

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A25-0930

A25-1002

A25-1008

N A BROTHERS LLC, d/b/a Goddard School of Albertville,
Respondent,

vs.

Heather Werts, et al.,
Appellants (A25-0930),
Defendants (A25-1002, A25-1008),

Megan Rothstein,
Defendant,

Rachel Caballero-Morris,
Appellant (A25-1008),
Defendant (A25-0930, A25-1002),

Juliana Marie Biederman,
Defendant,

Samantha Martinez,
Appellant (A25-1002),
Defendant (A25-0930, A25-1008).

Filed March 9, 2026
Reversed and remanded
Reyes, Judge
Dissenting in part, concurring in part, Wheelock, Judge

Wright County District Court
File No. 86-CV-24-5712

Brian N. Niemczyk, Nicklaus A. Johnson, Hellmuth & Johnson, PLLC, Edina, Minnesota
(for respondent)

Samuel A. Savage, Savage Westrick, PLLP, Bloomington, Minnesota (for appellants
Heather Werts, et al.)

William L. Davidson, Brian A. Wood, Matthew D. Sloneker, Lind, Jensen, Sullivan & Peterson, PA, Minneapolis, Minnesota (for appellant Rachel Caballero-Morris)

Chad A. Snyder, Michael H. Frasier, Rubric Legal, LLC, Minneapolis, Minnesota (for appellant Samantha Martinez)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

REYES, Judge

Appellants challenge the district court's denial of their special motions for expedited relief seeking dismissal of respondent's claims under the Uniform Public Expression Protection Act (UPEPA), Minn. Stat. §§ 554.07-.20 (2024), and we consolidated their interlocutory appeals. Appellants argue that the district court erred by (1) determining that UPEPA does not apply and (2) denying their motions for expedited relief. We reverse and remand.

FACTS

Consistent with applicable law, the following factual summary is based on the record before the district court on the special motion for expedited relief and is presented in the light most favorable to respondent as the nonmoving party. *See J&D Dental v. Hou*, 26 N.W.3d 491, 494 n.1 (Minn. App. 2025).

Appellants Samantha Martinez, Heather Werts, Jazmyne Theis, and Rachel Caballero-Morris participated in online discussions about childcare providers in the St.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Michael-Albertville area. These discussions took place in two Facebook groups, named “St. Michael Albertville Bulletin Board” and “STMA Moms.” All appellants made comments about respondent N A Brothers, LLC, doing business as The Goddard School of Albertville (“Goddard”), its owner, or its staff. The comments reflected appellants’ experiences with Goddard, either as former employees or as parents whose children attended the school. Appellants also discussed investigations by the Minnesota Department of Human Services (DHS) into Goddard, including publicly available reports of substantiated allegations of child abuse occurring at Goddard. In addition to appellants, the online discussions included multiple participants who commented both positively and negatively about local childcare providers, including Goddard. Goddard sued appellants and two nonappealing co-defendants, claiming that they defamed Goddard and conspired with each other to do so. Appellants’ statements appear below:

A. Statements by Appellant Caballero-Morris

STMA MOMS

Private group · 2.5K members

Invite

Share

Joined

Discussion

Featured

Members

Events

Media

Files



J. [redacted] B. [redacted]

Top Contributor · February 15 · 🌐

...

You may have seen Goddard Albertville marketing their new Parent Aware rating to draw people in. If you're considering attending, you should know about the teachers they hire first. DHS just published this report a few weeks ago about a teacher at Goddard Albertville, and my son is one of the students mentioned. Please, I urge you to be careful if you're considering them for childcare.



DHS.STATE.MN.US

LLO_465788

Minnesota Statutes, section 260E.01, paragraph (a), "The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through maltreatment."

 12

Like

Comment

Send

All comments

35

- Ray Caballero-Morris

Admin Top Contributor

Absolutely disgusting!

9w

Like

Reply
- E S

Thank you for sharing. In a world where places can pay Google to remove honest negative reviews, it is good when people speak out to spread awareness when it impacts the innocent children of the world.

9w

Like

Reply
- H K

Is DHS convicting this animal? Or is it just a slap on the wrist, per usual? This is disgusting.

9w

Like

Reply
- Ray Caballero-Morris

Admin Top Contributor

H K animals! There is multiple guilty of this there

9w

Like

Reply

Edited
- H K

Ray Caballero-Morris disgusting.

9w

Like

Reply
- Ray Caballero-Morris

Admin Top Contributor

H K agreed! S P and I advocate for this to be a safe space to share this info because of the length people go to to cover it up!

9w

Like

Reply
- H K

So, any repercussions or justice for these children? Just wondering....since this "system" has done NOTHING to protect my children in the past. You should get in touch with KARE 11.

9w

Like

Reply
- S P

Admin Group expert +1

Ray Caballero-Morris I absolutely feel we need full transparency on this topic because we are all moms! This is very disturbing.

9w

Like

Reply
- J E

Author Top Contributor

H K it appears like the teacher will not be able to work with children again, but no punishment for the school at which things like this have happened several times now. I have submitted the report, along with a similar report that came out from a school in Eden Prairie in January, but not sure if anyone will pick the story up.

H [redacted] K [redacted]
J [redacted] B [redacted] well, good for you!! I hope that one of these days this system gets exposed for not holding those that hurt our children, responsible. But, its a hope that I dont hold onto too tightly. Its infuriating.

9w Like Reply



Ray Caballero-Morris [Admin](#) Top Contributor
J [redacted] B [redacted] and just so we are all clear here, they all did their part in covering g this up. The teachers all the way up to the owner!

9w Like Reply

F [redacted] F [redacted]
Thank you for sharing the report. Grateful for the teachers we trusted there who told us the truth about these incidents so we knew to leave ❤️ so sorry your son had to go through this.

9w Like Reply



A [redacted] D [redacted]
F [redacted] exactly if the teachers hadn't come forward we would never have known our suspicions were true!

9w Like Reply



Reply to [redacted]



B. Statements by Appellants Caballero-Morris and Martinez

STMA MOMS

Private group · 2.5K members

Invite

Share

Joined

Discussion

Featured

Members

Events

Media

Files



K. G. (redacted)
March 4 · 🌤️

...

Hello! Thanks for accepting me into the group, my name is K. G. (redacted) and im a single mother, we will be moving to the area shortly and looking for a preschool center for my daughter. I toured a couple if places and looking for any input / advise you might have. Looking foward this next chapter and meeting new people!

👍❤️ You and 3 others

30 comments

Love

Comment

Send

All comments



Ray Caballero-Morris Admin Top Contributor

Definitely stay away from the Goddard School and Little Miracles. Active cases of child abuse.

Welcome to the area! S. F. (redacted) and I are glad you are here ! ❤️

6w Love Reply

5 👍❤️



Samantha Martinez

Ray Caballero-Morris little miracles is for sale and closed currently

6w Like Reply



L. G. E. (redacted)

Ray Caballero-Morris really? On my God!

6w Like Reply



Samantha Martinez

L. G. E. (redacted) yeah the staff walked out again and the owner was forced to sell the business

6w Like Reply



L. G. E. (redacted)

Samantha Martinez He seem so money hungry and that was a turn off

6w Like Reply



Ray Caballero-Morris Admin Top Contributor

L. G. E. (redacted) serves him right! Protect the innocent 🙏

Samantha Martinez
L [REDACTED] G [REDACTED] E [REDACTED] little miracles had a female owner. the goddard owner is currently looking to sell the business or hire on a co-owner because he realized he was over his head in childcare. I, but I doubt anyone will buy it seeing as this isn't the target demographic for a goddard school.

6w Like Reply

Samantha Martinez
L [REDACTED] G [REDACTED] E [REDACTED] He was just a turn off to me... not on I would want any business with. That's messed up because that's a lot of money invested gone to waste.

6w Like Reply

Samantha Martinez
L [REDACTED] G [REDACTED] E [REDACTED] the city and goddard warned him that is wasn't a good investment he didn't listen plus he is totally unqualified to run a childcare center. It takes more then money to be in this business. He was just another person that saw it as glorified babysitting, not early childhood education. The sad part is I worked for Goddard for almost 5 years and as a teacher this company was the best I have seen to clients, teachers, and children. It's a shame that he is tarnishing thier name cause they have incredibly high standards when it comes to franchise owners and Even have thier own "licensing" that visits just as much if not more then state licensing to ensure thier high standards. It's a shame that a uneducated business owner can turn a whole area against an amazing company with bad business practices. It's honestly a shame and I hope that people will not think this is a company wide issue It's just this specific owner. I hope he is able to sell and the next owner is actually able to show this area what an amazing school looks like

6w Like Reply Edited

Samantha Martinez
L [REDACTED] G [REDACTED] E [REDACTED] It is unfortunate. As an entrepreneur myself, I can honestly say the journey comes with a lot of trial and errors. And sometimes our heads is so far up our asses we do hear advice. And yes it cost. When I started my construction painting company, I'd only been a painter 2 months. I knew business but I didn't know construction management at all. Made a lot errors through the process. I didn't quit, took my loses, corrected my wrongs. So it happens. I tell you one thing, if giving another shot, he'll do things totally different. But it's super such big bullet in the butt and mental disruption. So I pray he grow from the experience and press forward with him entrepreneurial endeavors.

