When Do Parents Really Pose a Safety Risk?

By Perry A. Zirkel

A relatively small percentage of parents may, at times, engage in conduct that principals regard as substantially interfering with the instructional process, or even representing a threat to the safety of members of the school community. In the March/April 2011 issue of *Principal* magazine, we examined court cases that illustrated the legality of various school district responses to such parental conduct.

The following case provides an example of other relevant and relatively recent litigation. The accompanying question-and-answer discussion illustrates the variety of related case law issues and judicial outcomes concerning parental behaviors that school representatives perceive as offensive, disruptive, or a threat to school safety.

The Case

During the 2010–2011 school year, T.W. was a second-grader at an elementary school in Illinois. According to his mother, T.W. is bipolar, engaging in "a lot of screaming and a lot of yelling."

At the start of the school year, T.W.'s teacher, Ms. J, referred him to the principal for "disruptive behavior occurring throughout the day." After talking with T.W., the principal gave him one week of recess detention.

Approximately two weeks later, Ms. J issued a second disciplinary referral, for calling the art teacher "stupid" and trying to push a desk into other students. After talking with him again, the principal gave him three noon detentions and called his mother. Three days later, Ms. J issued a third referral, because T.W. had hit another student with his book and exploded verbally, calling his classmates and Ms. J "bastards" and calling her a "freak." After calling T.W.'s mother to report the incident, the principal sent him home at 1 p.m. for the next three days. However, the next morning T.W. continued his disruptive behaviors, including yelling, kicking furniture, and calling the teacher names. The principal removed him from the classroom, telephoned home, kept him until 1 p.m., and suspended him for three days.

A week after returning to school, T.W. had another episode, which included dumping over classroom furniture and using foul language. When the principal took him to her office, he called her "asshole." She telephoned his mother to pick him up and assigned him four detentions.

The next day, he hit another student in the face with a book bag and pushed the principal, resulting in another three-day suspension. When he started acting up upon his return, the principal called T.W.'s mother.

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Later that day, his mother emailed the superintendent, complaining about the principal.

A few days later, when the principal was escorting students into the building, T.W. refused to get in line, hit her on the arm, and threw his bookbag at her. The next morning T.W.'s mother came to school and aired her complaint with the principal. Upon learning of T.W.'s latest behavior, she asked whether the principal was going to suspend him again. The conversation became heated when his mother accused the principal of yelling at him, intentionally setting off his loss of control. She incompletely warned the principal, "If you ever scream at my son like you did yesterday. …" The principal informed T.W.'s mother that he was suspended.

T.W.'s mother filed a civil rights suit in federal court against the principal, claiming that the last suspension was in retaliation for her First Amendment expression of advocacy against the principal's treatment of her son. The principal responded with a motion for summary judgment, i.e., prior to a trial, asserting that the parent's expression was not protected under the First Amendment and, even if it were, the suspension was attributable to T.W.'s conduct, not his mother's expression.

What do you think was the court's ruling in response to the defendant principal's motion for summary judgment?
In *Wysocki v. Crump* (2011), the court granted the defendant-principal's motion for summary judgment, ruling that she was entitled to qualified immunity, which protects governmental employees from liability for alleged violations of federal law that are not clearly settled. More specifically, the court concluded that a reasonable principal under the circumstances would not have reason to know that the parent's communication to her about a private matter was entitled to First Amendment protection. The reason is that the courts had split as to whether the public concern criterion, which applies to governmental employees, applies to First Amendment retaliation claims of private citizens against the government or its representatives. Because the constitutional protection was not clearly established, the court did not proceed to the next step, which was whether the parent's communication, rather than the child's conduct, was the cause of the suspension.

Have other recent retaliation claims brought by parents under the Constitution had similar outcomes?
Yes, although the routes have varied. For example, in *Garten v. Hochman* (2010), a divorced parent who had a dispute with his former wife about their two children's school assignment sued the superintendent for changing their school assignments against his wishes, claiming that it constituted retaliation for his nondisruptive opposition. The court dismissed the suit, concluding that the parent failed to state a claim for violation of his First Amendment right in intimate association.

In T.W.'s case, would his parent have viable claims under legal bases other than the First Amendment?
Depending on a fuller account of the "facts," which are allegations interpreted in the light of the party opposing a motion for summary judgment, the parent may have a viable claim for "child find" under the Individuals with Disabilities Education Improvement Act (IDEA) or Section 504 of the Rehabilitation Act and, to the extent that the child is eligible under either of these two disability laws, retaliation under the Americans with Disabilities Act (ADA). However, the retaliation claim would still face further hurdles, including whether she was advocating T.W.'s rights as an individual with a disability and whether the suspension was based on her advocacy rather than his behavior.

If T.W.'s mother had completed her warning to threaten the principal or otherwise pose a perceived safety risk to the teacher, the principal, and/or the school community, would a no-trespass notice prohibiting her entry onto school property and to school activities withstand judicial challenge?
Not necessarily, depending on the extent of the perceived risk and the specific scope of the ban. Although the First Amendment does not protect threats, what the principal or other staff member perceives as threatening may not meet the objective standard for a threat. Additionally, some states have statutes providing parents with the right to access their child's classroom unless they are disruptive, with disruptiveness again being a matter for judicial review. Finally, courts generally require such prohibitions to provide sufficient 14th Amendment procedural due process protection for the affected individual and, under the First Amendment, to be narrowly tailored in relation to significant governmental interest and providing alternative channels for expression. For example, in *State v. Green* (2010), an appeals court in Washington reversed the conviction of a parent for criminal trespass arising from her entry into her child's elementary school in violation of such a ban because the district had not sufficiently proven (a) clear notice and (b) disruptiveness. In *Johnson v. Perry* (2015), a federal court in Connecticut denied the district's and principal's motions for summary judgment, concluding that a broad ban of a parent raised First Amendment and 14th Amendment questions for a jury to decide. As an example that focused on access to board meetings, a federal court in *Cyr v. Addison Rutland Supervisory Union* (2014) ruled that a categorical ban on a parent's attending and speaking at open school board meetings violated his First Amendment expression and 14th Amendment procedural due process rights.

Counterbalancing Considerations
Certainly, principals are expected to provide environments that not only promote academic achievement but also—especially in the light of continuing violent tragedies such as the shooting at Sandy Hook Elementary School in Newtown, Connecticut—school safety. However, various legal questions provide counterbalancing considerations in relation to parental conduct.

The first issue to consider is whether the parent's behavior is reasonably perceived as beyond the pale and whether less-restrictive alternatives would mitigate the problem. Conversely, is the treatment of the parent and child clearly even-handed and not retaliation for the right, as both a parent and a citizen, to criticize teachers and administrators? Next, if the behavior is sufficiently and irremediably problematic, is the school's response carefully tempered and tailored to resolve the situation, while providing alternative channels for expression?

The message is to avoid overreaction to what may, on first impression, appear to be unacceptable parental behavior. In T.W.'s case, when the conversation becomes heated on the parent's side, the key for the principal is to remain cool and calm, using professional skill for an effective and measured response. P

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