

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM PICKENS COUNTY

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2022-001332

Andrew Pampu,Petitioner,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan,Respondents.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Andrew Pampu, Appellant-Respondent,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan,
Respondents-Appellants.

Appellate Case No. 2022-001332

Appeal From Pickens County
Perry H. Gravely, Circuit Court Judge

Opinion No. 6112
Heard March 13, 2025 – Filed June 11, 2025

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Kimberly C. Lau and James E. Figliozzi, both of Offit Kurman, P.A., of New York, New York; Sarah D. Baum, of Whelan Mellen & Norris, LLC, and Michael A. Timbes, of Thurmond Kirchner & Timbes, P.A., both of Charleston; all for Appellant-Respondent.

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GEATHERS, J.: In this defamation action, Appellant-Respondent Andrew Pampu seeks review of the circuit court's judgment notwithstanding the verdict (JNOV) on his civil conspiracy claim. Pampu argues there was sufficient evidence of the elements of civil conspiracy to support the jury's verdict for him. Respondents-Appellants challenge the circuit court's denial of their directed verdict and JNOV motions on Pampu's defamation claim. They argue that collateral estoppel precludes Pampu from establishing the falsity of their alleged defamatory statements because an administrative hearing board for Clemson University's Office of Community and Ethical Standards (OCES) found that Pampu had sex with Respondent-Appellant Erin Wingo when she was intoxicated and did not have the capacity to consent. We affirm in part, reverse in part, and remand for the entry of a JNOV on Pampu's defamation claim.¹

FACTS/PROCEDURAL HISTORY

The genesis of this troubling litigation is a night of drunkenness at a college fraternity party on October 24, 2015. Prior to attending this party, Ms. Wingo, a 5'2" Clemson freshman weighing between 114 and 118 pounds, consumed approximately nine 1.5-ounce shots of alcohol at a friend's dorm room. This occurred over the course of approximately one hour. Ms. Wingo then went to the party on the premises of the Phi Delta Theta fraternity, a/k/a "the Compound,"² at approximately 10:45 p.m. Once there, she found Respondent-Appellant Colin J. Gahagan, with whom she was having a physically intimate relationship, and took

¹ We decline to address Respondents-Appellants' remaining issues because our remand for the entry of a JNOV on the defamation claim and affirmance of the JNOV on the civil conspiracy claim are dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

² The Compound comprised three houses and a courtyard. It is located off-campus in downtown Clemson.

two "pulls" from a water bottle filled with vodka.³ She became upset over something Gahagan said, parted ways with him, and at some point, went to look for Pampu, with whom she had "made out" several weeks before. Both Gahagan and Pampu were also freshmen and were rushing the Phi Delta Theta fraternity. Ms. Wingo testified that as she was asking another fraternity "pledge brother," Ben Zboray, to help her find Pampu, she was "feeling the effects of the alcohol substantially." She also testified that she remembered only some of what occurred that night, "like individual snapshots."

According to Pampu's testimony, Ms. Wingo found him in the courtyard and propositioned him with oral sex. Pampu observed that she was drunk. The two then went behind another house on the property, made out, then walked down a path for approximately one-quarter to one-half of a mile, leaving the property. When they arrived at a location between a wooden fence and a shed, they both took a sip from Ms. Wingo's bottle filled with vodka. Pampu testified that they then made out and ultimately engaged in sexual intercourse at Ms. Wingo's suggestion. Afterward, according to Pampu, they were quiet for a while, then had a conversation about Gahagan, re-dressed themselves, and walked back to the Compound.

Pampu also testified that on the way back to the Compound, Ms. Wingo was "extremely emotional" about having "been blown off by [Gahagan] that night" and he realized that she was "on the bad end of drunk" and was stumbling. When they arrived at the Compound's main house, Ms. Wingo sat on the front steps, and Pampu had a private conversation with Zboray to explain why Ms. Wingo was upset. Pampu told Zboray that Ms. Wingo was "looking for [Gahagan]" and that she and Pampu had "just hook[ed] up." Zboray offered to get a ride for Ms. Wingo and a friend of hers, Rachel Corbin, to take them back to their respective dormitories, and Pampu went back to the party. Around the same time, Corbin and another friend, Olivia Pescatore, noticed that Ms. Wingo was crying "hysterically" and repeatedly asking why Gahagan did not love her. Pescatore observed that Ms. Wingo was intoxicated to the point of being incapacitated.

Around this time, Ms. Wingo began sending text messages, some of which were unintelligible, to Gahagan. Ms. Wingo believed that she had "messed up the plan" to "go home with" Gahagan that night. She eventually got into a car with Zboray, Corbin, Pescatore, and Hayley Sinclair. On the way back to, and after

³ Both Gahagan and Ms. Wingo denied that they were "dating" each other. Their physical relationship was not "exclusive," but Gahagan considered Ms. Wingo to be his "best friend."

arriving at, her dormitory, Ms. Wingo continued crying and talking about Gahagan. She vomited several times after arriving at her dormitory, and the vomiting continued throughout the next day (Sunday, October 25).

At approximately 3:00 a.m. on Sunday, one of Pampu's pledge brothers, Jonathan Stoddart, began sending a series of text messages to Pampu. One of the messages stated, "I hope you killed it on your birthday," meaning "had a good time." Pampu responded, in part, "I ****ed a chick by the garbage thing behind [C]hipotle[,] so I think I definitely did with [that] alone." Without Pampu's permission, Stoddart took a screen shot of Pampu's response and shared it with everyone in their pledge class in a group text. Pampu did not react to this.

According to Ms. Wingo, when she first woke up that morning, she felt confused about why she and Gahagan "had gotten into a fight" and she did not remember most of what had happened the night before, only that she was "feeling like [her] world had changed" and she had a "pit in [her] stomach." At 7:58 a.m., Ms. Wingo began sending a series of text messages to Gahagan over the next few hours, including one that stated, "I cried over you last night. [A]ll night." She also sent a text message to Pampu at 10:04 a.m., stating, "do not tell [Gahagan] what happened." She explained that she had "a gut feeling that something bad happened" and "whatever it was, [she] was worried it was going to hurt [Gahagan]."

She went back to sleep, and after she woke again, her friend Jami Hafner visited her and observed that she was upset over Gahagan and Pampu. Ms. Wingo told Hafner, "I think I had sex with [Pampu]." Ms. Wingo testified that she was not sure about that until late Sunday afternoon, when Gahagan showed her Pampu's text message to Stoddart. At that time, Ms. Wingo was not completely forthcoming with Gahagan, as she told him that she remembered seeing Pampu at the party and she did not remember anything else until she left the party with her friends. Gahagan stated something to the effect of "If you don't remember, it's rape." Ms. Wingo testified that she did not tell Gahagan about the "other things" she remembered because she was embarrassed, she was not ready to tell him, and she "was worried."

At approximately 5:10 p.m., Ms. Wingo sent a text message to Hafner stating that Gahagan knew about Pampu. She also participated in a group text between herself, Pescatore, and Sinclair, in which she stated, "I hooked up with [Pampu] and had sex apparently and I don't remember it," and sent a similar message to other close friends. Closer to midnight, Ms. Wingo sent the following text message to Gahagan:

I need you to tell me it's going to be okay because I'm [lying] here in bed and all I can think about is last night and the crying and how I feel violated because [Pampu] should have known better and I shouldn't get to be upset because I let it happen but I am mad because I screwed up with you . . . and I know we aren't a thing and stuff but you're my best friend and I need to know it[']s going to be okay because right now I feel like I don't deserve it to be okay.

(reformatted).

On the following Monday night, Ms. Wingo's roommate reported Pampu's sexual encounter with Ms. Wingo to a resident assistant, who in turn filed a report with Clemson officials the next day. The report included a statement that Ms. Wingo did not want to report the incident. On the same day that the report was filed, Clemson's "Deputy Title IX Coordinator"⁴ with OCES, Alesia Smith, asked Ms. Wingo to meet with her. Ms. Wingo recalled that she cried throughout the entire meeting and did not say "a single word." She asked a friend, Ashley Hodge, to pick her up from the meeting and help her "get home." Ms. Wingo apprised Hodge of the reason for the meeting, using the word "rape" for the first time. She later told family members and friends that she had been raped. On Tuesday night, Gahagan sent a text to Ms. Wingo stating that he heard Pampu's "side of the story" and it made Gahagan "feel like [Pampu was] not a criminal[, b]ut he still did make an extreme unforgivable mistake."

Approximately two weeks later, Ms. Wingo filed a formal complaint with OCES, and Smith sent a letter to Pampu advising him that she would be investigating the complaint according to the procedures in Clemson's Student Handbook. Ultimately, an administrative hearing board found that Ms. Wingo was incapacitated and unable to give consent to sexual intercourse and that Pampu "should have reasonably known." On February 29, 2016, the board suspended Pampu for approximately five months, and on appeal, Clemson's President added an additional

⁴ Referencing Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 to 1689. Section 1681(a) provides, with certain exceptions, that no "person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

year to the suspension. Pampu did not attempt to appeal the decision under the Administrative Procedures Act.

On June 15, 2016, Pampu filed an action in federal court naming as defendants Clemson University, Clemson University Board of Trustees, and several of Clemson's individual employees. He asserted claims for violation of Title IX of the Education Amendments of 1972, violation of due process (Fourteenth Amendment), breach of contract, breach of the covenant of good faith and fair dealing, negligence, promissory estoppel, and declaratory judgment. Ultimately, the parties settled the case, and this settlement kept the February 29, 2016 decision of Clemson's administrative hearing board in place. Accordingly, on March 27, 2018, the United States District Court for the District of South Carolina, Anderson Division, dismissed the action. *See Doe v. Clemson Univ.*, No. 8:16-CV-1957, 2019 WL 1383822 (D.S.C. Mar. 27, 2019) (unpublished).⁵

Meanwhile, on June 15, 2017, Pampu filed the present action, asserting claims for, *inter alia*, defamation and civil conspiracy. Respondents-Appellants filed summary judgment motions asserting, *inter alia*, that Pampu was collaterally estopped by the board's findings from asserting that Ms. Wingo consented to intercourse. However, the circuit court denied the motions and conducted a jury trial on March 21-25, 2022. Respondents-Appellants raised collateral estoppel again when arguing their directed verdict motions immediately after the conclusion of their case. Nonetheless, the circuit court sent Pampu's claims to the jury. The trial concluded with a jury verdict for Mr. Wingo on the civil conspiracy claim and the following verdicts for Pampu: Civil Conspiracy, as to Ms. Wingo, \$2,000,000 in actual damages; as to Gahagan, \$1,000,000 in actual damages; Defamation, as to Ms. Wingo, \$700,000 in actual damages and \$450,000 in punitive damages; as to Mr. Wingo, \$230,000 in actual damages and no punitive damages; as to Gahagan,

⁵ The District Court dismissed the case without prejudice to seek, within sixty days, to reopen the case if settlement had not been consummated "or, alternatively, to enforce the settlement agreement." *Id.* On March 27, 2019, the District Court filed its opinion and order granting Clemson's motion to enforce the settlement agreement. *Id.* The parties executed the final version of the settlement agreement on July 1, 2019. On March 19, 2021, Pampu and his parents filed a legal malpractice action against the attorneys who represented him in the federal action and initially represented him before the circuit court in the present action. *See Pampu v. Clawson Fargnoli, Civil Action No. 2021-CP-10-01343.* Pampu's appeal of the circuit court's dismissal of the malpractice action is now pending before this court. *See Pampu v. Clawson Fargnoli, Appellate Case No. 2023-001779.*

\$700,000 in actual damages and \$220,000 in punitive damages. The Wingos and Gahagan then filed separate motions for a JNOV, new trial absolute, or new trial *nisi*,⁶ raising the issue of collateral estoppel once more. The circuit court granted Gahagan's and Ms. Wingo's motions for a JNOV as to Pampu's civil conspiracy claim but denied all remaining post-trial motions. The circuit court also denied Mr. Wingo's motion to reconsider. This appeal followed.

LAW/ANALYSIS

I. JNOV/Civil Conspiracy

Pampu argues that the circuit court erred by granting a JNOV on his civil conspiracy claim because there was sufficient evidence to support each of the elements of this claim and the circuit court correctly denied Respondents-Appellants' directed verdict motions on this issue at trial. We disagree.

"In considering a JNOV, the [circuit court] is concerned with the existence of evidence, not its weight." *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). "The jury's verdict must be upheld unless no evidence reasonably supports the jury's findings." *Id.* "When ruling on a JNOV motion, the [circuit] court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party." *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012). "This court must follow the same standard." *Id.* "If more than one reasonable inference can be drawn or if the inferences to be drawn from the evidence are in doubt, the case should be submitted to the jury." *Id.* (quoting *Chaney v. Burgess*, 246 S.C. 261, 266, 143 S.E.2d 521, 523 (1965)). However, "[i]f only one reasonable inference can be drawn from the evidence, the motion must be granted." *Brady Dev. Co. v. Town of Hilton Head Island*, 312 S.C. 73, 78, 439 S.E.2d 266, 269 (1993).

To successfully assert a civil conspiracy claim, the plaintiff must show "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). "Since civil conspiracy is an intentional tort, an intent to harm, which has also been discussed in our conspiracy law, remains an inherent part of the analysis." *Id.* at 574 n.9, 861 S.E.2d at 780 n.9. "Conspiracy may be inferred from

⁶ Gahagan did not seek a new trial *nisi*.

the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances." *Moore v. Weinberg*, 373 S.C. 209, 228, 644 S.E.2d 740, 750 (Ct. App. 2007), *aff'd*, 383 S.C. 583, 681 S.E.2d 875 (2009).

Pampu states that his civil conspiracy claim is based on Gahagan's and Ms. Wingo's "concerted effort to have Pampu removed from Clemson." Pampu also states that Gahagan and Ms. Wingo "utilized the Clemson disciplinary process to achieve that goal" and "[i]t is clear that the false statements [Ms.] Wingo and Gahagan provided to Clemson during the disciplinary process . . . led to Pampu's removal from Clemson." However, in its order granting a JNOV on this claim, the circuit court found, *inter alia*, that there was no evidence of any unlawful act, any lawful act by unlawful means, or resulting damages.

Pampu maintains that the "unlawful act" committed by Gahagan and Ms. Wingo was the tortious interference with a contract. He asserts that he had a contract with Clemson in which he would make tuition payments and comply with Clemson's policies in exchange for his continued enrollment as a student, and Gahagan and Ms. Wingo caused Clemson to breach that contract by removing him from enrollment.

"The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) [the wrongdoer's] intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Vortex Sports & Ent., Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008) (quoting *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993)). We agree that Pampu's status as a student at Clemson was in the nature of a contractual relationship. *See Carter v. Univ. of S.C.*, 360 S.C. 428, 432 n.4, 602 S.E.2d 59, 61 n.4 (Ct. App. 2004) ("It is commonly held that a contract exists between a university and its students.").

Pampu's settlement of his lawsuit against Clemson, which included a breach of contract claim, precluded him from asserting at trial that Clemson breached its contract with Pampu. *See infra* (discussion of collateral estoppel); Restatement (Second) of Judgments § 27 cmt. e (Am. L. Inst. 1982) (stating that a consent judgment may be conclusive with respect to one or more issues if the parties have entered an agreement manifesting such an intention). Even if Pampu was not so

precluded, there are no reasonable inferences that can be drawn from the evidence presented to the jury of a breach.⁷

First, section 59-105-40 of the South Carolina Code (2020), which is part of the South Carolina Campus Sexual Assault Information Act, contemplates the responsibility of Clemson's OCES to conduct disciplinary proceedings when it receives a complaint of sexual assault.⁸ Subsection (A) requires "each institution of higher learning" to "establish *and implement*" a written sexual assault policy, and subsection (B)(4) requires that the policy address

procedures for institutional disciplinary action in cases of alleged sexual assault, including a clear statement that both the accuser and the accused:

(i) have the same opportunities to have support persons or legal counsel, if the institution's policy allows the presence of outside legal counsel, present during an institutional disciplinary proceeding; and

(ii) must be informed of the outcome of an institutional disciplinary proceeding brought alleging a sexual assault.

§ 59-105-40 (emphasis added). Therefore, Clemson's imposition of a sanction against Pampu for violating its sexual assault policy can hardly be characterized as a breach of contract, especially given Pampu's contractual duty to comply with Clemson's policies. We note that Pampu does not cite any authority to the contrary.

⁷ Further, Pampu's argument that Clemson's suspension of Pampu constituted a breach of contract does not appear in his initial brief; it is only in his reply brief. Therefore, he did not properly present his theory of tortious interference with a contract to this court. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) ("[A]n argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief."). Nonetheless, we will address the merits out of an abundance of caution.

⁸ Although the name of the Act includes the term "campus" in it, section 59-105-40 also covers sexual assaults that occur off-campus if both the accused and the accuser are students of the institution. *See* § 59-105-40(D) ("[T]he institution's law enforcement personnel, security personnel, and counseling center must make the written policy available to a student who reports being a victim of a sexual assault involving another student *or* occurring on campus." (emphasis added)).

