FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-37-00279

Mariam R. Noorai
PLAINTIFF(S)

School District Pickens County, et al
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	$N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/J. Cordell Maddox, Jr.
Circuit Court Judge

2131
Judge Code

05/07/14
Date

For Clerk of Court Office Use Only

This judgment was entered on the 13th day of May, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 13th day of May, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

S. Paul Aaron (mail)

ATTORNEY(S) FOR THE PLAINTIFF(S)

Laura C. Hart (mail)
Thomas K. Barlow (mail)
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ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter: Robin S. Hild

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Mariam R. Noorai,

Plaintiff,

v.

School District of Pickens County, School District of Oconee County, and Gary Culler, Donald Boggs, Richard Hudak, Earnestine Williams, Marilyn Raines and Dr. Kelly Pew in their individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No. 2011-CP-37-279

ORDER

This matter came before this court for a hearing on April 7, 2014 on Motions for Summary Judgment filed by all Defendants. In support of their motions, the Defendants also filed deposition testimony, affidavits, and documentary evidence. In opposition to the motions, Plaintiff submitted her own affidavit. Based on this evidence, the Defendants argue that no genuine issues of material fact exist and they are entitled to judgment as a matter of law on all causes of action asserted by Plaintiff. For the reasons stated below, the court grants the Motions for Summary Judgment and dismisses each of Plaintiff's causes of action with prejudice.

In addition, in reaching this decision, I have fully considered the Plaintiff's affidavit and her claim of medical injury resulting from Defendants' alleged behaviors. Although there appears to be no evidence of these injuries other than her own statements, for the purposes of summary judgment I considered that the injuries do exist. With that said, I find there is no evidence to support Plaintiff's allegations that these conditions proximately resulted from the actions or inactions of the Defendants.

FACTUAL BACKGROUND

Plaintiff was employed by the School District of Pickens County ("the Pickens District") as an English/Language Arts teacher at one of its middle schools during the school years 2007-2008 and 2008-2009. During that time and as a part of her job, she also served as the school yearbook advisor. Although the Pickens District offered her a contract to teach for the 2009-2010 school year, Plaintiff declined to accept it. Plaintiff applied for teaching positions in other school districts, including the School District of Oconee County ("the Oconee District") both before and after she left her employment in the Pickens District, but was unsuccessful in obtaining another position.

Plaintiff claims in the Second Amended Complaint ("the Complaint") that the Pickens District and Defendants Culler, Boggs, Hudak, Raines, and Pew, all employees of the Pickens District, incorrectly handled several matters during her employment. She also accuses all the Defendants, including the Oconee District and its employee, the Defendant Williams, of fault resulting in her failure to obtain employment following her departure from the Pickens District.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 701 S.E.2d 742 (2010); *David v. McLeod Reg'l Med. Ctr*, 367 S.C. 24, 626 S.E.2d 1 (2006). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the nonmoving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). When it is clear that the moving party is entitled to judgment as a matter of law, the court must enter judgment in favor of the moving party. *Laughridge v. Parkinson*, 304 S.C. 51, 403 S.E.2d 120 (1991).

Inadmissible testimony, including hearsay, suppositions, speculation, and bald allegations, are insufficient to create a genuine issue of fact. *Id.; see also David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 24, 626 S.E.2d 1 (2006) ("summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner"): *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 390, 701 776, 780 (Ct. App. 2010) (non-moving party may not rely on speculation to defeat a motion for summary judgment). Thus, in opposing the Defendants' Motions for Summary Judgment, Plaintiff may not rest on the mere allegations of her Complaint or her suspicions, but must set forth or point to specific admissible facts showing that there is a genuine issue of material fact to be considered by a jury. *Hoard ex rel. Hoard v. Roper Hosp., Inc.* 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010); *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2002); *Coker v. Cummings*, 381 S.C. 45, 54-55, 671 S.E.2d 383, 388 (Ct.App. 2008).

DISCUSSION

Plaintiff's Second Amended Complaint ("the Complaint") asserts eight causes of action against various combinations of the Defendants:

- Negligence and gross negligence against the Pickens District in connection with an alleged sexual assault by a student (First Cause of Action);
- Negligent misrepresentation against the Pickens District, relating to her letter of resignation (Second Cause of Action);
- Negligence and gross negligence against the Oconee District in connection with its decisions not to hire Plaintiff (Third Cause of Action);
- Breach of contract accompanied by a fraudulent act against the Pickens District and Defendant Culler, principal of the school where Plaintiff taught and an employee of the Pickens District, in connection with her teaching contract (Fourth Cause of Action);
- Defamation against the Pickens District, the Oconee District, and Defendant Culler, arising from alleged communications about her performance as a teacher (Fifth Cause of Action);

- Assault against Defendant Hudak, a fellow teacher and employee of the Pickens District (Sixth Cause of Action);

- Civil conspiracy against Defendants Pew, Boggs, and Raines, employees of the Pickens District, and Defendant Williams, an employee of the Oconee District, who allegedly conspired to ruin and damage her in her profession (Seventh Cause of Action);

- Intentional infliction of emotional distress against Defendant Culler (Eighth Cause of Action)

The tort claims asserted by Plaintiff against the Defendants in her First, Second, Third, Fifth, Sixth, Seventh, and Eighth Causes of Action are subject to the South Carolina Tort Claims Act which is the exclusive and sole remedy for all tort claims brought against a governmental entity and its employees acting within the scope of their official duties. S.C. Code Ann. § 15-78-200. The Fourth Cause of Action, for breach of contract accompanied by a fraudulent act, is governed by general contract law. This Order will address each cause of action separately.

I. Negligence/gross negligence asserted against the Pickens District (First Cause of Action)

Plaintiff claims that she was sexually assaulted by a student in a crowded school hallway during change of classes on January 27, 2009. Plaintiff claims that the Pickens District was negligent and grossly negligent because it failed either to prevent or report this incident, which she characterizes as "criminal behavior."

The Pickens District denies that Plaintiff was criminally sexually assaulted at school or that she reported the incident as a sexual assault to its school personnel. The Pickens District argues further that even if Plaintiff were assaulted as she claims, it is entitled to summary judgment on this cause of action because (1) Plaintiff's claim is barred by the statute of limitations; (2) the Pickens District is immune under the Tort Claims Act; (3) the District owed no duty to Plaintiff to protect her from this particular student; (4) the District owed no duty to Plaintiff to file a formal, independent report of the student's alleged conduct with the Sheriff's

Department; and (5) Plaintiff was not damaged by the alleged failure to report the student's actions to law enforcement.

A. Plaintiff's claim of negligence and gross negligence against the Pickens District because it did not prevent the alleged assault is barred by the statute of limitations.

Under the South Carolina Tort Claims Act ("the Act"), negligence and gross negligence claims against political subdivisions of the State, including school districts, are barred "unless an action is commenced within two years after the date the loss was or should have been discovered." S.C. Code Ann. § 15-78-110.[1] Plaintiff knew of the incident that she characterizes as a sexual assault on January 27, 2009, when it occurred, and prepared a written student disciplinary notice, referring the matter to the school administration for handling on the same day. However, she did not commence this action against the District until March 22, 2011, when she served her initial Complaint on the District, more than two years after the alleged occurrence.

Because Plaintiff knew of the incident on January 27, 2009, more than two years before she commenced her suit against the District on March 22, 2011, the statute of limitations in the Act bars her claim. The District is, therefore, entitled to summary judgment on the First Cause of Action because it was untimely.

