

APPROVED

Orange County Schools Safety Task Force

Meeting Summary

Thursday, April 27, 2023 at 5:30 PM

Meeting Room

**Bonnie B. Davis Environmental & Agricultural Center
1020 US 70 West, Hillsborough, NC**

Members Present: Ari Schein, Cassie Rice, Kate O'Boyle, Richard Bradford, Evan Sredzienski, Jean Hamilton, Earl McKee, Tina Sykes, Chris Atack, Rani Dasi, Paul Bell, Andy Simmons

Alternates Present: Andre Stewart, Andrew Poole, Tracy Holloway

Members Absent: Monique Felder, Andre Richmond, Evelyn Estrada Hernandez, Nyah Hamlett

Alternates Absent: Patrick Abele, Jonathan McVey, George Griffin

(Note: Student members from Chapel Hill Carrboro City Schools had not yet been determined.)

Facilitator: Jay Bryan, Retired District Court Judge

Staff Present: Greg Wilder from the Orange County Manager's Office

1. Welcome and Introductions

Commissioner and Task Force Co-Chair Jean Hamilton welcomed everyone to the meeting. She noted that Commissioner and Task Force Co-Chair Earl McKee was delayed in getting to the meeting and that she would lead the meeting until his arrival. All Task Force members and alternates briefly introduced themselves.

2. Approval of April 13, 2023 Meeting Summary

Task Force Facilitator Jay Bryan asked if there were any changes to the April 13, 2023 Meeting Summary that was distributed with the meeting agenda materials. With no changes, Task Force Member Ari Schein motioned to approve the Meeting Summary. Task Force Alternate Andre Stewart seconded the motion, and the motion was approved unanimously.

3. Presentation by County Attorney John Roberts

Facilitator Bryan introduced John Roberts, the County Attorney for the Orange County Board of Commissioners.

Mr. Roberts shared that he had been asked to provide the Task Force with an overview of laws impacting conduct at schools by students, parents and others. He noted that his official position may limit some of his comments, but that he would address any questions as best he could.

Mr. Roberts briefly discussed the prohibition of weapons on school property. He referenced legal provisions against creating a public disturbance, sometimes referred to as a “riot statute”, and noted application of those provisions were sometimes problematic. He shared comments regarding the “dispersal statute”, in which a group was required to disperse when ordered by a law enforcement officer. He noted that violations of these laws were all misdemeanors.

Mr. Roberts discussed “disorderly conduct”, noting that there were sometimes problems in how those provisions were applied. He also discussed a statute regarding “Seizures of a Public Building”, adding that there was some uncertainty regarding what “seizure” meant. He noted that violations of these statutes fell under criminal charges. Mr. Roberts also briefly discussed the defacement of buildings and trespass provisions, noting that trespass would apply in cases where the property was appropriately posted, or if someone had been asked to leave.

Mr. Roberts moved forward to discuss protests and other activities that might occur along the public roadway adjoining a school or on the road right-of-way. He referenced Orange High School and noted that he had recently reviewed the survey plat for the school property, as the County actually owned the school property based on a previous financing action. He noted that the school property extends to the roadway, and that the road right-of-way was an overlay onto the school property.

Mr. Roberts also briefly added that law enforcement had the authority to require dispersal when an activity impedes the progress of a school bus.

Mr. Roberts concluded his comments by noting that a County ordinance may not be the best way to address school safety concerns, as most of the schools in Orange County were located in the towns where a County ordinance would not apply. Adoption by the towns would be necessary for any provisions to apply to most of the schools.

4. Discussion/Questions & Answers with County Attorney John Roberts

Facilitator Bryan moved the discussion forward to questions and answers with Mr. Roberts. Task Force Member Andy Simmons inquired about the Orange High School property plat showing the school property extending to the roadway and asked if that was

typical. Mr. Roberts responded that it was not atypical, and that some property lines extend to the center of the roadway.

Task Force Member Schein commented regarding the existing statutes related to gatherings on school property and violations. Mr. Roberts shared that those provisions could apply in some cases, but that, to be a violation, they would need to occur in the presence of a law enforcement officer or school administrator.

Task Force Member Richard Bradford expressed concern regarding the time it takes for a school administrator to initiate action and for law enforcement to respond. Mr. Roberts noted alternatives including calling 911 and involving the school resource officer (SRO).

Task Force Member Evan Sredzienski asked about protesting on the sidewalk. Mr. Roberts noted that was typically where protests occurred. Co-Chair Hamilton referenced if the sidewalk was on school property, and Mr. Roberts responded that protesters could be removed in that case. UNC Law Professor Mary-Rose Papandrea commented that there is some public interest in sidewalks because sidewalks are where people gather. Task Force Member Simmons added that people cannot block the sidewalk and impede its use, but that protesters can line up single file to avoid that concern. He also noted that it may be worth recognizing who owned the sidewalk, but that law enforcement officers could not have plat maps readily available to address situations that might develop.

Co-Chair Hamilton commented that interfering with school functions seemed to be a pivotal point and interfering with students' education was a concern.

Task Force members and alternates briefly discussed conceal carry on school property, with Task Force Member Simmons noting that a weapon could be brought on school property provided it was locked up in a vehicle. Task Force Member Kate O'Boyle expressed concern that the presence of the weapon on the property could cause a disruption. Task Force Member Simmons noted that a conceal carry occurrence on school property was limited since students were not 21 years old, the minimum age for conceal carry, and that school districts had prohibitions against employees having weapons on campus. Task Force Alternate Andrew Poole confirmed school staff by policy could not have firearms on school property.

