

Recommendations for Principals Providing Letters of Reference

Although Principals are often asked to provide a reference for former employees, agreeing to do so is not something that should be done without considering the potential legal risks. For instance, you might be accused of defamation if the employee feels slighted by your words, but at the same time you could face potential liability, in certain cases, if you don't reveal all the negative information about an employee to a potential employer. Therefore, writing a letter of reference can sometimes pose quite a dilemma for school administrators, who may fear the defamation accusation, but at the same time feel a professional responsibility to prevent incompetent or unfit educators from gaining future employment.

As for defamation, it is generally defined as any communication that tends to damage the reputation, character, or good name of someone by slander or libel. In the employment context, the communication must be to a third party, who finds it to shine an unfavorable light on the employee, thereby "injuring" the employee's reputation. However, a statement must be patently untrue to be considered defamatory. Generally, in order to promote candid communication, employers are protected by a form of qualified or conditional privilege. Therefore the employee must demonstrate actual malice, in that the person giving the reference knew that the statement was made with a reckless disregard for the truth.

On the flip side of that issue, any district employee who sends a recommendation to a potential employer for a former employee, while withholding the negative information, can be held liable if the new employer relies on the "misleading" recommendation and someone then suffers physical injury as a result. This is based on a landmark case wherein the California Supreme Court ruled that a student who was molested by a school employee could sue the former school districts that recommended the person for the job while failing to disclose the man's history of sexual wrongdoing with students in their districts. The case involved a school administrator who had asked his previous employers to make recommendations on his behalf, and in each case the employees of those districts provided recommendations that contained positive comments about his performance, but omitted the fact that this administrator had been the subject of complaints of sexual misconduct at each district, and had in several cases been forced to resign. None of the recommendations made any reference to this history. A new school district then hired the man, based on the recommendations, and he subsequently molested a 13-year old girl there.

Since the ruling in the above mentioned case, the Legislature amended the California Civil Code to authorize a current or former employer to simply state whether the employer would rehire the employee. This type of response would be privileged and protected from a defamation lawsuit unless made maliciously. It is important to note that the California Code of Regulations provides that a certificated employee who makes a recommendation, knowing that it will be relied upon by another district for employment decisions, may lose his or her credential if it intentionally omits significant facts or states as facts matters the writer has no knowledge are true.

With all this in mind, it is recommended for the Principal to discuss the key elements of any reference with the former employee before providing it. Further, it is important to ensure that what is stated provides adequate information to verify its truth, regardless of positive or negative. It is also best to clearly label any statements of personal opinion. Naturally, if the Principal does not feel comfortable with providing a good reference, then it is best to decline. These simple suggestions should greatly reduce any chance for defamation or liability litigation.

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