B. The Tort Claims Act provides immunity to the Pickens District for the claims Plaintiff alleges in the First Cause of Action.

The Pickens District asserts that it is immune from liability to Plaintiff under several immunity provisions of the Tort Claims Act, specifically S.C. Code Ann. §§ 15-78-60 (2), (4), (5), and (20). None of the immunity provisions asserted by the Pickens District contain a gross negligence standard. Therefore, the gross negligence standard is not interpolated into these

[1] If a claimant files a verified claim using the procedure outlined in S.C. Code Ann. § 15-78-80, the statute of limitations is extended to three years after the loss was or should have been discovered. However, Plaintiff did not file a verified claim of her loss in this case.

defenses. *See Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900 (2010). If these immunity defenses apply to Plaintiff's claims, as the Pickens District argues, it is immune from liability, even if it acted in a negligent or grossly negligent manner.

The court finds that the Pickens District is immune under § 15-78-60 (20) which provides that state entities are not liable for losses resulting from "an act or omission of a person other than an employee [of the governmental entity] including but not limited to the criminal actions of third persons." The student, who was not an employee of the Pickens District, committed what Plaintiff characterized in her Complaint and deposition as a "sexual assault" and "criminal behavior." Because Plaintiff claims damages resulting from the criminal action of a person who was not an employee of the Pickens District, the Pickens District is immune from liability to her. Similarly, Plaintiff's claim that the Pickens District negligently failed to "report such criminal behavior to the appropriate law enforcement agencies for investigation and prosecution" is a claim that also arises out the alleged criminal act of a third person, for which the Pickens District is immune. Because the District is immune under S.C. Code Ann. § 15-78-60 (20) from Plaintiff's tort claims in her First Cause of Action, it is entitled to judgment as a matter of law on those claims. The court declines to address in detail the remaining immunity provisions asserted by the Pickens District, but finds that they are also applicable to Plaintiff's claims.

C. A prior risk of danger from the offending student was not apparent and, therefore, did not give rise to a duty by the Pickens District to act to protect Plaintiff from that particular harm.

To establish a claim of negligence or gross negligence against the Pickens District, Plaintiff must prove: (1) a duty of care owed by the District to the Plaintiff; (2) a breach of that duty by a negligent or grossly negligent act or omission; (3) the Plaintiff was injured; and (4) the District's breach of duty proximately caused the Plaintiff's injury. *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). Whether a duty of care

exists is a question of law for the court. *Oblachinski v. Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011), *reh'g denied* (Apr. 7, 2011); *Johnson v. Robert E. Lee Acad., Inc.*, 401 S.C. 500, 504, 737 S.E.2d 512-513-14 (Ct.App. 2012).

Whether the Pickens District owed the Plaintiff a legal duty of care to protect her from the actions of the student depends on whether, before the alleged assault by the student on the Plaintiff, the danger of such was apparent to the District. *See Bailey v. Segars*, 346 S.C. 359, 366, 550 S.E.2d 910, 913-14 (Ct.App. 2001), *cert. dismissed*, 354 S.C. 57, 579 S.E.2d 605 (2003) (duty of care arises only when danger is apparent to one in the actor's position before the harm occurs). "It is not enough that the danger can be perceived by "looking back at the mishap with the wisdom borne of the event." *Carter v. R.L. Jordan Oil Co., Inc.*, 294 S.C. 435, 444, 365 S.E.2d 324, 329-30 (Ct.App. 1988), *rev'd on other grounds*, 299 S.C. 439, 385 S.E.2d 820 (1989) (citations omitted). "A plaintiff must identify a duty that the defendant has to protect her from a particular harm to merit consideration of her claim by a jury." *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 392, 701 S.E.2d 776, 781 (Ct. App. 2010), citing *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999) (whether a "particular duty" exists is a matter of law that must be determined by court before sending the case to a jury). .

In this case, Plaintiff has produced no evidence that before the student allegedly sexually assaulted her, the Pickens District knew or should have known of this danger to her or any other person from this student, nor even that the student posed a risk of any danger whatsoever to her or to other persons. Plaintiff offered no evidence that before the January 27, 2009 incident, the student ever acted in a threatening or combative way toward her or any other person. Indeed, there is no evidence that the circumstances at her school on January 27, 2009, more than one and one-half years after she began teaching there, were any different than on any other day before the

assault allegedly occurred. She did not testify that she was aware of a danger of assault from the student, or that anyone else at the school was on notice of a risk of harm from the student.

Because there is no evidence that, before the alleged assault, the Pickens District was aware of that particular harm to Plaintiff, or even that the student posed any potential danger to Plaintiff, the Pickens District owed no duty to take extra precautions to protect Plaintiff from the possibility that this student may attack her. The Pickens District, therefore, is entitled to judgment as a matter of law.

D. The Pickens District is not liable to Plaintiff for failing to report the alleged sexual assault to law enforcement.

1. The statutes requiring the reporting of a crime to law enforcement or other authorities do not provide for a private cause of action.

State law requires school administrators to report criminal conduct to law enforcement authorities, S.C. Code Ann. § 59-24-60, and school-related crimes to the State Department of Education, S.C. Code Ann. § 59-63-330. Failure to report this information does not subject the administrator and the school district to tort liability, but only to an action for a writ of mandamus to compel compliance with these statutes and to recover the costs and attorneys fees associated with the mandamus action. S.C. Code Ann. § 59-63-335.

"The general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability." *Doe v. Marion*, 373 S.C. 390, 396, 645 S.E.2d 245, 248 (2007), citing *Dorman v. Aiken Commc'ns, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (quoting *Whitworth v. Fast Fare Mkts of S.C., Inc.*, 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)). The statutes at issue here do not expressly create a private cause of action in negligence for failure to report criminal conduct, and one cannot be implied from their language.

Assuming *arguendo* that the Pickens District knew that the offending student's conduct was a criminal act, it nevertheless is not civilly liable to the Plaintiff for its failure to report the crime.

Moreover, the statutes that require the reporting of school crimes expressly include a remedy for their violation in S.C. Code Ann. § 59-63-335. The fact that § 59-63-335 establishes a penalty for violation through a writ of mandamus, while omitting language establishing a private cause of action in tort for their violation, indicates the intention of the legislature not to establish a private cause of action in tort. *See Doe v. Marion*, 373 S.C. 390, 397-98, 645 S.E.2d 245, 248-249 (2007) (statute requiring physicians to report suspected child abuse to appropriate authorities is silent as to civil liability, while other statutes impose civil and criminal liability for making false reports of child abuse, indicating legislative intent not to create civil liability for failure to report); *Byrd v. Irmo High Sch.*, 321 S.C. 426, 433-34, 468 S.E.2d 861, 865 (1996) (finding that a statute that omitted a right that was included in a related provision indicates a legislative intent that the right not be implied in the subject statute). The Pickens District, therefore, is entitled to summary judgment on the First Cause of Action on the additional ground that the statutes requiring the reporting of crimes do not impose civil liability for failure to report.

2. Any duty by the Pickens District to report the alleged assault to law enforcement was a public duty rather than a private duty of care owed to the Plaintiff.

