

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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SC SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-160 (S.C. Ct. App. filed Apr. 6, 2016)

Mariam R. Noorai.....Petitioner,

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,

Of whom the School District of Pickens County and Gary Culler

are Respondents.

APPENDIX
VOLUME I

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

APR 10 2015

SC Court of Appeals

Case No. 2011-CP-37-279
Appellate Case No. 2014-001282

Miriam R. Noorai

Appellant,

v.

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

Respondents.

**RECORD ON APPEAL
VOLUME I**

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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

)
) IN THE COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT

2011-CP-37-279

Mariam R. Noorai,

Plaintiff,

vs.

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.

PLAINTIFF'S AFFIDAVIT

PERSONALLY APPEARED BEFORE ME Mariam R. Noorai, who first being duly sworn,
deposes and says that:

1. I am the plaintiff in this case.
2. I have brought this action against the defendants because I believe they have conspired against me to prevent me from gaining employment since I resigned from the Pickens county School District position I held at RC Edwards Middle School.
3. I am a teacher, and was previously employed at R.C. Edwards Middle School in Pickens County. During my time there as a teacher, I was mistreated by Mr. Culler, by Mr. Boggs, and by Mr. Hudak, all employees of the SDPC. I was also sexually assaulted by two different students on two separate occasions. My concerns for my safety were totally ignored by Mr. Culler and Mr. Boggs on the second occasion. I also expressed my concerns to Mr. Culler about my excessive work load (more than any other teacher) but was ignored by Mr. Culler, even though I told him that the

students might suffer as a result. I also expressed to Ms. Raines, Ms. Hedetniemi, Mrs. Matthews and others that Mr. Culler himself made me uncomfortable. Ms. Hedetniemi advised Mr. Culler that he made me uncomfortable in November 2008.

4. When I was assaulted the first time, it was around February 2008. This was the 2007-2008 school year. The principal at the time was Dr. Chuck Pressley. Mr. Boggs and the School Resource Officer were made aware of the incident. The student was arrested and charges were pressed. The student was placed on homebound instruction, and I never had to teach him again.
5. At the time that I was sexually assaulted for the second time on January 27, 2009 I followed procedure, reporting it immediately to Mr. Boggs (vice-principal in charge of discipline) in writing as I was supposed to. However, he did nothing about it. Mr. Culler was the new principal. The student was not referred to DJJ, to the solicitor, to the sheriff nor to the family court. The student was even allowed to participate back in my class after he was suspended for an assault on another student. The student was never disciplined for his assault on me. This assault was more violent in nature, and, as a result, I started having symptoms of PTSD.
6. I was physically intimidated on numerous occasions by Mr. Boggs, Mr. Hudak and Mr. Culler. They are all substantially bigger in stature than I am, and they used their size to intimidate me. In addition, I was verbally assaulted on several occasions by Mr. Culler and by Mr. Hudak. Mr. Hudak yelled and screamed at me in the hall way in front of my students and pushed a student because I had followed school procedure and allowed a student to stay late in my class to finish important testing. He even bumped a student of mine trying to enter the classroom as he was storming

out. I reported this to Ms. Bridges who in turn reported to Mr. Culler. I was assured it would be taken care of. Instead I continued to receive intimidating emails from Mr. Hudak about the incident and Mr. Culler failed to address it with him.

7. By the end of the school year, I had endured so much that I felt forced to resign and seek employment elsewhere. Teachers and administrators alike had ignored my calls for help. I suffered both emotional and physical health problems as result of my treatment at the school as well from my excessive work load which included being in charge of the yearbook.
8. I had suffered some additional health problems in the spring. My gall bladder stopped working, and I had surgery that was followed by some complications. When I finally got back to work, Mr. Culler ignored my fragile emotional and physical condition and put even more pressure on me. Some of those problems he created linger on today in the form of post-traumatic stress disorder, anxiety and depression.
9. I was forced to endure this emotional and physical distress and my administrators and employers ignored my pleas for help. I reported his behavior to Dr. Pew, Assistant Superintendent of Human Resources, in June 2009. I was advised by a co-worker that it would result in some form of retribution, but I endured it as long as I could. After I reported these incidents to him, Mr. Culler challenged me at every opportunity. He would confront me in compromising circumstances, trapping me in my room or other places without any means of escape. He would wink at me at inappropriate times and in a fashion that was disconcerting to me. At one point he actually became sexually aroused while confronting me about my resignation.

10. Since leaving the school in the summer of 2009, I have endured even more emotional injury. I have been blackballed from teaching or from any employment in the areas of my expertise, despite having the highest available academic credentials and test scores in my particular disciplines. I have been systematically denied employment first in Oconee County and then in Anderson County and then Greenville County and later in the lower parts of the state. I have been denied employment because of comments made to my potential employers about my teaching and my employment at RC Edwards, both by Mr. Culler and the SDPC. Some of those negative comments were made even before the interview process began, while others occurred after I had been interviewed, having been designated as having the highest level of qualifications and being given a tour of the facilities. For example, in Oconee County, I learned that I was being denied employment, according to Ms. Verderosa, principal of West-Oak Middle School in the SDOC, "after checking [your] references". However, when I checked my references, I found that none of them had actually been contacted at all. The only plausible conclusion that can be drawn from my failure to obtain employment under such circumstances is that Mr. Culler and or the SDPC provided negative information about my employment at RC Edwards to Ms. Verderosa. Such information was not true, clearly defamatory, and given in retaliation for my reporting his unprofessional behavior.

11. Ms. Earnestine Williams, assistant superintendent in SDOC, told me that but for the reference Mr. Culler gave to Ms. Verderosa, I would have been the leading candidate for the Oconee positions. Ms. Verderosa told me that "after checking [my]

references" I was not offered the position. However, she did not contact any of my references and in her deposition, Ms. Verderosa denies ever contacting Mr. Culler about my credentials. Her testimony is in direct conflict with that of the assistant superintendent who had the responsibility of maintaining the employment files. Her credibility is a key issue in this lawsuit and as to my inability to obtain employment.

12. Ms. Verderosa also claimed that I was not considered as a final candidate because I had told the committee I wanted to leave RC Edwards because I had to repeat ADEPT, and I wasn't willing to do so. Yet my ADEPT scores were perfect, and nowhere in my resume does it say that. The only possible source of that information could have been Mr. Culler.
13. She claimed that I was a poor manager in the class room and that affected my ranking with her and the committee. However, she never talked to any of my references. Clearly, she had to talk to someone in order to have such information, yet she denies contacting anyone. Ms. Verderosa's credibility is a major issue in this lawsuit. She is cavalier in her responses acting as if she is complete command of the facts, when in fact that has been established otherwise. For example, in her deposition she adamantly said that all of her teachers were fully certified and of the highest ranking. Yet later on in that same deposition, when pressed about the certification of specific teachers, she admitted that she wasn't sure what each individual teacher's credentials were. Ms. Verderosa's credibility goes to the heart of the employment issue. Somehow, at the time of the interview and shortly thereafter, she gained some independent knowledge about me and my teaching that were not

included in my resume, nor available elsewhere. This information had to come from the other defendants from Pickens County.

14. Since my experience at RC Edwards Middle School in Pickens County, I have been unable to find another position in teaching anywhere in South Carolina, even at the post- secondary level. By its very nature, a conspiracy is a secretive process. Proving that any one individual or group has acted in a deliberate and vindictive manner, resulting in my inability to find employment, is hard as no one is going to admit it. However, when my credentials, experiences in academia and elsewhere, my attractiveness to potential employers, and my proven teaching skills, as evidenced by the numerous awards my students have received, are considered, it is apparent that such a conspiracy existed. It is my belief that these defendants have systematically implemented a plan to discredit me wherever and whenever possible in retaliation for my reports to the school district and the state department of education.
15. Verderosa's credibility, and that of the other defendants in this case, is a main issue and for the trier of fact. It is obvious that someone with specific personal knowledge from the school or the SDPC provided this information to her. It is equally clear that at the time of the interview or shortly thereafter that she had specific knowledge about my teaching skills and yet she claims she had no contact with anyone about me at all. While being deposed, Ms. Verderosa was questioned if there was anything on my application or resume that caused her any concern, she responded there were none or I would not have been selected for an interview.
- 16 Administrators and law enforcement, including the school resource personnel, never investigated or pursued my allegations, despite having a mandate to do so under

South Carolina law, in addition to school district policy. Instead, I have been ridiculed and embarrassed by both teachers and administrators in front of students, peers and other school personnel; I have been physically and verbally assaulted; and I have been forced to resign. No one else has suffered any consequence. Not the student who assaulted me. Not the teacher (Mr. Hudak) who assaulted me. Not the administrator (Mr. Culler) who assaulted me and who ignored my pleas for help. I had to resign for my physical and mental health because no one would help me.

17. I developed several health problems as a direct result of the defendant's individual and collective behaviors. I am now under a doctor's care for post-traumatic stress disorder and depression and anxiety. None of these I had before these events occurred.

18. Even though I left his employment in 2009, I have been subjected to continuing harassment by Mr. Culler. As an example, he sent me an envelope with a King of Hearts Love stamp on it containing a letter regarding my complaints about him and how they kept appearing on my job applications. While I am unsure how he would know what is on those applications, the letter and envelope were considered by law enforcement to be threatening and intimidating by their very nature. Another example is how he recently cornered me in a parking lot, and blocked my egress for no reason other than to intimidate me.

19. I want an opportunity to tell my story to let a jury decide who is telling the truth. All I wanted to do when I graduated was to enjoy teaching at RC Edwards for my entire career. Then when I was forced to leave RC Edwards, all I wanted was to get a new job and be left alone. I wanted to feel secure in my employment, free of harassment

from students or fellow employees. I am now an emotional wreck because of the behavior of the defendants in this suit. I have suffered considerable pain and suffering as well as loss of income, embarrassment and humiliation.

Mariam R. Morai

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 26th December, 2013

[Signature]
Notary Public for S.C.
My commission expires: 7/18/2023

COUNTY OF OCONEE

Mariam R. Noorai,

FILED OCONEE, SC
EVERLY H. WHITFIELD
CLERK OF COURT

Plaintiff(s)

vs. JUN 11 P 2:23

School District of Pickens County, et al,

Defendant(s)

Submitted By: Larry C. Brandt

Address: Larry C. Brandt, P.A.

P.O. Box 738, 3691 Blue Ridge Blvd., Walhalla,
SC 29691

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 37-00279

COPY

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

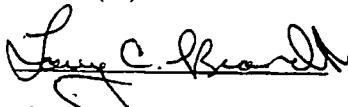
*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint ☐ NON-JURY TRIAL demanded in complaint
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Label (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:



Date: June 11, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S C. Code Ann §15-36-10 et. seq.

COPY

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED OCONEE, SC
DEVERLY H. WHITFIELD
CLERK OF COURT

COURT OF COMMON PLEAS

2012 JUN 11 P 2:24

Mariam R. Noorai,

Plaintiff,

vs.

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.

"JURY TRIAL DEMANDED"

SUMMONS

(2ND Amended Complaint)

CASE #2011-CP-37-00279

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Second Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber at P.O. BOX 738, WALHALLA, SOUTH CAROLINA 29691, within THIRTY (30) DAYS after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the prescribed time, judgment by default will be rendered against you for the relief demanded in the Complaint.

LARRY C. BRANDT, P.A.
P.O. BOX 738
3691 BLUE RIDGE BLVD.
WALHALLA, SC 29691
864/638-5406

BY: Larry C. Brandt
Larry C. Brandt, Bar #856
Attorney for Plaintiff

June 11, 2012
Walhalla, South Carolina

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

C/A NO.: 2011-CP-37-00279

**SECOND AMENDED
Complaint
(Jury Trial Demanded)**

FILED OCONEE, SC
KEVERLY H. WHITEFIELD
CLERK OF COURT
JUN 11 P 2:24

The Plaintiff, complaining of the Defendants herein, would respectfully allege as follows:

PARTIES

1. The Plaintiff, Mariam R. Noorai, is a citizen and resident of Oconee County, South Carolina, residing in Seneca, South Carolina.

2. The Defendant, School District of Pickens County ("SDPC"), is a political subdivision operating under the laws of the State of South Carolina for purposes of public education. SDPC is located within Pickens County, South Carolina, and its principal place of business is located at 1348 Griffin Mill Road, Easley, South Carolina, 29640.

3. The Defendant, School District of Oconee County ("SDOC"), is a political subdivision operating under the laws of the State of South Carolina for purposes of public education. SDOC is located within Oconee County, South Carolina, and its principal place of business is located at 414 South Pine Street, Walhalla, South Carolina, 29691.

4. The Defendant, Gary Culler ("Culler"), is, upon information and belief, a citizen and resident of Pickens County, South Carolina. At all times mentioned herein Culler served as principal of R.C. Edwards Middle School ("Edwards") located in Central, South Carolina, operating within the auspices of the SDPC.

5. The Defendant, Donald Boggs ("Boggs"), is, upon information and belief, a citizen and resident of Pickens County, South Carolina. At all times mentioned herein Boggs served as assistant principal responsible for student discipline at Edwards.

6. The Defendant, Richard Hudak ("Hudak"), is, upon information and belief, a citizen and resident of Oconee County, South Carolina. At all times mentioned herein Hudak served as a teacher at Edwards.

7. The Defendant, Earnestine Williams ("Williams"), is, upon information and belief, a citizen and resident of Oconee County, South Carolina. At all times mentioned herein Williams served as the head of Human Resources for SDOC.

8. The Defendant, Marilyn Raines ("Raines"), is, upon information and belief a citizen and resident of Pickens County and was at all times mentioned herein served as Plaintiff's mentor teacher.

9. The Defendant, Dr. Kelly Pew ("Pew"), is, upon information and belief, a citizen and resident of Pickens County, South Carolina. At all times mentioned herein Pew served as the head of Human Resources for SDPC.

FACTUAL ALLEGATIONS

10. At all times mentioned herein, Plaintiff served as an 8th grade language arts teacher at Edwards, until a decision was made not to renew her contract which expired on or about June 30, 2009. Plaintiff also handled duties relating to the school's yearbook and took charge of the annual project related to the production of the same.

11. Plaintiff performed her duties in an exemplary and highly professional manner, as evidenced by her ADEPT scores and the success of her teaching and yearbook project.

12. In the fall of 2008, Plaintiff had assigned her students to write an essay to be entered into the Clemson University writing competition. The work performed by the students would also be a part of the students overall language arts grade.

13. In October, 2008, Plaintiff became aware and warned a student for plagiarizing his writing assignment. Despite her warnings, the student plagiarized his paper anyway, bragging about having done so. Plaintiff reported the student for a discipline referral, whereupon Boggs assigned the student a "zero" for the assignment, and took no further action. As Boggs' actions were contrary to school policy, and given the flagrant and defiant nature of the student's behavior, Plaintiff consulted with Marilyn Raines ("Raines"), head of the English Department at Edwards, who agreed the student needed both further and different disciplinary attention.

14. Plaintiff reported the situation to Culler. Although he reluctantly changed the discipline to one consistent with the student handbook, Culler also confronted Plaintiff and in loud, intimidating and angry terms denounced the Plaintiff for consulting with Culler after Boggs had "handled" the student's discipline.

15. From the beginning of the 2008 school year, Culler further caused Plaintiff personal discomfort by continuously utilizing personal gestures towards the Plaintiff in a manner

Plaintiff found to be unwelcome and gave her cause for concern. Culler further seemed to always become fixated on the Plaintiff, following her and always attempting to get into close proximity to her person.

16. As the end of the grading period approached, the student persisted in his improper behavior. Plaintiff again sought resolution from Culler, who took no action. When the issue remained unresolved, Plaintiff was forced to assign an incomplete/inaccurate grade. Ultimately, the student never submitted the required assignment.

17. The actions of Culler made it clear to Plaintiff that, where the welfare of a student or teacher was at issue, if a conflict existed with Boggs, the complainant could expect to be ignored.

18. Culler began a more severe and escalating pattern of hostility towards Plaintiff, almost daily taking every opportunity to infuse conflict into Plaintiff's work environment and to treat her in a disrespectful and embarrassing manner and at the same time continuing to exhibit an unusual interest in the plaintiff's whereabouts and activities.

19. When one of Plaintiff's students won third place in the Clemson writing contest, Plaintiff was never informed by Culler that an awards ceremony was being held, causing her to miss the ceremony despite Culler being provided with award information directed toward Plaintiff by Clemson University, thus depriving her of an opportunity to receive deserved recognition as a teacher. Mary Bridges ("Bridges") had instructed Culler to place the information in Plaintiff's inbox, which he intentionally failed to do.

20. On January 27, 2009, Plaintiff was caught in a stairwell and became trapped by a male student. The large male student began to loudly sing sexually explicit lyrics of a song in Plaintiff's presence using Plaintiff's name, trapping her from moving with his arms, making full

frontal contact with Plaintiff. In great fear of bodily harm, Plaintiff resisted the attacker and the student broke off his attack.

21. Plaintiff went directly to the Principals office and filed a discipline referral concerning the incident. Plaintiff became physically ill and emotionally affected as a proximate result of the sexual assault, and was unable to attend an open house that evening or to attend school the following day. Upon her return, Plaintiff was surprised to learn that nothing had been done to the student. Culler and Boggs refused to report the student's actions criminally, and failed to take any disciplinary action against the student as a result of the sexual assault, in spite of the severity of the same and the promptness of the Plaintiff in reporting the incident pursuant to school policy.

22. Plaintiff consulted Raines concerning the proper action to take, and was informed she must go through Culler, rather than go directly to SDPC, or face disciplinary action herself. Plaintiff voiced concern over speaking with Culler regarding such a personal issue, given his past history of personal antagonism towards Plaintiff and his unusual interest in her.

23. Shortly after the sexual harassment incident, Plaintiff was to meet with Luke Samples ("Samples"), a representative of the Jostens yearbook company. At that meeting, Plaintiff was informed by Samples that Culler had indicated Plaintiff would not be back at Edwards for the upcoming school year. At no time had Plaintiff ever been advised of Edwards intentions, and was appalled that such a statement could have been made by Culler.

24. On or about March 1, 2009, Plaintiff was summoned to a meeting with an instructional coach and Culler, whereby she was disciplined for teaching curriculum deemed to be beyond simple writing strategies, despite having been directed by Bridges earlier in the school

year that language arts strategies teachers could no longer teach only writing, and that teachers should "enrich and enhance all the language arts standards."

25. On April 2, 2009, Plaintiff had gall bladder surgery. Although excused from work until April 24, 2009 by her doctor, Plaintiff had returned early advising her supervisors that care must be taken for her not to over perform physically or to encounter stressful situations. Culler was well aware of the situation.

26. Immediately upon her early return on April 15, 2009, Plaintiff was summoned to Culler's office for a yearbook meeting. Having requested not to be assigned yearbook duties in the upcoming school year due to a heavy teaching load, Plaintiff had been reassured by Culler on numerous occasion in the past that the yearbook would be assigned to someone else. Plaintiff was informed by Culler that not only would her teaching load increase in the coming school year, but also she would be forced to accept responsibility for the yearbook yet again, causing Plaintiff great stress and concern. Culler bragged that he was forcing her to do this. Culler had been warned not to tell Plaintiff about this until she had a few days to recuperate from her gall bladder surgery and its complications.

27. Plaintiff was also further subjected to maltreatment, hostility, abuse, mental harassment, stress and ridicule when she allowed a student additional time to complete an exam and then sent the student to his/her next class with a pass stating the reason for the student's tardiness to the class, all in accordance with Edwards' policy providing for such action in cases where students experience difficulties in completing their exams.

28. On April 23, 2009, Plaintiff's first period class was taking an exam. As per policy, Plaintiff kept a student over to complete his exam, and then sent the student on to Hudak's industrial arts class with a pass. Hudak returned the student to Plaintiff with a note

stating he would not be accepted into Hudak's class. Hudak instructed Plaintiff to send the student to Hudak's class during Plaintiff's first period class the following day to "makeup" for his lost time.

29. When the bell rang between second and third period, Hudak stormed into the hallway outside Plaintiff's classroom doorway, verbally berating and belittling her in front of students. Visibly angered and with the intent to harass and intimidate Plaintiff, Hudak then stormed from the classroom, bumping into a female student on his way out so violently that Plaintiff had to obtain ice to treat the victim's injuries. Students in the classroom were aghast at Hudak's behavior and made comments to Plaintiff about the level of disrespect toward her displayed by Hudak.

30. Plaintiff reported the incident to assistant principal Bridges, who indicated Culler would meet with Plaintiff to discuss Hudak's behavior, yet this meeting never occurred. Bridges indicated the student need not worry about reporting to Hudak as demanded.

31. The student remained fearful of retaliation from Hudak. Plaintiff did not send the student to Hudak during her first period class as Hudak had demanded, prompting Hudak to send a second note indicating the student must report another day that week. Plaintiff again met with Bridges and then finally Culler, who simply indicated he "thought he had taken care of that" and seemed surprised by a second Hudak note.

32. Hudak again verbally attacked Plaintiff with an e-mail on May 1, 2009, which Plaintiff directly reported to Culler. Culler again acted as though the issue was resolved, going so far as to categorize Hudak's e-mail as accusatory. Culler's blasé attitude was in direct conflict with an earlier incident at Edwards whereby the same scenario occurred, yet Culler reacted definitively and made it clear the student was to be accepted in the classroom late.

33. In Plaintiff's case, Culler simply told her to "avoid" Hudak and that he would take care of it. Had Culler responded appropriately to the incident when it first occurred, Plaintiff would not have had to suffer the continued humiliation at the hands of Hudak.

34. Culler indicated he would speak to Hudak, but that there would be "no more contact and no apologies." Although never confronted again by Hudak, Plaintiff was continually confronted by Hudak, who continuously angrily leered at Plaintiff. Plaintiff believes that Culler lied to her and, in fact, supported Hudak and encouraged the prolongation of the controversy.

35. Plaintiff received advice from other faculty to report the incident to Human Resources, yet was dissuaded from doing so when told she would be the one who would suffer punishment for taking the incident beyond Culler.

36. On May 18, 2009, Plaintiff missed school to attend to her ailing great-uncle in Charleston, who had a terminal illness. Plaintiff informed Culler of her absence and e-mailed lesson plans for her classes directly to Culler.

37. However, Culler misinformed Plaintiff's first period class that no lesson plan existed and, at the direction of Culler, substitute teachers were told to have the students watch films instead. Other staff ultimately corrected the error, yet Plaintiff overheard Culler making derogatory comments about teachers who failed to submit lesson plans during absences, obviously critical of Plaintiff. These events caused Plaintiff serious and severe emotional distress and she believes that these were the intended effects.

38. Later in the 2009 school year, Culler scheduled Plaintiff to meet with Jostens yearbook representative and students to plan the yearbook for the coming school year. On the day of the meeting, Plaintiff reminded Culler of the meeting and that she would need to be present during her planning period. For the purpose of harming Plaintiff and causing her stress,

Culler scheduled Plaintiff for duty during the time period the meeting was scheduled and informed Plaintiff if she wanted to be off, she must find a replacement. This was clearly aimed at Plaintiff because other eighth grade teachers were not scheduled for duty that afternoon. It was clear to Plaintiff that Culler intended to cause problems for Plaintiff at every opportunity and did so as part of a retaliatory agenda.

39. On Thursday, May 21, 2009, Bridges told Plaintiff that she was going to talk to Culler about assigning yearbook to another teacher so that the Plaintiff might reconsider signing her contract for the following school year. On Friday, May 22, 2009, Plaintiff was called by the secretary during her afternoon planning period with a reminder to sign her contract. Culler had left to go to the District Office, and Bridges asked Plaintiff to wait for Culler to return. After 5 PM, Culler returned and first told Plaintiff he did not want to talk to her, then asked her to go to his office. Culler then treated the Plaintiff in a hostile and belligerent manner and tried to force Plaintiff to sign her contract. He repeated several times that "if I am going to force anyone to do yearbook, I will force you."

40. On June 1, 2009, Culler became aware that Plaintiff was interviewing for a teaching position with another school district and began hounding Plaintiff to submit a letter of resignation.

41. During a meeting with Bridges just after Culler had issued his ultimatum regarding Plaintiff's resignation, Plaintiff and Bridges could clearly overhear Culler, openly in the main office, loudly evaluating Plaintiff and other related arts teachers as "weak" or "strong," further intimidating Plaintiff.

42. Several days later, Plaintiff and several students, having completed distributing yearbooks in the cafeteria, were walking back to Plaintiff's class with Culler following. First, Culler shouted at Plaintiff, asking if she had completed yearbook duties, then Culler loudly and tersely shouted into the walkie-talkie, "if she doesn't tell me she's finished, how do I know?" Culler was carrying out his agenda to harass and intimidate Plaintiff to the best of his ability.

43. The following day, Plaintiff had just arrived at school when Culler bellowed "Noorai," and that he "needed to see her." When the Plaintiff went to his office, Culler curtly said he wanted to remind her about writing her "letter of resignation." Later in the day, Bridges indicated to Plaintiff that Culler had wanted her to tell Plaintiff that, if she didn't submit her letter of resignation, her license to teach would be "pulled" by Culler.

44. After a series of abusive encounters Plaintiff was finally forced to submit a letter of resignation by Culler during the time when Plaintiff was to be recognized by her peers on her last day of school. Rather than attend the celebration, Plaintiff was relegated to Bridges' office for a long period of time to use her computer to complete the resignation letter, thus depriving her of the pleasure and enjoyment of the occasion.

45. While in the office and thinking the door was locked, Culler entered unannounced and began again berating Plaintiff, who repeatedly requested that Culler leave the office. Culler refused and continued his barrage. Plaintiff finished the resignation letter under extreme duress and in a total state of stress.

46. Plaintiff had applied for a job at West-Oak Middle School ("West-Oak"), a job within the SDOC. Culler, during his barrage of Plaintiff, made strong implications that she had not been chosen for the job at West-Oak. Plaintiff was later called by West-Oak principal Jami Verderosa and informed that "after checking references, I am unable to give you a job at this

time." Plaintiff believes that Culler, or someone at his direction, was responsible for her not getting the position.

47. Pew, although Plaintiff sought her participation, made no effort to either assist with or investigate the behaviors exhibited toward Plaintiff by Culler. Pew further drafted a letter replete with inaccuracies and fabrications concerning Plaintiff. SDPC even falsely asserted that Plaintiff was on an improvement plan. She was also told by Pew that her replacement had already been hired and the Plaintiff had "no grievance rights."

48. No charges were ever brought by SDPC against the student who sexually assaulted Plaintiff, nor was any investigation conducted into the allegations and concerns raised by Plaintiff with regards to Culler and Hudak, in reckless disregard of her rights.

49. On or about August 19, 2009, Plaintiff learned that the teacher hired for the job at West-Oak was not certified as a middle school teacher by the South Carolina Department of Education, as Plaintiff was. Plaintiff was clearly the more qualified candidate for the position, yet had been purposefully overlooked as a direct result of Culler's interference.

50. In October, 2009, Plaintiff met with Williams at the offices of SDOC. Williams confirmed that Culler's actions had cost Plaintiff an employment opportunity at West-Oak and that everything Culler had said regarding Plaintiff could not be changed, affecting any jobs Plaintiff applied for in the future, including substitute teaching positions.

51. Plaintiff has been continually denied employment opportunities with both SDPC and SDOC through the current time and the record created by Culler is now keeping her from obtaining any meaningful position in her educational field.

**FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT SDPC
(Negligence/Gross Negligence)**

52. Plaintiff realleges paragraphs 1 through 51 aforesaid.

53. The Defendant owed Plaintiff a duty of care, comprised of the standard of conduct the law required of Defendant in order to protect Plaintiff from the risk of harm perpetrated upon her by the student. Further, the Defendant had an affirmative duty to report such criminal behaviors to the appropriate law enforcement agencies for investigation and prosecution.

54. Through its omission, Defendant has breached that duty of care by failing to take any definitive action on behalf of Plaintiff.

55. As a direct and proximate cause and result of Defendants negligence, Plaintiff has suffered damages including, but not limited to loss of employment, severe emotional distress and humiliation.

**FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT SDPC
(Negligent Misrepresentation)**

56. Plaintiff realleges paragraphs 1 through 55 aforesaid.

57. A false representation was made by Defendant Culler to Plaintiff in forcing her to submit a letter of resignation to the Board of the SDPC where none was required. Further, Defendant Pew, knowing such requirement did not exist, failed to inform Plaintiff of this fact when Plaintiff specifically requested such information. Such acts and omissions were known to be false by both Defendants at the time they were made.

58. Culler, as principal of Edwards, was the highest authority for the school and therefore its *alter ego*, making the SDPC vicariously liable for Culler's actions.

59. Defendant had a pecuniary interest in making the statement.

60. Defendant owed Plaintiff a duty of care to see that truthful information was communicated to Plaintiff.

61. Defendant breached its duty by failing to exercise due care.

62. Plaintiff justifiably relied upon the representation in submitting her resignation.

63. As a direct and proximate cause and result of reliance upon the representation, Plaintiff has suffered and continues to suffer a pecuniary loss by and through continued lack of employment.

**FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT SDOC
(Negligence/Gross Negligence)**

64. Plaintiff realleges paragraphs 1 through 63 aforesaid.

65. The Defendant owed Plaintiff a duty of care, comprised of that standard of conduct the law required of Defendant to ensure Plaintiff was not harmed by actions such as those perpetrated by Culler. Defendant had specific and exacting knowledge of the falsity of any and all negative comments characterizing Plaintiff's employment with SDPC, yet has continued to act as if those statements were true.

66. Defendant has breached its duty through its continued negative acts and omissions, continually denying Plaintiff employment opportunities she is clearly more qualified for than those applicants ultimately hired

67. As a direct and proximate cause and result of Defendant's negligence, Plaintiff has and continues to suffer loss of employment, severe emotional distress and humiliation.

**FOR A FOURTH CAUSE OF ACTION
AGAINST DEFENDANTS SDPC AND CULLER
(Breach of Contract Accompanied by Fraudulent Act)**

68. Plaintiff realleges paragraphs 1 through 67 aforesaid.

69. Defendants breached its contract with Plaintiff in failing to protect Plaintiff from the harms created by her employment, failure to intervene on her behalf where its contract warranted such action, failure to properly inform Plaintiff of the requirements for terminating her employment, and failure to act upon the grievances raised by Plaintiff with regards to her employment.

70. Defendants' fraudulent behavior relates specifically to the breaching of Plaintiff's contract, comprising numerous false representations made to Plaintiff with regards to their mutual contractual obligations.

71. The fraudulent acts perpetrated by Defendants include dishonesty in fact and unfair dealing with Plaintiff as to actions and remedies available to her under the contract.

72. As a direct and proximate cause and result of all Defendants actions, Plaintiff is entitled to actual damages. Where Defendant Culler's behavior was willful, wanton and in reckless disregard of Plaintiff's rights, Plaintiff is entitled to an award of punitive damages against Culler.

**FOR A FIFTH CAUSE OF ACTION
AGAINST DEFENDANTS SDPC, SDOC AND CULLER
(Defamation)**

73. Plaintiff realleges paragraphs 1 through 72 aforesaid.

74. Defendants have offered verbal and written communications that tend to impugn the honesty, integrity and reputation of Plaintiff, as well as expose her to public hatred,

contempt, ridicule and cause her to be shunned and avoided, as well as injure her in her business and occupation. Such communications allege impropriety and inadequacy in performing Plaintiff's trade and profession, and are therefore actionable *per se*.

75. Further, the communications made by Defendants are defamatory *per se*.

76. Malice is implied in said communications and as such no showing of malice is required.

77. The communications made by Defendants are false.

78. The statements made by Defendants were published and republished to third parties, including between SDPC and SDOC, as well as Plaintiff's former coworkers and colleagues at Edwards.

79. Such statements concerned Plaintiff.

80. As a direct and proximate cause and result of Defendants defamation, Plaintiff has suffered legally presumed special damages, including but not limited to embarrassment, humiliation, and mental suffering as a result of injury to her reputation.

**FOR A SIXTH CAUSE OF ACTION
AGAINST DEFENDANT HUDAK
(Assault)**

81. Plaintiff realleges paragraphs 1 through 80 aforesaid.

82. Defendant did exhibit conduct toward Plaintiff that, even if unintentional, was committed recklessly and in total disregard for Plaintiff and her students.

83. Plaintiff, due to Hudak's size and demeanor, was placed in reasonable and justifiable fear for her own safety. Such conduct by Hudak was made under circumstances as to affect the mind of Plaintiff so as to influence her conduct. Further, Plaintiff is a person

peculiarly susceptible to fear and Hudak knew and took advantage of the fact that Plaintiff could not stand as much as an ordinary person.

84. As a direct and proximate cause and result of the willful, wanton and reckless disregard of Plaintiff's rights, Plaintiff is entitled to actual and punitive damages against Defendant.

**FOR AN SEVENTH CAUSE OF ACTION
AGAINST INDIVIDUAL DEFENDANTS PEW, WILLIAMS, BOGGS
AND RAINES IN THEIR INDIVIDUAL CAPACITIES
(Civil Conspiracy)**

85. Plaintiff realleges paragraphs 1 through 84 aforesaid.

86. The named Defendants and others combined and joined with the Defendant Culler to conspire, meet, plan and scheme to remove the plaintiff from the school district. The nature and reasonable inferences arise that the acts were in furtherance of a common design of the conspirators and were outside the course and scope of their employment and in furtherance of a personal agenda of malice, ill will and intent to harm.

87. That combination of parties was for the purpose of injuring Plaintiff through insidious actions the object of which was to ruin and damage the business and profession of Plaintiff.

88. As a direct and proximate cause and result of Defendants actions, Plaintiff has suffered special damages, including but not limited to rendering Plaintiff unemployable within reasonable distance of her residence and in her chosen profession and injury inflicted due to the destruction of her professional business credentials.

**FOR AN EIGHTH AND SEPARATE CAUSE OF ACTION
AGAINST DEFENDANT CULLER
(Intentional Infliction of Emotional Distress)**

89. Plaintiff realleges paragraphs 1-88 aforesaid.

90. From the time he first became her Principal in the Fall of 2008 until January, 2011 the 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 all with a view toward not only causing Plaintiff to leave the school but to severely damage and harm her emotionally, physically and otherwise.

91. On June 4, 2009, Culler caused the Plaintiff to undergo hours of trauma and suffering while he continually berated and preyed upon her, demanding a letter of resignation and threatening her with the loss of her teaching credentials if she did otherwise. Culler did so knowing the disastrous emotional effect the same would bring and for several hours the Plaintiff cried and remained in a severely depressed condition, both in the school and the outside parking lot where she sat in her car and let forth her emotions. Defendant Culler then arranged to make Plaintiff to come 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, which caused a mental collapse and mental pain and suffering which continues until this date.

92. On January 5, 2011, the Defendant Gary Culler wrote a letter to the Plaintiff which on its face threatened to sue her for defamation but which was rather sent to her to cause her more pain and suffering, grief and fear since it was sent to her in an envelope with a King of Heart stamp that says LOVE on it, reinforcing her fears and concerns of what she had been through in the past year at the hands of Defendant Culler. While aided and abetted by several of the conspirators named herein the Defendant Culler arranged, orchestrated and carried out an outrageous campaign to devastate the Plaintiff physically and emotionally.

93. That such actions and statements as set forth throughout this Complaint were outrageous and constitute the intentional infliction of emotional distress for which the Defendant Culler is liable.

94. That the actions of the Defendant Culler constituted conduct that was so extremely outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized society.

95. That as a direct and proximate result of the outrageous conduct described herein Plaintiff has sustained severe and continuing distress, mental anguish, humiliation and embarrassment. Additionally, the Defendant Culler is liable for punitive damages for his intentional acts to punish and deter others from the same or similar conduct.

WHEREFORE, the Plaintiff, Mariam R. Noorai, prays for judgment against Defendant School Districts of Pickens and Oconee Counties awarding her actual damages as well as awarding her actual and punitive damages against the individual Defendants, in an appropriate

amount to be determined by a jury, as well as for attorney's fees and costs, and for such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

LARRY C. BRANDT, PA
Larry C. Brandt (SC Bar 0856)
P. O. Box 738
3691 Blue Ridge Blvd.
Walhalla, SC 29691
Phone 864-638-5406

BY Larry C. Brandt
Larry C. Brandt
Attorney for Plaintiff

June _____, 2012
Walhalla, South Carolina

I hereby demand a jury trial in this matter.

Larry C. Brandt
Larry C. Brandt, Attorney for Plaintiff

June _____, 2012
Walhalla, South Carolina

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. 2010-CP-37-279

**DEFENDANTS SCHOOL DISTRICT OF
PICKENS COUNTY, GARY CULLER,
DONALD BOGGS, RICHARD HUDAK,
MARILYN RAINES AND
DR. KELLY PEW'S ANSWER TO
SECOND AMENDED COMPLAINT
AND
COUNTERCLAIM OF DEFENDANT
CULLER**

(JURY TRIAL DEMANDED)

Defendants School District of Pickens County (hereinafter "the District"), Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines and Dr. Kelly Pew (collectively hereinafter "Defendants"), by and through their undersigned counsel, hereby respond to the Second Amended Complaint of Mariam R. Noorai, (hereinafter "Plaintiff"), in accordance with the numbered paragraphs thereof, as follows:

PARTIES

1. Defendants admit, upon information and belief, the allegations contained in Paragraph 1 of the Second Amended Complaint.
2. Defendants admit the allegations contained in Paragraph 2 of the Second Amended Complaint.
3. The allegations of this paragraph are directed to other defendants and therefore a response is not required. Insofar as a response may be deemed necessary, the allegations of this paragraph are admitted upon information and belief.
4. Admitted.

5. Admitted.

6. Admitted.

7. The allegations of this paragraph are directed to other defendants and therefore a response is not required. Insofar as a response may be deemed necessary, Defendants admit, upon information and belief, that Defendant Williams, at the times mentioned in the Second Amended Complaint, served as the head of Human Resources for Defendant School District of Oconee County. Defendants lack sufficient information and knowledge so as to form a belief as to the citizenship and residency of Williams and, therefore, deny said allegation.

8. Admitted.

9. Admitted.

FACTUAL ALLEGATIONS

10. Admitted in part, denied as stated, and denied. Defendants admit only that Plaintiff Noorai during the 2008-09 school year was an 8th grade language arts teacher at Edwards Middle School and that she was responsible that year for the school's yearbook and the production of the same. Defendants deny the allegation that she was a teacher at the school until a decision was made not to renew her contract for the 2009-10 school year and state, to the contrary, that Plaintiff did not sign the contract offered to her for that year and thereby caused her own separation from employment at the conclusion of the 2008-09 school year.

11. Admitted in part, denied as stated. Defendants admit only that Plaintiff performed her duties in a reasonably competent manner. The other implications of this paragraph are denied.

12. Admitted on information and belief.

13. Admitted in part, denied in part for lack of information or knowledge, and denied. Defendants state that in early November 2008, Plaintiff reported a student to Defendant Boggs for alleged plagiarism. As provided in the District's Student Handbook, the student was assigned a "0" for the assignment. The remaining allegations of this paragraph are denied.

14. Defendants deny that Plaintiff reported the student plagiarism matter to Defendant Culler and that Culler confronted Plaintiff in any way about the matter, as well as the remaining allegations of this paragraph.

15. Denied.

16. Denied and denied as stated. Defendants state that the plagiarism issue was resolved by the assigning of the grade of "0" and that the student should not have been allowed to resubmit the assignment.

17. Defendants deny that Culler took any inappropriate actions toward Plaintiff, as alleged in Paragraphs 14-16, and further state that they lack knowledge and information sufficient to form a belief as to how Plaintiff perceived anything that Culler may have done or not done.

18. Defendants deny all allegations of Paragraph 18, in particular the allegations that Culler began a more severe and escalating pattern of hostility toward Plaintiff almost daily, continued to exhibit an unusual interest in Plaintiff's whereabouts and activities, and the remaining allegations elaborating upon said allegation.

19. Admitted in part, denied in part for lack of knowledge, and denied. Defendants admit only that in an email to Mary Bridges, Assistant Principal, Plaintiff advised Bridges that a student won third place in the Clemson writing contest. Defendants deny for lack

of information and knowledge what Plaintiff was informed of regarding any awards ceremony concerning the writing contest. The remaining allegations of this paragraph are denied.

20. Denied as stated and denied in part for lack of knowledge. With regard to the details of the alleged incident between Plaintiff and a student, Defendants knowledge of the incident is based on the Discipline Notice submitted by Plaintiff, wherein she stated that the student sang a song to her and hugged her. Defendants lack knowledge or information of how Plaintiff perceived the incident and, therefore, deny the same.

21. Admitted in part, denied in part for lack of knowledge, and denied as stated. Defendants state that Plaintiff completed a District School Discipline Notice concerning the January 27, 2009 incident; that the student was disciplined; and that the School Resource Officer concluded that the incident did not warrant criminal charges. Defendants lack knowledge or sufficient information to form a belief as to the remaining allegations of this paragraph and therefore deny the same.

22. Admitted in part, denied as stated, and denied. Defendants admit that Plaintiff consulted Marilyn Raines, Department Chair, but deny that Raines informed Plaintiff that she must go through Culler or face disciplinary action. Defendants state that Raines informed Noorai that she could speak about the student incident with the Principal or an assistant principal. The remaining allegations of this paragraph are denied.

23. Defendants lack knowledge or information sufficient to form a belief as to the nature of any alleged conversation between Plaintiff and Samples and therefore deny the same. The remaining allegations of this paragraph are denied.

24. Denied as stated. Defendants state that on or about March 1, 2009, Plaintiff attended a previously scheduled meeting with an instructional coach and Culler where

they discussed students' test scores and strategies for achievement. The remaining allegations of this paragraph are denied.

25. The first sentence of this paragraph is admitted upon information and belief. The second and third sentences of this paragraph are denied as stated. Defendants state that Plaintiff advised her supervisors that her doctor supported her early return to work as long as she was comfortable doing so.

26. The first sentence of this paragraph is denied as stated. Defendants state that Plaintiff was asked to meet with Culler about the yearbook. The remaining allegations of this paragraph are denied.

27. Defendants deny that Plaintiff was in any way, as alleged in this paragraph or otherwise, subjected to maltreatment, hostility, abuse, mental harassment, stress and ridicule by Defendants. The remaining allegations in the paragraph also are denied.

28. Admitted in part, denied, and denied as stated. Defendants state that in late April 2009, Plaintiff elected to keep a student in her class to finish a test, causing the student to be late to Defendant Hudak's class. The remaining allegations in this paragraph are denied.

29. Admitted in part, denied as stated, and denied. Defendants state that Plaintiff and Hudak had a disagreement regarding the late student and that Hudak confronted Plaintiff about the situation in front of students. Defendants lack knowledge or information sufficient to form a belief as to how students perceived the alleged incident and, therefore, deny the same. The remaining allegations of this paragraph are denied.

30. Denied as stated and denied. Defendants state that on May 1, 2009, Plaintiff forwarded to Bridges an email she received from Hudak regarding the incident. The remaining allegations of this paragraph are denied.

31. Admitted in part, denied in part for lack of knowledge, and denied. Defendants admit only that Plaintiff did not send the student to Hudak's class during her first period. Defendants deny for lack of knowledge the allegations of the state of mind of the student or the reasons why Plaintiff did not send the student to Hudak's class. The remaining allegations of this paragraph are denied.

32. Denied as stated. Defendants state that on May 1, 2009, Hudak emailed Plaintiff about the incident and that on May 4, 2009, Plaintiff forwarded Hudak's email to Culler. Thereafter, Culler met with Plaintiff. The remaining allegations of this paragraph are denied.

33. Denied.

34. The first and second sentences of this paragraph are denied. Defendants lack knowledge or information sufficient to form a belief as to Plaintiff's beliefs that Culler lied to her, supported Hudak, and encouraged the prolongation of the controversy and, therefore, deny the same.

35. Defendants lack knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore deny the same.

36. Denied as stated. Defendants state that Plaintiff emailed to Assistant Principal, Mary Bridges and teacher, Marilyn Raines, lesson plans for May 18, 2009. Plaintiff copied Culler on the email to Bridges and Raines. Defendants deny any remaining allegations of this paragraph.

37. Denied.

38. Denied as stated. Defendants state that the meeting initially was requested by Plaintiff and scheduled by Plaintiff, Bridges and Culler. The remaining allegations of this paragraph are denied.

39. Denied as stated. Defendants state that, per District procedure, Plaintiff was reminded that she needed to sign her contract of employment for the 2009-10 school year which she never did. The remaining allegations of this paragraph are denied.

40. Defendants deny the allegations of this paragraph, in particular that Culler was aware that Plaintiff was interviewing with another district for a teaching position and that he began hounding her to submit her letter of resignation.

41. Denied.

42. Denied.

43. Denied.

44. Denied as stated. Defendants state that Plaintiff used Bridges' computer to draft her letter of resignation. The remaining allegations of this paragraph are denied.

45. Denied as stated. Defendants state that Culler walked into Bridges' office while Plaintiff was typing her letter of resignation and left the office when asked to do so by Plaintiff. The remaining allegations of this paragraph are denied.

46. Defendants lack knowledge or information sufficient to form a belief as to Plaintiff's application of employment at West-Oak Middle School or Plaintiff's beliefs regarding why she was not hired by Oconee County School District and therefore deny the same. The remaining allegations of this paragraph are denied.

47. Denied as stated. Defendants state Pew met with Plaintiff to discuss her concerns about Culler and that she followed up that meeting with a letter. The remaining allegations of the paragraph are denied.

48. Denied as stated. Defendants state that the District did not "bring charges" against the student involved in the incident with Plaintiff. The remaining allegations of this paragraph are denied.

49. Denied as stated. Defendants deny that Culler interfered with Plaintiff's employment search and lack knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph and therefore deny the same.

50. The allegations of this paragraph are directed to other defendants and therefore a response is not required. Insofar as a response may be deemed necessary, Defendants deny the allegations of this paragraph for lack of information and knowledge.

51. Defendants deny the allegation that Plaintiff has been continually denied employment opportunities by the District and the allegation that the record created by Culler is presently keeping her from obtaining any meaningful position in her educational field. As to the allegations related to Defendant School District of Oconee County, those allegations are denied for lack of information or knowledge.

**FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT SDPC
(Negligence/Gross Negligence)**

52. Defendants incorporate by reference herein their responses to paragraphs 1- 51 of the Second Amended Complaint.

53. Denied.

54. Denied.

55. Denied.

**FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT SDPC
(Negligent Misrepresentation)**

56. Defendants incorporate by reference herein their responses to paragraphs 1- 55 of the Complaint.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

**FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT SDOC
(Negligence/Gross Negligence)**

64. Defendants incorporate by reference herein their responses to paragraphs 1-63 of the Complaint.

65.-67. These allegations and the third cause of action in its entirety purport to state a claim solely against the SDOC and therefore require no response by Defendants.

**FOR A FOURTH CAUSE OF ACTION
AGAINST DEFENDANTS SDPC AND CULLER
(Breach of Contract Accompanied by Fraudulent Act)**

68. Defendants incorporate by reference herein their responses to paragraphs 1-67 of the Second Amended Complaint.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

**FOR A FIFTH CAUSE OF ACTION
AGAINST DEFENDANTS SDPC, SDOC AND CULLER
(Defamation)**

73. Defendants incorporate by reference herein their responses to paragraphs
1-72 of the Second Amended Complaint.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

**FOR A SIXTH CAUSE OF ACTION
AGAINST DEFENDANT HUDAK
(Assault)**

81. Defendants incorporate by reference herein their responses to paragraphs
1-80 of the Second Amended Complaint.

82. Denied.

83. Denied.

84. Denied.

**FOR A SEVENTH CAUSE OF ACTION
AGAINST INDIVIDUAL DEFENDANTS CULLER, PEW, WILLIAMS, BOGGS
AND RAINES IN THEIR INDIVIDUAL CAPACITIES
(Civil Conspiracy)**

85. Defendants incorporate by reference herein their responses to paragraphs
1-84 of the Second Amended Complaint.

86. Denied.

87. Denied.

88. Denied.

**FOR AN EIGHTH CAUSE OF ACTION
AGAINST DEFENDANT CULLER
(Intentional Infliction of Emotional Distress)**

89. Defendants incorporate by reference herein their responses to paragraphs 1-88 of the Second Amended Complaint.

90. Denied.

91. Denied as stated and denied. Defendants state that Plaintiff used Bridges' computer to draft her letter of resignation and that Culler walked into Bridges' office while Plaintiff was typing her letter and left the office when asked to do so by Plaintiff. The remaining allegations of this paragraph are denied.

92. Denied as stated and denied. Defendants state that upon Culler learning that Plaintiff placed inaccurate information on her employment applications concerning Culler's teaching certificate, Culler wrote to Plaintiff on January 5, 2011, and requested that Plaintiff correct the information. Culler's wife affixed a stamp on the envelope containing Culler's letter and mailed said letter to Plaintiff. The remaining allegations of this paragraph are denied.

93. Denied.

94. Denied.

95. Denied.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Second Amended Complaint fails, in whole or in part, to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

The proper venue for Plaintiff's claims is Pickens County, South Carolina.

THIRD AFFIRMATIVE DEFENSE

The District is a governmental entity within the provisions of the Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.*, and are entitled to all of the protections provided by the Act.

FOURTH AFFIRMATIVE DEFENSE

The District is not liable for the damages, injuries and losses claimed by Plaintiff to the extent such damages, injuries and losses resulted from one or more of the following actions, which the District affirmatively alleges were not done in a grossly negligent manner:

- a. administrative action or inaction of a legislative, judicial, or quasi-judicial nature.
- b. adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.
- c. the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.
- d. an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's recovery with regard to all claims is limited pursuant to the liability limits set forth at S.C. Code Ann. §§ 15-78-120 and 15-78-30(g).

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's Second Amended Complaint is barred by the doctrines of laches, waiver and/or estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff fails to establish the requirements necessary for individual liability against any of the Defendants under the South Carolina Tort Claims Act.

EIGHTH AFFIRMATIVE DEFENSE

The injuries complained of were caused in whole or in part by the actions of other persons or entities other than the Defendants.

NINTH AFFIRMATIVE DEFENSE

Defendants, on information and belief, would allege and show that any injuries and damages sustained by Plaintiff as alleged in the Second Amended Complaint, which are denied, were due to and were caused and occasioned by Plaintiff's own acts and/or acts of comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness, which acts on the part of Plaintiff combined and contributed and concurred with any negligence, carelessness, recklessness, heedlessness, willfulness and wantonness on the part of Defendants, which is denied, without which the alleged incident and resulting alleged damages would not have occurred or have been sustained, and Defendants do plead such comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness on the part of Plaintiff as the direct and proximate cause of the injuries and damages sustained by Plaintiff as alleged in the

Second Amended Complaint. Accordingly, Defendants are entitled to a determination as to the percentage with which Plaintiff's own comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness contributed to this incident and Plaintiff's alleged injuries and damages and to the reduction of any sum awarded to her by an equal amount to the percentage of Plaintiff's own comparative negligent, careless, reckless, heedless, willful and wanton conduct.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's Second Amended Complaint is barred by the doctrines of consent, authorization and/or privilege.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants would allege and show that Plaintiff has failed to mitigate the damages that Plaintiff claims to have sustained at the hands of Defendants.

TWELFTH AFFIRMATIVE DEFENSE

Defendants have denied, and do deny, Plaintiff's allegations regarding certain defamatory remarks, as set forth in Plaintiff's Second Amended Complaint. Any remarks made by Defendants were in response to legitimate and privileged inquiries and, Plaintiff's cause of action for defamation is also barred due to the truth of any matters asserted.

THIRTEENTH AFFIRMATIVE DEFENSE

At all times referenced, Defendants acted in good faith and in a reasonable manner.

FOURTEENTH AFFIRMATIVE DEFENSE

Punitive damages are not available against Defendants pursuant to S.C. Code Ann. § 15-78-120(b).

FIFTEENTH AFFIRMATIVE DEFENSE

Punitive damages are inappropriate in this case since Defendants did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

Defendants reserve the right to add any affirmative defenses as such become known.

WHEREFORE, Defendants School District of Pickens County, Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines and Dr. Kelly Pew respectfully request that the Second Amended Complaint be dismissed with prejudice, and that it be awarded the cost of this action and a reasonable attorney's fee according to law.

COUNTERCLAIM

Defendant/Counterclaimant Gary Culler ("Culler") alleges the following in his Counterclaim against Plaintiff/Counterclaim Defendant Mariam Noorai ("Noorai").

A. Culler is a citizen and resident of Pickens County, South Carolina. At all times mentioned herein, Culler served as principal of R.C. Edwards Middle School ("the School") located in the School District of Pickens County ("the District").

B. Noorai is, upon information and belief, a citizen and resident of Oconee County, South Carolina.

C. Venue is proper in Pickens County.

D. From August 2007, through June 2009, Noorai was employed as a teacher in the District, assigned to teach 8th-grade English/Language Arts and to serve as the yearbook advisor at the School.

E. On May 15, 2009, the District distributed employment contracts for the 2009-10 school year, which were to be returned to school principals no later than May 25, 2009.

F. Noorai was issued a contract of employment for the 2009-10 school year, but she did not return her signed contract by the deadline.

G. Culler met with Noorai to discuss whether she intended to remain employed with the District. Noorai informed Culler that she did not want to return to the District if she had to serve as yearbook advisor. Culler informed Noorai that he was unable to promise her that she could be relieved of her yearbook duties and encouraged Noorai to sign the employment contract, instead of risking potential unemployment for the following school year.

H. Noorai still did not sign her contract of employment for the 2009-10 school year; rather, she submitted a letter of resignation on June 5, 2009, stating that she was resigning because she no longer wished to be the yearbook advisor.

I. On June 25, 2009, Kelly Pew, Assistant Superintendent, received a letter from the S.C. Education Association on Noorai's behalf reporting concerns about Culler's treatment of Noorai.

J. The letter set forth allegations against Culler that were inconsistent with the bases given by Noorai for her resignation.

K. Pew met with Noorai on June 30, 2009, to hear the concerns. Pew investigated the concerns and concluded that no improper conduct had occurred.

L. Pew wrote to Noorai on July 8, 2009, outlining the results of her investigation and her conclusion that no improper conduct on Culler's part had occurred.

M. At no time did Pew or the District report Culler to the S.C. Department of Education for disciplinary action on his professional certificate, and at no time has the Department of Education taken any action on Culler's certificate.

**FIRST CAUSE OF ACTION
(Defamation)**

N. Culler realleges and incorporates by reference all preceding allegations of this Counterclaim as if fully set forth herein.

O. Noorai has published on employment applications available on-line to administrators throughout the District, and in other school districts in the State, that Culler's certificate was being reviewed by the S.C. Department of Education because of misconduct.

P. Said application was circulated and viewed by others within the District and other school districts around the State.

Q. Upon learning of the inaccurate information on the applications, Culler wrote to Noorai on January 5, 2011, and requested that she correct the information; Noorai did not immediately do so and the publications continue.

R. Noorai's publication impugned the reputation and integrity of Culler, injured him in his occupation and exposed him to embarrassment and humiliation. Such publication alleges impropriety and inadequacy in performing Culler's trade and profession and is actionable *per se*.

S. The publication made by Noorai was false.

T. Further, the publication made by Noorai was slanderous *per se* and libelous.

U. Malice is implied in said publication.

V. The publication made by Noorai was published to third parties, including other administrators in the District and in school districts around the State.

W. Such statements caused Culler great concern, including embarrassment and humiliation.

X. As a direct and proximate cause and result of Noorai's defamation, Culler has suffered legally presumed damages, including but not limited to embarrassment, humiliation and mental suffering.

Wherefore, Defendant/Counterclaimant Gary Culler prays for judgment against Plaintiff/Counterclaim Defendant Mariam Noorai for actual and punitive damages, and for costs of this action.

Respectfully Submitted:

DUFF, WHITE & TURNER, L.L.C.

By: Kiosha H. Dickey
David T. Duff (SC Bar # 1768)
Kiosha H. Dickey (SC Bar # 74868)

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Attorneys for Defendant School District of
Pickens County, Gary Culler, Donald
Boggs, Richard Hudak, Marilyn Raines and
Dr. Kelly Pew, and Counterclaimant Gary
Culler

June 28, 2012
Columbia, South Carolina

 ORIGINAL

State of South Carolina) In the Court of Common Pleas
County of Oconee) Case No: 2011-CP-37-00279

Mariam R. Noorai,)

Plaintiff,)

-vs-)

School District of) Transcript of Record
Pickens County; School) Motions for Summary
District of Oconee) Judgment
County; Gary Culler,)
Donald Boggs, Richard)
Hudak, Earnestine)
Williams, Marilyn)
Raines and Dr. Kelly)
Pew, in their)
individual capacities,)

Defendants.)

