises defense is applicable to this case. This logic is flawed because it suggests that the school district has no authority outside of RCW 28A.635 to impose conditions upon access to its building.

Although a school may be characterized as a public place, access to the school may be restricted to protect students, teachers, and staff.<sup>10</sup> Even a parent's access may be limited and is not unfettered. See, RCW 28A.605.020.

Once Ms. Green entered the Carriage Crest Elementary School she had committed trespass. The school was within its authority to maintain an efficient learning environment and, given her history, the school's actions were justified. Based upon the above, this Court should affirm the Ms. Green's convictions as there was sufficient evidence to prove that she committed the crimes charged.

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<sup>10</sup> RCW 28A.635.030 (making it a misdemeanor offense for any person to willfully disrupt a school activity or sponsored event); RCW 28A.635.010 (making it a misdemeanor offense for any person to insult or abuse a teacher while the teacher is carrying out official duties).

**D. CONCLUSION**

The Kent School District had authority to issue trespass admonishments to Ms. Green. The statutory scheme of Title 28A RCW makes clear the Legislature's policy to provide access to the classroom to parents, but similarly sets forth policy directives to afford school personnel the authority and discretion to eject any person, including a parent, who is disrupting the educational environment of its students. RCW 28A.605.020, RCW 28A.635.020.

Moreover, the fundamental right of parenting does not include the right of a parent to unconditionally enter or remain at a school in the manner of his or her choosing. Ms. Green cannot claim a deprivation of a fundamental right based on a limited trespass admonishment that still provided her ability to participate and control her son's education.

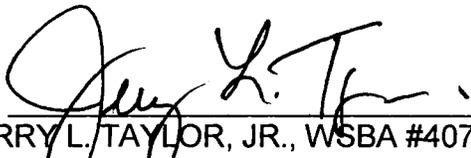
Finally, the Mathews v. Eldridge test requires a balancing of individual interests and government interests. Ms. Green's interest in unfettered access to the school does not substantially outweigh the interest of the school district to maintain a safe and effective learning environment. The risk of error by the district in this case is low. Also, Ms. Green availed herself of the opportunity to be heard

before the Board, and the Board's recognition of her arguments is documented. There is no showing of a due process violation. Therefore, this Court should affirm the Ms. Green's convictions.

DATED this 13<sup>th</sup> day of November, 2009.

Respectfully submitted,

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By:   
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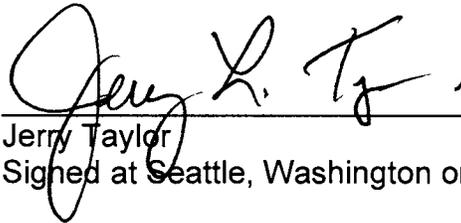
Today I deposited in the mails of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to TWYLA CARTER, attorney for Appellant at

The Defender Association  
420 West Harrison, Suite 202  
Kent, Washington 98032

The envelope contained a copy of the State's Response Brief to the Court of Appeals, Division One, in STATE OF WASHINGTON v. DONNA E. GREEN, COA No. 63016-1

In addition, I faxed a copy of the same to Ms. Carter at her fax number 206-447-2349.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.



Jerry Taylor  
Signed at Seattle, Washington on November 13, 2009.

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