6w Like Reply

Reply to [REDACTED]

Reply to Ray Caballero-Morris...

J [REDACTED] S [REDACTED]
We switched from Goddard to Li Explorers and LOVE it

6w Love Reply

2  

J [REDACTED] B [REDACTED] Top Contributor
We also switched from Goddard to lol Li Explorers Childcare, Otsego and we love it!!!

6w Love Reply



N [REDACTED] H [REDACTED]
Welcome K [REDACTED] We take our three year old to Primrose School of Rogers and they are great!



K G Author

Ok wow!! my daughters father (my ex) was looking at Goddard and was pushing me that direction. Does anyone have more info i can pass along to him about what going on?

6w Like Reply

K G Author

So glad i asked about this!!!!

6w Like Reply

J B Top Contributor

K G tagging you in a post now!! This is only one of the maltreatment investigations that I've been part of in the last year. And there are many others.

6w Like Reply

K G Author

J B thanks! i will take a look.

6w Like Reply

Reply to

L H

K G a lot of previous staff can tell you how not great it was to work there too and how the owner was!

6w Like Reply

Reply to

L J

Primrose School of Rogers has a wonderful curriculum program and amazing staff! There is availability in the preschool program!

6w Like Reply

K G Author

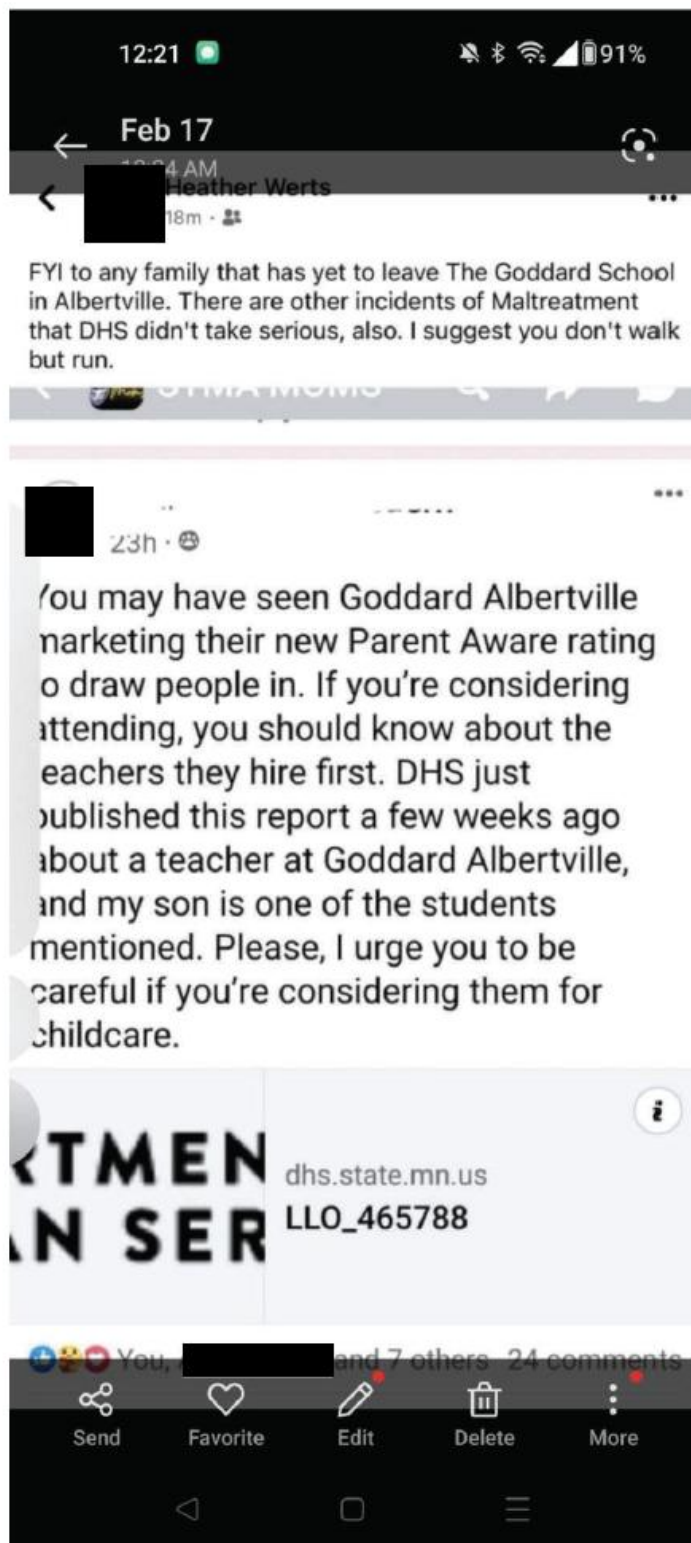
L J thanks !!

6w Like Reply

Reply to

Continued c

C. Statements by Appellant Werts





Heather

Active Now



Hi Heather! This is K [redacted] from STMA moms, i am looking into a center for my daughter and was told that you might have some information about the goddard school. My ex is trying to get me to enrole her their, i have heard some "no so great" things about them. Wondering if you have some intel so i can inform him. Thanks

1:32 PM

Can I ask who asked you to message me?

You can now message and call each other and see info like Active Status and when you've read messages.

I am the former director for The Goddard School. I quit last year.

J [redacted] directed me to a post you made



Oh you actually worked there?

Okay! Well I can say they have lost over 60 children since I left due to the owner, staff turn over and maltreatment cases.

Yes I was the director of the School and quit last March.

My ex is hell bent on getting me to enrole, i dont know why

All the good teachers that worked their have left and most work at Lil Explorers in Albertville along with abo 5 plus kids from the Goddard School including mine!

Heather
Active Now

The Goddard School is normally known to be to top of the top for child care centers but that is far from the case with the Albertville location.

The owner tries to cover everything up until he knows he is going to actually get investigated. You can see previous post on STMA mom's about all the stuff that has happened there.

I did read the report on Goddard the findings seemed kinda vague, but alot of people reached out and said stay away.

The owner has no child care experience and comes from an IT background and his main focus is on his 3 UPS stores. He is never there to support the school.

Yeah there is also a maltreatment case that happened over the Summer that was never investigated. A child was verbal and physically abused. With held food and water, child locked in a closet, ect. Owner covered all that up.

Ok wow. Thats crazy,

The 2nd investigation reported on the MN DHS page with the whole documentation. The owner tried to cover that one up to and placed blame in the teachers for reporting him but it was actually the parents only after they came to him and he made excuses for the teacher. He also still says its false accusations even though the teacher admitted to the abuse.

D. Statements by Appellant Theis

A B
Top contributor · 4h · 🌐

...

Looking for reviews of the Goddard School in Albertville? Just moved nearby. TIA!

4
31 comments

Like
 Comment
 Send

All comments

S S
I have seen a lot of people express bad experiences there, unfortunately. I do not

have my own experience to share but like the other person mentioned, asking in the STMA moms group could be very helpful as well! Good luck in your search!

3h Like Reply



J [REDACTED] D [REDACTED] Top contributor
Haven't heard anything good

2h Like Reply

A [REDACTED] E [REDACTED] Author Top contributor
J [REDACTED] D [REDACTED] can you expand? Thanks!

6m Like Reply

C [REDACTED] P [REDACTED]
try Lil' Explorers Childcare Center, Albertville !

2h Like Reply



K [REDACTED] H [REDACTED] Top contributor
I second this

26m Like Reply

J [REDACTED] B [REDACTED] Top contributor
We pulled our children from there immediately and they are at Lil Explorers happily now. Feel free to PM if you have any questions!

2h Like Reply



C [REDACTED] W [REDACTED] Top contributor
All daycare records are available online to review so you can see if/when any incidences occurred

2h Like Reply



M [REDACTED] H [REDACTED] Top contributor
Our daughter went there for over a year. My issue is that they turned teachers over like crazy. I think we had 5-6 teachers in the small amount of time we were there. It also sounded like it was a tough working environment under the owner. She enjoyed it and has lots of good memories and I never once had concerns about her health and well being. It just seemed like a lot of behind the scenes drama.

2h Like Reply



M [REDACTED] E [REDACTED] Top contributor
We have really liked [REDACTED] New Creations Child Care & Learning Center. Staff is amazing!

2h Like Reply



C [redacted] B [redacted] Top contributor

We've been there for a year & love it. So we've had a great experience personally. I have toured other centers locally too to compare, and we still like Goddard the best.

2h Like Reply Edited



D [redacted] S [redacted]
C [redacted] B [redacted]

I call you daughter "smiley girl"! She is just the sweetest!

48m Like Reply



C [redacted] B [redacted] Top contributor

D [redacted] S [redacted] She is so happy at school! And I love the pics you take with her!!