Plaintiff also cannot recover on her claim that the Pickens District breached its statutory duty to report the student's conduct to law enforcement for investigation and prosecution because the statutory duty was owed to the public rather than to the Plaintiff. "In the context of a negligence action, the public duty rule may be stated as follows: a statute prescribing the duties of a public office does not, without more, impose on the person holding that office a duty of care towards individual members of the public in the performance of those duties." *Rayfield v. S.C.*

Dep't of Corr., 297 S.C. 95, 105, 374 S.E.2d 910, 915-16 (Ct. App. 1988), cert denied, 298 S.C. 204, 379 S.E.2d 133 (1989); see also *Arthurs v. Aiken Cnty.*, 346 S.C. 97, 551 S.E.2d 579 (2001); *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999).

Where a statute imposes a duty on a public office or public officer, the presumption is that the statute was enacted for the essential purpose of providing for the operation of government or securing the general welfare of the public. Only if the statute has an additional essential purpose of protecting identifiable individuals from a particular kind of harm may it give rise to a "special duty" on which a negligence suit may be based. *Rayfield*, 297 S.C. at 105, 374 S.E.2d at 915. Thus, to avoid the application of the public duty rule in the context of a negligence claim based on an alleged violation of a statute, a plaintiff must establish "(1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect." *Id.* at 103, 374 S.E.2d at 914.

The statutes requiring school districts to report crimes to law enforcement or to the State Department of Education do not have as their essential purpose the protection of persons through the prevention of crimes. The essential purpose of § 59-24-60 is to ensure that law enforcement officials have information needed to investigate and prosecute crimes occurring in schools. The essential purpose of § 59-63-330 is to fulfill the requirements of the federal school reform legislation known as the No Child Left Behind Act, including a requirement to keep public records on school safety and crime. *See* S.C. Code Ann. § 59-63-333. While both statutes impose a duty on the Pickens District to report crimes after they occur to other public entities, neither statute creates a duty of care to individual persons to protect them from crimes before they occur. Neither statute expressly authorizes a civil action to recover damages, and neither statute was enacted for the benefit of or to protect private parties from crimes. The Pickens District is,

therefore, entitled to summary judgment because the alleged duty to report was owed to the public rather than to the Plaintiff.

3. The student behavior, as it was reported by Plaintiff to her school, did not constitute criminal behavior and, in any case, was known to law enforcement officials.

The School Resource Officer ("SRO"), an employee of the Pickens County Sheriff's Department assigned to the Plaintiff's school, was involved with the school's Assistant Principal on January 28, 2009 in the investigation of the offending student's conduct in the January 27 incident with Plaintiff, as well as in another incident the morning of January 28 in which the same student burned another student with a hot piece of metal. According to the SRO and the Assistant Principal, Plaintiff did not convey to them that the student had sexually or physically assaulted her on January 27, 2009. Plaintiff's written disciplinary referral stated that the offending student sang to her and attempted to hug her. The SRO, as well as other employees of the school, state that Plaintiff never used the words "sexual assault" or "physical assault" or similar terminology in describing what had happened and did not suggest that a crime had occurred. The SRO did not believe there were grounds for arresting the student for his conduct with Plaintiff and did not, therefore, arrest him. The SRO's involvement in the handling of this matter, however, establishes that the Sheriff's Department was aware of it. Because the evidence, viewed in the light most favorable to Plaintiff, establishes that the incident was reported to the SRO who was the law enforcement officer on duty and the SRO made the decision not to charge the student with a crime, the Pickens District is entitled to summary judgment on this claim in Plaintiff's First Cause of Action.

4. Plaintiff was not damaged, and does not claim to have been damaged, by the alleged failure to report the student's actions to law enforcement.

In order to recover in a negligence action, Plaintiff must prove that she was injured. *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325

(1986). However, Plaintiff could not have been injured by such a failure to report. The only possible consequence of a failure to report such a crime would be that the student would not be prosecuted for sexually assaulting her. Plaintiff herself would not suffer damages as a proximate result of failing to report a crime. Because Plaintiff cannot establish that she was injured as a proximate result of the Pickens District's failure to report an alleged crime, she cannot establish an essential element of her First Cause of Action for negligence and gross negligence. Consequently, the Pickens District is entitled to summary judgment on this cause of action.

II. Negligent misrepresentation asserted against the Pickens District (Second Cause of Action).

The Pickens District offered Plaintiff an employment contract to continue to teach for the 2009-2010 school year. Plaintiff decided not to accept the Pickens District's offer and so informed Defendant Culler, Principal of the school where she taught. Although she declined to sign the contract, the Pickens District also required her to submit a written letter of resignation. Plaintiff claims that this requirement, communicated to her through Defendant Culler as Principal of the school and Defendant Pew as the District Assistant Superintendent for Human Resources, was a false representation. She also claims that Defendant Culler falsely told her that her license to teach would be "pulled" or cancelled if she did not submit a resignation letter. She asserts that she reasonably relied on these representations and submitted the resignation letter, which caused her pecuniary loss because she lost her employment.

To establish a claim of negligent misrepresentation by the Pickens District, Plaintiff must prove: (1) a false representation made by the District to the Plaintiff; (2) a pecuniary interest by the District in making the statement; (3) a duty of care owed by the District to see that truthful information was communicated to the Plaintiff; (4) the District breached the duty by failing to exercise due care; (5) Plaintiff justifiably relied on the representation; and (6) Plaintiff suffered a pecuniary loss as a proximate result of her reliance on the District's representation. *Turner v.*

Milliman, 392 S.C. 116, 123, 708 S.E.2d 766, 769 (2011); *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010). The duty of care owed is "not a duty to take every possible care, still less is it a duty to be right; it is the familiar duty to exercise that care a reasonable man would take in the circumstances." *Ama Mgt. Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct.App. 1992). In addition, for a representation to be actionable, it "must relate to a present or pre-existing fact and be false when made." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 408, 581 S.E.2d 161, 167 (2003), quoting *Koontz v. Thomas*, 333 S.C. 702, 713, 511 S.E.2d 407, 413 (Ct.App.1999). "There is no liability for casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence." *Quail Hill, LLC*, 387 S.C. at 240, 692 S.E.2d at 508, quoting *Ama Mgt. Corp. v. Strasburger*, 309 S.C. at 223, 420 S.E.2d at 874; *see also Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 714 S.E.2d 869 (2011).

Plaintiff fails to produce evidence to support the necessary elements of negligent misrepresentation. First, several witnesses provided testimony that the practice of the District was to require a written notice of resignation and that if a teacher did not provide such written notice and took another teaching job elsewhere, her teaching certificate could be subject to revocation. These witnesses explained that a written notice of resignation clarified and documented that the teacher did not intend to continue in her position. The requirement protected against miscommunications and prevented the Pickens District from mistakenly filling positions that teachers did not intend to relinquish. Indeed, Plaintiff admitted that Defendant Culler told her directly that he needed her letter of resignation before he could interview a replacement for her position. This representation by the Pickens District and Defendant Culler was not false, but true.

Plaintiff also cannot establish that the Pickens District misrepresented to her that she could have her teaching certificate revoked by the State Department of Education if she refused to provide a written resignation notice and subsequently left the Pickens District for another teaching position. Defendant Culler and Mary Bridges, Assistant Principal of the school who assisted Defendant Culler in obtaining the written notice of resignation from Plaintiff, both believed that could happen. Even if they were mistaken in their belief, their representation was on a matter of law and is not actionable. *See Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 166-68, 714 S.E.2d 869, 875-76 (2011) (County is not liable for a mistaken representation regarding a matter of law); *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010) (misrepresentations as to matters of law are not actionable). Moreover, a mistaken representation is not, by itself, actionable. The Defendants' duty of care to Plaintiff was not to be right, but simply to take reasonable care, which Mr. Culler and Mrs. Bridges did. *Ama Mgt. Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct.App. 1992).