April 7, 2014
Walhalla, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Judge.

A P P E A R A N C E S:

S. Paul Aaron, Esq.
Attorney for the Plaintiff

Thomas K. Barlow, Esq.
Attorney For the Defendants School District of
Oconee County and Earnestine Williams

Laura Callaway Hart, Esq.
David T. Duff, Esq.
Attorneys for Defendants School District of Pickens
County, Culler, Boggs, Hudak, Raines and Pew

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

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5	There were no witnesses called	
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16	No Exhibits were marked for identification.	
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1 (Whereupon, the motion for summary judgment hearing
2 commenced, with all parties being represented;
3 Ms. Miriam R. Noorai, the Plaintiff, was not
4 present but was represented by S. Paul Aaron,
5 Esquire; before the Honorable J. Cordell Maddox,
6 Jr., in the Oconee County Court of Common Pleas,
7 commencing at approximately 1:00 p.m.)

8 THE COURT: Who is the moving party in this next
9 one?

10 MS. HART: Your Honor, I'm Laura Hart. I represent
11 the School District of Pickens County and its several
12 employees who were named in this case. We moved for
13 summary judgment.

14 Tom Barlow represents Oconee, and he has also filed
15 a motion for summary judgment.

16 THE COURT: Okay.
17 (Discussion off the record.)

18 THE COURT: Yes, ma'am.

19 MS. HART: This is David Duff, he also represents
20 the parties Defendants

21 We have with us Dr. Stephanie Lackey (phonetic),
22 who is the Head of Human Resources in Pickens; and Gary
23 Culler, who is the named Defendant.

24 THE COURT: Okay.

25 MS. HART: This is a case, Your Honor, that has

1 eight causes of action against the many Defendants.
2 Seven of those causes of action are against either the
3 School District of Pickens County or one or more of its
4 employees, and those are the ones I'm going to address.

5 THE COURT: Okay.

6 MS. HART: We have filed a motion for all the
7 Pickens Defendants to file this motion because, despite
8 the Plaintiff -- Miriam Noorai is the Plaintiff's
9 name -- despite her assertions and theories of
10 wrongdoing by the Defendants, she has not been able to
11 produce any admissible evidence, even after lengthy
12 factual discovery, after many depositions, which,
13 viewed in the light most favorable to her, would raise
14 a genuine issue of material fact to be considered by a
15 jury.

16 There's a complete lack of proof. We're not
17 talking about a scintilla of evidence here. Mostly
18 what is supporting the Plaintiff's allegations are
19 speculation and conjecture and that's inadmissible and
20 doesn't rise to the level of evidence to be considered

21 Very briefly, there are a lot of factual
22 disputes -- or I shouldn't say that -- there are no
23 factual disputes materially, but there are a lot of
24 factual allegations asserted by the Plaintiff.

25 But basically she was a teacher at Edwards Middle

1 School for two years. She started in August of 2007.
2 her last day was June of 2009. So two years as a
3 English language arts teacher at Edwards Middle School,
4 and she was also the yearbook adviser and taught
5 yearbook.

6 She was offered a contract for the next year, she
7 declined to sign it, so her employment ended. But she
8 has, she applied for teaching positions elsewhere after
9 that and was unable to find a job.

10 So now she filed, after that she files this lawsuit
11 and she complains about her experience and her
12 treatment at Edwards Middle School, alleges that she
13 has been unable to find a job because the people at --
14 the Pickens Defendants defamed her or conspired to ruin
15 her chances of employment.

16 We should point out there is no cause of action for
17 wrongful termination, there is no cause of action for
18 constructive discharge. These are all tort claims:
19 negligence, gross negligence, defamation, things like
20 that. So it's not an employment case so to speak, it's
21 torts arising out of her failure to find a job after
22 leaving her job at Pickens. All right?

23 THE COURT: Okay.

24 MS. HART: Now I'm gonna take these causes of
25 actions individually, consecutively, and just address

1 the facts that the Plaintiff alleges support her
2 claims.

3 The first one is a cause of action against the
4 Pickens District, School District of Pickens County,
5 and it's for negligence/gross negligence. It arises
6 out of an alleged, what the Plaintiff refers to as a
7 sexual assault on her by a student.

8 So this incident with the student and the Plaintiff
9 occurred on January 27, 2009. It was during the change
10 of class, lots of movement in the hallway, lots of
11 students in the hallway. Ms. Noorai reported to the
12 office in what's called a disciplinary referral, a
13 notice asking that the student be disciplined, that the
14 student hugged her in a crowded stairwell, sang some
15 song lyrics to her inserting her name in the song, and
16 that's what she said in the disciplinary referral.
17 Now, later, she calls that a sexual assault but at the
18 time she wasn't calling it a sexual assault. That's
19 all the school people knew, that in the change of
20 class, in a crowded stairwell, the student hugged her,
21 was singing song lyrics and inserting her name in them.

22 Pickens is not -- in this case, this is gross/gross
23 negligence, because, first of all, the Statute of
24 Limitations, the Tort Claims Act bars it. This
25 incident occurred in January of 2009. She served

1 Pickens District with her Complaint in March 2011,
2 which is more than two years after the occurrence. So
3 the Tort Claims Act, of course, allows for a two-year
4 Statute of Limitations unless there's been a verified
5 claim. There was no verified claim so we got two
6 years. So, first of all, her claim that the District
7 failed to protect her, failed to prevent this what she
8 refers to as a sexual assault is barred by statute.

9 Secondly, the District is also protected under the
10 Tort Claims Act by a number of different immunities.
11 Probably the easiest one to apply here is 15-78-20,
12 which is a criminal action by a third party. The
13 student was not an employee of the District so he,
14 therefore, under the law of that subsection, a third
15 party, and she calls this a criminal action or a
16 criminal act. So it would be barred by that Tort
17 Claims Act, immunity, completely.

18 There are other immunities that I address in the
19 Brief. I'm not sure if Your Honor had a chance to
20 review the Brief.

21 THE COURT: Briefly. But I'll look at it.

22 MS. HART: Okay. But there are some others.

23 But in my view I think that a criminal act by a
24 third party is probably the most applicable to bar the
25 claim that the District negligently failed to prevent

1 this attack.

2 Thirdly, the District really had no duty to the
3 Plaintiff in this circumstance because there is nothing
4 in the record, nothing that we are aware of to suggest
5 that this, ahead of time that this student was any kind
6 of danger to the Plaintiff. It wasn't reasonably
7 foreseeable that he would come attack her during change
8 of class. They were not on notice. The Plaintiff was
9 not on notice that there was anything to be concerned
10 about so there was no duty to protect from
11 unforeseeable harm. She can't show a known risk of
12 this particular harm so, therefore, it can't support a
13 finding of a duty.

14 And furthermore, the other issue she raises is that
15 the District should have reported what she calls a
16 sexual assault to law enforcement, and that they are,
17 the District is liable to her for failure to report in
18 damages.

19 Well, first of all, they did report it because they
20 involved a School Resource Officer who is an employee
21 of the Pickens Sheriff's Department in the disciplinary
22 action on this student.

23 Secondly, the statutes that require this reporting
24 don't create a private cause of action that flow to
25 this Plaintiff. It's a public duty, it's a reporting

1 of a crime so that they can be prosecuted, or it's the
2 reporting of crimes to the State Department of
3 Education so they can keep a, you know, statistical
4 data on the safety of schools. But there is no private
5 duty owed to the Plaintiff arising out of either of
6 those statutes that require reporting. So it can't
7 support a private cause of action now.

8 Furthermore, the disciplinary referral, what the
9 Plaintiff reported to the District didn't rise to the
10 level of a crime. As I told you, it was --

11 THE COURT: It was a hugging and singing.

12 MS. HART: It was a hugging and singing. And the
13 SRO, the School Resource Officer, the Sheriff's Deputy
14 who wrote about it said, I knew about that, but that
15 wasn't anything I could charge a crime on. She did
16 charge the same student with a crime related to a
17 second incident the next morning after this incident,
18 but she didn't charge this incident as a crime.

19 THE COURT: But she charged the next day's
20 incident?

21 MS. HART: She charged the next day's incident
22 which didn't involve the Plaintiff at all.

23 THE COURT: Oh, okay.

24 MS. HART: That was another student.

25 THE COURT: I got you. That's okay.

1 MS. HART: I'm sorry.

2 THE COURT: No, no, no, no, no.

3 MS. HART: All these facts are in my head. I'm
4 trying not to clutter the courtroom with too many.

5 THE COURT: So she had two incidents back to back
6 and ---

7 MS. HART: The student had two incidents.

8 THE COURT: Not her?

9 MS. HART: Right.

10 THE COURT: So the student sang to her on day one
11 and on day two he committed a crime?

12 MS. HART: Correct.

13 THE COURT: I got you.

14 MS. HART: And the Principal, Assistant Principal
15 handled this on a disciplinary basis, and the School
16 Resource Officer who was involved with the Assistant
17 Principal on that, were aware of both of these things.
18 The School Resource Officer charged a crime on the
19 second incident involving that student not involving
20 the Plaintiff and decided that the incident with the
21 Plaintiff didn't warrant criminal charges.

22 So, and finally, there's no damage to the Plaintiff
23 because, I mean, she claims that a failure to report a
24 sexual assault on her damaged her. When at worst it
25 prevented a criminal prosecution of that student, but

1 that had nothing to do with whether the Plaintiff
2 herself could recover damages against the District for
3 not reporting it because it's all disconnected.

4 THE COURT: Okay.

5 MS. HART: I think the bottom line is that the
6 Plaintiff is interested in proving the District did
7 wrong, she wasn't interested necessarily in the
8 criminal prosecution of the student, and, in fact, she
9 says that. So it was all a matter of making sure that
10 her employer, Pickens School District, did things the
11 way she wanted them done essentially.

12 Now, I can talk more about the negligence cause of
13 action, but I honestly think that there is nothing that
14 the Plaintiff can assert that would get past these
15 legal barriers to her recovery.

16 THE COURT: Okay.

17 Yes, sir.

18 MS. HART: Do you want Mr. Aaron to address that
19 one?

20 THE COURT: Yes, let him address that.

21 MS. HART: Yes, sir.

22 MR. AARON: May it please the Court, Your Honor?

23 THE COURT: Yes, sir.

24 MR. AARON: I am the third lawyer involved in this
25 case. I did not file this case, I did not bring it to

1 its first set of motions. I am here on behalf of
2 Ms. Noorai who is away. I'm here to ask the Court to
3 deny this motion for summary judgment.

4 In relying on what Your Honor said earlier, I hope
5 that the Court will consider there is, unlike what
6 Ms. Hart says, a scintilla of evidence that would
7 suggest these causes of actions to go forward.

8 I'll try to address this first one briefly point by
9 point. As far as the Statute of Limitations go, I
10 believe that while the incident occurred before, two
11 years before the filing date, by the time she realized
12 it had not been filed, by the time she realized that
13 she would have a cause of action, that date was after
14 the filing date.

15 In other words, she reported this on January 27th
16 but was not aware until much later in the school year
17 that it had not been officially reported and that was
18 part of her conversation with the School District at
19 that time, so I would argue the Statute of Limitations
20 would run from the time she realized that she would
21 have a claim against them under that Act.

22 As far as the assault goes, the testimony -- and I
23 have her Affidavit here, Your Honor, I'll hand that up.
24 I've already handed that to Counsel and provided that
25 to them before we had the last scheduled hearing.

1 The nature of the assault in this case was, in
2 fact, a hug in the hallway. She was the hall monitor
3 as they have when classes change. The assault that she
4 alleges involved the hug and the singing of a very
5 graphic rap song where that individual inserted her
6 name into it, it's very sexually graphic, she put that
7 in her deposition that that was the fact, and that she
8 believed that that constitutes a sexual assault. She
9 testified under oath that she was afraid of that. It
10 caused her great distress. And it caused her even more
11 distress when she found out the School District had not
12 taken any steps to protect her from a future action by
13 him.

14 And so she believed that rap song was much more
15 than just a song being sung to her, it was a threat of
16 future sexual activity, and believes that that is tied
17 completely to her PTSD and other medical problems and
18 emotional problems that she has now, and she is
19 alleging that the School District failed to do the
20 things it should have done and that just enhanced
21 things with her medical condition.

22 **THE COURT:** All right. Here's where I'm confused
23 by what you said. She's alleging she was sexually
24 assaulted twice?

25 **MR. AARON:** She was assaulted the year prior to

1 that by a different student

2 THE COURT: But in her Affidavit she said "When I
3 was assaulted the second time." That's what I'm -- I
4 want to make sure I got it right.

5 MR. AARON: In her mind that means that the School
6 District should have been aware that ---

7 THE COURT: I got you.

8 MR. AARON. --- those behaviors happened in school
9 and should have provided more security, if that's the
10 right word, or better conditions for her not to be
11 placed in that condition or that circumstance again.

12 THE COURT: What about the criminal acts issue?

13 MR. AARON: Well, her position is that the rap song
14 in and of itself being so graphic and including her
15 name in there made it an assault, not an assault and
16 battery, but certainly an assault, coupled with the
17 student hugging her and putting her in that position,
18 and so she believes there should have been a charge
19 made on that.

20 This would be -- that was presented to Tedi Palis,
21 who was the School Resource Officer, she worked for the
22 Sheriff's Department. Part of the exhibits presented
23 to you through the Defense Counsel here includes a
24 report written by the school about the second incident
25 in particular related to this kid burned another kid or

Noora v School District Pickens & Oconee County, et al. -- 4/7/2014

1 the neck in wood shop the next day. After she got
2 ahold of that, which again was after the Statute of
3 Limitations issue, she believes they should have
4 reported the assault as well. Because they didn't, s
5 believes that they failed to do what they were supposed
6 to.

7 THE COURT: Okay.

8 MR. AARON: As far as the duty goes, she takes t
9 position that maybe there's no duty to the outside
10 public, but the School District certainly has one to
11 their students and to their employees, a heightened
12 level of duty, and that they failed to provide that.
13 When they failed to report it, they, for lack of a
14 better word, brushed it under the carpet. And combin
15 with the other allegations that are in the other cause
16 of action, we can get into those facts as they come u
17 That's her theory on that cause of action.

18 THE COURT: She's not a lawyer, is she?

19 MR. AARON: No, sir. And, as I indicated, Couns
20 pled that.

21 THE COURT: I get you. I understand.

22 Yes, ma'am

23 MS. HART: Just very briefly. The Statute of
24 Limitations bars recovery of damages from the actual,
25 if there was a sexual assault, the sexual assault,

1 because it was more than two years before she filed
2 this, and she certainly knew that had happened.

3 The other allegation of negligence is that the
4 District didn't report the crime, but, in fact, they
5 did because the School Resource Officer knew about it
6 and decided, in her discretion, not the School
7 District's discretion but in the Sheriff's Department's
8 discretion, didn't warrant criminal charges.

9 THE COURT: The singing of the song?

10 MS. HART: The singing of the song. Disciplinary
11 referrals are in our exhibits, behind tab 7, if you
12 would like to look at it.

13 THE COURT: I'll look at it. I won't waste y'all's
14 time on that now.

15 MS. HART: Okay. So, moving on to the second cause
16 of action, that one is also against the School District
17 of Pickens County, and it is negligent
18 misrepresentation. Ms. Noorai claims that Dr. Kelly
19 Pew, who was then Head of Human Resources, and Gary
20 Culler, who was the Principal of Edwards Middle School,
21 told the Plaintiff that although she had declined the
22 offer of a contract of employment for the next year,
23 they still needed her to write a letter of resignation
24 or a notice of resignation. And Ms. Noorai also says
25 that they told her, or she got the impression somehow

1 that if she didn't do that, that her teaching
2 certificate was subject to being, in her words, pulled
3 by the State Department of Education. Those were the
4 false representations that, or the allegedly false
5 representations that Ms. Noorai bases this cause of
6 action on. All right? She says that both of those
7 things were false and the loss that she claims as a
8 result was her employment.

9 Well, understand, the District had already offered
10 Ms. Noorai a contract to return and teach at the same
11 school, the same thing the following year, and she had
12 declined to sign it.

13 It's the practice of the District, it's not a
14 written policy, but it's the practice of the District,
15 and they never had any problem with this before, that
16 if a teacher did not wish to grant her the proffered
17 contract, that they would obtain a letter of
18 resignation or a written, some kind of written
19 confirmation that she was not going to return. They
20 didn't want to fill a job, a position and have a
21 teacher say, Oh, but I really don't want to leave.
22 They would be left with too many teachers. Understand
23 again, this was the depth of the recession in the
24 spring of 2009 and school budgets were stretched thin
25 and school districts were not keeping teachers they

1 didn't absolutely need.

2 So the issue is they also, the District also has
3 this practice because they don't want -- Dr. Pew
4 described it in her deposition -- We don't want to be
5 in a situation where we have 1,200 contracts that are
6 out there and we're trying to get them all back in, and
7 we overlooked one and we figure that teacher didn't
8 sign it and, therefore, we go ahead and terminate her
9 position and she didn't mean for that to happen So
10 it's just a practice to protect both the District and
11 the teachers from any misunderstanding.

12 For some reason Ms. Noorai, although she said that
13 she was not going to return to teach that next year,
14 she refused to submit a written resignation letter. It
15 wasn't a false representation that the District
16 required her to submit something in writing. It was,
17 in fact, the District's practice. The District had no
18 pecuniary interest in misrepresenting the need for a
19 written confirmation of resignation. What did they
20 have, you know, to gain by that?

21 The Plaintiff -- these are all elements of
22 negligent misrepresentation. The Plaintiff has to
23 prove that she justifiably relied on the false
24 representation believing it was true. She had a
25 contract. She knew that the contract was going to

1 expire, and if she didn't sign another one, she was
2 going to be out of a job, and whether or not she signed
3 a written confirmation that she wasn't signing the
4 contract, that really has no significance whatsoever
5 whether or not she was going to be able to continue to
6 be employed there.

7 She didn't sign a contract. We wanted written
8 confirmation of it. She didn't give it to us until the
9 last minute. But that's not why she suffered any
10 pecuniary loss. Her loss of employment was due to her
11 own decision not to sign the contract.

12 THE COURT: She didn't sign it, went somewhere
13 else, couldn't get a job?

14 MS. HART: And now it's a false representation that
15 we required a written confirmation.

16 THE COURT: All right. What about that?

17 MR. AARON: Ms. Noorai's position, Your Honor, is
18 that this is just part and parcel of this overall
19 conspiracy by both the Pickens County School District
20 and the Oconee County School District and particular
21 employees to deny her future opportunity to work. And
22 in particular it was misrepresented to her that if she
23 didn't sign, she wouldn't be able to proceed forward
24 because they would revoke her certificate. And I think
25 that's admitted that Mr. Culler and Ms. Bridges

1 (phonetic) both believed that to be the case at the
2 time because she was told that. But she believes that
3 just demonstrates more in particular that, again, this
4 conspiracy to prevent her from getting any future
5 employment because she would not have signed that had
6 she realized that she didn't have to. She felt
7 pressured and threatened and that's why --

8 THE COURT: All right. Well, now, factually she
9 went somewhere else and couldn't get a job?

10 MR. AARON: That's correct. More than one place.
11 Many places, actually. Still unemployed.

12 THE COURT: Well, I hate to do this to two cases in
13 a row, but we've got a time problem. Y'all come back
14 here.

15 (Court and all Counsel had a conference in chambers
16 from approximately 1:20 p.m. until 1:32 p.m.)

17 THE COURT: Let me tell you what I'm gonna do, and
18 I don't mean to cut anybody short. But we got held up
19 this morning by two cases that shouldn't have taken as
20 long. And this is obviously gonna be something a
21 little more detailed. But I also think that there's a
22 lot of interest in it.

23 So what I'm gonna do, I've got these depositions
24 that have just been handed up, I've got the Affidavits,
25 I've got the Memorandum, and I've got the file.

1 Do you all have any objection to me just reading
2 this, I mean, what you have written? Any objection to
3 me taking it under advisement, reading everything and
4 rule?

5 MS. HART: No, Your Honor, we have no objection at
6 all. You have just got plenty to read --

7 THE COURT: I don't mean that to be ugly. I sort
8 of see where this is headed.

9 I got concern about your client's case, obviously

10 MR. AARON: Her Affidavit I've handed to the Court
11 explains her position, Your Honor.

12 THE COURT: That's what I thought. You know, I can
13 listen for three hours or I can read for 40 minutes.

14 MR. AARON: Yes, sir.

15 THE COURT: So what I'll do is I'll let you know --
16 I'll be in Anderson in two weeks. I'll let you know
17 that week. And then y'all confer on any Order and
18 we'll go from there.

19 I don't mean to cut you short. I know you've got
20 clients and there is some public interest in it. But
21 I'm not sure I could listen to much more.

22 MS. HART: You've got plenty of reading matter,
23 Your Honor.

24 (Discussion off the record.)

25 (Court adjourned at 1:35 p.m.)

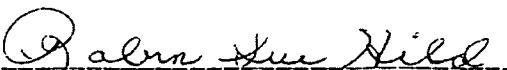
Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, Federal Certified Realtime Reporter and Registered Professional Reporter, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Oconee County, South Carolina, on the 7th day of April, 2014.

There may be quoted material which was read into the record by counsel or other persons. Such quoted material is transcribed as read by the reader.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 14, 2014


Robin Sue Hild, FCRR, RPR
10th Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Mariam R. Noorat,

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

FILED
BENJAMIN L. HARRIS, JR.
CLERK OF COURT
2014 APR 13 PM 11:12

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 S.E.2d 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. Lou*, 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 of 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. Marron*, 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), *Stemke 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. *SC 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. *Am. 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 S.C. 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." *Holtzschueher 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. Holman, 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 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. [Purely 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 qualifiedly 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 Cullen 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. Wailes*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Cl. 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), *Huckworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Cl. 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 Cal. 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. 804-23001RBH, 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.

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 S.C. 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." Patrick Hubbard and Robert L. Felix, *The South Carolina Law of Torts* 438 (3rd Ed. 2004). "Doq 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.

Hunson, 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 *AIG Holdings LLC v. Dunn*, 392 S.C. 160, 169-70, 708 S.E.2d 218, 223-24 (Cl. 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. *Shupman v. Glenn*, 314 S.C. 327, 328, 443 S.E.2d 921, 922-23 (Cl. App. 1994). See also *Hunson*, 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)

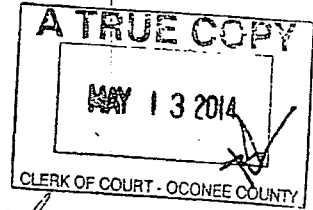
In this case, the evidence of Plaintiff's distress, although vividly described, does not support a conclusion that it reached the level of severity contemplated in the case law. Plaintiff testified that she cried, felt uncomfortable and belittled, and believed her treatment to be unfair and unwarranted. 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 Hunnison*, 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.

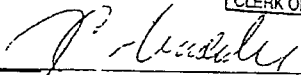
Plaintiff fails to produce evidence to satisfy the heightened burden of proving intentional infliction of emotional distress by Defendant Culler. Defendant Culler is, therefore, entitled to judgment as a matter of law on the Seventh Cause of Action.

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

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BEVERLY S. WATFIELD
CLERK OF COURT
2014 MAY 13 AM 11 52

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. 2010-CP-37-279

**MOTION FOR SUMMARY JUDGMENT
BY DEFENDANTS SCHOOL DISTRICT
OF PICKENS COUNTY, GARY CULLER,
DONALD BOGGS, RICHARD HUDAK,
MARILYN RAINES AND
DR. KELLY PEW**

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 56, SCRCP, Defendants School District of Pickens County (hereinafter "the District"), Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines and Dr. Kelly Pew (collectively hereinafter "the Pickens Defendants"), will move before the presiding Judge of the Court of Common Pleas for the Tenth Judicial Circuit, at the Oconee County Courthouse, Columbia, South Carolina, on the tenth day after service hereof or as soon thereafter as counsel may be heard, for an Order granting Summary Judgment in their favor. This motion is based on the grounds that there is no issue of material fact and the Defendants are entitled to summary judgment because of the following:

1. Plaintiff cannot establish genuine issues of material fact as to the elements of the First Cause of Action for negligence or gross negligence against the District as a matter of law;
2. Plaintiff cannot establish genuine issues of material fact as to the elements of the Second Cause of Action for negligent misrepresentation against the District as a matter of law;

3. Plaintiff cannot establish genuine issues of material fact as to the elements of the Fourth Cause of Action for breach of contract accompanied by a fraudulent act against the District and the Defendant Culler as a matter of law;

4. Plaintiff cannot establish genuine issues of material fact as to the elements of the Fifth Cause of Action for defamation against the District and the Defendant Culler;

5. Even assuming *arguendo* that Plaintiff could establish the elements of a defamation cause of action, Defendants can establish as a matter of law that any statements made by these Defendants of or concerning Plaintiff were privileged;

6. Plaintiff cannot establish genuine issues of material fact as to all elements of the Sixth Cause of Action for assault against the Defendant Hudak;

7. Plaintiff cannot establish that the Defendants Culler, Pew, Boggs, and Raines engaged in a conspiracy against Plaintiff, as alleged in the Seventh Cause of Action;

8. Plaintiff cannot establish genuine issues of material fact as to the elements of the Eight Cause of Action for intentional infliction of emotional distress against the Defendant Culler.

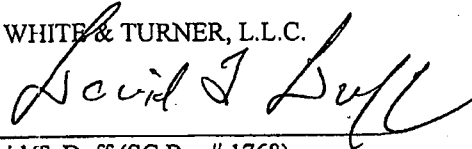
This Motion will be supported by a Memorandum of Law to be filed with the Court at a later date. This Motion is based upon the Amended Complaint of Plaintiff, pleadings, papers, records, files, depositions, and other discovery in this matter, as well as the applicable statutory and case law of South Carolina, and such other pleadings, documents, and evidence as may be presented to the Court.

[SIGNATURE BLOCK ON NEXT PAGE]

Respectfully Submitted:

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January 28, 2013
Columbia, South Carolina

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

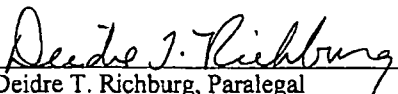
C.A. No. 2010-CP-37-279

**CERTIFICATE OF SERVICE
VIA U.S. MAIL**

The undersigned of Duff, White & Turner, L.L.C., hereby certifies that she has served the following counsel of record with the foregoing **MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS SCHOOL DISTRICT OF PICKENS COUNTY, GARY CULLER, DONALD BOGGS, RICHARD HUDAK, MARILYN RAINES AND DR. KELLY PEW** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 28TH day of JANUARY, 2013.

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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

**AMENDED MOTION FOR SUMMARY
JUDGMENT BY DEFENDANTS SCHOOL
DISTRICT OF PICKENS COUNTY,
GARY CULLER, DONALD BOGGS,
RICHARD HUDAK, MARILYN RAINES
AND DR. KELLY PEW**

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 56, SCRCP, Defendants School District of Pickens County (hereinafter "the District"), Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines and Dr. Kelly Pew (collectively hereinafter "the Pickens Defendants"), will move before the presiding Judge of the Court of Common Pleas for the Tenth Judicial Circuit, at the Oconee County Courthouse, Columbia, South Carolina, on the tenth day after service hereof or as soon thereafter as counsel may be heard, for an Order granting Summary Judgment in their favor. This motion is based on the grounds that there is no issue of material fact and the Defendants are entitled to summary judgment because of the following:

1. Plaintiff cannot establish genuine issues of material fact as to the elements of the First Cause of Action for negligence or gross negligence against the District as a matter of law;
2. Plaintiff cannot establish genuine issues of material fact as to the elements of the Second Cause of Action for negligent misrepresentation against the District as a matter of law;

3. Plaintiff cannot establish genuine issues of material fact as to the elements of the Fourth Cause of Action for breach of contract accompanied by a fraudulent act against the District and the Defendant Culler as a matter of law;

4. Plaintiff cannot establish genuine issues of material fact as to the elements of the Fifth Cause of Action for defamation against the District and the Defendant Culler;

5. Even assuming *arguendo* that Plaintiff could establish the elements of a defamation cause of action, Defendants can establish as a matter of law that any statements made by these Defendants of or concerning Plaintiff were privileged;

6. Plaintiff cannot establish genuine issues of material fact as to all elements of the Sixth Cause of Action for assault against the Defendant Hudak;

7. Plaintiff cannot establish that the Defendants Culler, Pew, Boggs, and Raines engaged in a conspiracy against Plaintiff, as alleged in the Seventh Cause of Action, as a matter of law;

8. Plaintiff cannot establish genuine issues of material fact as to the elements of the Eight Cause of Action for intentional infliction of emotional distress against the Defendant Culler.

9. Any claims by Plaintiff that the District or the Pickens Defendants are liable in damages to her arising out of an assault or other personal injury inflicted upon her by a student or District employee on or prior to March 22, 2011, including on January 27, 2009, are barred by the applicable statute of limitations.

This Motion will be supported by a Memorandum of Law to be filed with the Court at a later date. This Motion is based upon the Amended Complaint of Plaintiff, pleadings, papers, records, files, depositions, and other discovery in this matter, as well as the applicable

statutory and case law of South Carolina, and such other pleadings, documents, and evidence as may be presented to the Court.

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Culler

August 13, 2013
Columbia, South Carolina

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

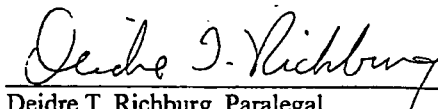
C.A. No. 2011-CP-37-279

**CERTIFICATE OF SERVICE
VIA U.S. MAIL**

The undersigned of Duff, White & Turner, L.L.C., hereby certifies that she has served the following counsel of record with the foregoing **MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS SCHOOL DISTRICT OF PICKENS COUNTY, GARY CULLER, DONALD BOGGS, RICHARD HUDAK, MARILYN RAINES AND DR. KELLY PEW** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 13TH day of AUGUST, 2013.

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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

**MEMORANDUM OF LAW IN
SUPPORT OF AMENDED MOTION
FOR SUMMARY JUDGMENT BY
DEFENDANTS SCHOOL DISTRICT OF
PICKENS COUNTY, GARY CULLER,
DONALD BOGGS, RICHARD HUDAK,
MARILYN RAINES AND
DR. KELLY PEW**

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February 11, 2014
Columbia, South Carolina

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INTRODUCTION

Plaintiff's Second Amended Complaint (hereinafter "the Complaint") asserts eight causes of action against various combinations of the Defendants. Defendants School District of Pickens County (hereinafter "the District"), Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines and Dr. Kelly Pew (collectively hereinafter "the Pickens Defendants"), have moved for an Order granting Summary Judgment in their favor. This motion is based on the grounds that there are no issues of material fact and the Defendants are entitled to judgment as a matter of law because (1) Plaintiff cannot establish the elements of any of the causes of action, (2) Plaintiff's gross negligence cause of action is barred, in whole or in part, by the statute of limitations and by the Tort Claims Act; and (3) the alleged defamatory statements by the Defendants were privileged as a matter of law. The Pickens Defendants offer this Memorandum of Law in support of their Motion for Summary Judgment, together with an Appendix of Attachments containing the record relied upon by the Pickens Defendants.

FACTUAL BACKGROUND

Plaintiff was employed by the District as an English/Language Arts teacher at Edwards Middle School from August, 2007, until June 30, 2009. During that time and as a part of her job, she also served as the school yearbook advisor. Although the District offered her a contract to teach for the 2009-2010 school year, Plaintiff declined to accept it. Att. 4, Noorai Dep. of January 26, 2012 ("Noorai Dep. I") 24:13-20; 146:11-147:10; 151:23-152:3; and Att. 10, Noorai Dep. I: Ex. 13. Having declined continued employment, she embarked on a campaign, culminating in this lawsuit, to prove that the Defendants incorrectly handled several incidents involving her. She also blamed the

Defendants for her failure to obtain employment following her voluntary resignation from the District.

On the afternoon of January 27, 2009, Plaintiff prepared a School Discipline Notice on one of her students for an incident and placed the notice (commonly called a "referral") in the interoffice mailbox of the Assistant Principal, Defendant Donald Boggs. In the written referral, Plaintiff stated that the student sang song lyrics to her and "hugged" her in a stairwell on campus. Att. 7, Noorai Dep. 1: Ex. 9.¹ By the time Mr. Boggs retrieved the referral from his mailbox the following morning, he had also received a referral from another teacher that the same student had burned a classmate with a hot piece of metal. Att. 8, Noorai Dep. 1: Ex. 10;² Att. 26, Boggs Dep. 28:22-29:13. As is typical for students who commit multiple offenses in close temporal proximity, the two referrals were addressed simultaneously, and Mr. Boggs brought the accused student in to discuss them. *Id.*, see also Att. 30, Palis Aff. ¶¶ 5-7

Upon consultation with Teddi Palis, the School Resource Officer who is employed by the Pickens County Sheriff's Office, Mr. Boggs concluded that the student would be suspended for a total of five days: three days for burning another student and two days for his improper interaction with Plaintiff. The five-day suspension was noted on the January 28 written referral, but not on the January 27 written referral submitted by the Plaintiff. Att. 26, Boggs Dep. 29:14-30:21. Additionally, Officer Palis filed an incident report with the Pickens County Sheriff's Office on the burn incident, see Att. 1, but concluded that the hugging/singing incident did not warrant criminal charges. Att. 30,

¹ Plaintiff now asserts that she was "attacked" and "sexually assaulted" by the student, as opposed to the "hug" she described in the Notice she prepared immediately after the incident occurred

² The second referral was erroneously dated January 29, 2009.

Palis Aff. ¶¶ 8-9; *see also* Att. 26, Boggs Dep. 32:2-33:2. Mr. Boggs heard nothing more from Plaintiff about the matter and believed it was resolved. *Id.* Because the hugging/singing incident did not result in an arrest of the student, Mr. Boggs handled the discipline for it without telling or involving the Principal, Defendant Gary Culler. Att. 18, Culler Dep. 34:23-35:18.

In late April 2009, Plaintiff and Defendant Richard Hudak, an Industrial Arts teacher, had a disagreement regarding a student. Plaintiff had elected to keep the student in her class to finish a test, causing him to miss part of Mr. Hudak's class. Mr. Hudak then confronted Plaintiff about the situation in front of other students. Att. 4, Noorai Dep. I 124:10-18; 127:13-15; Att. 24, Hudak Dep. 21:1-16. Plaintiff brought this confrontation to the attention of the Assistant Principal, Mary Bridges, who informed Mr. Culler, who spoke with Mr. Hudak about the situation. A few days later, Plaintiff informed Mr. Culler that Mr. Hudak continued to press her to send the student back to his class to make up the time missed. Mr. Culler again met with Mr. Hudak and "dealt with that." Att. 18, Culler Dep. 66:5-19.

In the Complaint, Plaintiff describes several other occasions on which she disagreed with management and student disciplinary decisions at her school. She also complains that advice provided to her by more senior teachers and administrators in the District resulted in negative consequences to her, although those consequences are vaguely described. Nevertheless, her teaching evaluations were positive, and the District offered her a continuing teaching contract for the 2009-2010 school year, a year ahead of schedule.³ Att. 10, Noorai Dep. I: Ex. 13; Att. 22, Pew Dep. 35:12-36:12.

³ Plaintiff had an annual contract for the 2008-2009 school year. At the time Plaintiff

On May 15, 2009, the District distributed employment contracts to teachers for the following school year, which were due to be signed and returned to the school principals no later than May 25, 2009. Att. 4, Noorai Dep. I 146:11-147:8; Att. 18, Culler Dep 86:16-24. When the Principal, Mr. Culler, did not receive a signed contract from Plaintiff by the deadline, he met with her to discuss whether she intended to sign her contract. *Id.* at 88:22-25. Mr. Culler was aware that Plaintiff was then looking for a teaching position in another school district because, as he understood it, she did not want to continue to teach the Yearbook class and serve as the yearbook adviser. *Id.* at 91:3-15. At the time, Mr. Culler was unable to promise the Plaintiff that she could be relieved of this duty because he did not know whether any other teachers qualified to teach Yearbook would be hired for the following school year, particularly given the unusual budget issues facing the District due to the global recession of 2009. *Id.* at 63:21-64:13. In light of the fact that Plaintiff had not yet secured other employment, he encouraged her to sign the employment contract instead of risking potential unemployment for the following school year. *Id.* at 89:2-15; Att. 31, Bridges Aff. ¶7. Despite Mr. Culler's urging, Plaintiff did not sign the contract.

Because Plaintiff was employed only year-to-year, her failure to sign a contract for the 2009-2010 school year technically constituted a resignation. However, because the District did not wish to fill the potential vacancy created by Plaintiff's departure until she confirmed her decision not to return to the school, it requested that Plaintiff submit a written notice or letter of resignation, a standard procedure in the

was offered a continuing contract for 2009-2010, teachers with continuing contracts generally needed to have taught for more than two years and successfully completed the evaluation process known as ADEPT. Clearly, the District was treating her more favorably than the law required.

District. Att. 22, Pew Dep. 51:10-54:4.⁴ On June 5, 2009, she complied with the District's request and submitted a written resignation letter in which she stated that she was resigning because she did not want to be the yearbook adviser for a third school year. She stated further that she was leaving "for this reason alone." Att. 11, Noorai Dep. I: Ex. 14.

Plaintiff applied for teaching positions in other school districts both before and after she left her employment in Pickens, but was unsuccessful in obtaining another position. One of the persons who interviewed her observed, "This was in 2010. Districts were laying off teachers and firing teachers, and I couldn't imagine why a teacher would choose to leave a position, especially if she was a continuing contract teacher." Att. 29, Brock Dep. 35:2-5.

After her last day at school, Plaintiff reported concerns about the circumstances surrounding her resignation to Defendant Dr. Kelly Pew, then Assistant Superintendent of Human Resources. On June 30, 2009, Dr. Pew met with Plaintiff to hear her list of concerns, which was the first time Dr. Pew was made aware of them, although Plaintiff's many complaints dated back more than a year. Att. 22, Pew Dep. 40:12-18; 48:17-24; 74:7-17. Plaintiff provided Dr. Pew with a 25-page statement laying out a litany of complaints against Mr. Culler, all of which were different from the reasons Plaintiff gave for her resignation in her own letter. Dr. Pew investigated Plaintiff's allegations, including speaking with Mr. Culler, who was also unaware of many of Plaintiff's listed

⁴ As Dr. Pew indicated, Plaintiff's departure from the District occurred during the economic recession that began in 2008-2009, a time when school districts' budgets were being cut and districts were reducing their staffing and taking other steps to decrease their expenses. The District did not want to be in a position where Plaintiff changed her mind about leaving after they had hired a replacement for her "[I]n 2008, 2009 we were in such economic - we would never have wanted to over-hire." Att. 22, Pew Dep. 54:3-4

complaints, particularly about him. *Id.* at 40:18-41:5, 41:16-18 (Culler was “very shocked and concerned when he heard that complaint”) and 42:9-10. Dr. Pew concluded that while there may have been misunderstandings, no improper conduct regarding Plaintiff had occurred and notified her of this determination. Att. 23, Pew Dep.: Ex. 6. Plaintiff then proceeded to file complaints of misconduct against Mr. Culler and Mr. Boggs with the State Department of Education. Att. 15, Noorai Dep. I: Ex. 19. The State Department of Education investigated Plaintiff’s complaints and closed the cases in 2010 without taking any action. See Att. 2.

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). “Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed.” *McClanahan v Richland Cnty Council*, 350 S.C. 433, 437, 567 S.E.2d 240, 242 (2002). “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).

In a case in which the party opposing summary judgment “fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial,” *Carolina Alliance for Fair Employment v. S.C. Dep’t of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct.App.1999), “there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 546 (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 District’s Motion 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).

ARGUMENT

Plaintiff asserts the following causes of action:

- Negligence and gross negligence against the District in connection with the alleged “sexual assault” by a student (First Cause of Action)

- Negligent misrepresentation against the District, relating to her resignation letter (Second Cause of Action)
- Breach of contract accompanied by a fraudulent act against the District and Mr. Culler, principal of the school where Plaintiff taught, in connection with her teaching contract (Fourth Cause of Action)
- Defamation against the District and Mr. Culler, related to her profession as a teacher (Fifth Cause of Action)
- Assault against Mr. Hudak, a fellow teacher (Sixth Cause of Action)
- Civil conspiracy against Defendants Pew, Boggs, and Raines, employees of the District, who allegedly conspired to ruin and damage her in her profession (Seventh Cause of Action)
- Intentional infliction of emotional distress against Mr. Culler (Eighth Cause of Action)

The South Carolina Tort Claims Act 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. As a political subdivision of the State under S.C. Code Ann. § 59-17-10, school districts are governmental entities and, thus, all tort claims brought against school districts and their employees are subject to the Tort Claims Act and its limitations, defenses, and immunities.

The tort claims asserted by Plaintiff against the District and its employees in her First, Second, Fifth, Sixth, Seventh, and Eighth Causes of Action are subject to the Tort Claims Act. The sole remaining cause of action asserted against the District and any of its employees is the Fourth Cause of Action for breach of contract accompanied by fraudulent act; this claim is governed by general contract law.

- I. The District is entitled to summary judgment on the First Cause of Action for gross negligence because the claim is barred by the statute of limitations, the District is immune from liability for the claimed acts or omissions, and Plaintiff is unable to establish the essential elements of her claim.**

The Plaintiff claims that the District was negligent and grossly negligent because it failed either to prevent or report the "harm perpetrated against her" by a student, which she characterizes as "criminal behavior." Complaint at ¶¶ 53-54. Plaintiff claims that this incident, which occurred on January 27, 2009, was a "sexual assault" on her by the student. *Id.* at ¶ 21. Plaintiff commenced this action against the District by service of her initial Complaint on the District on March 22, 2011.

The District is entitled to summary judgment on this cause of action because (1) it is barred by the statute of limitations; (2) the 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 District is barred by the statute of limitations.

Plaintiff's claim that the District is liable in damages to her arising out of an alleged "assault" inflicted upon her by a student on January 27, 2009, is barred by the two-year statute of limitations applicable to claims against the District under the South Carolina Tort Claims Act ("the Act"). Under the Act, negligence and gross negligence claims against political subdivisions of the State, including the District, 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. § 15-78-110.⁵

⁵ 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.

Plaintiff's First Cause of Action is premised on an alleged "sexual assault" committed on her by a student on January 27, 2009. Complaint ¶¶ 20-21 and 53. Plaintiff knew of the "sexual assault" allegedly committed by the student on January 27, 2009, when it occurred, and prepared a written referral for discipline of the student on the same day he allegedly assaulted her. 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 "assault" 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 District is immune from tort liability by the terms of the Tort Claims Act.

The Amended Answer on behalf of the Pickens Defendants includes several exceptions to the waiver of immunity in the Tort Claims Act, specifically S.C. Code Ann. §§ 15-78-60 (2), (4), (5), and (20). None of the exceptions pleaded contain a gross negligence standard. Therefore, the gross negligence standard is not interpolated into these defenses. *See Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900 (2010). If these immunity defenses apply, as the District argues, the District is immune from liability, even if it acted in a negligent or grossly negligent manner.

1. The District is immune from tort liability for damages resulting from administrative action or inaction of a legislative, judicial, or quasi-judicial nature.

Under the provisions of the Act, a State governmental entity is immune from liability for losses resulting from "administrative action or inaction of a legislative,

judicial, or quasi-judicial nature.” S.C. Code Ann. § 15-78-60 (2). Plaintiff claims that the District breached its supposed duty of care to her “by failing to take any definitive action on behalf of Plaintiff,” referring to the District’s handling of her report seeking disciplinary action against the student.

The District disciplined the student according to its student disciplinary code and state law, suspending him from school for a number of days. This is administrative action of a judicial or quasi-judicial nature. The fact that the District imposed a punishment on the student by suspending him establishes that these administrative actions were of a judicial or quasi-judicial nature. The District is, therefore, immune from liability under S.C. Code Ann. § 15-78-60 (2)

2. The District is immune from tort liability for damages resulting from adoption, enforcement, or compliance with any law or failure to adopt or enforce any law.

Under the provisions of the Act, a State governmental entity is immune from liability for losses resulting from “adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.” S.C. Code Ann. § 15-78-60 (4). Plaintiff’s claim that the District is liable to her because it failed to report the “sexual assault” on her by the student to law enforcement authorities in accordance with the law falls within this provision. “[S]ubsection (4) of section 15-78-60 makes clear that the government is not liable in tort for its failure to enforce a statute.” *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 570-71, 743 S.E.2d 778, 783 (2013); *see also Sloan Const. Co., Inc v Southco Grassing, Inc.*, 377 S.C. 108, 118, 659 S.E.2d 158, 164 (2008) (“the Act does not act as a waiver of sovereign

immunity when a governmental entity fails to enforce a statute"). The District is, therefore, immune from liability for its alleged failure to enforce the law requiring that crimes be reported to appropriate law enforcement authorities.

3. The District is immune from tort liability for damages resulting from its exercise of discretion or judgment.

Under the provisions of the Act, a State governmental entity is immune from liability for losses resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." S.C. Code Ann. §15-78-60 (5). Plaintiff claims that the District is liable to her because it failed to handle her report of student misconduct properly. Complaint ¶ 53. However, the District is immune under this exception if it "weighed competing considerations and made a conscious decision to act or not to act, and . . . used accepted professional standards appropriate to resolve the issue before [them]." *Steinke v. SC Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 397, 520 S.E.2d 142, 154 (1999).

The evidence establishes that in his role as Assistant Principal, Mr. Boggs investigated the incident reported to him by Plaintiff and also consulted with the School Resource Officer, Teddi Palis, about the student's behavior. After this investigation, consultation, and consideration, Mr. Boggs imposed a penalty of suspension on the student. Mr. Boggs and the District had the authority and discretion to decide the nature of and the consequences for the student's misconduct, and they exercised that authority and discretion. Moreover, because suspensions and expulsions of students have constitutional due process implications, South Carolina statutes prescribe the procedures that must be followed by schools in student disciplinary matters involving suspensions or

expulsions, including notice, explanation of the evidence, and an opportunity by the accused to be heard. *See* S.C. Code Ann. § 59-63-230 (process for suspensions); *Floyd v Horry Cnty Sch. Dist.*, 351 S.C. 233, 560 S.E.2d 343 (2002). There is no dispute that Mr. Boggs followed this procedure. The District, thus, “weighed competing considerations and made a conscious decision to act or not to act, and . . . used accepted professional standards appropriate to resolve the issue before [them].” *Steinke*, 336 S.C. at 397, 520 S.E.2d at 154. The District is, therefore, immune from liability under S.C. Code Ann. § 15-78-60 (5).

4. The District is immune from tort liability for damages resulting from criminal actions of third parties.

Under the provisions of the Act, a State governmental entity is immune from liability 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.” S.C. Code Ann. § 15-78-60 (20) Plaintiff claims damages arising out of what she characterizes in her Complaint as “sexual assault” and “criminal behavior” by a student.

The District is immune from liability for the alleged assault on Plaintiff by a student because the student was not an employee of the District and, further, because he committed what Plaintiff alleges was a criminal action. Similarly, her claim that the District is liable to her because it failed to “report such criminal behavior to the appropriate law enforcement agencies for investigation and prosecution” also arises out the alleged criminal act of a third person. The District is immune under S.C. Code Ann. § 15-78-60 (20) from Plaintiff’s claims in her First Cause of Action and is, therefore, entitled to judgment as a matter of law on those claims.

C. The District owed no duty to the Plaintiff to protect her from a student's behavior about which it had no prior knowledge or notice.

To establish a claim of negligence or gross negligence against the 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). Without a duty, there can be no actionable negligence. *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007). 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 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).

The duty of care is that standard of conduct the law requires of an actor in order to protect others against the risk of harm from his actions. The law does not make the actor an insurer against all possible harm he may cause. He is not required to guard against harm which is not reasonably to be anticipated, or which is so unlikely to occur that the risk, although recognizable, would commonly be disregarded. A duty of care arises only with respect to a danger which is apparent to one in the position of the actor 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 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 "assault," the District was aware of that "particular harm" to Plaintiff, or even that the student posed any potential danger to Plaintiff, the District owed no duty to take extra precautions to protect Plaintiff from the possibility that this student may attack her. The District, therefore, is entitled to judgment as a matter of law.

D. The District is not liable for failing to report the "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.

These statutes do not expressly create a private cause of action in negligence for failure to report such conduct, and one cannot be implied from their language. Assuming *arguendo* that the District knew that the student's conduct was a criminal act, it nevertheless owed no duty to the Plaintiff that could support a negligence action and the recovery of damages against it.

"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 main factor in determining whether a statute imposes a legal duty is legislative intent. Whether the legislature intended to create a private cause of action for the violation of a statute is determined primarily by the language of the statute. Generally, if a statute does not expressly establish

civil liability, a duty will not be implied absent evidence the legislature enacted the statute for the benefit of a private party.

16 Jade St, LLC v R Design Const Co, LLC, 405 S.C. 384, 747 S.E.2d 770, 773 (2013) (citations omitted).

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).

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

To the extent that Plaintiff asserts the District acted in a negligent fashion in failing to abide by a statutory duty to report the student's conduct to "law enforcement agencies for investigation and prosecution," Complaint ¶ 53, she cannot recover because the alleged duty owed by the District was 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.

In *Rayfield*, the Supreme Court applied the public duty rule to a statute requiring the reporting of information. In that case, the plaintiffs’ decedent was murdered by a paroled prisoner whose prison records included some, but not all reports of his drug use, violent behavior, or other criminal acts while in prison. The Court held that the essential purpose of the reporting statute was to assign responsibility for the management and control of the two agencies and to provide for general record keeping. Even though one of the purposes of reporting information to the Parole Board was to ensure that it made informed decisions about paroling prisoners, that purpose related primarily to the internal

functioning of the Board, not to the prevention of crimes by released prisoners. The Court reasoned as follows:

By no stretch of interpretation can it be said the essential purpose of any of these statutes is to guard members of the public against violent crimes by released prisoners. No language in these statutes charges the specific officers with a duty to prevent such crimes. [footnote omitted] The statutes confer on the officers no authority or means to protect against the harm that came to the Rayfields. Although the information contained in prison records may be incidentally useful in many types of law enforcement, the purpose of keeping the records is not primarily to prevent the commission of crimes against individual citizens. For those reasons, the Corrections and Parole Officers had no special duty to the Rayfields by virtue of the statutes.

Id. at 108, 374 S.E.2d at 917. The Court observed that the prevention of crimes is instead "the general duty of local officers of the peace." *Id.* at fn 7.

Similarly, 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 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 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 District is, therefore, entitled

to summary judgment because the alleged duty to report was owed by the District 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.

The description provided by Plaintiff of the student's behavior in the disciplinary referral does not suggest that a criminal sexual assault had occurred. See Att. 7, Noorai Dep. I: Ex. 9. The School Resource Officer assigned to the Plaintiff's school, Teddi Palis, was involved with Mr. Boggs in investigating the student's conduct in the January 27, 2009, incident with Plaintiff, as well as in the incident the following morning when he burned another student with a hot piece of metal. According to Officer Palis and Mr. Boggs, Plaintiff did not convey to them that the student had sexually or physically assaulted her on January 27, 2009. Att. 26, Boggs Dep. 30:18-21; 31:9-32:21. Officer Palis had arrested another student the previous year, 2008, following a report by Plaintiff that he had "come up behind her and rubbed her right side and applied pressure to her right breast with his hand." Att. 30, Palis Aff. ¶ 2. By contrast, the student behavior reported by Plaintiff following the January 27, 2009, incident consisted only of singing and hugging her, which did not suggest to Officer Palis that a crime had occurred. Officer Palis, 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. *Id.* at ¶ 9; Att. 31, Bridges Aff. ¶ 3; Att. 28, Raines Dep. 32:12-17. Officer Palis did not believe there were grounds for arresting the student for his conduct with Plaintiff and did not, therefore, arrest him.

Plaintiff complains in her First Cause of Action that the District should have reported the student's criminal behavior to law enforcement officials for prosecution.

However, the information the District and its employees, as well as the Sheriff's Department's School Resource Office, had on the incident did not suggest that a crime had occurred. These allegations and claims should be dismissed as a matter of law.

4. The Pickens County Sheriff's Department, through its School Resource Officer, was aware of Plaintiff's report to her school.

Teddi Palis was employed as the School Resource Officer by the Pickens County Sheriff's Department, assigned to Edwards Middle School. Att. 30, Palis Aff. ¶ 1. She was aware of the referral sent by Plaintiff to Mr. Boggs about the hugging/singing incident, and Mr. Boggs consulted with her about it. Her involvement establishes that the Sheriff's Department knew of the student's conduct. As Dr. Pew explained, "[T]he school resource officer was a part of what happened, and they would then do what they needed to do as law enforcement to handle anything they needed to handle. . . . That is one of the reasons why they're in our schools." Att. 22, Pew Dep. 71:3-12. Plaintiff cannot prove her allegation that the incident was not reported to appropriate law enforcement.

5. 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). In this case, Plaintiff was not and could not have been injured by a failure to file a report with law enforcement. The only possible consequence of that alleged failure was that the student was not prosecuted for sexually assaulting her. Plaintiff herself was unaffected by the alleged lack of a report.

Plaintiff filed a complaint herself with the Sheriff's Department in December 2009, 10 months after the incident itself. In the narrative report, the investigating officer wrote that Plaintiff said "she was not concerned about criminal charges against the student so much as she was concerned about charges being brought against someone within the school district for covering up a crime." Att 9, Noorai Dep. I Ex. 11 at p. 3. Plaintiff also told the officer that "she 'mainly wanted to know the status as to why the Administrator handled this sexual assault against her rather than the student himself.' She also wanted to know if the investigation uncovered information as to why her assault was not reported the way it should have been." *Id*

Plaintiff was not concerned about the criminal prosecution of the student, which is the purpose of the reporting statutes, but about proving the District did something wrong. This claim is not about an injury to Plaintiff, but about trying to establish that she is right and the District is wrong. That is not a tort claim, but a vendetta. Her claim against the District in the First Cause of Action should be dismissed as a matter of law.

II. The District is entitled to summary judgment on the Second Cause of Action because the Plaintiff fails to establish the essential elements of negligent misrepresentation by the District.

In her cause of action for negligent misrepresentation, Plaintiff claims that the District, through Mr. Culler as Principal of Edwards Middle School and Dr. Pew as Assistant Superintendent for Human Resources, falsely represented that she was required to submit a letter of resignation. Complaint ¶ 57. She also claims that Mr. Culler, through Assistant Principal Mary Bridges, told her that her license to teach would be "pulled" or cancelled if she did not submit a resignation letter. *Id.* at ¶ 43. She asserts

that she reasonably relied on this representation and submitted the resignation letter, which caused her pecuniary loss because she lost her employment. *Id.* at ¶¶ 62-63.

To establish a claim of negligent misrepresentation by the 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 does not produce evidence to support the necessary elements of negligent misrepresentation.

A. The District exercised reasonable care and made no false representation to Plaintiff.

Several witnesses provided testimony that the practice of the District was to require a written notice of resignation. Plaintiff produced no evidence contradicting that testimony. There is, therefore, no triable issue of fact on this issue. When viewed in the light most favorable to Plaintiff, the evidence and all reasonable inferences that may be drawn from it establish that the District exercised reasonable care and that the alleged misrepresentation of which Plaintiff complains was in fact not false, but true.

Dr. Pew, who as Assistant Superintendent for Human Relations was responsible for overseeing the employment of teachers by the District, testified that the District's practice was to ask teachers who do not sign contracts of employment for the following year and who intend to resign to write a resignation letter. As she explained,

We do that to benefit the employee, because we give more than 1,200 contracts in a year. We want to make sure that we don't get an unsigned contract or we don't get a contract returned to us because somebody laid it down, it got put somewhere, and we take the name to the board to terminate them and that was not their intention. And that resignation letter ensures that we understand that their intention is to resign.

We ask that they say that they do intend to resign, and we ask that it's attached to the contract. That way, we take it to the board and we can post the position.

Att. 22, Pew Dep. 51.13-52:5.