20m Like Reply Edited



D [redacted] S [redacted]

C [redacted] B [redacted] that's so good to hear! And thank you!

3m Like Reply

M [redacted] S [redacted]

We like it there! We have been there over a year. Our kids enjoy it. We have had some awesome teachers.

There is turnover everywhere these days and daycares are not immune to that. I feel like my kids are cared for and safe.

Jazmyne Theis

I have worked at that daycare and do not like anything about it. The owner doesn't cater to need of the staff or family's. He does not listen to you and I have had some pretty bad experiences with teachers being to physically rough when "disciplining" the children or yelling at them. I worked there for about 4-5 months and only 2-4 teachers stayed out of about 25. Maybe it's better now sense I last worked there October of last year but definitely a lot of in and out! Feel free to PM if you have any questions about stuff that went on or the programming

1h Like Reply



A [redacted] B [redacted] Author Top contributor

Jazmyne Theis sending pm

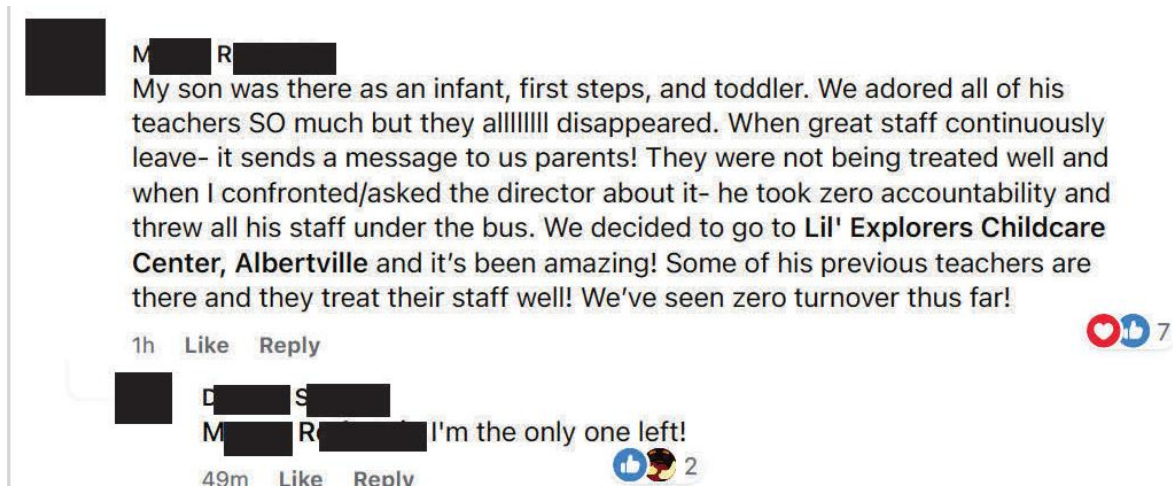
1h Like Reply

T [redacted] Y [redacted]

Jazmyne Theis I'm sorry that was your experience. Please don't discourage families based on teachers who no longer work for the school or because of your experiences with prior leadership! We have wonderful teachers who are passionate about the care they provide, seeing posts like this about experiences they were not a part of is not fair to current prospective families. Thank you

14m Like Reply Edited





Appellants filed special motions for expedited relief, requesting that the district court dismiss Goddard’s complaint with prejudice under UPEPA and Minnesota Rule of Civil Procedure 12.02(e). The district court denied the motions, determining that UPEPA did not apply and appellants’ statements were capable of being defamatory. The district court further determined that Goddard had stated a claim for civil conspiracy for which relief may be granted.

This appeal follows.

DECISION

At issue on appeal is the scope of UPEPA, Minnesota’s anti-SLAPP (strategic lawsuit against public participation) statute. Minn. Stat. §§ 554.07-.20; *J&D Dental*, 26 N.W.3d at 496. Anti-SLAPP statutes are “designed to present substantive consequences” of SLAPP actions, such as “the impairment of First Amendment rights and the time and expense of defending against litigation that has no demonstrable merit.” *Id.* at 496 n.2. UPEPA applies to several types of civil actions, including causes of action brought “against a person based on the person’s . . . exercise of the right of freedom of speech or of the press, . . . guaranteed by the United States Constitution or the Minnesota Constitution on a matter

of public concern.” Minn. Stat. § 554.08(b)(3). Under UPEPA, a party may file a special motion for expedited relief seeking dismissal of the cause of action within 60 days after being served with the complaint. *See* Minn. Stat. § 554.09.

“UPEPA directs courts assessing special motions for expedited relief to engage in a three-part analysis.” *J&D Dental*, 26 N.W.3d at 496. A district court must determine whether (1) “UPEPA applies to the action at issue,” (2) “the nonmoving party has established a prima facie case for each essential element of the challenged causes of action,” and (3) “the moving party has demonstrated a basis for dismissal either for failure to state a claim or because there are no genuine issues of material fact and judgment is appropriate as a matter of law.” *Id.* (citing Minn. Stat. § 554.13(a)(1)-(3)). “We review a district court’s decision on a special motion for expedited relief under UPEPA de novo,” independently examining the record. *Id.* at 496, 499; *Cook v. Trimble*, 22 N.W.3d 196, 204 (Minn. App. 2025), *rev. granted on other grounds* (Minn. Aug. 12, 2025). Following *J&D Dental*, we begin our analysis by first examining whether UPEPA applies. Because the second element is not disputed, we next proceed to analyze whether appellants have shown that they are entitled to judgment as a matter of law.

I. The district court erred by determining that the speech at issue was not on a matter of public concern¹ and that UPEPA does not apply.

Appellants argue that the district court erred by determining that UPEPA did not apply to their online statements because the quality of childcare and child maltreatment at childcare centers are matters of public concern to the community. We agree.

¹ The phrase “on a matter of public concern” is a term of art used in UPEPA and First-Amendment caselaw. *See, e.g., Snyder v. Phelps*, 562 U.S. 443, 451-58 (2011); *Johnson v. Freborg*, 995 N.W.2d 374, 387-89 (Minn. 2023).

UPEPA “*must be broadly construed and applied* to protect the exercise of the right of freedom of speech and of the press.” Minn. Stat. § 554.17 (emphasis added). Speech regards a “matter[] of public concern when it can be fairly considered as *relating to any matter of political, social, or other concern to the community* or when it is . . . a subject of general interest and of value and concern to the public.” *Snyder*, 562 U.S. at 453 (emphasis added) (quotations and citation omitted).²

Here, the district court determined that, even looking at the statements “within the context of the entire online discussion, the dialogue does not implicate an intention to influence public discourse about desired political or social change.” But that is not the correct standard. The proper standard asks whether the speech “relat[es] to any matter of political, *social, or other concern to the community*.” *Id.* (emphasis added) (quotation omitted).

Moreover, appellants provide several reasons why their statements related to a matter of concern to the community, including: (1) the many news reports that appear locally, nationally, and internationally when child abuse is reported at childcare centers; (2) the state’s regulation of childcare facilities and public posting of maltreatment reports; (3) legal authority declaring “that the public policy of [Minnesota] is to protect children whose health or welfare may be jeopardized through maltreatment,” Minn. Stat. § 260E.01 (2024); and (4) the high frequency of discussions in various Facebook groups in the St. Michael-Albertville area about abuse and maltreatment at childcare centers.

² Minnesota courts “rely[] on *Snyder* to guide the public-concern determination in tort actions generally.” *Freborg*, 995 N.W.2d at 388 n.4.

As a general matter, child abuse and “legal recourse available to [an] abused child” are matters that “are certainly of public concern.” *Richie v. Paramount Pictures Corp.*, 544 N.W.2d 21, 26 (Minn. 1996). “There is a strong public interest in reporting child abuse and protecting children from further abuse.” *Bol v. Cole*, 561 N.W.2d 143, 150 (Minn. 1997). We conclude that the district court erred as a matter of law by construing speech on matters of public concern to include only speech intending to influence political or social change.

However, our analysis does not end there because there is no per se rule that statements about child maltreatment and its occurrence at childcare centers “are always [speech on] matters of public concern.” *Freborg*, 995 N.W.2d at 385 (emphasis omitted). Instead, we evaluate the speech “on a case-by-case basis, apply the totality of the circumstances test and balance the content, form, and context of the speech, as well as any other pertinent factors, to determine whether [the] speech involves a purely private matter or is a statement about a matter of public concern.” *Id.* We assess “what was said, where it was said, and how it was said.” *J&D Dental*, 26 N.W.3d at 498 (quotation omitted). We begin by considering the form of appellants’ speech (where the speech was said), then its content (what was said), and finally its context (how it was said).

E. With the exception of a one-on-one conversation, the form of appellants’ speech weighs strongly in favor of concluding that appellants’ speech was on a matter of public concern.