Second, the Pickens District had no pecuniary interest in misrepresenting its need for a written notice of resignation. Plaintiff offered no evidence to support her claim that the Pickens District would benefit in any way by making the alleged misrepresentation. Indeed, the evidence suggests instead that the Pickens District was not attempting to protect its own financial interest, but to protect Plaintiff's teaching position in the event she did not intend to resign.

Third, Plaintiff cannot establish that she justifiably relied on the Pickens District's representations to her. A plaintiff who has the means to ascertain the truth of a matter does not act reasonably when she relies solely on a defendant's representations to her and cannot, therefore, prove that she justifiably relied on those representations. *See Quail Hill,* 387 S.C. at 241, 692 S.E.2d at 509 (real estate buyer could not show justifiable reliance on county's representations of the property's zoning classification when buyer could have reviewed the

zoning map itself). Plaintiff allowed several days to elapse after being told of the requirement before she actually wrote her letter of resignation on June 4, 2009, during which she had the opportunity to investigate the truth of the Pickens District's representations to her. In addition, Plaintiff did not raise the issue with Defendant Pew, the Assistant Superintendent for Human Relations, until she met with Defendant Pew on June 30, 2009, after she had already submitted her resignation letter. She did no independent investigation of the truth of the statement before she wrote the letter and could not have acted in reliance on Dr. Pew's statements to her after the fact.

Fourth, Plaintiff cannot establish that she suffered a pecuniary loss as a proximate result of her reliance on the District's representation. She claims pecuniary loss "by and through continued lack of employment." Complaint ¶ 63. However, Plaintiff herself decided not to return to her school and rejected the contract of employment the Pickens District offered her for the school year 2009-2010. Her loss of employment was not due to the Pickens District's insistence on compliance with a procedural requirement of a written notice of resignation, which is the alleged misrepresentation, but to her earlier decision not to accept the proffered employment contract. Plaintiff did not lose her job because of the resignation letter, but because she herself decided not to return to teach at the school.

When viewed in the light most favorable to Plaintiff, there is no triable issue of fact on the elements of negligent misrepresentation. The evidence and all reasonable inferences that may be drawn from it do not suggest falsity for the pecuniary interest of the Pickens District or Plaintiff's justifiable reliance on or pecuniary loss resulting from the alleged misrepresentations. Plaintiff, therefore, cannot recover on the Second Cause of Action for negligence misrepresentation.

III. Negligence/gross negligence asserted against the Oconee District (Third Cause of Action).

Plaintiff claims that the Oconee District, to which she applied for several jobs, had a duty to ensure that she was not harmed by inaccurate information about her that it obtained from the Defendant Culler, and that the Oconee District breached this duty when it did not hire her for jobs that she asserts she was "clearly more qualified for than those applicants ultimately hired." In other words, she is claiming that the Oconee District negligently failed to hire her.

As the Oconee District points out, such a cause of action is not recognized in South Carolina law, nor should it be. Even if she were able to establish that she was "clearly more qualified" for the jobs for which she applied, nothing in South Carolina law provides a disgruntled job applicant a cause of action in tort against a prospective employer that chooses another candidate.

Plaintiff does not allege unlawful discrimination on the basis of gender, race, age, disability, or other protected characteristics or activities. She merely claims that she should have been hired because in her own self-assessment, her qualifications exceeded those of other applicants for the same jobs. However, the Oconee District was entitled to make its own assessment of its job applicants, and its assessment apparently differed from that of the Plaintiff. In any event, employers are not required to hire the most qualified applicants; they are merely required to make their hiring decisions without regard to certain protected characteristics. Absent unlawful discrimination, which Plaintiff does not claim or attempt to prove, Plaintiff has no legal basis to complain about the Oconee District's decision not to hire her. The Oconee District is, therefore, entitled to summary judgment on the Third Cause of Action.

IV. Breach of contract accompanied by a fraudulent act asserted against the Pickens District and Defendant Culler (Fourth Cause of Action).

Plaintiff's claim of breach of contract accompanied by a fraudulent act is based on the contract between Plaintiff and the Pickens District pursuant to which she was employed as a teacher during the school year 2008-2009. Plaintiff never had a contract with Defendant Culler. Plaintiff claims that the Pickens District and Defendant Culler breached her 2008-2009 employment contract by not protecting her employment, not acting on her complaints, and failing to properly inform her of the requirements to terminate her contract. She alleges that the fraudulent acts by the District and Defendant Culler consisted of "dishonesty in fact and unfair dealing with Plaintiff as to actions and remedies available to her under the contract." She does not allege a breach of her employment contract based on constructive discharge.

To recover on her claim of breach of contract accompanied by a fraudulent act, Plaintiff must prove: (1) a breach of contract; (2) the breach was accomplished with a fraudulent intent; and (3) the breach was accompanied by an independent fraudulent act. *D.R. Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 555, 730 S.E.2d 340, 354 (2012); *Conner v. City of Forest Acres*, 348 454 465-66; 560 S.E.2d 606, 612 (2002). Both a fraudulent intent to breach the contract and a separate fraudulent act are required; the absence of either requires dismissal of the claim. *See D.R. Horton, Inc.*, 398 S.C. at 556, 730 S.E.2d at 355.

The existence of a contract and breach of that contract are foundational elements of this cause of action. "There is no cause of action distinct from breach of contract for breach of contract accompanied by a fraudulent act." *Smith v. Canal Ins. Co.*, 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980). Thus, Plaintiff's claim against Mr. Culler fails because Plaintiff had no contractual relationship with him. He could not have breached a contract that did not exist. *D.R. Horton, Inc.*, 398 S.C. at 557, 730 S.E.2d at 355 (claim cannot be asserted against a party with whom the claimant had no contract).

With respect to Plaintiff's employment contract with the Pickens District, she asserts that it obligated the Pickens District to protect her from harm, intervene on her behalf "where its contract warranted such action," inform her of requirements for terminating her employment, and act upon her grievances. For the reasons enumerated below, the Pickens District owed no such contractual duties to Plaintiff and did not breach its contract with her.

First, the contract was a straightforward employment contract with no extraordinary provisions. The only contractual obligations owed by the District to Plaintiff were to employ her as a teacher for the school year 2008-2009 and to compensate her in accordance with the adopted salary schedule. Plaintiff does not claim that the Pickens District breached those obligations.

Second, the contract contained no terms transforming the ordinary tort duty of care into a contractual obligation. The Pickens District had no contractual duty to protect Plaintiff from harm, to intervene in her disagreements with other employees, or to protect her in any other way from normal workplace issues.

Third, the contract contained no extraordinary provision requiring the Pickens District to inform Plaintiff of its procedures for resigning from her employment. In fact, the District did not terminate Plaintiff's employment: her contract of employment expired of its own accord at the end of the contract period. The fact that the Pickens District required Plaintiff also to submit a resignation letter did not change or breach the terms of Plaintiff's employment with the Pickens District and did not result in any pecuniary loss to Plaintiff. The simple fact is that the Pickens District employed Plaintiff as a teacher until the end of the contractual period; it owed no additional contractual duties to her and did not breach its contract with her.