Mr. Culler testified consistently with Dr. Pew: it was District procedure to request a written resignation letter from any teacher who did not choose to accept and sign a proffered contract. Att. 18, Culler Dep. 92:19-22. Plaintiff said that Mr. Culler told her directly that "he wanted me to write a letter of resignation so that he could interview.

And until I wrote this letter of resignation, he could not interview anybody for my position" Att. 4, Noorai Dep. 1 159:8-12; *see also id* at 160:4-9.

Mrs. Bridges, the Assistant Principal, agreed that the District's practice was to require a written notice of resignation from a teacher before declaring the teaching position vacant and filling it with a new hire. She further stated that she was concerned that if Plaintiff refused to provide formal written notice of resignation and subsequently obtained another teacher position elsewhere, she could be at risk of having her teaching certificate revoked by the State Department of Education. Att. 31, Bridges Aff ¶ 8. Mr. Culler had a similar concern. Att. 18, Culler Dep 94:4-95.4.

Dr. Pew testified that the District had never had a teacher in that situation refuse to provide a resignation letter. Att. 22, Pew Dep. 52:6-16. Mr. Culler similarly had never known a departing teacher not to turn in a resignation letter when requested. Att. 18, Culler Dep. 96:5-6. The District had not encountered this situation in the past with any other teacher; this was uncharted territory.

Plaintiff cannot establish that the District, through Mr. Culler, Mrs. Bridges, or Dr. Pew, made a false representation when they told her that it required non-returning teachers like her to provide written resignation letters. It was, in fact, the District's practice and procedure to require written statements of resignation from teachers so that it would not mistakenly proceed to fill positions that teachers did not intend to relinquish. Thus, not only was this representation not false, but it was made in an effort to protect teachers, including Plaintiff, from having the District mistakenly replace them with new hires. As Dr. Pew explained, "For us, it is a situation where we are ensuring that the employee truly intends to resign, that somehow the contract did not get lost in the shuffle.

And with as many employees as we have, that is just a very clear way for us to understand their intentions.” Att. 22, Pew Dep. 52:16-21.

Plaintiff also cannot establish that the District misrepresented to her that she could have her teaching certificate revoked if she refused to provide a written resignation notice and subsequently left the District for another position. Mr. Culler and Mrs. Bridges believed that to be the case. 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).

Because Plaintiff cannot establish genuine issues of material fact as to the falsity of the representations made by the District or the breach by the District of a duty of care to Plaintiff, the District is entitled to judgment as a matter of law on the Second Cause of Action.

B. The District had no pecuniary interest in misrepresenting its need for a written notice of resignation.

Plaintiff alleges, but offers no evidence, that the District had a pecuniary interest in falsely telling her that it needed a written resignation letter from her. Indeed, the evidence suggests instead that the District was not attempting to protect its own financial

interest, but instead to protect Plaintiff's teaching position in the event she did not intend to resign.

Because Plaintiff failed to make any showing that the District had a pecuniary interest in making the alleged misrepresentation, there is a complete failure of proof of this essential element of her cause of action for negligent misrepresentation. *See Baughman v American Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991); *Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct.App. 1999). There is no issue of material fact to be decided by a jury on this issue, and summary judgment for the District on Plaintiff's Second Cause of Action is appropriate.

C. Plaintiff cannot establish that she justifiably relied on the District's representations to her.

Aside from the fact that the representation by the District – that it required a written notice of resignation – was not false, Plaintiff cannot establish that she justifiably relied on the District's statements 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 had a contractual relationship with the District and a concomitant duty to inform herself about the conditions and requirements of her employment, as well as the District's requirements and procedures for ending that employment. Mr. Culler expressly discussed with Plaintiff the District's procedure of requiring a written resignation letter

during their meeting on June 1, 2009, Att. 4, Noorai Dep 1160:4-15, yet Plaintiff had not submitted the letter by June 4, 2009, the last day she worked at the school. She resisted supplying a written notice of resignation, suspecting that the District was misinforming her about its need for such notice. In fact, she testified that she "did not think it sounded correct," *id.* at 159:15-16, and said that she drafted the letter "under duress," *id.* at 156:7-9. Under these circumstances, she should and could have investigated this issue further, but she did not.

In addition, Plaintiff did not raise the issue with Dr. Pew, the Assistant Superintendent for Human Relations, until she met with Dr. Pew on June 30, 2009, after she had already submitted her resignation letter. In submitting her letter on June 4, she could not have relied on anything Dr. Pew told her, since those communications did not occur until after the fact.

Plaintiff cannot establish that she was justified in relying solely on the District's statements to her before she submitted her resignation letter, and she could not have acted in reliance on Dr. Pew's statements to her after the fact. Justifiable reliance on the District's alleged misrepresentation is an essential element of Plaintiff's Second Cause of Action, and Plaintiff's failure to create a genuine issue of fact on this element entitles the District to summary judgment.

D. Plaintiff cannot establish that she suffered a pecuniary loss as a proximate result of her reliance on the District's representation.

Plaintiff claims that because of the District's representations to her, she suffered a pecuniary loss "by and through continued lack of employment." Complaint ¶ 63. However, Plaintiff herself decided not to return to teach at Edwards Middle School and rejected the contract of employment the District offered her for the school year 2009-

2010. Her loss of employment was not due to the 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. The letter of resignation was of no consequence to her lack of employment; Plaintiff did not lose her job and was not prevented from obtaining further employment because of the resignation letter, regardless of whether the letter was required.

Plaintiff cannot establish that her lack of employment in 2009-2010 and later was due to and proximately caused by a misrepresentation by the District. Her lack of employment was instead due to her own decision and actions. Because she cannot establish falsity for the pecuniary interest of the District or her own justifiable reliance and pecuniary loss, she cannot recover on the Second Cause of Action.

III. The District and Mr. Culler are entitled to summary judgment on the Fourth Cause of Action because the Plaintiff fails to establish the essential elements of a contract with Mr. Culler or breach of contract accompanied by a fraudulent act by the District.

Plaintiff's claim of breach of contract accompanied by a fraudulent act is apparently based on the contract between Plaintiff and the District pursuant to which she was employed as a teacher during the school year 2008-2009.⁶ Plaintiff claims that the District and Mr. Culler breached "Plaintiff's contract," presumably 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 Mr. Culler consisted of "dishonesty in fact and unfair dealing with Plaintiff as to actions and remedies available to her under the

⁶ The 2008-2009 contract was the only contract Plaintiff had. She never had a contract with Mr. Culler, and she had no contract with the District for the school year 2009-2010 because she rejected the contract offered by the District.

contract.” Complaint ¶ 71. She does not allege how she was damaged by these alleged failures. She also does not allege a breach of 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). Proof of the additional elements of a fraudulent intent to breach plus an accompanying fraudulent act does not transform the cause of action into something other than a breach of contract action; such proof merely entitles a plaintiff to recover punitive damages on his breach of contract action. *Id*

As an initial matter, 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. *Id.* 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 contract with the District, Plaintiff claims that the District had contractual obligations 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. Complaint ¶ 69. A review of the contract shows that it imposed no such obligations on the District. *See* Att. 3. For the reasons enumerated below, the 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.

Second, the contract contained no terms transforming the ordinary tort duty of care into a contractual obligation. The 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 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. Plaintiff's complaint that she was fraudulently told to write a resignation letter refers to the procedure adopted by the District for the protection of departing teachers like Plaintiff, as discussed *supra* at pp 24-26. The fact that the District obtained a resignation letter from her did not change or breach the terms of Plaintiff's employment with the District and did not result in any pecuniary loss to Plaintiff. The simple fact is that the 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 District did not breach its contract, Plaintiff makes no attempt to allege or prove that the District fraudulently intended to breach its contract or that its alleged breach was accompanied by a separate fraudulent act. First, the District did not misrepresent the terms of Plaintiff's employment or the means by which it ended, as is fully discussed *supra* at pp 24-26. Plaintiff speculates, but provides no evidence to prove that the District acted dishonestly or unfairly with the Plaintiff in connection with the end of her employment contract. 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. In the *D R Horton* case, in which the developers of real estate asserted that a purchaser of the property committed breach of contract accompanied by a fraudulent act when it refused to close the sale, the Supreme Court observed:

[The developers] maintain [the purchaser's] shifting reasons for refusing to close on [the property], reversing positions as to whether conditions precedent had been satisfied, its strained and self-serving construction of the parties' contract, and [the purchaser's] written threat to tie up the property if [the purchaser] did not get its way support this cause of action. Even if we were to assume these qualify as evidence of [the purchaser's]

fraudulent intent in breaching the contract, they are not evidence of an independent fraudulent act which accompanied the breach. *See Minter v GOCT, Inc.* 322 S.C. 525, 530, 473 S.E.2d 67, 70-71 (Ct.App. 1996) (holding evidence corporation opened quick oil-change facility without offering real estate developer contractual right of first refusal despite being put on notice by developer that such conduct would be regarded as breach, while possibly evidence of corporation's fraudulent intent in breaching the contract, was not evidence of an independent fraudulent act which accompanied the breach)

Id. at 556, 730 S.E.2d at 355-56.

The fact that the Plaintiff was dissatisfied with the handling of her various complaints and grievances at the end of her employment with the District does not make the District's handling of those complaints and grievances fraudulent, nor were they connected to the ending of her employment contract, except in a temporal sense. The District explained the various situations to the Plaintiff exactly as the District believed the situations to be and handled her complaints accordingly, albeit not to Plaintiff's satisfaction. 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.

There must be evidence that the 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 has no evidence to prove any of these elements, and, accordingly, the Fourth Cause of Action for breach of contract accompanied by a fraudulent act should be dismissed as to both the District and Mr. Culler.

IV. The District and Mr. Culler are entitled to summary judgment on the Fifth Cause of Action because the Plaintiff cannot establish the essential elements of defamation and because the alleged statements by the District and Mr. Culler were privileged.

Plaintiff claims that the District and Mr. Culler defamed her by impugning her honesty, integrity, and reputation and by alleging "impropriety and inadequacy" in her profession in communications made to the School District of Oconee County and to her former co-workers at Edwards Middle School. She alleges that the communications were both defamatory *per se* and actionable *per se*. Complaint ¶¶ 74-78.

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).

An action for defamation "requires that the challenged statement be both defamatory and actionable. A defamatory statement is a [false] statement which tends to impeach the plaintiff's reputation. To be actionable, the statement must also injure the plaintiff" *Austin v. Torrington Co.*, 810 F.2d 416 (4th Cir. 1987); *Parrish v. Allison*, 376 S.C. 308, 656 S.E.2d 382 (2007); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998). These two issues are further broken down as follows:

- **Defamation *per se* or *per quod*:** If the defamatory meaning of a communication is obvious on its face, it is defamatory *per se*. If extrinsic evidence is necessary to prove that the communication is defamatory, it is defamatory *per quod*. *Id.* at 508-09; 506 S.E.2d at 501.
- **Actionable *per se* or not:** If the communication is actionable *per se*, the law presumes that the defendant acted with common law malice and that the plaintiff was damaged. In such a case, the plaintiff need not plead or prove common law malice or special damages. Slander is actionable *per se* only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. *Id.* at 511; 506 S.E.2d at 502.

If a communication is both defamatory *per se* and actionable *per se*, 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 District or Mr. 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 District or Mr. Culler made false and defamatory statements about her fitness for her profession.

Plaintiff's defamation claim rests on her allegations that the District and Mr. Culler published false statements about her fitness for her profession to third parties, pointing to vague statements she believes they made to personnel in other school districts where she had applied for jobs.⁷ However, Plaintiff has produced only speculation to support her allegations that such statements were made, which is insufficient to prove defamation. Moreover, the statements she believes were made about her were not

⁷ The Defendants concede that if the District or Defendant Culler published false statements about Plaintiff's fitness for her profession, as she imagines, such statements would be actionable *per se*, relieving Plaintiff of proving common law malice or special damages. However, the Defendants deny that they published any false or defamatory statements about Plaintiff, and Plaintiff has not produced competent evidence contradicting this denial. In addition, the Defendants assert that any such statements, if made, would have been privileged.

defamatory *per se* because they were not defamatory on their face, but require extrinsic evidence to render them defamatory, which Plaintiff has not supplied.

First, Plaintiff bases her claim of false and defamatory statements by the District and Mr. Culler on the fact that she was unable to get a job in other school districts. 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 witnesses to testify that such statements were, in fact, made. Indeed, not only the Pickens Defendants but also witnesses from the School District of Oconee County testified that no one with the School District of Pickens County, including Mr. Culler, provided any disparaging information to them about Plaintiff. Att. 18, Culler Dep. 98:17-24, Att. 25, Williams Dep. 86:14-21; Att. 27, Verderosa Dep. 67:9-14. Plaintiff does not establish that Mr. Culler or other persons with the District even spoke with personnel at the Oconee District about her. Att. 16, Noorai Dep. of March 13, 2012 ("Noorai Dep. II") 358:5-359:1. When pressed, Plaintiff stated, "I'm sure they probably have, but, I mean, I don't know." *Id.* at 358:22-23.

In addition, Plaintiff admits that Ernestine Williams, Assistant Superintendent for Human Resources in Oconee, told her that her references from the Pickens Defendants disclosed no concerns, but were in fact quite good. Att. 4, Noorai Dep. I 218:17-22. Mrs. Williams confirmed that nothing in Plaintiff's references would have prevented Plaintiff from being hired, Att. 25, Williams Dep. 44:1-4, and that her overall references were very strong. *Id.* at 44:23-45:5.

Mr. Culler wrote a positive letter of recommendation for Plaintiff. *See* Att. 21, Culler Dep: Ex. 5. He did not speak with anyone associated with the School District of

Oconee County about Plaintiff, but said that persons associated with other school districts contacted him to inquire about Plaintiff. Att. 18, Culler Dep. 98:25-99:7. Mr. Culler generally told those who reached him to call the Human Resources Department of the Pickens District. *Id.* at 100:1-4; 104:10-14. In one instance when a caller persisted in asking about Plaintiff, Mr. Culler provided positive information, saying that Plaintiff's test scores were good, the District had offered her a contract, and if Plaintiff had wanted to stay at his school, she could have. *Id.* at 100:5-18.

Other employees of the District also provided positive references for Plaintiff. Mary Bridges, Assistant Principal at Plaintiff's school, and Marilyn Raines, another English teacher at Plaintiff's school, submitted Applicant Reference Forms to the School District of Oconee County on which they were asked their response if they were considering Plaintiff for employment. Both Mrs. Bridges and Mrs. Raines checked the block, "Employ without looking further", instead of the blocks for "Consider strongly, but look at additional applicants" or "Do not consider for employment." Atts. 5 & 6, Noorai Dep. I Ex. 6 and 7. Dr. Pew said she responded to inquiries from other school districts about Plaintiff by providing factual information only: Plaintiff was offered a continuing contract by the District and had passed her teaching evaluations, but chose not to return to the District. Att. 22, Pew Dep 65:14-20.

Plaintiff claims that statements by the District and Mr. Culler insinuated something negative about her fitness as a teacher, else she would have been hired. However, the statements actually in evidence 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). Since the words in evidence are incapable of a reasonable construction that will render them defamatory, they cannot form the basis for a defamation action.

The reason Plaintiff was not hired for the positions in Oconee County for which she applied was because the hiring personnel preferred other candidates, believing them to be "better fits" for those positions. *See* Att. 27, Verderosa Dep. 71:5-14. In fact, Mrs. Verderosa, the incoming principal of West Oak Middle School in Oconee County who headed the team who selected and interviewed Plaintiff and four other teacher applicants for two positions for 2009-2010, stated that Plaintiff scored fifth out of the five applicants after the interview process. *Id.* at 31:3-23. Mrs. Verderosa also testified that she contacted no references or principals about any candidates before the interview, *id.* at 36:13-25, and did not call Mr. Culler or any of Plaintiff's references about her after the interview, *id.* at 38:7-11. Subsequently, after Plaintiff sued the School District of Oconee County, the Superintendent in Oconee County stated that in any case, the Oconee District would not hire a person who was in the process of suing it. Att. 25, Williams Dep. 82:2-7. The School District of Oconee County and other school districts chose not to hire Plaintiff not because of anything the Pickens Defendants told them, but simply because they preferred to hire other candidates.

Plaintiff has failed to support her claims of defamation because she has produced no evidence of any defamatory statements by the District or by Mr. Culler. The Defendants are, therefore, entitled to summary judgment on this cause of action.

B. If the District or Mr. Culler made any statements about Plaintiff's fitness for her profession to other school districts, such statements were privileged and cannot form the basis for liability to Plaintiff.

If, as Plaintiff speculates, Mr. Culler or the District provided information to other school districts in response to inquiries from them about her after she applied to them for jobs, such statements would have been privileged. Absent a showing that the privilege was abused, a showing which Plaintiff does not attempt to make, the District and Mr Culler cannot be liable for defamation.

In determining whether or not the communication was qualifiedly privileged, regard must be had to the occasion and to the relationship of the parties. When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interest of the one who makes it and the persons to whom it is addressed.

Bell v. Bank of Abbeville, 208 S.C. 490, 493-94, 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).

If, as Plaintiff asserts, the District and Mr Culler responded to inquiries from other school districts about her qualities as a teacher at Edwards Middle School, any responses by the District and Mr. Culler would have been made by persons with an interest in that subject to persons with a corresponding interest. Aside from Plaintiff's speculation that the District and Mr. Culler disparaged her to other school districts, the only evidence in the record is that the 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. Even if the District and Mr. Culler provided information about her history at Edwards Middle School that Plaintiff preferred not to share and that might have caused her not to be hired by other school districts, such information would nevertheless have gone "straight to the heart" of the requests for information about Plaintiff's work and employment there. See *Fountain*, 398 S.C. at 446, 730 S.E.2d at 311 (statement by bank employee to borrower about plaintiff's role in a previous failed business "went straight to the heart of the [borrower's] loan request"). Therefore, if the District and Mr. Culler had provided information about Plaintiff to other school districts where she had applied for jobs, even information that might have caused potential employers to be concerned about hiring her, such communications would have been privileged.

The existence of a privilege is a matter of law for the court, *Murray v Holnam, Inc.*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct.App. 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. In this case, any communication of information about Plaintiff by the District or Mr. Culler in response to requests for such from other school districts was privileged, and there is no evidence that the District or Mr. Culler abused the privilege. They are entitled to judgment as a matter of law on Plaintiff's Fifth Cause of Action for defamation.

V. Mr. Hudak is entitled to summary judgment on the Sixth Cause of Action because the Plaintiff cannot establish the essential elements of assault.

Plaintiff complains in the Sixth Cause of Action that Mr. Hudak, a fellow teacher at Edwards 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. Complaint at ¶¶

28-34 and 82-83. She alleges that Mr. Hudak verbally berated and belittled her in front of students and in a subsequent e-mail.

Mr. Hudak agrees that he was upset by Plaintiff's keeping a student away from his class without notice or permission, testifying that Plaintiff had a pattern of keeping students from his classroom for various purposes, including to take pictures for the yearbook which she supervised Att. 24, Hudak Dep. 10:8-22. Plaintiff and Mr. Hudak, however, disagree on several details of the circumstances surrounding the alleged assault, including which of them correctly followed school policy and practice, *compare* Att. 24, Hudak Dep. 10:23-13:12 with Att. 4: Noorai Dep. I 123:19-23 and 124:10-13, whether Mr. Hudak raised his voice or, in Plaintiff's words, "screamed at her" in her classroom. *compare* Att. 24, Hudak Dep. 21:1-16 with Att. 4, Noorai Dep. I 127:13-19; and whether the Principal, Mr. Culler, agreed with Plaintiff or with Mr. Hudak about who was at fault. In any case, Mr. Hudak expected Plaintiff to send the student to his classroom to make up the time he had missed, *see* Att. 20, Culler Dep. Ex. 4, and Plaintiff did not comply. This remained the situation for approximately two weeks, until Mr. Culler instructed both teachers not to say anything further about it and, at least according to Plaintiff, stated that neither teacher would have to apologize to the other. Att. 4, Noorai Dep. I 139:2-12.

To establish that Mr. Hudak assaulted her, Plaintiff must show conduct by Mr. 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).

An important qualification in the definition of assault is that the forceful or violent conduct must be such that it would place a reasonable person in fear that he will be bodily harmed.

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 Mr. Hudak's conduct would have placed a reasonable person in fear of bodily harm, and also that she was peculiarly susceptible to fear and Mr. Hudak knew that and took advantage of it.

Plaintiff's claim of assault rests on her description of Mr. Hudak as large and angry, but she testified that he made no threats toward her. In fact, after Mr. Hudak came to Plaintiff's classroom and "screamed" at her, Att. 4, Noorai Dep. 1 127:13-15, "[h]e was so angry that when he stood to leave. . . he then stood back, slammed into one of my eighth grade students who was trying to enter my classroom." *Id.* at 127:24-128:4.⁸ She felt, and says her students commented to her, that Mr. Hudak's behavior was disrespectful, but says she ignored it and started her next class *Id.* at 127:8-15. When

⁸ Mr. Hudak said that when he opened the door to leave Plaintiff's classroom, someone was standing outside the door that he could not see. Since the door opened out into the hallway, he could have bumped that person with the door, although neither the student, nor Plaintiff, nor the student's parent complained about that to him, so he has no actual knowledge about it. Att. 24, Hudak Dep. 27:15-28:23.

asked if he made any threats toward her. she responded, "He was just screaming and shouting about everything that had happened and just going off." *Id* at 140: 6-9.

Q. Okay. So I'm just trying to understand what exactly about him at that time made you fearful?

A. Because he was screaming at me, he was criticizing me, he was telling me how horrible I was and what I did was so wrong. And it was just – it was a personal attack.

Id at 140:12-17.

Plaintiff also complains that an email Mr. Hudak subsequently sent her was a part of his assault on her. The email reads in full as follows:

Ms. Noorci [sic], You seem to have lost sight that what you did was wrong. Keeping a student out of another teacher's class without permission from that teacher is inconsiderate and unprofessional. Compounding the offense by putting a student in the middle of conflicting directions is worse. I gave you a week where you could allow [the student] the opportunity to make up my class time on any day that would be convenient. This was a reasonable solution and a lot more courteous than taking a student out of my class without notice or permission. I discussed this with Mr. Culler and it was agreed that this was a more than fair solution. As [the student] has still not made up this time I am notifying you in writing that this time will be made up next week. I am also letting you know that no student is to be taken from my class for any reason as they cannot afford the time. With testing and the Florida trip they are already going to be pressed to finish class requirements. I trust you not further jeopardize the grades of any other students. RW Hudak

Att. 19. Culler Dep., Ex. 2. When she read the email, Plaintiff says, "I just almost fainted right there. I mean, it was a horrible, aggressive, unprofessional, how Mr. Culler agreed. . . . But I felt sick and horrible. I could not believe that someone was attacking me like this when I had done nothing wrong" Att. 4, Noorai Dep. I 133.19-134.4.

What Plaintiff describes is a common workplace disagreement, where the demands of the job can easily result in the bruising of personal feelings and emotions. Assuming *arguendo* that Mr. Hudak behaved rudely, Plaintiff's reaction to his criticism

was extreme and not reasonable. Further assuming *arguendo* that Mr. Hudak spoke louder than he should have, he did not act violently or threateningly toward Plaintiff when he confronted her in her classroom. Indeed, Plaintiff even suggested that although he was angry, he was seated and stepped back, away from her: “[h]e was so angry that when he stood to leave, . . . he then stood back, slammed into one of my eighth grade students who was trying to enter my classroom.” *Id.* at 127:24-128:4. 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, *id.* at 140:12-17, not because she feared he would physically harm her.

Plaintiff also described an excessive and exaggerated reaction to reading Mr. Hudak’s subsequent email to her, saying it caused her almost to faint, and she felt “sick and horrible” after reading it. The email contains no threats to Plaintiff of bodily harm. 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 certainly did not establish that Mr. Hudak knew that and took advantage of it by assaulting her. *See id.* Indeed, she does not suggest, and the Defendants cannot surmise, what advantage Mr. Hudak could have gained by frightening her.

The evidence, viewed in the light most favorable to Plaintiff, does not suggest that Mr. Hudak acted in such a violent or threatening way as to create a reasonable fear of bodily harm. He was expressing disagreement and probably also frustration 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 Mr.

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

VI. The Defendants Pew, Boggs, and Raines are entitled to summary judgment on the Seventh Cause of Action because the Plaintiff cannot establish the essential elements of civil conspiracy.

Plaintiff claims that the individually-named Defendants Pew, Williams, Boggs, and Raines conspired with Mr. Culler to "remove" her from the 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." Complaint at ¶¶ 86-88. Defendants Pew, Boggs, and Raines are employees of the School District of Pickens County, and Defendant Williams is employed by the School District of Oconee County.

Plaintiff lacks any proof whatsoever of this alleged conspiracy, relying entirely on speculation and suspicion. 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.” Att. 32, *Doe v. Erskine Coll.*, No. 8:04-23001RBH, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) (unpublished opinion).

An action for civil conspiracy will not lie if a plaintiff has obtained relief through other avenues. *See Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981). This is a unique feature of the tort of civil conspiracy. The Supreme Court expounded: “Where the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, plaintiff cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.” *Todd*, 276 S.C. at 293, 278 S.E.2d at 611 (quoting 15A C.J.S. *Conspiracy* § 33 (1967)).

Kuznik v. Bees Ferry Assoc., 342 S.C. 579, 610-11, 538 S.E.2d 15, 31 (Ct. App. 2000).

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 allege and prove 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 plead

or 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, Complaint at ¶ 88, yet she also claims current and future employment loss in her First, Second, and Third Causes of Action, *id.* at ¶¶ 55, 63, 67; loss of her employment through breach of her employment contract in her Fourth Cause of Action, *id.* at ¶¶ 69-72; and harm to her business and occupation in the Fifth Cause of Action, *id.* at ¶ 74. There is essentially no difference between the damages she seeks in her civil conspiracy claim and those she seeks in her defamation or 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. Att. 33, *Howard v. Allen Univ.*, No. 3:11-2214-MBS-SVH, 2012 WL 3637754, at *8 (D.S.C. Feb. 27, 2012) *report and recommendation adopted*, No. 3:11-2214-MBS-SVH, 2012 WL 3637746 (D.S.C. Aug. 22, 2012) (unpublished opinions). *See also 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. She could only guess that Defendants Pew, Boggs, Raines, and Williams worked together somehow to thwart her job search. Att. 4, Noorai Dep. I 213 7-215-20. When questioned about the alleged conspiracy, Plaintiff named a few people in the District who she claimed defamed her, but 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.

Id. 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." Att. 32, *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 is not sufficiently pleaded and is supported only by speculation and fanciful imagining. It lacks any competent supporting evidence and should be dismissed as a matter of law.

VII. Mr. Culler is entitled to summary judgment on the Eighth Cause of Action because the Plaintiff cannot establish the essential elements of intentional infliction of emotional distress.

Plaintiff alleges that during the entire time she was employed as a teacher at Edwards Middle School and continuing for more than another year after she left that employment, until January 2011, the Principal of the school, Mr. 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. . . ." Complaint ¶ 90. Plaintiff has apparently devised a scenario in her mind whereby Mr. Culler acted inappropriately in virtually every circumstance in which she was in his presence because he wanted her "to leave the school [and] to severely damage and harm her emotionally, physically and otherwise." *Id.* 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 "I.LOVE." *Id.* at ¶¶ 91-92.

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.

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." 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 Mr. 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." Complaint ¶ 91. The only evidence of Mr. Culler's intention and state of mind at this point, however, is from Mr. Culler who said he went back into the room where Plaintiff was writing her resignation letter "because I heard she was upset and I did not want an employee of mine in there upset." Att. 18. Culler Dep. 96:25-97: 3. He asked her if writing the letter was upsetting her, to which she replied that

she wanted to be left alone, so he left the room *Id* at 97:4-14.

In the second instance of allegedly egregious conduct alleged, Plaintiff claims that a letter written by Mr. Culler requesting that she stop indicating on her applications for employment in other school districts that Mr. Culler's educator certificate "was being reviewed by the State Department of Education because of misconduct,"⁹ was outrageous and atrocious. Mr. Culler's letter was short, mild, and to the point. *See* Att. 14, Noorai Dep. I: Ex. 18. Plaintiff, however, viewed it as threatening and further claimed that "his choice of postage stamp was very upsetting to me . . . and very unprofessional." *Id* at 223:24-224:1. 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. Complaint ¶ 92. 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." *Id* at 224:24-225:3. This testimony is no more than speculation and sounds almost paranoid. It cannot form a competent basis for proving 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.

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."

⁹ Plaintiff wrote this statement on several of her employment applications in 2011, *see, e.g.*, Att. 16, Noorai Dep. I: Ex. 23 at p. 4, based on a complaint she herself had filed in 2010 with the State Department of Education, *see* Att. 15, Noorai Dep. I: Ex. 19. In fact, the State Department of Education had investigated Plaintiff's complaint and closed the case in 2010 without taking any action. *See* Att. 2.

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.

In *Gattison v S C State Coll*, 318 S.C. 148, 456 S.E.2d 414 (Ct.App. 1995), the Court of Appeals catalogued a number of cases and circumstances in which the plaintiffs failed to allege or prove sufficiently outrageous conduct to support liability, including, but not limited to, the following:

- Retaliatory discharge from employment, as in *Corder v. Champion Rd Mach Int'l Corp*, 283 S.C. 520, 324 S.E.2d 79 (Ct.App. 1984),
- Investigation by independent contractor for employer in which the investigator lied to employees and asked them to take an illegal voice stress analysis test, as in *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 171, 321 S.E.2d 602, 611 (Ct.App.1984);
- Verbally and abusively accusing plaintiff that he owed hundreds of thousands of dollars in taxes and that he filed fraudulent tax returns, as in *Folkens v Hunt*, 290 S.C. 194, 348 S.E.2d 8309 (Ct.App. 1986);
- Conduct by employer in which he continually denied employee's medical excuses and willfully engaged him in verbal arguments about his absences, despite knowing of plaintiff's inability to talk due to vocal chord surgery, as in *Butts v AVX Corp.*, 292 S.C. 256, 355 S.E.2d 876 (Ct.App. 1987);
- Conduct by employer, who was allegedly plotting to build a case to fire plaintiff, in which employer increased plaintiff's job responsibilities but removed her authority, and also changed the way she should perform her job and then accused her of not following instructions, as in *Wright v. Sparrow*, 298 S.C. 469, 381 S.E.2d 504 (Ct.App. 1989);
- Reference by newspaper to plaintiff's murdered daughter as a drifter and high school drop-out who had no family support, as in *Holtzscheiter v Thomson*, 306 S.C. 297, 411 S.E.2d 665 (1991);

- Supervisor ridiculing speech impediment of plaintiff, who had cerebral palsy, and threatening to fire him, as in *Shipman v Glenn*, 314 S.C. 327, 443 S.E.2d 921 (Ct.App. 1994); and
- Doctor incorrectly informing patient's daughter that patient had died, as in *Strickland v Madden*, 323 S.C. 63, 448 S.E.2d 581 (Ct.App. 1994).

After this extensive review of precedent, the Court of Appeals in *Gattison* determined that the plaintiff's allegations – that his independence as an internal auditor was improperly limited; that he lost support, staff, and funding for his office; that his complaints of irregularities and violations were ignored by his supervisors and by the Board of Trustees; that his supervisors failed to provide information to him, misplaced his travel vouchers, taunted him and told him he was going to be fired, that he was humiliated at meetings; and that his work environment became hostile – also did not rise to the level of conduct required for outrage. “While the facts *Gattison* 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 S.C. 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 descriptions of the instances in which she alleges Mr. Culler's conduct was atrocious and outrageous include the following:

- Mr. Culler "made [her] uncomfortable from the very beginning" because he was argumentative and aggressive toward her, Att. 4, Noorai Dep. I 36:8-17;
- After Mr. Culler allegedly winked at Plaintiff in the office, she responded to a question from Mary Bridges about whether Plaintiff had spoken with him by saying, "I looked at her and with tears in my eyes, I told her, 'All he did was wink at me.'" *Id.* at 150:16-18; 150:23-151 1;
- When she spoke to Mr. Culler in the parking lot about not signing her contract at the end of the school year, he spoke to her in "an abrasive tone" that caused her to catch her breath. *Id.* at 151:14-19;
- "A principal who constantly told me what he was going to force me to do [referring to serving as the yearbook sponsor] was not professional or appropriate. . . . I felt like I was being singled out for being stupid or incompetent or not doing what was being asked of me," *Id.* at 152:24-153:6;
- Mr. Culler referred to her as "the little writing teacher" and addressed her in "a belittling manner," which she felt was not appropriate. *Id.* at 153:10-13,
- After a meeting in which Mr. Culler tried to coax her into signing her contract for the next year by telling her if she signed the contract and found another job, they would let her out of the contract, she "left crying my eyes out the whole way home. . . . I was balling my eyes out. It was the most horrible, most painful thing, But there was no way I could stay there." *Id.* at 153:14-154:7.

In describing the scene on June 4, 2009, when Mr. Culler and Mrs. Bridges

insisted that Plaintiff finally submit a written notice of resignation so that they could begin interviewing for a replacement for her position. Plaintiff described a scene that is unrecognizable to either of them. *See id.* at 160-171. She depicted a scene in which Mr. Culler harassed her, screamed at her, took pleasure (or so she surmised) in frightening her, and even appeared to have had an erection while talking with her in Mrs. Bridges' office where Plaintiff was finally writing her resignation letter. (Notably and tellingly, Plaintiff did not tell anyone at the time that Mr. Culler had an erection in her presence, nor did she include that detail in a 25-page detailed statement she provided to Dr. Pew a few weeks later. *See* Att. 12, Noorai Dep. I: Ex.15.)

In contrast, Mr. Culler testified that he opened the door to Mrs. Bridges' office to check on Plaintiff because he had been told that Plaintiff was upset and he "did not want an employee of mine in there upset" Att. 18. Culler Dep. 96:25-97:3. He also testified that he asked her if writing the letter was making her upset, to which she said she just wanted to be left alone, and he left the room. *Id.* at 9:4-14.

Mrs. Bridges' testimony is consistent with that of Mr. Culler. She was aware that Plaintiff was upset about having to write the resignation letter, which Mrs. Bridges did not understand since Plaintiff had already decided not to accept the offer of employment for the next school year. Att. 31. Bridges Aff ¶ 8. She confirmed that Mr. Culler asked her to check on Plaintiff because she seemed upset, and that Plaintiff told her that writing the letter made her upset. According to Mrs. Bridges, Plaintiff said nothing to her "about feeling uncomfortable around Mr. Culler and made no complaints to me about Mr. Culler's behavior, or any alleged hostility or sexual harassment by him on that day or at any other time." *Id.* at ¶ 9.

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)." Att. 32, *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 are 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 established that Mr. Culler's actions 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.

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

In addition to failing to establish extreme and outrageous conduct by Mr. Culler, Plaintiff also provides no evidence that the emotional distress she suffered was so severe and extreme that no reasonable person could be expected to endure it.

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.

Moreover, "[t]he distress must be reasonable and justified under the circumstances, and

there is no liability where the plaintiff has suffered exaggerated and unreasonable emotional distress, unless it results from a peculiar susceptibility to such distress of which the actor has knowledge.” 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, Plaintiff’s distress neither reached the level of severity contemplated in the case law, nor was it reasonable or proportionate to the allegedly objectionable

behavior of Mr. Culler. She testified that she felt "uncomfortable," Att. 4, Nóorai Dep I 36:8; she had "tears in my eyes," *id.* at 150:25-151:1; she had to "catch her breath," *id.* at 151:14; she felt she was "being singled out," *id.* at 153:4-5, she felt Mr. Culler belittled her, which was "not appropriate," *id.* at 153:11-13; she left a meeting with Mr. Culler and Mrs. Bridges "crying my eyes out the whole way home. . . . I was balling my eyes out. It was the most horrible, most painful thing." *Id.* at 153:14-154:6. Plaintiff provided perhaps the most complete summary of her distress in recalling the last day of school, June 4, 2009, when the other teachers asked that she join them in the end of year celebration for the teachers who, like Plaintiff, were leaving the school:

And I broke into tears at that instant because I had realized what that threat [about possibly losing her teaching certificate] meant. And I said, "No, I cannot." And I turned and I walked out of the school and got into my vehicle to cry my eyes out because what was happening and the unfairness of it and how everything was escalating and had gotten to this point and how unsafe and unprofessional a place that school environment was and that I could no longer stay there. And I cried and I cried.

Id. 164:9-18.

Plaintiff's response was, in the first place, not reasonable or proportionate to the allegedly offensive behavior of Mr. Culler. If she were a person with a "peculiar susceptibility to such distress," she certainly did not establish that Mr. Culler knew that and took advantage of it by allegedly harassing her for the requested resignation letter. See Restatement (Second) of Torts § 46 cmt. j.

Indeed, Plaintiff's emotional distress, although she described it vividly, was not any more severe than any other person's distress at experiencing what is perceived as unfair treatment on a job. The evidence, viewed in the light most favorable to Plaintiff, does not support a conclusion that the distress derived from the circumstances was so

severe that a reasonable person could not be expected to endure it. A reasonable person would not have been justified in reacting, and indeed they do not react, in such a highly emotional manner to the kind of run-of-the-mill, on the job conflicts described by Plaintiff. 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 distress was driven by her own imagination rather than the actions of Mr. Culler, and can only be viewed as exaggerated. Plaintiff's evidence of her distress does not, therefore, establish that it was so severe 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 Mr. Culler. Mr. Culler is entitled to judgment as a matter of law on the Seventh Cause of Action.

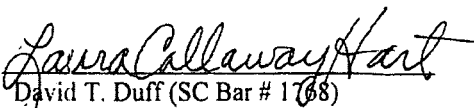
CONCLUSION

The Pickens Defendants respectfully submit that the evidence and any inferences to be drawn from it, viewed in the light most favorable to Plaintiff, do not establish that they can be liable to Plaintiff on any of the causes of action pleaded in the Complaint. They request that this Court grant summary judgment in their favor on all causes of action.

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Respectfully Submitted:

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Attorneys for Defendants School

District of Pickens County, Gary

Culler, Donald Boggs, Richard Hudak,

Marilyn Raines and Dr. Kelly Pew

February 11, 2014
Columbia, South Carolina

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

**APPENDIX OF ATTACHMENTS
FOR
MEMORANDUM OF LAW IN SUPPORT
OF AMENDED MOTION FOR
SUMMARY JUDGMENT BY
DEFENDANTS SCHOOL DISTRICT OF
PICKENS COUNTY, GARY CULLER,
DONALD BOGGS, RICHARD HUDAK,
MARILYN RAINES AND DR. KELLY
PEW**

<u>Attachment No.:</u>	<u>Description:</u>
1.	Incident Report dated 01/11/2010
2.	State Department of Education Determination on Plaintiff's Complaints regarding Culler and Boggs
3.	Plaintiff's 2008-09 Employment Contract (& Affidavit of Authenticity)
4.	Noorai Deposition I: Excerpts
5.	Noorai Deposition I: Exhibit 6
6.	Noorai Deposition I: Exhibit 7
7.	Noorai Deposition I: Exhibit 9
8.	Noorai Deposition I: Exhibit 10
9.	Noorai Deposition I: Exhibit 11
10.	Noorai Deposition I: Exhibit 13
11.	Noorai Deposition I: Exhibit 14
12.	Noorai Deposition I: Exhibit 15
13.	Noorai Deposition I: Exhibit 16

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14. Noorai Deposition I: Exhibit 18
 15. Noorai Deposition I: Exhibit 19
 16. Noorai Deposition I: Exhibit 23
 17. Noorai Deposition II: Excerpts
 18. Culler Deposition: Excerpts
 19. Culler Deposition: Exhibit 2
 20. Culler Deposition: Exhibit 4
 21. Culler Deposition: Exhibit 5
 22. Pew Deposition: Excerpts
 23. Pew Deposition: Exhibit 6
 24. Hudak Deposition: Excerpts
 25. Williams Deposition: Excerpts
 26. Boggs Deposition: Excerpts
 27. Verderosa Deposition: Excerpts
 28. Raines Deposition: Excerpts
 29. Brock Deposition: Excerpts
 30. Affidavit of Teddi Palis
 31. Affidavit of Mary Bridges
 32. *Doe v. Erskine Coll* , No. 8:04-23001RBH, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) (unpublished opinion)
 33. *Howard v Allen Univ.*, CA 3:11-2214-MBS-SVH, 2012 WL 3637754 (D.S.C. Feb. 27, 2012) *report and recommendation adopted*, CA 3:11-2214-MBS-SVH, 2012 WL 3637746 (D.S.C. Aug. 22, 2012)

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P.0021012

AGENCY I.D.
SC0390000INCIDENT REPORT
PICKENS COUNTY SHERIFF'S OFFICE

CASE NUMBER

2009002008

NCIC

IND. ENTO.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. 520 - WEAPON LAW VIOLATIONS		☒ YES ☐ NO	☐ YES ☐ NO	22(Schools (Grades K-12 Only))		☒ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2. 13A - AGGRAVATED ASSAULT		☒ YES ☐ NO	☐ YES ☐ NO	22(Schools (Grades K-12 Only))		
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		ZIP CODE		WEAPON TYPE		
1157 MADDEN BRIDGE RD, CENTRAL, SC		29530-		20-Knife/Cutting Instrument (Ax, Scr		
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK
01/28/2009	12:45		01/28/2009	12:45	01/28/2009	12:45
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
			J S O U	W	M	14
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
		SIX MILE	SC	29682-		
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
		VO AQ	O S O U	W	M	14
HEIGHT		WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
1'30"	506		GRN - Green			
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
3048 WALHALLA HIGHWAY		SIX MILE	SC	29682-		
VICTIM'S INJURY (YES/NO) ☒ YES ☐ NO		EXPLAIN - M - Apparent Minor Injury				
VICTIM NO. 1 USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS ☐ YES ☐ NO ☐ UNK ☐ TYPE:		COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☒ NO				
TWO-MAN VER. ☐ ONE-MAN VER. ☐ DETECTIVE/PLANT. ☐ OTHER ☐		* J - This Jurisdiction G - State O - Out of State U - Unknown				
☐ SUSPECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH
☐ RISKWAY		W	M	14	N	01/24/1995
☐ WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
☐ WARRANT	ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.	
☐ ARREST		SIX MILE	SC	29682-		
☐ JAIL	SUSPECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS ☐ YES ☐ NO ☐ UNK ☐	ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐ EX		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
☐ SUMMONS	CRUISE: ☐ YES ☐ NO ☐ UNK ☐	TOTAL ARRESTED 2		01/28/2009 12:45		
On 1-28-2009 the victim/suspect number 1 came to the main office at Edwards Middle School after one of his classes to use the office phone to call his father. The suspect did not advise the office personnel of any medical issue when he was asked prior to using the phone. A short time later, the suspects father came to the school to speak to his son which was called to the main office area. Suspect's father became upset after to speaking to his son because his son had a burn mark on his neck which happened while he was in the Industrial Arts Class. I explained to that no one was aware of the incident since his son did not report anything, even when asked prior to using the phone. The suspect appeared nervous and requested to use the rest room while I was speaking to his father. The suspect went directly to the bath room located in the nurses office. Before signed his son out of the school, I photographed his neck area and observed what appeared to be a fresh burn mark. The suspect told Mr. Boggs (assistant						
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY						
PROPERTY EST. TYPE (GROUP) STOLEN DAMAGED BURNED RECOVERED BOILED COUNTERFEIT TOTAL VALUE						
ADMINISTRATIVE SUBJECT IDENTIFIED ☒ YES ☐ NO ☐ SUBJECT LOCATED ☒ YES ☐ NO ☐ ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY REPORTING OFFICER(S) DATE UNIT NUMBER APPROVING OFFICER DATE UNIT NUMBER 518 - PALIS, T. 01/28/2009 FOLLOW-UP INVESTIGATION OFFICER 01/11/2010 ☐ YES ☐ NO						

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11/03/2010 12:23

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COMPLAINANT VICTIM # 2	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.						
SUBJECT #	1'40"	510	BRO - Brown		AQ	VO			14	9/27/1984	N
RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	HOME PHONE	EMPLOYER PHONE			
WANTED	216 LEC RD		PICKENS	SC	29531-		(864) 356-4813				
WARRANT	VICTIM NO. 2 VISIBLE INJURY: ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURY: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		TWO-MAN VEHICLE: ☐ DETECTIVE/PLASMT: ☐ ALONE				
ARREST	EXPLAIN		DRUGS: ☐ NO ☐ YES ☐ UNK		ONE-MAN VEHICLE: ☐ OTHER: ☐ ASSISTED						
JAIL	SUBJECT NO. USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		USING DRUGS: ☐ NO ☐ YES ☐ UNK								
SUMMONS											
COMPLAINANT VICTIM # 3	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.						
SUBJECT #	STATE OF SC										
RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	HOME PHONE	EMPLOYER PHONE			
WANTED	216 LEC RD		PICKENS	SC	29571-		(864) 888-5500				
WARRANT	VICTIM NO. 3 VISIBLE INJURY: ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURY: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		TWO-MAN VEHICLE: ☐ DETECTIVE/PLASMT: ☐ ALONE				
ARREST	EXPLAIN		DRUGS: ☐ NO ☐ YES ☐ UNK		ONE-MAN VEHICLE: ☐ OTHER: ☐ ASSISTED						
JAIL	SUBJECT NO. USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		USING DRUGS: ☐ NO ☐ YES ☐ UNK								
SUMMONS											
NARRATIVE	(principal) and I that suspect number 2 put a piece of hot metal on his neck during class. He said that there had not been any problems between he and suspect number 2. He said that he did not want to tell anyone about the incident until he spoke with his father. After the victim/suspect was signed out of school, I spoke with several students including the two listed witnesses who were in the class during the incident. Suspect number 2 and other students were playing "Hot Potato" with heated metal to see how long they could hold the metal and toss it around. The teacher, Mr. Hudak was helping a different group in the class and did not see the incident. Different students also observed suspect number 1 holding a "shank" that he made during this class and made threats towards suspect number 2. Witnesses said that suspect number 1 had the sharp										
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY					JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					
	STATUS		TYPE		VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.			
	☐ STOLEN ☐ VEHICLE		☐ GUN		SERIAL AND/OR OWNER APPLIED NO.			STATE			
	☐ RECOVERED ☐ GUN		☐ BOAT		YEAR OF REGISTRATION			YEAR OF EXPIRATION			
	☐ FOUND ☐ BOAT		☐ LICENSE PLATE		MODEL			STYLE			
	☐ TOWED ☐ LICENSE PLATE		☐ SECURITY/BONDS, ETC.		COLOR			BRAND NAME			
	☐ SUSPECT ☐ SECURITY/BONDS, ETC.		☐ ARTICLE		HTC NO.			DENISTRATION			
	☐ VICTIM ☐ ARTICLE				ISSUER			SECURITY DATE			
					MISCELLANEOUS						
PROPERTY EST.	TYPE (GROUP)								TOTAL VALUE		
	STOLEN										
	DAMAGED										
	BURNED										
	RECOVERED										
	SEIZED										
ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18		☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER		
	☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ VICTIM DECLINED COOPERATION		☐ JUVENILE - NO CUSTODY		
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINED COOPERATION		DATE		DUTY NUMBER		APPROVING OFFICER		DATE		
	616 - PALIS, T.		01/28/2009						01/11/2010		
							FOLLOW-UP INVESTIGATION OFFICER				
							☐ YES ☐ NO				

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NARRATIVE	shanks with him when he left the class. I went into the nurses office, checked the trash can and found metal pieces including a long sharp shank. Witnesses stated that both suspects had a slight physical altercation with each other in the class room and suspect number one had a hammer in one hand and the shank in the other hand. Suspect number 2 had a yard stick and was also trying to instigate an altercation. After speaking to different students, I contacted Mr. Wright and requested that he bring his son to the school on 1-29-2009 due to pending charges. Before speaking to suspect number 2, he was advised of his Miranda Rights. Suspect number 2 provided a written statement that he was playing around and did burn suspect number 1 with a piece of metal. Suspect number 2 charged with ABHAN and released to the custody of his mother, On 1-29-2009 suspect number 1 was charged with a weapons violation charge and ABHAN. Suspect number 1 stated that he felt threatened after suspect number 2 had burnt him with the metal.										
	ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
		REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY				DATE		DATE		UNIT NUMBER	
REPORTING OFFICER(S)				DATE		DATE		UNIT NUMBER			
516 - PALIS, T.				01/28/2009		01/11/2010					
						FOLLOWUP INVESTIGATION OFFICER ☐ YES ☒ NO					

11/03/2010 12:23

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P.005/012

AGENCY I.D. SC0390000
 SUPPLEMENTARY INCIDENT REPORT
 PICKENS COUNTY SHERIFF'S OFFICE

CASE NUMBER

2009002008

NCIC

INQ. ENT'D.

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE 7 of 7 PAGES
☐ MODERES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

Victim(s), Offender(s), Others Involved

☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
☐ VICTIM #						J S O U	B	M	14	9/27/1984	N
☒ SUBJECT # 2	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.						
☐ RUNAWAY	5'10"	140	BLK - Black	BRO - Brown							
☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	HOME PHONE	EMPLOYER PHONE			
☐ WARRANT			CLEMSON	SC	29631-		(864) 358-4813				
☐ ARREST	☐ VICTIM NO. _____ VISIBLE INJURY: ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMIT		☐ ALONE		
☐ JAIL	EXPLAIN		☐ NO ☐ YES		☐ DRUGS: ☐ NO ☐ YES		☐ UNK ☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED		
☐ SUMMONS	☒ SUBJECT NO. 2 USING ALCOHOL: ☐ NO ☐ YES ☐ UNK										
☐	USING DRUGS: ☐ NO ☐ YES TYPE:		☐ UNK								
☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
☐ VICTIM #						J S O U	B	M	16	9/20/1993	
☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.						
☐ RUNAWAY				BRO - Brown							
☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	HOME PHONE	EMPLOYER PHONE			
☐ WARRANT			CLEMSON	SC	29631-		(864) 653-5558				
☐ ARREST	☐ VICTIM NO. _____ VISIBLE INJURY: ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMIT		☐ ALONE		
☐ JAIL	EXPLAIN		☐ NO ☐ YES		☐ DRUGS: ☐ NO ☐ YES		☐ UNK ☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED		
☐ SUMMONS	☐ SUBJECT NO. _____ USING ALCOHOL: ☐ NO ☐ YES ☐ UNK										
☐ Witness	USING DRUGS: ☐ NO ☐ YES TYPE:		☐ UNK								
☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
☐ VICTIM #						J S O U	W	F	14	6/20/1994	N
☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.						
☐ RUNAWAY											
☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	HOME PHONE	EMPLOYER PHONE			
☐ WARRANT			CLEMSON	SC	29631-						
☐ ARREST	☐ VICTIM NO. _____ VISIBLE INJURY: ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMIT		☐ ALONE		
☐ JAIL	EXPLAIN		☐ NO ☐ YES		☐ DRUGS: ☐ NO ☐ YES		☐ UNK ☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED		
☐ SUMMONS	☐ SUBJECT NO. _____ USING ALCOHOL: ☐ NO ☐ YES ☐ UNK										
☐ Witness	USING DRUGS: ☐ NO ☐ YES TYPE:		☐ UNK								

Pickens Defs 11

ADDITIONAL NARRATIVES

The suspect told Mr Boggs (assistant principal) and I that suspect number 2 put a piece of hot metal on his neck during class. He said that there had not been any problems between he and suspect number 2. He said that he did not want to tell anyone about the incident until he spoke with his father. After the victim/suspect was signed out of school, I spoke with several students including the two listed witnesses who were in the class during the incident. Suspect number 2 and other students were playing "Hot Potato" with heated metal to see how long they could hold the metal and toss it around. The teacher, Mr. Hudak was helping a different group in the class and did not see the incident. Different students also observed suspect number 1 holding a "shank" that he made during this class and made threats towards suspect number 2. Witnesses said that suspect number 1 had the sharp shanks with him when he left the class. I went into the nurses office, checked the trash can and found metal pieces including a long sharp shank. Witnesses stated that both suspects had a slight physical altercation with each other in the class room and suspect number one had a hammer in one hand and the shank in the other hand. Suspect number 2 had a vord click and was also trying to instigate an altercation. After speaking to different students, I contacted I and requested that he bring his son to the school on 1-29-2009 due to pending charges. Before speaking to suspect number 2, he was advised of his Miranda Rights. Suspect number 2 provided a written statement that he was playing around and did burn suspect number 1 with a piece of metal. Suspect number 2 charged with ABHAN and released to the custody of his mother, ... On 1-29-2009 suspect number 1 was charged with a weapons violation charge and ABHAN. Suspect number 1 stated that he felt threatened after suspect number 2 had burnt him with the metal.

Case referred to DJJ.

Narrative Entered By / Modifications

TEDDIP 2/5/2009 2:09:59PM

TEDDIP 2/5/2009 2:06:08PM

Pickens Defs 12



South Carolina
Department of Education

Jim Rex
Superintendent of Education

Together, we can.

July 28, 2010

COPY

Dr. Henry Hunt
Superintendent
School District of Pickens County
1348 Griffin Mill Road
Easley, SC 29640

Re: S.C. Educator Gary Culler, Certificate 176610

Dear Dr. Hunt:

The South Carolina Department of Education's (SCDE) Certification Review Committee reviewed the information provided by the Pickens County School District (District) and Ms. Mariam Nooral regarding concerns Ms. Nooral raised involving allegations of unprofessional conduct by Mr. Gary Culler, including discrimination and harassment. Based on the information provided to the SCDE by the District and Ms. Nooral, a determination was made that no action will be taken against Mr. Culler's educator certificate, and the case has been closed.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

Wendy B. Cartledge
Wendy B. Cartledge
Deputy General Counsel

WBC/pwdb

cc: Dr. Kelly Pew, Human Resources, Pickens County School District
Gary Culler, Principal, R.C. Edwards Middle School
Jim Turner, Director, Office of Educator Certification, SCDE
Dr. Kathy Meeks, Adept Coordinator, SCDE



South Carolina
Department of Education

Together, we can.

Jim Rex
Superintendent of Education

COPY

July 28, 2010

Dr. Henry Hunt
Superintendent
School District of Pickens County
1348 Griffin Mill Road
Easley, SC 29640

Re: S.C. Educator David Boggs, Certificate 135141

Dear Dr. Hunt:

The South Carolina Department of Education's (SCDE) Certification Review Committee reviewed the information provided by the Pickens County School District (District) and Ms. Mariam Nooral regarding concerns Ms. Nooral raised involving allegations of unprofessional conduct by Mr. David Boggs, specifically a failure to appropriately address Ms. Nooral's claim of sexual assault by a student. Based on the information provided to the SCDE by the District and Ms. Nooral, a determination was made that no action will be taken against Mr. Boggs' educator certificate, and the case has been closed.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

Wendy B. Cartledge
Wendy B. Cartledge
Deputy General Counsel

WBC/pwdb

cc: Dr. Kelly Pew, Human Resources, Pickens County School District
David Boggs, Assistant Principal, R.C. Edwards Middle School
Jim Turner, Director, Office of Educator Certification, SCDE
Dr. Kathy Meeks, Adept Coordinator, SCDE

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CONTRACT FOR EMPLOYMENT

This agreement is entered into by and between the Board of Trustees of the School District of Pickens County, hereinafter referred to as the Employer and MARIAM ROSALIE NOORAI hereinafter referred to as the Employee. This agreement is a(n) ANNUAL FIRST YEAR contract as defined in Section 59-26-40 of the Code of Laws of South Carolina.

The Employee will possess throughout the contract term a valid and appropriate certificate to teach in the schools of the state of South Carolina and/or other professional qualifications required by state law or district policy. Failure to maintain such prerequisite qualification(s) during the contractual period shall automatically terminate this contract as of the time of disqualification. Proof of these qualifications shall be filed by the Employee in the Office of the Superintendent.

The employee agrees to render acceptable service for 190 days for the 2008-2009 school year, to perform all duties imposed on a teacher by the district and laws of South Carolina, to comply with all district policies and regulations, and to attend required school and district meetings or activities. If, for reasons of financial exigency or budgetary constraint, the number of teachers and/or in-service days for the year is reduced below the number prescribed herein, no payment will be due or made to the Employee for days lost due to such reduction.

The Employee is tentatively assigned as a teacher of GRADE 8 ELA for the 2008-2009 contract term at EDWARDS MIDDLE SCHOOL, however, it is understood that all assignments are tentative and may be changed at any time by the district.

