

WHAT CAN A PRINCIPAL DO TO DEFEND AGAINST PUBLIC CRITICISM?

Part I: Statements by a Member of the Public at a School Board Meeting

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Principals frequently ask what they can do when they are “defamed” by a parent, school board member, superintendent or another school employee. Principals also want to know how to respond if they are accused of defaming someone else, for example, an employee whom the principal evaluated. The answer to the question “What can I do to defend myself?” differs depending on who made the statement and the context in which it was made. Here and in the next few issues of the *Advisory*, we will present various scenarios in which “defamatory” statements are made. We will discuss the rights of the person defamed, the defenses available to the person making the statement and suggestions on how to react in each situation. In Part I, we will consider comments made by a member of the public during a school board meeting.

First, it is helpful to have an overview of the legal cause of action, or tort, known as “defamation.” Defamation requires that there be an individual who was the victim (the plaintiff); statements harmful to the victim’s reputation (defamatory matter); and dissemination of the statement to at least one other person (publication). The plaintiff must also prove that he or she suffered specific damages unless injury is presumed because there is defamation “per se,” as for example, when the defamatory matter attacks one’s occupation or profession. When the defamatory statement is made in writing it is referred to as “libel,” and when that statement is made orally, it is called “slander.” Someone accused of defamation can raise a number of defenses, namely the truth of the statement; that the statement was an opinion only; privilege; and immunity. These defenses will be discussed in each scenario.

Scenario: Angry parent speaks during the public comment period at school board meeting and accuses the middle school principal of incompetence, cruelty and of being unresponsive to the needs of special education students such as her son.

1) Can a member of the public say whatever he/she wants at a school board meeting?

No. Whether the district is required to let a resident say whatever he/she wants at a board meeting involves the Sunshine Law and school board policies rather than defamation law. The Sunshine Act limits public comment to matters of concern, official action, or deliberation which are or may be before the board prior to taking official action. (65 Pa.C.S. ‘710.1.) The clear intent is to permit public comment on agenda items of the meeting or on a subject where action or an agenda item is foreseeable or anticipated. It should not be anticipated until after the public complaint process has been exhausted to the level of the board. If the principal’s performance or treatment of special education students is not before the board now or in the foreseeable future, the comments are not authorized by the Sunshine Act. The public comment period is not intended as a “bully pulpit” to permit the intimidation or harassment of individual employees. Name calling

of administrators because of an individual dispute with a parent is seldom relevant to an agenda item.

2) What can the school board do to put a halt to the parent's comments?

Most school board policies define and limit the scope of public participation at board meetings. For example, Pennsylvania School Boards Association (PSBA) Policy 903, which serves as a model for many school district policies, permits public participation as part of the order of business. The policy also authorizes the presiding officer to "interrupt or terminate a participant's statement when the statement is too lengthy, personally directed, abusive, obscene or irrelevant." The presiding officer can cut off the parent's comments if they do not relate to an order of business or if they qualify as "personally directed, abusive and irrelevant."

The school district should have a complaint policy for resolving complaints against employees. PSBA Policy 906 specifically recognizes the board's duty to protect its staff from public harassment. At the third of the four levels in the complaint procedure, the superintendent investigates the complaint and reports its resolution to the board. In the event the superintendent finds the complaint to be legitimate, then he/she might recommend disciplinary action to the board. The more serious and truthful the complaint, the more important it becomes to remove the board from any investigation so that it can later act as an unbiased factfinder. Therefore, the parent at the board meeting should be advised to air her grievance about the principal pursuant to the complaint policy. If the concerns are well founded and cannot be resolved in the first few levels of the complaint procedure, the superintendent will eventually bring them before the board. If the board were to listen to her complaints now it may prejudice the board's ability to be unbiased in a later proceeding.

3) What if the board refuses to stop the parent from making further defamatory statements?

By permitting a member of the public to continue to criticize employees publicly, the board would appear to be knowingly violating its own policies and procedures. When the complaining parent or resident has established a pattern of such conduct, the board's acquiescence condones the conduct. By condonation, the board is deliberately indifferent and is probably establishing a custom of permission of public attacks on its staff. This inaction may be subject to challenge under a Section 1983 lawsuit by an employee arguing that the board is depriving the employee of his/her reputation without due process under the Fourteenth Amendment. In the alternative, the employee may also be able to assert the deprivation of a personal right under Local Agency Law and demand a hearing before the board.

Using the rationale and arguments in this article, PAESSP will be happy to write a letter on your behalf if you provide us with a written chronology of the events preceding the meeting, what precisely the parent said at the meeting, how the board reacted and your board policies 903 and 906.

4) What action can I take against the parent after she makes these statements at the board meeting?

The principal may be tempted to pursue a defamation action against the parent. However, the parent will be able to raise some strong defenses, namely that she is protected by a privilege because the principal is a "public figure" and that her statements were merely an expression of opinion. These defenses will be the topic of the next *Advisory* article on defamation.