Aside from the fact that the Pickens District did not breach its contract, Plaintiff makes no attempt to allege or prove that the Pickens District fraudulently intended to breach its contract or that its alleged breach was accompanied by a separate fraudulent act. First, the Pickens

District did not misrepresent the terms of Plaintiff's employment or the means by which it ended. Plaintiff speculates, but provides no evidence to prove, that the Pickens District acted dishonestly or unfairly with the Plaintiff in connection with the end of her employment contract. However, as the South Carolina Supreme Court noted in the *D.R. Horton* case when it found no evidence of dishonesty or unfair dealings in the contractual transaction, "more is required than mere speculation to withstand [the defendant's] motion for summary judgment." *D.R. Horton, Inc.*, 398 S.C. at 556, 730 S.E.2d at 355.

Second, the fraudulent acts Plaintiff alleges accompanied the breach are not independent acts occurring prior to, contemporaneous with, or subsequent to the breach, but rather the same acts she contends amounted to the breach. They are, therefore, insufficient proof of a fraudulent act accompanying the alleged breach. *See id.* at 556, 730 S.E.2d at 355-56. Moreover, there is no evidence that the District acted dishonestly or fraudulently, and, thus, there can be no finding of either a fraudulent intent or a separate fraudulent act.

In order to recover on this cause of action, Plaintiff must provide evidence that the Pickens District breached its contract with Plaintiff; that its breach of the contract was dishonest and done with the intent to deceive Plaintiff; and that it perpetrated an independent fraudulent act against Plaintiff in connection with its breach of the contract. The Plaintiff supplied no evidence to prove any of these elements, and, accordingly, the Fourth Cause of Action for breach of contract accompanied by a fraudulent act is dismissed as a matter of law as to both the Pickens District and Defendant Culler.

V. Defamation asserted against the Pickens District, the Oconee District, and Defendant Culler (Fifth Cause of Action).

Plaintiff claims that the Pickens District and Defendant Culler defamed her by impugning her honesty, integrity, and reputation and by alleging "impropriety and inadequacy" in her profession in communications made to the Oconee District and other school districts, as well as

to her former co-workers. She claims that the Oconee District also defamed her, but identifies no employees of the Oconee District who published defamatory communications about her.

The elements of a defamation claim are: "(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 517, 506 S.E.2d 497, 506 (1998) (Toal, concurring). If a communication that is both defamatory (because it impeaches the plaintiff's reputation) and actionable (because it injures the plaintiff), a defendant may nevertheless not be liable if the statement is qualifiedly privileged. A statement is qualifiedly privileged if the speaker makes it in good faith on a subject about which he has an interest or duty and he makes the statement to a person with a corresponding interest or duty. *McBride v. School Dist. of Greenville Cnty.*, 389 S.C. 546, 698 S.E.2d 845, 853 (2010); *Murray v. Holnam, Inc.*, 344 S.C. 129, 140-41, 542 S.E.2d 743, 749 (2001). Communications between employees of an organization are qualifiedly privileged if made in good faith and in the usual course of business. *Id.*

In this case, Plaintiff cannot recover on her Fifth Cause of Action because she cannot establish that the either the Pickens District, the Oconee District, or Defendant Culler published false and defamatory statements about her fitness for her profession to third parties. Further, assuming *arguendo* that such statements were published, they were privileged.

A. Plaintiff cannot establish that the Oconee District, the Pickens District, or Defendant Culler made false and defamatory statements about her fitness for her profession.

Plaintiff's defamation claim against the Oconee District is not supported by evidence of a defamatory communication by any of its employees. With no evidence of a defamatory

communication or, in fact, any communication at all made by an employee of the Oconee District about her. Plaintiff's claim against it fails as a matter of law.

Plaintiff's defamation claim against the Pickens District and Defendant Culler rests on her allegations that they published false statements about her fitness for her profession to third parties. She believes that such statements were made to personnel in other school districts because she was unable to get a job in the school districts where she had applied for jobs. Although she has speculated that such statements were made, based on what she perceived as curious or negative reactions to her from the persons who interviewed her for jobs, she has produced no admissible evidence that such statements were, in fact, made. Indeed, not only the Pickens Defendants but also witnesses from the Oconee District testified that no one with the Pickens District, including Defendant Culler, provided any disparaging information to them about Plaintiff. Plaintiff does not establish that Defendant Culler or other persons with the Pickens District even spoke with personnel at the Oconee District about her. When pressed, Plaintiff stated, "I'm sure they probably have, but, I mean, I don't know."

In addition, Plaintiff admits that Defendant Williams, Assistant Superintendent for Human Resources in the Oconee District, told her that her references from the Pickens Defendants disclosed no concerns, but were in fact quite good. Defendant Williams confirmed that nothing in Plaintiff's references would have prevented Plaintiff from being hired, and that her overall references were very strong. In fact, Defendant Culler wrote a positive letter of recommendation for Plaintiff, and other personnel in the Pickens District also provided positive references, according to the documentary evidence. When Defendant Culler was contacted by persons in other school districts inquiring about Plaintiff, he either referred them to the Human Resources Department of the Pickens District or, in one case where the caller persisted in asking about Plaintiff, he provided only positive information, saying that her test scores were good, that

the Pickens District had offered her a contract for the next year, and that Plaintiff could have stayed at his school if she had so chosen.

Nevertheless, Plaintiff claims that statements by the Pickens District and Defendant Culler insinuated something negative about her fitness as a teacher, else she would have been hired. The statements actually in evidence, however, are not capable of any reasonable defamatory construction. "[P]urely conjectural interpretations" are insufficient to avoid summary judgment. *Fountain v. First Reliance Bank*, 398 S.C. 434, 443, 730 S.E.2d 305, 310 (2012). The only inference susceptible from the evidence is that Plaintiff was not hired for the positions in the Oconee District or other school districts for which she applied because the hiring personnel preferred other candidates, believing them to be "better fits" for those positions.

Plaintiff has produced only speculation to support her allegations that the Defendants made defamatory statements about her, which is insufficient to prove defamation. She has produced no admissible evidence of any defamatory statements by the Oconee District, by the Pickens District, or by Defendant Culler. The words actually in evidence are incapable of a reasonable construction that would render them defamatory, and they cannot form the basis for a defamation action. The Defendants are, therefore, entitled to summary judgment on this cause of action.

B. If the Oconee District, the Pickens District, or Defendant Culler made any statements about Plaintiff's fitness for her profession to other school districts, such statements would have been privileged and could not serve as the basis for liability to Plaintiff.

If a statement is privileged, the Defendants cannot be liable for defamation absent a showing that the privilege was abused, a showing which Plaintiff does not attempt to make. *See Bell v. Bank of Abbeville*, 208 S.C. 490, 38 S.E.2d 641, 643 (1946); *see also Austin v. Torrington Co.*, 810 F.2d 416 (4th Cir. 1987) (personnel manager of company that had laid off employees told personnel manager of another company that he was not able to recommend plaintiff for

employment and also provided information on other laid-off employees; statements were privileged and scope of privilege was not abused); *Fountain v. First Reliance Bank*, 398 S.C. 434, 730 S.E.2d 305 (2012). Whether an occasion gives rise to a qualified or conditional privilege is a question of law for the court. *Murray v. Holnam, Inc.*, 344 S.C. 129, 140-41, 542 S.E.2d 743, 749 (2001). It is also "for the court to determine in the first instance whether there are facts demonstrating abuse" of the privilege. *Fountain*, 398 S.C. at 446, 730 S.E.2d at 311.