In consideration of this agreement, and pursuant to the salary schedule adopted by the Board, the Employer promises to pay the employee for professional services rendered during the life of this contract the sum of which the Employee is entitled under local, state, and federal allotments or any combination of these. The Employer will adopt and publish the said schedule as soon as practicable. Loss or reduction in any amount of these funding sources shall, at the discretion of the Employer, result in the termination of this contract or the pro-rata reduction of the payment made for services rendered under this contract. The term of the contract or salary also may be reduced or the contract terminated, because of a decline in student enrollment, an elimination or change in course programming, or a financial emergency. In the event pro-rata salary cuts cannot otherwise reasonably be avoided, such a reduction shall be based on a uniform percentage reduction in the salary of each district employee; but the aggregate savings from such reduction shall not exceed the loss or reduction of funds. Such reduction shall spread over as many pay periods as possible and will apply only to the the employer school district to be unavoidable.

The administration may assign reasonable extra-curricular activities to teachers. The assignment of such activities, including all coaching assignments, shall be for the school year for which the assignment is made and for that year only. No expectations are created concerning such assignments for future years. All extra-curricular assignments are discretionary with the administration. Accordingly, notice and opportunity for hearing shall not be required to non-renew these assignments.

This agreement is not valid unless authorized by the Board and signed by the District Superintendent.

To be valid, this agreement must be signed by the employee and returned to Superintendent or his agent on or before April 24, 2008.

SPECIAL CONDITIONS:

Signed: Mariam Rosalie Noorai
(EMPLOYEE)
4/23/08
(DATE)

Signed: Joe D'Andrea
(DISTRICT SUPERINTENDENT)
April 14, 2008
(DATE)

I, Mariam Rosalie Noorai, hereby certify that I am physically and mentally able to perform the duties of this position

RETURN TO HUMAN RESOURCES AFTER SIGNATURE

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

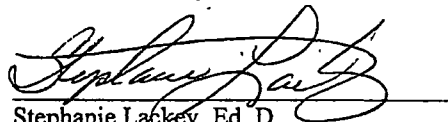
C.A. No. 2011-CP-37-279

**AFFIDAVIT OF AUTHENTICITY
AND ACCURACY OF RECORDS**

I HEREBY CERTIFY that the record attached is a true, correct, accurate and authentic copy of the employment contract between the School District of Pickens County and Mariam Rosalie Noorai by which Ms. Noorai was employed by the School District as a teacher during the school year 2008-2009. I have knowledge of the matters with regard to this record. This record was made in the regular course of business by employees and agents of the School District of Pickens County, at or near the time of the transaction to which it relates. This record was made and has been kept by the School District of Pickens County in the course of its regularly conducted business.

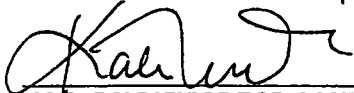
FURTHER AFFIANT SAYETH NOT.

(SIGNATURE BLOCK ON NEXT PAGE)

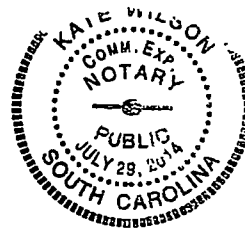


Stephanie Lackey, Ed. D.
Executive Director of Human Resources Services
School District of Pickens County

SWORN TO BEFORE ME THIS
DAY OF December 2, 2013



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 7/29/14



1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF OCONEE

3

4 MARIAM R. NOORAI,

5 Plaintiff(s),

6 vs.

Case No.: 2010-CP-37-279

7 SCHOOL DISTRICT OF PICKENS COUNTY,

SCHOOL DISTRICT OF OCONEE COUNTY,

8 AND GARY CULLER, DONALD BOGGS,

RICHARD HUDAK, EARNESTINE WILLIAMS,

9 AND DR. KELLY PEW IN THEIR INDIVIDUAL CAPACITIES,

10 Defendant(s).

CERTIFIED COPY

11

12

D E P O S I T I O N

13 WITNESS: MARIAM R. NOORAI

14 DATE: Thursday, January 26, 2012

15 TIME: 11:07 a.m.

16 LOCATION: Duff, White & Turner, LLC
3700 Forest Drive, Suite 404
17 Columbia, South Carolina

18

19 TAKEN BY: Attorneys for the Defendants

20 REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

21

22

COMPUSCRIPTS, INC.

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1 them. Hunter.

2 Q. Okay.

3 A. Wigingtons.

4 Q. I just ask these questions in the event this
5 case were to go to a trial and we have to select a
6 jury, we kind of need to know the last names of people
7 who would be related to you.

8 A. Right.

9 Q. So that's the only reason why we ask these
10 types of questions.

11 A. There are a lot of different. It was a huge,
12 huge family.

13 Q. That's the main?

14 A. Main ones, yes, ma'am.

15 Q. Okay. And I know you told me your father
16 works for the Port Authority in New York, correct?

17 A. In New Jersey, correct.

18 Q. In New Jersey. Okay. And does your mother
19 work?

20 A. No.

21 Q. Okay. Where did she work -- did she ever
22 work?

23 A. Yes, she did.

24 Q. What was her occupation?

25 A. Before she went to Columbia University for

10

1 her doctorate, she did work for the North Carolina
2 Hospital Association in public relations. After
3 getting her doctorate at Columbia University in English
4 and comparative literature, my sister was already a
5 year old, and so she opted to stay at home with my
6 sister. She also worked for the Renaissance Society in
7 New York with their journal.

8 Q. Okay.

9 A. Part-time.

10 Q. Were you born in South Carolina, or were you
11 born in New York?

12 A. I was born in Bronxville, New York.

13 Q. Okay. How long did you live in New York?

14 A. My family has always gone back and forth
15 between New York and South Carolina.

16 Q. Okay.

17 A. And so I started going to school in New York.
18 I did first grade in Seneca because my grandfather had
19 become ill, and so my father thought it was best to
20 move the family down there to be with my mother's
21 family while my grandfather was ill.

22 Q. Okay.

23 A. So I went to first grade at Kellett. But my
24 father was unable to find a job that would be
25 comparable to what he had in New York, so we moved back

1 from second grade to high school and my primary
2 residence was in Manhattan in New York City, and then I
3 went to college.

4 Q. Okay.

5 A. And then my primary residence shifted to
6 Seneca.

7 Q. So from second grade to high school, you were
8 in New York?

9 A. Yes, ma'am.

10 Q. Okay. Are you a member of any type of social
11 club or organization?

12 A. I have hereditary organizations that I'm a
13 member of.

14 Q. What are those?

15 A. The Daughters of the American Revolution, and
16 the Colonial Dames of the XVII Century are the two main
17 ones.

18 Q. Okay. Do you attend church?

19 A. Yes, ma'am.

20 Q. What church do you attend?

21 A. St. Johns Lutheran Church in Walhalla, South
22 Carolina. It's a family church.

23 Q. Is the pastor related to you?

24 A. No, but my great great great grandfather gave
25 the four main beams that built the steeple for the

12

1 church on my German side. That's their church.

2 Q. Okay. Are you currently a defendant in any
3 lawsuit?

4 A. No, ma'am.

5 Q. Okay. Have you ever been a defendant in any
6 lawsuit?

7 A. No, ma'am.

8 Q. Are you currently a plaintiff in any lawsuit
9 other than this one?

10 A. Yes. I have the -- when I was in a car
11 accident in 2005.

12 Q. And that case is?

13 A. It's still not settled.

14 Q. Okay. So that's still pending. That's the
15 only other lawsuit you have been involved in?

16 A. Yes, ma'am.

17 Q. And this was 2005?

18 A. Was the accident, yes.

19 Q. Was that accident in South Carolina?

20 A. Yes, ma'am.

21 Q. Okay. In the Oconee County area?

22 A. Yes.

23 Q. I know you told me that from second grade
24 through high school you were in New York, correct?

25 A. Yes, ma'am.

1 Q. What high school did you attend in New York?

2 A. I attended The Bronx High School of Science.

3 It's located in the southern part of the Bronx.

4 Q. Okay.

5 A. It's a specialized high school, and you had
6 to take an exam and only the top 6- to 800 students in
7 the city would be able to go there.

8 Q. Okay. What year did you graduate from that
9 school?

10 A. 1999.

11 Q. From there, you told me you went to college,
12 correct?

13 A. Yes, ma'am.

14 Q. And what college did you attend?

15 A. I first was at Emory University.

16 Q. Okay.

17 A. Then I was a junior transfer to the
18 University of North Carolina at Chapel Hill where I
19 graduated with highest distinction.

20 Q. What year did you graduate?

21 A. In 2003.

22 Q. And what degree did you earn?

23 A. I had a Classics degree with a minor in
24 English.

25 Q. What is a Classics degree?

14

1 A. Classics degree, it's the study -- one of the
2 oldest degrees out there. It is the study of Latin,
3 language of Latin and ancient Greek. It's also a study
4 of the culture, civilization, history, and all of that
5 kind of rolled into one.

6 Q. And then, I'm sorry, you also said that
7 you --

8 A. Were an English minor.

9 Q. English minor.

10 Okay. At that time what did you plan on
11 doing careerwise with that degree?

12 A. Ever since I was in the fifth grade, I wanted
13 to be a teacher.

14 Q. Okay. And so 2003 is when you graduated from
15 college, correct?

16 A. Yes, that is correct.

17 Q. And after you graduated from college, did you
18 pursue any further education?

19 A. Yes, I did. I enrolled the same month that I
20 graduated in August at the College of Charleston.

21 Q. Okay.

22 A. And I got a Master's degree in English.

23 Q. What year did you earn that Master's?

24 A. I got the degree in May 2006.

25 Q. Okay. And did you work at all when you were

1 in college?

2 A. I had an assistantship for my last year at
3 the College of Charleston.

4 Q. Okay. And what type of assistantship did you
5 have?

6 A. The first semester I was a writers group
7 facilitator, which means I work with struggling
8 freshman students that were enrolled in English.

9 Q. Okay.

10 A. And I had to create lessons and work a
11 workshop and run lessons for them where they worked
12 with each other and on their own writing to improve so
13 that they were better prepared for college.

14 Q. Any other assistantships that you had?

15 A. The next semester, because they did not have
16 the writers group for the spring semester, I was the
17 research assistant for two separate professors in the
18 English department, and I had to do research and other
19 tasks for them that they needed to help working on
20 their projects.

21 Q. Do you remember the names of the professors
22 that you worked for?

23 A. The one was Dr. Joe Kelly, and I cannot think
24 of the other one.

25 MR. CROMER: Man or woman?

16

1 THE WITNESS: She was a female.

2 BY MS. DICKEY:

3 Q. So in May 2006 when you earned your Master in
4 English --

5 A. Yes.

6 Q. -- did you receive any other degrees after
7 that?

8 A. Yes, I did. Within a month I had started at
9 Clemson in the MAT program, become a middle grades
10 English teacher.

11 Q. What does MAT stand for?

12 A. Master's of Arts in teaching.

13 Q. Okay. And you said that you wanted to be an
14 English middle school?

15 A. English teacher or high school teacher. I
16 took the exam so that I was highly qualified to also
17 teach secondary English.

18 Q. Okay. What exam did you take?

19 A. I had to take three exams, two different
20 English subject exams for secondary, and then the PLT,
21 the Principles of Learning and Teaching, which I
22 received a certificate for my high score on that.

23 Q. What year did you earn your MAT?

24 A. I was only in the masters program for 11
25 months, and I finished my Master's in May 2007.

1 Q. Okay.

2 A. May 11.

3 Q. Okay. Now, while you were at Clemson, did
4 you work anywhere, did you student teach anywhere?

5 A. We were unallowed to have a job. We had to
6 actually sign that when we started the Master's
7 problem, but I did my practicum and student teaching at
8 R.C. Edwards in Central, South Carolina.

9 Q. And so that was in 2---

10 A. We started in fall of 2006 and finished in
11 spring 2007. And I also did substitute. The
12 cooperating teacher and the principal wanted me to take
13 sub training, and so I did take sub training so that I
14 could fill in for the eighth grade teachers as needed
15 when I wasn't doing my practicum or student teaching.

16 Q. Okay. Now, in whose class were you doing
17 your student teaching in?

18 A. Both semesters in Marilyn Raines' eighth
19 grade English class.

20 Q. Just tell me about just the duties of a
21 student teacher, what did you have to do on a daily
22 basis?

23 A. There's varying duties. The first part is
24 your practicum, and you're really just supposed to be
25 observing, helping with tasks, preparing lessons, and

18

1 doing stuff like that. I actually, because my teacher,
2 my cooperating teacher's father fell ill within the
3 second week, I think, of school, so I was doing a
4 majority of, a lot of teaching in both her class and
5 also the other English teacher, they taught the same
6 subjects.

7 Q. Okay.

8 A. And that teacher was having issues trying to
9 get pregnant. And then when she finally did get
10 pregnant, she had issues, so I had to fill in and do a
11 lot of teaching in her classroom as well.

12 Q. What was that teacher's name, the other --

13 A. Christine Matthews.

14 Q. Okay. And what grade did Marilyn Raines
15 teach?

16 A. Eighth grade.

17 Q. And Christine was eighth grade as well?

18 A. Yes, ma'am.

19 Q. Was this eighth grade ELA?

20 A. It was language arts, yes.

21 Q. Is that what essentially what ELA stands for?

22 A. English language arts.

23 Q. And that encompasses what areas, is it just
24 writing or is it --

25 A. It's reading, it's writing, it's

24

1 that I just do all the writing for the courses. All
2 the writing standards. The second year it changed.

3 Q. Okay. Do you remember what your salary was
4 that first school year?

5 A. I don't remember exactly what my salary was.
6 I was actually told by the lady at the district office
7 they had never had a first-year teacher come in making
8 as much. It was close to 40,000.

9 Q. Okay. And did she tell you why they had
10 never had a first-year teacher coming in at that --

11 A. Because I had two master's degrees, so I was
12 already at the masters and 30 plus.

13 Q. Okay. So you taught eighth grade language
14 art strategies; is that correct?

15 A. Yes, and yearbook.

16 Q. And yearbook. What were your duties as
17 the -- were you the yearbook adviser?

18 A. I was the yearbook adviser. I had a class,
19 and I was also in charge of producing the yearbook,
20 yes.

21 Q. So what were your duties as the yearbook
22 adviser?

23 A. I had to teach the yearbook class, which was
24 just one of my regular classes the first semester.

25 Q. Okay.

36

1 BY MR. CROMER:

2 Q. Tell me about -- now, Gary Culler came in for
3 the '08-'09 school year, correct?

4 A. Correct.

5 Q. Tell me about your relationship with
6 Mr. Culler. Did you get along with him ever, initially
7 or --

8 A. He made me uncomfortable from the beginning.

9 Q. When you say "from the beginning," the
10 beginning of the '08-'09 school year?

11 A. Yes.

12 Q. And how did he make you feel uncomfortable?

13 A. Initially and it became very much escalating,
14 I didn't like the way that he kind of looked and kind
15 of leering. And he also had the habit when he would
16 come in to encounter me, he would always block the exit
17 so that there was no way for me to get out.

18 And, for example, it was always very
19 argumentative, I guess, kind of aggressive towards me.
20 For example, on August 25th, 2008, he came and brought
21 documentation into my room. And I was sitting at my
22 desk, you know, preparing for my next class. It was
23 during my morning planning period, I believe.

24 Q. Okay.

25 A. And he said that he had a federal form that I

1 A. If my memory serves.

2 Q. So you asked your mother to call Detective
3 Burgess?

4 A. Yes.

5 Q. Are you saying that you did not ask your mom
6 to pretend to be you when you called?

7 A. No. She was calling on my behalf, which I
8 guess is where the confusion come from.

9 Q. Okay. Now, do you recall being involved in
10 an incident with someone named Richard Hudak?

11 A. Yes, I do.

12 Q. Who is Richard Hudak?

13 A. Richard Hudak was an industrial arts teacher.

14 Q. Okay. Tell me about the incident that you
15 had with him you referenced in your complaint.

16 A. Oh, surely. I have to give the background
17 information first, if that is all right with you.

18 Q. Sure.

19 A. Okay. First of all, eighth-grade policy, and
20 it's been there since I student taught for the two
21 years that I taught there, that they believe in giving
22 students plenty of extra time to -- if they need some
23 extra time to complete tests. Especially because this
24 was I believe in April, and so this was approaching the
25 May PASS testing. Although the writing PASS testing

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1 was over, I was enriching and enhancing, as the
2 District required me to do the other English language
3 arts standard.

4 Q. Okay.

5 A. It was a very important test. It was a very
6 lengthy test. I had a few students who needed to take
7 a little longer. This was first period. Their second
8 period class is a related-arts-type class.

9 Q. Okay.

10 A. Okay. So it was not a core class. But
11 plenty of times core teachers allow students to stay
12 late, even sending them to a core teacher late with a
13 pass. It was standard practice, accepted. And I
14 allowed some students to stay. I sent them to their
15 teachers after whatever, you know, extra 5, 10 minutes,
16 15 minutes, whatever it took for them to finish. I
17 sent a particular student was going to Mr. Hudak's
18 class. And so then I sent some other students after
19 that to wherever the classes they were going.

20 I then left my room. I locked -- I left my
21 room, you know, closed it up. I went to the teachers'
22 workroom. I went to start doing some teacher stuff to
23 do during a planning period. When I came back to my
24 classroom, getting close to when second -- you know,
25 the second period was over, I noticed that the student

126

1 for the sixth graders. Now, the sixth graders were on
2 their way to their related arts class. They move, I
3 think, about four minutes before the other students.

4 Q. Okay.

5 A. So Mr. Hudak had a long class full of eighth
6 graders that still had class that were not out of class
7 yet. They were still in class in the shop class. He
8 had a group of sixth graders who were lining up to go
9 to class at this time. But Mr. Hudak was not there.
10 He was standing outside my door.

11 So when I come down the steps, I see that he
12 is there. He is very angry. You can tell by his stare
13 and his demeanor. He is a very large man. He looks
14 like ex-military, big, puffy, muscular, large man. And
15 he was brooding and standing in a very square, very
16 loud, aggressive stance.

17 And you have to remember this is soon after I
18 came back. I had a tube sticking out of me. I had
19 medical complications. I was very weak and very pale,
20 you know, look what I was doing. So this was a state.

21 The whole school knew that e-mails had been
22 sent out about my complications, so my medical
23 condition was known.

24 Q. This is your gallbladder?

25 A. Yes, the complications from the gallbladder.

1 And that everyone knew that I had an excuse from the
2 doctor, that I could have been out longer but the
3 surgeon felt that getting me back in the workplace, as
4 long as I took it easy and was not stressed, that it
5 was better for me to go to work than to stay at home.

6 Q. Okay.

7 A. So when I came down, I was almost so
8 intimidated by the fact the way Mr. Hudak was standing
9 and his look of anger. I mean, he was not hiding it.
10 And there were students already in the locker area.
11 The bell had rung at that time. My eighth graders were
12 starting to come down.

13 And I went down there and he started verbally
14 berating me and screaming at me for being
15 unprofessional for keeping a student. And he just went
16 off and was screaming and shouting as my students were
17 walking into my classroom, as all the students that
18 were in the locker room. He was screaming and
19 shouting.

20 It didn't matter what I said, he didn't hear
21 me. He just kept on. He was gesticulating with his
22 finger. I mean, it was a horrible, screaming, shouting
23 thing.

24 He was so angry that when he stood to leave,
25 because it was getting ready for the late bell to ring,

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1 so his eighth graders would have left but his sixth
2 graders were still unattended in his classroom, he then
3 stood back, slammed into one of my eighth grade
4 students who was trying to enter my classroom. The
5 girl hit the door and slammed her head, and I had to
6 send another student to get ice for her injury that
7 Mr. Hudak caused and completely ignored.

8 And then my students that were walking in,
9 one of the students said, "That was so disrespectful."
10 And I tried to completely ignore what had happened, as
11 a good teacher would do, just teach the class, don't
12 have any unpleasantness, unprofessionalism in front of
13 students. And the student repeated, "What Mr. Hudak
14 just did to you is disrespectful."

15 But I just start class. I ignored it. I was
16 able to send an e-mail to Mary Bridges --

17 Q. Okay.

18 A. -- to tell her that I had a concern about
19 something that happened. I believe I said it happened
20 in between the end of second, before third started.

21 Q. Okay.

22 A. She was busy. I didn't get a response from
23 her. So then I had to talk to her at some point. I
24 remember she was out at bus duty at the end of the day.
25 I knew this had to be discussed that day.

1 When I came back, not the following day but
2 the day after, I believe it was a Friday. Because this
3 stretched on for weeks, this back and forth with
4 Mr. Hudak.

5 Q. Okay.

6 A. When I came back, it was the first day that I
7 had felt like myself since a semester before. Before I
8 had gotten this sick and started having all of these
9 tests and unpleasantries.

10 Q. Right.

11 A. I taught all my classes. I was on my last
12 class. They came on the loud speaker, I believe, and
13 said, "Please check your e-mail." Because sometimes
14 they would say you need to check an e-mail. They
15 wanted to know were students out of a classroom at a
16 certain time.

17 So I went on and checked my e-mail, and I saw
18 that I had an e-mail from Mr. Hudak. Of course, you
19 can see part of the e-mail. And I just almost fainted
20 right there. I mean, it was a horrible, aggressive,
21 nasty e-mail. And going off about how I was
22 unprofessional, how Mr. Culler agreed.' And this is
23 just from my memory. If I had the e-mail I could, you
24 know, tell you more about it.

25 But, anyway, I had to print the e-mail off.

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1 Once the class -- again, I finished teaching the class,
2 didn't show anything to the students. But I felt sick
3 and horrible. I could not believe that someone was
4 attacking me like this when I had done nothing wrong
5 and was saying he was doing it because the principal
6 told him that I was the wrong person, the wrong party,
7 and that he had the right to go off on me.

8 I then took the letter. It was printed off.
9 I went up to the office. I did not see Mr. Culler. I
10 went to Marilyn Raines. I showed her the letter, and
11 she said she wanted me to go up and either have the
12 secretaries call him on the walkie-talkie, Mr. Culler,
13 or just wait for him to come because he had to see that
14 letter for himself.

15 Q. This is Mr. Culler who needed to see it?

16 A. See the letter.

17 Q. Okay.

18 A. I finally got Mr. Culler in the office. He
19 read the letter. He read it a couple of times. He
20 took notes on the letter. He agreed that this letter
21 was, you know, accusatory in tone. He also said that
22 he, again, thought he had taken care of it, that he was
23 going to take care of it. He couldn't believe that
24 Rich was pushing it. He told me the only reason Rich
25 was pushing it is because he was upset about the

1 to resend the e-mail.

2 And so he went to go see Mr. Hudak, but he
3 told me that he was -- this was going to be the end of
4 it. There was going to be no more contact on either
5 side. He was taking care of it, ending it, you know,
6 just and for all.

7 I tried to tell him, now, starting -- that
8 I'm going to have my duty spot outside and Mr. Hudak
9 had the next spot and I was intimidated by that. And
10 he just completely ignored what I was saying and just
11 said, "There will be no more contact and no apologies
12 on either side," and that was that.

13 Q. So did you have any more encounters of this
14 type with Mr. Hudak again?

15 A. He did not send any more e-mails or contact,
16 but he kind of followed me outside. He kind of
17 watched. He would come behind me when our duty was
18 over and kind of slam his feet and kind of speed up and
19 slow down. So it's just intimidation, but he never
20 again mentioned it. And it was towards the end of the
21 year.

22 Q. Now, during -- going back to the incident in,
23 I guess it was the hallway in front of the students
24 with Mr. Hudak that you were describing earlier, at
25 that time were you in fear of Mr. Hudak?

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1 A. He's very intimidating. I mean, he was so
2 angry, I wouldn't have been surprised if he struck me.
3 And the way he slammed into my student was horrible.

4 Q. So were you in fear of him during that time?

5 A. Yes, I was in fear of him.

6 Q. And did he at that time make any threats
7 towards you?

8 A. He was just screaming and shouting about
9 everything that had happened and just going off. It's
10 not stated but when someone is that angry and that
11 aggressive, it's understood.

12 Q. Okay. So I'm just trying to understand what
13 exactly about him at that time made you fearful?

14 A. Because he was screaming at me, he was
15 criticizing me, he was telling me how horrible I was
16 and what I did was so wrong. And it was just -- it was
17 a personal attack. And this is the type of thing that
18 he had been addressed for in the past.

19 An earlier incident happened with a student
20 teacher, and the principal, Mr. Sanders, handled it
21 very swiftly and nothing followed that when he had
22 attacked a student teacher. Because that teacher who
23 was the former student teacher worked there and she
24 told me about it and she said there was no comparison
25 about how it was handled. Because her situation was

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1 So it was made very clear.

2 Q. Okay. Do you recall receiving a Contract of
3 Employment for the '09-'10 school year with Pickens?

4 A. Yes. I received a continuing contract.

5 MS. DICKEY: Okay. Just so we have it in the
6 record.

7 (DEFT. EXH. 13, Contract for Professional
8 Services for the 2009-2010 School Year, was marked for
9 identification.)

10 BY MS. DICKEY:

11 Q. Okay. Ms. Noorai, have you ever seen this
12 particular document?

13 A. Yes, I have.

14 Q. And can you just identify it for me?

15 A. It's my tenured or continuing contract that
16 was offered to me.

17 Q. Okay. And it's dated May 15th, 2009, signed
18 by Mendel Stewart. Who was Mendel Stewart?

19 A. He was the interim superintendent at the time
20 before they had hired Dr. Hunt.

21 Q. Okay. And did you -- it's dated May 15th,
22 2009. Is that when you received it?

23 A. I believe so. We had to turn it in the day
24 after Memorial Day. That's all I remember.

25 Q. It says, under Special Conditions, "Please

1 indicate your acceptance of this agreement by signing
2 below and returning the original to the superintendent
3 on or before May 25, 2009."

4 So did you understand that if you intended to
5 accept employment with the District for the next school
6 year, you had to sign this and turn it in by the 25th
7 of May?

8 A. Yes, ma'am, I did.

9 Q. Okay. And did you sign your contract of
10 employment?

11 A. This was a very difficult decision for me to
12 make and so it took -- where I went trying to decide
13 whether the school that I had planned to stay for the
14 rest of my career, with all the staff that I cared for,
15 that I worked well with, the environment had changed.
16 It was not the same place. Although the students were
17 the same and the community was the same, it was a very
18 tough decision for me to make whether I could stay at
19 that school.

20 Q. Okay.

21 A. And I went -- the decision was very difficult
22 for me, and it made -- it was a hard station to make
23 and I went back and forth quite a bit. I knew that I
24 had to discuss it and with whatever findings I was
25 coming up with with Marilyn Raines, because of the

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1 teacher from the beginning. The administrators did not
2 want to lose me.

3 Mr. Sanders made a phone call before my
4 District screening interview to Ms. Lackey. When I was
5 there, Ms. Lackey asked me was I the student teacher
6 that Mr. Sanders called about to say if he couldn't
7 have me at Edwards, he didn't want me out of that
8 District so as soon as there was an opening at Edwards,
9 he could have me go there. Nobody had wanted me to
10 leave the school.

11 So Mary Bridges, on her own, went and I guess
12 had a meeting with Mr. Culler. She said she was going
13 to be out at the high school in the -- that next day
14 and that she would talk to me whatever the decision
15 was.

16 When I came to work and I was signing in the
17 office, all that Mr. Culler did was wink at me in an
18 inappropriate manner. And so he didn't say anything.
19 He didn't say anything for the rest of the day. At the
20 end of the day, Mary Bridges came and found me, and I
21 was -- where we were getting ready for the eighth
22 graders to get their materials for this big field trip.

23 She said, "Did Gary tell you that he wanted
24 to talk to you this morning?"

25 And I looked at her and with tears in my

1 eyes, I told her, "All he did was wink at me."

2 And she said, "Well, he was leaving for the
3 District office, or was there any way that I could stay
4 until he came back so I could discuss this with him?"

5 And it was the day of the dance. I waited at
6 the school till 5:00 before Mr. Culler made it back to
7 the school. I met him outside. There were the cars.
8 It was out in public, with the parents. I felt very
9 comfortable addressing him there.

10 And I said to him, "Mr. Culler, Mary Bridges
11 said that you want to --" "-- you wanted to talk to
12 me."

13 And he just said, "No, I don't."

14 And so I said -- I had to catch my breath
15 because that caught me completely off guard by his
16 abrasive tone and the fact that Mary Bridges had told
17 the opposite. I told him that I regretted to inform
18 him but if I was going to be required or forced to do
19 yearbook, that I would be unable to sign my contract.

20 He told me that he didn't want to discuss
21 that there, so he had me go to his office to discuss
22 it.

23 Q. Okay. So did you end up signing your
24 contract?

25 A. I hadn't made the decision yet.

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1 Q. But I'm just saying, did you end up signing
2 your contract with the District?

3 A. No, I did not sign it.

4 Q. Okay. That was the question.

5 Now, you talked about the heavy class load,
6 student load, and not wanting that to be jeopardized by
7 working with the yearbook. Now, did -- is that the
8 reason why you decided that you did not want to
9 continue working with Pickens County School District?

10 A. My reason not to was conflicted, and it was
11 more than just one simple thing. The environment in
12 which I worked was no longer a safe environment for me
13 or my students. I just wanted to decide -- it was hard
14 because I didn't want to leave. You have to
15 understand, this was a very difficult decision. I
16 mean, I had really thought I would never leave this
17 school. But our school went through three principals
18 in one year. This was not -- it wasn't becoming the
19 place that I had expected. It was just not the same
20 place.

21 There was things that happened to me, things
22 happened to students that should not have happened.
23 And so I was trying to figure out what was the best
24 thing. A principal who constantly told me what was he
25 going to force me to do was not professional or

1 appropriate. I was made to feel uncomfortable by him
2 at every single encounter. He would go out of his way
3 to sometimes isolate me from others or kind of say
4 things in manners in which I looked like -- I felt like
5 I was being singled out for being stupid or incompetent
6 or not doing what was being asked of me.

7 And so I had to, you know -- when I had this
8 meeting with him, I was wanting to sign the contract
9 but his manner in which he carried on that meeting,
10 referring to me as a "little writing teacher," and how
11 I could just, you know, go on to do things, and the
12 belittling manner is how he always addressed me. It
13 was just not appropriate.

14 He then called Mary Bridges into the meeting
15 and he was trying to coax me to sign my contract. He
16 wanted Mary Bridges there. He told me how I could sign
17 my contract and he would let me get out of it if I
18 found a job within a month. And he would let me out.
19 He explained he did this himself when he left Woodmont
20 for Easley, he signed a contract in Greenville. He
21 left it and broke it when he went to Easley High
22 School.

23 He kept saying, "Mary, don't you agree that
24 we'll let her out if she can find a job within a
25 month?"

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1 So Mary said, you know, "Okay."

2 And so that's how the conversation ended. I
3 left crying my eyes out the whole way home. I called
4 and spoke to Marilyn Raines on the phone. I was
5 balling my eyes out. It was the most horrible, most
6 painful thing. But there was just no way I could stay
7 there.

8 So when I came back, I had made the decision.
9 It was Memorial Day. I was to leave for the
10 eighth-grade field trip, which I was required as an
11 eighth-grade teacher. They had asked me to go, so I
12 said that I would go.

13 Mr. Culler was not there. Mary Bridges was
14 there as the administrator. I had had a note. She
15 asked me what my decision was because Mr. Culler said I
16 could have until he came in the day after Memorial Day
17 to make my decision, whether I signed my contract or
18 not, because that was when they had to be taken off.

19 I told Mary Bridges that I had put a note in
20 her box and that it was painful for me, but I was not
21 signing it. She looked at me and she said, "You mean
22 you're not doing what Gary told you to do?"

23 Q. Which was what?

24 A. Was to sign my contract. And I said, "No,
25 ma'am. I was taught that you don't sign a contract --"

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1 your contract for the '09-'10 school year, do you
2 recall drafting a letter of resignation regarding that
3 decision?

4 A. Yes, but can I explain the context of that?

5 Q. Okay. But you do recall drafting --

6 A. Under duress I wrote it.

7 Q. So you do recall drafting the letter,
8 correct?

9 A. Under duress, yes.

10 Q. You recall drafting a letter of resignation
11 from employment with the District. Who asked you to
12 write that letter?

13 A. The first person to ask me to write that
14 letter was Gary Culler because he said if I didn't
15 write this letter -- and he asked me this when I
16 returned from my interview on June 1st where he knew
17 that I had gone for an interview --

18 Q. Let me stop you. How do you know -- did you
19 tell him you went to interview?

20 A. When I returned from the eighth-grade trip on
21 Friday, I knew that the interview was set up. I was
22 very up front. I waited, again, because being
23 uncomfortable, I did not want to go into his office. I
24 waited until he was in the office, in front of the
25 office staff, the secretary, et cetera. I told him

1 Bridges was going to have certificates and other things
2 for me to sign. So to do my due diligence and make
3 sure I did everything I needed, I went back to the
4 school.

5 On my way in to go check my mail, that is
6 when Mr. Culler, who was sitting at the secretary's
7 desk shouted, "Noorai," and so he followed me in to
8 where the mailboxes were. And this is where he told me
9 that he wanted me to write a letter of resignation so
10 that he could interview. And until I wrote this letter
11 of resignation, he could not interview anybody for my
12 position and so it would be hurting the school.

13 It wasn't a desperate thing that I had to
14 write immediately, but he just kept going on, he could
15 not interview. And I took him at his word. I did not
16 think it sounded correct, but that's what was said.
17 And from that I checked my box, I then went to speak to
18 Mary Bridges to make sure there was nothing that she
19 needed from me with the certificates in relation to
20 writing stuff or yearbook.

21 And that is the time that I heard Mr. Culler
22 going off in the office because he kept wanting to talk
23 to Mary, and he started going off about which teachers
24 were weak and which teachers were strong because he was
25 trying to plan who was going to watch what during

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1 yearbook day. And it made me very uncomfortable to
2 hear my colleagues being spoken to in such derogatory
3 terms or groupings.

4 Q. Okay. So Gary Culler asked you to write a
5 letter of resignation, and I believe you said that he
6 asked you to write it so that he would be able to
7 interview you for your position?

8 A. Yes. Because without the letter, he could
9 not interview for the position.

10 Q. Okay.

11 A. And there was not a rush. He just wanted me
12 to write it when I got a chance. He knew yearbook day
13 was coming --

14 Q. This was on June 1st?

15 A. Yes. When I came back from my interview.

16 Q. When did you draft this letter of
17 resignation?

18 A. Well, it was the last day of school. It was
19 Thursday. I think it was June 4.

20 Q. Okay.

21 A. I had to be dealing with some last minute
22 yearbook stuff. Some students had got -- was not here
23 on yearbook day. She had gotten her yearbook, had left
24 it in the classroom and other students had defaced it.
25 So I was on the phone with an angry, older sister, who

1 was going off about how her younger sister had these
2 horrible, disgusting comments written about her on the
3 yearbook. And she was demanding another copy of the
4 yearbook.

5 We had sold out all the yearbooks, so I had
6 to -- first, I had to go find Mr. Boggs to see if there
7 was anything that could be done. He said the school
8 year is over, the kids are on the bus, they're going
9 home, nothing we can do. I had to go back, tell the
10 sister how there was nothing that could be done. I got
11 screamed at by the sister because she was very angry
12 because she didn't like what was written in her younger
13 sister's yearbook. So I left -- and I had taken that
14 call because of the loudness of the sister, the
15 bookkeeper was so sweet to have me use her office for
16 the second call because she knew how angry the sister
17 was.

18 When I was walking out of the bookkeeper's
19 office, I heard Mary Bridges call to me from the office
20 of one of the guidance counselors, Paula Doolittle. So
21 I went into Paula's office, where it was just Mary
22 Bridges. And she said very plainly, I needed to -- she
23 needed to tell me that Mr. Culler wanted her to tell me
24 that if I did not write my left of resignation that
25 day, my certificate would be pulled and I would never

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1 teach again in the state of South Carolina.

2 Q. Okay. So Paula Doolittle?

3 A. No.

4 Q. Mary Bridges --

5 A. Mary Bridges in --

6 Q. -- told you?

7 A. -- Paula Doolittle's office.

8 Q. That Gary Culler --

9 A. Told her.

10 Q. -- that if you do not draft that letter of
11 resignation -- was it that day that you had to do it?

12 A. Yes.

13 Q. -- that your certificate would be pulled?

14 A. I would never be able to teach again. And I
15 was in shock. I couldn't believe this. But I thought,
16 well, if she says and he says he can do that, then it
17 must be true because why would they lie to me.

18 So I looked at her, and I said, "Mary, I was
19 going to write it. I've been busy."

20 She says, "I know you were busy, and it's not
21 that Gary doesn't think you're not going to write it,
22 but he wants you to know what the consequences are and
23 it's very serious."

24 And I said, "Mary, I don't have any paper, I
25 don't have a computer, I don't have anything in my

1 room, it's completely emptied."

2 They had the desk, you know, packed up that I
3 was taking home. It was my desk. I said I had
4 nothing.

5 She said, "Well, you can use the computer in
6 my room."

7 And I said, you know, I was -- you know, "I
8 do it because I did not want to lose my certificate."
9 I went to Marilyn Raines to borrow a pen and to get a
10 piece of paper so that I could draft my letter of
11 resignation so that I would not lose my certificate. I
12 went down to my room. All the desks and chairs had
13 been taken out because they were going to be waxing the
14 floor. I had a big long cabinet against one wall. I
15 had to sit on top of the cabinet to write my rough
16 draft letter. I was becoming really upset.

17 I couldn't believe that someone -- I had
18 worked so hard to get my professional teaching license.
19 I had to pass ADEPT with a perfect score. I had been
20 offered the top professional continuing contract. Not
21 every second year teacher who passes ADEPT is offered
22 that. I knew that that was a sign of how the District
23 respected me and my abilities.

24 And so I wrote it, and I went to take Marilyn
25 Raines back her pen. And we were getting ready to have

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1 our big barbeque lunch. And I guess there had been a
2 celebration planned for the teachers that were leaving.
3 And they knew that, you know, barbeque might not be
4 something I wanted to eat.

5 So when I walked to over to Ms. Raines and to
6 Kristine Matthews, they said, "Now, you're going to
7 have to sit down and eat with us whether you can eat or
8 not. So you're going to have to stay."

9 And I broke into tears at that instant
10 because I had realized what that threat meant. And I
11 said, "No, I cannot." And I turned and I walked out of
12 the school and got into my vehicle to cry my eyes out
13 because what was happening and the unfairness of it and
14 how everything was escalating and had gotten to this
15 point and how unsafe and unprofessional a place that
16 school environment was and that I could no longer stay
17 there.

18 And I cried and I cried. And then Marilyn
19 Raines came out to my vehicle, and she had a message
20 from Mr. Culler. And she told me that I was supposed
21 to come in there and that he wanted me in that
22 cafeteria for that celebration and that if I didn't
23 come, he was going to be angry. I just had to come in
24 there for them to do the little ceremony and the little
25 PowerPoint or whatever else they had for me.

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1 And I told her, "I'm sorry, I don't care at
2 this point what he wants me to do." I needed to be in
3 my own vehicle for myself, and I refused go in.

4 Following that, first Mr. Brooks had come out
5 because he was leaving for the day. He could tell I
6 was upset. He didn't ask any questions. Then Mary
7 Bridges came out. My vehicle was parked in a giant
8 puddle because when it rained, it was a very rainy day,
9 it would flood up.

10 Mary Bridges took her shoes off. She stood
11 in the puddle, and she said she was angry, too, just as
12 angry as I was. Angry about what was happening. It
13 wasn't fair. And that she wasn't leaving that puddle
14 till I got out of that vehicle. She was going to take
15 me to her office so that I could write this letter so
16 Mr. Culler would be happy. He would leave me alone.
17 She would have me locked in there. Nobody could come
18 in there, that I would be safe and fine.

19 Q. This was Mary Bridges?

20 A. Bridges. So because I didn't want her
21 standing in that puddle any longer, for her, I got out.
22 She walked me in there. She told me how something I
23 never want to happen was to lose my certificate.
24 That's very serious and hard to get back. So to just
25 do what he said so I wouldn't lose it.

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1 She walked me in there like I was a student
2 who had done something wrong. I got taken straight up
3 to her office. I was locked in there so that I could
4 write the letter. She didn't want anybody coming in
5 there.

6 She handed me a box of Kleenex. Her office
7 is a very small, kind of long and narrow office. She
8 has her door kind of all the way over on the left in
9 the back. Her computer is all the way at the other end
10 of the office, more on the right side. So it's the
11 full length of the office. I'm sorry, it gets kind of
12 difficult.

13 So she had me start writing it. I was in
14 there a long time writing this letter. Because I
15 didn't know what to do, she tried to show me a sample
16 letter. I didn't know what to say. She kept saying
17 she was going to be in Paula's office. They were
18 working on scheduling.

19 She had -- there's a small, like most of the
20 doors, there's a window, a very long, kind of narrow
21 window that goes down. But she had her window of her
22 door blocked by a white cardigan kind of buttoned-up
23 sweater that she had hanging on the back of the door.
24 So she had that so it's like when you're in there
25 nobody can really see what's going on in there, the way

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1 she had her sweater that was hanging there.

2 So she would go -- and she got it locked so
3 that it couldn't be opened by anyone but herself
4 because she was the only one, she said, with that key.

5 Q. Okay.

6 A. So I was writing the letter. It was taking
7 forever. I finally heard a knock and kind of bang on
8 the door. And so it was Marilyn. She was there with
9 the white orchid and a gift -- the gift card from just
10 the eighth-grade teachers. And she told me, you know,
11 that -- she came in there, so I had to let her in. She
12 stayed in there a while. I told her that Mr. Culler
13 said if I didn't write this letter that I would lose my
14 license. She didn't tell me that it wasn't true.

15 She just said, "Well, I guess I better go to
16 let you write this letter." So she left. But when she
17 left, she obviously did not -- the door didn't relock
18 when she left. And so I stayed in there thinking that
19 I had the security that the door was locked.

20 So then sometime later the door opened and
21 Mr. Culler came in there, and he was very angry. And
22 he was screaming, and he was going off. He came and he
23 closed the door. He's standing with a bright red face.
24 He was so angry. He was screaming. He had excitement.
25 He had pleasure on his face because he seemed to take

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1 pleasure of the fact that I was completely scared, that
2 I was completely crying, that it was -- I was just in a
3 state. It was horrible. And he was going off and
4 taking pleasure in that I was doing what he wanted, but
5 that wasn't enough.

6 Then his face kind of changed a little bit,
7 and it appeared that he was having an erection and he
8 came forward to get in the seat that was in front of me
9 and he sat down and his tone kind of changed. And he
10 kept going off, "I thought I had explained it to you
11 the first time. I needed you to write this letter."
12 And he went off about how he couldn't interview -- all
13 the good teachers would already be interviewed, "even
14 you," he said, so even I had an interview, implying I
15 knew at that point I didn't get that job.

16 And he went off and he was screaming and he
17 just saying this was this and he kept on. I kept
18 asking him to leave. He did not leave. I told him to
19 please, you know, just leave me alone. Then he kept
20 on, so then I said, "I'll give in."

21 He said, "You're not really upset about
22 writing this letter."

23 So I said, "No, sir, I'm not." I just wanted
24 him to leave the room, but he wouldn't. And I guess he
25 was collecting himself so that when he left he would

1 not be that disheveled. He finally left. And then he
2 sent in Mary Bridges right away. And Dr. Pew even said
3 in her letter that he realized that I was more upset
4 when he left so had Mary Bridges come in there to check
5 on me.

6 I was crying my eyes out, so Mary Bridges
7 came in. She starts refixing the door so that it would
8 lock. She said, "Oh, silly Marilyn --" "-- silly
9 Marilyn didn't refix the door for it to lock."

10 And so she then looked at the letter that I
11 was writing. She said it was a good letter. But she
12 said she had the envelopes for me. She said that I had
13 to understand if I tell the whole truth with what
14 happened, it was going to make Gary angry because he
15 would read it. So whatever I said, I had to know that
16 my letter may cause him to be angrier than he already
17 was based on what I wrote, how much of the truth I put
18 into it.

19 And so she left. I eventually finished the
20 letter. I put two copies, one in the envelope for the
21 District, another for Mr. Culler's box. Okay. And
22 when Mr. Culler had come in there and he was doing his
23 thing, I really several times almost picked up the
24 phone and called 911 because I was scared to death. I
25 have never seen anything like that or the anger or

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1 anything. It completely beat what Mr. Hudak did. I
2 was more violated than I was with the student.

3 So when I finished my letter, I went into the
4 office with my head down. I put the letters, and I had
5 to go to Paula Doolittle's office to find Mary Bridges.
6 And she said, "Okay," because I told her I had
7 finished. And she told me that I had to -- had a
8 little checklist that had everything and the last thing
9 you had to turn in your keys, turn in your
10 walkie-talkie, all the things you had to do. And that
11 the last thing was an exit interview that you were
12 supposed to have with the principal.

13 Mary Bridges asked me, "Can you have this
14 exit interview with Mr. Culler?"

15 And I told her, "After what he did, no, I
16 never want to see that man again."

17 And she said I didn't have to. So she sent
18 me to Susan Rowland's office to turn in -- to get her
19 signature, the walkie-talkie was turned in. That I
20 didn't have any receipts that I needed to give her.
21 Then I came back to Mary Bridges. She signed my exit
22 interview. She told me to go on and leave before she
23 started crying.

24 I went down -- I had to go to Marilyn Raines'
25 room because I had my handbag locked in her closet

1 because I had nothing in my room where it would be
2 locked. So then I got my bag. There were a group of
3 eighth grade teachers that were there. James King was
4 there. Traci Hedetniemi was there. Kristine Matthews
5 was there. Marilyn Raines was there. And Rachel
6 Gregory, who was like -- I think she was more in
7 seventh grade at that point. She had been a fill-in
8 teacher, was there working on scheduling.

9 All the teachers, when I walked in they
10 stopped their laughter, they stopped all the fun. They
11 looked and put -- they looked at me and put their heads
12 down. They wouldn't say anything to me. Marilyn went
13 and got my handbag. I got my bag. She said how she
14 was going to miss seeing my little twinkle in my eye
15 that she had gotten used to for three years being at
16 that school, that it was going to be sad with me not
17 there.

18 I left. I then met one of the art teachers
19 that was retiring out there. He stayed with me. They
20 moved my desk out, and then I left. Mary Bridges told
21 me that I did not need to come back the next day. That
22 that was it.

23 MS. DICKEY: Okay. We can take a short five-
24 or ten-minute break, then we'll resume.

25 (A recess transpired.)

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1 or belief as to why Mr. Culler would in a way single
2 you out as far as his treatment of you?

3 A. I don't know why he would do that. I don't
4 know. I just know that it happened.

5 Q. Now, did you end up meeting with Dr. Pew
6 about your complaints regarding Mr. Culler?

7 A. Yes, I did.

8 Q. And do you remember about when that happened?

9 A. It was around June 29th, I think, around
10 then. It was towards the end of June.

11 Q. And did you prepare any type of document in
12 preparation of your meeting with Dr. Pew?

13 A. No. The SCEA asked me to document before I
14 met with Janet Stein.

15 Q. Okay.

16 A. And so that -- I had a document, and it was
17 her decision. She wanted me to take that and write up
18 a little bit more for Dr. Pew.

19 MS. DICKEY: Okay.

20 (DEFT. EXH. 15, Chronology, Pickens Defs 43
21 through 67, was marked for identification.)

22 BY MS. DICKEY:

23 Q. Okay.

24 A. Yes, this is the document that Janet Stein --

25 Q. Okay.

1 A. I had written up the chronology, and then she
2 told me what else that I should write, the opening
3 statement in the chart.

4 Q. Okay. And just for purposes of the record,
5 this is a 25-page document, correct?

6 A. I believe so.

7 Q. Yeah. And the first page has Opening
8 Statement?

9 A. Yes.

10 Q. So this is a document that your SCEA rep
11 asked you to draft in preparation of your meeting --

12 A. Yes.

13 Q. -- with Dr. Pew?

14 A. Yes, ma'am.

15 Q. Do you remember about when you drafted this
16 document?

17 A. It was in between leaving Edwards June 5th
18 and before meeting with Dr. Pew.

19 Q. Okay.

20 A. By the middle of June.

21 Q. And the first, I believe, four pages are an
22 opening statement, and then you have a timeline of
23 incidents. Did you draft this timeline in June of '09?

24 A. Yes.

25 Q. Okay.

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1 A. At the request of the SCEA.

2 Q. Okay. And did you just draft this from your
3 memory of what had occurred throughout the '08-'09 --

4 A. Memory and some things I had jotted down on a
5 calendar.

6 Q. Okay. So you just made some previous notes
7 and then from your memory is how you created the
8 timeline.

9 A. Yes, ma'am.

10 Q. Okay. And did you give this document to
11 Dr. Pew when you met with her?

12 A. Yes. The advocate suggested -- told me to
13 give it to her.

14 Q. And when you met with Dr. Pew, was your SCEA
15 rep in attendance?

16 A. Yes, she was there.

17 Q. And that's Janet --

18 A. Stein -- Stein but pronounced Stein.

19 Q. Okay. Was the intent of you drafting this
20 was just to do what?

21 A. She wanted, I guess, to present to Dr. Pew, I
22 guess, the whole picture of what had gone on.

23 Q. Okay. And you said that you did hand this
24 document to Dr. Pew at the meeting that you had with
25 her?

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1 MR. CROMER: And "she" is who?

2 THE WITNESS: Earnestine Williams.

3 BY MS. DICKEY:

4 Q. And she's with the defendant, Oconee County
5 School District?

6 A. Yes, ma'am.

7 Q. Other than this conversation that you had
8 with Ms. Williams, anyone else tell you that Gary
9 Culler made statements about your teaching abilities?

10 A. Not directly.

11 Q. Okay.

12 A. But that's part of the whole conspiracy and
13 the nature of it and that most principals don't even
14 respond to me or the ones that do indirectly say
15 things.

16 Q. So you mentioned conspiracy a couple of
17 times. Who is involved in this conspiracy against you?
18 Who are the individuals who are conspiring against you?

19 A. I'm assuming that, like, Mr. Culler and Kelly
20 Pew and whoever was involved at the District level to
21 do this, whoever sends out these references, whoever
22 had put that I had an improvement plan on my ADEPT that
23 I never had.

24 Q. So these are the people who conspired?

25 A. The District. And then I guess how they've

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

7 Q. Okay. So Gary Culler is involved in the
8 conspiracy, that's what you believe, correct?

9 A. Correct.

10 Q. Kelly Pew is involved in the conspiracy, as
11 well? Correct?

12 A. Correct.

13 Q. Who else at the District or school level is
14 involved in the conspiracy?

15 A. Well, I mean, I don't know exactly. It has
16 to be working through -- at the District. I can't know
17 exactly who was saying it. It would have to do with
18 the references going out. The one principal said that
19 he would be calling Ms. Lackey. So, I mean, I cannot
20 tell you exactly who. I mean, that's the whole part of
21 a conspiracy is that it's secretive. They are not just
22 going to reveal everything.

23 Q. So why do you believe that Gary Culler or
24 Dr. Pew or whoever at the School District, why do you
25 believe they would be trying to conspire against you?

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1 A. I guess it's part of them covering up exactly
2 what happened and also for the fact that if I wasn't
3 going to work there, I -- just like with an abusive
4 spouse, if you're not going to stay and do what he
5 tells you to do, then you're not going to have a job
6 anywhere. This is obviously what has happened, that I
7 have been unable to get any type of job. I'm unable to
8 get any type of reference for any employer.

9 Q. So do you believe the only reason why you
10 haven't been able to get a job is because of Gary
11 Culler, Kelly Pew, and the people at Pickens County
12 School District?

13 MR. CROMER: Object to the form, but you can
14 answer.

15 THE WITNESS: I also feel like there's some
16 involvement with Oconee, as well.

17 BY MS. DICKEY:

18 Q. Oconee, as well. So you believe you haven't
19 been able to gain employment because Kelly Pew, Gary
20 Culler, other Pickens County administrators and then
21 Oconee County administrators are conspiring against
22 you?

23 MR. CROMER: Same objection. You can answer.

24 THE WITNESS: Yes.

25 BY MS. DICKEY:

1 Q. Okay. I know you said that the Pickens
2 County folks would be conspiring against you to cover
3 up what had happened during the '08-'09 school year,
4 correct?

5 A. Correct.

6 Q. Why would Oconee be involved in a conspiracy
7 with Pickens?

8 A. I guess because they got pulled in by
9 Pickens, and they got pulled into it by hiring someone
10 for the position that I applied for that I was supposed
11 to get based -- that was unqualified, unexperienced.
12 And I believe that it just got blown out of proportion,
13 and it escalated from there.

14 Q. So other than this conversation that you said
15 you had with Ms. Williams with Oconee, what evidence do
16 you have that any of these individuals conspired
17 against you?

18 A. That I've been unable to get a job with all
19 these jobs that I have applied for and unable to get a
20 reference and based on what I've been told.

21 Q. Okay. I know that you had interviewed at
22 Anderson 5, correct?

23 A. Oh, yes, multiple positions at Anderson 5.

24 Q. Greenville County, you applied there?

25 A. Yes.

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1 he was the first principal and that she had known him.
2 She said that since he did observe my teaching and was
3 the principal that hired me, he should also give a
4 reference. And that he did.

5 Q. You had mentioned before that when you were
6 interviewing in different places, that they made
7 reference to classroom management issues that you may
8 have had when they checked your references.

9 A. Earnestine Williams had just said it was
10 about what type of teacher I was blooming, maybe, and
11 how I was in the classroom. I had a principal at
12 Greenville High who said -- assistant principal,
13 actually, who said it was for the Freshman Academy
14 English position, said that, "Well, these --" you know,
15 "These letters right here show that you do not have a
16 management issue."

17 And also when I met with Mrs. Williams, she
18 told me that my references actually showed no concerns,
19 and she said this is the first time she had looked at
20 them because she had them up on her computer while I
21 was in there for over an hour, I believe. And she
22 said, actually, my references were quite good.

23 Q. Okay. Now, at that time were you aware about
24 the below expectations mark that Ms. Raines had put on
25 your reference form concerning classroom management?

1 Q. So Mr. Culler says, "I have contacted with
2 the State Department of Education. No action has been
3 taken nor is there any pending action regarding my
4 certificate."

5 You do not believe that statement that he
6 made; is that accurate?

7 A. That's not the understanding I have.

8 Q. Okay. It goes on to say, "Because the
9 information about me on your application is inaccurate,
10 I believe that including it amounts to slander. I'm
11 requesting that you immediately remove the statement
12 from any and all applications where it has been
13 included."

14 Now, you said you ended up calling the
15 police?

16 A. I went to the Seneca Police Department.

17 Q. Okay. What made you contact the Seneca
18 Police Department when you received this letter?

19 A. Because I had took it as threatening but also
20 as a violation because especially with the fact that he
21 had someone else other than himself address the
22 envelope. There was no return address. He was
23 ensuring that I would open it, which I was told was
24 what stalkers do. And also his choice of postage stamp
25 was very upsetting to me, from what I had reported to

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1 Dr. Pew, and very unprofessional. So it caused a lot
2 of issues.

3 I started grinding my teeth. I've got that
4 documented. I had to get a mouth guard made for that.
5 I had to go see my counselor. She had to have a
6 special appointment for me to come in. And I discussed
7 it with a detective, as I said.

8 Q. Now, you said it appeared that someone else
9 had addressed the envelope, is that what --

10 A. Yes. It looked like a woman's hand.

11 Q. And so do you know whether it was -- how do
12 you even know that it wasn't his handwriting? How do
13 you know he didn't address the envelope?

14 A. Because I've seen his handwriting, and it did
15 not match.

16 Q. So because you felt that it did not match the
17 handwriting that you had seen of Mr. Culler's, you
18 assume that somebody else addressed the envelope?

19 A. That's how it appeared.

20 Q. Okay. And you had took issue with the stamp
21 that was on the envelope. You believe that someone
22 else addressed the envelope. Do you also believe that
23 someone else put the stamp on the envelope?

24 A. I believe that if he asked someone to address
25 the envelope in order to disguise so that to ensure

1 that I would open it, he also knew full well which
2 stamp would have been used to cause me the most
3 distress. And the fact that it was sent to my personal
4 home made me fear for my safety.