Therefore, he has abandoned this argument. *See Glasscock*, 348 S.C. at 81, 557 S.E.2d at 691 ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

To the extent that Pampu argues an impropriety in the Title IX proceedings constituted a breach, the circuit court excluded the evidence pertaining to these proceedings from the jury's consideration.⁹ Therefore, there was no evidence before the jury showing that these proceedings were not lawfully initiated or conducted. Pampu makes the conclusory statement that Clemson "unilaterally failed to perform its portion of the contract it had with Pampu due to the false statements that [Ms.] Wingo and Gahagan provided during the disciplinary process." However, Pampu is barred from asserting that Ms. Wingo and Gahagan made false statements concerning her lack of consent because Pampu not only failed to appeal the decision of Clemson's President pursuant to the Administrative Procedures Act (APA), *see infra* (discussion of collateral estoppel), but also settled his federal lawsuit against Clemson, which specifically left the board's findings in place.¹⁰

Further, he does not assert that any Clemson employee knowingly accepted or acted on any false evidence. Neither does he cite any authority allowing him to second-guess the administrative hearing board's assessment of the credibility of the evidence before it. Therefore, he has abandoned this argument. *See Glasscock*, 348 S.C. at 81, 557 S.E.2d at 691 ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."). Because Pampu failed to show a breach of contract on Clemson's part, there can be no tortious interference with a contract with which to establish the "unlawful act" element of civil conspiracy.

As to the civil conspiracy element "damages proximately resulting to the plaintiff," Pampu broke the chain of causation by failing to appeal the decision of Clemson's President upholding his suspension and settling his federal lawsuit against Clemson, precluding any possible reversal of the suspension. Moreover, the testimony of Pampu's expert witness that but for having to self-report his suspension on his dental school applications, Pampu would have not only been accepted into dental school *but also* completed dental school and completed the additional training required to specialize in orthodontics was pure speculation and does not qualify as even minimally probative evidence to support the jury's verdict.

⁹ We express no opinion on the propriety of excluding this evidence.

¹⁰ We express no opinion on the preclusive effect of Pampu's failure to appeal the President's decision pursuant to the APA on the issues in his federal lawsuit.

Finally, Pampu argues that it is "unclear how a circuit court could possibly deny a motion for a directed verdict and then grant a JNOV motion on the same issue without improperly deciding credibility issues [or] resolving evidentiary conflicts." In support of this argument, Pampu cites this court's opinion in *Garrison v. Target Corp.*, 429 S.C. 324, 348–49, 838 S.E.2d 18, 31 (Ct. App. 2020) (*Garrison I*), *aff'd in part as modified, rev'd in part*, 435 S.C. 566, 869 S.E.2d 797 (2022) (*Garrison II*). In *Garrison I*, this court reversed the circuit court's granting of a JNOV on the jury's punitive damages award, and our supreme court affirmed this part of the opinion. *Id.* at 349, 838 S.E.2d at 31; *Garrison II*, 435 S.C. at 585, 869 S.E.2d at 808.

Specifically, this court addressed the plaintiffs' concern that the circuit court "conflated evidentiary sufficiency with constitutional excessiveness" and "failed to articulate the standard for evaluating a motion for a JNOV as to the award of punitive damages" because the court was primarily concerned with the amount of the jury's verdict. *Garrison I*, 429 S.C. at 348–49, 838 S.E.2d at 31. This court agreed with the plaintiffs that the inconsistency between the circuit court's JNOV and its previous denial of the defendant's directed verdict motion (when the circuit court found sufficient evidence to support punitive damages) could be explained by the court losing sight of the standard for a JNOV "after being confronted with the enormity of the jury's punitive damages award." *Id.* at 349, 838 S.E.2d at 31. Nothing in the opinion stated or even implied that granting a JNOV after having denied a directed verdict rests on an improper basis. If such were the case, our rules of civil procedure would not contemplate the circuit court's reconsideration of the legal questions raised in the directed verdict motion. But, of course, Rule 50(b), SCRPC, does contemplate such a reconsideration:

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury *subject to a later determination of the legal questions raised by the motion*. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict[.]

(emphasis added)); *see also Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006) ("[A] motion for JNOV under Rule 50(b), SCRCP[,] is a renewal of a directed verdict motion.").

Based on the foregoing, the circuit court properly granted a JNOV on the civil conspiracy claim.

II. Collateral Estoppel

Respondents-Appellants assign error to the circuit court's denial of their directed verdict and JNOV motions as to Pampu's defamation claim.¹¹ They argue that (1) pursuant to the doctrine of collateral estoppel, Pampu is bound by Clemson's findings that Ms. Wingo did not have the capacity to consent and Pampu should have known that and (2) these findings establish that the alleged defamatory statements made by Respondents-Appellants were true and, therefore, defeat Pampu's defamation claim. *See Kunst v. Loree*, 424 S.C. 24, 40, 817 S.E.2d 295, 303 (Ct. App. 2018) ("The truth of the matter is a complete defense to an action based on defamation." (quoting *WeSav Fin. Corp. v. Lingefelt*, 316 S.C. 442, 445, 450 S.E.2d 580, 582 (1994) (per curiam))). We agree.

To prove defamation, the plaintiff must show (1) a *false* and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

McBride v. Sch. Dist. of Greenville Cnty., 389 S.C. 546, 559–60, 698 S.E.2d 845, 852 (Ct. App. 2010) (emphasis added).

In Pampu's complaint, his defamation claim states, in part,

[Ms. Wingo and Gahagan] made *false* and defamatory statements about [Pampu] to administrators at Clemson University, to the national headquarters of [Pampu's]

¹¹ Pampu questions the existence of a directed verdict motion on the ground of collateral estoppel, but Respondents-Appellants raised collateral estoppel as one of their grounds for a directed verdict at the end of their case. Likewise, they raised this issue in their respective JNOV motions.

fraternity, as well as to fellow students. . . . [Mr. Wingo's]¹² statements to the national headquarters of [Pampu's] fraternity were based on confidential and incomplete findings, which only served to breed further acts of defamation and harassment. . . . Similarly, [Ms. Wingo's] statements at the public speaking competition were defamatory and further perpetuated [Respondents-Appellants'] acts of defamation and harassment. . . . [Respondents-Appellants'] statements were made with actual malice. . . . [Respondents-Appellants'] statements during the Title IX proceedings were defamatory and are not protected by "privilege" because [Respondents-Appellants] made those statements knowing they were *false*.

(emphases added).¹³

¹² Mr. Wingo is Ms. Wingo's father.

¹³ The defamation claim specifically referenced the following statements as defamatory: (1) Ms. Wingo "reported the alleged incident to . . . a counselor at Clemson's Counseling and Psychological Services"; (2) Gahagan "actively participated in spreading the false allegations that [Pampu] had raped [Ms. Wingo]"; (3) Ms. Wingo submitted a Title IX complaint to OCES, pursuing a "false report of sexual misconduct"; (4) Gahagan was discussing the ongoing Title IX investigation "and the incident in question" around campus and "publicly referring to [Pampu] as a 'rapist' around campus," making "these statements to at least ten members of the Clemson community"; (5) Respondent-Appellant David Wingo sent a letter concerning the OCES findings to Pampu's fraternity and attached the February 29, 2016 decision letter from the administrative hearing board's chairperson despite the fact that Pampu's appeal from that decision was still pending and "knowing it concerned a false allegation and finding of sexual misconduct"; (6) Ms. Wingo "continued to disseminate her lies by making a public presentation regarding sexual assault to members of the campus community at a Clemson sponsored event" in which she "falsely stated that she had been sexually assaulted on October 24, 2015" and provided "sufficient detail during her presentation . . . for attendees to identify [Pampu] as the perpetrator"; and (7) Respondents-Appellants "pursued a false claim of sexual misconduct" during the Title IX investigation and proceedings to "numerous administrators in Clemson's OCES."

Pampu has never contested the fact that he and Ms. Wingo had sexual intercourse. Therefore, to determine whether Respondents-Appellants' statements concerning this encounter were false, the trier of fact must focus on whether Ms. Wingo had the capacity to consent. Under both state law and Clemson's Anti-Harassment Policy, the lack of capacity to consent is key to determining the culpability of an individual charged with sexual misconduct. *See* S.C. Code Ann. § 16-3-654(1) (2015) ("A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if . . . [t]he actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery."); S.C. Code Ann. § 16-3-651(f) (2015) (stating, "'Mentally incapacitated' means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance[,] or from some other cause"); *Clemson University Anti-Harassment and Non-discrimination Policy* § II.C.1 (defining "Rape" as "[t]he carnal knowledge of a person without the consent of the victim including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacitation"); *id.* at § II.D (defining consent to sexual contact or behavior and including "impairment due to the influence of alcohol" as a factor that "may limit or negate a person's ability to consent"); *see also State v. Lindsey*, 355 S.C. 15, 19, 583 S.E.2d 740, 741 (2003) (referencing the common law definition of rape as "the carnal knowledge of a woman by force and against her consent" (quoting *State v. Tuckness*, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971))).

Prior to Pampu's filing of the present action, Clemson's administrative hearing board found that Ms. Wingo was incapable of giving consent because of her incapacitation and that Pampu should have known Ms. Wingo did not have the capacity to consent. As we explain below, these findings are binding in the present action and preclude Pampu from asserting the falsity of Respondents-Appellants' references to Pampu's "rape" of Ms. Wingo and to his "sexual misconduct," therefore defeating Pampu's defamation claim. *See Kunst*, 424 S.C. at 40, 817 S.E.2d at 303 ("The truth of the matter is a complete defense to an action based on defamation." (quoting *WeSav Fin. Corp.*, 316 S.C. at 445, 450 S.E.2d at 582)). On this basis, Respondents-Appellants are entitled to a JNOV on this claim.

"Collateral estoppel is an equitable doctrine." 46 Am. Jur. 2d Judgments § 469 (2025) (footnote omitted). "It is founded on principles of fundamental fairness, and fairness is its overriding concern." *Id.* (footnotes omitted). In the present case, we conclude that ultimately, fundamental fairness requires the court to

give preclusive effect to the administrative hearing board's February 29, 2016 findings.

"Collateral estoppel prevents a party from re-litigating an issue in a subsequent suit which was actually and necessarily litigated and determined in a prior action." Our courts have applied the doctrine of issue preclusion to the factual determinations of administrative tribunals. However, not every factual determination by an administrative agency is entitled to preclusive effect.

...

In order to determine whether an agency's factual finding is preclusive, we must first determine whether the particular finding meets the traditional elements of collateral estoppel. We must then examine whether there is some countervailing consideration which necessitates relitigation. A party claiming preclusive effect under collateral estoppel must demonstrate that the particular issue was "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment."

Crosby v. Prysmian Commc'ns Cables & Sys. USA, LLC, 397 S.C. 101, 108–09, 723 S.E.2d 813, 816–17 (Ct. App. 2012) (footnote omitted) (citations omitted) (first quoting *Aaron v. Mahl*, 381 S.C. 585, 592, 674 S.E.2d 482, 486 (2009); and then quoting *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009)); *see also* Restatement (Second) of Judgments § 27 (Am. L. Inst. 1982) ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim."). Further, "our courts have applied collateral estoppel only when the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue." *Carolina Renewal*, 385 S.C. at 555, 684 S.E.2d at 782.

"Our courts have relied heavily on the Restatement (Second) of Judgments in developing collateral estoppel jurisprudence." *Id.* at 556 n.2, 684 S.E.2d at 783 n.2. In *Beall v. Doe*, this court adopted section 29 of the Restatement (Second) of

Judgments (1982), which addresses the application of issue preclusion in subsequent litigation with different parties. 281 S.C. 363, 370, 315 S.E.2d 186, 190 (Ct. App. 1984). Section 29 states, in part,

A party precluded from relitigating an issue with an opposing party, in accordance with §§ 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue.

Restatement (Second) of Judgments § 29 (1982). Section 29 is appropriate for application in the present case because Mr. Wingo and Gahagan were not parties to the Title IX proceedings or the federal action against Clemson, and Ms. Wingo was not a party to the federal action against Clemson.

In the present case, the first "action" is the Title IX proceedings that resulted in the administrative hearing board's findings concerning Ms. Wingo's consent. These proceedings began after OCES received the report regarding the sexual encounter, which prompted Clemson's Deputy Title IX Coordinator, Alesia Smith, to initiate a three-month investigation involving at least thirteen interviews. After the investigation's conclusion, Smith held a conference with Pampu to advise him of Clemson's allegations that he violated the following student regulations: Alcohol, Disorderly Conduct, "Harm to Person," and Sexual Misconduct. Smith also advised Pampu that the recommended sanction was dismissal from Clemson with no eligibility to return. Pampu requested an administrative hearing, and Smith later sent to him written notice of the date, time, and location of the hearing as well as the names of the witnesses likely to be called by OCES. The notice also advised Pampu to provide Smith with the names of any additional witnesses who would be attending the hearing on his behalf and stated that the evidence to be presented consisted of the investigator's report, including text messages and witnesses' accounts.

A five-member administrative hearing board conducted a hearing on February 29, 2016, which was recorded and transcribed. The board members included a faculty representative, a staff representative, and two student representatives. The board's chairperson, David Frock, opened the hearing with an explanation of the hearing's purpose and the right of either the complainant (Ms. Wingo) or the responding student (Pampu) to appeal the resulting decision. Chairperson Frock also explained that those accompanying Ms. Wingo and Pampu, including legal counsel, would not be allowed to directly participate in the proceedings but could speak to

the students and advise them during the hearing. Both Pampu and Ms. Wingo were assisted by South Carolina licensed attorneys.

Chairperson Frock further advised the students that the alleged violations of the student code of conduct had to be "proven based upon a preponderance of the evidence." The board did not implement any formal rules of evidence, but Chairperson Frock and Smith, who presided as the hearing officer, periodically interjected to exclude repetitious or irrelevant information. OCES presented five fact witnesses and Chairperson Frock called two fact witnesses on Pampu's behalf. Pampu was allowed to question all witnesses by submitting the questions to Frock, who then asked the questions after vetting them.

One of the OCES witnesses, an investigator, summarized the investigation and explained that, having known that Ms. Wingo and Pampu had intercourse, the investigators' focus was on information relevant to Ms. Wingo's capacity to consent. After Pampu questioned the witness, Smith interjected to explain, "incapacitation is the issue at hand." The remaining fact witnesses, which included Pampu and two additional witnesses appearing on his behalf, provided their observations of Ms. Wingo's behavior just before and immediately after the sexual encounter. Subsequently, Ms. Wingo and Pampu were allowed to give oral statements and to question each other after their respective statements were given.

The board then deliberated on whether Pampu had committed any of the policy violations with which he had been charged. The board returned from deliberations to announce its determination that Pampu had committed all charged violations. The board then considered information necessary to determine the appropriate sanction, including the statements of Ms. Wingo's mother, three character witnesses for Pampu, and the campus counselor's description of Ms. Wingo's emotional and psychological state since the night of the party. The counselor stated that Ms. Wingo was suffering from post-traumatic stress disorder and Pampu's continued presence on campus would have an adverse impact on her recovery.

After the board deliberated on the sanction, Chairperson Frock announced that Pampu would be suspended but would be allowed to reapply for admission the following August. Chairperson Frock later sent a letter to Pampu stating the board's findings that Ms. Wingo lacked the capacity to consent to sexual intercourse and that Pampu should have known so. Chairperson Frock advised Pampu that the suspension would begin "immediately or at the conclusion of any appeals that are filed that result in [Pampu] remaining at Clemson University throughout the appeal

process." The letter also stated that if the suspension were to begin immediately, Pampu would be eligible to re-enroll for the 2016 Fall semester. Chairperson Frock also advised Pampu of the steps necessary to appeal the board's decision.

A few days later, Ms. Wingo and Pampu filed cross-appeals with Clemson's Vice President for Student Affairs, Almeda Jacks, but Vice President Jacks upheld the five-month suspension.¹⁴ Both Ms. Wingo and Pampu then appealed to the Office of the President, and Ms. Wingo filed a reply to Pampu's appeal. The President's Chief of Staff issued a decision on May 27, 2016, upholding the board's findings and increasing the suspension period by one year, effective until August 1, 2017. The decision specifically stated that it was final.¹⁵

On June 15, 2016, Pampu filed a complaint in federal court against Clemson and its employees, asserting claims for violation of Title IX and due process, *inter alia*.¹⁶ In addition to damages, Pampu requested

a judicial declaration that (i) the outcome and findings made by Clemson be reversed; (ii) Plaintiff's reputation be restored; (iii) Plaintiff's disciplinary record be expunged; (iv) the record of Plaintiff's suspension from Clemson be removed from his education file; (v) any record of the complaint against Plaintiff be permanently destroyed; (vi) Plaintiff be readmitted to Clemson for the Fall 2016 semester; and (vii) Clemson's rules, regulations and guidelines are unconstitutional as applied[.]

The parties engaged in mediation on March 21, 2018, and reached a settlement agreement that was reduced to handwriting and signed by both Pampu and his counsel. *Doe v. Clemson Univ.*, No. 8:16-CV-1957, 2019 WL 1383822, at *1

¹⁴ Ms. Wingo sought Pampu's dismissal from Clemson.