We first consider the form, or “where” appellants spoke. “[S]ocial media acts as the ‘modern public square’ and . . . sites like Facebook ‘allow a person with an Internet connection to become a town crier with a voice that resonates farther than it could from any soapbox.’” *Freborg*, 995 N.W.2d at 389 (quoting *Packingham v. North Carolina*, 582

U.S. 98, 107 (1997)). In *Freborg*, the supreme court considered a Facebook post in which a dancer accused three of her former dance instructors of sexual assault. *Id.* at 380-92. When considering the form of her speech, the supreme court noted that the dancer disseminated her speech through a public posting on Facebook, increased its reach through use of specific hashtags, and concluded that the dominant theme of her post spoke to the broader issue of sexual abuse, a matter of public concern. *See id.* at 389-90. Similarly, in *J&D Dental*, this court concluded that posting a series of Google reviews online weighed in favor of the conclusion that the speech was on a matter of public concern. 26 N.W.3d at 501-02.

Here, the record shows that appellants' speech was "posted on private Facebook groups, on [Werts's] personal Facebook profile accessible only to 'friends,' and through private messaging." Goddard cites no cases to support its contention that posting to Facebook groups does not weigh in favor of concluding that the speech was on a matter of public concern as it did in *Freborg* and *J&D Dental*. The Facebook groups in which appellants posted had anywhere from 2,500 to 26,000 members each and the record indicates that they were accessible to each and every member of the group in which they were posted. Moreover, the record shows that at least one of the Facebook groups is categorized on the site as a "public group." The comparison of social media websites to a modern public square is apt and instructive. Social media sites "for many are the principal sources for . . . speaking and listening in the modern public square" *Packingham v. North Carolina*, 582 U.S. at 107. Here, members of the St. Michael-Albertville community could, and did, go online to discuss issues of public concern. Even Goddard's executive

director joined the conversation in which the statements at issue were made as a community member.

Regarding the comment on Werts's personal Facebook page, Goddard acknowledges that its audience could reach up to 5,000 Facebook users, which Goddard admits is "a fairly large audience." Because Werts's speech on her personal Facebook page was available to community members and she linked the post back to the larger childcare and abuse discussion in the STMA Moms Facebook group, its form weighs strongly in favor of a determination that the speech was on a matter of public concern.

Werts also engaged in a Facebook Messenger conversation involving only one other person, K.G., a local community member. This conversation was different from an online posting with which third parties could access and engage. Because it involved only the speaker and one other person, the form weighs against concluding that the speech was on a matter of public concern. However, we must still consider the totality of the circumstances of the speech, including the content and context of the speech, which we do in the next two sections. *See J&D Dental*, 26 N.W.3d at 498.

The form of appellants' remaining speech, all of which was available to thousands of local community members on a public social-media site, weighs strongly in favor of the conclusion that the speech was on a matter of public concern.

F. The content of the speech weighs in favor of concluding that appellants' speech was on a matter of public concern.

Next, we consider whether the content, or the "what," of the challenged speech weighs in favor of concluding that the speech was on a matter of public concern. Goddard's complaint cited specific statements within appellants' social-media posts, alleging that

these statements were defamatory. When “the component parts of a single speech are inextricably intertwined, we cannot parcel out the speech, applying one test to one phrase and another test to another phrase. Such an endeavor would be both artificial and impractical.” *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 796 (1988). Instead, when evaluating the content of speech, we consider all comments made by the speaker within the conversation to determine the dominant theme of the speech. *Id.* at 796; *see also J&D Dental*, 26 N.W.3d at 499-500 (explaining that “we do not examine these statements in isolation,” but instead “consider the entirety of [the speech] to determine whether the speech is on a matter of public concern”). We also review the immediate conversation within which the speech is situated to the extent that it helps us evaluate the content of the speech.³ *See Freborg*, 995 N.W.2d at 386 (looking to the “broader context and response posts” within the thread to evaluate content).

In *Freborg*, the dancer’s post referenced “all these women dancers coming out” and used #MeToo and #DancePredators hashtags. *Id.* at 380. The supreme court concluded that, even though the dancer “named, tagged, and admonished three specific instructors in her post, these personal messages [did] not outweigh the dominant theme of her speech—to discuss sexual assault in the dance community, a matter of public import.” *Id.* at 387.

In a contrasting case, this court considered whether the content of a dental patient’s negative online review about care she received from a dental provider favored a

³ In the third prong of the totality-of-the-circumstances test, we evaluate context to determine whether the speech is connected to a broader conversation taking place within the community or society at large. *Freborg*, 995 N.W.2d at 390-91. This is a wider view than the immediate conversation we consider when evaluating content in the second prong. *Id.*

determination that the speech was on a matter of public concern under UPEPA. *J&D Dental*, 26 N.W.3d at 495-96, 501-02. The patient’s review included a comment that “[a]nyone who cares about their dental health should avoid this [provider]!” *Id.* at 500. We examined the patient’s statements as a whole, noting that “[t]he majority of [her] speech recounts an individual grievance about her personal experience” with that dental provider. *Id.* We concluded that the “overall thrust and dominant theme of [the] speech was to discuss [a] personal grievance with [the provider] and not to speak to broader public issues or discuss a matter of public import.” *Id.* at 501 (quotation omitted). With these principles in mind, we separately evaluate the content of each appellants’ alleged defamatory statements

1. Statements by Appellant Caballero-Morris

Goddard contends that Caballero-Morris made three defamatory statements in two Facebook conversations. The statements are provided in italics below, alongside the conversation in which they were made.

J.B. initiated and posted the following conversation on which Caballero-Morris commented:

J.B.: You may have seen Goddard Albertville marketing their new Parent Aware rating to draw people in. If you’re considering attending, you should know about the teachers they hire first. DHS just published this report a few weeks ago about a teacher at Goddard Albertville, and my son is one of the students mentioned. Please, I urge you to be careful if you’re considering them for childcare. [attached link to webpage on dhs.state.mn.us]

Caballero-Morris: Absolutely disgusting!

- E.S.: Thank you for sharing. In a world where places can pay Google to remove honest negative reviews, it is good when people speak out to spread awareness when it impacts the innocent children of the world.
- H.K.: Is DHS convicting this animal? Or is it just a slap on the wrist, per usual? This is disgusting.
- Caballero-Morris: [H.K.]⁴ animals! *There is multiple guilty of this there.*
- H.K.: [Caballero-Morris] disgusting.
- Caballero-Morris: [H.K.] agreed! [S.P.] and I advocate for this to be a safe space to share this info because of the length people go to cover it up.
- H.K.: So, any repercussions or justice for these children? Just wondering... since this “system” has done NOTHING to protect my children in the past. You should get in touch with KARE 11.
- S.P.: [Caballero-Morris] I absolutely feel we need full transparency on this topic because we are all moms! This is very disturbing.
- J.B.: [H.K.] it appears like the teacher will not be able to work with children again, but no punishment for the school at which things like this have happened several times now. I have submitted the report, along with a similar report that came out from a school in Eden Prairie in January, but not sure if anyone will pick the story up.
- H.K.: [J.B.] well, good for you!! I hope that one of these days this system gets exposed for not holding those that hurt our children responsible. But, it’s a hope that I don’t hold onto too tightly. It’s infuriating.
- Caballero-Morris: [J.B.] and just so we are all clear here, *they all did their part in covering this up. The teachers all the way up to the owner!*

⁴ We place names in brackets to indicate when individuals tagged another Facebook user in their comment.

. . . .

J.S.: I urge everyone when looking into any type of daycare facility to check out their license information on <https://licensinglookup.dhs.state.mn.us>. You can find any corrective actions taken along with if they have any maltreatment findings.

Here, J.B. began the conversation by referring to a DHS report to warn others about the risks she believed were present at Goddard. J.B. also included a link to the DHS website regarding the investigation involving Goddard.⁵ The conversation subsequently involved child abuse at childcare centers generally and the need to have open conversations to protect children. Caballero-Morris responded by sharing that multiple people were guilty of harming children at Goddard and that she believed Goddard's staff covered up the abuse. Caballero-Morris specifically stated that she advocates for the Facebook group to be a safe space to share information. Several other participants also emphasized the importance of speaking out on matters impacting children's welfare.

While Caballero-Morris expressed her belief that teachers and the owner were covering up the abuse, we conclude that the majority of Caballero-Morris's speech and, therefore, its dominant theme, was to discuss child maltreatment in local childcare centers, a matter of public concern.

Caballero-Morris participated in a second conversation that another member of the Facebook group, K.G., initiated:

⁵ To the extent that Werts or other appellants reference child-abuse allegations investigated by DHS, UPEPA applies. See Minn. Stat. § 554.08(b)(2) (UPEPA applies to "communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding").

K.G.: Hello! Thanks for accepting me into the group, my name is [K.G.] and I'm a single mother, we will be moving to the area shortly and looking for a preschool center for my daughter. I toured a couple of places and looking for any input/advice you might have. Looking forward to this next chapter and meeting new people!

Caballero-Morris: Definitely stay away from the Goddard school and Little Miracles. *Active cases of child abuse.* Welcome to the area! [S.P.] and I are glad you are here!