5 Q. So it's your contention that the Love Stamp
6 was inappropriate or in some way -- did you find it
7 threatening?

8 A. I found it extremely inappropriate based on
9 what I had reported to Dr. Pew. And when I took it to
10 the police department, the detective who looked over
11 everything told me that that stamp meant one of two
12 things: That either I had had a sexual relationship
13 with this man in the past that had gone wrong, which he
14 questioned me about over and over again, or he was
15 still obsessed with me a year and a half after leaving.
16 And he said those were the only two options in the eyes
17 of law enforcement for the use of that stamp.

18 He said -- I showed him a copy of Dr. Pew's
19 letter, and he said -- you know, where she said she
20 didn't think it was his intention to make me feel
21 uncomfortable. And he said, "Based on this stamp, his
22 intention was all along to make you uncomfortable."

23 MR. CROMER: Who is "he"?

24 THE WITNESS: A detective at the Seneca
25 Police Department.

**School District of Oconee County
Applicant Reference Form**

Ref #: 00005488

APPLICANT

Applicant Name **NOORAI, MARIAM R**
Positions Desired **Middle Level Language Arts, English**

PID: 12375

Please assist us in determining this applicant's potential for success in the desired position. Provide a rating for each of the applicable characteristics listed below. Check all that apply.

	Clearly Outstanding	Exceeding Expectations	Satisfactory	Below Expectations	Not Applicable
Positive Attitude and Enthusiasm	X	-	-	-	-
Initiative / Personal Motivation	X	-	-	-	-
Emotional Stability and Maturity	-	X	-	-	-
Dependability and Punctuality	X	-	-	-	-
Planning and Organizational Skills	-	X	-	-	-
Oral Communication	X	-	-	-	-
Written Communication	-	X	-	-	-
Professional Attitude	X	-	-	-	-
Problem Analysis	X	-	-	-	-
Judgment	-	X	-	-	-
Decisiveness	X	-	-	-	-
Leadership	X	-	-	-	-
Sensitivity	X	-	-	-	-
Stress Tolerance	-	X	-	-	-
Team Participation Skills	X	-	-	-	-
Teaching Strategies and Techniques	X	-	-	-	-
Skills in Student Evaluation	X	-	-	-	-
Classroom Management Skills	-	X	-	-	-
Provides Acceptable Role Model	X	-	-	-	-
Knowledge of Office Procedures	X	-	-	-	-
Response to Supervision	X	-	-	-	-
Office Machine Skills	X	-	-	-	-
Telephone Etiquette	X	-	-	-	-
Ability to Complete Jobs	X	-	-	-	-
Honesty and Integrity	X	-	-	-	-

Between what dates have you known the applicant's work: 09/2008 (MM/YYYY) to 01/2009 (MM/YYYY)

What position did the applicant occupy and at what school or organization?
8th Grade English Language Arts Teacher at RC Edwards Middle School

If you were considering this person for a position would you:
☒ Employ without looking further ☐ Consider strongly, but look at additional applicants ☐ Do not consider for employment

Please add any comments that might be helpful to us in evaluating this applicant: 1024 characters remain

I gladly recommend Ms. Nooral as an English Language Arts teacher. I met Mariam when she came to Edwards as a student teacher. For the last two years she has taught our 8th grade writing strategies course. This course supplements the English Language Arts standards. Mariam is knowledgeable in her English content area. She has built a good rapport with her students. They know she cares about them in and out of the classroom. Ms. Nooral demonstrates a professional commitment in her work with students and colleagues.

In the above evaluation, the lack of experience is the only reason Mariam is not receiving "clearly outstanding" in all the categories.



DEF SDOC 000182

First Name: Mary Middle Initial: Last Name: Bridges
Title: Assistant Principal Company: R. C. Edwards Middle School
Work Phone: (864)854-1400 Date: 01/12/2009 (MM/DD/YYYY)

DEF SDOC 000183

**School District of Oconee County
Applicant Reference Form**

Ref #. 00005487

APPLICANT

Applicant Name **NOORAI, MARIAM R**
Positions Desired **Middle Level Language Arts, English**

PID 12376

Please assist us in determining this applicant's potential for success in the desired position. Provide a rating for each of the applicable characteristics listed below. Check all that apply.

	Clearly Outstanding	Exceeding Expectations	Satisfactory	Below Expectations	Not Applicable
Positive Attitude and Enthusiasm	-	X	-	-	-
Initiative / Personal Motivation	-	X	-	-	-
Emotional Stability and Maturity	-	-	X	-	-
Dependability and Punctuality	X	-	-	-	-
Planning and Organizational Skills	-	X	-	-	-
Oral Communication	-	-	X	-	-
Written Communication	-	X	-	-	-
Professional Attitude	-	-	X	-	-
Problem Analysis	-	-	X	-	-
Judgment	-	-	X	-	-
Decisiveness	-	-	X	-	-
Leadership	-	X	-	-	-
Sensitivity	-	X	-	-	-
Stress Tolerance	-	-	X	-	-
Team Participation Skills	-	X	-	-	-
Teaching Strategies and Techniques	-	X	-	-	-
Skills in Student Evaluation	-	-	-	X	-
Classroom Management Skills	-	X	-	-	-
Provides Acceptable Role Model	-	X	-	-	-
Knowledge of Office Procedures	-	X	-	-	-
Response to Supervision	-	-	-	-	X
Office Machine Skills	-	X	-	-	-
Telephone Etiquette	-	X	-	-	-
Ability to Complete Jobs	-	X	-	-	-
Honesty and Integrity	-	X	-	-	-

Between what dates have you known the applicant's work August 2006 (MM/YYYY) to January 2009 (MM/YYYY)

What position did the applicant occupy and at what school or organization?
ELA Strategies Teacher at Edwards Middle School 2007 to present / Student Teacher In 2006-07

If you were considering this person for a position would you.
☒ Employ without looking further ☐ Consider strongly, but look at additional applicants ☐ Do not consider for employment

Please add any comments that might be helpful to us in evaluating this applicant. 1024 characters remain

Ms. Nooral excels in content knowledge, conscientious performance, and lesson design. With experience she will grow in classroom management and in team interaction

First Name Marilyn Middle Initial Last Name Raines
Title 8th Grade ELA Teacher Company: R C. Edwards Middle School
Work Phone (864)654-1400 Date 01/12/2009 (MM/DD/YYYY)



DEF SDOC 000181

SCHOOL DISTRICT OF PICKENS COUNTY

School Discipline Notice

Student's Name [REDACTED] Grade 8
 Date 1/27/09 Time 2:18 Location of Incident hall by stairs

Report of Incident (Attach separate sheet, if necessary)

During class change students were blocking stairs so I walked up. I was pinned between the stairs to the locker room and in the office. [REDACTED] started sing repeatedly "I'm ready to go right now" and had his arms out to hug me. He asked my name in between the hints. I told him to stop, he just came closer and hugged me singing the same lyrics.

Signature of Person Making Referral

Prior Action by Teacher

☒ Verbal Warning
☒ Conference with Student
☐ Detention (Circle one)
☐ recess/Lunch/After School
☐ Parent Contact (Circle one)
☐ Note/Phone/Conference
☐ Guidance Referral
☐ Filer Office Referral
☐ Other

Office Use Only

☐ 180 Academic Dishonesty/ Cheating	☐ 009 Failure to Serve Detention	☐ 300 Parking Violation
☐ 019 Cafeteria Misconduct	☐ 010 Failure to Serve Sat Detention	☐ 018 Possession of Contraband
☐ 021 Classroom Misconduct	☐ 042 False Documentation	☐ Tobacco/Lighter/Matches/Pirawods
☐ 220 Computer Misuse	☐ 019 Field Trip Misconduct	☐ CP Phone (Cell/Pager) Violation
☐ 170 Cutting Activity	☐ 380 ID Badge Violation	☐ (Circle one) 331 = 1st 332 = 2nd
☐ 160 Cutting Class	☐ 483 Insults	☐ 333 = 3rd or subsequent offense
☐ 150 Cutting School	☐ 085 Instigating a Disturbance	☐ 330 Phone Violation
☐ 054 Damage to Property	☐ 422 Insubordination/Disobedience	☐ 028 Playground Misconduct
☐ 450 Discipline Contract Violation	☐ 320 Leaving Class w/o Permission	☐ 270 Refusal to Obey
☐ 420 Disrespectful Behavior	☐ 310 Leaving School w/o Permission	☐ 421 Rude Behavior
☐ 030 Disruptive Behavior	☐ 370 Littering	☐ 220 Smoking on School Property/Tobacco
☐ 280 Dress Code Violation	☐ 280 Obscene Gesture	☐ 038 Taking Other's Possessions
☐ 301 Driving Violation	☐ 281 Obscene Language	☐ 410 Tardy Card/Hall Pass Violation
☐ 180 Excessive Tardiness	☐ 282 Obscene Literature	☐ 053 Throwing Objects
☐ 012 Failure to Bring Supplies	☐ 283 Obscene Drawing	☐ 200 Unauthorized Area/Off Limits
☐ 013 Failure to Complete Assignments	☐ 201 On Campus While Suspended	☐ 092 Untruthfulness
☐ Criminal Offense	☐ 034 Overly Affectionate Behavior	☐ 210 Use of Profanity
		☐ 100 Other Discipline Violation

Please note the action taken below.

☐ ALT Referred to Alternative Program	☐ 009 Parent Conference Requested for	☐ Held
☐ 001 Behavior Conference	☐ PMT Payment for Damages \$	
☐ 38 Boot Camp Date(s)	☐ 013 Recommendation for expulsion - Hearing on	
☐ QTP Call to Parents	(Indicate below the action that was taken during the Expulsion Hearing)	
☐ QNF Conference with Student	☐ ALT Referred to Alternative Program	☐ Began Program on
☐ CP Cell Phone Consequence (Circle one)	☐ 20 Changed to Homebased Status	☐ Effective Date
☐ CP1 CP2 CP3	☐ 18 Review by IEP Team Reinstated Expelled Student to School	☐ Effective Date
☐ 80 Consult District Office per revised JDE Policy	☐ EXP Expelled from School	☐ Effective Date
☐ 003 Denied School Privilege	☐ 21 Expulsion Appealed - Reinstated to School	
☐ DET Detention (Circle one) Recess/Lunch/ Before School/Class/After School	☐ REF Referral to	
☐ 018 Dismissal from Homework Center	☐ 018 Saturday School on	☐ 7/2 day - full day (Circle one)
☐ HMV Home Visit Scheduled on	☐ 012 Sent home for remainder of day	
☐ INS In-School Suspension for days	☐ SUPX Suspension Pending Expulsion	☐ Hearing on
☐ LTP Letter to Parent Mailed on	☐ SUS Suspension (OSS) for days. May return to class on	
☐ NON No action taken	☐ TAN Transfer	
☐ 007 Office Time Out	☐ WRN Warning	
☐ OTH Other		

Comments:

Student Statement: "I understand that I am to give a copy of this report to my parent when I arrive home."

Student's Signature

Parent's Signature

School Administrator's Signature

Pickens Defs 1

SCHOOL DISTRICT OF PICKENS COUNTY

School Discipline Notice

Student's Name

Grade 8

Date 1/29/09 Time 2nd Period Location of Incident

Mr. Hudak's class

Report of Incident (Attach separate sheet, if necessary.)

Burned a student on the back of the neck with a hot piece of metal.

Prior Action by Teacher

- ☐ Verbal Warning
- ☐ Conference with Student
- ☐ Detention (Circle one)
- ☐ Recess/Lunch/After School
- ☐ Parent Contact (Circle one)
- ☐ Note/Phone/Conference
- ☐ Guidance Referral
- ☐ Prior Office Referral
- ☐ Other

Signature of Person Making Referral

Office Use Only

☐ 180 Academic Dishonesty/Cheating	☐ 009 Failure to Serve Detention	☐ 300 Parking Violation
☐ 015 Cafeteria Misconduct	☐ 010 Failure to Serve Set Detention	☐ 019 Possession of Contraband
☐ 021 Classroom Misconduct	☐ 042 False Documentation	☐ (Circle one) Tobacco/Lighter/Matches/Fireworks
☐ 220 Computer Misuse	☐ 018 Field Trip Misconduct	☐ CP Phone (Cell/Pager) Violation
☐ 170 Cutting Activity	☐ 360 ID Badge Violation	☐ (Circle one) 331 = 1st 332 = 2nd
☐ 160 Cutting Class	☐ 423 Insolence	☐ 333 = 3rd or subsequent offense
☐ 160 Cutting School	☐ 035 Insulting a Disturbance	☐ 330 Phone Violation
☐ 064 Damage to Property	☐ 422 Insubordination/Disobedience	☐ 022 Playground Misconduct
☐ 430 Discipline Contract Violation	☐ 320 Leaving Class w/o Permission	☐ 270 Refusal to Obey
☐ 420 Disrespectful Behavior	☐ 310 Leaving School w/o Permission	☐ 421 Rude Behavior
☐ 030 Disruptive Behavior	☐ 370 Littering	☐ 230 Smoking on School Property/Tobacco
☐ 280 Dress Code Violation	☐ 290 Obscene Gesture	☐ 038 Taking Other's Possessions
☐ 301 Driving Violation	☐ 291 Obscene Language	☐ 410 Tardy Card/Hall Pass Violation
☐ 180 Excessive Tardiness	☐ 282 Obscene Literature	☐ 053 Throwing Objects
☐ 012 Failure to Bring Supplies	☐ 293 Obscene Drawing	☐ 200 Unauthorized Area/Off Limits
☐ 013 Failure to Complete Assignments	☐ 201 On Campus While Suspended	☐ 052 Untruthfulness
☒ Criminal Offense	☐ 034 Overtly Affectionate Behavior	☐ 210 Use of Profanity
		☐ 100 Other Discipline Violation

Aggravated Assault

Please note the action taken below.

☐ ALT. Referred to Alternative Program	☐ 008 Parent Conference Requested for	☐ Held
☐ 001 Behavior Contract	☐ PMT Payment for Damages \$	
☐ 36 Boot Camp Date(s):	☐ 013 Recommendation for expulsion - Hearing on	
☐ CTP Call to Parents	(Indicate below the action that was taken during the Expulsion Hearing.)	
☐ CNF Conference with Student	☐ ALT Referred to Alternative Program	☐ Began Program on
☐ CP Cell Phone Consequence (Circle one.)	☐ 20 Changed to Homebased Status	☐ Effective Date
☐ CP1 CP2 CP3	☐ 19 Review by IEP Team Reinstated Expelled Student to School	☐ Effective Date
☐ 30 Consult District Office per revised JOE Policy	☐ EXP Expelled from School	☐ Effective Date
☐ 003 Denied School Privilege	☐ 21 Expulsion Appealed - Reinstated to School	
☐ DET Detention (Circle one.) Recess/Lunch/Before School/Class/After School	☐ Referral to	
☐ 015 Dismissal from Homework Center	☐ 016 Saturday School on	☐ 1/2 day - full day (Circle one.)
☐ HMV Home Visit Scheduled on	☐ 012 Sent home for remainder of day	
☐ INS In-School Suspension for days.	☐ SUPX Suspension Pending Expulsion	☐ Hearing on
☐ May return to class on	☒ SUS Suspension (QSS) for 5 days. May return to class on	<u>2/5/09</u>
☐ LTP Letter to Parent Mailed on	☐ TRN Transfer	
☐ NON No action taken	☐ WRN Warning	
☐ 007 Office Time Out		
☐ OTH Other		

Comments: Suspended 1/29, 1/30, 2/2, 2/3, and 2/4/09 May return to class ON 2/5/09 Must meet at 3:15 on Thurs. 2/5/09 with parent(s)

Student Statement: "I understand that I am to give a copy of this report to my parent when I arrive home."

Student's Signature

Parent's Signature

School Administrator's Signature



Pickens Defs 2

261

NO. 8289 P. 9/11
FBI 10/012

Pickens Defs 5

NOV. 3. 2010 12:24PM Mail SCHOOL DIST PICKENS

(FAX)

NO. 8289 P. 10/11
P. 10/11/012

☐																																																	
01/20/2010 Det. Rita Burgess ☐																																																	
☐																																																	
On this date at 1:42 PM I received a message from Ms. Noorai stating that she "mainly wanted to know the status as to the way the Administrator handled this sexual assault against her rather than the student himself." She also said she wanted to know if the investigation uncovered information as to why her assault was not reported the way it should have been. ☐																																																	
☐																																																	
☐																																																	
01/22/2010 Det. Rita Burgess ☐																																																	
☐																																																	
I reviewed this case with Assistant Solicitor Judy Munson and she stated that we can't investigate how the school handles a situation reported to them, that would be handled by the School District Office and the paperwork we received from Ms. Noorai does show that she filed a complaint with the District Office. I have contacted School Resource Officer Teddi Falls, who is assigned to Edwards Middle School, and she advised Ms. Noorai never came to her and reported a sexual assault by																																																	
I also have a copy of the School Discipline Notice filled out by Ms. Noorai concerning this incident and it does not say that she was sexually assaulted it states "I pinned her between the stairs to the locker room and the office and repeatedly sang 'I'm ready to go right now' and he put his arms out to to hug her. It also says " added her name in between the lyrics of the song. It states she told him to stop and he came closer and hugged her while singing the same lyrics. The copy of this notice was provided to our office by Ms. Noorai at the time of this report. Assistant Solicitor Munson said we won't go back a year after this incident and try to make a charge on this suspect. I have attempted to contact Ms. Noorai to advise her of these results and left a message with her mother at 864-882-2405. ☐																																																	
☐																																																	
☐																																																	
01/22/2010 Det. Rita Burgess ☐																																																	
☐																																																	
I received a call back from Ms. Noorai from 864-247-1778 and I advised her of the case status. Ms. Noorai stated she was not concerned about criminal charges against the student so much as she was concerned about charges being brought against someone within the school district for covering up a crime. I advised her that we cannot get involved with an internal investigation within the school district and have no control over how they deal with a complaint. ☐																																																	
☐																																																	
A few minutes after speaking with Ms. Noorai I received another call from 864-247-1778 from a female who advised that she was Marian Noorai and wished for me to provide her with something in writing stating we will not make a criminal charge against anyone. I knew the person I was speaking with was not the same individual I had just disconnected with who advised she was Ms.																																																	
<table border="1"> <tr> <td>SEARCHED INDEXED</td> <td>SERIALIZED</td> <td>FILED</td> <td>APR. 11 2010</td> <td>ADMITTED UNDER 10</td> <td>RECEIVED UNDER 10</td> </tr> <tr> <td>NO</td> <td>NO</td> <td>NO</td> <td>NO</td> <td>NO</td> <td>NO</td> </tr> <tr> <td colspan="2">RECEIVED OFFICIAL COMPLAINT</td> <td colspan="2">RECEIVED OFFICIAL COMPLAINT</td> <td colspan="2">RECEIVED OFFICIAL COMPLAINT</td> </tr> <tr> <td colspan="2">DATE</td> <td colspan="2">DATE</td> <td colspan="2">DATE</td> </tr> <tr> <td colspan="2">01/27/2010</td> <td colspan="2">01/27/2010</td> <td colspan="2">01/27/2010</td> </tr> <tr> <td colspan="2">1697-WALD, K.</td> <td colspan="2">760-SGT R. MCKINNEY</td> <td colspan="2">01/22/2010</td> </tr> <tr> <td colspan="2">FOLLOW-UP INVESTIGATION</td> <td colspan="2">FOLLOW-UP INVESTIGATION</td> <td colspan="2">FOLLOW-UP INVESTIGATION</td> </tr> <tr> <td colspan="2">YES</td> <td colspan="2">YES</td> <td colspan="2">YES</td> </tr> </table>		SEARCHED INDEXED	SERIALIZED	FILED	APR. 11 2010	ADMITTED UNDER 10	RECEIVED UNDER 10	NO	NO	NO	NO	NO	NO	RECEIVED OFFICIAL COMPLAINT		RECEIVED OFFICIAL COMPLAINT		RECEIVED OFFICIAL COMPLAINT		DATE		DATE		DATE		01/27/2010		01/27/2010		01/27/2010		1697-WALD, K.		760-SGT R. MCKINNEY		01/22/2010		FOLLOW-UP INVESTIGATION		FOLLOW-UP INVESTIGATION		FOLLOW-UP INVESTIGATION		YES		YES		YES	
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YES		YES		YES																																													

Pickens Defs 6

NOV. 3. 2010 12:24PM Mail SCHOOL DIST PICKENS

(FAX)

NO. 8289 P. 11/11/2012

NARRATIVE	Nooral and I recognized the voice as the person who earlier advised me she was the mother of Mo. Nooral. I inquired as to who I was speaking with and the female became defensive stating she was Ms. Nooral and when I pointed out to her that she was the person who earlier told me she was Mo. Nooral's mother she became more agitated stating Ms. Nooral didn't want to speak with me anymore. She stated this was a conspiracy to cover up for the school district failing to do their job and report a crime. I advised her that we at the Sheriff's Office are not covering up for anyone and that everything we have done here has been documented. I also advised her that her daughter as an adult and alleged victim should have contacted law enforcement herself when this incident occurred. I advised her that we have a Resources Officer in the school as well as a full staff of Officer's here at this office and Ms. Nooral never contacted anyone for eleven months. She then stated that it was the school's responsibility to file a police report and they didn't do their job and I again referred her and Ms. Nooral to the School District Office or the School Board. She again stated we were in a conspiracy with the school district and I advised her if she had further issue with this decision she should contact the Solicitor's Office, she then stated they had already contacted the Solicitor's Office. I did provide her with the phone number (864-688-8903) for the Pickens Solicitor's Office. Case closed.												
	ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ DECEASED		☐ ADJ. CLOSED ☐ UNDETERMINED		☐ ARRESTED UNDER 16 ☐ ARRESTED 17 AND OVER		☐ RELEASED UNDER 16 ☐ RELEASED 17 AND OVER	
		☐ YES ☐ NO		☐ YES ☐ NO									
REASON FOR DEPORTATION CLEARANCE: 1. ☐ OFFENSE DEATH 2. ☐ NO PROSECUTION 3. ☐ EXEMPTION DENIED 4. ☐ VICTIM RESISTS COOPERATION 5. ☐ JUVENILE-NO CUSTODY				DATE		UNIT NUMBER		APPROVING OFFICER		DATE		UNIT NUMBER	
1087 - WALD, K.				01/27/2009				708 - SGT R. MCKINNEY		01/22/2010			
								FOLLOWUP INVESTIGATION					
								☐ YES ☐ NO					

Pickens Defs 7

CONTRACT FOR PROFESSIONAL SERVICES)
FOR THE 2009-2010 SCHOOL YEAR)

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

NAME OF EMPLOYEE: Mariam Nooral
TENTATIVE ASSIGNMENT/SCHOOL: Teacher at Edwards Middle School
CONTRACT LEVEL: Continuing

This is to notify you of your appointment to a position in the School District of Pickens County. This agreement, by and between the Board of Trustees and the Employee, is a Continuing teacher contract as defined in Section 59-26-40 (Rev 2004) of the Code of Laws of South Carolina. The following conditions of employment are hereby a part of this contract.

1. The Board agrees to employ the Employee in a professional position for 190 days during the 2009-10 school year, which includes 10 days of in-service training. The assignment indicated above is tentative and may be changed by the administration upon notice to and consultation with the Employee in accordance with Board policy.
2. The District agrees to pay the Employee according to the salary schedule adopted by the Board. This salary schedule will be made available as soon as practicable. Loss or reduction in any amount of anticipated or appropriated state, local or federal funding may, at the discretion of the District, require a pro-rata reduction of salary, a reduction in the term of this contract and pro-rata reduction in salary, or a termination of this agreement. Furthermore, any decline in student enrollment, elimination or change in course programming, financial emergency, or temporary closing of school or District operations because of emergency circumstances may require a pro-rata reduction in salary, a reduction in the term and pro-rata reduction in salary, or termination of this agreement. Any such reduction will take place only upon the recommendation of the Superintendent and approval by the Board after reasonable notice has been provided to the affected parties. Recommendations to reduce salary or to terminate contracts will be made only after all other remedies have been considered. Any compensation reductions will be made on an equitable basis. Any position eliminations will be handled in accordance with Board Policy GBQA/GBQB. [Reduction-In-Force]
3. The Employee agrees to possess throughout the contract term a valid South Carolina teaching certificate, as well as the "highly qualified" certification to perform his or her teaching assignment, as that term is defined in the No Child Left Behind Act and all South Carolina State Board of Education implementing rules and regulations. Proof of required professional qualifications shall be filed with the District Office. Failure to maintain such prerequisite qualifications during the contract period shall constitute grounds for termination of this contract.
4. The Employee agrees to render acceptable service, perform all assigned duties, and comply with all District policies, rules, and regulations, including attendance at required school or District meetings and activities. The administration may assign reasonable extracurricular activities to the Employee.
5. This offer of employment is subject to receipt of a criminal record history report from the South Carolina Law Enforcement Division, which reveals no good and just cause for its withdrawal.
6. This agreement is not valid unless authorized by the Board and signed by the Superintendent. If, during the term of this agreement, it is found that any part of this contract is illegal under federal or State law, the remainder of the agreement not affected by such ruling shall remain in force.

Special Conditions _____

Please indicate your acceptance of this agreement by signing below and returning the original to the Superintendent or his/her agent on or before May 25, 2009.

Employee

Date

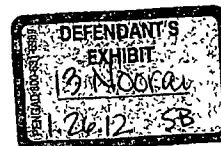
Mervel H. Stewart

Superintendent

May 15th, 2009

Date

{ COPY }



on board list 06/08/09

Superintendent's Office

JUN 05 2009

Mariam R. Nooral
518 W. North 4th Street
Seneca, South Carolina 29678

June 4, 2009

School District of Pickens County School Board
1348 Griffin Mill Road
Easley, South Carolina 29640-6997

Dear School Board Members:

I, Mariam Rosalie Nooral, have regretfully decided not to sign my contract with the School District of Pickens County for the 2009-2010 school year and to terminate my employment at the end of the 2008-2009 school year.

This is my second year of teaching eighth graders at R C Edwards Middle School. Prior to this, I completed both my practicum and student teaching there. My loyalty and dedication to this school is why making this decision extremely difficult for me.

My decision not to renew my contract is one of necessity. My position as the eighth grade Language Arts Strategies teacher is one I have enjoyed since August 2007. In my two years, I have taught both district winners of the state eighth grade writing contest, in addition to winners of other various writing contests.

I wholeheartedly believe that my principal's request is completely unreasonable. He informed me that I would have to give up a planning period daily in order to be the yearbook adviser for the third year, while teaching language arts to over two hundred and sixty students on an alternating A/B schedule. Serving as the yearbook adviser would take away from my language arts instruction, and I feel it would have had a detrimental effect on my students. Also, it would have been unfair to my yearbook staff not to devote myself to producing the best annual possible. The welfare of my students' education is a priority to me.

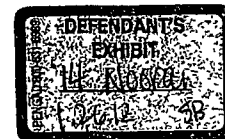
For this reason alone, I have chosen not to renew my contract for the 2009-2010 school year with the School District of Pickens County and to terminate my employment at the end of the 2008-2009 school year.

Thank you for your time.

Respectfully Yours,

Mariam R. Nooral

Mariam R. Nooral



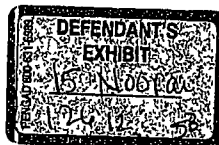
Pickens Dels 35

Opening Statement

I, Mariam R. Noorai, am an eighth-grade language arts strategies teacher at R. C. Edwards Middle School. The 2008-2009 school year was my second year teaching. During this school year, I have experienced a hostile work environment due to the principal, Gary Culler, and the way in which he handled specific incidents that arose. These offenses can be categorized into eight areas, which are outlined in the following chart and elaborated on in the attached timeline.

Although each episode by itself had a negative, accumulative effect on me, the students, and deserve examination, the three most detrimental are summarized in this opening statement. These three events are extremely serious in nature because they involve the breaking of school policy, rules, and state laws. They also illustrate how Mr. Culler has come into direct conflict with the qualities and behaviors outlined by the State House of South Carolina in Title 59 Chapter 24 which deals with principals. In addition, the Safe School Climate Act, which was approved on June 12, 2006, gives behavioral instructions to all who work at schools. Just as students are not allowed to harass, intimidate, and bully, "Since students learn by example, school administrators, faculty, staff, and volunteers should be commended for demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation, or bullying." Mr. Culler not only harassed, intimidated, and bullied, but he also allowed teachers to exhibit the same behaviors condemned by the Safe School Climate Act without consequences.

The most distressing episode with Mr. Culler took place on June 4, 2009 and occurred because I did not renew my contract with the School District of Pickens County.



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On May 22, 2009, Mr. Culler used intimidation to try to get me to sign my contract while telling me that I would be allowed a month to break my contract if I could find another job. Following my decision, on the afternoon of June 1, 2009, Mr. Culler informed me for the first time that I had to write a letter of resignation whenever I had a chance so that he could begin interviewing for my position. The next time he mentioned this letter to me was on the morning of June 4th, when he called me into his office for a reminder. After noon, the assistant principal, upon Mr. Culler's request, told me that if I did not write this letter of resignation that day, I would automatically lose my professional certificate. This threat was detrimental by itself, but it was turned into a nightmare when Mr. Culler, without permission, entered the closed office where I was typing the letter under duress to further bully, harass, and intimidate me. I asked him to leave because I did not want to discuss his threat of pulling my teaching certification. Unfortunately, for my own well-being, I did not know this was an empty threat because it's not one of the areas listed as "just cause" for losing one's license in Section 59-25-160 of the state law code.

Another episode occurred over a series of twelve days, although it was never completely resolved. Mr. Culler's inaction caused this episode to escalate, allowing collegial mistreatment to continue, promoting a hostile work environment without any concern for the student and his grade that was caught in the middle. I allowed a child extra time to complete a test in compliance with eighth-grade school policy and they sent him to class with a pass stating that he had been completing his exam. When I returned to my classroom after using the scantron machine in the teachers' workroom, the student awaited me with a note from the shop teacher who refused to accept him and who

demanding the student be sent the next day to him during my class. The note was evidently not enough because this shop teacher stormed to my classroom, berated me in front of a locker room full of students, attacking me for "unprofessional" behavior before almost knocking over an eighth-student who was entering my classroom. The terrorizing of the student and myself continued, although Mr. Culler repeatedly stated, "I thought I took care of that." The student was threatened with disciplinary action or failing, and I was blamed by the shop teacher via email as being at fault and "jeopardizing" students' grades. Mr. Culler's resolve was to have both parties have no more contact nor any need to apologize; however, he ignored my request to change duty position to move away from the shop teacher and his deliberate glaring at me.

The episode on January 27, 2009 involved a student sexually harassing me as I was pinned against the stair railing. The office referral was never returned to me; therefore, the proper consequence was never dealt out to the student. I was told by one of my former mentor teachers that I could not go to the district without first discussing this incident with Mr. Culler because I would receive negative repercussions from the district. Due to the personal nature of this situation, I was too uncomfortable to go to Mr. Culler who had repeatedly winked at me. In addition, when I went to him about a plagiarizing student whose punishment was not in accordance with school policy, Mr. Culler promised to have the assistant principal assign the correct consequence, but he never followed through even though this caused the student to receive an inaccurate grade in the second nine weeks. I therefore could not handle going to Mr. Culler, especially since this new episode involved sexual harassment, and he told that he would handle it when

instead he would surely have sided with the assistant principal as he did with the plagiarism.

These three episodes are explained in detail in the attached Timeline of Incidents, and they illustrate Mr. Culler's disregard for the welfare of students and faculty, his repeatedly choosing inaction as his course of action, and breaking school policy, rules, and state laws. His use of bullying, intimidation, and harassment serve as the antithesis of what middle schoolers should emulate. As the state of South Carolina explains in 59-24-10, a principal "must be assessed for instructional leadership and management capabilities" and the following chart and timeline show that Mr. Culler needs improvement in both areas before he has any further detrimental effects on the school, students, and faculty. In Section 59-63-140 of the Safe School Climate Act, the state clarifies that it is the responsibility of each school district to create and follow policy that has "consequences and appropriate remedial actions for persons committing acts of harassment, intimidation, or bullying, and for persons engaging in reprisal or retaliation."

Truly, the incidents and consequences that happened to me cannot and should not ever happen to any one else which is why I feel the impetus to bring this to your attention.

Bully Behavior	• Demanded participation in meeting, disregarding medical excuse • Unprofessional and argumentative, using irrational basis for decisions involving workload • Overall intimidating demeanor at meetings • Scheduled class coverage during a planned meeting with Jostens rep, refusing to change • Inappropriate, condescending remark - "young, writing teacher" • Unfairly questions teacher over attendance at a special education presentation • Informed teacher that discussing consequences with him "upset" the assistant principal who "wasn't happy" about it • Frequently stated he would "force" teacher to do yearbook • Harangued teacher before writing PASS test, ignoring district directive about what would be taught in strategies classes • Called a teacher's action as "unprofessional" when following school policy in order to placate another teacher • Blamed teacher for not writing a letter of resignation fast enough which was hurting the school by putting off interviews which could not occur until the letter was written
Lack of Professionalism	• Inconsistent with school rules, policies, and expectations thus creating a school culture of conflict and low morale • Promised financial reimbursement without carrying through • Inappropriate use of Walkie-Talkie, making comments of a personal nature knowing that others could hear • Inconsistent decisions regarding pulling students from class, causing conflict between teachers • Refused to address faculty conflict, allowing escalation which jeopardized faculty relationships • Misappropriation of school purchased gift card • Publicly labeled teachers as "weak" or "strong" • Shared personal information about teachers with employees and non-district employees at school • Discussed plan to "punish" a parent at work to stop parental emails of concern • Misuse of school email • Stated that the school's password could be given out for the district's sign-in program • Used the discussion of episodes that occurred with other faculty as a means to "force" another teacher into doing something • Winked at a teacher instead of telling the teacher that they needed to talk • Kept the list of sixth grade students generated by their teachers to receive yearbooks
Failure to Provide Administrative Support	• Ignored teacher's concerns • Unreasonable expectations related to the monitoring of students in the hallways, corridors, and locker room without providing adequate administrative support and allocating a sufficient number of school personnel • Allowed collegial mistreatment without addressing it, thus promoting a hostile work environment

Harassment	• Demanded a letter of resignation, when none was needed • Misrepresented consequences for not writing a letter • Frequently winks during the midst of a stressful conversation which conveys a condescending and intimidating attitude • Refused to leave a closed room, when a distressed teacher requested it
Instructional	• Jeopardized ADEPT process demanding teacher to cut daily instructional time • Frequently caused a loss of valuable grading and planning time • Ignored teacher's workload, assigning non-essential tasks
Poor Communication Skills	• Miscommunication, conflicting instructions related to preparing students for the writing PASS test • Frequently refuses to respond to emails about students, etc. • Ignored teacher's request for information • Promised remedies or consequences but does not follow through • Gave conflicting messages: told the assistant principal one thing for a teacher, then told the teacher something different • Refused to give pertinent information to the appropriate teacher about students' winning of non-school contests on multiple occasions • Frequently stated, "I'll get back to you," but never gave answers to these relevant questions
Professional Negligence	• Allowed the falsification of federal regulations • Failure to address plagiarism • Stated that he did not care if teachers "arrive at 8:15am every day" • Failure to provide access code for copy machine • Refused to give student agreed consequence, causing falsified academic record • Failure to provide students with supplies purchased by the district • Multiple promises without follow through • Disregard for teacher's concerns • Inaction, offering no remedies • Refusal to give teacher information from the district • Required teacher to teach in violation of the district's mandate • Forced teacher to incur financial expenses • Lack of concern over students' instruction • Failure to inform teachers about the informal sign-in process • Promised to enforce school policy without following through • Ignored emails about students • Refused to give needed information to the teacher to attend an awards ceremony at Clemson University • Refused to offer a remedy, causing a teacher to give up personal time on weekends to deal with yearbook issues, only informing the teacher to work around the unhappy teacher • Mishandled situation by saying, "no more contact" • Ignored teacher's statement about emailing lesson plans, telling covering teachers that the absent teacher left no plans and to watch a movie • Refused to change the class coverage schedule, although a previously arranged meeting for a teacher was at the same time as class coverage
Disregard for Personal	• Insufficient monitoring of hallways, corridors, and the like where students engage in inappropriate contact

Safety of Faculty and Students	• Failure to take appropriate action when teacher is assaulted and sexually harassed by student • Allowed student to be threatened, believing that a teacher would write-up or fail said student • Ignored concerns over missing students • Caused students to feel "singled out" or punished on several occasions • Failure to address teacher for physically knocking into student

Timeline of Incidents: 2008-2009 School Year

August 13th – I emailed G. Culler because I did not receive his email in which he sent out the information about and the activation code for the supply card given by the state. I also informed him about my email problem and my concern about not receiving important school emails that would be pertinent for my students and my other responsibilities, like school and district meetings, along with resources.

Connected

August 18th – I was missing school supplies for nine students in my homeroom class. I went to G. Culler to inform him about this problem before the students reported to school the first day. He assured me that I would have the missing supplies from the district by the next day for my students. He said that he would send an email right then to correct the problem.

*Extra supplies had already been distributed to teachers in the school. After I spoke to G. Culler, an announcement was made over the school intercom system requesting extra supplies be returned so that every student would receive the supplies that were promised to them by the district.

4488 asking
Not Dr.
Name
Network
-Flight
-Flight
-Flight
for Dr.

August 21st – Due both to the new schedule whereby sixth graders changed classes four minutes before the seventh and eighth graders and to my class being located in the locker room, G. Culler spoke to me in the locker room. He told me to stop my classes four minutes early so that I could leave my classroom and oversee the sixth graders in the locker room. Since I was going through ADEPT and did not want to be criticized for giving up four minutes of instruction, I was distressed by his request to give up valuable instruction time. He told me that giving up these four minutes would not make a difference to my students. I consulted with the head of the English Department, telling about this order from G. Culler. The teacher suggested that I go to the assistant principal and voice my concerns over giving up the last four minutes of instruction. When discussing these concerns, the assistant principal told me that I would have to inform my ADEPT team about my principal's request to stop teaching four minutes before the bell. In addition, I was warned that it was my responsibility to monitor my class first before

Both yours in the enclosure.
1st you both girls did not have legs.

Pickens Defs 50

observing the sixth graders. If something happened in my classroom while I was out monitoring the sixth graders as G. Culler requested, I would be the one held responsible and admonished. These four minutes lost would have taken away from the time that my students reviewed what they learned that day before exiting the class, which was extremely valuable since the students would not return the next school day; therefore, I knew that I could not comply with this directive and since G. Culler never came back down to my class, it was never discussed again.

August 25th - G. Culler came to my classroom and brought the federal form for me to sign about the special education presentation at the school district's welcome back bash at Littlejohn Coliseum in Clemson, South Carolina. Teachers signed the form only if they were present and watched this important special education presentation. G. Culler stressed that this dealt with federal regulations before he even allowed me to sign. He questioned me twice if I was present before he allowed me to sign the form. He told me that if I had not been present, I could not sign this form and would have to attend a make-up session due to federal regulations and the importance of this presentation. As I signed, I observed that one of the eighth-grade teachers who had signed before me had not attended the event. This teacher was excused from attending the event and the presentation because of a family event.

Early September - G. Culler came to me and told me to make "A" and "B" day signs for him, like the ones I had made for my class, to use all over the school. I made and printed ten signs. I took them to the librarian to laminate, explaining that G. Culler wanted these signs made. After laminating them, they were brought to my room the next day. The librarian said that G. Culler refused to take these signs because these signs were my responsibility to put up every day. I then went to ask him where he wanted me to place the signs, and he told me to put them all over the locker room area and stairwells. He said this was my job now and he did not care about the details. Again, doing this task every day took away from valuable planning and grading time, which took away from time I could have spent on my students or professional development. In addition, I had to buy Velcro to place on the signs. After I had been putting the signs up for awhile, he came to me as an afterthought and said that since I paid for this Velcro, he would give me the school's procurement card to buy something for my classroom to compensate me for my expenses, never mentioning the time that I lost every day swapping signs or replacing missing signs. This offered financial compensation never occurred.

Fall Meeting with Administrators (October?) - During this second period meeting in the teachers' workroom where doughnuts were served, G. Culler announced the district's new sign-in process. This was a new computer program. From past experiences, he stated that this sign-in system was problematic and could be slow. He told this group of eighth grade teachers that it was not his concern what time we got to school. He said, "I do not care if you come in at 8:15am every day." He repeated this sentiment at later faculty meetings as well. He added that if this sign-in process took too long, he could give individual teachers the password so that they could sign-in in their classrooms or even at home. According to the R. C. Edwards Middle School's handbook, "Students arriving at school after 8:00 AM are considered tardy" and being tardy is a "behavior

leading to Disciplinary Action," especially after "subsequent offenses." The concern for the students' well-being who would be left unattended in a classroom for at least ten minutes was ignored by G. Culler.

**Previous to this meeting, teachers were informally signing-in on a sheet of paper placed in front of the mailboxes every morning. Administrators never informed us of this sign-in process, although a new sheet appeared every morning. Word of this informal sign-in process was spread by teachers observing other teachers. Since I was usually one of the first teachers to arrive, I did not learn about this sign-in process until after several weeks had passed in the first nine-weeks period.

28 Oct 29?
Late October - My students were working on essays for the Clemson University writing contest on Martin Luther King, Jr. Before writing this composition, students learned about plagiarism. I modeled the entire writing process, even giving students a sheet of facts and quotations, along with a sample essay that we discussed in depth. While students were writing their essays in the computer lab, I observed that a particular student was copying from the sample essay and the sheet of facts. I stopped the student and spoke to him about the seriousness of plagiarism. This student could not believe the possible consequences that went along with plagiarism, so I sent the student to the assistant principal to hear about what punishments could be received for plagiarizing. The student returned and told me that the assistant principal told him "to get another source." I reminded the student not to plagiarize and getting a new source would not correct the issue of academic dishonesty. At the next class session, the student turned in the essay, and I noticed that the essay still contained the directly copied material and had additional plagiarized material added to it. This resulted in my writing up an office referral after conferring with the head of the English Department. In the referral, I made it clear that the student disregarded my and the assistant principal's authority because he chose to plagiarize after being repeatedly warned. The R. C. Edwards Middle School handbook explains that after first verbal warnings are given to a student about an offense, when "dealing with second and subsequent offenses . . . [t]he student will be considered disobedient and an appropriate consequence will be assigned." In addition, the handbook spells out the clear-cut procedure when dealing with academic dishonesty or plagiarism and states that this "procedure must be followed." I followed both steps as described in the school's handbook; after conferencing with the student, I wrote the official office referral and waited to be contacted by the administrators as the handbook states will happen. To compound the issue of academic dishonesty further, the student openly bragged to friends about plagiarizing which was mentioned in the referral as well. When I received my copy of the referral, the consequence was that the student should receive a zero for a major grade and no other punishment. Since the student had been warned twice by the teacher and by the assistant principal before turning in the final plagiarized essay, I went to the head of the English Department again to discuss this consequence. She took me to the principal's office to discuss this matter with G. Culler. G. Culler said that he could understand my concern over the seriousness of the matter and the consequence. He neglected to explain that the school's academic dishonesty policy was not followed, but he instead described it as the assistant principal not showing me common courtesy by not discussing the consequence with me before assigning it. He said that a student could not disregard authority and the fact that he was bragging about

*Never
talked
to Mr.
Culler
about it
until
teacher
said it
was
word of
mouth*

his actions demanded a harsher consequence. He asked me to return to him the next day after I thought about what kind of consequence I would like this student and any student who plagiarized to have which would become the precedent for this offense. He informed me and the head of the English Department that he would be speaking to the assistant principal that afternoon about this issue and would "take care of it." The next morning I told the principal that I thought the suggestion that he liked would be the appropriate consequence for plagiarism since it made the student learn a lesson through rewriting the assignment, while saving his or her grade by not assigning a zero for a major grade, since only three are required by the district's grading policy each nine weeks. G. Culler said he would have the student sit ISS to rewrite this essay, receiving a grade no higher than a sixty for this major grade. He then added that he had spoken with the assistant principal and said, "Mr. Boggs is upset and not happy with you complaining to me since he had already punished the child." He did not mention that the school's policy as mandated was not being followed in this case of plagiarism. I was shocked when he stated that the assistant principal was not happy with me, which intimidated me.

November 22nd – Since the grading period was approaching, I emailed G. Culler about the student who plagiarized since said student still had not sat ISS to rewrite his essay. I had tried to talk to G. Culler in person, but with only one planning period a day, I was not able to talk to him. In the email, I reminded him about this student and his consequence that had not occurred which made finalizing his grades problematic. G. Culler did not respond to this email.

November 24th – G. Culler spoke to me as I came into the office that morning. He said, "Nooral, I got your email, and I have not forgotten." He then winked at me. This was the first time that he winked at me, but not the last. It made me feel uncomfortable. G. Culler made no reference to my grading concern. I had to give the student an incomplete because he did not sit ISS. I later had to change the grade without him ever sitting ISS to rewrite his essay which caused his final second nine weeks' grade to be inaccurate. This matter of plagiarism or its consequence was never taken care of nor handled by G. Culler. This event did set a precedent that although G. Culler gave his word to take care of a legitimate issue, especially one dealing with the welfare of the student or teacher, if it came into conflict with the assistant principal, it was to be ignored.

December 1st – G. Culler sent out an email to the entire school staff asking about suggestions for a babysitter. Although this is not a standard use of school email, it would not be as problematic if it had not come after a statement made by G. Culler to a teacher after a conference with a parent who had complained to the District Office. G. Culler informed this teacher that if this parent emailed again from a work email, then G. Culler was personally going to contact this parent's boss to inform this individual's boss how the parent was sending personal emails from a work email address to stop this parent from voicing complaints and possibly to have ramifications at work.

December 4th – Although I responded to the email about getting my copier number set up for yearbook, it was never programmed into any of the copiers at the school. This meant that I had to produce all my Xeroxing for yearbook on my language arts' strategies.

account which skewed my copy amounts when the administrators checked how many copies each teacher was making. G. Culler made it clear on numerous occasions that the amount of copying each teacher did was being checked in case budget cuts demanded that limits be set. Previously when I emailed G. Culler about concerns for the teachers working on the alternating A/B schedule who have twice as many students as the other core teachers and how setting copier limits would affect them, he responded that the school is not setting limits at this time, ignoring a teacher's valid concerns about having appropriate materials for all students.

December 5th - I responded to the email from the Jostens yearbook representative. He asked me to talk to G. Culler about signing the Jostens renewal contract for the 2009-2010 school year. He told me that G. Culler would "sign if [I] were happy." I took the contract with its self-addressed envelope to G. Culler's office. I asked him if we could talk about yearbook. I explained that teaching language arts strategies on an A/B alternating schedule to two hundred and fifty students while giving up a planning period every day to teach yearbook was too much of a load for me to handle next year. I also said how helpful Jostens was. G. Culler took the Jostens renewal contract from me and assured me that he would not "force" me to do yearbook next year. He added that he would either "assign yearbook to someone else, hire, or pay someone to do it." G. Culler explained that he did not force the teacher to do cheerleading this year when she expressed the desire not to continue, and he would oblige me with the same.

January 14th - Although I was medically excused from work, I learned through *Panther Press* that one of my eighth-grade students won third place in the Clemson University's Dr. Martin Luther King essay contest. Upon my return to school, the assistant principal asked me at lunch, "Did Gary put the information from Clemson University about the winning essay and the ceremony in your box?" I responded that he did not. The assistant principal seemed surprised because that is what G. Culler was supposed to do with the information. I never received the information so that I ended up missing the ceremony and was not there to represent the school or support my student at this prestigious event. This was an honor that the student needed to be recognized for, and, as I know from last year, Clemson University requests that the winners of this contest be present along with an administrator and the teacher who was responsible for working with the student in this essay contest. To the best of my knowledge, no administrator attended the event, and I was never given the information about the ceremony. By the time I made contact with Clemson University independently, it was too late, and I missed the ceremony.

*This was
the duty
of the
Clemson*

January 27th - During class change between sixth and seventh periods, I was headed to the office before the Jostens representative arrived. An eighth-grade male student saw me on the stairs and began to sing an inappropriate song about being ready to have sexual intercourse called "Green Light" by John Legend. He then incorporated my name into the lyrics telling me, "I'm ready to go right now, Ms. Noorai," which he kept repeating. As he sang this, he headed towards me and pinned me against the railing between the stairs going down to the locker room and up to the back of the office. I repeatedly told him to stop and not come near me. I told him that he would be written up, but he did not stop and put his arms around me, pressing his body against me, even though I was telling

Ruki Sampson
yearbook rep

him to get away and that he could not touch the teacher. When I got to the office, shaken and upset, the yearbook representative had arrived, and I took a referral to fill out for the student who just accosted me at the stairwell after this yearbook meeting was concluded. During my meeting with the Jostens representative, I was asked where I was planning on being next year because "Mr. Culler told [him] that I was leaving the school." This was shocking because I had not discussed this with G. Culler nor was I planning to do this. G. Culler had assured me in December that I would not have to be the yearbook adviser next year; therefore, I had no plans to leave the school. I felt extremely uncomfortable that G. Culler discussed my personal business with someone, especially since I had never mentioned this to G. Culler who was telling or discussing it with people without my permission. I felt violated, knowing that the yearbook representative was probably not the only one that G. Culler discussed my personal business with, especially a lie. I was very upset about this incident, especially since it happened the same day as the episode with the student. I felt extremely sick and left school to return home before having to return to school for an open house that night. Following proper school policy, I submitted the referral for the student who had pinned me against the stairs to the box of the assistant principal. From home, I called the school and sent an email to G. Culler because I got even sicker after getting home and was unable to return to school for the open house.

January 28th - I was extremely upset and felt nauseated after the episode with the student at the stairs and with G. Culler's discussing my personal business with the Jostens representative. I had to take a sick day. I sent my lesson plans to M. Bridges and a carbon copy to G. Culler at 4:52 AM since I was traumatized and unable to sleep.

January 29th - I returned to school. I never received a copy of the referral nor did the student receive any consequences for his actions as far as I know. This was not the first time that I did not receive a copy of an office referral. I was very upset because of this and asked my former mentor teacher, who knew about the incident the day it happened and my referral, what I could do. The teacher told me that I would have to go to G. Culler about this episode before contacting the district office about this sexual harassment because if I skipped this step, I would be the one punished by the district. I told her that I did not feel comfortable around G. Culler when discussing something of this nature since his winking caused me great discomfort, plus the fact that he supported assistant's punishment over school policy in the plagiarism incident. This teacher agreed that G. Culler's earlier inaction was discouraging, but I could not pursue this case of sexual harassment without G. Culler handling it or there would be serious repercussions for me. I felt trapped and completely distressed. The R. C. Edwards Middle School handbook discusses its sexual harassment policy, stating that "Anyone found to have engaged in sexual harassment will be subject to disciplinary action." In addition, the South Carolina's Law Code, 59-24-65, states that it is the "requirement of school officials to contact law enforcement authorities when criminal conduct occurs." G. Culler's earlier admonition that the assistant principal was not "happy" with me when I went to G. Culler about the mishandling of a referral left me distressed without any recourse.

Year before
had been
discussed
the principal
incident
no follow-up
AP (Boggs)
Principal

Late February or Early March? (Same day I substituted in the gym second period and had to break up a fight between two eighth grade girls in the locker room) – I had to meet with G. Culler, the assistant principal, and the Instructional Coach about what I was doing to prepare my students for the upcoming writing PASS test. G. Culler actually changed the time of this meeting so that I could cover this second period gym class wherein the fight arose. G. Culler and the instructional coach asked me about the material I covered thus far this year. They told me that the language arts strategies teachers were only supposed to teach writing and that I was the only one of the three (one per grade) that taught other language arts standards to my students. Their reprimand was in direct violation of district policy to the best of my knowledge. The fact that I was being criticized for doing as the district instructed made me extremely uncomfortable and was quite distressing. The assistant principal had told me in August 2008 that the district changed what I was allowed to teach; I could no longer teach only writing, but must “enrich and enhance all the language arts standards.” I had to rework my syllabi and units to conform to this new directive and was dismayed to receive unjustified criticism from G. Culler at this PASS test planning meeting for doing what the district office directed. I was upset about being unfairly upbraided and went to one of my former mentor teachers. I explained how this meeting was extremely upsetting and how I felt intimidated and bullied by G. Culler who would not listen to what I was saying because of his preconceived notions about me and what he wanted me to teach. He has never observed me teaching, but he was quick to criticize me and the one to blame if the eighth grade writing PASS scores were not up to par.

A 7th
teacher
teaching
writing

April 15th – During seventh period (my afternoon planning period), I was called to G. Culler's office. He wanted to have a meeting with me and the assistant principal about yearbook for next year. This was my first day back after having gallbladder surgery; I was extremely exhausted and slightly sick, and G. Culler had already received my letter of disability which excused me from being at work until April 24, 2009. I had previously discussed via email with G. Culler that my doctor was okay with me returning to work early, but I had to be careful not to over do or get stressed. I was dealing with serious complications from surgery (I still had my t-tube inside my abdomen.) The assistant principal opened the meeting, stating, “Mari, I told Gary that this was not a good day to discuss yearbook with you.” Before this day, G. Culler had still led me to believe that I would not be forced to do yearbook for the 2009-2010 school year. For the second time, I explained that it was too much to teach two hundred and fifty students on an A/B alternating schedule, while preparing them for the March PASS writing test. Being a yearbook adviser would have required me to give up a daily planning period, and I could not do this in addition to having twice as many students with the same number of grades as required of the other core teachers while I had them for half the amount of time. When I explained this to G. Culler, he corrected me and said that I would actually have “forty more students” next year, which showed that he had not listened to my concerns. I explained that if I did both, both groups of students would suffer because of my limited time for planning, grading, and yearbook duties during the school day because I have one less planning period a day than other core teachers. In addition, most of the time I spent doing these things was at home because my one, free planning period was usually filled with meetings. Completing the yearbook required a lot of time, especially since I worked

with individual staff members to customize layouts so that each student was happy with his or her pages. If I dedicated this time to the yearbook, my language arts students would suffer and would miss out on the enrichment activities that the students learn from and thoroughly enjoy. If I did not dedicate this time to the yearbook, then I would be unfair to my staff and the school's yearbook would not get the praise that it received from Jostens and elsewhere. He responded by telling me that "If I have to force someone to do yearbook, I would force you" because of what happened with "cheerleading" earlier in the school year. I realized that I either had not convinced him of my concerns or he did not care. At this point, I was past explaining, and I could not take his lack of concern any longer. I felt even sicker than I did before the meeting started.

April 23rd - My first-period students were taking a test. Eighth-grade policy at R. C. Edwards Middle School allows students extra time to finish tests and the teacher then sends them to their next class with a pass stating that they were finishing a test. My last student to finish the test was given a pass and sent to his second period class with more than half the period remaining. I left my classroom with the door open and went to the teachers' workroom to make copies and run scantrons. When I returned to my classroom, this student was sitting in my room with a note from the industrial arts teacher. The student said that the teacher would not accept him into his class. The note told me to send the student to him during my first period class the next day, but I did not have the student that day because of the A/B schedule. I first went to find the assistant principal to discuss this matter, but I was unsuccessful. Next, I went to the keyboarding teacher with whom I alternate students to discuss how to accommodate the teacher's request. The bell rang so that I returned to class for third period. The industrial arts teacher was standing in the locker room right outside my door, instead of at his far away classroom to watch the students entering his classroom which was now unattended. When I got down the steps, he started verbally assaulting me. He was shouting at me in front of all the students in my classroom and the locker room. He is a massive person and was so angry that he was physically intimidating. He kept telling me that I could not keep any student from his class without his prior permission which he would not give me. He called me "unprofessional," although I was following eighth-grade policy. As he stormed away, he knocked into one of the female eighth-grade students entering my classroom. Another female student entered my classroom and said, "Ms. Noorai that was so disrespectful." I sent an email to the assistant principal during Channel One in my fourth period class asking to speak about this incident. I had to wait until almost 4pm to talk to the assistant principal due to afternoon duty. I explained what happened, and I was told to tell the student that he was not going to report to the industrial arts teacher during first period by "order of Mr. Culler." The assistant principal also told me that G. Culler would be informed of this situation right after our meeting. In addition, I was told that G. Culler would probably come talk to me the next day to get an official report from me about this incident, but this did not happen.