Plaintiff believes that employees of the Oconee District circulated information that was defamatory about her during the hiring process, although as previously noted, she offered no evidence that any agent of the Oconee District made any statement about her. Even assuming intra-district communications within the Oconee District occurred, such communications would be privileged. Communications between officers and employees of an organization are qualifiedly privileged if made in good faith and in the usual course of business. *Murray*, 344 S.C. at 140-41, 542 S.E.2d 743 at 749. Since Plaintiff offered no evidence that any employee of the Oconee District acted with actual malice or in bad faith, the alleged communications she believes were made would be privileged as a matter of law, and the Oconee District is entitled to summary judgment on the defamation claim.

With respect to the Pickens District and Defendant Culler, any communications they may have made to their co-workers or provided to other school districts in response to inquiries from them about Plaintiff after she applied to them for jobs would also have been privileged. As with the Oconee District, any intra-district communications would be qualified privileged. Responses by the Pickens District and Defendant Culler to inquiries from other school districts about Plaintiff's qualities as a teacher were made by persons with an interest in that subject to persons with a corresponding interest and were also qualifiedly privileged. Aside from Plaintiff's speculation that the Pickens District and Mr. Culler disparaged her within the District or to other

school districts, the only evidence in the record is that the Pickens District and Mr. Culler responded honestly and in good faith to inquiries from other school districts and did not go beyond the scope of the inquiries in their responses. They are entitled to judgment as a matter of law on Plaintiff's Fifth Cause of Action for defamation.

VI. Assault asserted against Defendant Hudak (Sixth Cause of Action).

Plaintiff complains in the Sixth Cause of Action that Defendant Hudak, a fellow teacher at the middle school, assaulted her when she held a student over in her class to allow him to finish a test, thus causing him to be tardy to Hudak's class. She alleges that Defendant Hudak verbally berated and belittled her in front of students and in a subsequent e-mail.

To establish this cause of action, Plaintiff must show conduct by Defendant Hudak that placed the Plaintiff in reasonable fear of bodily harm. "An 'assault' is an attempt or offer, with force or violence to inflict bodily harm on another or engage in some offensive conduct. . . . The elements of assault are: (1) conduct of the defendant which places the plaintiff, (2) in reasonable fear of bodily harm." *Mellen v. Lane*, 377 S.C. 261, 276, 659 S.E.2d 236, 244 (Ct.App. 2008); *accord, Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 229, 317 S.E.2d 748 (Ct.App. 1984); *Herring v. Lawrence Warehouse Co.*, 222 S.C. 226, 72 S.E.2d 453 (1952).

> The conduct must be of such nature and made under such circumstances as to affect the mind of a person of ordinary reason and firmness, so as to influence his conduct; or it must appear the person against whom the threat is made was peculiarly susceptible to fear, and the person making the threat knew and took advantage of the fact he could not stand as much as an ordinary person.

Mellen, 377 S.C. at 276, 659 S.E.2d at 244. Plaintiff's proof fails to support her claims that Defendant Hudak's conduct would have placed a reasonable person in fear of bodily harm, or that she was peculiarly susceptible to fear and Defendant Hudak knew that and took advantage of it.

Plaintiff's claim of assault rests on her description of Defendant Hudak as large and angry, but she also testified that he made no threats toward her. She described a workplace disagreement, where the demands of the job can easily result in the bruising of personal feelings and emotions. Assuming *arguendo* that Defendant Hudak was angry and spoke louder than he should have, he did not act violently or threateningly toward Plaintiff when he confronted her. When pressed to explain why she was fearful, she said it was because he had criticized her and told her she had done something wrong, not because she feared he would physically harm her. Further assuming as true that Defendant Hudak rudely and loudly confronted her in the presence of students, Plaintiff's reaction to his criticism was extreme and not reasonable.

Plaintiff also described her reaction to an email about the disagreement that Defendant Hudak sent to her. The email contained no threats to Plaintiff of bodily harm. Nevertheless, Plaintiff said it caused her almost to faint, and she felt "sick and horrible" after reading it. Plaintiff did not respond as a "person of ordinary reason and firmness" would respond, *see Mellen*, 377 S.C. at 276, 659 S.E.2d at 244, and, therefore, cannot establish that she was in reasonable fear of bodily harm. If she were a person "peculiarly susceptible to fear," she did not establish that Defendant Hudak knew that and took advantage of it by assaulting her. Indeed, she does not suggest what advantage Defendant Hudak could have gained by frightening her.

The evidence, viewed in the light most favorable to Plaintiff, does not suggest that Defendant Hudak acted in such a violent or threatening way as to create a reasonable fear of bodily harm. He was expressing disagreement with Plaintiff and her chosen course of action, but assault requires more than disagreement or even rudeness. In order to recover on a claim of assault, Plaintiff must prove that Defendant Hudak's behavior was "of such nature and made under such circumstances as to affect the mind of a person of ordinary reason and firmness." The

evidence, viewed in the light most favorable to Plaintiff, does not establish that. Defendant Hudak is, therefore, entitled to judgment as a matter of law on the Sixth Cause of Action.

VII. Civil conspiracy asserted against the Defendants Pew, Boggs, Williams, and Raines (Seventh Cause of Action).

Plaintiff claims that the individually-named Defendants Pew, Williams, Boggs, and Raines conspired with Defendant Culler to "remove" her from the Pickens District; that they had personal agendas of malice, ill will and intent to harm her; and the purpose of their conspiracy was to injure Plaintiff by ruining and damaging her business and profession. She claims special damages consisting of being rendered unemployable in her chosen profession within a reasonable distance of her home and "destruction of her professional business credentials." Defendants Pew, Boggs, and Raines are employees of the Pickens District, and Defendant Williams is an employee of the Oconee District.

The elements of a cause of action for civil conspiracy are (1) a combination of two or more persons, (2) for the purpose of injuring plaintiff, and (3) causing the plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App. 1989). To recover on a civil conspiracy claim, a plaintiff must plead and prove acts in furtherance of the conspiracy that are in addition to and separate from those alleged in support of her other causes of action. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981), *rev'd on other* grounds 283 S.C. 155, 321 S.E.2d 602 (1984), *quashed in part on other* grounds, 287 S.C. 190, 336, S.E.2d 472 (1985); *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct.App. 2009). Summary judgment for the defendant is appropriate in a case in which a plaintiff "merely restates alleged wrongful acts pled in relation to the plaintiff's other claims for damages." *Doe v. Erskine Coll.*, No. 8:04-23001RBH, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) (unpublished opinion).

In addition, a plaintiff in a civil conspiracy claim must specifically allege and prove special damages, or damages that do not necessarily result from the wrong and, therefore, are not implied at law. "If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed." *Hackworth*, 385 S.C. at 117, 682 S.E.2d at 875.

In this case, Plaintiff fails to establish a combination of persons who agreed and pursued a common plan to injure her, or any additional, independent acts in furtherance of the conspiracy, or any special damages that are separate and independent of the damages that underlie her other causes of action. Her conspiracy action merely re-alleges the prior acts complained of in her other causes of action; Plaintiff does not provide proof of any additional acts in furtherance of the conspiracy. Plaintiff is precluded from recovering additional damages under conspiracy for the same acts for which she seeks relief under other causes of action.