Martinez: [Caballero-Morris] little miracles is for sale and closed currently.

L. G.-E.: [Caballero-Morris] really? Oh my God!

....

J.S.: We switched from Goddard to Lil Explorers and LOVE it.

J.B.: We also switched from Goddard to Lil Explorers Childcare, Ostego and we love it!!!

N.H.: Welcome, [K.G.]! We take our three-year-old to Primrose School of Rogers and they are great!

Here, Caballero-Morris made her statement in response to a question in the group and noted that not only Goddard but also Little Miracles were being investigated for child abuse. Again, she participated in a broader conversation about which local childcare centers were safe for children. The content of Caballero-Morris's statement weighs in favor of concluding that it was on a matter of public concern.

2. Statements by Appellant Werts

Goddard also claims that Werts made defamatory statements. We italicize the challenged statements below. The first statement reads, "FYI to any family that has yet to

leave The Goddard School in Albertville. *There are other incidents of Maltreatment that DHS didn't take serious[ly] also.* I suggest you don't walk but run.”

Werts expressed concern about incidents of child maltreatment that she believed DHS did not take seriously. Although she identified Goddard as a childcare center at which child maltreatment took place, her warning to parents is similar to the dancer's warning in *Freborg* about three specific individuals whom she alleged assaulted her. *See* 995 N.W.2d at 380-83. The dominant theme of this post concerns child maltreatment and her perception that DHS inadequately responded to other reported incidents of child maltreatment. This is also similar to *Freborg's* broader message about sexual assault in the dance community. *See id.* at 382-83, 385-87. The content of this post therefore weighs in favor of concluding that the speech was on a matter of public concern.

The other two statements, italicized below, were made as part of a conversation between Werts and K.G., a member of the STMA Moms Facebook group.

K.G.: Hi [Werts]! This is K.G. from STMA moms, I am looking into a center for my daughter and was told that you might have some information about [Goddard]. My ex is trying to get me to enroll her there. I have heard some “not so great” things about them. Wondering if you have some intel so I can inform him. Thanks.

Werts: Can I ask who asked you to message me? I am the former director for The Goddard School. I quit last year.

K.G.: [J.] directed me to a post you made.

. . . .

K.G.: My ex is hell bent on getting me to enroll, I don't know why.

Werts: All the good teachers that worked [there] have left and most work at Lil Explorers in Albertville along with about 5 plus kids from the Goddard School including mine! The Goddard School is normally known to be the top of the top for child care centers but that is far from the case with the Albertville location. *The owner tries to cover everything up until he knows he is going to actually get investigated.* You can see previous posts on STMA moms about all the stuff that has happened there.

K.G.: I did read the report on Goddard the findings seemed kinda vague, but a lot of people reached out and said stay away.

Werts: *The owner has no child care experience* and comes from an IT background and his main focus is on his 3 UPS stores. *He is never there to support the school.* Yeah there is also a maltreatment case that happened over the Summer that was never investigated. A child was verbally and physically abused. Withheld food and water, child locked in a closet, etc. Owner covered all that up.

K.G.: Ok wow. That's crazy.

Werts: The 2nd investigation reported on the MN DHS page with the whole documentation.

Here, Werts did not initiate the conversation. K.G. asked Werts about her experience at Goddard because of some “not so great” things she had heard. Werts focused on child maltreatment that she believed the owner of Goddard was “covering up.” She also referenced previous posts on the STMA Moms group that K.G. should consider. Importantly, Werts referenced an investigative report publicly available on the Minnesota DHS website. Because Werts did not initiate this communication, her participation indicates that she was motivated to share her experience to warn the inquiring parent of a risk of child maltreatment rather than a desire to air a personal grievance.

While Werts focused her answer on Goddard, naming an individual does not automatically convert speech into a private matter. Instead, we evaluate the “dominant theme” of Werts’s speech. We conclude that the dominant theme or focus of Werts’s communication was to warn a parent about alleged maltreatment of children at the school, a topic that mattered to K.G. and to many other members of the STMA Moms group. The content of this exchange weighs in favor of the conclusion that the speech was on a matter of public concern.

3. Statements by Appellant Martinez

Goddard also contends that statements made by Martinez were defamatory, which appear within one conversation that occurred under K.G.’s post, referenced above⁶ and provided below.

Martinez: [Caballero-Morris] little miracles is for sale and closed currently.

L. G.-E.: [Caballero-Morris] really? Oh my God!

Martinez: [L. G.-E.] yeah the staff walked out again and the owner was forced to sell the business.

L. G.-E.: [Martinez] He seemed so money hungry and that was a turn off.

Caballero-Morris: [L. G.-E.] serves him right! Protect the innocent.

Martinez: [L. G.-E.] little miracles had a female owner. The goddard owner is currently looking to sell the business or hire on a co-owner because he realized *he was over his head in childcare*. But I doubt anyone will buy it seeing as this isn’t the target demographic for a goddard school.

⁶ We omitted this portion with an ellipsis earlier to avoid duplicating the conversation.

L. G.-E.: [Martinez] He was just a turn off to me... not one I would want any business with. That's messed up because that's a lot of money invested gone to waste.

Martinez: [L. G.-E.] *the city and goddard warned him that it wasn't a good investment he didn't listen plus he is totally unqualified to run a childcare center.* It takes more than money to be in this business. He was just another person that saw it as glorified babysitting, not early childhood education. The sad part is I worked for Goddard for almost 5 years and as a teacher this company was the best I have seen to clients, teachers, and children. It's a shame that he is tarnishing their name cause they have incredibly high standards when it comes to franchise owners and even have their own "licensing" that visits just as much if not more than state licensing to ensure their high standards. It's a shame that an uneducated business owner can turn a whole area against an amazing company with bad business practices.

Again, Martinez's statements were made in response to K.G.'s post and are part of a broader conversation about childcare providers in the local community of the STMA Moms Facebook group. Martinez initially offered information about Little Miracles, stating that the staff walked out, forcing the owner to close. She similarly discussed Goddard, offering her thoughts on why the school was struggling. She also provided positive comments about Goddard, emphasizing the "incredibly high standards" and quality that typically attend Goddard's franchisor, indicating that she was not motivated by an opportunity to air a personal grievance. The dominant theme of Martinez's comments is the need for quality childcare. We conclude that the speech's content weighs in favor of the conclusion that the speech was on a matter of public concern.

4. Statements by Appellant Theis

Goddard also challenged statements made by Theis on a Facebook Group named “St. Michael Albertville Bulletin Board”:

A.B.: Looking for reviews of the Goddard School in Albertville? Just moved nearby. TIA!

S.S.: I have seen a lot of people express bad experiences there, unfortunately. I do not have my own experience to share but like the other person mentioned, asking in the STMA moms group could be very helpful as well! Good luck in your search!

J.W.D.: Haven’t heard anything good.

....

C.P.: try Lil’ Explorers Childcare Center, Albertville!

K.H.: [C.P.] I second this.

J.B.: We pulled our children from there immediately and they are at Lil Explorers happily now. Feel free to PM if you have any questions!

C.W.: All daycare records are available online to review so you can see if/when any incidences occurred.

....

M.S.: We like it there! We have been there over a year. Our kids enjoy it. We have had some awesome teachers. There is turnover everywhere these days and daycares are not immune to that. I feel like my kids are cared for and safe.

D.S.: [M.S.] we love your kids so, so much!

Theis: I have worked at that daycare and do not like anything about it. *The owner doesn’t cater to needs of the staff or famil[ies]. He does not listen to you and I have had some pretty bad experiences with teachers being too physically rough when “disciplining” the children or*

yelling at them. I worked there for about 4-5 months and only 2-4 teachers stayed out of about 25. Maybe it's better now since I last worked there October of last year but definitely a lot of in and out! Feel free to PM if you have any questions about stuff that went on or the programming.

A.B.: [Theis] sending pm.

T.Y.: [Theis] I'm sorry that was your experience. Please don't discourage families based on teachers who no longer work for the school or because of your experiences with prior leadership! We have wonderful teachers who are passionate about the care they provide, seeing posts like this about experiences they were not a part of is not fair to current prospective families. Thank you.

....

T.Y.: As the Executive Director of the Goddard School and coming from Goddard corporate. The Goddard school of Albertville opened 3 years ago and staff turnover is inevitable in your first 2 years of operation. The owner is passionate about quality childcare for this community and we have a management team and teacher staff to support that mission. Many past posts were disgruntled former employees and I encourage anyone looking for childcare to come take a tour, meet our leadership team and our teachers.

Similar to the other appellants, Theis makes her comment in response to a broader conversation about which childcare providers were safe and, specifically, what other group members thought about Goddard. Theis focused her comment on child maltreatment and teacher turnover, two issues that parents had discussed as important to the wellbeing of their children. She also provided a positive comment, expressing hope that conditions at Goddard had improved. In addition, Goddard's executive director engaged in the conversation, commenting twice. The dominant theme of Theis's comment was to discuss

whether a particular childcare provider was safe. Although she mentioned only one provider, a review of the entire comment, the immediate conversation, and her willingness to consider that Goddard may have improved leads us to conclude that the content of Theis's comment weighs in favor of concluding that the speech was on a matter of public concern rather than her simply airing a personal grievance against Goddard. *See J&D Dental*, 26 N.W.3d at 501.