April 27th - The student came back to my class and told me that he was scared that the industrial arts teacher was going to "write [him] up" or "fail" him because of missing class time. I assured the student that he had done nothing wrong and had no reason to worry. The student left my class and went to his industrial arts' second period class. The

student returned to my class on the way to his third period class to give me a second note from the industrial arts teacher. The note told me to send the student to him first period either that Wednesday or Friday. The student also informed me that the industrial arts teacher said that I had not talked to G. Culler, who "knew nothing about any of this." As soon as it was my planning period, I went to the assistant principal who took me and my note from the industrial arts teacher straight to G. Culler. He seemed surprised that I had received another note from the industrial arts teacher. He first told me, "I thought I took care of that." He told me that this particular teacher was reacting so strongly due to being upset about some other things that were happening this year. He said that he would not tell the industrial arts teacher that this industrial arts class was not as important as another class, but he "would not let [the industrial arts teacher] tell [him] when to take a student out of English before PASS testing." He said that he would talk to the industrial arts teacher, and the student would remain in my class until the week of the Florida field trip when any missing work for the industrial arts teacher could be made up. He told me not to worry; he would handle it.

May 1st – I received an email from the industrial arts teacher; this email was accusatory and upsetting to me. I forwarded the email to the assistant principal and took a copy straight to G. Culler during my planning period, after first showing it to one of my former mentor teachers, who responded by saying, "Go find Mr. Culler right now so that he can see how upset you are!" After finally locating G. Culler, he first read the email and said, "I thought I took care of that" and "I can't believe [the industrial arts teacher] is pushing this." He agreed with me that this was an accusatory email. He told me not to worry because he would take care of it. He told me that I did not need to forward him the email, although he had me forward him the email the next week. G. Culler took notes on the copy of the email I took him. He recorded and agreed that I was following eighth-grade policy. He told me to be understanding towards the industrial arts teacher, and he tried to convince me that one could say that sending a student with a pass late to class could be considered "unprofessional," although it's school policy. Earlier in the school year, when another related arts teacher refused to accept students from an eighth-grade teacher, G. Culler came down hard on that related arts teacher and ordered that students be accepted with a pass without trouble. That incident was handled differently from mine. In addition, I told G. Culler that I felt uncomfortable standing next to the industrial arts teacher on afternoon bus duty, but G. Culler did not offer to change my duty position nor did he comment on my statement. Although this was a separate issue, he also told me that I could not get my yearbook students out of this industrial arts teacher's class because it upset that teacher, and instead I would have to take them from gym, some other class, or use different students. Before this April 23, 2009 incident, the same industrial arts teacher refused to send yearbook students to sort the yearbooks although he had previously told the assistant principal that he would, but it was something that I did not try to pursue because I did not want to anger the teacher and jeopardize faculty relationships, creating a hostile work environment. Instead I gave up personal time, time away from planning and grading, to sort the yearbooks myself. G. Culler did not offer any solutions, only told me to avoid and work around the industrial arts teacher since he once again stressed that that teacher was upset about other things that were happening this year and would not compromise with me. This upset me because my concerns and

feelings were being overlooked and being treated as unimportant by G. Culler. The assistant principal told me that if G. Culler had spoken with the industrial arts teacher when he was supposed to the day before, I would never have gotten that unprofessional email nor been upset yet again. G. Culler's inaction escalated this conflict allowing collegial mistreatment, promoting a hostile work environment. Everything would have been taken care of without causing me more distress which I did not need after my medical issues this past year.

Did Mr. Culler also did not feel comfortable having duty w/ Hudack - (standing outside - need to know) -

May 4th - G. Culler found me in the Commons area during my morning planning period. He told me that he needed me to forward him the industrial arts teacher's May 1st email. He also informed me that he was going to talk to the industrial arts teacher during fourth period. He was going to tell the industrial arts teacher that there was to be "no more contact and no apologies." He added firmly that this was true for me as well and that would be the end of it. I never heard from the industrial arts teacher again nor did G. Culler tell me that he did finally talk to the industrial arts teacher. Although I did not get any other emails or notes from the industrial arts teacher, this teacher was very intimidating and stared at me during outside duty or when passing in the halls. I told other eighth-grade teachers about still feeling uncomfortable. One teacher told me to contact the head of Human Resources about this situation, but one of my former mentor teachers told me that I would have to go back first to G. Culler if I wanted to inform the district office about the industrial arts teacher's unprofessional behavior and intimidation tactics. I told this teacher that G. Culler had already told me that this incident was over, and this same teacher told me then there was nothing I could do because if I went to the district without G. Culler's approval, I would be the one punished. I gave up because G. Culler mishandling of this episode since April 23rd only caused me more distress. In addition, G. Culler wanted to place some of the blame on me, even though he agreed that I was only following eighth-grade policy and not doing anything differently from the other eighth-grade teachers.

May 17th - Although it was Sunday, I called the school and G. Culler answered. I had a short conversation on the phone as I drove down to Charleston, South Carolina. I explained that my great-uncle's health had taken a turn for the worse and he was not expected to live much longer. I told G. Culler that I did not know when I would be back, but I would email him and the assistant principal my specific lesson plans for tomorrow once I was in Charleston and able to use my computer. All he said was, "see you when you get back." I emailed my lesson plans that night at 9:40 PM to G. Culler, the assistant principal, and a fellow eighth-grade ELA teacher.

*7th grade
ap teacher
Marilyn
Raines
at arrival
of district
comment*

May 18th - My first period class was not given its assignment. Instead the class was told that I did not leave a lesson plan; therefore, G. Culler told the two teachers that covered this class to have them watch a film. One of these seventh-grade teachers wrote a note stating, "Tom Sawyer Video for all classes!" At some point, it was corrected, and the rest of my classes did their assignment. When I returned, found the note, and talked to my first period class, I was distressed about teachers being told that I did not leave a lesson plan. I have overheard G. Culler make derogatory comments about teachers who have not left lesson plans when I have been in the office early in the morning; therefore, I

imagined that he had made a similar comment about me on the morning of May 18, 2009, even though I had emailed the lesson plans to him the night before.

End of May or Early June(?) – This occurred on a day when a specific related arts teacher went on a team school trip and her second period eighth-grade students were being watched in the media center by the instructional coach. I was in the classroom of one of my former mentor teachers, and a guidance counselor came looking for me. She asked me if a certain student had been in my first period class. I told her yes, and she told me that this student along with another student was missing. Neither one had made it to the next class. She told me that when this message was relayed to the office, G. Culler wrote a note for the assistant principal stating that both students were missing or cutting class, and G. Culler placed said note in the box. Since he made no attempt to locate the students, she took the note because the assistant principal was not there to handle the issue. She came to me and solicited my help to look for the students. Finally, the resource officer was contacted to help locate these students before they got into further trouble, preventing the school from being put into jeopardy.

May 21st – This was the first of two meetings I planned and held with the new 2009-2010 yearbook staff. I had made it clear that I could not be yearbook adviser, but I wanted to help the school out with scheduling by picking the new staff, making sure that the students understood how this course fits their schedule [which classes they would have to alternate with or could not take because it would interfere with high school credit], also saving money by submitting a cover so that it would be free and setting the theme for the 2009-2010 yearbook before fall 2009. Weeks prior, I had emailed and discussed with G. Culler and the assistant principal when to have this first meeting because the Jostens representative wanted to come to get the students ready for next year by introducing them to the Jostens website. When I arrived at school that morning, I reminded G. Culler about this meeting and how I needed to be free in order to have this meeting during my afternoon planning period. I saw that he was getting ready to start making the coverage sheets for absent teachers and wanted to make sure that if I had to cover a class, it would not be during the time of my yearbook meeting. Later that morning, I went back up to the office, and G. Culler told me that I had to cover a class during my afternoon planning period. I reminded him again that I had the yearbook meeting scheduled at that time with the Jostens representative coming, and I could not cancel it. He told me that I could try to switch with one other teacher, but he refused to change it. Many times he had changed the coverage sheets for other teachers. I was especially upset because G. Culler had picked the date and time for this pre-planned yearbook meeting. I was not able to talk to this one teacher prior to his going to cover the morning class, but I did see that there were other eighth-grade teachers that were not assigned to coverage during this afternoon planning period. I felt that there was nothing that I could do since G. Culler would not adjust his coverage schedule. The assistant principal actually came to my aid by covering the afternoon class for me while I had the meeting with the new yearbook staff and the Jostens representative. The assistant principal said that it was important that I have this meeting for the full time, especially since the yearbook representative was coming from Greenville. After school, I finally got to talk to the assistant principal about the yearbook for the 2009-2010 school year. I had emailed the assistant principal earlier, but I had to

wait to talk until after all the testing, etc. was over. After our meeting, the assistant principal planned to talk to G. Culler right after I left about yearbook. I explained to this assistant principal my concerns again about doing yearbook in addition to teaching over two hundred and sixty students language arts with one less daily planning period. The assistant principal said that we would discuss what G. Culler wanted the next afternoon. The assistant principal emailed me, but due to some trouble with Outlook, I did not receive this email until twenty-four hours later. In this email, the assistant principal wrote, "Gary is going to think about it tonight (May 21st). You need to go talk to him tomorrow (May 22nd)."

May 22nd – After arriving at school, I went to the office to sign in, and G. Culler winked at me and said nothing. This made me feel uncomfortable and belittled. The assistant principal was not going to be at school until the afternoon. When the assistant principal came back and realized that the email was not sent, the assistant principal came to find me and asked if I had talked to G. Culler. I said that I only saw him that morning when he winked at me. The assistant principal said that G. Culler wanted to talk to me about yearbook and that he had already left to go to the district office for a meeting. I said that I could wait for his return, and the assistant principal thanked me. I had to wait until 5pm before G. Culler returned to school. I went up to him outside, and I said that "[The assistant principal] told me that you wanted to talk to me." He told me that he did not, which made me feel like I had done something wrong. He added, "but if [I] had any questions about yearbook, then [I] needed to ask [him] not [the assistant principal]." I then regretfully informed him that if he was determined that I do yearbook, I could not sign my contract for the 2009-2010 school year. He told me to follow him to his office to discuss this in private. After walking into his office, G. Culler escorted me to his personal desk, not the conference table. I felt his chair was intentionally positioned higher than mine so that he looked down at me while he smugly restarted the conversation. In addition, I believed that he was trying to coerce me into signing my contact. I explained to him for the third time how my position as a language arts strategies teacher required too much and that I could not afford to give up a planning period every day to be the yearbook adviser. I explained that the grading alone took a considerable amount of time. I reminded him about how the alternating A/B schedule gave me half the time that the other core teachers have to obtain the same number of grades for twice as many students. I also explained that taking home over two hundred and sixty essays at a time made being the yearbook adviser impossible. I had to explain everything fully because he at first said he did not understand what I was saying about my workload. He tried to compare my load with a teacher who teaches all the students in the school but on a six week rotation. When I explained the difference, he indignantly responded that of course he understands the schedule because "[he] came up with it!" Although I explained everything completely, G. Culler told me that the school had to have a yearbook. He also told me that he understood that the yearbook at Edwards had been traditionally tied to my course. I told him in the past there were two teachers who advised the yearbook or that it also worked as an elective, as it does now. I explained that it had been tied to language arts strategies in recent years only, but this year the course was separated. I explained that with this alternating A/B schedule it was impossible to keep yearbook tied to the eighth-grade language arts strategies course. I

felt like we had had this conversation before, and we had, so I stopped. He repeated that unless someone volunteered, he would "force" me to do it. He called me a "young writing teacher" who would have lots of opportunities, and that he would not say that Edwards was "the be all, end all school." Labeling me as a writing teacher was belittling to me and was not what the district hired me to do. For two years, I have had two separate preps: one to complement the regular eighth-grade language arts course and the other to go with Honors English I. The district office was very specific that the Honors English I course had to be completely separate, which is why the 2007-2008 school year was the first time that the language arts strategies class was divided into two courses. The former district Coordinator of ELA and World Languages specifically told me and the Honors English I teachers that my language arts strategies for the Honors English I could not teach only writing. Next, G. Culler told me that if I wanted him to tell me "yes or no" about yearbook for next year, he would not do that at this time. He repeated that could not tell me "yes" at this time. He then said he wanted to talk to me as a "colleague" not my "principal." He called for the assistant principal to join us in his office. He said, in front of the assistant principal, more than once, "If I were you, I would sign my contract because you would have at least a month to pull out of it without risking the loss of your certificate." Intimating that one had wiggle room for this period, he told me that he did this when he "left Woodmont for Basley." I told him that I did not want to do anything that would risk my professional certificate since I had just earned it this year by passing ADEPT. He looked to the assistant principal who seemed to be nodding in agreement at what he was saying. He said I could look for a job, and then I could make my decision. He did warn that if I look longer than a month, I could lose my license by breaking my contract. He repeated this advice and then told me as my "principal," I would just have to make up my mind. I asked if it would be okay for me to take until Monday to decide about my contract before leaving for the eighth-grade Florida trip, and he said that would be fine. He said he was sure that I would want to talk this over with my family before making any further decisions. The assistant principal told me to put my contract in G. Culler's box if I chose to sign it.

May 25th - Before leaving for the eighth-grade trip to Florida, I told the assistant principal that I decided regretfully not to sign my contract for the 2009-2010 school year. The assistant principal questioned me, "So you decided not to do what Gary told you to do?" I answered yes because I did not feel it was right to sign a contract and then look for another job.

May 29th - I returned from the Florida field trip, and G. Culler asked me how the trip went when I got off the bus. I said that it was fine but tiring, and he responded brusquely, "Well, that's to be expected." I had to speak to him later in the day because an interview had been arranged for me by my mother while I was in Florida. I needed to leave during my afternoon planning period on June 1st which was the last class period of the day. This was the day of the eighth-grade district career day. I informed G. Culler via email that I would be willing to go on the field trip and help get the students on the return bus, but I would then need to leave directly from Basley or I could stay at school with the eighth graders who were not going on the field trip. He responded that I would stay at school with the students who were not going since no one else had been scheduled to monitor

these students. His email response and what he said later on June 1, 2009 implied that he had not even thought about who would be supervising the students that were not going on the field trip until I had sent him the email that night.

June 1st – I reminded G. Culler that morning about my interview and leaving early. He said that was fine. I did not speak to him again until I returned to school that afternoon after my interview. When I returned after 4pm, G. Culler stopped me as I walked to my box and said that he needed to talk to me. I thought it was about the email that I sent him that morning about a student which he never responded to, but that was not it. He informed that I needed to write a letter of resignation so that he could begin interviewing candidates for my job. He said that he could not even begin the interviewing process until I wrote this letter for him. He said that there was no reason to rush, but he would like it as soon as possible. He said "That's it." When I went to ask the assistant principal a question about Honors and Awards Night, G. Culler kept interrupting and wanting to know who and what the assistant principal was talking about in the assistant principal's office. The assistant principal said we were talking about Yearbook Signing Day which was Wednesday, June 3, 2009. G. Culler, talking loudly from the main office, told me that I needed to send my schedule out to the school for that day, and I told him I would be emailing him and the assistant principal a schedule for them to approve that evening before sending it to the other teachers. While I was still with the assistant principal, G. Culler began talking about which related arts teachers were "weak" and which were "strong." He was again talking very loudly from the main office, and his naming of specific teachers with either the epithet "weak" or "strong" made me extremely uncomfortable to be hearing his subjective grouping. He was arbitrarily assigning these teachers as he determined which teachers to put where on duty during Yearbook Signing Day. I was relieved when he stopped, and he kept trying to bring my conversation with the assistant principal to a close because he now needed the assistant principal in his office.

June 3rd – On Yearbook Signing Day, I followed the schedule that I created which had been approved. After all the yearbooks had been distributed and the office had called all the homerooms to the cafeteria to sign for their annuals, G. Culler followed me and some of my yearbook staff down into my room. He asked if I was finished distributing yearbooks, and I said yes. Speaking loudly and roughly into his walkie-talkie, "if she does not tell me she's finished, how do I know?" He glared at me, said nothing, and then left my classroom. Later, I went up to the office, and I was approached by two sixth-grade teachers. They asked me why the students they selected to receive free yearbooks did not get them. I informed them that I never received any names from their team. One of the teachers told me that G. Culler took the list of their names and said he knew nothing about giving out free yearbooks, but this teacher assumed that G. Culler would have given the list to me. However, I had previously sent an email response to G. Culler saying that the yearbook account could not afford to buy an advertisement in another yearbook because our profit went to buy yearbooks for our deserving students who could not afford to purchase one. I said that G. Culler never gave me the list, but I could still give them the yearbooks they needed, and they called the sixth graders to the office to receive their free yearbooks. Before I explained that I did not receive the list from G.

Culler and corrected this situation, these teachers were upset with me because their feelings were hurt that their students did not get what they were promised. This again was jeopardizing collegial relationships. In addition, because I was not informed earlier, these students received yearbooks which were slated for sale.

June 4th - As I was signing in that morning, G. Culler called "Noonai, I need to talk to you." I told him that I would be there shortly. I walked in, and he said, "I just wanted to remind you about your letter of resignation." I said "Yes, sir," and he said, "That's all." A little after noon, I was handling a call from a guardian about a yearbook issue when the assistant principal began calling for me. After completing my phone call, I went to the assistant principal who was in one of the guidance counselors' office. The assistant principal told me, "Gary wanted me to tell you that if you do not write your letter of registration, your license will be pulled." I was completely in shock after hearing this, especially since this was the first time that I heard about it. I explained that I was planning on writing the letter, but I had been busy all week with yearbook especially since the day before was Yearbook Signing Day, and I was still dealing with yearbooks today. The assistant principal said, "Mari, you are preaching to the choir. I know you are too busy." Next, the assistant principal explained that I had to write it that day, and Gary just wanted me to know what would happen if I did not write it. I interjected that I had already turned in my laptop, and the assistant principal told me to write it in the assistant principal's office. The assistant principal said that it did not have to be long because I did not need to include my reason for not signing my contract; however, if I wanted to include it, then I could. In addition, the assistant principal kept adding that it was not that G. Culler thought I was "refusing" to write the letter, he just wanted me to know that I would lose my certificate if I did not write it; it was just automatic. I left the office, highly upset and went to the teachers' workroom to use the phone. I needed my mother to come exchange vehicles with me so that my desk and chair did not get wet in my truck because of the rain. My mother asked why my voice sounded tremulous, and I told her that I had to write the letter of resignation now or lose my professional certificate; then I said I had to go. I went to one of my former mentor teachers and got a piece of paper and a pen to write a rough draft of my letter. I went down to my room and outlined my letter. Everyone was called to lunch, but I was too upset and sick to my stomach that I only wanted to find the assistant principal so that I could accept the offer to type my letter in the assistant principal's office. When a fellow eighth-grade teacher asked me if I was going to eat with them, I said no. Another one told me that I had to sit with them since it was my last day. I said I couldn't and turned to get some fresh air because I was getting increasingly upset. I was completely frustrated and aggravated by how I was being treated by G. Culler all year, but especially after this episode. The first person to check on me was one of my former mentor teachers who told me to come back in so that I could receive the gift that G. Culler had for me from the school and the flower and gift from the eighth-grade teachers. I told her that I could not return for that after being threatened by him with losing my professional certificate. A staff member then came out, saw my condition, and spoke to me. The assistant principal also came to me, staying until I was ready to go to the assistant principal's office to be left alone to type the letter. The assistant principal put me in there and told me to come to the assistant principal if I needed anything. The assistant principal wanted to get me lunch, but I said that I was too

*Mari
Busy*

upset to eat. The assistant principal made a big deal about locking me in the office so that no one could come into the office and upset me any further. The assistant principal got me the address for the school board, along with two envelopes, one for the school board and the other for G. Culler. The assistant principal said that I could leave, write my letter from home, and then email it. I declined because I feared that if I emailed to G. Culler, he would have changed what I wrote to suit his fancy before submitting it to the School District of Pickens County School Board. I told the assistant principal that since I was being "forced" to write this letter, I had to include my reason for leaving, although the assistant principal said I did not have to include that. I told the assistant principal what I was writing, and the assistant principal said it was fine as long as I did not mind G. Culler reading it. Since it was the truth, I did not mind writing it. The assistant principal kept asking what else could be done for me, and I said there was nothing. As I was writing the letter, one of my former mentor teachers came to the door and knocked until I opened the door. The teacher brought in my flower and gift card from the eighth-grade teachers. The teacher added again that G. Culler had my gift from the school. Next, the teacher left, explaining that the reason for leaving so quickly was that I had to write this letter today. After leaving, the teacher shut the door, but it was now unlocked. I sat there, totally upset and actually thought the door was still locked. Then, without knocking, G. Culler strode into the room, shut the door, and sat down across from me. I immediately got tense. He said, "I know you are upset," and I then specifically told him that I did not want to talk about it and asked him to leave. He ignored what I said and continued as he always did. He was bullying and attempting to intimidate me yet again. He remarked that writing this letter could not be making me upset, and I said no, hoping that he would be satisfied and leave. I told him again that I did not want to talk about it, asking him to leave the room. I thought about leaving the room myself, but I would have had to walk past him, the thought of which made me uncomfortable especially since it was a narrow interior room. In addition, I did not want to leave my letter which I was typing alone with him. He continued talking about how he may not have explained this letter of resignation right the first time. He said that if I did not write it, I would then lose my professional teaching certificate. Next, he explained that by keeping him waiting for this letter, I was hurting the school because he could not begin interviewing candidates for my job, and the longer a principal waits, the greater the chance that all the better candidates would already be taken. He even smugly made reference to the fact that even I had gone on an interview already. He again repeated that I would lose my license automatically by not writing this letter now. He left, closing the door behind him. He never gave me the card from the school with my gift card either, although he told my former mentor teacher that he had it for me. I was suffering from shellshock after this last encounter with G. Culler. My sister arrived to change vehicles with me, but I was so upset that it took me a good minute to come to the door to open it for the bookkeeper who was telling me that my sister was there. After I swapped keys, I went back to writing my letter. Next, the assistant principal came back to check on me and to see if I needed anything. Once I was finished with my letter, I was told to go directly to the assistant principal. I told the assistant principal how distressed I was after G. Culler had come into the room. The assistant principal made a comment about needing to relock the door. When I finished writing this letter under complete duress, I went to the assistant principal. The assistant principal had to sign off on my sheet, along with a few other staff members. The

assistant principal asked if I was able to see G. Culler for my exit interview, and I said that I could not handle any more stress that he would cause me after what had happened in the assistant principal's office. The assistant principal said that was fine and signed my exit interview, saying that I was done. I asked if I needed to help with scheduling, and the assistant principal repeated that I was done and did not need to come in the next day. The assistant principal kept my sign-out sheet, and I left the office. Before leaving the school, I went to one of my former mentors' room to retrieve my handbag which was locked in the closet, and the teacher acknowledged my emotional state. Another teacher also showed concern for the elevated level of duress that I was under.

Appendix

A) G. Culler does gossip with other teachers, staff, and other people who come into the school. For example, G. Culler discussed my "decision" to leave the school with the Jostens representative prior to January 27, 2009. In addition, on April 27, 2009, G. Culler informed me that the reason why the industrial arts teacher was upset was not because of the student missing part of his class, but he was actually trying a power play because he was angry about not being told by G. Culler that the related arts teacher, who was his former student teacher, was neither offered a contract nor passed ADEPT. As a result, G. Culler implied that he was going to handle this situation differently and try to soothe the industrial arts teacher, and G. Culler also expected me to be understanding about the industrial arts teacher's unprofessional outburst. Of course, he clarified that the situation with the related arts teacher was not any of the industrial arts teacher's business, but he was going to have to discuss it with the industrial arts teacher anyway.

B) Typically, teachers have two weeks of duty every month. Time and again, the same teachers come late or not at all to their duty spots who reprimand. My classroom, B-1, is in the locker room, and repeatedly I have had to go out to the locker room in the morning and the afternoon to cover the locker room because I am the only adult down there. When I have had to turn in names of teachers who have not shown up to duty spots, nothing happens because the behavior repeats. There have been occasions where I have had to cover morning locker room duty because the teacher either shows up late or not at all on days when I am assigned afternoon duty. More than once, I have also had to rush out into a crowded locker room some afternoons to discipline or separate students because the assigned teacher is absent from duty at the end of the day.

C) During class change, again it is rare that either the resource officer, the assistant principal, or except for a few occasions during this entire year, G. Culler comes down to the locker area. I am left to watch the students entering my classroom, while monitoring and disciplining students who are in the locker room at the wrong time or behaving inappropriately at this time. On several occasions, I have had to write office referrals for misbehaving seventh graders after assigning lunch detention that they do not sit. Also, during MAP testing schedules, while I am teaching, I have had to stop teaching to correct the students at their lockers because

there is no authority, administrative or otherwise, monitoring the locker room. This situation is compounded by the fact that my classroom wall next to the lockers does not go all the way up which makes the sounds echo even with the door closed. This can cause particular issues when I am trying to give tests to my students and the students outside are distracting them. Numerous times I have had to stop teaching and discipline the students in the locker area without administrative support. Since I am the only teacher in the locker room area, my students' learning environment is overlooked most of the time.

D) In addition, there is one staircase that most students try to use for both going into and out of the locker. This area gets clogged. Numerous times I have to address this area because of students getting heated with each other. Also, the hallway above these stairs is the most congested with student traffic between class change. I have normally had to go up these steps to address students who are blocking the stairs or fooling around the stairs. Fights have started in this area. Administrators do not show up in this area during class change until after I get up there and begin shouting for the students to leave the area and get to class.

E) As G. Culler told me on May 22nd, he does not like it when teachers go first to the assistant principal with concerns; however, on June 4, 2009, he sent the assistant principal to me to inform me of his threat about my license being pulled if I did not write him my letter of resignation that day. This situation on June 4th illustrated G. Culler's arbitrary behavior and typifies why R. C. Edwards Middle School was a hostile work environment.

F) On several occasions, G. Culler did not follow through or give me an answer to a specific question. A week prior to the last deadline to submit pages for our 2008-2009 yearbook, I asked G. Culler to decide if I needed to reword the part of the closing that a student wrote for the yearbook. He said that he would have to get back to me about it and winked; he never did. Besides failing to carry through when I ask him to make a relevant decision, G. Culler also makes me feel uncomfortable with his winking and intimidating demeanor. Whenever I have gone to M. Bridges with a problem, she has always followed through, getting it taken care of, without causing me distress. G. Culler, on the contrary, has threatened me with having my license pulled, a threat especially insidious since I had specifically told him on May 22, 2009 that I did not want to do anything to jeopardize my teaching certificate. The mishandling of the episode with the industrial arts teacher made me feel like my feelings and position did not matter. I followed eighth-grade policy, yet I was treated as if I had acted unprofessionally. In addition, his inaction about the plagiarizing student told me that although he promised to take care of it, he does not follow through with the punishment we agreed upon in our meeting with the head of the English Department. In addition, it is unprofessional to tell me as a teacher that an assistant principal is "upset" and "not happy" with my discipline referral concerns.



School District of Pickens County

Building success beyond the classroom

July 8, 2009

Marlam R. Nooral
518 W. North 4th Street
Seneca, SC 29678

Dear Ms. Nooral,

This letter is a follow-up to the conference we had on Tuesday, June 30, 2009. Present at the conference were you, Mrs. Janet Stein (SCEA representative), and me. During our meeting you shared concerns that you had with your principal, Gary Culler, which fall into four general categories: sexual harassment, lack of communication, intimidation, and lack of professionalism. You also provided me with a written chronology of specific issues and events beginning August 13, 2008 and ending June 4, 2009.

At the conclusion of our meeting, I asked you to share what you hoped to be the outcome of our meeting. You stated you would like the following: no employee would have to experience the harassment you have experienced, an apology letter from Mr. Culler, a recommendation letter from Mr. Culler, the ability to review your personnel file, a copy of your final summary evaluation, and the gift card from the School. Enclosed you will find the recommendation from Mr. Culler, a copy of your final evaluation, and the gift card from Edwards Middle School. On June 29, 2009, you reviewed your personnel file at the Central Office. With regard to your stated concerns and the related apology, I have looked into the concerns and have detailed my general findings below. Additionally, these matters have been addressed with Mr. Culler, as appropriate, and the District will not require him to issue an apology.

As to your concerns that you have been subjected to sexual harassment, you cited an incident that occurred in the stairwell with a male student singing a song with sexual lyrics and touching you inappropriately. You indicated that you went to the office to get the yearbook advisor and to complete a referral, but that no action was taken against the student. However, you never verbally shared this incident with an administrator or the School Resource Officer. Mr. Culler was unaware of this incident until I brought it to his attention on Wednesday, June 30, 2009. He immediately contacted other administrators for additional information. According to the assistant principals, this incident was dealt with according to the School's discipline policy and the local police; however, they admit that you may not have received a copy of the referral indicating the consequences the student received. You also indicated that Mr. Culler winked at you at times when you had to meet with him. Mr. Culler does not recall ever winking at you and, after talking with him, I do not believe that he intended to make you feel uncomfortable in any way while meeting with him.



Kelly U. Pew, Ph.D., Assistant Superintendent for Human Resources

1348 Griffin Mill Road • Easley, SC 29640-8997 • P 864-855-8150 • F 864-855-8159

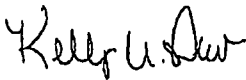
The next area of concern related to a lack of communication between you and Mr. Culler. You shared several incidents that occurred during the school year where you believe that Mr. Culler did not keep you informed or did not follow through with you. After reviewing the information you provided and discussing the matter with Mr. Culler, it appears that a number of these situations could have been easily rectified if Mr. Culler had been notified (ie- the e-mail, use of procurement card). It does not appear that Mr. Culler intentionally ignored your requests, and it may have been helpful for you to communicate further with him to let him know you had not received a response to a request or e-mail. Many of us on occasion forget or fail to promptly follow-up with something and need another reminder.

You also expressed that Mr. Culler had engaged in intimidation. You mentioned two meetings that made you feel uncomfortable. The first involved Mr. Culler, Mrs. Bridges, and Mrs. Martin. As you mentioned, every core academic teacher had a similar meeting to discuss strategies to ensure student success on the new state test PASS. After inquiring about this meeting, it was determined that Mrs. Martin shared concerns with you about having students complete a formal writing assignment which involved a lot of time in the computer lab. This was discussed, and you defended your reasoning for this assignment. Mr. Culler shared very little about this activity. The other involved the discussion of your decision not to sign your contract. Contracts were issued on May 15th and were to be returned no later than May 25th. You indicated that during discussions with Mr. Culler about your desire not to return, he suggested you sign your contract if you were unsure, and to then request to be released if you found another employment opportunity. You did not sign and return your contract by May 25, which is the equivalent of submitting a letter of resignation. After May 25, the Human Resources Office asked principals to send unsigned contracts to our office so that we could confirm the resignations. Mr. Culler was attempting to follow these instructions, based on the common practice of having teachers who do not sign their contracts also submitting a letter of resignation. You stated, however, that Mr. Culler threatened taking your certificate. Based on your written chronology and on how certificate suspension can actually take place, I believe Mr. Culler was attempting to explain that you could lose your certificate if you did not resign and took other employment without obtaining a release from your contract. There apparently were misunderstandings on the part of all involved, including the assistant principal involved in some of the discussions. You also indicated that on the last day of school you were extremely upset and felt intimidated when Mr. Culler came to the assistant principal's office where you were writing your letter of resignation. Mr. Culler expressed that he was concerned about you and came to check on you - not to intimidate you - and left upon your request. He did find Mrs. Bridges and asked that she go check on you.

Finally, you indicated that Mr. Culler demonstrated a lack of professionalism in some of his interactions with you and others. Several of these incidents could not be confirmed by you or were situations that could have been easy oversights by the administration that were corrected (assigning duty when you had a meeting). Other situations appear to have involved misunderstandings, not intentional conduct. For example, you mentioned specifically that Mr. Culler informed the Jostens representative that you had resigned. Mr. Culler indicates that he merely told the representative that you did not want to work with the year book the following year. You also stated that Mr. Culler did not enforce school policy; however, there is evidence that he did follow through on issues of which he was aware, even if you did not agree with the outcome (plagiarism). You also indicated that you felt Mr. Culler had given a reference to West Oak Middle School that kept you from being offered a position there. Mr. Culler indicated that no one from West Oak Middle School or any other school has contacted him requesting a reference for you.

Thank you for bringing these matters to my attention, and I regret that you had such concerns during the 2008-2009 school year. In many instances, however, they were not shared with Mr. Culler or with Human Resource Services at the time they occurred so that they could be effectively addressed. The District wishes to support and assist all employees when warranted, and will not tolerate employees being subjected to harassment, intimidation, or unprofessional conduct. I wish you much success as you pursue other educational opportunities.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kelly U. Pew".

Kelly U. Pew, Ph.D.

CC: Personnel File

Pickens Defs 72

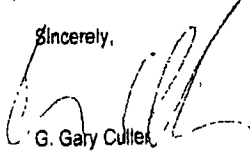
January 5, 2011

Mariam R. Nooral
518 W. North 4th Street
Seneca, SC 29678

Ms. Nooral,

It has come to my attention that you have indicated on employment applications that my certificate is being reviewed by the State Department of Education because of misconduct. As a matter of clarification, I have contacted the State Department of Education and no action has been taken nor is there any pending action regarding my certificate. Because the information about me on your applications is inaccurate, I believe that including it amounts to slander. I am requesting that you immediately remove this statement from any and all applications where it has been included. If the applications are not immediately corrected, I will seek legal counsel regarding my options in this matter.

Sincerely,


G. Gary Cullen





South Carolina
Department of Education

Together, we can.

Jim Rex
Superintendent of Education

March 24, 2010

Dr. Henry Hunt, Superintendent
Pickens County School District
1348 Griffin Mill Road
Easley, SC 29640

Re: Parent Complaint against Gary Culler
Parent Complaint against Donald Boggs

Dear Dr. Hunt:

Please find enclosed a copy of a complaint submitted to the Office of General Counsel from Ms. Mariam Nooral regarding a parental complaint against Mr. Gary Culler and Mr. Donald Boggs.

I ask that you please review the attached complaint carefully and respond back to our office no later than Friday, April 23, 2010, as to the District's explanation of the events in question. I would also request if you have received any other complaints or have taken disciplinary actions against Mr. Culler or Mr. Boggs that they be included in this response also. This will assist our office in determining whether further investigation into this complaint is necessary. Please forward the District's response to: South Carolina Department of Education, Office of General Counsel, 1429 Senate Street, Room 1015, Columbia, South Carolina, 29201.

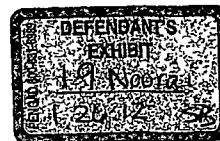
Your assistance in responding to this complaint will be appreciated.

Sincerely,

Wendy B. Cartledge / PB

Wendy B. Cartledge
Deputy General Counsel

WBC/pwdb
Enclosures



COMPLAINT OF EDUCATOR MISCONDUCT FORM

Name of Complainant:

NOORAI
(last)

MARIAM
(first)

Address:

505 ROBIN DRIVE
(street)

SENECA
(city)

SC
(state)

29678
(zip)

Telephone Numbers:

Home: (864) 882-2485
(area code)

Bus.: _____
(area code)

Fax: (864) 882-2485
(area code)

E Mail Address: mari.noorai@gmail.com

Name of educator against whom the complaint is made:

CULLER
(last)

(Jr./Sr./etc.)

GARY
(first)

(MI)

Educator's position and title: PRINCIPAL AT R.C. EDWARDS MIDDLE SCHOOL

Name and address of educator's employer:

SCHOOL DISTRICT OF PICKENS COUNTY
(name)

1348 GRIFFIN MILL RD. Easley
(street) (city)

SC
(state)

29640
(zip)

RETURN THIS FORM AND THE ATTACHED AFFIDAVIT TO
Office of General Counsel, S. C. Department of Education
1015 Rutledge Building, 1429 Senate Street
Columbia, South Carolina 29201

RECEIVED

MAR 19 2010

State Dept. of Education
Office of General Counsel

Pickens Def's 88

AFFIDAVIT OF MARIAM R. NOORAI

I, MARIAM R. NOORAI, declare that I have personal knowledge of the following acts of misconduct committed by an educator named GARY CULLER.

I believe that these acts of misconduct constitute grounds for revocation or suspension of the educator's certificate. I have contacted the educator's employer about this matter, and I personally spoke with or sent a prior written complaint to the following individual DR. KELLY U. PEN [name and title of employer representative contacted].
SCHOOL DISTRICT PICKENS COUNTY
ASSISTANT SUPERINTENDENT OF
HUMAN RESOURCES

Description of alleged misconduct:

PLEASE SEE ATTACHED

Description of action taken by educator's employer concerning the educator's misconduct:

PLEASE SEE ATTACHED

I certify under penalty of perjury under the laws of South Carolina that I have read the foregoing statement and believe it to be accurate.

DATE: MARCH 18, 2010 Mariam R. Noorai
SIGNATURE OF COMPLAINANT

Revised: 1-24-08

Pickens Defs 89

Description of alleged misconduct:

As a teacher, I was sexually and physically assaulted by a student who pinned me against the stairs as he sang the song "Green Light" by John Legend, inserting my name into the lyrics about being ready to have sex with me, before he forced himself on me. I became physically sick from this assault and was unable to return for the open house nor to work the following day. I sent an email to Mr. Culler about my condition, which he never responded to via email or in person. Although I officially reported this assault immediately after it happened, Mr. Culler ignored it which caused this same student to burn another student with a piece of hot metal the next day. Mr. Culler's behavior in this incident displays a willful neglect of duty, a willful violation of the rules and regulations of the State Board of Education, unprofessional conduct, breaks South Carolina Code of Law Section 59-24-60 among others, and dishonesty when he told the district that administrators handled this assault according to school discipline policy and contacted the police. This failure to report my assault to law enforcement makes me a non-victim until the District officially reports that I am, according to the Crime Victim's Ombudsman.

Description of action taken by educator's employer concerning the educator's misconduct:

Dr. Pew wrote me a three page letter stating her "general findings" in regard to my concerns of sexual harassment, i.e., this incident, and others. She claimed that she investigated, and the District would not require Mr. Culler to write an apology. She stated that Mr. Culler, although principal, knew nothing of me being physically assaulted by a student with criminal sexual intent. She blamed me for not verbalizing my assault to this administrator who made me feel unsafe on a daily basis, even though policy only requires that I, the victim, fill out an official report and nothing further. In addition, she wrote that school administrators did follow the school discipline policy and contacted local law enforcement. She did admit that I may not have received my copy of the referral, which breaks policy, but that the assigned consequence given to the student was marked. Later, I was told by the District's attorney, Jane Turner, that my assault was tied to the later attack on the other student, even though connecting these two would be illegal, according to the Crime Victim's Ombudsman.

Pickens Defs 90

COMPLAINT OF EDUCATOR MISCONDUCT FORM

Name of Complainant:

NOORAI
(last)

MARIAM
(first)

Address:

505 ROBIN DRIVE
(street)

SENECA
(city)

SC
(state)

29678
(zip)

Telephone Numbers:

Home: (843) 882-2485
(area code)

Bus.: _____
(area code)

Fax: (843) 882-2485
(area code)

E Mail Address: mari.noorai@gmail.com

Name of educator against whom the complaint is made:

BOGGS
(last)

(Jr /Sr./etc.)

DONALD
(first)

(MI)

Educator's position and title: ASSISTANT PRINCIPAL AT R.C. EDWARDS MIDDLE SCHOOL

Name and address of educator's employer:

SCHOOL DISTRICT OF PICKENS COUNTY
(name)

1348 GRIFFIN MILL RD.
(street)

EARLEY
(city)

SC
(state)

29640
(zip)

RETURN THIS FORM AND THE ATTACHED AFFIDAVIT TO
Office of General Counsel, S. C. Department of Education
1015 Rutledge Building, 1429 Senate Street
Columbia, South Carolina 29201

Pickens Defs 91

305

307

PID: 12375

Application Date: 05/26/11

School District of Oconee County
414 South Pine Street
(864) 886-4400
www.oconee.k12.sc.us

**Certified
Application**

CONTACT INFORMATION			
Last Name: Nooral	First Name: Marlam	Middle Initial: R	
Former Last Name(s):			
Present Address: 518 W. North 4th Street			
City: Seneca	State: SC	Country: USA	Zip Code: 29678
Home Phone:	School/Business Phone:	Cell Phone:	
(864)882-2485		(864)247-2428	
E-Mail Address: mari.nooral@gmail.com			
Permanent Address (if different than present address):			
City:	State:	Country:	Zip Code:
Permanent Phone:			
Alternate / Emergency Contact			
Name: Rooksana E. Nooral	Address: 505 Robin Drive Seneca, SC 29678		Phone: (864)882-2486
How did you first learn about the School District of Oconee County? Other			

ADDITIONAL INFORMATION	
Date available for employment: 05/24/2011	
If presently employed, why do you wish to change jobs? I am a non-degree seeking graduate student at Clemson University. I was a middle school ELA teacher, but I chose not to sign a continuing contract because of harassment and feeling unsafe.	
Are you currently under contract in a certified position with another school district? No	
If Yes, please state school/department, type of contract, and expiration date of current contract I was offered a continuing contract with School District of Pickens County at R.O. Edwards Middle School for the 2009-2010 school year, but I declined to sign it.	
Have you ever been employed by the School District of Oconee County? No	

If Yes, state position(s) and date(s):
Are you legally authorized to work in the United States on a full-time basis? (If employed, you will be required to complete an Employment Eligibility Verification Form (Form I-9) and produce documentation of your identity and authorization to work)
Yes
List relatives employed by the School District of Oconee County:
Did you participate in SC Teacher Cadet program? No

EMPLOYMENT PREFERENCE(S)
English
Middle Level Language Arts
Educational Evaluator

Sports and/or activities you are qualified to instruct or coach:
Yearbook Soccer Mentor

EMPLOYMENT POSITIONS
Certified positions for which you have already applied:
00001610 - Teacher Summer School Program Instructors (21st Century Grant)
00001621 - Teacher Teacher, Secondary English (Anticipated Vacancies-Various Schools)
00001598 - Teacher Long-Term Substitute Teacher, Art



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DEF SDOC 000995

Certified Application

00001680 - Teacher Teacher, GED
 00001635 - Teacher Teacher, GED
 00001639 - Teacher Teacher, Middle Level Language Arts(Anticipated Vac.-Various Loc.)
 00001593 - Teacher Teacher, Special Education (Resource)
 00001817 - Teacher Teacher, Music
 00001611 - Educational Evaluator Educational Evaluator .6 (Part-Time)

Certified positions you are adding:
 00001846 - Teacher, Secondary English(Anticipated Vacancies-Variou Locations) -
 LANGUAGES / SKILLS

Are you bilingual? No
 languages in which you are proficient

Other languages not listed:
 Latin

EDUCATION					
Date From / To	Degree / Hours Earned	Degree Date / G.P.A	College / University	Major	Minor
08/2001 / 05/2003	Bachelors	08/2003	UNIVERSITY OF NORTH CAROLINA-CHAPEL HILL	CLASSICAL STUDIES	ENGLISH
08/2003 / 05/2006	Masters	05/2006	COLLEGE OF CHARLESTON	ENGLISH	
08/2006 / 05/2007	Masters	05/2007	CLEMSON UNIVERSITY	* NOT LISTED	

CERTIFICATION / LICENSURE

Are you applying to be certified through the Program of Alternative Certification for Educators (PACE)? No
 If Yes, do you have a letter of eligibility?

Grade Level	Certification / Endorsement	Certification Type / Number	Issue Date	Expiration Date	State
Grades 6-8	Middle-Level Language Arts	Professional / 234385	2009-07-01 00:00:00.000	2014-06-01 00:00:00.000	SC

HIGHLY QUALIFIED

Subjects Highly Qualified in:

- Advanced Fine Arts	- Art (Visual Arts & Music Only)
- Biology	- Chemistry
- Civics and Government	- Early Childhood
- Earth Science	- Economics
- Education Evaluator	- Elementary
X English	- Environmental Science and Natural Resources
- ESOL	- Family and Consumer Science
- Forestry	- French
- General Mathematics	- General Science
- Geography	- Geography
- German	- Government

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DEF SDOC 000996

- Health	- Health and Physical Education
- History	- Horticulture
- Industrial Arts	- Industrial Technology Education
- Japanese	- Latin
- Marine Biology	- Mathematics
X Middle School Language Arts	- Middle School Mathematics
- Middle School Science	- Middle School Social Studies
X Middle-Level Language Arts	- Middle-Level Mathematics
- Middle-Level Science	- Middle-Level Social Studies
- Music Education - Choral	- Music Education - Instrumental
- Music Education - Piano	- Music Education - Violin
- Music Education - Voice	- Physics
- Psychology	- Reading Clinician
- Reading Consultant	- Reading Coordinator or Director
- Reading or Language Arts	- Reading Teacher
- Russian	- Science
- Social Studies	- Special Ed
- Special Ed - Cross Categorical	- Special Ed - ED
- Special Ed - LD	- Special Ed - Resource

WORK EXPERIENCE

Have you ever been dismissed from a position? No
 Have you ever been asked to resign from a position? No
 Have you ever resigned from a position rather than being dismissed? No
 Have you ever resigned rather than face disciplinary action and/or nonrenewal by an employer? No
 Have you ever been disciplined for any reason which resulted in suspension from work (with or without pay)? No
 Details to YES answers:

Do you have ANY Teaching / Supervisory / Administrative work experience? Yes

Teaching / Supervisory / Administrative Experience

Date From - To: 08/2005 - 12/2005 Name of School / District: College of Charleston / College of Charleston State: SC
 Grade / Subjects / Title: Writer's Group Facilitator Supervisor Name: Dr. Patricia Ward
 Email: ward@cofc.edu Phone Number: (843)963-6648

Accredited: Yes

May we contact this supervisor: Yes

If No, please explain:

Reason for Leaving: The position ended with the semester.

Date From - To: 10/2006 - 05/2007 Name of School / District: R.C. Edwards Middle School / School District of Pickens County State: SC
 Grade / Subjects / Title: Substitute Teacher Supervisor Name: Mike Sanders
 Email: Phone Number: (864)654-1400

Accredited: Yes

May we contact this supervisor: Yes

If No, please explain:

Reason for Leaving: I was hired as a full-time teacher.

Date From - To: 08/2007 - 08/2009 Name of School / District: R.C. Edwards Middle School / School District of Pickens County State: SC
 Grade / Subjects / Title: eighth grade / ELA /

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DEF SDOC 000997

Certified Application

language arts strategies / yearbook adviser Supervisor Name: Gary Culler
 Email: GaryCuller@pickens.k12.sc.us Phone Number: (864)654-1400

Accredited: Yes

May we contact this supervisor: No

If No, please explain: Reported misconduct, certificate under review.

Reason for Leaving: I was sexually assaulted by student, administrators ignored it.

Date From - To: 02/2010 - 12/2011

Name of School / District:
 Clemson University /
 I am currently a graduate student.

State: SC

Grade / Subjects / Title: Non-Degree Graduate Student Supervisor Name: Not assigned one

Email: Phone Number: (864)855-1881

Accredited: Yes

May we contact this supervisor: Yes

If No, please explain:

Reason for Leaving: I have not changed my status yet.

Total Years Administrative Experience: 0

Total Years Teaching Experience: 2

Student Teaching Experience

Date From - To: 08/2006 - 04/2007

Name of School / District:
 College of Charleston /
 School District of Pickens County

State: SC

Grade And Subjects: eighth grade - honors
 English and college preparatory

Supervisor Name: Dr. Lienne Medford

Email: Lienne@clemson.edu Phone Number: (864)250-8891

Name of Co-Op. Teacher: Marilyn Raines Phone Number: (864)654-1400

Date From - To: -

Name of School / District:
 R.C. Edwards Middle School /

State:

Grade And Subjects:

Supervisor Name:

Email: Phone Number:

Name of Co-Op. Teacher: Phone Number:

Date From - To: -

Name of School / District:
 R.C. Edwards Middle School /

State:

Grade And Subjects:

Supervisor Name:

Email: Phone Number:

Name of Co-Op. Teacher: Phone Number:

Date From - To: -

Name of School / District:
 Clemson University /

State:

Grade And Subjects:

Supervisor Name:

Email: Phone Number:

Name of Co-Op. Teacher: Phone Number:

Do you have ANY General work experience? Yes

General Work Experience

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DEF SDOC 000998

Dates From / To: 01/2006 - 06/2006 Years: 1
 Company: College of Charleston
 Address: 66 George Street Charleston, SC 29424
 Position: Graduate Assistant X Full Time _ Part Time
 Number of Employees Supervised: None
 Supervisor: Dr. Patricia Ward Title: Graduate Program Director Phone Number: (843)953-5648 Email: ward@cofc.edu
 May we contact this supervisor: Yes

If No, please explain:

Reason for Leaving: I graduated and started a degree at Clemson University.

Description of responsibilities and duties:

I had to perform research tasks for both professors. I created annotated bibliographies, etc. I reviewed current research to help them with the projects that they were working on in their fields.

PROFESSIONAL REFERENCES

Name: Lienne Medford Title:
 School / University / Company:
 Address: 225 S. Pleasantburg Drive P. O. Box 5818 Greenville, SC 29605
 Work Phone: (864)250-8891 Home Phone:
 Mobile Phone: E-Mail Address: Lienne@clemson.edu

Name: Marilyn Raines Title:
 School / University / Company:
 Address: 1157 Madden Bridge Road Central, SC 29630
 Work Phone: (864)654-1400 Home Phone:
 Mobile Phone: E-Mail Address: MarilynRaines@pickens.k12.sc.us

Name: Mary Bridges Title:
 School / University / Company:
 Address: 1157 Madden Bridge Road Central, SC 29630
 Work Phone: (864)654-1400 Home Phone:
 Mobile Phone: E-Mail Address: MaryBridges@pickens.k12.sc.us

PROFESSIONAL PERSPECTIVE

Identify two issues facing education and your possible solutions.
 One major issue facing education is the lack of support that many struggling students feel. Many times I have overheard students say that teachers do not care. Having a caring disposition is necessary so that students know that their entire well-being matters. When a student knows his or her teacher cares, the student performs better, gaining confidence in his or her own ability. Teachers need to show interest in their students outside of their own classroom by attending sports, musical performances, and such that are part of school and the community. By teachers putting in the extra time, students will do the same. Attending memorial services are also integral to show the students who have suffered a loss that their teacher cares. Students get more out of learning, especially middle school students, when they connect with their teachers and know that they care. Another issue facing education is the effect of a teacher's expectations on student performance. Students easily discern what expectations their teachers have for them. This can have positive or negative ramifications. Teachers must have high expectations for all their students, being firm, fair, and flexible. All students can learn from the same content with just different levels of scaffolding. This requires teachers to be highly qualified and have a thorough knowledge of their content area. They also must be able to show students how what they learn relates to their lives. When a teacher expects the most from each student, he or she will strive to prove the teacher right.

Discuss any of your qualifications that you would like to stress.
 I am already highly qualified to teach secondary English/Language Arts, and I am currently enrolled as a non-degree graduate student at Clemson University so that I can take the one course I need in order to add-on secondary English to my certificate. I passed ADEPT, earning my professional certificate as a second year teacher. Although I have only taught for two years, I have already had over five hundred students, excluding the one hundred plus

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DEF SDOC 000999

Certified Application

students that I student taught. This not only has given me a plenitude of experiences, but has also allowed me to hone my ability to create lessons for diverse learning styles and assess in an effective manner. I also have a diverse background which allows students from all areas to connect with me. I have attended public school in both Oconee County and New York City. My undergraduate degree in Classics allows me to have a background in Latin and ancient Greek, which helps me work with my students in decoding words and using roots and affixes that the state standards require that they learn.

Present any additional information, which you have not been able to include elsewhere on the application. I am an educator who feels a great impetus to stay connected to research in order to teach each and every student in my classroom. I have presented at five conferences since I was a student teacher in the spring of 2007. I presented twice at the 2010 South Carolina Council of Teachers of English (SCCTE) Conference. I have presented three times at the South Carolina Middle School Association (SCMSA) conference. Recently, I presented with Dr. Lienne Medford of Clemson University at the 2010 SCMSA Conference, and I am currently writing an article on our research at the request of The South Carolina Middle School Journal. I have published my master's thesis at the College of Charleston entitled, "The Game of Authorial 'Entente' in Chaucer's *Troilus and Criseyde*." I also had my original short story published in *Colophon*, the graduate online newsletter at the College of Charleston. I am an active member of the National Society of the Daughters of the American Revolution and the National Society of the Colonial Dames of the Seventeenth Century. I was named the South Carolina State Outstanding Junior Member at the 2008 State Conference for the Colonial Dames. In addition, I am the Senior State Librarian and Senior Society President in the National Society of Children of the American Revolution. I am also a member of The South Carolina Education Association (SCEA), the South Carolina Middle School Association, and the South Carolina Council of Teachers of English.

AGREEMENT

I AUTHORIZE INVESTIGATION OF ALL THE STATEMENTS IN THIS APPLICATION INCLUDING INVESTIGATION OF PREVIOUS EMPLOYMENT EXPERIENCES. I CERTIFY THAT THE ABOVE ANSWERS ARE TRUE AND COMPLETE AND UNDERSTAND THAT FALSIFICATION OR OMISSION OF FACTS ON THIS APPLICATION SHALL BE CONSIDERED SUFFICIENT CAUSE FOR DISQUALIFICATION OR DISMISSAL. I FURTHER AGREE TO TAKE ANY FUTURE PHYSICAL EXAMINATIONS THE DISTRICT MAY DEEM NECESSARY. REFERENCES AND PERSONAL INFORMATION WHICH BECOME A PART OF THIS RECORD ARE TO BE REGARDED AS CONFIDENTIAL AND WILL NOT BE REVEALED.

Type "YES" if you agree to the above: YES

The School District of Oconee County is an equal opportunity employer and does not discriminate on the basis of race, color, national origin, sex, religion, marital status or disability in programs, activities, or employment practices, as required by Title IV, Title IX, and Section 504.

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DEF SDOC 001000

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF OCONEE

3

4 MARIAM R. NOORAI,

5 Plaintiff(s),

6 vs.

Case No.: 2010-CP-37-279

7 SCHOOL DISTRICT OF PICKENS COUNTY,

8 SCHOOL DISTRICT OF OCONEE COUNTY,

AND GARY CULLER, DONALD BOGGS,

RICHARD HUDAK, EARNESTINE WILLIAMS,

9 AND DR. KELLY PEW IN THEIR INDIVIDUAL CAPACITIES,

10 Defendant(s).

CERTIFIED COPY

11 VOLUME II

12 D E P O S I T I O N

13 WITNESS: MARIAM R. NOORAI

14 DATE: Tuesday, March 13, 2012

15 TIME: 1:58 p.m.

16 LOCATION: Duff, White & Turner, LLC
3700 Forest Drive, Suite 404
17 Columbia, South Carolina

18 TAKEN BY: Attorneys for the Defendants

19 REPORTED BY: SHERI L. BYERS
20 Registered Professional Reporter

21 - - - - -

22 COMPUSCRIPTS, INC.
A Full-Service Court Reporting Agency
23 Post Office Box 7172
Columbia, South Carolina 29202
24 803-988-0086
1-888-988-0086
25 compuscripts.com

1 A. Not she, but when Jami Verderosa came and
2 talk to her, that West-Oak had talked to Mr. Culler.
3 And she just could not recall what she was told
4 Mr. Culler said.

5 Q. All right. So you're not testifying here
6 that Earnestine Williams talked to Mr. Culler?

7 A. No.

8 Q. All right. Do you believe that Earnestine
9 Williams talked to Mr. Culler?

10 A. She may have afterwards. I don't know.

11 Q. All right. Do you have any evidence that she
12 did?

13 A. No.

14 Q. All right. At any point?

15 A. No.

16 Q. All right. But your testimony is that you
17 believe Jami Verderosa talked to Mr. Culler?

18 A. Or someone from West-Oak.

19 Q. All right. Do you believe that anyone else
20 from the district office at the School District of
21 Oconee County talked to Mr. Culler?

22 A. I'm sure they probably have, but, I mean, I
23 don't know.

24 Q. All right. But that's -- you don't know for
25 a fact either way?

359

1 A. No.

2 Q. Do you have any reason to believe that
3 somebody has?

4 A. It's possible. Mr. Culler, in his letter,
5 said that someone was sharing with him how I was, you
6 know, filling out confidential employment applications,
7 so ...