¹⁵ Because Pampu was not dismissed from Clemson, he could have re-enrolled for classes at the conclusion of the suspension period. However, he ultimately transferred to the College of Charleston and graduated with a degree in biochemistry.

¹⁶ In his complaint, Pampu stated that, *inter alia*, both he and Ms. Wingo were intoxicated when they had sex on October 24, 2015, but the defendants "failed to consider the effect of [his] incapacitation on his ability to affirmatively consent to the physical contact initiated by [Ms. Wingo]." He quoted a provision in Clemson's student code of conduct stating, "Intoxication of the respondent is not an excuse for failure to obtain consent or failure to know of the complainant's inability to consent."

(D.S.C. Mar. 27, 2019). The parties executed the formalized version of the agreement on July 1, 2019. The agreement's terms included, *inter alia*, the payment of \$100,000 to Pampu's attorneys, keeping in place the board's February 29, 2016 decision "as upheld by the University Vice President of Student Affairs," and Pampu's voluntary dismissal of his action before the District Court with prejudice.

The Board's Procedures

In evaluating the necessity of relitigating the issue of Ms. Wingo's consent, the apparent failure of OCES to administer an oath to witnesses during the February 29, 2016 hearing gives us pause. *See Crosby*, 397 S.C. at 109, 723 S.E.2d at 817 ("In order to determine whether an agency's factual finding is preclusive, we must first determine whether the particular finding meets the traditional elements of collateral estoppel. We must then examine whether there is some countervailing consideration which necessitates relitigation."). However, our overriding concern is fairness. *See* 46 Am. Jur. 2d Judgments § 469 ("[Collateral estoppel] is founded on principles of fundamental fairness, and fairness is its overriding concern." (footnotes omitted)). In light of this, we view Pampu's course of action (or inaction) after receiving the final decision of Clemson's President as the decisive factor in our conclusion that he was precluded from relitigating the issue of Ms. Wingo's consent.

First, Pampu's assertion that inadequacies in the board's procedures violated due process and made the board's findings unreliable rings hollow in the face of his failure to seek judicial review of Clemson's final decision in state court and his settlement of his federal lawsuit against Clemson that kept the board's February 29, 2016 decision in place. *Cf. Earle v. Aycock*, 276 S.C. 471, 475, 279 S.E.2d 614, 616 (1981) (holding that a former employee of a state agency was barred from relitigating the validity of his discharge in court after the State Grievance Committee upheld the discharge because he did not seek judicial review of the committee's decision). We will address this in more detail below.

Further, it simply could not have been the legislative intent underlying the South Carolina Campus Sexual Assault Information Act to allow a student disciplined in proceedings authorized by the Act to indirectly attack that decision with a retaliatory defamation suit against his accuser. *See Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 378, 735 S.E.2d 453, 455 (2012) ("Th[e appellate c]ourt will not construe a statute in a way which leads to an absurd result or renders it meaningless."); *id.* ("The statutory language must be construed in light of the intended purpose of the statute."); *Smith v. S.C. Ins. Co.*, 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002) ("A statute must receive a practical and reasonable

interpretation consistent with the 'design' of the legislature."). Pampu argues that his defamation claim is based on statements Respondent-Appellants made "outside of the Clemson process." However, the defamation claim set forth in Pampu's complaint specifically referenced statements outside of the proceedings *and within* the Title IX process as being false and defamatory.

Recognizing the "serious nature and consequences of sexual assault and the particular problems caused by sexual assault within a campus community," the General Assembly chose to require colleges to implement a campus sexual assault policy including programs aimed at prevention and awareness and procedures to follow if a sexual assault of a student occurs. S.C. Code Ann. § 59-105-30 (2020); *see* § 59-105-40(A). The policy "must address," *inter alia*, disciplinary procedures, possible sanctions, and notification of services for sexual assault victims. § 59-105-40(B). We are required to read these provisions so that they are not "rendered surplusage, or superfluous," for "[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (alterations in original) (citation omitted) (quoting *State v. Sweat*, 379 S.C. 367, 377, 382, 665 S.E.2d 645, 651, 654 (Ct. App. 2008)). Were a student disciplined under the procedures authorized by the Act allowed to relitigate the findings resulting from those procedures in state court, it would render the Act's provisions superfluous.

Turning to the federal lawsuit, Pampu has enjoyed the benefits of his settlement with Clemson while also trying to assert in the present litigation the very due process allegations against Clemson that the settlement intended to resolve. Pampu had a full and fair opportunity to seek judicial review in state court or to continue the federal lawsuit and allow the federal court to address any inadequacies in the Title IX proceedings. Yet, he declined to do so. He cannot now attack the credibility of those proceedings for purposes of pursuing redress from Respondents-Appellants. It is fundamentally unfair to require Respondents-Appellants to pay damages to Pampu when he already had an opportunity to mitigate those damages by seeking direct review of the Title IX findings and in fact accepted compensation from Clemson for his damages. Pampu simply cannot have it both ways. *See* 46 Am. Jur. 2d Judgments § 469 ("Collateral estoppel is an equitable doctrine. It is founded on principles of fundamental fairness, and fairness is its overriding concern." (footnotes omitted)).

Pampu argues the settlement agreement "makes absolutely no reference to any factual findings" and merely states that Clemson "will reinstate the hearing board's

decision of February 29, 2016."¹⁷ We find this argument disingenuous because the hearing board's decision necessarily includes its findings that Ms. Wingo did not have the capacity to consent and Pampu should have known this. But even if Pampu is correct, his argument fails to recognize that the settlement agreement represents his failure to pursue direct review of the board's findings.

Likewise, Pampu emphasizes the following statement in the settlement agreement's introductory recitals: "Whereas, [Pampu] denies the allegations of [Ms. Wingo's] formal Title IX complaint to Clemson University, the basis of which the hearing board's decision of February 26, 2016 was made[.]" However, this does not change our analysis.

"Whereas clauses" are generally viewed as being merely introductory and since recitals indicate only the background of a contract, that is, the purposes and motives of the parties, they do not ordinarily form any part of the real agreement. Generally, they do not have the force of contractual stipulations. However, "whereas clauses" can assist in determining the parties' intent; recitals may have a material influence in construing the contract and determining the intent of the parties, and in such respect they should, so far as possible, be reconciled with the operative clauses and be given effect.

Generally, if the recitals in a contract are clear and the operative part is ambiguous, the recitals govern the construction; however, if the recitals are ambiguous and the operative part is clear, the operative part must prevail. If both the recitals and the operative part are clear, but they are inconsistent with each other, the operative part must control.

17A Am. Jur. 2d *Contracts* § 373 (footnotes omitted).

Here, it is important to place the statement emphasized by Pampu back within the context of the entire settlement agreement. Considering the agreement as a whole, the recitals and the operative parts are clear and, therefore, the operative parts

¹⁷ We question the use of the term "reinstate" because nothing in the record indicates that the board's decision was annulled or vacated.

must control. The operative language shows the parties' intent to keep in place the hearing board's decision, which necessarily includes its findings on consent. And by virtue of the federal district court's adoption of the parties' agreement as a basis to dismiss Pampu's lawsuit, any individual's restatement of the board's findings on consent would be truthful as a matter of law. *See* Restatement (Second) of Judgments § 27 (1982), comment e (stating that a consent judgment may be conclusive with respect to one or more issues if the parties have entered an agreement manifesting such an intention).

We acknowledge that there are occasions when a party should be afforded an opportunity to relitigate an issue previously decided in another proceeding. Restatement section 29(2) states,

A party precluded from relitigating an issue with an opposing party, in accordance with §§ 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue. The circumstances to which considerations should be given include those enumerated in § 28 and also whether:

...

(2) The forum in the second action affords the party against whom preclusion is asserted procedural opportunities in the presentation and determination of the issue that were not available in the first action and could likely result in the issue being differently determined[.]

See also Restatement (Second) of Judgments § 28(3) (1982) ("A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them[.]"). However, the circumstances in the present case do not justify giving Pampu a second bite at the apple.

First, as we previously stated, this retaliatory action flies in the face of the requirements of, and the policy underlying, the South Carolina Campus Sexual Assault Information Act. Further, during the disciplinary hearing, Pampu was allowed to present multiple witnesses to multiple finders of fact—a five-member

administrative board that included two student representatives. In addition to providing his own observations of Ms. Wingo's behavior before and after the sexual encounter, he presented two additional witnesses. Pampu was also allowed to cross-examine OCES witnesses just as he was allowed to cross-examine Respondents-Appellants' witnesses in the present action. Moreover, in the OCES hearing, Pampu was accompanied by counsel to advise him throughout that proceeding.

We acknowledge that Pampu's ability to subpoena witnesses for the trial in this case enabled him to present more witnesses than the two who appeared voluntarily at the OCES hearing. However, the quantity of witnesses will not *necessarily* make a difference as jurors may assign weight to the testimony that they determine to be appropriate, accepting or rejecting that of several witnesses or one witness or accepting only part of a witness's testimony. *See Ross v. Paddy*, 340 S.C. 428, 434, 532 S.E.2d 612, 615 (Ct. App. 2000) ("Even where the evidence is uncontradicted, the jury may believe all, some, or none of the testimony[.]"). More importantly, Pampu failed to seek judicial review of Clemson's decision in order to obtain relief for either his inability to subpoena witnesses for the OCES hearing or the apparent failure of OCES to administer an oath to witnesses. In sum, the totality of the circumstances in this particular case do not align with those described by section 29(2) or section 28(3) of the Restatement (Second) of Judgments.

Based on the foregoing, we conclude that Pampu had a full and fair opportunity to seek relief from the board's findings on the issue of Ms. Wingo's consent, but he failed to do so and instead chose to keep in place the decision that was necessarily based on those findings. Fundamental fairness requires that the board's findings be given preclusive effect in Pampu's defamation claim.

State Agency/Contested Case

Pampu concedes that preclusive effect may be given to the findings of an administrative agency but argues that Clemson does not fall within the definition of "agency" in our Administrative Procedures Act (APA) and that Clemson is not an extension of the state. We disagree.

Clemson's student disciplinary proceedings addressing sexual assault allegations, as contemplated by section 59-105-40 and as required by due process, qualifies as a "contested case" as that term is defined in the APA, i.e., "a proceeding . . . in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing[.]" S.C. Code

Ann. § 1-23-310(3) (2005); *see* § 59-105-40(A), (B)(4) (requiring institutions of higher learning to implement a written sexual assault policy addressing procedures for disciplinary action in cases of alleged sexual assault); *Doe v. Univ. of N. Carolina Sys.*, 133 F.4th 305, 317 (4th Cir. 2025) ("[A]s a matter of procedural due process, an accused student must be 'afforded the meaningful hearing to which they [are] entitled.'" (quoting *Tigrett v. Rector & Visitors of Univ. of Va.*, 290 F.3d 620, 630 (4th Cir. 2002))); *id.* (addressing the appropriate scope of "a meaningful hearing in higher-education disciplinary proceedings" in which "the resolution of a disciplinary charge turns on credibility determinations" and "the potential sanctions are severe").

Further, "agency" is defined in section 1-23-310 as "each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases[.]" § 1-23-310(2) (Supp. 2024). Clemson is a "State Institution" pursuant to section 59-107-10 of the South Carolina Code, and section 59-105-40(B)(4) contemplates the student disciplinary proceedings Clemson conducts. It logically follows that Clemson is a state agency as defined in the APA. *Cf. Liu v. Portland State Univ.*, 383 P.3d 294, 301 (Or. Ct. App. 2016) (interpreting the term "agency" in Oregon's Administrative Procedures Act (APA) and holding a university that expelled a student was an "agency" and the expulsion proceeding was a "contested case" as those terms were defined in Oregon's APA and, therefore, the APA conferred jurisdiction for judicial review on Oregon's court of appeals); *id.* at 298 ("[T]he expulsion process at issue here was the type of proceeding that necessitated contested case procedures under the APA."); Or. Rev. Stat. Ann. § 183.310(1) ("Agency' means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches."); Or. Rev. Stat. Ann. § 183.310(2)(a) ("Contested case' means a proceeding before an agency: (A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard; (B) Where the agency has discretion to suspend or revoke a right or privilege of a person; (C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or (D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.417, 183.425, 183.450, 183.460 and 183.470."); Or. Rev. Stat. Ann. § 183.482(1) ("Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals.").

Therefore, Pampu's argument that the definition of "agency" in the APA does not include any explicit reference to schools, colleges, or universities does not

control our analysis. Moreover, in at least one case, our supreme court has treated a state-supported university as a state agency for purposes of the APA. *See Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 380, 384, 453 S.E.2d 880, 882, 885 (1994) (*Ross I*) (applying provisions of the APA to judicial review of a decision of a state-controlled university board of trustees upholding a professor's termination); *see also Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) (*Ross II*) ("In *Ross I*, the [supreme c]ourt specifically determined the lower court had discretion under provisions of the APA to order discovery concerning alleged irregularities in the grievance proceedings at [the Medical University of South Carolina (MUSC)] and, during the grievance process, MUSC's General Counsel and Vice-President had violated provisions of the APA prohibiting ex parte communication. In arriving at these conclusions, the [c]ourt necessarily decided the APA was applicable to MUSC's grievance proceedings.").¹⁸

This is consistent with our courts' treatment of secondary school boards as administrative agencies whose decisions are subject to judicial review under the APA. *See Brown v. James*, 389 S.C. 41, 49–50, 697 S.E.2d 604, 608–09 (Ct. App. 2010) (summarizing previous appellate opinions in cases involving school districts and noting the treatment of local school boards as falling within the definition of "agency" in the APA); *Law v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 496, 243 S.E.2d 192, 193 (1978) (applying the substantial evidence rule to judicial review of the decision of a school board). This is also consistent with the treatment that several other jurisdictions give to college student disciplinary proceedings. *See Brewbaker v. State Bd. of Regents*, 843 N.W.2d 466, 470–71, 473–75 (Iowa Ct. App. 2013) (applying Iowa's Administrative Procedure Act to judicial review of a university's suspension of a student for harassing a fellow student and characterizing the suspension proceedings as "agency action" and the university's board of regents as "the agency"); *Daley v. Univ. of Tenn.*, 880 S.W.2d 693, 695–96 (Tenn. Ct. App. 1994) (upholding the chancery court's judicial review of an administrative law judge's findings and conclusions in a contested case concerning charges by a university's honor council against a student and applying Tennessee's Administrative Procedures Act, which has a standard of review very similar to South Carolina's APA); *Ruane v. Shippensburg Univ.*, 871 A.2d 859, 860 n.1 (Pa. Commw. Ct. 2005) (explaining a university that suspended a student for violating the student code of conduct by sexually assaulting another student was a part of Pennsylvania's State

¹⁸ *Cf. Riggin v. Bd. of Trs.*, 489 N.E.2d 616, 625 (Ind. Ct. App. 1986) (conducting judicial review of a decision of a university's board of trustees to terminate a professor, characterizing the board as an administrative agency, and applying a standard of review virtually identical to the standard under South Carolina's APA).

