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EDUC 6740
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Week 6 – Law Case Analysis #5

You are assuming the role of a legal advisor for the Adams County School District #14. Using the following anecdotal case, respond to it in terms of the “district's position”. Justify your remarks using data and information we discussed in class or that was found in this course. Try to respond fully, yet keep your responses succinct and to the point.

Defenses for Defamation Involving School Personnel

When school personnel communicate personal and sensitive information to another unauthorized person, that results in injury to a teacher's reputation or standing in the school or diminishes the respect and esteem to which the teacher is held, charges of defamation through slander and libel may be filed.

In the case of teacher Joan Eisenbach, the following situation occurred. While attending a movie at a local theater, Ms. Eisenbach overheard a conversation between two adults sitting two rows in back of her. One of the adults was a part-time aide in her classroom. While the conversation was not heard in its entirety, she did hear the aide describe her, Ms. Eisenbach, as being “... stupid, dumb, and lame and not a good teacher at all”. The aide went on to say that if Ms. Eisenbach was doing her job the way she was supposed to that the students in class wouldn't act the way that they do. Not knowing what to do, Ms. Eisenbach talked to her school principal the next day.

What issues of liability exist in terms of the aide's statements? Are there grounds for any legal action? What should be the next course of action regarding the aide, teacher, and principal? Are there any defenses for this type of defamation?

My Response: The part-time aide is possibly liable for defamation, but defamation by definition has to be proven to include each of the following: first, that what they communicated was a “false communication that has the effect of injuring [a person's] reputation”; second, that they had an “unprivileged communication... accessible to a third party”; third, fault must be established based on “negligence, actual malice”, etc.; finally, harm was caused or would result (Sun, n.d.). So, is that what occurred in this circumstance? Let's look at each of these requirements to find out.

First, was this a “false communication”? Well, the aide claimed that Ms. Eisenbach was “stupid, dumb, and lame and not a good teacher at all”. Obviously a closer look at Ms. Eisenbach's recent teaching evaluations, as well as the opinions of other adults and students that work with her would be worth looking at. If no one (or very few) agrees with this aide's assessment, then I think we can safely assume that these statements, as judged by any reasonable standard, would be considered false. If a good number of others however agree with the aide's allegations, then the falsehood of their claims would be in serious doubt.

Secondly, we must look at the issue of whether this was “unprivileged communication... accessible to a third party” (Sun, n.d.). On this point, the aide made a mistake. Ms. Eisenbach was able to overhear her accuser in a movie theater several rows away. Obviously, others (including possibly whomever the aide was talking with) could've heard as well, and the aide is liable for the effect this would clearly have had on

anyone living in the nearby community, which could have easily overheard their conversation. On this point, it would appear that the aide is liable.

Third, was the aide guilty or at fault for negligence or malice in their communication? Because they allowed others to overhear in a public place, and clearly they didn't mean well for Ms. Eisenbach, I think that an affirmation of this point would be easy to prove.

Finally, was there "special harm", or is this a case of "defamation per se"? Since these claims made by the aide were clearly making claims about her "fitness to conduct [the teaching] profession" (one of the defamation per se exceptions), then it seems clear that this in fact does qualify as defamation per se (Sun, n.d.). While Ms. Eisenbach may not as of yet suffered directly for these claims, it is of little doubt that if such rumors were to persist, it would surely create problems professionally and personally for her as well as for the school and its appearance / reputation in the community.

While some recent cases for defamation have been shown to be on weak footing (Rubino, 2018), there are also cases that show that defamation is a serious matter, and courts are willing to rule in favor of teachers that can show that they were unjustly defamed, like the 2013 case in California where two students and their parents were held responsible for over \$300,000 in damages (Mukherji). In this case, I believe that the crux of the matter rests on whether the aide's opinions / statements are collaborated by others at the school, or if this is indeed a case of false statements being spread in public, with malice.

I believe the principal should immediately put the aide on leave while a speedy investigation is carried out, and after the results are known, proceed in one of two ways: if the aide's statements seem to be collaborated, reinstate them immediately with back pay, but chat with them about the inappropriateness of such public conversations (no matter how "true" they might be) going forward. Then I'd recommend the principal have a serious discussion with the teacher about how they need to improve their teaching and actions, and probably consider probation and an action plan for immediate improvement.

However, based on what I've seen thus far, I would guess that the aide's statement will likely *not* be collaborated, and in that case, I would suggest the principal inform the aide that going forward, we as a district would support any defamation lawsuit that Ms. Eisenbach might decide to go forward with. I would also suggest the principal invite the aide to sincerely apologize to Ms. Eisenbach, and strongly recommend that they cease and desist such conversations immediately, and suggest the principal let the aide know that their services at our school would no longer be required. Such actions cannot be tolerated, especially by an entry-level employee who is defaming and slandering one of our respected teachers. Our educators and community need to know that we take such things seriously, and that we will defend our teachers against such arbitrary and capricious slander.

Sources:

Mukherji, A. (2013, November 18). Teacher Gets \$363K for Students' Lies, Defamation. Retrieved February 14, 2019, from <https://blogs.findlaw.com/injured/2013/11/teacher-gets-363k-for-students-lies-defamation.html>

Rubino, N. (2018, September 10). Teacher files lawsuit against parent over social media post. Retrieved February 14, 2019, from https://www.cbs46.com/news/teacher-files-lawsuit-against-parent-over-social-media-post/article_fbb1a034-8dee-5c4a-8a40-5b210eoadc6.html

Sun, J. C. (n.d.). Defamation. Retrieved February 14, 2019, from <http://usedulaw.com/247-defamation.html>