G. The context of appellants' speech weighs in favor of concluding that the speech was on a matter of public concern.

Lastly, we consider whether the full context, or the "how," of appellants' speech, weighs in favor of concluding that their speech was on a matter of public concern. *See Freborg*, 995 N.W.2d at 390. We consider (1) whether discussion was generated in response to the online speech, (2) the types of conversations that ensued, and (3) the importance of the movement or subject matter to broader public discourse. *See id.* at 390-91. For example, the dancer's post in *Freborg* generated discussion with mixed reactions and conversations about how people should talk about the topic. *Id.* at 390. However, in *J&D Dental*, this court concluded that the context favored a conclusion that the patient's speech was not on a matter of public concern because the speech did not connect the patient's experience to broader public issues and the record did not reflect any discourse, conversation, or connection between the review and other reviews. *See* 26 N.W.3d at 502-03.

First, even though the record consists of statements and conversations hand-picked by Goddard, each shows a robust discussion, with many comments themselves generating additional conversation. Almost all of the challenged statements were made in response to

requests for information and those statements drew many responses. In the instances in which appellants initiated a post, the initial postings also sparked dozens of comments from group members, indicating that appellants were participating in a broader public discourse on a topic of interest to the community.

Second, like in *Freborg*, the conversations that ensued generated mixed reactions. *See* 995 N.W.2d at 390. Group members, including appellants, shared positive and negative experiences they had with Goddard and other childcare centers. For example, one member commented, “Grateful for the teachers we trusted there who told us the truth about these incidents so we knew to leave. So sorry your son had to go through this.” Another member replied, “Exactly, if the teachers hadn’t come forward we would never have known our suspicions were true!” A satisfied parent commented, “So we’ve had a great experience personally. I have toured other centers locally too to compare, and we still like Goddard the best.” Importantly, as discussed above, Goddard itself took part in the conversation through its executive director, at one point admonishing Theis for her statements and providing a counterweight to positive comments, similar to the mixed comments generated in *Freborg*.

Third, the type and frequency of the discourse that occurred in the groups demonstrates the topic’s importance to the broader public discourse. Werts’s post included a link to a published report by DHS, clearly placing it within the context of the broader public discourse. The members’ conversations similarly often went beyond a discussion of Goddard or other specific schools, with comments like, “[a]ll daycare records are available online to review so you can see if/when any incidents occurred.” Another commenter said, “I urge everyone when looking into any type of daycare facility to check

out their license information on [a state licensing website]. You can find any corrective actions taken along with if they have any maltreatment findings.”

During the conversation with Caballero-Morris, a member explicitly connected the conversation directly to the broader public discourse, stating, “Thank you for sharing. In a world where places can pay Google to remove honest negative reviews, it is good when people speak out to spread awareness when it impacts the innocent children of the world.” Another member shared that the system had “done NOTHING to protect my children in the past. You should get in touch with KARE-11.” The suggestion to call the media demonstrates that group members understood that their discussion about children being abused at a childcare facility was part of a broader social conversation and about which the public would be concerned.

The many comments throughout the conversation offering to speak in private messages (PMs) or referencing previous private conversations demonstrate the connection between those conversations and the overall social discussion happening within the community at the time. The conversation was so broad that K.G. reached out privately to Werts to ask additional questions. This demonstrates that the private discussion was generated in response to Werts’s previous online speech, placing the private conversation squarely within the context of the broader social conversation happening online. Werts’s private conversation simply continued the online conversation, as K.G. discussed with Werts her concern about finding the right childcare provider for her child. Because Werts’s private conversation was part of the broader online conversation, its context strongly weighs in favor of concluding that it was on a matter of public concern.

Overall, the context of the speech of all appellants weighs strongly in favor of the conclusion that the speech was on a matter of public concern. In sum, broadly construing UPEPA to protect the right of freedom of speech, and because the content, form, and context here weigh in favor of concluding that the speech was on a matter of public concern, we conclude that UPEPA applies to the claims against each of the appellants.

II. The district court erred by denying appellants' motions to dismiss.

Appellants argue that the district court erred by denying their motions to dismiss because their statements were not defamatory. Again, we agree.

Because UPEPA applies, the next step is to evaluate whether Goddard as the nonmoving party has established a prima facie case for each essential element of the challenged causes of action. *See* Minn. Stat. § 554.13(a)(3)(i). The parties do not dispute that Goddard established a prima facie case for defamation and civil conspiracy, so we move to the final step in which we evaluate whether appellants have demonstrated a basis for dismissal because either respondents failed to state a claim upon which relief can be granted or because there are no genuine issues of material fact and appellants are “entitled to judgment as a matter of law.” Minn. Stat. § 554.13(a)(3)(ii).

A party may bring a motion to dismiss under Minnesota Rule of Civil Procedure 12.02(e) for failure to state a claim. But if the parties present matters outside the pleading and those matters are not excluded by the district court, “the motion shall be treated as one for summary judgment” under Minnesota Rule of Civil Procedure 56, and “all parties shall be given a reasonable opportunity” to present all relevant material. *Id.* Summary judgment must be granted “if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. “We

review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). “In ruling on a motion under section 554.09, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment.” Minn. Stat. § 554.12 (2024).

Here, the district court had before it several affidavits and exhibits, thereby requiring it to treat the motions as ones for summary judgment, which it did at least as to some of the nonappealing co-defendants. *See* Minn. R. Civ. P. 12.02(3). The district court denied appellants' motions to dismiss because it determined that each appellant made statements that could be “construed as non-opinion.”

“Under the common law, a plaintiff pursuing a defamation claim must prove that the defendant made: (a) a false and defamatory statement about the plaintiff; (b) in [an] unprivileged publication to a third party; (c) that harmed the plaintiff's reputation in the community.” *Freborg*, 995 N.W.2d at 384 (quotation omitted). “The question of whether a statement's language reasonably conveys a defamatory meaning is one of law” that we review de novo. *McKee v. Laurion*, 825 N.W.2d 725, 731 (Minn. 2013).

A. Statements of Opinion

Goddard contends that Werts and Caballero-Morris defamed it when they stated that Goddard's owner “tries to cover everything up until he knows he is going to actually get investigated” (Werts) and that “there was a cover up of child abuse” by the employees and owner of Goddard (Caballero-Morris).

Statements of opinion are not actionable as defamation because “[t]he First Amendment protects opinion from defamation liability.” *Larson v. Gannett Co.*, 940 N.W.2d 120, 147 (Minn. 2020). To be nonactionable, an opinion or statement must be one that “cannot be reasonably interpreted as stating a fact” and “cannot be proven true or false.” *McKee*, 825 N.W.2d at 733. We consider four factors when distinguishing “a protected statement of opinion from an actionable statement of fact . . . : (1) the statement’s precision and specificity; (2) the statement’s verifiability; (3) the social and literary context in which the statement was made; and (4) the statement’s public context.” *Hunt v. Univ. of Minn.*, 465 N.W.2d 88, 93 (Minn. App. 1991) (citing *Janklow v. Newsweek, Inc.*, 788 F.2d 1300, 1302-03 (8th Cir. 1996)). These factors “must be considered together” and “the decision whether a statement is fact or opinion must be based on all the circumstances involved.” *Janklow*, 788 F.2d at 1302.

First, appellants’ statements lack precision and specificity. Without specifics, it is impossible to measure what “cover everything up” means just as terms like “favoritism” or “a real tool” have ambiguous implications and are, therefore, too imprecise to be actionable as defamation. *See Lund v. Chi. & Nw. Transp. Co.*, 467 N.W.2d 366, 368-69 (Minn. App. 1991); *McKee*, 825 N.W.2d at 733. These terms amount to “rhetorical hyperbole that cannot be the basis for a defamation action.” *McKee*, 825 N.W.2d at 733 (quotation omitted). Because of their imprecise nature, appellants’ statements are impossible to verify.

Second, “if it is plain that the speaker is expressing a subjective view . . . rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable.” *Schlieman v. Gannett Minn. Broad., Inc.*, 637 N.W.2d 297, 308 (Minn. App. 2001)

(quotations omitted), *rev. denied* (Minn. Mar. 19, 2002). In *Hunt*, we evaluated whether the statement that a person “had no integrity” was defamatory. 465 N.W.2d at 91. “Had no integrity,” like “cover everything up,” has a meaning that may lower a person’s reputation in some contexts if more information was included. However, in *Hunt*, we determined that the speaker expressed his subjective view of Hunt’s integrity when answering questions about Hunt’s job qualifications and, in that context, “cannot be seen as fact, but instead must be viewed as a personal impression built over the course of time, based on general past experience and limited solely to the individual speaker.” *Id.* at 95. We conclude the same here. Both Werts and Caballero-Morris were expressing their own personal impressions based on their past experiences with Goddard.