System of Higher Education, and therefore, it was a Commonwealth agency over which the Commonwealth Court of Pennsylvania had appellate jurisdiction to review student disciplinary proceedings (citing 42 Pa. Cons. Stat. § 763)); Penny J. Rezet, *Courts-Limiting the Intended Scope of the Commonwealth Court's Original Jurisdiction-Balshy v. Rank*, 59 Temp. L.Q. 629, 635 (1986) (explaining that the commonwealth court's appellate jurisdiction under § 763 covers actions on appeal from "governmental agencies and boards"); *Horner-Neufeld v. Univ. of Alaska Fairbanks*, 389 P.3d 6, 10–12 (Alaska 2017) (characterizing a former student's appeals of her dismissal from a university to the superior court and then to the supreme court as administrative appeals and setting forth a standard of review for "the agency's factual findings" and other determinations comparable to that in South Carolina's APA); *id.* at 14 (citing Alaska Appellate Rule 609(b) for the proposition that the superior court "has the discretion to grant a trial de novo in an appeal from an *administrative agency*" (emphasis added)); *Doe v. Brockport*, 186 N.Y.S.3d 458, 460 (N.Y. App. Div. 2023) (concluding that substantial evidence supported a university's finding that a student violated code of conduct provisions governing sexual contact between students and rejecting the student's additional challenge to the sanctions because it "*was not raised during the administrative process or on the administrative appeal and, thus, it is not properly before [the court] . . .*" (emphasis added)); *e.g.*, *Ayach v. Regents of Univ. of California*, 321 Cal. Rptr. 3d 428, 434 (Cal. Ct. App. 2024) (reviewing a decision of the Los Angeles Superior Court denying two students' petition for a writ of administrative mandate challenging their expulsions from a university and holding that for the petitioners "to have prevailed in the superior court on their petition, they were required to show that [the university] either '(1) acted without, or in excess of, its jurisdiction; (2) deprived [him] of a fair administrative hearing; or (3) committed a prejudicial abuse of discretion,'" similar to the standard of review in South Carolina's APA (second alteration in original) (quoting *Doe v. Regents of Univ. of California*, 285 Cal. Rptr. 3d 532 (Cal. Ct. App. 2021))); *e.g.*, *Doe v. State Univ. of New York, Binghamton Univ.*, 162 N.Y.S.3d 173, 175 (N.Y. App. Div. 2022) ("Insofar as 'administrative decisions of educational institutions involve the exercise of highly specialized professional judgment' . . . , '[c]ourts have repeatedly addressed student [and faculty member] challenges to [disciplinary action] from institutions of higher learning through the conduit of a CPLR article 78 proceeding'. This is particularly true where, as here, a student challenges disciplinary action taken in response to a finding of sexual misconduct in violation of a university's student code." (alterations in original) (citations omitted) (first quoting *Maas v. Cornell Univ.*, 721 N.E.2d 966 (N.Y. 1999), then quoting *Meisner v. Hamilton, Fulton, Montgomery Bd. of Coop. Educ. Servs.*, 108 N.Y.S.3d 206, 209 (N.Y. App. Div. 2019))); *id.* at 175–76 ("Allegations that a university failed to substantially comply with its internal rules and procedures are the frequent subject

of CPLR article 78 proceedings . . . , as are assertions of bias and partiality in the disciplinary process Upon a careful examination of the complaint, it is clear that the claims all sound in challenges to the propriety of an educational institution's disciplinary determination as arbitrary and capricious, and, therefore, may be properly addressed through a CPLR article 78 proceeding That plaintiff sought damages in addition to injunctive relief does not change the analysis, as such a demand is incidental to his success in invalidating the administrative determination" (citations omitted)); N.Y. C.P.L.R. 7801 (excluding civil actions and criminal matters from the scope of article 78 proceedings); N.Y. C.P.L.R. 7803 (limiting questions that may be raised in an article 78 proceeding to whether "the body or officer" failed to perform a duty or exceeded its jurisdiction, or whether a determination violated a lawful procedure, was affected by an error of law, was arbitrary or an abuse of discretion or was not supported by substantial evidence, similar to the standard in South Carolina's APA); N.Y. C.P.L.R. 7804 (characterizing an article 78 proceeding as a special proceeding and providing for the supreme court's jurisdiction over article 78 proceedings)); *Gagne v. Trs. of Indiana Univ.*, 692 N.E.2d 489, 496 (Ind. Ct. App. 1998) (conducting judicial review of a student's expulsion from a university's law school and stating, "When the trial court reviewed the Law School's application of its Code, its 'sole function' was to determine whether the Law School acted illegally, arbitrarily[,] or capriciously, and the court was bound to accept the evidence most favorable to support the Law School's action").

Additionally, we disagree with Pampu's argument that Clemson is not sufficiently affiliated with the state to qualify as a state agency. Pampu cites *Rice Hope Plantation v. South Carolina Public Service Authority* in support of his argument that Clemson's OCES is not a state agency, quoting language from the opinion stating that Clemson "is not an institution or corporation wholly owned and controlled by the State." 216 S.C. 500, 518, 59 S.E.2d 132, 139 (1950), *overruled on other grounds by McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). However, this proposition is dictum as the question before the supreme court was whether *the South Carolina Public Service Authority* was a state agency for purposes of sovereign immunity.

In any event, the partially private nature of Clemson's Board of Trustees does not necessarily disqualify Clemson from state agency status. Particularly persuasive is section 59-107-10 of the South Carolina Code,¹⁹ which includes Clemson in the

¹⁹ Title 59 of the South Carolina Code governs education, and Chapter 119 of this title addresses Clemson University. Section 59-119-40 requires the General

definition of "State Institution:" "The several state-supported institutions of higher learning, within the contemplation of this chapter, are declared to be: . . . Clemson University, in Clemson" This is consistent with the requirement in Pampu's settlement agreement with Clemson that *the South Carolina Insurance Reserve Fund* issue the amount of \$100,000 to Pampu's attorneys,²⁰ to serve as consideration for Pampu's dismissal of his action from federal court and his agreement to keep in place the February 29, 2016 decision of the administrative hearing board.²¹

Assembly to elect, in joint assembly, six out of the thirteen members of the Board of Trustees. S.C. Code Ann. § 59-119-40 (2020). The remaining seven members are successors to individuals who were nominated by the will of Thomas G. Clemson. *Id.*

²⁰ See S.C. Code Ann. § 1-11-140(A) (2005) ("The State Fiscal Accountability Authority, through the Insurance Reserve Fund, is authorized to provide insurance for *the State, its departments, agencies, institutions, commissions, boards, and the personnel* employed by the State in its departments, agencies, institutions, commissions, and boards so as *to protect the State* against tort liability and to protect these personnel against tort liability arising in the course of their employment." (emphases added)).

²¹ Further, the content of several additional statutes demonstrate that Clemson does not exercise a significant degree of autonomy from the State. See, e.g., S.C. Code Ann. § 59-119-100 (2020) ("The State Treasurer shall securely invest and reinvest the funds in his hands derived from the Clemson bequest in such manner as shall be directed by the Governor, the Comptroller General and the State Treasurer or any two of them. He may collect the interest annually upon all investments made of funds of the Clemson bequest and pay the same over to the treasurer of the board of trustees of Clemson University. He shall, under the direction of the Governor, the Comptroller General and the State Treasurer or any two of them, enforce the collection of the principal and interest due on any investment made of such Clemson bequest."); S.C. Code Ann. § 59-119-140 (2020) ("The board of trustees shall make to the General Assembly an annual report of the university, of all farming operations and tests and experiments and of all receipts and expenditures, with a statement of the condition of the property and funds of such university and of all receipts and expenditures of money appropriated thereto by the State."); S.C. Code Ann. § 59-119-570 (2020) ("The board of trustees [of Clemson University] or its proper administrative officers shall file with the State Treasurer within thirty days from the date of their issuance a complete description of all obligations entered into by the board, with the rates of interest, maturity dates, annual payments and all pertinent data.").

Based on the foregoing, we conclude that the administrative hearing board that conducted disciplinary proceedings against Pampu qualifies as a state agency under the APA.

We also reject Pampu's argument that procedural irregularities baked into the administrative hearing process takes that process out of the definition of a "contested case" because the very purpose of judicial review under the APA is to correct errors in the administrative process and the APA provisions governing judicial review anticipate procedural irregularities. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2024) ("The review must be conducted by the court and must be confined to the record. *In cases of alleged irregularities in procedure* before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate." (emphasis added)). Pampu could have appealed the May 27, 2016 final decision of Clemson's Office of the President within thirty days in accordance with section 1-23-380. *See* § 1-23-380 ("A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. . . . Except as otherwise provided by law, an appeal is to the court of appeals. . . . Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered.").

However, Pampu chose not to do so, and even if his failure to appeal did not preclude his action against Clemson in federal court, the parties settled the case, and this settlement allowed the February 29, 2016 decision of Clemson's administrative hearing board to remain in place. This was fatal to his defamation claim in the present case. *See Earle*, 276 S.C. at 475, 279 S.E.2d at 616 ("Earle appealed his discharge to the State Grievance Committee which upheld the validity of the discharge. He did not appeal the decision of the committee to the courts. He is precluded from raising the validity of the discharge in a collateral action as the decision of the committee became the law of the case, and the doctrine of *res judicata* bars the relitigation of this issue.").

Essentiality

Pampu also argues that the board's findings concerning Ms. Wingo's consent were not necessary to support its decision to suspend Pampu.²² Specifically, he contends that the board's imposition of his suspension for "Sexual Misconduct," as defined in Clemson's Anti-Harassment Policy and which excludes sexual intercourse, means that "incapacitation during sexual intercourse was irrelevant [to] the findings of responsibility" in the board's decision. We disagree.

At the board's hearing, Pampu admitted that he had sexual intercourse with Ms. Wingo on October 24, 2015, and therefore, this was not a disputed issue. As recognized by the OCES hearing officer, the only contested issue before the board was the issue of Ms. Wingo's consent. Accordingly, we need not speculate as to why OCES charged Pampu with "Sexual Misconduct" rather than "Sexual Assault and/or Battery," as those terms are defined in Clemson's Anti-Harassment Policy. Further, the determination of capacity to consent does not depend on the type of sexual offense with which a student is charged.

Section II of Clemson's Anti-Harassment Policy defines several terms, including "Sexual Harassment" and "Consent." Within the definition of sexual harassment are the terms "Sexual Assault and/or Battery," "Sexual Coercion," "Sexual Misconduct," "Dating/Relationship Violence," "Domestic Violence," and "Stalking." The term "Sexual Assault and/or Battery" includes non-consensual sexual intercourse or "any intrusion, however slight, of any part of a person's body or of any other object into the oral, genital or anal openings of another person's body." On the other hand, "Sexual Misconduct" includes "[a]ny other nonconsensual conduct of a sexual nature including but not limited to touching, fondling, kissing, groping," etc. "Consent" is defined as requiring "speech or conduct indicating a freely given, un-coerced agreement to engage in sexual contact." Further, the Anti-Harassment Policy defines "Inability to Consent" as including but not limited to "impairment due to the influence of alcohol or drugs."

The board's February 29, 2016 letter to Pampu referenced "an incident occurring on October 24[,], 2015[,], which resulted with [Pampu] being charged with violating Clemson's Student Regulations concerning "Alcohol," "Disorderly Conduct," "Harm to Person," and "Sexual Misconduct." The board then stated:

²² See *Crosby*, 397 S.C. at 109, 723 S.E.2d at 817 ("A party claiming preclusive effect under collateral estoppel must demonstrate that the particular issue was '(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.'" (quoting *Carolina Renewal*, 385 S.C. at 554, 684 S.E.2d at 782)).

"Based on the information presented[,] the hearing board found that the complainant was incapacitated and unable to give consent which you should have reasonably known, therefore you were found in violation of all four charges[.]" The letter further stated that "as a result," the board was imposing a suspension from Clemson until August 1, 2016 as well as other sanctions.

These sanctions were undoubtedly based on the finding that Pampu should have known Ms. Wingo did not have the capacity to consent to *any* sexual contact. Therefore, this finding was essential to the board's imposition of sanctions against Pampu. The classification that was assigned (or should have been assigned) to Pampu's sexual offense was not essential to the suspension decision because Pampu had already admitted that he and Ms. Wingo had intercourse, and the only contested issue before the board was the issue of consent. Therefore, Pampu's hyper-technical distinctions between the definitions in the Anti-Harassment Policy have no bearing on the collateral estoppel analysis in the present case.

Finally, Pampu asserts that Clemson's findings should not be employed as a defense against his defamation claim because that claim is based on statements made by Respondents-Appellants "outside of the Title IX process." Yet, the defamation claim set forth in Pampu's complaint specifically referenced statements outside of the proceedings *and within* the Title IX process as being false and defamatory. More to the point, this is a distinction without a difference as the setting of the publication of the allegedly defamatory statements has no bearing on the defense of truth. *See McBride*, 389 S.C. at 559–60, 698 S.E.2d at 852 (requiring a defamation plaintiff to show, *inter alia*, the defendant's publication of a false and defamatory statement to a third party). If Pampu is collaterally estopped from asserting the falsity of statements that are consistent with Clemson's findings on consent, then Pampu does not get to attack those statements in any setting.

In sum, collateral estoppel precludes Pampu from relitigating the issue of Ms. Wingo's consent, and hence, the truth of the alleged defamatory statements of Respondents-Appellants defeats Pampu's defamation claim. *See Kunst*, 424 S.C. at 40, 817 S.E.2d at 303 ("The truth of the matter is a complete defense to an action based on defamation." (quoting *Lingefelt*, 316 S.C. at 445, 450 S.E.2d at 582)). Therefore, the circuit court erred by denying Respondents-Appellants' JNOV motions.

CONCLUSION

Accordingly, we affirm the circuit court's JNOV on the civil conspiracy claim, reverse the circuit court's denial of Respondents-Appellants' motions for a JNOV on the defamation claim, and remand for the entry of a JNOV on this claim.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

WILLIAMS, C.J., and TURNER, J., concur.

RECEIVED

Jun 26 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2022-001332

Andrew Pampu Respondent,
Appellant-

v.

Erin Wingo, David Wingo, and Colin J. Gahagan,-Appellants.
Respondents

PETITION FOR REHEARING

Rehearing is warranted where this Court has misapprehended or overlooked specific points when deciding an appeal. Rule 221, SCACR. The instant Petition for Rehearing should be granted for the reasons detailed below.

REINTRODUCTION AND SUMMARY OF FACTS

Erin Wingo (“E. Wingo”), David Wingo (“D. Wingo”), and Colin J. Gahagan defamed Pampu by stating that he raped/sexually assaulted E. Wingo. R. p. 1458, line 25-p. 1459, line 16. The jury found the Wingos and Gahagan liable for defamation. R. p. 2314, lines 8-18. E. Wingo and Gahagan were also found liable for civil conspiracy. R. p. 2314, line 19-p. 2315, line 2. The Circuit Court denied the Wingos’ and Gahagan’s motions for judgment notwithstanding the verdict (JNOV) regarding the defamation claims but granted E. Wingo and Gahagan’s motions for JNOV regarding the civil conspiracy claims. R. pp. 7-11. On June 11, 2025, this Court reversed the

Circuit Court’s decision on the JNOV motions regarding defamation and affirmed the grant of JNOV regarding civil conspiracy. This Petition for Rehearing timely follows.

ARGUMENT¹

I. The Court’s Determination that Clemson’s Office of Community and Ethical Standards (“OCES”) is a State Agency Conflicts with the Plain Language of the South Carolina Administrative Procedures Act (“APA”)

“When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” *State v. Sweat*, 379 S.C. 367, 375, 665 S.E.2d 645, 650 (Ct. App. 2008). The APA defines “agency” as “each state board, commission, department, executive department or officer, other than the legislature, the courts, the South Carolina Tobacco Community Development Board, or the Tobacco Settlement Revenue Management Authority, authorized by law to make regulations or to determine contested cases.” S.C. Code Ann. § 1-23-10(1). Similarly, S.C. Code Ann. § 1-23-310 defines “agency” as “each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases.” S.C. Code Ann. § 1-23-310(2). As written, the plain language APA indicates that state schools, colleges, and universities are not state agencies as defined by the APA.

A “contested case” means “a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.” S.C. Code Ann. § 1-23-310(3). OCES disciplinary proceedings are not “contested cases,” as the statute plainly fails to mention school disciplinary proceedings, which are not analogous to the state and industry-wide regulatory functions contemplated by the APA. S.C. Code Ann. § 1-23-310. Additionally, parties to a

¹ The Arguments set forth in Pampu’s Respondent’s Briefs are incorporated herein by reference.

contested case under the APA are entitled to conduct direct cross-examination (*i.e.*, without having to submit questions to the adjudicator in advance). S.C. Code Ann. § 1-23-330(3). The APA unambiguously states that “the rules of evidence as applied in civil cases in the court of common pleas **shall be followed**” in all contested cases except for proceedings before the Industrial Commission. S.C. Code Ann. § 1-23-330(1) (emphasis added). Moreover, parties to a “contested case” under the APA have the right to depose witnesses, and agencies deciding “contested cases” have full subpoena power to obtain testimony and documents, including from witnesses identified by a party. S.C. Code Ann. § 1-23-320(C)-(D). None of these rights are available to students involved in the OCES process. R. pp. 364-389; pp. 391-403. Indeed, Pampu was not able to conduct direct cross-examination during the OCES proceeding. R. at 22. Pampu’s OCES hearing was not conducted using the South Carolina Rules of Evidence. *Id.* Pampu was also unable to depose witnesses or compel them to attend the hearing *via* subpoenas. R. pp. 378-380. OCES did not conduct itself as a state agency because it is not a state agency as defined by the APA.²

Moreover, and as noted by then Judge Letitia H. Verdin (now Associate Justice Verdin), there is not “a single case in this state holding that a university board is considered a state agency entitled to preclusive effect.” R. at 22. The Court’s reliance on the *Ross v. Med. Univ. of S.C.* line of cases is misplaced. *Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 453 S.E.2d 880 (1994) (“*Ross I*”),

² The Court’s misplaced reliance on the Oregon APA and irrelevant out-of-state caselaw cannot support a finding that OCES is a state agency as defined by the South Carolina APA. *Pampu v. Wingo*, No. 2022-001332, 2025 WL 1646413 at *14-*15 (S.C. Ct. App. June 11, 2025). The Court’s comparison of secondary school boards, which are comprised of duly elected public officials managing multimillion dollar budgets obtained through mandatory taxation, to an *ad hoc* disciplinary committee, nearly half of which is comprised of undergraduate college students, is also illogical. *Id.* at *15. Further, the fact that Clemson is defined as a state institution and state agency in unrelated statutes does not make Clemson or OCES a state agency as defined by the APA. *Id.* at *14-*15. Nor does the fact that Clemson made payment from the South Carolina Insurance Reserve Fund as part of its federal settlement with Pampu, as this does not indicate that Clemson or OCES is a state agency whose decisions are entitled to preclusive effect. *Id.* at *15.

merely determined that a Circuit Court sitting as a reviewing court under the APA had the ability to order discovery. *Ross I*, 317 S.C. at 381. There is no indication that MUSC ever contested the application of the APA, and the Supreme Court did not hold that MUSC’s Faculty Hearing Committee was a state agency, nor did it determine that the matter involved a contested case. *Id.* at 380-81, 453 S.E.2d at 882-83. In *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 492 S.E.2d 62 (1997) (“*Ross II*”), the Supreme Court was simply applying the law of the case doctrine based on the discovery issues resolved in *Ross I*. *Ross II*, 328 S.C. at 62, 492 S.E.2d at 68. There was no holding that university disciplinary boards are state agencies; rather, the Court held that the specific proceedings *in that case* were governed by the APA because of the law of the case doctrine. *Id.* An unappealed ruling – whether it is right or wrong – is the law of the case. *Transportation Ins. Co. & Flagstar Corp. v. S.C. Second Inj. Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691-92 (2010). “[T]he doctrine of ‘law of the case’ is just that—the law of the case in which it was made, not the law of future cases.” *E. Cherry Grove Co., LLC v. State*, 443 S.C. 617, 630, 905 S.E.2d 421, 429 (Ct. App. 2024) (internal quotations and citation omitted). Thus, the *Ross* cases cannot support the Court’s finding, as they do not establish that all state university disciplinary boards are state agencies whose decisions are entitled to preclusive effect.