Additionally, the special damages resulting from the alleged civil conspiracy are not separate and independent from those sought in Plaintiff's other causes of action. She claims the conspiracy has made her unemployable and hurt her in her profession, but there is essentially no difference between those damages and the damages she seeks in her defamation and other claims. The damages are not separate and independent of the damages that underlie her other causes of action, and Plaintiff, therefore, has not satisfied the special damages element of the tort of civil conspiracy. *See Parkman v. Univ. of S.C.*, 44 Fed. Appx. 606, 620 (4th Cir. 2002) (unpublished opinion) (affirming dismissal of civil conspiracy claim under South Carolina law and stating, "the damages allegedly resulting from the conspiracy must not overlap with or be subsumed by the damages allegedly resulting from the other claims"); *Todd*, 276 S.C. at 293, 278 S.E.2d at 611.

Moreover, Plaintiff's suspicions of a conspiracy against her lack any factual support. She imagines that others intended and conspired to harm her, but offers no testimony or other evidence of a common design to remove Plaintiff from her job or to prevent her from obtaining another teaching job in the area. When questioned about the alleged conspiracy, Plaintiff was only able to describe the conspiracy in the following manner:

> I guess how they've all worked at all the districts that I'm unable to get a job. Because there have been multiple jobs. I've been told by principals how exceptional I am and that in regards to other people who are applying that are not as qualified or as experienced as I am, and yet I've not been able to get a job.

Plaintiff's depo. at 212:25-213:6. When asked directly about what evidence she had of conspiracy against her, she replied, "[t]hat I've been unable to get a job with all these jobs that I have applied for and unable to get a reference and based on what I've been told." *Id.* at 215:14-20.

While it is true that civil conspiracy "is an act which is, by its very nature, covert and clandestine and usually not susceptible of proof by direct evidence," *First Union Nat'l Bank of S.C. v. Soden,* 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct.App.1998) (quoting *Island Car Wash, Inc. v. Norris,* 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct.App.1987)), more than mere speculation is required. Plaintiff must not only prove additional facts beyond those already relied upon in other causes of action, but also "evidence that reasonably leads to the inference that Defendants positively or tacitly came to a mutual understanding to seek to accomplish a common and unlawful plan to injure her. Mere speculation about a party's motives with respect to certain conduct does not constitute proof of a conspiracy." *Doe v. Erskine Coll.*, No. 8:04-23001RBH, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) (unpublished opinion), citing *First Union Nat. Bank of South Carolina v. Soden,* 333 S.C. 554, 511, S.E.2d 372, 383 (Ct.App. 1998). Mere speculation about not only the actions, but also the motives of Defendants Pew, Boggs, Raines, and Williams, are all that Plaintiff offers to support her Seventh Cause of Action

for civil conspiracy. Plaintiff's Seventh Cause of Action for civil conspiracy lacks any competent supporting evidence and is, therefore, dismissed as a matter of law.

VIII. Intentional infliction of emotional distress asserted against Defendant Culler (Eighth Cause of Action).

Plaintiff alleges that during the entire time she was employed as a teacher at the middle school and continuing for more than another year after she left that employment, the Principal of the school, Defendant Culler, "carried out a ruthless and intentional campaign to severely inflict emotional distress upon the Plaintiff through threats, harassment, gestures, movements, stalking, intimidating and preying upon Plaintiff's sensibilities, weaknesses and personality. . . ." She specifically complains of two incidents: (1) being required to write a resignation letter on the last day of school, which is also the basis of other claims against the Defendants; and (2) receiving a letter in January 2011 from Mr. Culler which she viewed as threatening because it suggested she was defaming him and because it bore a King of Heart stamp saying "LOVE."

The tort of intentional infliction of emotional distress, or outrage, requires proof by Plaintiff of the following elements:

> (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
>
> (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
>
> (3) the actions of the defendant caused plaintiff's emotional distress; and
>
> (4) the emotional distress suffered by the plaintiff was "severe" and such that "no reasonable man could expect to endure it."

Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007). In South Carolina, the courts apply a heightened burden of proof to the second and fourth elements, noting "the widespread reluctance of courts to permit the tort of outrage to become a panacea for

wounded feelings rather than reprehensible conduct." *Id.* at 357, 650 S.E.2d at 71, quoting *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 171, 321 S.E.2d 602, 611 (Ct.App.1984), *rev'd on other grounds,* 287 S.C. 190, 336 S.E.2d 472 (1985). South Carolina courts have proven reluctant to find either such oppressive and atrocious conduct or the level of extreme emotional distress that would warrant a recovery for the tort of outrage.

In this case, Plaintiff asserts that Mr. Culler behaved in an egregious and atrocious manner toward her throughout her employment and after it concluded. However, she has not produced evidence sufficient to establish the first, second, or fourth elements of the tort of intentional infliction of emotional distress.

A. Plaintiff provided no evidence of Mr. Culler's state of mind or that he intentionally or recklessly inflicted severe emotional distress on her.

The first instance of allegedly egregious conduct Plaintiff complains of in the Complaint occurred when Mr. Culler "continually berated and preyed upon her, demanding a letter of resignation and threatening her with the loss of her teaching credentials" if she did not write such a letter. According to Mr. Culler and Mrs. Bridges, however, his intention was to obtain written confirmation from Plaintiff that she truly intended to leave the school before he began interviewing for a replacement for her. He also was trying to protect her from possible action by the State Department of Education for abandoning her position if she stopped working without notice.

Plaintiff also alleges that Defendant Culler "arranged to make Plaintiff come back into the school building, go into a room, which was supposed to be locked, to write her letter of resignation and knowing that the room was unlocked, he burst in on Plaintiff and to further inflict emotional distress on her demanding that she sign the letter immediately, which she was forced to do." The only evidence of Defendant Culler's intention and state of mind at this point, however, is from Defendant Culler himself who said he went back into the room where Plaintiff

was writing her resignation letter because he heard she was upset and he was concerned about that. When she said she wanted to be left alone, he left the room.

In the second instance of allegedly egregious conduct alleged, Plaintiff claims that a letter written by Defendant Culler requesting that she stop indicating on her applications for employment in other school districts that his educator certificate "was being reviewed by the State Department of Education because of misconduct,"[2] was outrageous and atrocious. Defendant Culler's letter was short, mild, and to the point. Plaintiff, however, viewed it as threatening and further claimed that "his choice of postage stamp was very upsetting to me . . . and very unprofessional." Plaintiff claims that Mr. Culler's intent to cause her emotional distress is somehow evidenced by the use of a stamp with the word "LOVE" on it on the envelope in which the letter was mailed. She speculated that Mr. Culler had someone else address the letter "in order to disguise so that to ensure that I would open it, he also knew full well which stamp would have been used to cause me the most distress." This testimony is no more than speculation and, therefore, incompetent as evidence to support her claim.

Plaintiff has produced no evidence that Mr. Culler "intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct." *Hansson*, 374 S.C. at 356, 650 S.E.2d 70. Plaintiff's speculation regarding his intentions or state of mind is insufficient to support this element of the tort of outrage.

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[2] Plaintiff wrote this statement on several of her employment applications in 2011, based on a complaint she herself had filed in 2010 with the State Department of Education. In fact, the State Department of Education had investigated Plaintiff's complaint and closed the case in 2010 without taking any action.

B. Plaintiff provided no evidence of conduct by Mr. Culler that was so "extreme and outrageous" that it exceeded "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community."

