What Can a Principal Do to Defend Against Public Criticism?

Part II: Defenses to a Defamation Claim

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In our article in the last issue of the *Advisory* (now available on the PAESSP web site), we discussed what a school board can and should do to limit defamatory statements at a board meeting made by a member of the public, using the following 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.*

In this issue, we will discuss the defenses likely to be raised by the parent if the principal pursues a defamation claim, namely that the parent was protected by a qualified privilege and that that statement was an opinion. However, first we would like to add the following wrinkle to the scenario:

Scenario (Part II): *Rather than limiting the parent's comments, the president of the school board agreed with the parent, and added that the principal was disrespectful to members of the school board and unwilling to address the concerns of parents. After the meeting, the parent and the board president expounded on their views in an interview with the newspaper reporter in attendance, who published them in an article the following day.*

What is the likelihood of success if the principal brings a defamation claim against the school board president for his statements to the reporter?

Very slim. School board members are shielded by the "doctrine of absolute immunity for public officials."

Is there a court decision that applies this doctrine to school board members?

Yes. *Matta v. Burton*,[1] a 1998 decision of the Pennsylvania Commonwealth Court, holds that school board directors are "high public officials" because of the importance of their office and the discretionary and policy-making authority they exercise.

What happened in *Matta*?

Burton, a school board director, sent a letter to the editor of the local newspaper. In the letter, which was published, she accused the business manager (Matta) of misconduct and malfeasance in his handling of a $13.5 million school renovation project. The letter was signed using the title *"Duquesne School Board Director."* Allegedly, the contractor performing the work was behind schedule and the school board director accused the business manager of failing to enforce a penalty provision in the contract. The business manager filed a complaint alleging defamation. In defense, the school board director asserted an absolute privilege as a high public official.

What is the doctrine of absolute immunity for high public officials?

The doctrine of absolute immunity for "high public officials" is an unlimited privilege that exempts a high public official from lawsuits for defamation provided the statements made by the official are made in the course of his/her official duties and within the scope of his/her authority. The privilege applies even if the statements made by the high public official were false and/or motivated by malice. The purpose of the doctrine is to preserve unrestrained discussion of public matters even if, as a result, persons harmed by the discussion cannot be compensated.

In *Matta*, were the school board director's statements made in the course of her official duties and within the scope of her authority, and therefore privileged?

Yes. The court determined that a school board director has the authority to oversee the administration of school district contracts. Moreover, her criticism of the handling of the contract falls within the scope of her duties and authority because the public clearly has a right to be informed of possible mismanagement by the business manager of a $13.5 million school renovation project. Protection of the public interest was her intent and this is the basis for the doctrine of immunity from liability for defamation by high public officials.

Are all statements by a school board director protected by this privilege?

No. If the director comments on a matter affecting only her individual rights as a private citizen which are unrelated to public matters, the doctrine of absolute immunity for high public officials does not apply.

What is the qualified privilege that protects the parent from a defamation claim?

Generally, principals are considered "public officials" or "public figures." Therefore, the principal can establish defamation only if he or she can prove by clear and convincing evidence that the parent uttered her statement with "actual malice," that is, willful or reckless disregard of the falsity of the statement. This high burden of proof is difficult to sustain.

What other defenses can the parent assert?

Proving the truth of the statement is always a defense. More difficult to rebut is a parent's defense that she was merely expressing her opinion. An opinion is protected when it is pure opinion or when it discloses the facts upon which it is based or if the facts are commonly known or accessible. Disclosure of the facts underlying an opinion enables the person hearing the statement to decide whether to agree with the opinion.

When does the parent lose the defense that the statement was an opinion?

An opinion is not protected if it implies undisclosed defamatory facts as the basis for the opinion or if the opinion is based on expressly stated false facts. For an extensive discussion of opinion in the context of defamation, see *Petula v. Melody.*[2]

What can a principal do to protect herself or himself if a parent makes defamatory statements?

You can ask the association to send a letter on your behalf seeking to flush out the false facts and to notify the parent of the falsity of the expressly stated or implied facts. This notice letter is an attempt to overcome the qualified privilege held by the parent. If the parent continues to repeat the falsehood after written notice, the letter may establish actual malice or willful or reckless disregard of the falsity of the statement. Without the letter of notice, the parent can plead ignorance of the fact. With notice, it can be argued that by repeating the statement, the parent is acting with reckless disregard of its falsity.

At your request, such a letter could be copied to the public officials who have heard the defamatory statements. The letter is an opportunity for you to advise the superintendent or board member of the truth so they are less likely to repeat the defamatory statement made by the parent.

The PAESSP letter to the parent would read as follows:

Ms. Principal has advised me that you have publicly stated that she is incompetent, cruel and unresponsive to the needs of special education students. This statement implies facts of which you are aware that support your derogatory opinion. Please advise me of the facts on which you base your derogatory opinions.

A response from the parent will enable you to determine whether the opinion is likely to be protected or not.

If you are requesting a letter from PAESSP, you need to provide full and complete information and whatever written documentation is available to indicate what the parent actually said. In addition, you need to state what true facts you wish to be conveyed. The materials and narrative must be presented to PAESSP in sufficient detail and with total accuracy; any inaccuracy will undermine the positive purpose and effect of the letter.

In Part III of this series, we will discuss allegedly defamatory statements about the principal made by the superintendent or other school district employees, either in public or in an employment reference. Part III will

also address statements by a principal that are alleged to be defamatory.

[1] 721 A.2d 1164 (Pa. Cmwlth. Ct. 1998).

[2] 138 Pa. Cmwlth. Ct. 411, 588 A.2d 103 (1991).