II. The Court’s Reading of the APA Conflicts with South Carolina’s Interpretation of the Statute and Would Lead to Absurd Results

Based on the Court’s ruling in the instant matter, the disciplinary boards of every state-funded college and university in South Carolina are state agencies charged with deciding contested cases and, therefore, must comply with all of the procedural requirements stated in the APA. Pursuant to the APA, parties to a contested case have the right to depose witnesses, the ability to subpoena witnesses for documents and testimony, the right to cross-examination, and the right to a hearing conducted in compliance with the South Carolina Rules of Evidence. S.C. Code Ann.

§ 1-23-320(C)-(D); § 1-23-330(3); § 1-23-330(1). Clemson’s policies do not afford students appearing before a disciplinary tribunal these rights. R. pp. 364-389; pp. 391-403. None of the equivalent policies at South Carolina’s other public colleges and universities comply with the APA. *See* Pampu Brief in Response to Gahagan Appellate Brief at pp. 24-26 (detailing aspects of public university disciplinary policies that do not comply with APA).

In addition to failing to comply with the procedural protections mandated by the APA when a state agency decides a contested case, none of the policies reference or cite the APA. These institutions, and by extension the State of South Carolina, do not view their student disciplinary boards as state agencies. Indeed, at least four institutions explicitly disclaim the availability of the procedural protections required by the APA. *See* The Citadel, *Title IX Grievance Policy* at p. 26, Section 4.L.3. <https://web.citadel.edu/root/images/policies/title-ix-grievance-policy.pdf> (last visited June 18, 2025) (“Parties to the Grievance Process do not have the right to depose parties or witnesses, nor to invoke a court system’s subpoena powers to compel parties or witnesses to appear at hearings, or otherwise. The Citadel . . . does not have subpoena power, and it cannot compel attendance of third parties”); College of Charleston, *Student Sexual Misconduct Policy* at Sections 7.5 and 12.7, <https://charleston.edu/equal-opportunity-programs/files/program-thumbnails/student-sexual-misconduct-policy.pdf> (last visited June 18, 2025) (stating “Under no circumstances will on Party be permitted to directly cross examine another party,” and “The hearing will not follow a courtroom model and formal rules of evidence will not be observed”); South Carolina State University, *Sex Discrimination and Harassment Policy (Title IX Policy)* at p. 16, Section 2C.06, https://scsu.edu/_resources/pdfs/SCSU%20T9%20Policy.pdf (last visited June 18, 2025) (“A Title IX hearing does not take place within a court of law and is not bound by formal rules of evidence”); Winthrop University, *Title IX Sexual Harassment Policy* at Sections 13.5.3-

13.5.4, <https://www.winthrop.edu/uploadedFiles/studentconduct/TitleIX-PolicyRevisions-2023.pdf> (last visited June 18, 2025) (“Parties to the grievance process under this policy do not have the right to depose parties or witnesses, nor to invoke a court system’s subpoena powers to compel parties or witnesses to appear at hearings, or otherwise. Likewise, the University does not compel participation or have subpoena power under this grievance process.”). Based on this Court’s reasoning, every public college and university in South Carolina is either unaware that its student disciplinary boards are state agencies, or they are intentionally violating the rights of students charged with disciplinary violations. Thus, the Court’s construction of the APA is incorrect, as it would lead to these absurd results. *Tempel v. S.C. State Election Comm’n*, 400 S.C. 374, 378, 735 S.E.2d 453, 455 (2012). The more logical explanation that is harmonious with the plain language of the APA is that public university disciplinary committees are not state agencies as defined by the APA. Rehearing is warranted for these reasons.

III. The Court Improperly Relied on the South Carolina Campus Sexual Assault Information Act (“SCCSAIA”)

This Court was incorrect to rely on the purported legislative intent of the SCCSAIA to wrongly determine that the OCES findings are entitled to preclusive effect – a finding that is unsupported by any citation or basis for the Court’s divining of the Legislature’s intent when enacting that SCCSAIA. Even so, it could not have been the Legislature’s intent to protect individuals who make false claims and prevent falsely accused individuals of clearing their names. Permitting a victim of a false rape claim to vindicate his rights in court does not render the SCCSAIA superfluous. Moreover, Pampu is not seeking to attack the OCES decision or relitigate the OCES findings through his defamation claim, which is solely based on statements made outside the OCES process. The SCCSAIA also cannot support a finding that OCES is a state agency, as it applies to all “institutions of higher learning,” which includes both public and private universities.

S.C. Code Ann. § 59-105-20. Without question, private entities are not state agencies. The word “agency” is also absent from the SCCSAIA. S.C. Code Ann. §§ 59-105-10, *et seq.* Further, the SCCSAIA only requires that schools “establish and implement a written campus sexual assault policy.” S.C. Code Ann. § 59-105-40. It does not require that schools implement the procedural protections mandated by the APA when deciding disciplinary matters; in fact, it does not even explicitly require that a school hold a hearing. S.C. Code Ann. § 59-105-10, *et seq.* Thus, the Court’s reliance on the SCCSAIA is misguided and warrants rehearing.

IV. The Court Misapprehended the OCES Findings and the Law Regarding Collateral Estoppel

Even if OCES were a state agency whose decisions were entitled to preclusive effect (which it is not), rehearing would still be warranted because the Court fundamentally misapprehended the OCES findings and the law regarding collateral estoppel. The decision incorrectly states that OCES found that “Ms. Wingo lacked the capacity to consent **to sexual intercourse** and that Pampu should have known so.” *Pampu*, 2025 WL 1646413 at *10 (emphasis added). However, the OCES decision actually states, “Based on the information presented, the hearing board found that [Ms. Wingo] was incapacitated and unable to give consent which you should have reasonably known, therefore you were **found in violation of all four charges.**” R. p. 3077 (emphasis in original). There is no mention of sexual intercourse in the OCES decision or any of the two internal appeal decisions. R. pp. 354, 360.

Indeed, Pampu was never charged with having non-consensual sexual intercourse with Ms. Wingo. Rather, the Record demonstrates that Pampu was charged with and found responsible by OCES for “Alcohol,” “Disorderly Conduct,” “Harm to Person,” and “Sexual Misconduct.” R. p. 3077. The definitions of the first three charges do not mention sexual intercourse. R. p. 345. Clemson’s Anti-Harassment Policy has distinct definitions for “Sexual Misconduct,” “Sexual

Assault,” and “Rape.” R. p. 392-93.³ Only the definitions “Sexual Assault” and “Rape” contemplate instances where nonconsensual penetrative sexual contact, including intercourse, occurs. R. p. 392. Only “Rape” implicates instances of sexual intercourse where an individual is unable to give consent due to incapacitation. R. p. 392. “Sexual Misconduct,” on the other hand, involves instances of “nonconsensual conduct of a sexual nature” **that are not covered** by “Sexual Assault” and “Rape.” R. p. 393. Thus, the definition of “Sexual Misconduct” *explicitly excludes* instances of sexual intercourse when an individual is incapacitated. R. p. 393. As a result, while OCES may have mistakenly investigated and wrongfully determined the issue of whether E. Wingo was incapacitated to the point where she could not consent to sexual intercourse, this finding was not necessary to determining whether Pampu engaged in “Sexual Misconduct” as that term is defined by Clemson’s Anti-Harassment Policy. Accordingly, it cannot form the basis of a collateral estoppel. *See Lowe v. Clayton*, 264 S.C. 75, 85, 212 S.E.2d 582, 587 (1975) (“a gratuitous finding . . . unnecessary to the decision . . . could not form the basis of an estoppel.”).

This Court also disregarded or overlooked multiple other reasons why the doctrine of collateral estoppel cannot possibly apply. The doctrine of collateral estoppel “is grounded upon concepts of fairness, it should not be rigidly or mechanically applied.” *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998). As a result, “even if all the requirements of issue preclusion are met, when unfairness or injustice results or public policy requires it, the doctrine’s application may be precluded.” *Id.* Further, even where an issue is “actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:

³ The Court’s mischaracterization of this important distinction as a pedantic parsing of policy provisions is improper. Indeed, *if* OCES is a state agency, as this Court asserts, then its policies must be interpreted and applied as written.

...

(3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them;

...

(5) There is a clear and convincing need for a new determination of the issue . . . because the party sought to be precluded, **as a result of the conduct of his adversary** or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

Restatement (Second) of Judgments § 28 (1982) (emphasis added); *see also Bacote*, 331 S.C. at 332, 503 S.E.2d at 163 (relying on Section 28 of the Restatement (Second) of Judgments to decline exercise of collateral estoppel). Moreover, where the first judgment at issue stems from a proceeding that operates informally without pleadings, counsel, or rules of evidence, the first judgment should not preclude arguments on the same issue in a subsequent action. Restatement (Second) of Judgments § 28, Illustration 7 (1982).

The OCES process did not follow the rules of evidence, did not allow the parties to conduct depositions, did not allow direct cross examination, did not allow direct participation of counsel, did not obtain sworn testimony, and did not compel testimony or document production through the use of subpoenas.⁴ Additionally, during the OCES process, the presentation of evidence was heavily restricted, there was no right to a jury trial, there was no public record, and the case was investigated, prosecuted, and decided by agents of the same party, namely Clemson. R. pp. 375-383. The Court glosses over the majority of these procedural issues and is inappropriately dismissive of the defects it does acknowledge. The Court's assertion that Pampu was "allowed to cross-examine OCES witnesses just as he was allowed to cross-examine Respondents-Appellants"

⁴ As then Judge Verdin noted, "Clemson's OCES board did not conduct itself as a state agency. It would be unfair to allow the OCES board's decisions to be entitled to preclusive effect while at the same time allowing it to operate outside of the rules that other state agencies follow." R. p. 22.

witnesses in the present action” is undeniably incorrect. *Pampu*, 2025 WL 1646413 at *10. Pampu was required to submit his questions to the chairperson at the OCES hearing before they were asked to witnesses with no guarantee all would be asked (and, in fact, not all of the questions were asked). R. at 22. This cannot be reasonably equated with direct cross-examination of a witness by an attorney. Additionally, if, as the Court asserts, OCES is a state agency, its refusal to subpoena witnesses and failure to obtain sworn testimony should be deeply concerning and certainly warrants a finding that collateral estoppel does not apply to the OCES determination. Accordingly, in light of the vast gulf in the quality and extensiveness of the procedures applied during the OCES process and those applied during the instant civil proceeding, it would be inequitable and improper to apply collateral estoppel in this matter. Restatement (Second) of Judgments § 28(3) (1982); Restatement (Second) of Judgments § 28, Illustration 7 (1982); *see also* Restatement (Second) of Judgments § 29(2) (1982) (noting that when determining whether to apply collateral estoppel consideration should be given to whether the forum in a second action affords the potentially estopped party with procedural opportunities unavailable in the first action that could likely result to the issue being decided differently in the second action).

Indeed, the evidence unearthed during litigation and presented at trial – when Pampu had all of the tools necessary to uncover the truth – shows that the Wingos and Gahagan engaged in the very type of misconduct that prevented Pampu from having “an adequate opportunity . . . to obtain a full and fair adjudication in the initial action.” Restatement (Second) of Judgments § 28(5) (1982). The Court overlooks this glaring issue. Indeed, the evidence developed through discovery and presented to the jury provided that E. Wingo was not incapacitated when she had sex with Pampu. R. p. 1447, lines 14-17; p. 1667, lines 11-13; p. 1761, line 18-p. 1762, line 14; p. 2011, lines 9-19; p. 2016, lines 11-21; p. 2019, lines 3-12; p. 2020, lines 3-11; p. 2050, lines

20-22; p. 2051, lines 12-24; p. 3124. The evidence also showed that E. Wingo and Gahagan both knew that the sexual encounter with Pampu was consensual and that they lied to Clemson about the nature of the encounter during the disciplinary process. R. p. 1798, lines 10-12, 16-19; p. 1787, lines 2-4; p. 1787, line 22-p. 1789, line 2; p. 3135. The evidence gathered through a robust adversarial process showed that the OCES finding was based on false information and testimony provided by E. Wingo and Gahagan. Accordingly, there is no basis for applying collateral estoppel here, as it would be fundamentally unfair, unjust, and contrary to public policy. Restatement (Second) of Judgments §§ 28(5), 29(2) (1982); *Bacote*, 331 S.C. at 332, 503 S.E.2d at 163.

V. Pampu was not Required to Exhaust his Administrative Remedies

This Court held that “Pampu’s course of action (or inaction) after receiving the final decision of Clemson’s President [w]as the deciding factor in our conclusion that he was precluded from relitigating the issue of Ms. Wingo’s consent.” *Pampu*, 2025 WL 1646413 at *11. In explaining its rationale, this Court incorrectly determined Pampu’s decision not to seek judicial review of the inadequate OCES procedures served as a bar to his claims. The plain language of the APA and relevant case law shows that this finding was in error. The APA merely notes that an individual who has exhausted his administrative remedies *within* the agency and who is aggrieved by the agency decision in a contested case is “entitled” to judicial review. S.C. Code Ann. § 1-23-380. The next sentence in the statute clearly states, “This section **does not limit** utilization of or **the scope of judicial review available under other means of review, redress, relief**, or trial de novo provided by law.” S.C. Code Ann. § 1-23-380 (emphasis added). In other words, even if OCES were a state agency, Pampu was *entitled*, but not *required*, to seek judicial review because “The doctrine of exhaustion of administrative remedies only applies when a litigant invokes the original jurisdiction of the circuit court to adjudicate a claim based upon a statutory violation for which the legislature has provided an administrative remedy.” *Stinney v. Sumter Sch. Dist.* 17, 391

S.C. 547, 550 n.1, 707 S.E.2d 397, 398 n.1 (2011); *see also Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) (holding that exhaustion of administrative remedies is not required when the “alleged wrong is not one which the administrative process was designed to redress”). Indeed, the relevant statutory provision and caselaw noted herein show that Pampu’s case is further distinguishable from the *Ross* cases, which involved a state employee seeking redress for an adverse employment action that could only be remedied through an administrative process. Here, Pampu’s defamation claims are not based on any alleged procedural irregularities in the OCES process, nor do they involve statutory claims for which the legislature has provided an administrative remedy. Rather, they are based on provably false statements made by the Wingos and Gahagan outside of the OCES process.⁵ Accordingly, Pampu was not required to seek judicial review of how the OCES process was conducted in order to preserve intentional tort claims. *See Thomas Sand Co.*, 349 S.C. at 413, 563 S.E.2d at 115 (holding exhaustion not necessary in tort case against third party because the question of whether administrative agency followed proper procedures was irrelevant).

The Court mistakenly asserts that Pampu is “now attack[ing] the credibility of [the OCES] proceedings for purposes of pursuing redress from Respondents-Appellants.” *Pampu*, 2025 WL 1646413 at *12. This is simply wrong. The validity of the OCES proceedings is irrelevant to Pampu’s defamation claims and was only raised as an affirmative defense against him. The Court’s claim that that it is “fundamentally unfair” for Pampu to seek damages from the Wingos and Gahagan when “he already had an opportunity to mitigate those damages by seeking direct review of the Title IX findings” is entirely misses the point. *Id.* If Pampu successfully sought direct

⁵ The Court’s assertion that Pampu is trying to recover on a defamation theory for statements made within the OCES process is simply not true. Pampu explained *ad nauseum* in court filings and at trial that his defamation claims are based on statements made **outside** the OCES process.

review of the OCES findings (and assuming for the purposes of argument that OCES is a state agency), the matter would have been remanded to OCES for an APA-compliant proceeding. This would not have mitigated the reputational harm caused by the Wingos' and Gahagan's defamation.