The third and fourth factors of the social and public context within which the statements were made further demonstrate that the statements were opinion. Publications with “a tradition of more colorful, even feisty language,” with a “freer style of personal expression . . . signal the reader to expect a fair amount of opinion.” *Janklow*, 788 F.2d at 1304; *see also, e.g., Sandals Resorts Int’l Ltd. v. Google, Inc.*, 925 N.Y.S.2d 407, 415–16 (N.Y. App. Div. 2011)⁷ (noting that “[t]he culture of Internet communications, as distinct from that of print media such as newspapers and magazines, has been characterized as encouraging a freewheeling, anything-goes writing style” and that readers “give less credence to allegedly defamatory remarks published on the Internet than to similar remarks made in other contexts”). Appellants were posting on Facebook groups in a free-form style

⁷ We consider cases from federal and other states’ courts for their persuasive value. *State v. McClenton*, 781 N.W.2d 181, 191 (Minn. App. 2010), *review denied* (Minn. June 29, 2010).

used by other group members as well. This free style is apparent in the posts in question, containing misspellings, incorrect capitalization, and careless use of grammar. In this context, readers would expect a fair amount of opinion, especially in response to posts that request “input/advice” from other group members. Applying the four factors, we conclude that the speakers were expressing their subjective views, and it would be apparent to readers, particularly within the social-media context the posts were written, that the views expressed by Werts and Caballero-Morris were opinions.

Goddard also complains that Martinez stated that its owner was “over his head in childcare.” “Over his head” is similarly impossible to define. It is imprecise, impossible to measure, and could mean different things to different people. Especially considering the social-media context within which the comment was shared, we conclude that this statement is opinion and not actionable as defamation for the same reason that “covers everything up” is nonactionable.

We conclude for the same reasons that Martinez’s statement that the owner was “totally unqualified to run a childcare center” is a nonactionable statement of opinion. Although Goddard argues that a fact-finder could determine the owner’s qualifications by examining whether he and Goddard met licensing standards, Martinez did not state that Goddard would not meet state licensing standards. Instead, she expressed her opinion that Goddard’s owner viewed the business as “glorified babysitting.”

Goddard claims that Theis defamed it when she stated that its owner “doesn’t cater to the needs of the staff or families” and “does not listen to” parents’ concerns. It is unclear what it means to “cater to the needs” of staff or families, nor how much “catering” must be lacking before one’s reputation was reduced due to that lack. This statement is imprecise,

incapable of being measured, and made within the context of other opinions on a social-media post. We conclude that this is a statement of opinion.

Because all of these statements are opinion, we conclude that none of them are actionable in a defamation suit.

B. True Statements

Goddard first complains that Werts defamed it when she stated that “[t]here are other incidents of child abuse at [Goddard] that [DHS] did not investigate.” Goddard specifically “denies that there were ‘other incidents’ of child abuse beyond what was investigated by the DHS.”

“We have held on numerous occasions that truth is a complete defense to defamation and ‘true statements, however disparaging, are not actionable.’” *Diesen v. Hessburg*, 455 N.W.2d 446, 452 (Minn. 1990) (quoting *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980)). Furthermore, even if a statement is not completely accurate, “[a] statement is substantially accurate if its gist or sting is true,” and “if it produces the same effect on the mind of the recipient which the precise truth would have produced.” *Jadwin v. Minneapolis Star & Trib. Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986) (quotations omitted); cf. *Oaks Gallery & Country Store-Winona, Inc. v. Lee Enters., Inc.*, 613 N.W.2d 800, 804 (Minn. App. 2000) (determining whether accurate version of statement would have had “same gist or sting”), *rev. denied* (Minn. Sept. 13, 2000).

Werts made the complained-of statement as part of her conversation with K.G. The full statement reads: “Yeah there is also a maltreatment case that happened over the Summer that was never investigated. A child was verbally and physically abused. Withheld food and water, child locked in a closet, etc. Owner covered all that up.” The

abuse Werts described is substantiated in the record. DHS issued a correction order to Goddard on December 22, 2023, finding that the school violated “behavior guidance policy prohibiting certain disciplinary actions” by (1) “subject[ing] children to emotional abuse by name calling, shaming, and using language that humiliated a child”; (2) “rough handl[ing] a child after the child had a toileting accident”; (3) “with[olding] drinking water from a child as a means of behavior guidance”; and (4) “placing a child in a closet alone with the door closed.” Werts’s description aligns with DHS’s findings. Her apparent mistaken belief that the abuse was not investigated does not change the substantial accuracy of her statements. We conclude that her statement is substantially true, as evidenced by the DHS report in the record.

Goddard also claims that Theis defamed it when she said that she “had some pretty bad experiences with teachers being too physically rough when ‘disciplining’ the children or yelling at them.” The first part of this statement, that Theis had “some pretty bad experiences,” is incapable of being proven true or false due to the subjective nature of the comment. It is a statement of opinion. But our analysis does not end there. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18-19 (1990) (analyzing factual implications of statement couched in terms of opinion). The latter half of the sentence describes physical and verbal abuse consistent with DHS’s findings in both the December 2023 correction order and a subsequent January 2024 report. While Goddard complains that Theis alleged that she had personally witnessed this, the veracity of that statement is immaterial because it only carries a defamatory meaning when paired with the accusation that child abuse occurred, which DHS found occurred. Neither part of the statement is actionable because the only portion capable of a defamatory meaning is true.

Goddard's claim that Caballero-Morris defamed it by stating that multiple employees were guilty of child abuse at Goddard is belied by the record. DHS substantiated at least two separate allegations of child maltreatment. DHS determined in its citation order that multiple staff members had demonstrated abusive behavior. Furthermore, Goddard itself admitted as much by providing evidence that it terminated at least two staff members for violating child-abuse and maltreatment policies, which are part of DHS licensing regulations.

Lastly, Goddard contends that Caballero-Morris's statement that there were "active cases of child abuse" at Goddard is defamatory. Caballero-Morris made this statement during a time when DHS investigated and produced multiple reports of substantiated instances of child maltreatment or abuse. Even if Caballero-Morris made the statement right after the last investigation concluded, it would not change the gist or sting of her statement, which is that DHS was investigating Goddard for child abuse occurring at its facility. This statement is substantially accurate because the gist or sting of the statement references DHS's child-abuse investigations, not whether all of them were completed by the time she made the statement.

Furthermore, the meaning of a statement must be construed in the context in which it was made. *Jadwin*, 367 N.W.2d at 492. Caballero-Morris posted on Facebook, a forum in which opinions flow freely and people speak less precisely. See *Janklow*, 788 F.2d at 1304. In fact, she did not even use a complete sentence, but instead said, "Active cases of child abuse." We conclude that these statements, viewed in the context in which they were made, are not actionable because they are true.

C. Statements Not Capable of a Defamatory Meaning

Goddard contends that Caballero-Morris defamed him when she said that “the city and [Goddard’s franchisor] warned” Goddard’s owner that Goddard would not be “a good investment, [but] he didn’t listen.” Even if the city and franchisor did make those warnings and Goddard’s now-owner chose not to take that advice, it is unclear how that choice would harm Goddard’s reputation within the community. We conclude that the statement is not capable of a defamatory meaning and therefore not actionable.

Werts’s statement to K.G. that “[t]he owner had no childcare experience and comes from an IT background and his main focus is on his 3 UPS stores” is similarly nonactionable. The first part of the statement, that the owner had no childcare experience, is specific enough to be verifiable. However, it is not capable of a defamatory meaning because lack of experience “is not an aspersion of character.” *Jadwin*, 390 N.W.2d at 443. The claim that the owner has a background in IT is verifiable, but incapable of a defamatory meaning because the owner having that background would not harm Goddard’s reputation in the community. Furthermore, Werts’s contention that “his main focus is on his 3 UPS stores” is not specific enough to be verifiable and, even if it could be verified, it is not capable of a defamatory meaning.

Lastly, Goddard argues that Theis defamed it when she stated that she had worked at Goddard for “about 4-5 months and only 2-4 teachers stayed out of about 25.” This is a statement of fact, so it is incapable of a defamatory meaning. Moreover, teachers may leave a place of employment for various reasons, many of which have no bearing upon their employer and, therefore, would not impact the employer’s reputation in the community.

Opinions shared alongside Theis's demonstrate that, even if there were high teacher turnover at Goddard, it did not reduce Goddard's reputation in the community. For example, one commenter thought that it indicated "a lot of behind the scenes drama" although his daughter had good memories of her time at Goddard. Another commenter noted that "There is turnover everywhere these days and daycares are not immune to that. I feel like my kids are cared for and safe." The executive director of Goddard also explained the turnover by stating: "The Goddard School of Albertville opened 3 years ago and staff turnover is inevitable your first 2 years of operation." Because there is no accepted meaning within the community as to what having a high turnover indicates, the statement did not reduce Goddard's reputation in the community and is not capable of a defamatory meaning.