8 Q. All right. But you had applied to all the
9 other districts, as well?

10 A. Yes.

11 Q. And you had done that by the time you got the
12 letter from Mr. Culler that we looked at in the last
13 deposition?

14 A. Yes.

15 Q. All right. Go to the fourth bullet.

16 A. The fourth bullet.

17 Q. Right. That's when you told Mrs. Williams
18 that you had been sexually and physically assaulted by
19 a student.

20 A. Yes, sir.

21 Q. All right. And why did you decide to tell
22 that to Mrs. Williams?

23 A. I wanted her to understand, I guess, you
24 know, the situation and where I was coming from.
25 Understand why I left my job, and, you know, I felt

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.



DEPOSITION OF GEORGE GARY CULLER

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of George Gary
Culler was taken at the law offices of Larry C. Brandt,
3691 Blue Ridge Boulevard, Walhalla, South Carolina, on
Tuesday, August 7th, 2012, commencing at 1:30 p.m.

KAREN BELANGER
CERTIFIED VERBATIM REPORTER, MASTER

FOOTHILLS COURT REPORTING
864-991-2570

- 1 Q. '94?
- 2 A. Uh-huh.
- 3 Q. After Clemson, tell me what you did next as far as
- 4 career, education, anything of that nature.
- 5 A. I taught for a year at Lancaster High School, taught
- 6 for five years with Woodmont High School, taught for
- 7 three years at Easley High School. I was an
- 8 assistant principal for five years at Easley High
- 9 School, and I've just completed my fourth year as
- 10 principal at Edwards Middle.
- 11 Q. So you came to Edwards from Easley?
- 12 A. Easley High, yes, sir.
- 13 Q. Easley High?
- 14 A. Uh-huh.
- 15 Q. And you were a vice principal?
- 16 A. Assistant principal, yes.
- 17 Q. Assistant principal there?
- 18 A. Uh-huh.
- 19 Q. And when you taught in the classroom, that was in
- 20 Lancaster?
- 21 A. In Lancaster and Woodmont High School.
- 22 Q. Woodmont. And then --
- 23 A. And Easley High School.
- 24 Q. And Easley?
- 25 A. Yes, sir.

1 bothering her?

2 A. Oh, yes. Well, I mean I've read other -- I've read
3 the predecessor of that Complaint. So yes, I'm aware
4 of that Complaint, but I did not know at the time,
5 no, sir.

6 Q. I'm talking about this one little specific instance
7 here where she said -- or basically was saying to you
8 that, "I'm upset because you didn't give me a chance
9 to go see my student get this honor," and all that
10 stuff. Did she ever come to you with that complaint
11 at all?

12 A. No, sir.

13 Q. Have you ever discussed with Mary Bridges -- well,
14 let me ask you this. Were you ever notified that
15 there was going to be an awards ceremony for this
16 student that had won in the writing contest?

17 A. Not to my knowledge.

18 Q. On January 27, 2009, Ms. Noorai complains about a
19 male student trapping her in the stairwell and
20 basically sexually assaulting her. Are you familiar
21 with that complaint?

22 A. Yes, sir.

23 Q. Tell me what you recall about the complaint. Start
24 off with how you first became aware of the complaint
25 and what you did in regards to that.

1 A. I became aware of it sometime in June, and -- after
2 the school year had ended. And I responded by going
3 in my assistant principal's office, Mr. Don Boggs,
4 and opening up his files and since I couldn't get him
5 on the phone, searching from A to Z, trying to find
6 the referral that you're referring to. And I found
7 it, read it, talked to my SRO at the time, Teddi
8 Palis.

9 Q. SRO meaning?

10 A. School resource officer, about the complaint, and
11 then I talked to Mr. Boggs.

12 Q. And what did Mr. Boggs tell you?

13 A. That, you know, he had handled it and, you know, told
14 me that he had seen the child the next day, said it
15 was left in his box at the end of the day. He saw
16 the child the next day when he was dealing with the
17 child with another incident and dealt with them both
18 together.

19 Q. And what was the other incident?

20 A. The child had gotten in trouble for -- I think he
21 heated up a piece of metal. Once again, it may not
22 have been metal, heated up something, I assume it was
23 metal, in the shop and burned another child.

24 Q. And was this -- the same person that did the heating
25 up and burning, was that the same person that

1 things you can do to help, some things they could do
2 to help themselves. You would start a dialogue and
3 start working with that person. And, you know, at
4 the end if it's an issue where it's -- you know, then
5 if it's an issue that you just can't overcome, then
6 you bring in ADEPT and HR and by that time, you know,
7 HR's heard from you a couple times on it and they're
8 aware of it.

9 Q. Have you ever -- in all your years in administration,
10 have you had to call a teacher in and start working
11 with them in that regard in that first step you
12 described?

13 A. Yes, sir, many times.

14 Q. Many times?

15 A. Well, I mean the first step is trying to help
16 teachers. I mean that's my job is to help teachers.

17 Q. I understand that. How many times do you think
18 you've had occasion where you've had teachers that
19 you had to go to that step, that first one you talked
20 about, bringing them in and talking to them and
21 saying, "Can't we resolve this? You need to
22 strengthen this," whatever the conversation would be?
23 How many teachers have you done that with?

24 A. I don't know the answer to that. I would --

25 Q. Do you think more than ten?

- 1 Q. She alleges that she had had some gallbladder surgery
2 and upon recommendation or advice from her doctors,
3 that she wanted to trim her workload. Did she ever
4 convey that to you?
- 5 A. I've never seen -- never saw anything from a doctor
6 about her caseload, no, sir.
- 7 Q. No. Did she tell you that, though?
- 8 A. Not from -- not about a doctor, no, sir.
- 9 Q. She didn't convey to you that her doctors told her to
10 trim her caseload?
- 11 A. Not about a doctor, no, sir.
- 12 Q. Or her workload?
- 13 A. Not about a doctor, no, sir.
- 14 Q. And I know you haven't seen a doctor's statement to
15 that effect. What I'm after is, did she tell you the
16 doctor had told her that?
- 17 A. No, sir.
- 18 Q. And why would you not -- why did you not want to
19 decrease her workload in that respect, let her teach
20 and get somebody else to do the yearbook?
- 21 A. Well, like I said, I could not guarantee it. I was
22 willing to do it, and that was conveyed, that if I
23 hired someone else -- if I had the opportunity to
24 bring in a new person, that I would have that as part
25 of that position or if someone on the faculty wanted

1 to do the yearbook. But just like when Ms. Noorai
2 was hired and that was attached to that position, you
3 know, you attach that to positions, you know, "I'm
4 hiring for English and yearbook." And, in fact, the
5 person that I replaced Ms. Noorai with was assigned
6 the yearbook also.

7 Q. So your testimony is you didn't refuse, you just told
8 her that you couldn't guarantee it for the coming
9 year, the yearbook, getting rid of the yearbook for
10 her?

11 A. The question is, did I say that?

12 Q. Yes.

13 A. Yes, sir.

14 Q. Is it your testimony that even after her request,
15 that even at that time if you couldn't guarantee her
16 being relieved of yearbook duties, that you were
17 wanting -- you were still willing to work and try to
18 find somebody else to do it?

19 A. You got to say that one more time. I'm sorry.

20 Q. Well, you said that you told her -- or you couldn't
21 guarantee that you would give someone else the
22 yearbook duty?

23 A. That's right.

24 Q. My question is, when you said that to her, did you
25 intend to look around to see if you could find

- 1 somebody else who could take it up?
- 2 A. Of course.
- 3 Q. And who did you have in mind?
- 4 A. I didn't have anybody in mind. I guess I had 32 and
- 5 a half in mind.
- 6 Q. Did you ever go and ask any of the other teachers if
- 7 they would take over the yearbook and relieve Mari of
- 8 that duty?
- 9 A. No, sir.
- 10 Q. Now, that was somewhere in April when you all had
- 11 that discussion, around the middle of April?
- 12 A. I do not know that. I'm --
- 13 Q. Had the contracts already gone out, to your
- 14 knowledge?
- 15 A. I can't answer that.
- 16 Q. Meaning you can't recall whether they'd gone out or
- 17 not, or you just don't know when the contracts went
- 18 out?
- 19 A. Well, I know contracts usually go out in April. But
- 20 what I'm saying is I can't tell you that meeting in
- 21 relation to contract time going out. No, sir, I
- 22 can't tell you that.
- 23 Q. There's an allegation here that she allowed a student
- 24 additional time to take an exam and then when she
- 25 sent the student to the next class with a pass, that

1 the subsequent teacher, Mr. Hudak, got upset. Are
2 you aware of that problem?

3 A. Yes, sir.

4 Q. Tell me what you remember of that situation.

5 A. Well, you just -- you know, what you said absolutely
6 I think there was -- for some reason the child was --
7 a child or children -- I don't know if it was one or
8 more than one -- were being held in class, got sent
9 to Mr. Hudak with a pass or without. I don't know
10 about the pass. I don't know about that. That's not
11 really relevant to the point, but Mr. Hudak got
12 upset, evidently went and spoke to Ms. Noorai about
13 one on one. Ms. Noorai then went to Ms. Bridges and
14 I believe, you know, did not like the way Mr. Hudak
15 handled it. Ms. Bridges came to me about it. I
16 spoke to Mr. Hudak and then I think there was a
17 follow-up e-mail from Mr. Hudak to Ms. Noorai about
18 that. And then that got sent on to me also and I
19 dealt with that also.

20 Q. Did Ms. Noorai violate school or district policy in
21 allowing a student extra time to complete an exam,
22 even if it made that student tardy to the next class?

23 A. Policy?

24 Q. Yes.

25 A. No, sir.

- 1 can happen easily. I mean that can happen.
- 2 Q. I understand that snafues happen --
- 3 A. Oh, regularly.
- 4 Q. -- but do you recall her ever complaining that you
- 5 told her to go one place and then turned around and
- 6 scheduled her for another?
- 7 A. Do I recall her telling me that? No, sir. Could
- 8 that have happened? Yes, sir.
- 9 Q. Well, tell me about the signing of the contract. I
- 10 think it was the one to the last deposition. Do we
- 11 have that contract that we put in in evidence? What
- 12 have we got there? Did we miss it? There it is.
- 13 That exhibit to Williams' deposition, have you seen
- 14 that before?
- 15 A. Oh, I'm sure I have, absolutely.
- 16 Q. Is that the contract that was offered to Mari in
- 17 April of 2009?
- 18 A. I have no reason to think it's not. If it's not the
- 19 exact, it was one that was, you know --
- 20 Q. It appears to have the signature of Mendel Stewart;
- 21 is that correct?
- 22 A. Yes, sir.
- 23 Q. And the date on it is what date?
- 24 A. May 15, 2009.
- 25 Q. And he was the superintendent of Pickens County

1 was there a date that you said, "We've got to have
2 them back by a certain date"?

3 A. Whatever that day is, the 25th, I would assume, you
4 know, I might have been given a directive -- we're
5 given a directive by the district on what day to have
6 them up there.

7 Q. And what happens if you don't return the signed
8 contract by the deadline date?

9 A. I'll remind you.

10 Q. Well, let's say I just don't send it back. Am I
11 terminated?

12 A. Not to my knowledge.

13 Q. How late could I delay before I sign it and turn it
14 back and still retain employment for the next year?

15 A. No idea.

16 Q. If I don't sign it by the deadline date, doesn't the
17 school district then -- if they're going to fill it,
18 if they're not sure I'm coming back, you can't leave
19 it hang it open all summer, can you, waiting on me to
20 get it back to you?

21 A. No, sir.

22 Q. Did you have a conversation with her about signing
23 her contract on May 22, 2009?

24 A. I don't know about the date, but yes, I did have a
25 conversation with her about signing her contract.

1 Q. Tell us what was said by you and her.

2 A. Well, it was me and Ms. Noorai and Ms. Bridges in my
3 office. And my concern was -- my comment to her was
4 that I was about to have a conversation with her, not
5 as her principal, but as just an adult who's been
6 around, someone who's -- you know, could potentially
7 be old enough to be -- you know, just looking out for
8 her. I was not talking to her as her principal, I
9 was just having a conversation with her as a
10 professional, and I advised her to sign her contract.
11 I knew that she did not -- you know, she did not want
12 to do the yearbook and that she did not want to come
13 back to Edwards if she had to do the yearbook, but
14 that as a professional, I would advise her to sign it
15 so she would be protected.

16 Q. What happens to teachers if you sign a contract, turn
17 it back in, and then quit, sometime during the summer
18 call you up and say, "I'm not coming back"? Does
19 that harm them in the job hunting process thereafter?

20 A. Not to my knowledge.

21 Q. Have you ever done that?

22 A. Yes, sir.

23 Q. Signed your contract and then quit after they thought
24 you were coming back during the summer?

25 A. Yes, sir, not in the summer -- well, the first week

1 wouldn't sign the contract?

2 A. No, sir.

3 Q. At the time you had the meeting May 22, 2009, were
4 you aware that she was interviewing for a teaching
5 position with another school district?

6 A. I believe so. I mean I knew right around there
7 sometime, yes, sir.

8 Q. Well, can you say for sure whether on Friday, the
9 22nd you knew it or you found out about it a few days
10 later or anything?

11 A. I mean I can't say for sure. I -- did I know she was
12 not happy? Yes, because of the yearbook discussions.
13 Did I know she was interviewing, per se, with a
14 specific district? I don't know that. I mean I knew
15 sometime around then.

16 Q. Have you ever referred to Mari and another related
17 arts teachers, calling them weak or strong in
18 reference to them personally?

19 A. Them personally? Yeah. Yeah, but not in -- not as
20 in teaching weak and strong.

21 Q. What, as a person they're weak or strong?

22 A. No, sir. As a person? No, sir.

23 Q. But in their teaching as being weak or strong?

24 A. No, sir. No, sir, in their desire to want to do
25 yearbook, day duty on a big playground by yourself,

1 yes, sir. Were they strong in that duty? Did they
2 want to be out there and deal with that? Yes, sir.

3 Q. Was there ever an incident where you were -- the
4 students had been distributing yearbooks and you
5 shouted at her in the hallway, asking if she had
6 completed her yearbook duties, and then shouting in
7 to the Walkie Talkie, "If she doesn't tell me she's
8 finished, how do I know," in an angry and frustrated
9 tone?

10 A. No, sir.

11 Q. Have you ever used those words that you can -- in any
12 tone in reference to Mari and her yearbook duties?

13 A. Have I ever made the statement --

14 Q. "If she doesn't tell me she's finished, how do I
15 know," meaning finished with yearbook duties.

16 A. I mean I -- it sounds like a logical statement.

17 Q. But you don't recall whether you did or not?

18 A. No, sir.

19 Q. Why, if she was not going to sign the contract by the
20 deadline date, why did you need a letter of
21 resignation?

22 A. Because of procedure.

23 Q. Is that written in any kind of manual or policy
24 procedures and book with the school district?

25 A. I do not know that.

- 1 there 20 years, they're free to go fill that position
2 some other way, aren't they?
- 3 A. I do not know that.
- 4 Q. Did you ever threaten her that if she didn't submit
5 a letter of resignation that you would pull her
6 license to teach?
- 7 A. That I would pull her license to teach?
- 8 Q. Yeah.
- 9 A. No, sir.
- 10 Q. Or that if she didn't do that, the district would do
11 it, would take her license to teach?
- 12 A. That the district would take her license to teach?
- 13 Q. Yes.
- 14 A. No, sir.
- 15 Q. Did you ever indicate to her that the State
16 Department would take action against her license if
17 she didn't resign?
- 18 A. Would take action? No, sir.
- 19 Q. Did you tell her they may take action?
- 20 A. Yes, sir.
- 21 Q. What did you tell her they may do to her if she
22 didn't sign that letter of resignation?
- 23 A. That they may take action.
- 24 Q. What did you mean by action? Did you explain that to
25 her?

- 1 A. I do not think so. I mean I think I said, "They may
2 -- "They can pull your certificate," but I did not
3 say they would. I said they could. I'm not the
4 State Department.
- 5 Q. And by what authority did you believe that they could
6 do that?
- 7 A. By what authority? I guess just by refusing to
8 follow procedure.
- 9 Q. So you're saying that if a teacher in any school
10 district refuses to return their contract by the
11 deadline day and refused to sign a letter of
12 resignation, that they're subject to discipline by
13 the State Office -- State Department?
- 14 A. No, sir. No, sir, I'm not saying that at all.
- 15 Q. What are you saying?
- 16 A. I'm saying that I would be worried that they could do
17 that. I'm just saying that if it were me or my
18 daughter or my son or my wife or someone that I was
19 responsible for, that I would want to make sure that
20 they did not leave themselves open to harm.
- 21 Q. Have you ever known anybody to not submit their
22 contract by the deadline date and also refuse to
23 resign and be disciplined by the State Department?
- 24 A. I've never known the first two.
- 25 Q. And so I take it -- and when I used the word

1 discipline, I'm talking about whether they can take
2 action against her certificate or whatever, but it
3 would somehow penalize her as far as getting jobs or
4 remaining certified as a teacher.

5 A. I have never known anyone to not turn in a letter of
6 resignation, no, sir.

7 Q. When she was in there on that day, and regardless of
8 which version of the facts we take, and was writing
9 that letter of resignation, was she in there in that
10 office with the door locked to begin with?

11 A. Not to my knowledge, but in the Complaint, it says
12 that. I have no reason to think that it's not true.

13 Q. When you opened it, did you open the door and walk in
14 on her?

15 A. Yes, sir.

16 Q. Do you know how the door became open?

17 A. I do not.

18 Q. Assume it was locked to start with. Do you know who
19 opened the door?

20 A. I do not.

21 Q. Did you have a key?

22 A. I have a key to every door.

23 Q. Did you use your key to open that door?

24 A. No, sir.

25 Q. Why did you go in there when she was in there writing

- 1 her letter?
- 2 A. Because I heard she was upset and I did not want an
- 3 employee of mine in there upset.
- 4 Q. When you went in there, what did you tell her?
- 5 A. I did not tell her anything. I asked a question.
- 6 Q. What did you ask?
- 7 A. If writing that letter was making her that -- making
- 8 her upset.
- 9 Q. Excuse me?
- 10 A. If writing that letter was making her upset.
- 11 Q. What did she say?
- 12 A. She said that she wanted to be alone.
- 13 Q. What did you do?
- 14 A. I walked out the door.
- 15 Q. At that point in time when she was in there writing
- 16 that letter, did you have knowledge that she had
- 17 interviewed for a job at West Oak?
- 18 A. Sometime around there I did, yes, sir.
- 19 Q. Did you intimate to her in any way that she had not
- 20 been chosen for the job at West Oak?
- 21 A. No, sir.
- 22 Q. Do you know Ms. Verderosa?
- 23 A. No, sir.
- 24 Q. Do you know Rosemary Wise?
- 25 A. No, sir.

- 1 Q. Do you know -- is it Linda Lusk or the Lusk lady that
2 was on that committee at West Oak? Do you know her?
- 3 A. I do.
- 4 Q. Is her first name Linda?
- 5 A. I do not know.
- 6 Q. How do you know her?
- 7 A. When I was a student teacher at Westminster Middle
8 School many moons ago, she was an assistant
9 principal.
- 10 Q. And did she ever call you in regards to Mari?
- 11 A. No, sir.
- 12 Q. Rosemary Wise ever call you in regards to Mari and
13 why she was leaving your school?
- 14 A. No, sir.
- 15 Q. Verderosa, did she call you and ask about her?
- 16 A. No, sir.
- 17 Q. Did anybody that you know connected with the Oconee
18 School District ever call you and talk to you about
19 Mari?
- 20 A. No, sir.
- 21 Q. Did anybody ever send you a written request for a
22 recommendation or your opinion of Mari as a teacher
23 that was connected with the Oconee School District?
- 24 A. No, sir.
- 25 Q. Has anybody connected with any school district -- and

1 I'm talking about a formal way, calling you in a
2 formal sense of the word, their job, your job, with
3 any school district in the State of South Carolina
4 and requested information about Mari?

5 A. Yes, sir.

6 Q. Who?

7 A. I can't answer. I mean I don't know all of them.

8 Q. Would there be anybody from Greenville?

9 A. I think so. I think -- yes, sir.

10 Q. Who do you think called you from Greenville?

11 A. I think there was a school, Tanglewood maybe. Is
12 that a middle school in Greenville, Tanglewood?

13 Q. I'm assuming that, but -- it seems like something
14 that'd be over there.

15 A. And then there was -- I think there was a middle
16 school over there, League Academy.

17 Q. And who did you talk to? Do you recall the names?

18 A. One of them's last name is Hall, and the other one I
19 do not know. The other one I didn't speak to. They
20 just left a message.

21 Q. Did you ever call them back?

22 A. No, sir.

23 Q. Did you ever supply anything in writing to either of
24 those people that called and inquired?

25 A. No, sir.

- 1 Q. And the one that you did talk with, what did you say?
- 2 A. I told her that she should call human resources.
- 3 Q. With Pickens County School District?
- 4 A. Yes, sir.
- 5 Q. Did you say anything at all negative about Mari in
- 6 the conversation you had with her?
- 7 A. It was kind of the opposite.
- 8 Q. What did you say?
- 9 A. I started out by saying, "You should call human
- 10 resources." And then Ms. Hall followed up with,
- 11 "Well, have you ever seen her teach?" And I said,
- 12 "No, you know, I had not." She then followed up
- 13 about, you know, her quality of, you know, work at
- 14 school. And all I could tell her was, you know, test
- 15 scores were good. We offered her a contract. She
- 16 chose not to sign it. There's no reason -- you know,
- 17 we -- you know, if she would have wanted to, she'd
- 18 still be teaching at Edwards."
- 19 Q. Have you talked to anybody from any of the Anderson
- 20 school districts?
- 21 A. Yes, sir.
- 22 Q. Who have you talked to at Anderson?
- 23 A. The principal of Riverside Middle School. His name
- 24 is Kevin Black.
- 25 Q. Kevin Black?

1 Anderson, another Anderson district, if I'm not
2 mistaken. Nobody in the lower part of the state
3 ever. There had to be a Greenville or Anderson
4 district. I just -- honestly I just -- I'm sorry.

5 Q. Have you ever been given any instruction from the
6 Pickens County School District offices about how you
7 should handle inquiries concerning Mari?

8 A. Yes.

9 Q. And what were those instructions?

10 A. Well, I believe -- I don't believe I was given
11 instructions, I believe I just asked for some
12 clarification, "Is this okay if I say this?"

13 Q. So you said, "Is this okay if I say" what?

14 A. That, "You should contact the district office."

15 MR. BRANDT:

16 Mark that one. You all should have that.

17 (EXHIBIT NUMBER 5 MARKED; ATTACHED)

18 EXAMINATION RESUMED BY MR. BRANDT:

19 Q. Do you recognize Exhibit Number 5? Exhibit Number 5
20 that I put out there, do you recognize that document?

21 A. Yes, sir.

22 Q. And what is that?

23 A. This is a letter of recommendation written and signed
24 by myself, written on October 13, 2009.

25 Q. And for what purpose was it written?

DJ Greenlee

Richard Hudak

Sent: Friday, May 01, 2009 12:25 PM

To: Mari Nooral

Ms. Noorei, You seem to have lost sight that what you did was wrong. Keeping a student out of another teacher's class without permission from that teacher is inconsiderate and unprofessional. Compounding the offense by putting a student in the middle of conflicting directions is worse. I gave you a week where you could allow the opportunity to make up my class time on any day that would be convenient. This was a reasonable solution and a lot more courteous than taking a student out of my class without notice or permission. I discussed this with Mr. Culler and it was agreed that this was a more than fair solution. As has still not made up this time I am notifying you in writing that this time will be made up next week. I am also letting you know that no student is to be taken from my class for any reason as they cannot afford the time. With testing and the Florida trip they are already going to be pressed to finish class requirements. I trust you not further jeopardize the grades of any other students. RW Hudak



<https://exchange.pickens.k12.sc.us/owa/?ac=Item&t=IPM.Note&id=RgAAAACP9PAsMTk...> 5/1/2009

4-27

From the Desk of...

Rich Hudak

 OWES ME A
CLASS PERIOD. HE CAN DO
THAT WED. OR FRI.
WHICH EVER IS MORE
CONVENIENT.

Rich Hudak





Edwards Middle School

Building success beyond the classroom

10/13/09

To Whom It May Concern:

I have known Mariam R. Noorai for one year. The 2008-2009 school year was my first year as principal and her second year of teaching eighth grade at R.C. Edwards Middle School. Mariam also completed her student teaching and practicum at R.C. Edwards. During her tenure, Ms. Noorai prepared students for the English 1 End of Course Test, PASS, and PACT. She also worked with the yearbook for two years. Mariam successfully completed the ADEPT evaluation process and was offered a continuing contract for the 2009-2010 school year.

Regards,

Gary Culler
Principal
R C. Edwards Middle School
864-624-4424



ems.pickens.k12.sc.us

1157 Madden Bridge Road • Central, SC 29630 • P 864-624-4423 • F 864-624-4426

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.



DEPOSITION OF KELLY ULDRICK PEW

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of Kelly
Uldrick Pew was taken at the law offices of Larry C.
Brandt, 3691 Blue Ridge Boulevard, Walhalla, South
Carolina, on Wednesday, August 8th, 2012, commencing at
1:35 p.m.

COPY

KAREN BELANGER
CERTIFIED VERBATIM REPORTER, MASTER

FOOTHILLS COURT REPORTING
864-991-2570

1 Q. Does this indicate that she has met all requirements
2 of, I guess, the 10 areas of which she was graded?

3 A. Yes.

4 Q. And it would be difficult for her to score any better
5 than what's on this paper?

6 A. She met all expectations.

7 Q. Would you say that's typical of the majority of
8 people that go through it, or do they usually have
9 some "not met" on there?

10 A. I cannot tell you that. I mean, there could be
11 people that have "not met", absolutely.

12 Q. And if they had one that they had not met, do they
13 have to continue in ADEPT till they comply?

14 A. We have switched to a new instrument. I don't --
15 but --

16 Q. Well, what about back then? Let's talk about back in
17 '09. What would have been the rule, then?

18 A. I cannot tell you that. I don't remember well enough
19 to be able to tell you that.

20 Plaintiff's Exhibit No. 5 marked for identification
21 (10/2/09 Fax Memo)

22 EXAMINATION RESUMED BY MR. BRANDT:

23 Q. Have you ever seen that document before?

24 A. I have not.

25 Q. Do you know Anita Parker?

1 A. Yes, sir.

2 Q. Is there anything in Mari's file, that you recall at
3 that time, that had placed her under continuing ADEPT
4 evaluation for the 2009, '10 year?

5 A. Continuing contract or this team evaluation?

6 Q. Team evaluation.

7 A. Not that I'm aware of.

8 Q. Continuing contract evaluation?

9 A. I do not know the answer to that.

10 (DISCUSSION OFF THE RECORD)

11 EXAMINATION RESUMED BY MR. BRANDT:

12 Q. Exhibit Number 1 to Williams' deposition, what is
13 that?

14 A. That is a contract and it does indicate that she was
15 offered a continuing contract.

16 Q. What role would you have, as HR director at Pickens
17 at that time, or assistant principal of HR, as you
18 all call them -- what role would you have played in
19 deciding whether or not to offer her that kind of
20 contract or not?

21 A. We met with our principals, with the person who is
22 responsible for ADEPT, which at that time was Dr.
23 Stephanie Lackey. We would talk about typically
24 making sure of who we were issuing contracts to and
25 that we had the correct contract level for each

1 employee in that school. The normal way that we
2 handle that, is a teacher who is on annual contract,
3 based on their evaluation and the recommendation from
4 their principal, we decide whether or not that person
5 is going to continuing. It appears that Mr. Culler
6 would have recommended that she go from annual to
7 continuing, and we honored that request.

8 Q. So there was nothing in the ADEPT keeping her from
9 putting on that, and you think that Mr. Culler would
10 have recommended that she go on continuing contract?

11 A. There would have been nothing, or she would not have
12 been offered a continuing contract.

13 Q. Does Mr. Culler make those recommendations in writing
14 or just verbally?

15 A. It is a verbal communication, but it's based on
16 factual information from the course of the year.

17 Q. Those contracts, I take it, are approved by the
18 School Board?

19 A. Yes, sir.

20 Q. And I'm sure the School Board doesn't run through
21 each contract, take them up one at a time. You all
22 make a recommendation that these teachers be offered
23 these kind of contracts and they vote on it? Is that
24 the way it works?

25 A. Yes, sir. They receive a contract book, by school,

1 State Department, what action did you take in regards
2 to answering questions or supplying information at
3 the State Department in regards to those complaints?
4 Did you do anything personally, like interview
5 anybody, take statements from anybody?

6 A. From the School District of Pickens County?

7 Q. Yes.

8 A. After the meeting that she had with me in June? Is
9 that the question?

10 Q. Yes.

11 A. After she had the meeting with me in June, clearly I
12 did. She had quite a list of concerns. Again we
13 went through her entire document, allowed her to
14 share every complaint that she had. I was quite
15 concerned that there were things from August,
16 September, October. It was a whole fiscal year of
17 concerns, and I had not been made aware until June.
18 There was a quite a list of them. I did contact Mr.
19 Gary Culler, the principal. I did ask that he come
20 and meet with me at Central Services, our district
21 office. I reviewed those concerns with him, most
22 specifically his concerns that she had against him.
23 I handled those. I then shared with him the concerns
24 she had, as it related to the discipline referral and
25 some other things that she was concerned with. He

1 went back and investigated those at the school level.
2 We would have talked. I can't tell you the dates,
3 but we would have talked during that time period so
4 that I could make sure that I responded to Ms.
5 Noorai's complaints after that.

6 Q. After you had that meeting, you stated that you
7 handled the complaints that she had that involved
8 Culler directly.

9 A. Yes, sir.

10 Q. Do you recall the specific nature of all those
11 complaints?

12 A. Oh, I couldn't tell you all of them. I could tell
13 you some of them. I couldn't tell you every single
14 one of them.

15 Q. Do the best you can.

16 A. She was concerning about him winking. I distinctly
17 remember that, because he was very shocked and
18 concerned when he heard that that was a complaint.
19 There was a complaint about him not replying to e-
20 mail messages. I had asked, you know, if she had
21 followed up with him. I think there was a complaint
22 about her not receiving a Visa card.

23 Q. A what?

24 A. A Visa supply card, at some point.

25 Q. What are those Visa cards?

1 A. I think that she -- and I can't remember exactly, but
2 I think it was something that she needed to purchase
3 for the school. And our principals have cards that
4 they can lend out for a person to buy something. I
5 believe that was one of the concerns.

6 Q. Okay.

7 A. She did talk to me about the concern about the
8 plagiarism and going to Mr. Culler. She talked about
9 the incident with the student. Again some of those,
10 when I went to Mr. Culler, he had no knowledge.

11 Q. He had no knowledge --

12 A. He had no knowledge of those until I came to him,
13 that those were concerns that she was bringing up.
14 He had felt like those had been dealt with at the
15 school level.

16 Q. Excuse me. Are you telling me that he was aware that
17 she had this concern, but he thought they had been
18 dealt with appropriately and in final, and they had
19 resolved, or that --

20 A. I don't know.

21 Q. -- he even had any knowledge --

22 A. I think some of --

23 Q. -- at all, they were grievances?

24 A. -- both. I don't know that he knew of all of the
25 incidents. There were some that he was made aware

1 Q. And in regards to that, do you have any idea about
2 when in June the complaint came to you and started
3 off the process which produced that letter?

4 A. I don't know. I mean, obviously the conference was
5 on Tuesday, June the 30th. I believe that it was
6 prior to that. I mean, clearly she brought concerns
7 that started from August the 13th of 2008 and ended
8 on June the 4th. And she brought all of those at one
9 time to our meeting. I had not corresponded with her
10 prior to that.

11 Q. So June 30th was the meeting?

12 A. June 30th was the day of the meeting.

13 Q. Okay, and that's referenced in that letter and --

14 A. Yes, sir.

15 Q. -- documented that way?

16 A. Yes, sir.

17 Q. But you'd never talked to her about those complaints
18 prior to --

19 A. No, sir.

20 Q. -- June 30th, you think?

21 A. Not that I can recall. I was somewhat surprised.
22 And I think I indicated to her, during our meeting,
23 why were these not brought earlier. But I was not
24 aware of them.

25 Q. And until she showed up at that meeting, what

1 Q. Do you think she provided you any information during
2 that time in writing, or was it just verbal?

3 A. I think it was just verbal.

4 Q. Would it have been information you obtained from her
5 before you wrote that letter?

6 A. I cannot tell you that. I do not know.

7 Q. Or did her information come to you after --

8 A. It could have come after. I don't -- I can't tell
9 you that.

10 Q. What is the School District policy on a teacher that
11 didn't sign a contract, even though offered by a
12 cutoff date?

13 A. Our practice is -- our contracts clearly say they
14 have ten days to sign their contract. However, our
15 practice is, that if a person intends to resign, we
16 ask that they write a resignation letter. We do that
17 to benefit the employee, because we give more than
18 1,200 contracts in a year. We want to make sure that
19 we don't get an unsigned contract or we don't get a
20 contract returned to us because somebody laid it
21 down, it got put somewhere, and we take the name to
22 the board to terminate them and that was not their
23 intention. And that resignation letter ensures that
24 we understand that their intention is to resign.

25 Q. So you're just needing a declaration from the teacher

1 that it is my intent not to sign this contract?

2 A. We ask that they say that they do intend to resign,
3 and we ask that it's attached to the contract. That
4 way, we take it to the board and we can post the
5 position.

6 Q. And if a teacher tells you or tells the principal I'm
7 not going to sign the contract and I'm not coming
8 back, do you still insist or try to get that
9 resignation?

10 A. We've never had an issue before this one. It has
11 never been a problem.

12 Q. And, my question, so you have never had anybody to do
13 that before?

14 A. To my knowledge, I've never had an issue with someone
15 agreeing to attach -- because they clearly know I'm
16 going to resign, I'm not signing my contract. For
17 us, it is a situation where we are ensuring that the
18 employee truly intends to resign, that somehow the
19 contract did not get lost in the shuffle. And with
20 as many employees as we have, that is just a very
21 clear way for us to understand their intentions.

22 Q. And in this case, if a teacher tells the principal
23 I'm not coming back and doesn't give you the
24 resignation letter, but just doesn't turn her
25 contract in, does that in some way penalize or

1 endanger the teaching credentials with the State
2 Department?

3 A. It does not.

4 Q. And also would that reflect or have any effect on any
5 kind of recommendation the School District would give
6 for the subsequent employment?

7 A. Because she chose not to sign her contract?

8 Q. Chose not to sign the contract and didn't give you a
9 letter of resignation.

10 A. It would not. For us, again -- and I guess the level
11 of concern for us grew even more of what her
12 intentions were, because she would not. And to just
13 take it a step further, had Ms. Noorai after day 10
14 gone to Mr. Culler and said, you know, I really think
15 I want my job, he would have to bring it to us. We
16 would take it to the board. But if we had not hired
17 a person, she most likely could have had her job
18 back.

19 Q. Up until the time it's filled, but --

20 A. Up until the time it's filled.

21 Q. -- any applicant that doesn't turn it in on time runs
22 the risk of having that job advertised and filled.
23 And then if they come back and you've filled it, it's
24 too late.

25 A. They could. We would not want -- we really try hard

1 to make sure that we have the appropriate
2 communication in and we do the right thing. That's
3 not our desire. And in 2008, 2009 we were in such
4 economic -- we would never have wanted to over-hire.

5 Q. In this situation, in this process Ms. Noorai has, of
6 course, filed this lawsuit I think we determined
7 yesterday somewhere in February, March of 2011.

8 A. Okay.

9 Q. And, of course, she had filed a complaint or at least
10 had SCEA involved and the State Department involved.
11 Have those actions penalized her employment
12 opportunities with Pickens County School District in
13 any way?

14 A. The fact that she had a lawsuit and that she's
15 -- what I will tell you has impacted her more than
16 anything, at this point, is that she has inaccurate
17 information about one of our principals on the
18 application that we have in the school district. And
19 we have closed those, so that other principals in our
20 district do not see that inaccurate information.

21 Q. And what is that inaccurate information?

22 A. That Mr. Gary Culler's credential is being reviewed
23 by the State Department of Education.

24 Q. And in what context was that revealed on her
25 application?

1 of your principals? And I pulled it up and looked at
2 it.

3 Q. But it wasn't like she's applied for us?

4 A. I think she had, but I cannot tell you that.

5 Q. But it was more like you say, he called in and said
6 do you know this is on--

7 A. He was -- I think he was going to check her
8 reference.

9 Q. It wasn't like how good a teacher, or anything like
10 that?

11 A. I don't think we had a whole lot of other
12 conversation.

13 Q. How about the other two of them?

14 A. I know I had one other, for sure. And I recall
15 saying to them that she was offered a continuing
16 contract in the School District of Pickens County,
17 that she had passed her ADEPT evaluation, and she
18 chose not to return to our school district. It was
19 very factual information, and that would have been
20 all that I would have said.

21 Q. Did you discuss with that other caller her comment
22 about --

23 A. I did not.

24 Q. -- Mr. Culler?

25 A. I did not discuss that. I looked at the information.

1 Q. And what was the extent, in your beliefs, that law
2 enforcement was involved in that?

3 A. I believe that the school resource officer was a part
4 of what happened, and they would then do what they
5 needed to do as law enforcement to handle anything
6 they needed to handle.

7 Q. So you make an assumption that the school resource
8 officer carried out her duties and did whatever --

9 A. That is --

10 Q. -- she wanted?

11 A. I'm sorry. That is one of the reasons why they're in
12 our schools.

13 Q. I understand that.

14 A. Is for them to do that.

15 Q. But you didn't check behind them, to see if she did
16 what she needed to do?

17 A. I did not check behind them until June the 30th. And
18 then Mr. Culler went back and checked to find out
19 what happened. And in addition, I think Ms. Noorai
20 also had gone and they were checking behind. So I'm
21 -- I feel very confident that, with all of that, they
22 made the right decision.

23 Q. Do you know what the reasoning was, with law
24 enforcement? I'm not talking about the school, from
25 the school resource officer. We know that Pickens

1 principal may have done other action. I can't tell
2 you that. But she put the information on the
3 referral, and it was handled based on what they saw
4 on that referral.

5 Q. But that wasn't anything unusual, out of the
6 ordinary, improper for her to do it that way?

7 A. I don't know that it was improper for her to do it
8 that way. I think that, as an HR person, my biggest
9 concern would have been that on June the 30th we had
10 incidents that began in August, that she was
11 concerned about, that we did not know about until
12 June. And if it was something that caused her the
13 concerns and being out of work, that is one of our
14 roles, would have been to have helped her with that,
15 or that would have been something for the principal.
16 And that was not brought to my attention until after
17 all of this occurred in June.

18 Q. And you understand that at least the assault
19 happened, what, six months prior?

20 MR. DUFF:

21 Object to the form.

22 EXAMINATION RESUMED BY MR. BRANDT:

23 Q. Do you understand when the assault occurred?

24 A. I don't have the exact date. I know it was early on.
25 And again there were things from August until the end



School District of Pickens County

Building success beyond the classroom

July 8, 2009

Mariam R. Noorai
518 W. North 4th Street
Seneca, SC 29678

Dear Ms. Noorai,

This letter is a follow-up to the conference we had on Tuesday, June 30, 2009. Present at the conference were you, Mrs. Janet Stein (SCEA representative), and me. During our meeting you shared concerns that you had with your principal, Gary Culler, which fall into four general categories: sexual harassment, lack of communication, intimidation, and lack of professionalism. You also provided me with a written chronology of specific issues and events beginning August 13, 2008 and ending June 4, 2009.

At the conclusion of our meeting, I asked you to share what you hoped to be the outcome of our meeting. You stated you would like the following: no employee would have to experience the harassment you have experienced, an apology letter from Mr. Culler, a recommendation letter from Mr. Culler, the ability to review your personnel file, a copy of your final summary evaluation, and the gift card from the School. Enclosed you will find the recommendation from Mr. Culler, a copy of your final evaluation, and the gift card from Edwards Middle School. On June 29, 2009, you reviewed your personnel file at the Central Office. With regard to your stated concerns and the related apology, I have looked into the concerns and have detailed my general findings below. Additionally, these matters have been addressed with Mr. Culler, as appropriate, and the District will not require him to issue an apology.

As to your concerns that you have been subjected to sexual harassment, you cited an incident that occurred in the stairwell with a male student singing a song with sexual lyrics and touching you inappropriately. You indicated that you went to the office to get the yearbook advisor and to complete a referral, but that no action was taken against the student. However, you never verbally shared this incident with an administrator or the School Resource Officer. Mr. Culler was unaware of this incident until I brought it to his attention on Wednesday, June 30, 2009. He immediately contacted other administrators for additional information. According to the assistant principals, this incident was dealt with according to the School's discipline policy and the local police; however, they admit that you may not have received a copy of the referral indicating the consequences the student received. You also indicated that Mr. Culler winked at you at times when you had to meet with him. Mr. Culler does not recall ever winking at you and, after talking with him, I do not believe that he intended to make you feel uncomfortable in any way while meeting with him.



Kelly U. Pew, Ph.D., Assistant Superintendent for Human Resources

1348 Griffin Mill Road • Easley, SC 29640-6997 • P 864-855-8150 • F 864-850-8159
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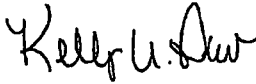
The next area of concern related to a lack of communication between you and Mr. Culler. You shared several incidents that occurred during the school year where you believe that Mr. Culler did not keep you informed or did not follow through with you. After reviewing the information you provided and discussing the matter with Mr. Culler, it appears that a number of these situations could have been easily rectified if Mr. Culler had been notified (ie- the e-mail, use of procurement card). It does not appear that Mr. Culler intentionally ignored your requests, and it may have been helpful for you to communicate further with him to let him know you had not received a response to a request or e-mail. Many of us on occasion forget or fail to promptly follow-up with something and need another reminder.

You also expressed that Mr. Culler had engaged in intimidation. You mentioned two meetings that made you feel uncomfortable. The first involved Mr. Culler, Mrs. Bridges, and Mrs. Martin. As you mentioned, every core academic teacher had a similar meeting to discuss strategies to ensure student success on the new state test PASS. After inquiring about this meeting, it was determined that Mrs. Martin shared concerns with you about having students complete a formal writing assignment which involved a lot of time in the computer lab. This was discussed, and you defended your reasoning for this assignment. Mr. Culler shared very little about this activity. The other involved the discussion of your decision not to sign your contract. Contracts were issued on May 15th and were to be returned no later than May 25th. You indicated that during discussions with Mr. Culler about your desire not to return, he suggested you sign your contract if you were unsure, and to then request to be released if you found another employment opportunity. You did not sign and return your contract by May 25, which is the equivalent of submitting a letter of resignation. After May 25, the Human Resources Office asked principals to send unsigned contracts to our office so that we could confirm the resignations. Mr. Culler was attempting to follow these instructions, based on the common practice of having teachers who do not sign their contracts also submitting a letter of resignation. You stated, however, that Mr. Culler threatened taking your certificate. Based on your written chronology and on how certificate suspension can actually take place, I believe Mr. Culler was attempting to explain that you could lose your certificate if you did not resign and took other employment without obtaining a release from your contract. There apparently were misunderstandings on the part of all involved, including the assistant principal involved in some of the discussions. You also indicated that on the last day of school you were extremely upset and felt intimidated when Mr. Culler came to the assistant principal's office where you were writing your letter of resignation. Mr. Culler expressed that he was concerned about you and came to check on you - not to intimidate you - and left upon your request. He did find Mrs. Bridges and asked that she go check on you.

Finally, you indicated that Mr. Culler demonstrated a lack of professionalism in some of his interactions with you and others. Several of these incidents could not be confirmed by you or were situations that could have been easy oversights by the administration that were corrected (assigning duty when you had a meeting). Other situations appear to have involved misunderstandings, not intentional conduct. For example, you mentioned specifically that Mr. Culler informed the Jostens representative that you had resigned. Mr. Culler indicates that he merely told the representative that you did not want to work with the year book the following year. You also stated that Mr. Culler did not enforce school policy; however, there is evidence that he did follow through on issues of which he was aware, even if you did not agree with the outcome (plagiarism). You also indicated that you felt Mr. Culler had given a reference to West Oak Middle School that kept you from being offered a position there. Mr. Culler indicated that no one from West Oak Middle School or any other school has contacted him requesting a reference for you.

Thank you for bringing these matters to my attention, and I regret that you had such concerns during the 2008-2009 school year. In many instances, however, they were not shared with Mr. Culler or with Human Resource Services at the time they occurred so that they could be effectively addressed. The District wishes to support and assist all employees when warranted, and will not tolerate employees being subjected to harassment, intimidation, or unprofessional conduct. I wish you much success as you pursue other educational opportunities.

Sincerely,



Kelly U. Pew, Ph.D.

CC: Personnel File

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

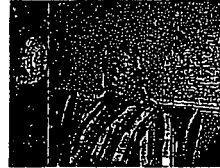
IN THE COURT OF COMMON PLEAS
CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.



DEPOSITION OF RICHARD WALTER HUDAK

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of Richard
Walter Hudak was taken at the law offices of Larry C.
Brandt, 3691 Blue Ridge Boulevard, Walhalla, South
Carolina, on Wednesday, August 8th, 2012, commencing at
10:56 a.m.

COPY

KAREN BELANGER
CERTIFIED VERBATIM REPORTER, MASTER

FOOTHILLS COURT REPORTING
864-991-2570

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1 Twenty-eight. It's on page 6, the bottom of page 6,
2 paragraph 28.

3 EXAMINATION RESUMED BY MR. BRANDT:

4 Q. That there was a problem with a student, that you got
5 upset because she kept a student over to complete an
6 exam. Is that true?

7 A. That is correct.

8 Q. Why did you get upset because she held him over?

9 A. It had been a pattern of keeping students out of my
10 room for various purposes.

11 Q. By Ms. Noorai?

12 A. Correct.

13 Q. How many times do you think she did that to you?

14 A. I would say more than 10 different students at
15 different times.

16 Q. What were the reasons that she held them over?

17 A. Initially it was for -- to take pictures around the
18 school for yearbook. And I don't know -- and the
19 test, I did not know why the student came in late at
20 the time, other than they came in late. But those
21 were the reasons I knew of, the test and being out
22 for yearbook work.

23 Q. What was the school policy in regards to students
24 taking a test in an earlier period and needing more
25 time to finish?

1 A. The policy is that the -- was and is, that the
2 student should come to that next period teacher and
3 get permission, and then go back to either the test
4 situation or the other teacher, for whatever the
5 reason was, if they got permission.

6 Q. Is there a school policy to that effect?

7 A. Yes, there is.

8 Q. It's written?

9 A. Yes, sir.

10 Q. Do you have a copy of it?

11 A. I do not. It's in the faculty handbook, and I
12 haven't been at the school for a few years.

13 Q. What does that little faculty handbook look like? Do
14 you know? Is it a faculty or a student handbook?

15 A. It was the faculty handbook.

16 Q. You've got one in your possession, at home?

17 A. I do not. Those are turned back in every year.

18 Q. But it's a faculty handbook?

19 A. Correct.

20 Q. And if I find that handbook that was in effect, in
21 2009, I can go there and see what the policy is?

22 A. Yes, sir.

23 Q. Notwithstanding what may have been written in that
24 handbook, what was the actual practice among the
25 faculty there at Edwards School in regards to that

1 situation? And I'm speaking toward the test
2 situation now, where the kid needed extra time on a
3 test in an earlier class period.

4 A. I would assume all teachers would follow the regular
5 policy.

6 Q. Did you have any other problems with any other
7 teachers not sending their kids to your class?

8 A. Over the 32 years, yes, I'd say once or twice.

9 Q. And what were those reasons from other teachers?

10 A. I don't recall.

11 Q. Prior to this incident on April 23rd, 2009, had you
12 ever complained to any of the principals that you
13 worked for that you felt like Ms. Noorai was abusing
14 your class because she was letting kids stay over for
15 the tests?

16 A. I didn't go to an administrator, no.

17 Q. So if we go back through the records, there's no
18 prior complaint by you to a school administrator that
19 any of the teachers, and in particular Ms. Noorai,
20 you felt like was abusing the school policy?

21 A. No.

22 Q. Are you telling me that the policy would be that if
23 a student was in the middle of an exam and the bell
24 rang and he needed more time, the teacher was willing
25 to give it to him for whatever reason, that they had

- 1 to stop him, send him to you, and get permission for
2 him to come back?
- 3 A. That was the policy, correct.
- 4 Q. And that teacher, that next teacher down the line,
5 could refuse to let him come back and finish the
6 test; couldn't he?
- 7 A. That's correct.
- 8 Q. According to your testimony?
- 9 A. As far as I understand the policy, yes.
- 10 Q. Did you ever refuse a student to return to any
11 teacher's class for the purpose of finishing a test?
- 12 A. No, not if asked.
- 13 Q. And what, in particular, got you so upset that day
14 because that student didn't come to your class?
- 15 A. Again it was a pattern of behavior. I had actually
16 discussed this with Ms. Noorai a prior occasion, in
17 regards to students not coming to my room for
18 whatever reason without permission. And so even
19 after speaking with her, it was still being done.
- 20 Q. So you state that you had already gone to her and
21 talked to her about that situation?
- 22 A. Yes, sir.
- 23 Q. Can you tell me approximately when that was, in
24 relation to this incident with this student?
- 25 A. I really can't.

1 A. At the end of that period, I think it was, I went
2 down to clear the matter up.

3 Q. And what happened then?

4 A. I went to Ms. Noorai's room between classes. And I
5 figured that was the only -- our schedules were not
6 the same. So I would not see her otherwise. And we
7 discussed why the student came in, and I mentioned to
8 her that we had discussed this before and we had
9 -- it was just a matter of asking permission and it
10 could have been resolved.

11 Q. Were you angry?

12 A. Angry? No.

13 Q. Did you raise your voice?

14 A. Did not. There were students in the room at the
15 time. And I would not have raised my voice around
16 students, or at any other time for that matter.

17 Q. Was Cassandra Baker in that room? Do you know her?

18 A. I don't.

19 Q. D'Aja Martin? Was she in the room, or do you know
20 her?

21 A. I don't. I taught a lot of students. And at this
22 point, I've been retired for several years. So the
23 names aren't all that familiar to me.

24 Q. Yes, sir, I understand. But do you recall the names
25 of any students who were in that room who may have

- 1 A. Did not.
- 2 Q. Did you punish him in any way for missing that class
- 3 time?
- 4 A. Did not.
- 5 Q. Did he finish his class requirements?
- 6 A. I believe he did.
- 7 Q. Do you remember what grade he got in your class?
- 8 A. I do not.
- 9 Q. On that first meeting after this incident occurred,
- 10 initial time when he didn't come down there to you
- 11 until late and you sent him back, and then you went
- 12 up and talked with Mari -- when you left her room or
- 13 left where you all were talking, did you bump into
- 14 another student and hurt her?
- 15 A. I believe when I opened the door, there was someone
- 16 standing outside the door. And they were outside the
- 17 room and I couldn't see them, because the door was
- 18 part -- just partway open, and they were on the other
- 19 side of it. I remember something about that, but I
- 20 don't recall anybody being injured. I never heard a
- 21 parent complaint or any problem that came from it.
- 22 Q. So you think if you bumped her, you bumped her as you
- 23 pushed the door open to go out?
- 24 A. I believe that was it, correct.
- 25 Q. And did you push it hard, push it easy? How did you

1 push it?

2 A. Just opened the door. I don't really recall.

3 Q. And the doors open out into the hallway, or back into
4 the room?

5 A. I believe it opened out into the hallway. So it
6 would come all the way around, I think. I believe
7 so.

8 Q. Do the doors in all the classrooms open to the
9 outside rather to the inside?

10 A. I believe so. I think mine did, yes, sir.

11 Q. I don't know. People hang doors differently.

12 A. Correct.

13 Q. So you think she was in the hall, and you opened the
14 door and might have bumped her?

15 A. Correct.

16 Q. Did she complain?

17 A. No.

18 Q. Excuse me?

19 A. No, sir.

20 Q. Do you have any knowledge about another student
21 having to go get ice and treat her injuries or
22 bruises?

23 A. No, I don't.

24 Q. How many times did you discuss this matter with Mr.
25 culler?

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.



DEPOSITION OF EARNESTINE ROBINSON WILLIAMS

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of Earnestine
Robinson Williams was taken at the law offices of Larry C.
Brandt, 3691 Blue Ridge Boulevard, Walhalla, South
Carolina, on Tuesday, August 7th, 2012, commencing at 9:33
a.m.

KAREN BELANGER
CERTIFIED VERBATIM REPORTER, CVR-M

FOOTHILLS COURT REPORTING
864-991-2570

- 1 Q. And in those three references, was there anything in
2 there negative that would have kept her from being
3 considered for employment?
- 4 A. No, there were not.
- 5 Q. Would you classify those references as weak, mild, or
6 strong?
- 7 A. All of her -- there's a -- if you've seen it, there's
8 like a checklist of the different items that they're
9 asking. She did have a below, I think, expectations
10 with classroom management. But her overall rating by
11 that particular person that did the reference said to
12 consider strongly. So her overall rating was high.
- 13 Q. Below expectations in what?
- 14 A. I think it was classroom management.
- 15 Q. And I know I'm asking you to go back and remember
16 stuff. So I probably won't hold you to that answer.
17 We'll go with what's on the thing.
- 18 A. Okay.
- 19 Q. But you think classroom management, that there was
20 criticism from one of her references that she gave
21 you? She supplied the three names?
- 22 A. She did.
- 23 Q. You all went out, and those three came in with
24 references. And you think that you recall, at least
25 one of them said, she was below expectations at

1 classroom management. But other than that, they were
2 pretty strong?

3 A. Overall, yeah.

4 Q. They were real strong?

5 A. Yeah.

6 Q. This position at West Oak, tell me what you know
7 about hiring process for that position. Was it a
8 one-person interview, two, three people that was in
9 on that? Do you know?

10 A. I don't know. I just know from the recommendation
11 form it did list several people's names, but I was
12 not at the interview.

13 Q. I guess I'd better back up and ask this. When
14 there's a position open at a particular school, this
15 intake interview that you go through, screening, you
16 screen HR screening interview and you make sure
17 everything is in order. And then do the principals
18 at the schools then take care of the interview
19 process, actual interview for the job?

20 A. They do.

21 Q. And do they get to make the final decision, or do
22 they send it forward to you? Do you have to bless
23 it?

24 A. They make the final decision. The only thing we do
25 it follow up, to make sure that the person is indeed

- 1 A. I do not know.
- 2 Q. The fact that Mari filed this lawsuit against the
3 School District, has that entered into a
4 consideration as to whether or not to consider her
5 for any other employment with Oconee School District?
- 6 A. The superintendent said that we would not consider a
7 candidate that was suing us at the moment.
- 8 Q. And the superintendent, that was Mr. Lucas?
- 9 A. Dr. Lucas, yes.
- 10 Q. Did the fact that a complaint, prior to filing a
11 lawsuit, that Mari had complained to the State
12 Department of Education and the South Carolina, I
13 guess, Teachers' Association, whatever, was involved
14 in this thing at one point in time --
- 15 A. I don't know.
- 16 Q. Well, are you aware that the State Department had
17 been involved in at least part of this investigation?
- 18 A. I was not, until all this information was provided.
- 19 Q. Forget the lawsuit. If she hadn't filed a lawsuit,
20 would the mere fact that she complained to the State
21 Department of Education -- was that entered into the
22 way you had treated her application since she
23 complained? She filed for other positions, a lot of
24 other positions with Oconee. Hasn't she?
- 25 A. Yes.

- 1 in writing somewhere?
- 2 A. No, it's not in writing.
- 3 Q. Did he give it to you personally, individually, or
- 4 did he give it to you in a meeting?
- 5 A. I think it was in a meeting with him, in his office.
- 6 Q. Was it just a meeting between you and him, or was it
- 7 a meeting between you and others?
- 8 A. No, just with me and him.
- 9 Q. Would Kay Powell have knowledge of that meeting and
- 10 that direction?
- 11 A. I'm not aware of.
- 12 Q. Kay just retired this June?
- 13 A. She did, yes.
- 14 Q. Have you ever talked to Kelly Pew about my client?
- 15 A. No, sir.
- 16 Q. Have you ever talked to Mr. Culler about my client?
- 17 A. No, sir.
- 18 Q. Marilyn Raines?
- 19 A. No, sir.
- 20 Q. Mr. Hudak?
- 21 A. No, sir.
- 22 Q. Have you ever done anything to try to check out my
- 23 client's claim that she was sexually assaulted by a
- 24 student at Edwards Middle School and nothing was ever
- 25 done about it?