VI. The Court Misapprehended the Effect of the Clemson Settlement Agreement

The Court's conclusion that it is "fundamentally unfair" for Pampu to seek damages from the Wingos and Gahagan when he has obtained compensation from Clemson also misses the point. *Pampu*, 2025 WL 1646413 at *12. Pampu's defamation claim seeks redress for the reputational harm caused by the Wingos' and Gahagan's conduct. No such relief was sought in the Clemson matter. Thus, there are two separate types of damages at issue, and Pampu is certainly entitled to seek recovery for both. The Court also incorrectly asserts that "Pampu has enjoyed the benefits of his settlement with Clemson while also trying to assert in the present litigation the very due process allegations against Clemson that the settlement intended to resolve." *Id.* This is simply not true, as Pampu's defamation claim has absolutely nothing to do with due process or the OCES proceedings. Rather, as explained above, the argument over the validity of the OCES process arises from the affirmative defenses asserted by the Wingos and Gahagan. Additionally, the Clemson settlement agreement explicitly incorporates the language of the "Whereas" clauses into the enumerated contract terms. *See* R. p. 3191 (noting that the settlement agreement is made "in consideration of the Recitals and mutual promises contained herein."). Regardless, the Court admits that "Whereas" clauses can materially influence contract construction and determinations of the intent of the parties. *Pampu*, 2025 WL 1646413 at *12. The inclusion of Pampu's clear denial of E. Wingo's allegations shows that the parties understood Pampu was contesting the OCES findings. R. p. 3190. If the parties meant to incorporate any OCES finding regarding consent by agreement, they would have said so, but they clearly did not. The Court's attempt to add terms that do not appear in the agreement is improper. *Sweat*, 379 S.C. at 375, 665 S.E.2d at 650.

VII. The Court Overlooked The Defamatory Statements Made By Dave Wingo

The Court failed to address the fact that D. Wingo made defamatory statements that go well beyond the OCES findings (assuming purely for the sake of argument that these findings are binding).⁶ D. Wingo falsely claimed that Pampu “preyed on” E. Wingo and described Pampu’s conduct as “predatory.” R. pp. 3142, 3145. He also asserted that Pampu “brought [E. Wingo] to an isolated but public location to sexually assault her,” would become a “serial perpetrator” who would sexually assault up to five other women, and would “target . . . another female student, guest or visitor of Phi Delt. Or he could next harm [Gahagan], a pledge, or a teacher.” R. p. 3145. None of these statements are in the OCES findings, nor can they be inferred from the findings. Thus, the OCES findings do not shield D. Wingo from liability for these false and defamatory statements. There was no basis for reversing the Circuit Court’s denial of D. Wingo’s JNOV motion.

VIII. The Court Improperly Affirmed Dismissal Of The Civil Conspiracy Claim

The Court’s reliance on Section 27 of the Restatement (Second) of Judgments to assert that the Clemson settlement precluded Pampu from asserting a breach at trial is misplaced, as that provision only applies to “a subsequent action between the parties.” Restatement (Second) of Judgments § 27 (1982). Even if it did apply, and even assuming that the settlement agreement constitutes a judgment (which Pampu disputes) the Court’s assertion is incorrect. *See id.* at cmt. e (1982) (“In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated.”). Nothing in the Clemson settlement agreement states that the parties agreed that Clemson did not breach its contract with Pampu. Rather, Clemson simply denied liability for the same. R. p. 3191-92, ¶ 7. Thus, the settlement agreement is not a bar in this matter.

⁶ Pampu maintains that D. Wingo’s other statements were also defamatory. R. pp. 3142-3146.

The Court's claim that Pampu failed to assert that his suspension constituted a breach in his initial brief is also incorrect. *See* Pampu Appellate Brief at p. 21 ("Pampu was removed from Clemson as a result of their actions even though he had done nothing wrong. . . . Thus, it is clear that they intentionally procured the breach of the contract that Pampu had with Clemson."). The Court's reliance on the SCCSAIA is also incorrect. As Pampu has repeatedly asserted, if he did nothing wrong, then there was no basis for his suspension, regardless of Clemson's duty to establish and implement a sexual assault policy. This argument certainly has not been abandoned. Pampu also asserted that "Wingo and Gahagan provided statements to Clemson that they knew were false in order to procure the breach." *Id.* Thus, the Court's assertion that Pampu has abandoned his argument that Clemson knowingly accepted and acted on false evidence is untrue. Pampu also offered testimony regarding his then-salary at trial. R. p. 1608, lines 21-22. He also presented admissible expert testimony that he would earn significantly less over the course of his lifetime as a result of his inability to obtain admission to dental school and work as an orthodontist based on a detailed explanation for this finding. R. p. 1939, lines:4-6, 8-22-p. 1941, line 4; p. 1959, lines 3-7; p. 2000, lines 12-18. This was sufficient to support an award of damages. *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981); *Mills v. S.C. State Ports Auth.*, 435 S.C. 213, 228, 865 S.E.2d 910, 917-18 (Ct. App. 2021). Finally, the inexplicable change in reasoning from trial to the JNOV motion is indicative of the trial court's improper basis for disturbing the civil conspiracy verdict. R. p. 6; p. 2207, line 14-p. 2215, line 15.

CONCLUSION

For the foregoing reasons, this Court should grant the instant Petition for Rehearing and reissue an opinion affirming the Circuit Court's denial of the JNOV motions related to Pampu's defamation claims and overturning the grant of JNOV regarding civil conspiracy.

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Jun 26 2025

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely
Circuit Court Judge

Appellate Case No.: 2022-001332

Andrew Pampu,Appellant

v.

Erin Wingo, David Wingo, and Colin J. Gahagan..... Respondents

PROOF OF SERVICE

I, hereby certify that the enclosed was served on the parties stated below by emailing a copy of the enclosed document(s) to opposing counsel:

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This 26th day of June, 2025.

THURMOND KIRCHNER & TIMBES, P.A.

BY: *Kaitlyn Nobles*
Kaitlyn Nobles
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The South Carolina Court of Appeals

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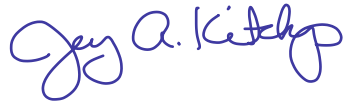
Re: Andrew Pampu v. Erin Wingo

Appellate Case No. 2022-001332

Dear Counsel:

We received the petition for rehearing on June 26, 2025. The Court requests a return within ten (10) days of the date of this letter. The time limits for perfecting the appeal will be held in abeyance pending the Court's decision.

Very truly yours,



CLERK

cc: Kimberly C. Lau, Esquire
James E. Figliozzi, Esquire
Sarah D. Baum, Esquire
Michael A. Timbes, Esquire

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Jul 07 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No.: 2022-001332

Common Pleas Case No.: 2017-CP-39-00709

Andrew Pampu.....Appellant/Respondent,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan.....Respondents/Appellants,

RETURN TO PETITION FOR REHEARING

Andrew Pampu has filed a Petition for Rehearing asserting that the Court incorrectly determined that he was precluded from seeking damages from Erin Wingo, David Wingo and Colin J. Gahagan for defamation and civil conspiracy. In doing so, he ignores the fact that he was found to have engaged in sex with Erin Wingo without her consent (R. pp. 3255 – 57), a finding which was confirmed on two appeals through Clemson University (R. p. 3258). Rather than appeal that adverse finding, he opted to sue Clemson University in the federal district court which was concluded with a settlement that reinstated the Clemson finding. Notwithstanding those results, he undertook this action seeking to collaterally attack the Clemson finding and thereby recover damages from these defendants. This Court, having

determined the Andrew Pampu had a full and fair opportunity to seek judicial review in both state and federal court, properly ruled that he was collaterally estopped from indirectly attaching the ruling of his Title IX hearing. Moreover, the Court properly determined that Andrew Pampu was precluded from recovering damages for the alleged civil conspiracy on the part of Erin Wingo and C.J. Gahagan since there as no evidence of a conspiracy on their part to have Andrew Pampu removed from Clemson through the disciplinary process or of any damages supposedly resulting from that alleged conspiracy. As a result, the petition for rehearing should be denied.

CIVIL CONSPIRACY

To successfully recover on a civil conspiracy claim, a plaintiff must prove the following:

- 1) a combination or agreement of two or more persons
- 2) to commit an unlawful act or a lawful act by unlawful means
- 3) in conjunction with the commission of an overt act in furtherance of the agreement which
- 4) proximately results in damages.

Paradis v. Charleston County School Dist., 433 SC 562. 864-SE2d 774 (221).

Andrew Pampu argues that C.J. Gahagan and Erin Wingo undertook a concerted effort to have him removed from Clemson. While there may have been a desire on the part of Erin Wingo and C.J. Gahagan to have Andrew Pampu expelled for his acts (R. pp. 1796-97), there was no evidence that they attempted any overt act to accomplish the removal of Andrew Pampu. Nevertheless, Andrew Pampu asserts

that Erin Wingo and C.J. Gahagan utilized the Title IX process to do this. However, evidence of the testimony submitted in the Title IX hearing and the ultimate result of that hearing were kept from the jury. As a result, there is no evidence of any acts by C.J. Gahagan or Erin Pampu to utilize the Title IX process (the legal investigation and hearing) to obtain an unlawful result. The settlement with Clemson by Andrew Pampu, in fact, confirmed the legitimacy of Andrew Pampu's suspension from Clemson (R. p. 3260).

Andrew Pampu goes on to argue that C.J. Gahagan and Erin Wingo committed an unlawful act through tortious inference of his contract with Clemson. As noted by the court, there must be proof that Erin Wingo and C.J. Gahagan intentionally procured a breach of that contract in order to establish tortious interference. It should first be noted that Andrew Pampu through his settlement with Clemson, agreed to allow the result of the Title IX hearing to be confirmed, thereby removing the contention that it was an illegal act. Secondly, Clemson had an obligation under *Section 59-105-40* of the *South Carolina Code* (the South Carolina Campus Sexual Assault Information Act) to conduct a disciplinary hearing and make a decision as to the existence of sexual wrongdoing and the appropriate sanction for that wrongdoing. In light of this duty there was no breach of the contract between Andrew Pampu and Clemson University.

Finally, there was an absence of proof of any damages resulting from the alleged civil conspiracy. The testimony of Andrew Pampu's expert as to Andrew Pampu's subsequent inability to be admitted to dental school or orthodontic school

was purely speculation in nature since there was no true testimony as to why he was not accepted at dental school, only speculative as to the impact of his required reporting of his Title IX suspension (R.p. 1949). Again, the Title IX suspension was upheld by Clemson and confirmed by the settlement of the federal court action with Clemson.

Andrew Pampu goes on to argue that there was nonetheless sufficient evidence to support an award of damages, citing Whisenent v. James Island Corp., 277 SC 10, 281 SE2d 794 (1981). While that case does stand for the proposition that proof to a mathematical certainty of the amount of damage is not required, it goes on to state that the existence, causation or amount of damages cannot be left to conjecture, guess or speculation. What constitutes “reasonable certainty and accuracy” often depends on the type of damage being considered. “Non-economic” damages such as pain and suffering, disfigurement, and loss of companionship have no standard by which to measure a loss and therefore are left to the discretion of the court or jury. See, §15-32-210(9), S.C. Code (1976). By comparison, “economic damages” such as medical expenses, education costs, lost earnings, loss of earning capacity, and property losses usually have a standard or formula which can be utilized to clearly determine the extent of a loss. This is true with regard to a claim for future lost earnings. This type of loss is usually determined through an economist. However, Andrew Pampu did not utilize an economist and therefore the claim for future economic loss was based on speculation.

Based upon the above, the circuit court was correct in granting a judgment NOV pursuant to Rule 50(6) of the *South Carolina Rules of Civil Procedure*, which permits a trial court to reconsider a prior directive verdict motion.

DEFAMATION

Andrew Pampu contends that Erin Wingo and C.J. Gahagan made false and defamatory statements about him. Since there was never any controversy as to whether Erin Wingo and Andrew Pampu had sexual intercourse, the true focus was on whether Erin Wingo had the capacity to consent since intercourse without consent constituted rape. See, §16-3-654(1), S.C. Code (2015). The issue of consent was determined by the Title IX hearing, with the Office of Community and Ethical Standards (OCES) finding that Erin Wingo was incapable of giving consent due to her incapacity and that Andrew Pampu knew of her incapacity (R. pp. 3255-57).

Andrew Pampu contends this finding is not binding and that he is not precluded by collateral estoppel to assert that the statements were false and therefore he was defamed.

Where a civil action arises out of the same factual scenario as one which has been before a state agency with regard to an element that is critical to recovery in the civil action, the finding by the state agency is binding on the civil court. *Bennett v. South Carolina Dept. of Corrections, 305 S.C. 310, 408 SE2d 230 (1991)*. In this case, the element which is critical to recovery of damages is whether statements by C.J. Gahagan and Erin Wingo concerning the interaction between Erin Wingo and Andrew Pampu was consensual. The OCES found the interaction was non-

consensual. As a result, the statements were true and the action for defamation must fail.

However, Andrew Pampu contends that the OCES finding was not binding upon him and therefore he was able to again contest the issue of consensual engagement by Erin Wingo. He argues that collateral estoppel is inapplicable in this situation since the Clemson Office of Community and Ethical Standards was not a state agency and that, even if it was a state agency, it failed to adhere to procedural safeguards, thereby failing to give him the opportunity to defend himself.

He first relies upon statutory definition of “agency”, citing the state APA. *§1-23-310 to 680* It should be noted that the Title IX hearing was a creature of the campus Sexual Assault Information Act. (*§§59-105-10 to 60*). Pursuant to *section 59-105-40*, each institution of higher learning (which would include Clemson University) is required to establish and implement a campus sexual assault policy, which would include procedures for institutional disciplinary action in cases of alleged sexual assault. (*See, §59-105-40 (B)(4)*). *Section 59-105-60* provides that the South Carolina Commission on Higher Education was to develop a model sexual assault policy which was to be given to the institution of higher learning.

The definition of “agency” relied upon by Andrew Pampu include state commissions, such as the South Carolina Commission on Higher Education. Moreover, *section 1-23-310 of the South Carolina Code* defines “agency” to include each state board, commission, department or office, other than the legislature or courts, which are authorized by law to determine “contested cases”. The term

“contested case” is defined by *section 1-23-310* to be proceeding in which the legal rights, duties or privileges of a party are determined by an agency after an opportunity to be heard. Under the Campus Sexual Assault Information Act, an institution of higher learning, such as Clemson, is to establish procedures for disciplinary action which are to include clear opportunities of both accused and accuser to have support persons or legal counsel (if allowed by the institution’s policy), and to constitute be informed by the outcome. Clearly the Title IX procedures utilized in this case was a “contested case” since it allowed for notice of hearing, testimony before a board with assistance from counsel, notice of the outcome. As a result, the OCES should be considered a state agency.

Please note that Andrew Pampu argues that the OCES cannot be a state agency since it includes both public and probate colleges and universities. This is a misreading of the applicable statute, *section 59-105-2 (3)* which makes the act mandatory to public colleges and universities but only optional as to private entities.

Andrew Pampu goes on to argue that the procedures used during the Title IX hearing were insufficient and therefore place the OCES outside the definition of “agency”. However, this ignores the holding of *Stinney v. Sumter School District*, 391 S.C. 547, 707 SE2d 397 (2011), which concerned the expulsion of two high school boys. In that case, the Court held that the touchstone of due process is the opportunity to be heard. It also noted that the type of hearing required will depend on the nature of the case. It gave as an example the suspension of a student requiring only notice of the claims against him and an opportunity to explain his position. However, he was

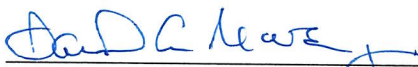
not guaranteed a full adversarial hearing. The court went on to hold that an expulsion is made serious in nature and the procedures and protection might be greater. Andrew Pampu was only suspended by Clemson and he was given, in compliance with *section 59-105-40*, notice of the claim against him and an opportunity to be heard with assistance of counsel. This is sufficient to comply with due process and thereby refute Andrew Pampu's argument that he was not given a fair hearing or chance. Moreover, Andrew Pampu had the means to correct any purported procedural wrong and failed to avail himself of that opportunity. If he were allowed to collaterally attack the Title IX conclusions, he would be able to hold C.J. Gahagan and Erin Wingo responsible for a matter previously determined by a government agency. To avoid this wrong, collateral estoppel should be applied and Andrew Pampu precluded from contesting a finding which he had previously conclusively lost. *See Earle v. Aycock, 276 SC 471, 279 SE2d 614 (1981); 20 USC §1092 Clary Act).*

Finally, Andrew Pampu asserts that the Title IX hearing found him at fault for "sexual misconduct" but not "sexual assault". However, the OCES did find that he had engaged in non-consensual sexual acting with Erin Wingo. Under collateral estoppel, as previously noted, an issue which is critical to a civil action which has been decided in prior agency matter against a party to the civil action, is binding on that party. *Bennett v. South Carolina Dept of Corrections, supra.* In this case, the focus is upon the non-consensual aspect of the sexual intercourse, the latter which was conceded. Collateral estoppel is concerned with findings on issues and elements and not with findings as a whole.