After reviewing the complained-of statements and other materials in the record we conclude that there are no material facts in dispute and that appellants are entitled to judgment as a matter of law on Goddard's claims of defamation. In addition, because the underlying tort of defamation fails, the civil-conspiracy claim necessarily fails as well. *See Harding v. Ohio Cas. Ins. Co.*, 41 N.W.2d 818, 825 (Minn. 1950) (explaining that civil conspiracy is not independent cause of action, but rather "predicated upon the tort committed by the conspirators"); *D.A.B. v. Brown*, 570 N.W.2d 168, 172 (Minn. App. 1997) (concluding that "conspiracy count fails because it is not supported by an underlying tort").

Reversed and remanded.

WHEELLOCK, Judge (concurring in part, dissenting in part)

I concur in parts of the court's opinion, but I respectfully dissent as to its conclusions that appellant Heather Werts's speech in the private messages is subject to the Uniform Public Expression Act (UPEPA), Minn. Stat. §§ 554.07-.20 (2024), and that, as to certain statements made by appellant Rachel Caballero-Morris, she is entitled to dismissal of the claims against her because she is entitled to judgment as a matter of law and there are no genuine issues of material fact. I would instead conclude that Werts's speech in the private messages is not subject to UPEPA and remand the claims related to it, and I would conclude that Werts and Caballero-Morris are not entitled to expedited relief under UPEPA of dismissal of the claims of respondent N A Brothers LLC, doing business as The Goddard School of Albertville (Goddard), against them and remand for further proceedings on those claims.

I diverge from the majority in part I of their opinion regarding how granular the analysis must be as to whether UPEPA applies. In my view, the court must consider each challenged statement to determine whether UPEPA applies. In this case, numerous statements by multiple speakers in different fora are at issue, which makes this a unique case as compared to those presented in *J&D Dental v. Hou*, 26 N.W.3d 491 (Minn. App. 2025), and *Johnson v. Freborg*, 995 N.W.2d 374 (Minn. 2023). No party argued that we must engage in a statement-by-statement analysis of the applicability of UPEPA or that *if some* of the speech is on a matter of public concern, *then all* of the speech is on a matter of public concern. Because we did not receive briefing on that specific question, I would not decide it here. Given that some statements may meet the public-concern test more readily

than others, I believe that the former approach is the better one. I make this observation based on the varying content and form of the challenged speech by multiple speakers that is at issue in this case.

But even assuming without deciding that we may take the latter approach, I would separately analyze the groups of challenged statements by the location—the form or the “where”—it occurred, differentiating between the private messages, the STMA Moms Facebook group, and the St. Michael Albertville Bulletin Board Facebook group. The different places online in which the challenged statements appeared included Facebook groups of varying sizes and memberships and an instance of private messaging. Viewing all Facebook posts and subsequent discussion as if they were each situated similarly as the “modern public square” may be painting with too broad of a brush.

The form of the speech must be balanced with its content and context; it is not determinative alone. Each of these considerations—content, form, and context—is distinct from the other two and we must be careful not to conflate or confuse them. Although I concur in the court’s conclusion that many of the challenged statements are speech on a matter of public concern, I believe that several of the statements present a close case. In particular, I disagree with sweeping Werts’s private-message statements into the purview of UPEPA merely because it was the continuation of a conversation that occurred in one of the Facebook groups. I would analyze that speech separately from speech made in the group and conclude that its form and content both weigh against a determination that it was speech on a matter of public concern.

In light of the supreme court's direction in *Freborg* that we must apply the totality-of-the-circumstances test and balance the content, form, and context of the speech on a case-by-case basis, I am wary of not parsing the speech Goddard challenges by speaker and by the online forum and specific discussion in which the speech occurred, notwithstanding that much of the speech was on a shared topic of quality and safety of childcare and child maltreatment. *See Freborg*, 995 N.W.2d at 385 (explaining that, although speech relating to sexual assault is a matter of public concern generally, caselaw instructs that there is no per se rule that statements about any sexual abuse, or any crime, are always matters of public concern). I do not dispute that child maltreatment and which schools and childcare providers can be trusted are matters of public concern; however, not all speech related or adjacent to that topic is automatically insulated as speech on a matter of public concern.

I also diverge from the majority in part II of its opinion regarding dismissal of the claims challenging certain statements made by Caballero-Morris. Specifically, I disagree with the majority with respect to the following statements, which she made in two separate online discussions in Facebook groups:

CABALLERO-MORRIS: [J.B.] and just so we are all clear here, *they all did their part in covering . . . this up. The teachers all the way up to the owner!*⁸

CABALLERO-MORRIS: Definitely stay away from the Goddard school and Little Miracles. *Active cases of child abuse*. Welcome to the area! [S.P.] and I are glad you are here!

⁸ Consistent with the majority opinion, I have italicized the part of the statement that Goddard asserts constitutes defamation.

If UPEPA applies, we consider whether dismissal is appropriate under one of the standards set forth in Minn. Stat. § 554.13(a). Because the district court was required to treat appellants' motions to dismiss as summary-judgment motions, we must determine whether appellants established that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Minn. Stat. § 554.13(a)(3)(ii)(B). This in turn requires that we apply these standards to Goddard's claims of defamation.

To establish defamation, Goddard needed to prove that

(1) the defamatory statement was communicated to someone other than [Goddard]; (2) the statement is false; (3) the statement tends to harm [Goddard]'s reputation and to lower [Goddard] in the estimation of the community; and (4) the recipient of the false statement reasonably understands it to refer to a specific individual.

McKee v. Laurion, 825 N.W.2d 725, 729-30 (Minn. 2013) (quotations omitted). To determine if a defamatory statement is fact or opinion, we consider "1) the statement's precision and specificity; 2) the statement's verifiability; 3) the social and literary context in which the statement was made; and 4) the statement's public context." *Lund v. Chi. & Nw. Transp. Co.*, 467 N.W.2d 366, 368 (Minn. App. 1991), *rev. denied* (Minn. June 19, 1991). Whether a statement's language reasonably conveys an opinion or a fact is a question of law that we review de novo. *Id.* at 369.

And while generally "statements of opinion . . . are not actionable," "not all statements of opinion are constitutionally protected." *Id.* at 368-70. Because "expressions of opinion may imply assertion of objective facts," *id.* at 368, and because we must

determine whether a statement is opinion or fact as part of the analysis, the courts have “concluded that only opinions relating to matters of public concern that are incapable of being proven true or false, and statements that cannot reasonably be interpreted as stating actual facts, are constitutionally protected,” *id.* at 369.

Caballero-Morris’s statements here—“[T]hey all did their part in covering . . . this up. The teachers all the way up to the owner,” and “[a]ctive cases of child abuse”—are not too imprecise in nature to be actionable defamatory statements, and they are verifiable.

First, as to the phrase “covering this up,” I would conclude that it is not impossible to measure what this means and thus that it is not similar to terms like “favoritism” or “a real tool.” *See id.* at 369; *McKee*, 825 N.W.2d at 733. It is plain language that implies that Goddard and its staff took affirmative steps to prevent the truth about how children were treated in the school from being known. Indeed, “coverup” appears in the dictionary, defined as “[a]n effort or strategy of concealment, especially a planned effort to prevent something potentially scandalous from becoming public.” *The American Heritage Dictionary of the English Language* 421 (5th ed. 2018); *accord Black’s Law Dictionary* 462 (12th ed. 2024) (defining “coverup” as “concealment of wrongdoing by a conspiracy of deception, nondisclosure, and destruction of evidence, usu[ally] combined with a refusal to cooperate with investigators”); *Merriam-Webster’s Collegiate Dictionary* 288 (11th ed. 2003) (defining “coverup” as, first, “a device or stratagem for masking or concealing” and, second, a “concerted effort to keep an illegal or unethical act or situation from being made public”). Whether Goddard took steps to conceal child maltreatment is possible to verify and is not opinion.

Second, as to the phrase “[a]ctive cases of child abuse,” the department of human services (DHS) investigation report was publicly available and addressed alleged child maltreatment that had occurred in the past, whereas saying “[a]ctive cases of child abuse” implied that there were new, not-yet-investigated incidents of child maltreatment that were an ongoing problem at Goddard. That DHS concluded in its report that different incidents occurred earlier in time and thus it is true that the earlier alleged incidents actually occurred does not mean that the statement that there are subsequent active cases is also true. Caballero-Morris’s statement about active cases is capable of being proven true or false.

Because at least two of Caballero-Morris’s statements are capable of being proved true or false and can reasonably be interpreted as stating actual facts, they do not lack the precision and specificity required to constitute defamation. As to these statements, I would conclude that there are genuine issues of material fact, that Caballero-Morris is not entitled to judgment as a matter of law, and thus that we cannot dismiss the claims against her with respect to them. I would therefore affirm the district court’s decision not to grant the motion to dismiss as to these statements and remand for additional proceedings. And because I would conclude that Werts’s private-message speech is not subject to UPEPA, I would also remand the claim against her for additional proceedings.