Task Force Member Bradford inquired about a potential draft ordinance and issues the Task Force should consider regarding distances. Mr. Roberts responded that the shorter the distance the better, and that any provisions needed to apply directly to students.

Task Force Member O'Boyle asked about protesters utilizing a bullhorn. Task Force Member Simmons noted that it becomes a problem when the use of a bullhorn disturbs the educational process. Task Force Member Chris Atack noted that two criteria apply – was it lawful for the parties to be there, and were they creating a disturbance.

Task Force Member Schein commented that if the existing state statute had been enforced with the prior high school incident, the issue would have been addressed. Task

Force Member Tina Sykes followed up noting that the event occurred after school hours at an athletic event and the statute may not have been applicable as part of a non-educational activity.

Task Force Member Attack noted that addressing potential events by ordinance was difficult since every situation, school, school property, etc. was different.

With no more comments or questions, Facilitator Bryan thanked Mr. Roberts for his presentation and discussion with the Task Force.

5. Presentation by UNC Professor Mary-Rose Papandrea

Facilitator Bryan introduced UNC Professor Mary-Rose Papandrea from the UNC School of Law, sharing her biography with the Task Force.

Professor Papandrea expressed her appreciation for the opportunity to present to the Task Force and that she was glad to help. Ms. Papandrea did note that she could not provide legal advice to the group.

Professor Papandrea shared that she hoped to provide some background on the First Amendment, with a focus on two civil rights-era US Supreme Court cases involving attempts to restrict speech around schools. The background may help guide the Task Force's conversations about how to proceed in Orange County.

Professor Papandrea initially noted some important background principles. The First Amendment has some categories of expressive activities that are carved out and have either no or limited First Amendment protection. Knowingly false defamatory statements are not protected under the First Amendment. True threats encompassing statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence are not protected. Professor Papandrea also referenced incitement, which encompasses statements that are directed to inciting immediate unlawful activity, and is not protected. She noted the events of January 6, 2021 in Washington, DC as a possible example. Fighting words, which are statements specifically directed to a person face to face that are likely to provoke the target to engage in violence, are also not protected, but this is a tricky area sometimes. These categories are defined in law.

Professor Papandrea shared that the fact that speech is upsetting is not enough, and that there is no category of unprotected or lesser protected speech called "hate speech." Restricting "offensive," "agitating," or "annoying" speech is impermissible under the First Amendment as it would permit the punishment for unpopular views. Ms. Papandrea referenced Westboro Baptist Church's unpopular efforts as fully protected speech. The Supreme Court held that the Westboro Baptist Church has a First Amendment right to engage in its speech on streets, sidewalks, and parks.

Professor Papandrea added that a group of speakers cannot be singled out on the basis of its message, and a specific topic cannot be singled out either. The First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. Government cannot grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.

Professor Papandrea then discussed some special school exceptions. The exceptions include speech that is substantially disruptive, but limits cannot be based on the content of the speech. Schools could restrict speech that promotes drug use. Other special concerns can relate to minors, such as pornography, particularly upsetting images, and potentially protests that use obscenities. However, exceptions do not apply to upsetting political speech. The Supreme Court recently noted the important role that schools play in promoting democracy, particularly with respect to political and religious speech.

Professor Papandrea noted, at the same time, that content-neutral time, place, and manner restrictions are permissible. Teachers, students, and members of the public do not have an unlimited right to engage in expression on school grounds. She noted the *Tinker* case, which held that students had a right to wear black armbands to protest the Vietnam War because there was no evidence that this expression caused a “substantial disruption” to the operation of the school. The flip side of *Tinker* though was that it recognized that speech that undermines the operation of the school can be restricted. She added that, as a practical matter, it is problematic to draw a line between picketing by students/staff and picketing by outsiders. She added that any ordinance should be limited to times when school is in session.

Professor Papandrea referenced two 1970’s U.S. Supreme Court cases. The cases held that an anti-noise ordinance around a school in Illinois was constitutional, but not the anti-picketing ordinance. Cities in Illinois had ordinances restricting picketing and other demonstrations around schools. Chicago’s ordinance restricted most picketing around a school, except for peaceful labor picketing. The Supreme Court held that if the school permitted peaceful labor picketing, there was no reason not to permit other peaceful picketing on other topics. In the other case, the Court upheld a broadly applicable anti-noise ordinance, which prohibited making any noise or diversion which disturbed the peace of a school session.

6. Discussion/Questions & Answers with UNC Professor Mary-Rose Papandrea

Facilitator Bryan moved the discussion forward to questions and answers with Professor Papandrea. Co-Chair Hamilton noted that part of the problem seemed to relate to activities that disrupted the school. A student who feels threatened cannot be in the mindset to learn. The example of a Confederate symbol was referenced, and Professor Papandrea commented that cases of Confederate symbols were based on the disruption of school – not about an individual. She noted that based on a court case, the use of profanity could not be considered a disruption to school operation. Task Force Member

Bradford commented that it appeared the focus needed to be on activities that disrupted school operation. Task Force Member Sredzienski noted that the term “disruption” was subjective, and that the Task Force needed to have other objective criteria such as distance and location in addition to “disruptive”.

Professor Papandrea commented that schools do have some leeway to make judgment on disruptive activities, but that any rules needed to be for all, and not specific for one group.

With no further questions or comments, Facilitator Bryan thanked Professor Papandrea for her presentation and feedback.

7. Other Issues

This item was not discussed due to time constraints.

8. Meeting Evaluation

This item was not discussed due to time constraints.

Adjourn

With no further items to discuss, the Task Force adjourned at 6:41 pm.

This Meeting Summary was approved at the June 22, 2023 Schools Safety Task Force meeting.