CONCLUSION

Andrew Pampu was given several opportunities to contest the issue of whether his sexual intercourse with Erin Wingo was consensual. He was allowed to interact in the Title IX hearing and lost. He appealed that finding to two separate levels with Clemson and lost on each occasion. He opted not to appeal those findings to the judiciary. Instead, he brought an action against Clemson in federal court. He settled that action. As part of that settlement, the finding of the OCES was left standing. He now attempts to collaterally attack that finding in order to obtain damages against the Wingos and C.J. Gahagan. Andrew Pampu has been given his opportunity and should be collaterally estopped from further contesting the fact that he had non-consensual intercourse with Erin Wingo. Equity requires an end to litigation where there has been a fair opportunity to participate and be heard.

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Jul 07 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No.: 2022-001332

Common Pleas Case No.: 2017-CP-39-00709

Andrew Pampu.....Appellant/Respondent,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan.....Respondents/Appellants,

PROOF OF SERVICE

I do hereby certify that I have served the Respondent/Appellant Colin J. Gahagan's Return to Petition for Rehearing to all counsel of record on July 7, 2025, by *electronic mail only*, as follows:

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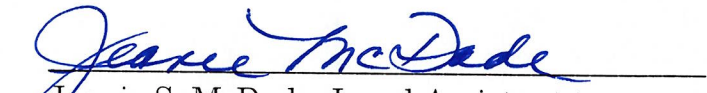
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Jul 14 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2022-001332

Andrew Pampu,	Appellant- Respondent,
v.	
Erin Wingo, David Wingo, and Colin J. Gahagan.....	Respondents- Appellants.

**RESPONDENTS-APPELLANTS ERIN WINGO AND DAVID WINGO’S
RETURN TO APPELLANT-RESPONDENT’S PETITION FOR REHEARING**

Appellant-Respondent Andrew Pampu (“Pampu”) filed a Petition for Rehearing asserting that the Court incorrectly determined that he was precluded from seeking damages from Erin Wingo (“Ms. Wingo”), David Wingo (“Mr. Wingo”), and Colin J. Gahagan (“Gahagan”) for defamation and civil conspiracy.¹ Rehearing is not warranted because the Court has not misapprehended or overlooked specific points when deciding the appeal. Rule 221, SCACR. Accordingly, the Court should deny Pampu’s Petition for Rehearing.

REINTRODUCTION AND SUMMARY OF FACTS

On October 24, 2015, Ms. Wingo, a 5’2” Clemson University freshman, drank approximately 13.5 ounce of liquor in a friend’s dorm room over the course of one hour and then

¹ This Return refers to the parties in line with the Court’s June 11, 2025 decision.

proceeded to go to a fraternity party, taking a plastic bottle with vodka in it with her. (R. 1637, line 2 to 1638, line 22; R. 1641, line 23 to 1642, line 7). Fraternity party's attendees, including Pampu, observed Ms. Wingo was drunk. (R. 1521, lines 1–3). At this party, Ms. Wingo and Pampu made out, walked from the fraternity party to a location between a wooden fence and a shed, drank vodka from the plastic bottle, and engaged in intercourse. (R. 1438, lines 10–18; R. 1438, line 10 to 1446; R. 1506, lines 7–10; R. 1508–14). On the walk back to the fraternity party, Pampu observed that Ms. Wingo was “extremely emotional,” stumbling, and “on the bad end of drunk.” (R. 1521, lines 4–11). Pampu later texted a fraternity member about the sexual intercourse, which text was shared with his entire fraternity. (cite)

A Clemson resident assistant learned of the encounter from Ms. Wingo's roommate and filed a report with Clemson University's Office of Community and Ethical Standards (“OCES”), which resulted in a formal Title IX complaint to Clemson by Ms. Wingo on November 11, 2015. (R. 48; R. 1572, lines 9–16; R. 1721, lines 3–5). Clemson instituted an investigation of the sexual encounter, and as a result of the investigation, charged Pampu with violating various Clemson University General Student Regulations, including harm to person and sexual misconduct. (R. 52; R. 340–41). Following a hearing involving multiple witnesses where lawyers were present, on February 29, 2016, Clemson University found that Ms. Wingo was “incapacitated and unable to give consent which [Pampu] should have reasonably known,” and the board suspended Pampu for five months. (R. 345). Pampu exhausted Clemson University's appeal process, and Clemson repeatedly upheld the findings. (R. 348–359; R. 3080–83; R. 3092–95; R. 3115). Pampu did not attempt to seek state court judicial review at the conclusion of the Clemson appeal process.

Instead, on June 15, 2016, he opted to file an action in federal court naming as defendants Clemson University, Clemson University Board of Trustees, and several of Clemson's individual

employees. *See Doe v. Clemson Univ.*, No. 8:16-CV-1957, 2019 WL 1383822 (D.S.C. Mar. 27, 2019) (unpublished). Pampu asserted claims for violation of Title IX of the Education Amendments of 1972, violation of due process (Fourteenth Amendment), breach of contract, breach of the covenant of good faith and fair dealing, negligence, promissory estoppel, and declaratory judgment. Pampu claimed in the suit against Clemson that the findings against him were incorrect and the Clemson process inadequate and illegal. Ultimately, the parties settled the case. On March 21, 2018, the parties in *Doe v. Clemson* participated in mediation and reached a settlement agreement, which was reduced to writing (the “Clemson Settlement”) and reinstated OCES’s factual decision, and Pampu was paid with monies from the South Carolina Insurance Reserve Fund on behalf of Clemson and the other named defendants. (R. 3190–91). The Clemson Settlement reads in pertinent part: “Clemson University will reinstate the hearing board’s decision of February 29, 2016 as upheld by the University Vice President of Student Affairs.” (R. 19; R. 3190). The validity of the Clemson Settlement was thereafter litigated and resolved by the federal district court, who concluded that the Clemson Settlement was enforceable. *See Doe*, 2019 WL 1383822. Pampu did not appeal the federal district court’s determination.

On June 15, 2017, Pampu filed the present action, asserting claims for abuse of process, intentional infliction of emotional distress, civil conspiracy, and defamation. (R. 59–69). The abuse of process and intentional infliction of emotional distress claims were dismissed prior to trial. (R. 28–29). The circuit court conducted a jury trial on March 21–25, 2022. (R. 1338).

The jury was not presented with evidence related to Clemson’s Title IX process, Clemson’s investigation, the evidence or information Clemson considered, Clemson’s findings or conclusions, or the Clemson lawsuit or settlement. Instead, in granting a Motion in Limine filed by Pampu which was later reaffirmed at trial, the circuit court excluded all evidence related to

Clemson’s Title IX process. (R. 1293, line 4 to 1294, line 15; R. 1386, line 15 to 1387, line 23). However, Pampu was permitted to offer testimony from a vocational expert, who claimed that Pampu’s “suspension” from Clemson caused him to not be accepted into dental school. (R. 1930–1959).

The trial concluded with a jury verdict for Mr. Wingo on the civil conspiracy claim and the following verdicts for Pampu: Civil Conspiracy, as to Ms. Wingo, \$2,000,000 in actual damages; as to Gahagan, \$1,000,000 in actual damages; Defamation, as to Ms. Wingo, \$700,000 in actual damages and \$450,000 in punitive damages; as to Mr. Wingo, \$230,000 in actual damages and no punitive damages; as to Gahagan, \$700,000 in actual damages and \$220,000 in punitive damages. (R. 1084–1085). Following posttrial motions, the circuit court entered a judgement notwithstanding the verdicts on the civil conspiracy claims, finding that Pampu failed to establish numerous elements of the civil conspiracy cause of action. (R. 5–7). The circuit court denied the remaining post-trial motions. These cross-appeals followed.

On appeal, this Court properly determined that Pampu had a full and fair opportunity to seek judicial review in both state and federal court and properly ruled that Pampu was collaterally estopped from indirectly attacking the decision of the Title IX hearing. Further, this Court properly determined Pampu could not recover damages from Ms. Wingo and Gahagan for civil conspiracy because the Record does not include evidence of a conspiracy to have Pampu removed from Clemson or of any damages arising from the alleged conspiracy.

ARGUMENTS

I. The Court properly applied the doctrine of collateral estoppel as neither unfairness nor injustice resulted from the application.

As Pampu states in his Petition for Rehearing, “[t]he doctrine of collateral estoppel ‘is grounded upon concepts of fairness, it should not be rigidly or mechanically applied.’” (Pampu

Pet. for Reh'g at p.11 (quoting *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998)). The Court's application of the doctrine of collateral estoppel to preclude Pampu from pursuing his claims for defamation and civil conspiracy aligns with the doctrine's principles of fairness. Pampu's arguments selectively quote from the Restatement and ignores Comment e. Comment e provides, "A stipulation or consent judgment may have preclusive effect in a subsequent action if the parties have so agreed." Restatement (Second) of Judgments § 27 (Am. Law Inst.1982), cmt. e. The Clemson Settlement explicitly stated that the Title IX findings would be upheld and the initial sanctions would be reinstated and released Clemson from any claims related to the federal suit. (R. 3190–91). The district court determined that the terms of that settlement were "clear and unambiguous" and signed by Pampu. *Doe*, 2019 WL 1383822, at *3. Thus, the Clemson Settlement has a preclusive effect as to the Title IX findings and sanctions as well as to Pampu's breach of contract claim against Clemson, which the Clemson Settlement fully and finally resolved. Further, Section 29 of the Restatement Second of Judgments provides, "A party precluded from relitigating an issue with an opposing party, in accordance with §§ 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue." Restatement (Second) of Judgments § 29 (Am. L. Inst. 1982). Therefore, reading Section 29 of the Restatement Second of Judgements in conjunction with Section 27, comment e, Pampu cannot use the purported procedural deficiencies which were the basis for claims he pursued against and settled with Clemson to avoid the preclusive effect of OCES's decision, which he agreed to be reinstated through the same settlement agreement.

Alone, the Clemson litigation and Clemson Settlement in which Pampu agreed for Clemson to "reinstate [OCES's] decision of February 29, 2016 as upheld by the University Vice President

of Student Affairs,” precludes Pampu from relitigating whether Ms. Wingo consented to sexual intercourse. (R. 3190–92). The U.S. District Court for the District of South Carolina found the Clemson Settlement is enforceable. *See Doe*, 2019 WL 1383822. Regardless of whether Clemson’s OCES is a state agency, Pampu signed a binding agreement for the following findings to be reinstated: “[Ms. Wingo was] incapacitated and unable to give consent which [Pampu] should have reasonably known,” and the board suspended Pampu for five months. (R. 345). To allow Pampu to pursue his claim for defamation when he has agreed for the reinstatement of OCES’s findings that Ms. Wingo was too intoxicated to consent to intercourse and Pampu should have reasonably known that, is inequitable and unjust.

II. The Court properly determined that Clemson’s OCES is a state agency as well.

Under South Carolina law, where a civil action arises out of the same factual scenario as one which has been before a state agency, a finding by that state agency with regard to an element that is critical to recovery in the civil action is binding upon the civil court. *Bennett v. South Carolina Dept. of Corr.*, 305 S.C. 310, 408 S.E.2d 230 (1991); *Perry v. South Carolina Law Enforcement Div.*, 310 S.C. 558, 426 S.E.2d 334 (1992). Clemson’s OCES qualifies as a state agency under the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-10, et. seq. pursuant to (1) the plain language of the statutes, (2) the reading of the South Carolina Campus Sexual Assault Information Act in conjunction with the APA, and (3) caselaw finding university boards and/or committees have been found to be subject to the APA.

First, Sections 1-23-10(1) and -310(1) of the APA define “agency” to include each state board, commission, department, or officer, other than the legislature or the courts, authorized by law to determine “contested cases.”² This definition neither includes nor excludes schools, colleges

² Additionally, the term “agency” has been defined to include state schools, colleges, and universities. S.C. Code Ann. § 15-78-30(a).

or universities. The APA agency term includes “state boards” that are authorized to hear “contested cases.” The term “contested case” is defined as a “proceeding **including, but not restricted to**, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party **are required by law** to be determined by an agency after an opportunity for hearing” S.C. Code Ann. § 1-23-310(3) (emphasis added).

Second, the Court properly relied on the South Carolina Campus Sexual Assault Information Act to conclude OCES’s IX decision was a contested case determined by a state agency. Clemson’s OCES is a board at Clemson that is authorized and required by law to determine rights of parties under both federal and state law. Both the Department of Education and the Department of Justice have promulgated regulations under Title IX that require a school to “adopt and publish grievance procedures that provide for the prompt and equitable resolution of student . . . complaints alleging any action that would be prohibited by” Title IX or regulations thereunder. 34 CFR § 106.8(b) (Dep’t of Education); 28 CFR § 54.135(b) (Dep’t of Justice). Such prohibited actions include all forms of sexual harassment, including sexual intercourse without consent. Similarly, the South Carolina Campus Sexual Assault Information Act requires public South Carolina universities, like Clemson, to establish procedures for institutional disciplinary actions in cases of alleged sexual assault. *See* S.C. Code Ann. § 59-105-20(3) (“‘institution’ means a public two-year or four-year . . . university located in this State”) and § 59-105-40 (requiring public universities “implement a campus sexual assault policy regarding . . . procedures followed by the institution once sexual assault occurs and is reported” that “must address” among other things, “procedures for institutional disciplinary action in cases of alleged sexual assault” and “possible sanctions following the final determination of an institutional disciplinary procedure regarding sexual assault.”). These required procedures make the decisions by Clemson’s OCES “contested

cases” under the APA, as the term “contested case” is defined in § 1-23-310 as a “proceeding including, *but not restricted to*, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing” S.C. Code Ann. § 1-23-310(3) (emphasis added).

Recognizing “[t]he serious nature and consequences of sexual assault and the particular problems caused by sexual assault within a campus community prompt[ed] the General Assembly to encourage institutions of higher learning to develop . . . a comprehensive sexual assault policy to address prevention and awareness of sexual assault and to establish procedures that address campus sexual assaults.” S.C. Code Ann. § 59-105-30. It is presumed that by passing a statute, the General Assembly intended to accomplish something and not to do a futile thing. *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002); *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). Courts have recognized the retaliatory nature of defamation claims brought by alleged perpetrators of sexual assault and the consequential impact of the under reporting of sexual assault. *See Sagaille v. Carrega*, 194 A.D.3d 92, 143 N.Y.S.3d 36, leave to appeal denied, 37 N.Y.3d 909, 174 N.E.3d 710 (2021) (“[S]exual assaults remain vastly under reported, primarily due to victims’ fear of retaliation. It does not escape [the Court] that defamation suits like the instant one may constitute a form of retaliation against those with the courage to speak out.”). To allow Pampu to relitigate OCES’s findings which resulted from procedures established pursuant to the South Carolina Campus Sexual Assault Information Act, would undermine the Act’s purpose to address the problems caused by campus sexual assaults and render the Act a futile thing. Therefore, the Court properly relied on the South Carolina Campus Sexual Assault Information Act to conclude OCES’s decision was a contested case determined by a state agency.

Third, in previous cases, decisions by university boards and/or committees have been found to be subject to the APA. *See Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 379, 453 S.E.2d 880, 882 (1994) (tenured professor appeals a decision by a faculty committee, that was approved by the universities board of trustees, pursuant to the APA). Additionally, courts within this state have found that numerous other state boards fall within this broad definition of “agency.” *See, e.g., Bursey v. S.C. Dep’t of Health & Env’t Control*, 360 S.C. 135, 143, 600 S.E.2d 80, 85 (Ct. App. 2004) (finding that the Mining Council is an agency under the APA), *aff’d*, 369 S.C. 176, 631 S.E.2d 899 (2006); *Ruocco v. S.C. State Bd. of Registration for Pro. Engineers & Land Surveyors*, 314 S.C. 111, 114, 441 S.E.2d 829, 831 (Ct. App. 1994) (finding that the South Carolina State Board of Registration for Professional Engineers and Land Surveyors is an agency under the APA); *Webber v. Michelin Tire Corp.*, 285 S.C. 581, 583, 330 S.E.2d 547, 548 (Ct. App. 1985) (“The Industrial Commission is an agency for purposes of the Administrative Procedures Act.”); *Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (“Clearly, the Employment Security Commission is an agency within the meaning of S.C. Code Ann. § 1–23–310(1) of the APA as ‘it has rule making authority, and hears and decides contested matters.’”); *Guerard v. Whitner*, 276 S.C. 521, 280 S.E.2d 539 (1981) (finding that the Coastal Council is an agency under the APA).