South Carolina courts, following the guidelines of the Restatement, have deliberately required a heightened burden of proof on the element of outrageous conduct and limited recovery to those extraordinary cases where the defendant's conduct is extreme and utterly intolerable in a civilized society. This cause of action is not intended to redress rude or harassing behavior or to compensate for hurt feelings. *See Gattison v. S.C. State Coll.*, 318 S.C. 148, 456 S.E.2d 414 (Ct.App. 1995) (cataloguing cases and circumstances in which the plaintiffs failed to allege or prove sufficiently outrageous conduct to support liability and finding that plaintiff's complaints about his treatment on the job did not rise to the level of conduct required for outrage). "While the facts [the plaintiff] alleges may demonstrate unprofessional, inappropriate behavior, they fall short of conduct that exceeds all possible bounds of decency and is atrocious and utterly intolerable in a civilized society." *Gattison*, 318 S.C. at 157, 456 S.E.2d at 419.

The case law in South Carolina that has developed since the *Gattison* case is replete with other examples of circumstances where defendants may have acted with tortious or even criminal intent, with malice, or even with "a degree of aggravation which would entitle the plaintiff to punitive damages for another tort," Restatement (Second) of Torts § 46 cmt. d (1977), applied in *Ford v. Hudson*, 276 157, 276 S.E.2d 776 (1981) and *Hudson v. Zenith Engraving Co.*, 273 S.C. 536, 259 S.E.2d. 812 (1979), but which did not rise to the level of intentional infliction of emotional distress. *See, e.g., Roberts v. Dunbar Funeral Home*, 288 S.C. 48, 51-52, 339 S.E.2d 517, 519 (Ct.App. 1989) (even where a defendant, knowing that the plaintiff is fragile and emotional, acts with extreme insensitivity and with "a hard and inflexible business posture" toward the plaintiff, he does not commit the tort of outrage).

> The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society

> are still in need of a good deal of filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where some one's feelings are hurt.

Restatement (Second) of Torts § 46 cmt. d (1965).

Plaintiff's complaints of atrocious and outrageous conduct on the part of Defendant Culler derive from instances in which she alleges he made her uncomfortable, winked at her, spoke to her in an abrasive tone, told her she would be required to serve as the yearbook sponsor, made her feel as though she were "singled out for being stupid or incompetent or not doing what was being asked of me," belittled her, insisted forcefully that she must sign a resignation letter, "screamed" at her, and seemed to take pleasure in frightening her. Notably, her descriptions of how she perceived these incidents are inconsistent with the descriptions of the same incidents provided not only by Defendant Culler, but also by other witnesses. Even so, Plaintiff does not describe actions by Defendant Culler that were "so extreme or outrageous as to be beyond all possible bounds of decency and regarded as atrocious and utterly intolerable in a civilized community."

In addition, "the tort of outrage was not intended to replace existing causes of action but was intended as a remedy for tortious conduct 'where no remedy previously existed.' F. Patrick Hubbard and Robert L. Felix, The South Carolina Law of Torts 438 (3rd Ed. 2004)." *Doe v. Erskine Coll.*, No. 8:04-23001RBH, 2006 WL 1473853, at *14 (D.S.C. May 25, 2006) (unpublished opinion). Most of the acts Plaintiff claims as outrageous conduct are also included as the basis for her other causes of action. Her remedy is in the other causes of action, not in the tort of outrage.

An analysis of Plaintiff's evidence in the light most favorable to her, and considering the legal precedent for this tort in South Carolina, demonstrates that Plaintiff has not met the

heightened burden of proof on the element of outrageous conduct. Defendant Culler's actions as described by Plaintiff were not so extreme or outrageous as to be beyond all possible bounds of decency and regarded as atrocious and utterly intolerable in a civilized community.

C. Plaintiff does not establish that she suffered such severe emotional distress, that no reasonable person could be expected to endure it.

The record also lacks sufficient evidence that the emotional distress Plaintiff suffered was so severe and extreme that no reasonable person could be expected to endure it. As with proof of outrageous conduct, the law imposes a heightened burden of proof of severe emotional distress.

> Emotional distress . . . includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. It is only where it is extreme that the liability arises. Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it.

Hansson, 374 S.C. 352, at fn 3, quoting Restatement (Second) of Torts § 46 cmt. j.

Thus, evidence that property owners experienced high blood pressure and digestive problems and that they became "emotionally ill" and lost weight as a result of a dispute and lawsuit over the use of their property is insufficient to establish severe emotional distress. *See AJG Holdings LLC v. Dunn*, 392 S.C. 160, 169-70, 708 S.E.2d 218, 223-24 (Ct.App. 2011). Similarly, evidence that an employer's ridicule of his employee who had cerebral palsy and his threats to fire her caused the employee "to become emotionally upset, distressed, and worried, caused her to be physically ill to the point that she had to leave work early that day, caused her to live in constant fear of [her employer] and what he might do to injure her or harm her career, and adversely affected her personal life and her ability to function in her job," fell "far short" of the kind of severe emotional distress required in a cause of action for intentional infliction of emotional distress. *Shipman v. Glenn*, 314 S.C. 327, 328, 443 S.E.2d 921, 922-23 (Ct.App. 1994). *See also Hansson*, 374 S.C. at 359-60, 650 S.E.2d at 72 (evidence that plaintiff suffered

sleeplessness and grinding of his teeth at night was insufficient to establish severe emotional distress); *Ludwick v. This Minute of Carolina, Inc.*, 283 S.C. 149, 154, 321 S.E.2d 618, 621 (Ct.App. 1984) (humiliation and embarrassment at being fired is not sufficient proof of emotional distress so severe that no reasonable person could be expected to endure it).

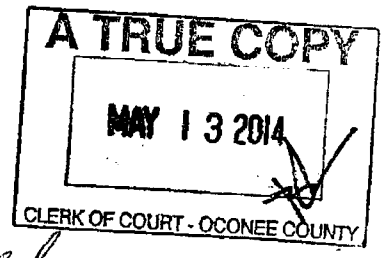
In this case, the evidence of Plaintiff's distress, although vividly described, does not support a conclusion that it reached the level of severity contemplated in the case law. Plaintiff testified that she cried, felt uncomfortable and belittled, and believed her treatment to be unfair and unwarranted. The vagaries of day-to-day interactions among staff and students in a public school can certainly create "fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea." but only where such emotions are severe does liability for intentional infliction of emotional distress attach. *See Hansson*, 374 S.C. 352, at fn 3, quoting Restatement (Second) of Torts § 46 cmt. j. Plaintiff's evidence of her distress does not satisfy the heightened burden of proving distress that was so severe or extreme that no reasonable person could be expected to endure it.

Plaintiff fails to produce evidence to satisfy the heightened burden of proving intentional infliction of emotional distress by Defendant Culler. Defendant Culler is, therefore, entitled to judgment as a matter of law on the Seventh Cause of Action.

CONCLUSION

After due deliberation, review of the memoranda, prevailing case law, affidavits, exhibits, and arguments of counsel, the Motions for Summary Judgment filed by Defendants School District of Pickens County, School District of Oconee County, Gary Culler, Donald Boggs, Richard Hudak, Earnestine Williams, Marilyn Raines and Dr. Kelly Pew ARE HEREBY GRANTED, and the Complaint is dismissed as against all Defendants.

IT IS SO ORDERED.



The Honorable J. Cordell Maddox, Jr.
Presiding Judge
Tenth Judicial Circuit

5/7, 2014

Anderson, South Carolina