As the Court concluded, *Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 453 S.E.2d 880 (1994), offers support for the conclusion that the Clemson OCES hearing constitutes a “contested case” before a “state agency.” There, a tenured professor at MUSC was terminated for alleged abuse of his position for personal financial gain. *Id.* at 378, 453 S.E.2d at 881. A Faculty Hearing Committee upheld the decision, and that committee’s decision was reviewed by the Vice President for Academic Affairs and then by the MUSC Board of Trustees. *Id.* The professor then filed suit in

the Circuit Court, seeking review of the decision under the APA. *Id.* This fact pattern is substantially similar to the one at issue in this case, with the Faculty Hearing Committee being akin to the OCES board and with a similar internal appellate process.³

While Pampu attempts to distinguish this case by claiming that the issue of whether the APA was applicable was not raised in *Ross*, it is of no moment in *Ross* that the Supreme Court of South Carolina was not specifically presented with an argument regarding whether the APA applied. The state courts in *Ross* only had subject matter jurisdiction because the case was appealed under the APA. Other issues were originally brought in the lawsuit, but those issues were removed to federal court. Only the review of the APA action was remanded to the circuit court. *Id.* A state appellate court “must, on its own motion, raise the issue of subject matter jurisdiction to ensure the ‘orderly administration of justice.’” *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002) (quoting *State v. Castleman*, 219 S.C. 136, 139, 64 S.E.2d 250, 252 (1951)). By deciding the issues in the case, the Supreme Court of South Carolina implicitly recognized that the APA applied. Otherwise, it would have lacked subject matter jurisdiction to decide the case. Therefore, *Ross* does support the conclusion that the South Carolina Supreme Court has treated a state-supported university as a state agency for purposes of the APA.

Finally, if Clemson’s OCES is a state agency (in a general sense and not necessarily as one expressly defined or listed under the APA), and Pampu was afforded a quasi-judicial proceeding, the proceeding will have a preclusive effect from its findings. As such, collateral estoppel applies regardless of whether the APA applies and regardless of whether all of the procedural aspects (i.e., depositions and subpoenas) were available to Pampu. For example, in *King v. Charleston Cnty. Sch.*

³ Similar to *Pampu*, the plaintiff in *Ross* argued on appeal that the APA was violated because he was refused a deposition and a subpoena. *See Ross*, at 64, 492 S.E.2d at 69. The supreme court determined that the plaintiff’s rights were not substantially prejudiced by this refusal. *Id.*

Dist., the United States District Court for the District of South Carolina concluded that a “quasi-judicial hearing before the Charleston County School District Board of Trustees pursuant to the South Carolina Teacher Employment and Dismissal Act” was entitled to preclusive effect. 664 F. Supp. 2d 571, 580 (D.S.C. 2009); *see also Pettiford v. S.C. State Bd. of Ed.*, 218 S.C. 322, 344, 62 S.E.2d 780, 790 (1950) (finding that a school board disciplinary hearing resulting in the termination of a faculty member constituted a quasi-judicial proceeding). In *King*, the court noted that the plaintiff received substantial due process rights before the school board, including the first to produce witnesses, the right to cross-examine, the right to present defenses, and the right to counsel. *Id.*

Here, as authorized by statute, Clemson’s OCES provided Pampu not only the right to retain counsel, but also the right to be notified of the proceedings, the right to participate in the proceedings, the right to notice of the findings of the agency, and the right of appeal. (R. 375-77; R. 391-99). Pampu received notice of the hearing, retained counsel, participated in the proceedings with the assistance of counsel and was notified of the agency finding. (R. 342; R. 344; R. 2394, lines 2-18). Pampu exercised his right to appeal the Hearing Board’s decisions on two levels, to the Vice President of Student Affairs and then to the President of the University. (R. 2395, lines 2-4, 2396, line 24 - 2397, line 6; R. 348-360; R. 3080-83; R. 3092-95; R. 3115). Because OCES is a part of Clemson, authorized to enforce institutional disciplinary actions for alleged sexual assaults through contested cases, it is a state agency authorized by law to determine contested cases and its findings are binding upon Pampu.

III. Pampu’s failure to exhaust remedies regarding Clemson’s findings should weigh in favor of precluding Pampu from relitigating the issue of Ms. Wingo’s consent.

To the extent Pampu believed certain protections of the APA were not provided, he could have appealed those issues to the state courts of South Carolina. *See* S.C. Code Ann. § 1-23-380.

Pampu should not be allowed to collaterally attack the findings of OCES via this defamation action after failing to seek judicial review of the OCES findings. *See Bennett*, 305 S.C. 310, 408 S.E.2d 230 (finding that a claimant’s failure to seek judicial review of an agency’s ruling barred his subsequent suit because by not seeking judicial review of the decision, he abandoned his only opportunity to gain a favorable ruling on the issues also raised in the subsequent suit); *McClellan v. Bd. of Regents of State Univ.*, 921 S.W.2d 684 (Tenn. 1996) (noting that allegedly procedural issues in a hearing before the university’s board should and could have been raised on appeal).

Pampu cites *Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 563 S.E.2d 109 (Ct. App. 2002). (Pampu Pet. for Reh’g at 12), asserting it supports his positions. In *Thomas Sand Co.*, a mining company brought a negligence action against a pipeline owner for economic damages arising from a diesel spill, alleging Department of Health and Environmental Control (“DHEC”) denied a permit to mine a sand deposit as a result of the spill. *Id.* at 406–07, 563 S.E.2d 110–11. The Court of Appeals found a mining company was not required to exhaust administrative remedies before bringing a negligence action against the pipeline owner because “a litigant need not exhaust administrative remedies where ‘there are no administrative remedies for the wrongs it assertedly suffered.’” *Id.* at 413, 563 S.E.2d at 115. In contrast with the mining company in *Thomas Sand Co.*, Pampu had remedies under the APA available for the wrongs he allegedly suffered, and he did not exhaust them. Instead, he sued Clemson in federal court and asserted claims arising from purported deficiencies in the Title IX proceeding, and he resolved those claims through the Clemson Settlement. (R. 19; R. 3191).

IV. The Court properly concluded that OCES found Ms. Wingo lacked consent.

Following the hearing, Clemson OCES sent Pampu the initial decision letter memorializing the findings of the board that Pampu did commit “Sexual Misconduct,” which is by definition

nonconsensual conduct,⁴ and the letter unequivocally states that, “[b]ased on the information presented, the hearing board found that [Ms. Wingo] was incapacitated and unable to give consent which you should have reasonably known.”⁵ (R. 345–47; R. 2106, lines 1–19; R. 2113–2114; R. 3075–77). The finding that Ms. Wingo was incapacitated and unable to consent to the sexual encounter was necessary to support OCES’s finding. To determine if Pampu committed “Sexual Misconduct,” OCES had to determine whether the incident was consensual; it conclusively found that it was not. Therefore, a finding that Ms. Wingo was incapacitated and unable to give consent was necessary to the judgment that Pampu committed Sexual Misconduct.

It is true that OCES did not make a charge of “Sexual Assault and/or Battery,” defined to include “[a]ny attempted or actual act of nonconsensual sexual intercourse” (R. 392), or “Rape,” which is defined as the “carnal knowledge of a person without the consent of the victim including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical impairment,” (R. 392). Because the act of sexual intercourse was not in dispute,⁶ the only issue to be decided by Clemson and OCES was one of consent. Although, for reasons not appearing in the record, Clemson did not *charge* Pampu with rape or sexual assault, non-consensual sexual intercourse meets the definitions of rape and sexual assault. The fact that he was not so charged is thus of no moment to this matter based on

⁴ “Sexual Misconduct” is defined by Clemson’s Anti-Harassment and Non-Discrimination Policy as “any other nonconsensual conduct of a sexual nature.” (R. 393). Pampu concedes he had sexual intercourse with Wingo.

⁵ Under the Anti-Harassment Policy, in order to find a person failed to receive consent from a person impaired and unable to give consent “due to the influence of alcohol,” “there must be a finding that the complainant was unable to consent and a finding that the respondent knew or had reason to know the complainant was unable to consent.” (R. 394-95).

⁶ Pampu has never denied engaging in sexual intercourse with Ms. Wingo on the night at issue. (R. 1530, line 16 - 1531, line 16). “Rape” as defined above, thus applies as a term because of the temporary impairment and corresponding lack of consent, coupled with admitted sexual intercourse.

the necessary factual finding made by OCES in the initial decision letter and later affirmed by Clemson on appeal of lack of consent.

While it is true that he was not charged with violating Clemson’s policy on “Sexual Assault” and “Rape,” all of the factual predicates for such a finding were present (*i.e.*, nonconsensual sexual intercourse). Substantial truth is the most obvious defense to defamation. Pampu cannot escape the admitted truth that he had sexual intercourse with Ms. Wingo and the truth that OCES explicitly determined “[Ms. Wingo] was incapacitated and unable to give consent.” (R. 345–47). Courts have addressed nomenclature in the defamation context and generally do not require that we all communicate technical legal principles with precision. *See Simonson v. United Press Int’l, Inc.*, 654 F.2d 478, 481–82 (7th Cir. 1981) (no defamation when word “rape” used even though crime was second-degree sexual assault because “rape,” as understood in common usage, truthfully described the conduct involved); *Nanji v. Nat’l Geographic Soc’y*, 403 F. Supp. 2d 425, 433–34 (D. Md. 2005) (finding that use of “rape” instead of “more technically precise term, such as ‘sexual assault’ or ‘sexual abuse,’” did not render article inaccurate, and collecting cases for proposition that “technical errors in legal nomenclature in reports on matters involving violation of the law are of no legal consequence” in defamation actions) (internal quotations omitted). Therefore, the conclusion that OCES, as a state agency, made finding that Ms. Wingo was incapacitated and unable to give consent was necessary to the judgment that Pampu committed Sexual Misconduct disposes of Pampu’s defamation claim.

V. Pampu’s defamation claim improperly seeks to relitigate the OCES’s findings and pursue damages that he has already recovered from the Clemson Settlement.

In the Petition for Rehearing, Pampu argues because “he is not seeking to attack the OCES decision or relitigate the OCES findings through his defamation claim, which is solely based on statements made outside the OCES process,” OCES’s findings should not have a preclusive effect.

(Pampu Pet. for Reh'g at 6). He further argues the damages he recovered in the Clemson Settlement are separate from the damages he seeks from his defamation claim in the present action. (*Id.* at p.13). Yet, in the Petition for Rehearing, Pampu also argues that collateral estoppel should not bar his defamation claim because “[t]he evidence also showed that E. Wingo and Gahagan both knew that the sexual encounter with Pampu was consensual and that they lied to Clemson about the nature of the encounter during the disciplinary process.” (*Id.* at p.11).

Pampu’s alleged damages were directly related to the Title IX process. For example, Pampu testified that he was unable to graduate from Clemson and that he had to alter his career plans because he could not get into dental school due to his “removal” from Clemson. (R. 1461–64). Pampu’s vocational expert testified that Pampu would have gotten into dental school “but for” his removal from Clemson. (R. 1939–43; R. 1948–49). The expert did not place a specific monetary value to this alleged harm, as the trial court did not permit the testimony, and instead generally testified that Pampu suffered a reduced lifetime earning capacity based on the “removal” from Clemson. (R. 1939–43). In his suit against Clemson, Pampu sought “damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and career opportunities, and loss of future career prospects” Compl., *Doe v. Clemson Univ.*, No. 8:16-CV-1957, at “Wherefore” (i)–(vi) (D.S.C. Jun. 15, 2016). In his suit against the Wingos and Gahagan, Pampu seeks: “damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and career opportunities, and loss of future career prospects.” (R. 69).

Based on the testimony and arguments at trial, Pampu directly and repeatedly tied the allegedly defamatory statements to his removal from Clemson. Pampu’s counsel often conflated the issue of defamation reputational damages with the Clemson suspension while addressing the

jury. For example, during the opening statement Pampu’s counsel argued that “[Pampu’s] defamation claim is actually based on defendants’ false statements to at least 20 other people calling him a rapist. Because of defendants’ actions, [Pampu] will be required to disclose and self-report *his removal from Clemson* for the rest of his life whenever he applies to another school or applies to certain jobs. His dreams of becoming an orthodontist will never happen because of defendants’ irreversible actions.” (R. 1416, line 18 –1417, line 2 (emphasis added)). In the same vein, during closing arguments Pampu’s counsel claimed that, “[t]he reason [Pampu] cannot fulfill his intended career goal of being an orthodontist is not because of Clemson, but for [Ms. Wingo and Gahagan’s] statements, *Clemson would not have kicked him out.*” (R. 2235, lines 3-6 (emphasis added)).

The ultimate decision to suspend Pampu from Clemson was solely based on comments, statements, and evidence from *within* the Title IX process. There is no suggestion that OCES based its decision on anything other than the testimony and evidence uncovered during the Title IX investigation and presented during the Title IX hearing. It was Clemson’s decision, and its decision alone, to suspend Pampu. Pampu based his alleged damages solely on Clemson’s decision to suspend him from school based on Title IX process and findings.⁷ Therefore, Pampu’s arguments based on the proposition that “he is not seeking to attack the OCES decision or relitigate the OCES findings through his defamation claim” are meritless.

VI. The Court need not address the statements by Mr. Wingo because the finding of the preclusive effect of the OCES decision and remand for the entry of JNOV on the defamation claim is dispositive.

The Court declined to address the Wingos’ remaining issues because the remand for the entry of a JNOV on the defamation claim and affirmance of the JNOV on the civil conspiracy

⁷ Pampu and Clemson agreed to reaffirm the findings of the Title IX process in the Clemson Settlement, which meant the findings stayed on his record.

claim are dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

VII. The Court Properly Affirmed the Circuit Court’s Granting JNOV on the Civil Conspiracy Claim.

The Court properly affirmed the circuit court’s granting a JNOV on Pampu’s civil conspiracy claim. Pampu argues the Court’s decision was improper for four reasons: (1) the reliance on Section 27 of the Restatement Second of Judgments, (2) the Court’s conclusion that Pampu abandoned his argument that Clemson knowingly accepted and acted on false evidence, (3) the Court’s conclusion that Pampu did not prove damages proximately resulting from the alleged conduct of Ms. Wingo and Gahagan, and (4) the Court’s conclusion that a court may deny a motion for a directed verdict and then grant a JNOV motion on the same issue. As set forth below, each of Pampu’s arguments fail to establish the Court misapprehended or overlooked specific points when deciding the appeal.

First, the Court properly relied on Section 27 of the Restatement Second of Judgments, as outlined above, which also precludes Pampu from establishing that Ms. Wingo and Gahagan committed an “unlawful act” by allegedly causing Clemson to breach its contract with Pampu.

Second, the Court properly concluded that Pampu abandoned the argument that Clemson’s imposition of sanctions was a breach of Clemson’s contractual duties to him, because Pampu failed to cite legal authority to support his conclusion. In the Petition for Rehearing, Pampu cites to the same baseless conclusions without citing supporting authority on the issue. *See Glasscock*, 348 S.C. at 81, 557 S.E.2d at 691 (“[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”).

Third, Pampu relies on *Mills v. S.C. State Ports Auth.*, 435 S.C. 213, 865 S.E.2d 910 (Ct. App. 2021), for the proposition that a jury does not need a specific calculation to reach a non-

speculative damages amount. However, *Mills* is easily distinguishable from the present case. In *Mills*, the jury was left to determine the amount of lost wages experienced by the plaintiff. 435 S.C. at 228, 865 S.E.2d at 917. Critically, the jury was presented with testimony from the plaintiff that “he lost about \$12,000 during the nine weeks he was out of work.” *Id.* at 229, 865 S.E.2d at 918. The jury in *Mills* was easily able to use this figure to calculate a non-speculative damages figure for lost wages. Pampu did not present the jury with a single monetary figure regarding Pampu’s lost income; instead, the jury was given extreme generalizations that Pampu would earn “significantly less” over his lifetime as a salesman as compared to an orthodontist. (R. 1959, lines 3–7).

Finally, Pampu argues that the trial court is unable to grant JNOV based on a change in reasoning from an earlier directed verdict denial. By asserting this argument, Pampu ignores the plain language and purpose of 50(b), SCRCP. *See Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006) (“[A] motion for JNOV under Rule 50(b), SCRCP[,] is a renewal of a directed verdict motion.”). A JNOV motion would not exist if it could not be granted.

CONCLUSION

For the foregoing reasons, Pampu has failed to establish under Rule 221, SCACR, that the Court misapprehended or overlooked specific points when deciding the appeal. Accordingly, the Court should deny Pampu’s Petition for Rehearing.

(Signature Page Follows)

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July 14, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2022-001332

Andrew Pampu,	Appellant- Respondent,
v.	
Erin Wingo, David Wingo, and Colin J. Gahagan.....	Respondents- Appellants.

PROOF OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Erin Wingo and David Wingo, do certify that I have served all counsel of record in this action with a copy of the document(s) set forth below under Supreme Court Order dated April 24, 2024:

Pleading(s): Respondents-Appellants Erin Wingo and David Wingo’s Return to Appellant-Respondent’s Petition for Rehearing

Served: **Via E-Mail**

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The South Carolina Court of Appeals

Andrew Pampu, Appellant-Respondent,

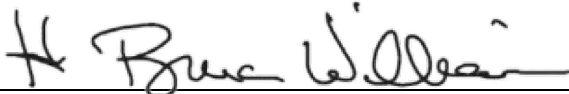
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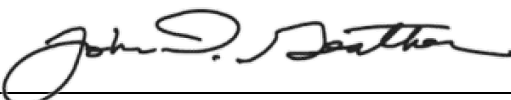
Erin Wingo, David Wingo, and Colin J. Gahagan,
Respondents-Appellants.

Appellate Case No. 2022-001332

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:

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