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.



DEPOSITION OF DONALD GREGORY BOGGS

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of Donald
Gregory Boggs was taken at the law offices of Larry C.
Brandt, 3691 Blue Ridge Boulevard, Walhalla, South
Carolina, on Wednesday, August 8th, 2012, commencing at
9:32 a.m.

COPY

KAREN BELANGER
CERTIFIED VERBATIM REPORTER, MASTER

FOOTHILLS COURT REPORTING
864-991-2570

- 1 Q. And this other child left?
- 2 A. Correct.
- 3 Q. He didn't come back to your school after that?
- 4 A. That's correct.
- 5 Q. He transferred back to Dacusville?
- 6 A. That is correct.
- 7 Q. Do you know anything about his family?
- 8 A. From the best I can remember, he was living with his
- 9 mother in our attendance area, and he chose to move
- 10 back with the dad. Now, I may have that just
- 11 opposite, but it was something of that --
- 12 Q. But you understand the parents were divided, and so
- 13 he chose to go back to the other parent that he was
- 14 not living with?
- 15 A. That's correct.
- 16 Q. Had you had any problems with that other victim
- 17 before?
- 18 A. No, sir.
- 19 Q. Okay, let's go to the next one, on 1/27. I guess
- 20 that's Exhibit Number 2. Tell me how that came to
- 21 your attention.
- 22 A. To the best of my knowledge, on the afternoon of the
- 23 27th this referral was in my mailbox, which is normal
- 24 procedure for a teacher to turn in an office
- 25 referral. And I did not -- I don't recall if I saw

1 it that afternoon after the buses, which the students
2 were gone, or if it was the first thing the next
3 morning. But my plan of action was to deal with this
4 on the first thing of the next school day.

5 Q. And did you deal with it, the next school day?

6 A. I did deal with it the next school day, but in the
7 meantime -- when the school day starts, I may have
8 all these plans of what I want to do, but something
9 always comes up. So I did not get to it until the
10 burning incident happened. And so then I immediately
11 -- I spoke with the student and his mother about this
12 incident as well as the burning, when she came in at
13 that time.

14 Q. And that bottom of the page, on number 1, I guess,
15 concerning the burning incident there are notations
16 down there.

17 A. Yes, sir.

18 Q. And you signed that? Is that your signature?

19 A. It is.

20 Q. If I looked at that, and that record only, would it
21 be a fair assumption on my part that disciplinary
22 action was taken on that referral alone and involved
23 no other referral?

24 A. You could make that assumption.

25 Q. There's nothing that ties that record back to the

1 other assault?

2 A. Not in evidence here, no, sir.

3 Q. And on the one concerning the assault, nothing's
4 filled out at the bottom of the page. Why not?

5 A. I just failed to do that, at the time when I had the
6 student in there with the parent. I did verbally
7 tell them. And I should have written it on here. I
8 mean, that's my mistake, that I did not, that he was
9 suspended three days for the assault and then two
10 more for his situation involving Ms. Noorai.

11 Q. So three of the five days was for the assault on the
12 student, where he burned him?

13 A. That's correct.

14 Q. And so two days for the assault on the teacher?

15 MR. DUFF:

16 Object to the form of the question.

17 WITNESS ANSWERS:

18 A. The alleged assault. If I had viewed it as an
19 assault, as you're characterizing it as, then there
20 would have been many more days added on to that, than
21 just two.

22 EXAMINATION RESUMED BY MR. BRANDT:

23 Q. At what point in time did you mete out the discipline
24 that is referenced on the bottom of the burning
25 incident there?

1 A. On the 29th.

2 Q. So that would have been the very day and the very
3 time that you investigated that situation?

4 A. That's correct.

5 Q. At that time when you meted out that punishment
6 that's listed at the bottom of that page, had you
7 interviewed Mari Noorai concerning her situation?

8 A. No, sir, I had not.

9 Q. Had you discussed her situation with anyone at the
10 time that you decided to suspend the child for five
11 days?

12 A. Yes, sir.

13 Q. Who?

14 A. Officer Palis..

15 Q. And at what point in the process did you talk to her?
16 At the same time you all were in there with the burn
17 student?

18 A. We conferred by ourselves, with students sitting
19 right outside my office, to discuss the situation.

20 Q. But what I'm saying is you did not talk to anyone
21 about Mari's complaint until you had that student in
22 that office on the Hudak matter?

23 A. That's correct.

24 Q. And then you only talked to the resource officer?

25 A. That is correct.

1 Q. And what did she tell you?

2 A. I don't recall her exact words. We just conferred
3 over the situation. And she agreed with me, and I
4 with her, that we didn't consider this a sexual
5 -- well, we didn't even bring up sexual assault. I
6 never even thought of that, because I didn't -- from
7 the information in the referral, I don't deem that an
8 assault at all.

9 Q. You didn't deem that as an assault?

10 A. No, sir.

11 Q. A student is accused of pinning a teacher against a
12 wall, touching a female teacher, and this being a
13 male and singing sexually explicit lyrics from a
14 song. And you don't consider that assault?

15 A. I had no idea it was sexually explicit lyrics. I
16 didn't know the song, didn't know anything about it.

17 Q. And at that time you investigated it, it didn't
18 matter?

19 A. I'm not saying it didn't matter. But my
20 investigation, I didn't deem it an assault of any
21 kind.

22 Q. But you didn't attempt to find out, or go to find the
23 lyrics, or discuss with Mari about how she may have
24 felt or how frightened she might have been when it
25 occurred?

1 A. I did not. But, in turn, she didn't come to me as
2 well.

3 Q. But this would have been the policy for handling that
4 incident with Mari, the assault, is to fill out the
5 referral and send it to you?

6 A. Yes.

7 MR. DUFF:

8 Object to the form.

9 EXAMINATION RESUMED BY MR. BRANDT:

10 Q. You can go ahead and answer. Would that have been
11 the proper procedure for her to follow?

12 A. Would you repeat that, please?

13 Q. Did Mari not follow procedure in reporting this
14 incident?

15 A. She did.

16 Q. Did you ever go to Mari and ask her to give her view,
17 her version of what happened?

18 A. I did not.

19 Q. And have you, to this very day, asked her to do that?

20 A. I have not.

21 Q. Do you know whether the resource officer did?

22 A. I have no knowledge whether she did or not.

23 Q. What did the resource officer tell you? Did she know
24 anything at all about the facts of this alleged
25 assault at the time that you spoke with her?

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.

DEPOSITION OF JAMI LYNN VERDEROSA

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of Jami Lynn
Verderosa was taken at the law offices of Larry C.
Brandt, 3691 Blue Ridge Boulevard, Walhalla, South
Carolina, on Thursday, October 18th, 2012, commencing
at 3:00 p.m.

KAREN BELANGER, CVR-M

FOOTHILLS COURT REPORTING
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- 1 square?
- 2 A. Yes.
- 3 Q. So before you start the interview, everybody knows
- 4 they're going to be asking the questions they're
- 5 going to ask, and they're going to be scoring this
- 6 1 to 5 on each and every question?
- 7 A. Yes.
- 8 Q. And all these five candidates were scored; is that
- 9 correct?
- 10 A. Yes.
- 11 Q. Give me the order of the scores, high to low, who
- 12 got the most.
- 13 A. Palermo, Freeman.
- 14 Q. who else?
- 15 A. Chassereau.
- 16 Q. who?
- 17 A. Chassereau.
- 18 Q. Okay.
- 19 A. Cody and Noorai.
- 20 Q. So Palermo was first, Freeman was second,
- 21 Chassereau was third, Cody was fourth, and Noorai
- 22 was fifth?
- 23 A. Yes, sir.
- 24 Q. Can you give me the scores?
- 25 A. I don't know.

1 A. No.

2 Q. Did you call any of the teachers that were coming
3 from other districts? How many of them were coming
4 from other districts?

5 A. All of them were coming from other -- well, when
6 you say other districts --

7 Q. Not Oconee schools. They were maybe in-state, out-
8 of-state, but other school districts other than
9 Oconee.

10 A. If they were currently in permanent positions
11 teaching, not just student teaching?

12 Q. Yes.

13 A. I didn't call any references on any candidate prior
14 to the interviews.

15 Q. So you didn't call any principals from any of the
16 schools from which they were coming?

17 A. No.

18 Q. Why not?

19 A. I don't do that. We wait until we have the
20 interview. And once the interview committee has
21 come to consensus on the top candidate or
22 candidates, then reference checks are made.

23 Q. So you would have selected your top candidates and
24 then called?

25 A. That's correct.

- 1 Q. And did you specifically do that, in this case?
- 2 A. Yes.
- 3 Q. Did you call any principals at the schools from
- 4 which candidates may be coming?
- 5 A. Yes.
- 6 Q. So you made a decision on two that day?
- 7 A. Yes.
- 8 Q. And that was who?
- 9 A. Palermo and Freeman.
- 10 Q. And where was Freeman coming from?
- 11 A. Chicago.
- 12 Q. And you called her principal in Chicago and asked
- 13 about her?
- 14 A. Yes.
- 15 Q. And you called the principal where Palermo was
- 16 coming from?
- 17 A. Palermo was currently graduating. I spoke with her
- 18 cooperating teacher.
- 19 Q. Who was that?
- 20 A. I don't recall.
- 21 Q. Being as she was just graduating, did you call the
- 22 head of the department at Clemson and find out what
- 23 they had to say about Palermo?
- 24 A. Yes. When I say cooperating teachers, supervising
- 25 professor. But I spoke directly with the

1 cooperating teacher who saw Ms. Palermo teach in
2 the classroom.

3 Q. Did you speak with Lienne Medford about any
4 candidate? Do you know who she is?

5 A. I know the name. I did not speak with her about
6 Ms. Freeman or Ms. Palermo.

7 Q. Did you call any references or the principal at
8 Edwards Middle School, in regards to Ms. Noorai?

9 A. I did not, because she was not one of the
10 candidates that we were considering and offering a
11 position to.

12 Q. I take it that, again, this order that you gave me
13 is based on that score of the ten areas, 50-point
14 range. Do you recall what Ms. Noorai's score was?

15 A. I do not.

16 Q. Was anything graded or scored other than her
17 answers to the questions?

18 A. No.

19 Q. So just the content, thoroughness, that kind of
20 thing of the questions? That was what was scored?

21 A. Yes.

22 Q. And nothing else about personalities, or anything
23 else like that was scored?

24 A. No.

25 Q. Or appearances, age?

1 A. Other than the interview team that came to
2 consensus that day, those five other individuals.
3 Those were the only people that I've spoken with.

4 EXAMINATION RESUMED BY MR. BRANDT:

5 Q. And I get that, but I want to make sure. And I'll
6 tell you why. Sometimes obviously us lawyers, we
7 become paranoid at times and we don't want to leave
8 a witness to change his story later. So I ask
9 specific questions to get an answer, okay? So that
10 means that at no time had you ever spoken with
11 anyone either from state department, Pickens County
12 School District, Edwards Middle School or
13 Earnestine Williams about Ms. Noorai?

14 A. I have not .

15 MR. BARLOW:

16 Object to the form. Go ahead.

17 WITNESS CONTINUES:

18 A. I have not.

19 EXAMINATION RESUMED BY MR. BRANDT:

20 Q. And there has never been anyone from the district
21 office -- has never called you to inquire as to
22 whether or not you had ever spoken to Mr. Culler
23 about Ms. Noorai?

24 A. No, other than when I met with counsel previously
25 when the lawsuit was --

1 teacher going back through the ADEPT process again.

2 Q. And that was because she said that if she stayed,
3 she would have to go back through ADEPT?

4 A. Yes.

5 Q. Other than that, was there anything about the
6 interview that said, look, this is not my kind of
7 candidate and I would never consider her?

8 A. Candidates can look very good on paper, very bright
9 and can be straight As. But their interaction with
10 students and what they do in the classroom is
11 something completely different. And the decision
12 of the interview committee that day is that we felt
13 that she would not be a good match for West-Oak
14 Middle School.

15 Q. Were you aware that she had her students writing
16 essays, and whatever, that had won several state
17 awards under her tutelage?

18 A. I did not recall that, no, until you showed me that
19 information.

20 Q. Did you understand that her students at RC Edwards,
21 that she had taught for those two years, had really
22 scored well on the exams and things that had been
23 given, that she really had a productive class down
24 there? Were you aware?

25 A. Like I said, you can look good on paper. But, you

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

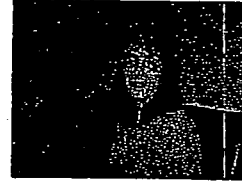
IN THE COURT OF COMMON PLEAS
CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.



DEPOSITION OF MARILYN ELIZABETH RAINES

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of Marilyn
Elizabeth Raines was taken at the law offices of Larry C.
Brandt, 3691 Blue Ridge Boulevard, Walhalla, South
Carolina, on Wednesday, August 8th, 2012, commencing at
3:30 p.m.

COPY

KAREN BELANGER
CERTIFIED VERBATIM REPORTER, MASTER

FOOTHILLS COURT REPORTING
864-991-2570

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1 had many concerns and issues that bothered her from
2 time to time. And she would come and ask advice and,
3 you know, this was one of those.

4 Q. Do you remember the advice you gave her?

5 A. I do not. I'm sure that any kind of incident, in
6 which she expressed that a student was inappropriate,
7 I would have said discuss it with an administrator,
8 make a referral. That was the standard response.

9 Q. Did she ever come back after that time and complain
10 to you that nothing was being done about her sexual
11 assault complaint?

12 A. Well, first of all, I never heard the words "sexual
13 assault" with regard to that incident. That
14 terminology was never used. I would have had a
15 totally different reaction to that incident. I think
16 I would remember it. So that was never expressed to
17 me. I do remember a question about a referral not
18 being in her box, and responding that that meant it
19 probably had not yet been addressed by the
20 administration. I frequently found that it took some
21 time for situations to be addressed and the paperwork
22 to be returned to my box.

23 Q. What did she tell you had happened with that student?
24 Did she describe the incident to you?

25 A. She did. I could not tell you all the details. I do

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.

DEPOSITION OF TAMMY ALEXANDER BROCK

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of Tammy
Alexander Brock was taken at the law offices of Larry C.
Brandt, 3691 Blue Ridge Boulevard, Walhalla, South
Carolina, on Monday, October 15th, 2012, commencing at 2:32
p.m.

KAREN BELANGER
CERTIFIED VERBATIM REPORTER, MASTER

FOOTHILLS COURT REPORTING
864-991-2570

1 Q. And why were you concerned about the gap in time?

2 A. This was in 2010. Districts were laying off teachers
3 and firing teachers, and I couldn't imagine why a
4 teacher would choose to leave a position, especially
5 if she was a continuing contract teacher.

6 Q. Did you ever do anything to attempt to verify whether
7 or not she was in fact a continuing contract teacher?

8 A. Did I verify it?

9 Q. Did you attempt to verify whether or not --

10 A. No, sir.

11 Q. -- she was a continuing contract teacher?

12 A. No, sir, I believe that information was revealed in
13 the letter that she sent.

14 Q. But back when she applied and was interviewed for the
15 job, was it revealed that she was a continuing
16 contract teacher?

17 A. I don't remember.

18 Q. Did you go online and look at any application, such
19 as the application for her? or did you check
20 -- what's that program they've got now?

21 A. WinOcular.

22 Q. WinOcular.

23 A. No, sir, I do not have access to that program.

24 Q. So you don't get to see CERRA or WinOcular?

25 A. No, sir.

30

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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

AFFIDAVIT OF TEDDI PALIS

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 25 AM 9 56

TEDDI PALIS, being first duly sworn, does depose and say the following:

1. My name is Teddi Palis. I employed by the Pickens County Sheriff's Department as a Deputy Sheriff and am assigned to serve as the School Resource Officer ("SRO") at Edwards Middle School. I offer this affidavit in support of the Amended Motion for Summary Judgment filed by the School District of Pickens County and its employees who are named as Defendants in this case.

2. In February, 2008, Mariam Noorai reported to me that a student had come up behind her and rubbed her right side and applied pressure to her right breast with his hand. Ms. Noorai reported that she corrected him, but that the student just grinned and stated he loved her. Ms. Noorai was upset and concerned about the student's actions. As a consequence of her report, I arrested the student on a charge of aggravated assault.

3. On the morning of January 28, 2009, I became aware of another incident reported by Ms. Noorai about a different student, identified here as Student T.C. If this had been an incident that required immediate attention, I was not advised by Ms. Noorai. On the

afternoon of January 27, 2009, Ms. Noorai had submitted a disciplinary referral about the incident to Donald Boggs, the Assistant Principal at Edwards Middle School who handled student disciplinary matters. In the disciplinary referral, Ms. Noorai stated that while students were blocking the stairs and she was "pinned" on the stairs, Student T.C. "started singing repeatedly, 'I'm ready to go right now' and had his arms out to hug me. He added my name in between the lyrics. I told him to stop; he just came closer and hugged me singing the same lyrics." See Attachment 1: School Discipline Notice dated January 27, 2009 (redacted to obscure student's name).

4. At the same time, I became aware of another disciplinary referral written on the morning of January 28, 2009 by Assistant Principal Donald Boggs. The second written referral stated that in Mr. Hudak's class, the same Student T.C. "burned a student on the back of the neck with a hot piece of metal." See Attachment 2: School Discipline Notice dated January 29, 2009 (redacted to obscure student's name). The date of January 29, 2009 is incorrect; I reviewed this Disciplinary Referral on January 28, 2009.

5. I was present when Mr. Boggs questioned Student T.C. on January 28, 2009 regarding the two incidents. Mr. Boggs suspended Student T.C. for a total of five (5) days, three (3) days of which served as discipline for the January 28, 2009 incident in which he burned another student, and two (2) days of which served as discipline for the January 27, 2009 incident involving Ms. Noorai.

6. It is not unusual for disciplinary referrals submitted on the previous afternoon to be handled the following day.

7. It is not unusual for two disciplinary referrals on the same student occurring at or near the same time to be combined and handled simultaneously.

8. It is not unusual for students to hug or sing to teachers. Without more information or detail suggesting that such behavior constituted a criminal or sexual assault, I would not arrest a student for hugging or singing to a teacher.

9. I was not provided information by Ms. Noorai or anyone else to justify arresting Student T.C. on a charge of assaulting her on January 27, 2009. The information provided to me at that time did not suggest that a crime had occurred. Ms. Noorai never used the terms "sexual assault" or "physical assault" or any similar terminology in the disciplinary referral she filed with the school after the incident that occurred on January 27, 2009, or in later conversations with me. I did not have the impression from what she wrote in the disciplinary referral or from what she subsequently told me that she had been sexually assaulted or physically harmed in any way, or that the incident that occurred on January 27, 2009 was as severe or objectionable as the 2008 incident which did result in an arrest.

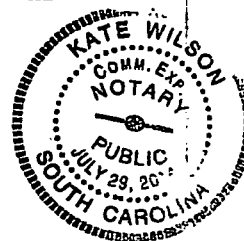
FURTHER AFFIANT SAYETH NOT.

Respectfully submitted,

Teddi Palis
Teddi Palis

SWORN TO BEFORE ME THIS _____
DAY OF November 19, 2013

Kate Wilson
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 7/29/14



SCHOOL DISTRICT OF PICKENS COUNTY

School Discipline Notice

Student's Name

Grade 8

Date 1/27/09

Time 2:18

Location of Incident hall by stairs

Report of Incident (Attach separate sheet, if necessary)

During class phone students were blocking stairs so I walked up. I was cornered in the stairs to the locker room and in the office. [redacted] started singing repeatedly "I'm ready to go right now" and had his arms out to hit me. He asked my name in between the lyrics. I told him to stop; he just came closer and hugged me singing the same lyrics.

Signature of Person Making Report

Prior Action by Teacher

- ☒ Verbal Warning
- ☒ Conference with Student
- ☐ Detention (Circle one)
- ☐ Request Lunch/After School
- ☐ Parent Contact (Circle one)
- ☐ Note/Phone/Conference
- ☐ Guidance Referral
- ☐ Prior Office Referral
- ☐ Other

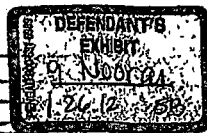
Office Use Only

100 Academic Dishonesty/ Cheating	009 Failure to Serve Detention	300 Parking Violation
010 Confiscation Misconduct	010 Failure to Serve Set Detention	010 Possession of Contraband
021 Classroom Misconduct	042 False Documentation	(Circle one.) Tobacco/Alcohol/Drugs/Weapons
220 Computer Misuse	049 Field Trip Misconduct	CP Phone (Cell/Pager) Violation
170 Cutting Activity	320 ID Badge Violation	(Circle one.) 331 = 1st 332 = 2nd
160 Cutting Class	423 Insults	333 = 2nd or subsequent offense
150 Cutting School	425 Harassing a Disturbance	330 Phone Violation
054 Damage to Property	422 Intimidation/Disobedience	022 Playground Misconduct
490 Discipline Contact Violation	320 Leaving Class w/o Permission	270 Refusal to Obey
420 Disrespectful Behavior	370 Leaving School w/o Permission	421 Rude Behavior
030 Disruptive Behavior	370 Littering	230 Smoking on School Property/Tobacco
280 Dress Code Violation	350 Obscene Gesture	038 Taking Other's Possessions
001 Driving Violation	381 Obscene Language	410 Tardy Card/Hall Pass Violation
180 Excessive Tardiness	292 Obscene Literature	039 Throwing Objects
012 Failure to Bring Supplies	353 Obscene Drawing	200 Unauthorized Area/Off Limits
013 Failure to Complete Assignments	201 On Campus While Suspended	032 Untruthfulness
Criminal Offense	034 Overly Affectionate Behavior	210 Use of Profanity
		100 Other Discipline Violation

Please note the action taken below.

ALT Referred to Alternative Program	009 Parent Conference Requested for	Held
001 Behavior Control	PMT Payment for Damages \$	
28 Bond Camp Date(s)	013 Recommendation for expulsion - Hearing on	
QTP Call to Parents	(Indicate below the action that was taken during the Expulsion Hearing)	
0NF Conference with Student	ALT Referred to Alternative Program	Begin Program on
CP Out Phone Consequences (Circle one.)	20 Changed to Homebased Status	Effective Date
CP1 CP2 CP3	10 Review by IEP Team Reinstated Expelled Student to School	Effective Date
30 Consult District Office per revised JOE Policy	EXP Expelled from School	Effective Date
003 Confiscated School Privilege	21 Expulsion Appealed - Reinstated to School	
0RT Detention (Circle one.) Request Lunch/Before School/Class/After School	REF Referral to	
015 Dismissal from Homework Center	016 Saturday School on	1st day - 1st day (Circle one.)
HMV Home Visit Scheduled on	012 Sent home for remainder of day	
IN6 In-School Suspension for days	SUPX Suspension Pending Expulsion	Hearing on
May return to class on	SUS Suspension (OSS) for days	May return to class on
LTP Letter to Parent Mailed on	TRN Transfer	
NON No action taken	WRN Warning	
007 Office Time Out		
OTH Other		

Comments:



Student Statement: "I understand that I am to give a copy of this report to my parent when I arrive home."

Student's Signature

Parent's Signature

School Administrator's Signature

Pickens Defs 1

SCHOOL DISTRICT OF PICKENS COUNTY

School Discipline Notice

Student's Name

Grade 8

Date 1/29/09

Time 2nd Period

Location of Incident

Ms. Hudak's class

Report of Incident (Attach separate sheet, if necessary.)

Burned a student on the back of the neck with a hot piece of metal.

Prior Action by Teacher

- ☐ Verbal Warning
- ☐ Conference with Student
- ☐ Detention (Circle one).
- ☐ Release/Lunch/After School
- ☐ Parent Contact (Circle one.)
- ☐ Note/Phone/Conference
- ☐ Guidance Referral
- ☐ Prior Office Referral
- ☐ Other

Signature of Person Making Referral

Office Use Only

☐ 180 Academic Dishonesty/ Cheating	☐ 009 Failure to Serve Detention	☐ 300 Parking Violation
☐ 016 Custodial Misconduct	☐ 010 Failure to Serve Set Detention	☐ 019 Possession of Contraband
☐ 021 Classroom Misconduct	☐ 042 False Documentation	☐ (Circle one.) Tobacco/Lighters/Matches/Fireworks
☐ 220 Computer Misuse	☐ 018 Field Trip Misconduct	☐ CP Phone (Cell/Pager) Violation
☐ 170 Outing Activity	☐ 380 ID Badge Violation	☐ (Circle one.) 331 = 1st 332 = 2nd
☐ 160 Cutting Class	☐ 423 Insults	☐ 333 = 3rd or subsequent offense
☐ 160 Cutting School	☐ 039 Instigating a Disturbance	☐ 330 Phone Violation
☐ 054 Damage to Property	☐ 422 Insubordination/Disobedience	☐ 022 Playground Misconduct
☐ 430 Discipline Contract Violation	☐ 320 Leaving Class w/o Permission	☐ 270 Refusal to Obey
☐ 420 Disrespectful Behavior	☐ 310 Leaving School w/o Permission	☐ 421 Rude Behavior
☐ 030 Disruptive Behavior	☐ 370 Littering	☐ 230 Smoking on School Property/Tobacco
☐ 260 Dress Code Violation	☐ 290 Obscene Gesture	☐ 038 Taking Other's Possessions
☐ 301 Driving Violation	☐ 281 Obscene Language	☐ 410 Tardy Card/Hall Pass Violation
☐ 180 Excessive Tardiness	☐ 282 Obscene Literature	☐ 053 Throwing Objects
☐ 012 Failure to Bring Supplies	☐ 208 Obscene Drawing	☐ 200 Unauthorized Area/Off Limits
☐ 013 Failure to Complete Assignments	☐ 201 On Campus While Suspended	☐ 052 Untruthfulness
☒ Criminal Offense	☐ 034 Overtly Affectionate Behavior	☐ 210 Use of Profanity
		☐ 100 Other Discipline Violation

Aggravated Assault

Please note the action taken below.

☐ ALT. Referred to Alternative Program	☐ 008 Parent Conference Requested for	☐ Held
☐ 001 Behavior Contract	☐ PMT Payment for Damages	☐ \$
☐ 35 Boot Camp Date(s):	☐ 013 Recommendation for expulsion - Hearing on	☐ (Indicate below the action that was taken during the Expulsion Hearing.)
☐ CTP Call to Parents	☐ ALT Referred to Alternative Program	☐ Began Program on
☐ CNF Conference with Student	☐ 20 Changed to Homebased Status	☐ Effective Date
☐ CP Cell Phone Consequences (Circle one.)	☐ 19 Review by IEP Team Reinstated Expelled Student to School	☐ Effective Date
☐ 30 Consult District Office per revised JDE Policy	☐ EXP Expelled from School	☐ Effective Date
☐ 003 Denied School Privilege	☐ 21 Expulsion Appealed - Reinstated to School	☐ Effective Date
☐ DET Detention (Circle one.)	☐ REP Referral to	☐ Saturday School on
☐ Before School/Class/After School	☐ 016 Saturday School on	☐ 1/2 day - full day (Circle one.)
☐ 015 Dismissal from Homework Center	☐ 012 Sent home for remainder of day	☐ Suspension Pending Expulsion
☐ HMV Home Visit Scheduled on	☐ SUPX Suspension Pending Expulsion	☐ Hearing on
☐ INS In-School Suspension for	☒ SUS Suspension (OBS) for	☐ 5 days. May return to class on
☐ May return to class on	☐ TRN Transfer	☐ 2/5/09
☐ LTP Letter to Parent Mailed on	☐ WRN Warning	
☐ NON No action taken		
☐ 007 Office Time Out		
☐ OTH Other		

Comments: Suspended 1/29, 1/30, 2/2, 2/3, and 2/4/09 May return to class on 2/5/09 Must meet at 2:15 on Thurs. 2/5/09 with parent(s)

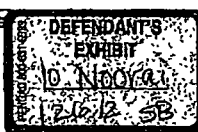
Student Statement: "I understand that I am to give a copy of this report to my parent when I arrive home."

Student's Signature

Parent's Signature

School Administrator's Signature

Pickens Defs 2



31

408

410

COPY

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

AFFIDAVIT OF MARY BRIDGES

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2011 NOV 25 AM 9 56

MARY BRIDGES, being first duly sworn, does depose and say the following:

1. My name is Mary Bridges. I was employed by the School District of Pickens County ("the District") as a teacher at Edwards Middle School from 1999 to 2005. Since August 2005, I have been employed as Assistant Principal at Edwards Middle School. I offer this affidavit in support of the Amended Motion for Summary Judgment filed by the District and its employees who are named as Defendants in this case.
2. I have read and reviewed the deposition testimony of the Plaintiff, Mariam R. Noorai, regarding her characterizations of my opinions, knowledge, and beliefs about several matters. Her characterizations of my opinions, knowledge, and beliefs were not based on her own knowledge and are incorrect in some respects. This affidavit correctly conveys my opinions, knowledge, and belief about those matters.
3. The Plaintiff never told me she had been "sexually assaulted" at school. She never used the terms "sexual assault" or "physical assault" or any similar term in describing

to me what happened on January 27, 2009. I did not have the impression from what she told me that she had been sexually assaulted or physically harmed in any way.

4. Contrary to the Plaintiff's characterization of my supposed beliefs, I did not believe the Plaintiff should be allowed to refuse to serve as the yearbook adviser at Edwards Middle School if she were assigned that duty. In fact, I felt otherwise and advised the Plaintiff that such duties were typical and should be expected during the early years of a teaching career. I even advised her that she should volunteer for extra duties, as I had done as a young teacher, in order to enhance her career opportunities. I also advised the Plaintiff that if she did not wish to continue serving as the yearbook adviser, she should locate another person to serve in that capacity, but I did not believe she would be successful in that.

5. I was aware that the Plaintiff had a disagreement with Defendant Richard Hudak, another teacher at the school, after the Plaintiff held a student over in her classroom to complete a test instead of reporting to Mr. Hudak's classroom as scheduled. Although the Plaintiff said I agreed with her that she had done nothing wrong, this is incorrect. I did not take a position on this matter. Instead, I counseled the Plaintiff to speak with Defendant Donald Boggs, who was an Assistant Principal, or Defendant Gary Culler, who was the Principal, about it.

6. Disagreements among the teaching staff occur from time to time, and I, as a school administrator, expect the teachers to resolve their differences and continue to work with each other. Plaintiff demonstrated difficulties in resolving disagreements with other teachers without involving administrative staff.

7. I was present when Mr. Culler advised the Plaintiff to sign the contract offered by the District for employment as a teacher at Edwards Middle School for the 2009-2010 school year, even though the Plaintiff told Mr. Culler and me that she was looking for a teaching

position at another school. Mr. Culler spoke to the Plaintiff in a polite manner, he was in no way belligerent or hostile toward the Plaintiff. Mr. Culler advised the Plaintiff to sign the contract so that she would be protected from losing employment if she was unsuccessful in locating a teaching position in another district. I know that the District has never had any difficulty filling vacancies at Edwards Middle School. If the Plaintiff signed the contract and subsequently found another teaching position, the District would in all likelihood release her from her obligations under the new contract because it would be able to fill the vacancy left by her departure. That has been the result in every similar situation I can remember. I have never known the District to refuse to release an Edwards Middle School teacher from her contract if she found employment elsewhere, and I have no reason to believe that the District would have refused to release the Plaintiff from her contract if she had signed it and later requested to be released. I believed that Mr. Culler was trying to help and coach the Plaintiff through this situation and to protect her from possible unemployment if she was unsuccessful in her job search. I was not aware that the Plaintiff was unhappy or upset about this conversation.

8. On June 4, 2009, Gary Culler asked me to request a written letter of resignation from the Plaintiff because she had not signed the contract for 2009-2010 employment previously offered to her by the District. I understood that it was the practice of the District to require a teacher to provide written notice of resignation before it would declare the teacher's position vacant and fill it with a new employee; once the District filled the position with a new employee, the former teacher could not then change her mind and retain her old position. I also understood and was concerned that if the Plaintiff did not formally provide written notice of resignation to the District and obtained teaching employment elsewhere, the State Department of Education might have grounds to revoke her teacher certification under S.C. Reg. 43-206. For

these reasons, I told the Plaintiff that we (meaning the District) needed her to write a letter of resignation – I described it as needing to “tie up a loose end” – and offered her the use of my office to write the letter. The Plaintiff seemed upset by this request, which I did not understand since she had already advised us that she would not accept or sign the contract the District had offered her.

9. I left the Plaintiff alone in my office to write the letter while I resumed urgent work in the Guidance Office on scheduling classes for the next year. Mr. Culler subsequently asked me to check on the Plaintiff because she seemed upset. I went back to my office and asked Plaintiff whether she was alright and whether she had completed her resignation letter. The Plaintiff told me that writing the letter was upsetting to her. I asked her why, and she said because she wanted to write more. I told her that was fine, but all she had to write was that she was resigning. The Plaintiff said nothing to me about feeling uncomfortable around Mr. Culler and made no complaints to me about Mr. Culler's behavior, or any alleged hostility or sexual harassment by him on that day or at any other time.

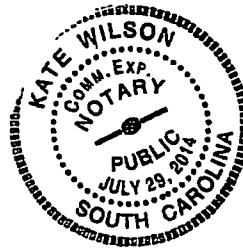
FURTHER AFFIANT SAYETH NOT.

[SIGNATURE BLOCK ON NEXT PAGE]

Respectfully submitted,

Mary S. Bridges
Mary Bridges

SWORN TO BEFORE ME THIS
DAY OF November 18 2013
Kate Wilson
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 7/29/14



2006 WL 1473853

Only the Westlaw citation is currently available.
United States District Court,
D. South Carolina.

Jane DOE, Plaintiff,
v.

ERSKINE COLLEGE, Dr. John Carson, both
individually and as President of Erskine College,
Robyn Agnew, both individually and as agent
and/or employee of Erskine College, and Monty
Wooley, both individually and as agent and/
or employee of Erskine College, Defendants.

No. Civ.A. 8:04-23001RBH. | May 25, 2006.

Attorneys and Law Firms

Jill W Fennel, Fennel and Maguire, Myrtle Beach, SC, for
Plaintiff

Ellen S Cheek, Michael BT Wilkes, Michael Wilkes Law
Firm, Spartanburg, SC, for Defendants.

Opinion

ORDER

HARWELL, J.

*1 On February 3, 2006, this matter came before me for hearing of the motion for summary judgment filed on December 19, 2005 by defendants, Erskine College, John Carson, Robyn Agnew and Monty Wooley. This is an action by plaintiff, Jane Doe, against the above defendants, alleging a federal claim under Title IX, 20 U.S.C. § 1681(a) and state law claims for defamation and intentional infliction of emotional distress. (The remaining causes of action were dismissed by Order of this Court filed on June 22, 2005 or by consent of the plaintiff at the February 2006 hearing.)

Summary Judgment Standard

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

law." Fed.R.Civ.P. 56(c). Once the moving party makes the showing, however, the opposing party must respond to the motion with "specific facts showing there is a genuine issue for trial." Fed.R.Civ.P. 56(e).

When no genuine issue of any material fact exists, summary judgment is appropriate. *Shealy v. Winston*, 929 F.2d 1009, 1011 (4th Cir.1991). The facts and inferences to be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Id.* However, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Id.*, quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

ALLEGED FACTS¹

The following alleged facts are taken in the light most favorable to the plaintiff. On November 14, 2002 the plaintiff was sexually assaulted by a male student in his dorm room at Kennedy Dorm.² She initially reported the rape to Ruth Burton, the residence director of her dorm, Bonner Dorm,³ on the Sunday immediately following the incident. Doe Dep., 146-147. Burton directed Plaintiff to report the rape to Robyn Agnew (hereinafter "Agnew"), Dean of Women *Id.*, 150. On either the next Monday or Tuesday, Plaintiff visited Agnew to report the rape. Doe Dep., 151. Plaintiff recalls Agnew telling her that she could press charges criminally or that she could pursue the matter through the school. However, Agnew indicated to the plaintiff several times that the school was not the right venue because of the severity of her case and the fact that Erskine is not equipped to deal with it *Id.*, 153 and 185. During the plaintiff's first couple of meetings with Agnew, Agnew was very compassionate toward the plaintiff. However, after learning the identity of the rapist, Agnew started acting rudely to the plaintiff. *Id.*, 155.

Plaintiff understood Agnew to be the person to help her understand what could be done within the school framework. *Id.*, 179-180. Agnew testified that she explained to Plaintiff how the College Discipline and Appeals Committee (hereinafter "CDA") process is run. Agnew instructed the plaintiff to go to the Erskine Department of Public Safety to give a statement because the male student knew that she had reported the rape. *Id.*, 163. Agnew told the plaintiff that the Department of Public Safety already

knew about the rape allegations and that they knew she would be coming there to give a statement. *Id.* Plaintiff visited the Department of Public Safety on the Thursday after the incident, November 21, 2002. *Id.* When the plaintiff visited the Erskine Dept. of Public Safety and met with Lt. Stahl, the investigating officer, she could not stop shaking or crying. *Id.*, 164. Lt. Stahl did not know about the incident until the day the plaintiff gave her statement. He expressed frustration with Wooley and Agnew for not telling him sooner. *Id.*, 211.

*2 On Friday, November 21, 2002, Plaintiff took medical withdrawal from school. *Doe Dep.*, 165. Dean Monty Wooley, Vice President of Student Services ("Wooley") met with the plaintiff's parents that day and pledged that the school wanted to do whatever they could to help. *Wooley Dep.*, 12. However, the plaintiff's parents became upset with Dean Wooley when he claimed to have conducted his own investigation and that the male student was very bright, very intelligent, and "going places." Plaintiff's mother's *Dep.*, 138

Plaintiff spent the rest of November at home in bed. *Doe Dep.*, 165-66. Plaintiff finally went to counseling because her mother insisted that she do so. *Id.* 221. At first, the plaintiff did not wish to return to Erskine because she felt Erskine wanted her to leave the school. *Id.*, 350. However, after engaging in counseling and speaking with other victims of sexual assault, she decided she wanted to return. *Id.* at 234. In addition, she had registered for an interim trip to Australia with 10 other students and faculty for sixteen (16) days. *Id.*, 236.

Prior to the Australia trip, on January 7, 2003, Plaintiff and her mother met with Dean Wooley and Agnew regarding her fears about being on campus and running into her assailant. *Id.*, 251. Dean Wooley told her that she could do something through the school but that if she was not able to prove sexual assault at the hearing, she would be charged with having had sex on campus, which would be viewed as conduct unbecoming of an Erskine student. *Id.*, 252. Dean Wooley said that a restraining order would not be necessary because he would have a good "heart-to-heart talk" with the boy. *Id.*, 253. Plaintiff and her mother expressed to Dean Wooley and Agnew during the meeting that they did not understand why the school had not yet requested a statement from the male student. *Id.*, 255. Dean Wooley and Agnew offered no further instruction or guidance to the plaintiff. *Id.*, 252-253.

During the spring semester, the plaintiff was still not improving. She dropped her biology class because it was held in the Science Center, and every time she went to class she

ran into the male student. *Id.*, 269. Plaintiff started taking antidepressants. *Id.*, 269. She was not able to sleep, so her doctor prescribed Valium. *Id.* at 269. Plaintiff decided to press charges shortly after she began cutting herself. *Id.*, 352. She had discussed with her counselors the fact that pretending the rape did not happen was not working. *Id.*, 352.

Plaintiff made the decision to seek criminal action against the male student in April 2003 and visited Chief Smith of the Due West Police Department to press charges. Chief Smith told the plaintiff that he did not have jurisdiction and that she would have to go back to Erskine. *Id.*, 270. Chief Smith told the plaintiff that the male student had already told him, "I need to talk with someone because I just raped someone," *Id.*, 304, but that he then changed his statement to "I've been charged" with rape. *Id.*, 305.

*3 Plaintiff visited Chief Estep of the Erskine Department of Public Safety and he accompanied her to the Magistrate's Office to file charges. An arrest warrant was issued on April 14, 2003. *Id.*, 270. The judge included a condition on the male student's bond that stated, "stay away from victim; have no contact whatsoever." Erskine was made aware of the no-contact order when the plaintiff's mother faxed a copy of the order to Estep. *Estep Dep.*, 31. Estep presented the no-contact order to his supervisor, Dean Wooley. *Id.*, 32.

Based upon the no-contact order, Estep, who was also resident director of a dorm on campus, recommended to Wooley that they comply with the order by having the male student commute from off-campus housing. *Id.*, 33. Wooley responded by saying that they are both students with a right to an education and that the male student had not been found guilty of any crime so he could not do that. *Id.*, 33. Estep then recommended that the male student be removed from Kennedy Dorm and relocated across campus because Kennedy Dorm was right next to the plaintiff's dorm, Bonner Dorm. *Id.* The male student eventually was moved across campus, but not until the spring of 2004. *Id.*, 34 and 70.

When asked if there was any particular incident that inspired the plaintiff to pursue a subsequent rule to show cause hearing, she responded, "Every day. Every day. He just wouldn't walk away or leave me alone." *Doe Dep.*, 276. Plaintiff described a day when she shouted at the male student because his friends were pointing and laughing at her and she cried. *Id.*, 303. During one of Plaintiff's softball games, the male student came out on the field and made a point of throwing softballs right beside her. *Id.*, 378. In

another incident, Plaintiff was approached by one of the male student's friends, who confronted Plaintiff on her decision to press charges. She thought it inappropriate for Plaintiff to press charges and wanted to know if Plaintiff really needed to ruin the male student's life in order to get better. *Id.*, 329. When asked if she felt as though her contacts with the male student limited her ability to participate in or benefit from an educational program or activity at Erskine, Plaintiff replied, "I feel so, yes." *Id.*, 378. Plaintiff suffered anxiety attacks when she was forced to have contact with the male student. Plaintiff described the attacks she suffered from her forced contacts with the male student. "Like you black out, you tense up like your body temperature goes up and down from hot to cold. You feel like you can't breathe, pain throughout your body. You have to just leave I mean I always break out in these weird rashes and feel like the world is caving in on you." *Id.*, 275. Plaintiff's counselor, Dr. Joanne Armstrong, told Plaintiff that these were symptoms of panic attacks. *Id.*, 275-276.

Plaintiff eventually obtained cooperation from Erskine in setting a dining schedule for her and the male student so that she could avoid contact at meal times. *Id.*, 368. However, Erskine scheduled her in a biology class where the male student was the lab assistant to the professor. It was not until the plaintiff's attorney contacted the school that Erskine removed Plaintiff from the male student's lab. *Id.*, 369. Plaintiff understood that Dr. Don Weatherman⁴ (hereinafter "Weatherman") was supposed to be checking the class schedules to make sure that the two were not placed in the same class. *Id.*, 368.

*4 On July 2, 2003, the plaintiff notified Erskine that she had decided to pursue charges before the CDA. A hearing was held on August 12, 2003, allegedly after being postponed several times. The plaintiff's physician and some other witnesses were not able to attend due to the fact the hearing was re-scheduled.

The normal procedure for the CDA is to receive documentation from the Office of Student Services about the context of the case. Christie⁵ Depo., 15. Then, they hear statements from the parties involved and any witnesses. The CDA then goes into executive session and reviews the documentation, discusses the case and makes a decision. *Id.* Dr. Brad Christie (hereinafter "Christie") defined the role of Chair of the CDA as receiving materials about the case and presiding over the hearing. *Id.*, 10.

The CDA was provided with a packet of information put together by Wooley and Agnew. Agnew Dep., 32. Plaintiff was provided with a copy of the CDA packet by Chief Estep the night before the hearing. Pl.'s Dep. at 291; *see also* Estep Dep., 63. She did not know that the packet existed prior to that evening and it contained a lot of information that she had never seen before. Doe Dep., 291. The male student was allegedly provided with a copy of the packet one week prior to the hearing, so he was better able to prepare. *Id.* The CDA hearing would normally be chaired by Dr. John Wingard⁶ (hereinafter "Wingard"). However, in Plaintiff's case, Wingard recused himself because of conversations with Plaintiff concerning the alleged sexual assault. Wingard Dep., 9. The Vice Chair of the CDA, Dr. Brad Christie was to take over as Chair. Christie Dep. at 8. Christie testified that the plaintiff's case was the first case heard by Erskine's CDA, in which he participated, that involved allegations of rape. *Id.*, 36.

Even though Christie was acting as the effective Chair of CDA for Plaintiff's case, the procedure was changed. Bowe Dep. at 10. Professor Bowe testified that, "the normal procedure is that the chair runs the meeting. In this case, Mr. Bill Patrick⁷ acted as a hearing officer." *Id.*, 10-13. According to Gid Alston⁸ (hereinafter "Alston"), another change in the normal procedure for CDA hearings was that Plaintiff and the male student were made to appear before the CDA in the same room at the same time. Alston Dep., 11. Alston explained that the reasoning behind not putting both the accuser and the accused in the same room during testimony at the hearing involved a concern that the accuser might not open up if the accused was there and that this arrangement always worked pretty well in his years of his experience on CDA. *Id.*, 44. Plaintiff was told that she could not have her lawyer, her psychologist, her mother or her father present with her during the hearing. Doe Dep. at p 292 and 298. After the plaintiff requested a victim's advocate, Estep appointed Fitzgerald to serve in that capacity. *Id.*, 292, and Fitzgerald Dep., 13. Fitzgerald had never served as a victim's advocate. *Id.*, 13-14. Plaintiff attempted to talk to Fitzgerald in her capacity as the victim's advocate, but she was turned away by Fitzgerald's supervisor. Doe Dep., 293. When Plaintiff was first introduced to Fitzgerald, she felt as though Fitzgerald did not understand her role with respect to Plaintiff's case. *Id.*, 295. Plaintiff indicated her frustration over the fact that Fitzgerald was not always able to answer her questions. *Id.*, 296. However, Fitzgerald did apologize for not always knowing how to respond to her questions. *Id.*, 297. Fitzgerald appeared at the CDA hearing to provide support

for both the plaintiff and the male student. Dean Wooley and Estep told her that Fitzgerald was the victim's advocate for both of them *Id.*, 299.

*5 Plaintiff was upset with the way the CDA hearing was conducted. *Id.*, 301. Estep was willing to testify at the hearing. However, Estep was not allowed to testify since the male student was promised by Dean Wooley that Estep would not testify. *Id.*, 301. However, Plaintiff was told he could not testify because he was called out of order. Estep Dep., 49. Christie stated that based upon his experience of service on the CDA, the public safety officer would normally be heard by the CDA *Id.*, 35.

Plaintiff felt that Estep understood the case better than she did and that he "could explain the criminal stuff better than I could've." Doe Dep., 302. Additionally, Estep's investigation allegedly contained information that had not yet been shared with Erskine.

In the fall of 2003, the plaintiff was approached by her Calculus professor, Ann Bowe, (a CDA panel member) out of concern that the plaintiff did not appear to be getting any better. Doe Dep., 323. Despite her participation in the CDA's deliberations, Bowe did not know that the CDA found the plaintiff herself guilty of sexual misconduct until the plaintiff read her the letter she had received about the CDA's decision. Bowe Dep., 24. Christie verified that the only decision to be made by the CDA that day was whether or not the male student committed sexual assault. Christie Dep., 17. Christie confirmed that the CDA engaged in discussions that both parties conducted themselves in a way that was inappropriate. *Id.*, 17. Bowe testified that Erskine never provided her with any kind of definition of sexual misconduct. Bowe Dep., 23. Furthermore, Erskine never provided Vice Chair Christie with a definition of conduct unbecoming of an Erskine student Christie Dep., 19.

Plaintiff told Bowe that she wanted an explanation of why the CDA found her guilty of engaging in sexual misconduct Doe Dep., 323. Bowe said the CDA's final decision was that the male student was not guilty of sexual assault, but only recalls a discussion about whether or not the two students engaged in sexual misconduct. Bowe Dep., 22. Thus, Bowe recommended that the plaintiff visit Christie. Plaintiff stated that Christie responded to her inquiry by saying that the committee did not know what they were doing and that they had tried their best. Doe Dep., 324. Christie then told the plaintiff to put herself in the male student's shoes. *Id.*, 324. He

further stated that without physical evidence it was impossible to find the male student guilty of sexual assault *Id.*, 324.

Rich Schelp⁹ also served on Erskine's CDA committee for the plaintiff's case and was assigned to take minutes of the hearing. Schelp had served on at least two CDA hearing panels prior to Plaintiff's hearing, but neither of the hearings involved issues of sexual assault. Schelp Dep., 17. Schelp testified that other than discussions about the pending litigation at the CDA's meeting of August 1, 2004, he did not receive training on how to proceed with his role as a CDA member. *Id.*, 22. In fact, Schelp did not receive training from Erskine on how to handle a sexual assault case. *Id.*, 12. Schelp does not recall Erskine ever providing him with a definition of sexual assault. *Id.*, 24. When asked how Schelp would respond to a student approaching him with a report of rape, Schelp ultimately stated that he "didn't know because it's so hard for me to imagine exactly how this would all go. It's very far from my experience." *Id.*, 13-14.

*6 In regard to the CDA process, Schelp wrote an e-mail to Wingard stating that, "writing the minutes made me concerned about the way the meeting was conducted." See Ex. 37. When asked in his deposition what he meant by this statement, he testified that he was concerned that where the Roberts Rules of Order type structure were not followed, it is difficult to know what the committee really decided. Schelp Dep., 35. Despite Schelp's concerns, nothing was done to change the CDA hearing result. *Id.*, 33.

The only exhibits provided at the hearing were reports from the plaintiff's doctors and statements collected by Chief Estep. Agnew appeared before the CDA and recounted her conversations with the plaintiff concerning her belief that the indication in the plaintiff's medical records that she had a pelvic inflammatory disease (PID) meant that she had a sexually transmitted disease (STD). Agnew affidavit; Doe Dep., 325. Plaintiff wanted her doctors to appear at the CDA to explain the records, but rescheduling of the CDA hearing prevented her from doing so. Christie testified that the inference that Plaintiff had an STD contributed to the decision found by the CDA that the plaintiff voluntarily had intercourse with the male student. Christie Dep., 18-22.

The CDA found that the male student did not commit a sexual assault on the plaintiff. It further found that both students had engaged in sexual misconduct. Plaintiff filed for an appeal of the CDA's decision by filing an application with

the Presidential Appeals Committee (hereinafter "PAC") on August 14, 2003.

According to Tracey Spires,¹⁰ the PAC convened to answer two issues on appeal. The first issue was Plaintiff's desire to have the determination as to her by the CDA of conduct unbecoming an Erskine student reversed. The other was the plaintiff's appeal of the CDA's decision that the male student was not guilty of sexual assault. Spires Dep., 12. Spires never received any training from Erskine College on how to handle a sexual assault case, *Id.*, 16, nor did he receive any training on how to carry out his role on the PAC, *Id.*, 16-17. Cory Young¹¹ was asked to serve on the PAC for Plaintiff's case. He testified that he received no training for how to proceed as a PAC member either generally or specifically for Plaintiff's case. Young Dep., 9-10. Steve Sniteman¹² also served on the PAC in the plaintiff's case. When asked if Erskine College offered any sort of course or training to its faculty members with regard to handling sexual assault cases, Weatherman said, "I do not know." Weatherman Dep., 18.

When asked what direction he received from Erskine on how to proceed with his role on the committee, he responded, "We did not really receive any instruction per se about conduct." Sniteman Dep., 9. He went on to say, "Since we do not have many of those-I mean, we just don't have that many problems at Erskine, we're blessed with that." *Id.*

*7 The PAC discussed that if the PAC upheld the CDA's decision that the male student and the plaintiff were guilty of sexual misconduct, the overall consequence would be that a woman would not report rape if she was found to have done something wrong. *Id.*, 18-19. The PAC agreed that Plaintiff and the male student were guilty of sexual misconduct, but for the "greater good," they agreed to drop that part of the CDA's decision. *Id.*, 19. President John Carson¹³ (hereinafter "Carson") concurred with the decision of the PAC in the plaintiff's case. Carson Dep. at 21. However, when writing to the parties regarding the PAC's decision on October 14, 2003, he expressed his disapproval of the parties' conduct. See Ex. 15, E-1212.

Plaintiff alleges that her grades suffered and that she thus became ineligible for several scholarships. Plaintiff entered Erskine after having scored a 1350 on her SAT in high school, and earning several scholarships in order to attend Erskine. However, Plaintiff alleges that she was denied a positive learning environment due to the hostility she felt

from the defendants. Bowe Dep., 376. Plaintiff felt humiliated on campus among her peers because she became known as the "rape girl" on campus. Doe Dep., 419. Plaintiff attempted suicide the week before her spring break in 2004. *Id.*, 342. During her deposition, Plaintiff responded by saying that she wanted to die because she was tired of being scared and living her life with everything being in question. *Id.* Plaintiff went on to explain that she felt like a burden to everyone, and that a year had passed and she did not feel any better. *Id.*, 343. Plaintiff woke up the next day in the hospital confronted by a person from the state mental hospital to decide whether or not she should be released or institutionalized. Her diagnosis was post traumatic stress disorder due to rape. *Id.*, 347.

OCR Complaint

On November 10, 2003, the plaintiff filed a formal complaint with the Office of Civil Rights (hereinafter "OCR"). OCR is responsible for enforcing Title IX of the Education Amendment Act of 1972 (hereinafter "Title IX"), 20 U.S.C. Sections 1681, *et seq.* The agency formally investigated the plaintiff's complaints and found Erskine in violation of several provisions of Title IX. Erskine was found guilty of several violations, including but not limited to: (a) failure to follow its own sexual harassment policy which stated that, "confidentiality can only be respected insofar as it does not interfere with the College's legal obligation to investigate allegations of misconduct which, when brought to their attention require it to take corrective action; (b) conducting a limited investigation in January 2003 and not issuing any reports or findings until after the CDA process was completed in August 2003; (c) failure to take prompt and effective action to resolve the complaint subjecting Plaintiff to further harassment by her peers and continued contact with the male student; and (d) allowing serious charges to remain unresolved for more than 9 months. See Ex. Doe 684-685.

Title IX

*8 Title IX provides:

No person ... 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.

20 U.S.C. § 1681(a)(2004)

"Sexual harassment as recognized by Title VII precedent is therefore considered a form of discrimination for Title IX purposes." *Jennings v. University of North Carolina*, 340 F.Supp.2d 666, 673 (M.D.N.C.2004), *aff'd*, 444 F.3d 255 (4th Cir.2006).¹⁴ Sexual harassment includes hostile environment cases by analogy to Title VII. *See Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986), cited with approval in *Davis v. Monroe County Bd. of Education*, 526 U.S. 629, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999). In *Davis*, the United States Supreme Court held that student-on-student harassment is actionable against a federal funding recipient when the school: (1) is deliberately indifferent to sexual harassment; (2) of which the school has knowledge, (3) of conduct that is so severe, pervasive, and objectively offensive, (4) that it can be said to deprive the victim of access to the educational opportunities or benefits provided by the school. *Id.* at 631-50. *Davis* involved sexual harassment of a fifth grade school student by another student. Prior to *Davis*, the Court decided *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 118 S.Ct. 1989, 141 L.Ed.2d 277 (1998), holding an implied right of action lies under Title IX for harassment of a student by a teacher where the school district has actual notice and deliberate indifference is shown. *Davis* set the legal standard for Title IX claims involving student-on-student sexual harassment, while *Gebser* addresses teacher-on-student harassment.

School administrators will continue to enjoy the flexibility they require so long as funding recipients are deemed 'deliberately indifferent' to acts of student-on-student harassment only where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances. "[T]he recipient must merely respond to known peer harassment in a manner that is not clearly unreasonable.

Davis, 526 U.S. at 648-649.

"If school .. administrators were 'well aware of the [harassment], yet they deliberately ignored requests for aid from the female students wishing to use the resource [then] [t]he district's knowing refusal to take any action in response to such behavior would fly in the face of Title IX's core principles, and such deliberate indifference may appropriately be subject to claims for monetary damages." *Jennings*, 444 F.3d at 267, citing *Davis*, 526 U.S. at 651.

A totality of the circumstances analysis is appropriate in Title IX cases in determining whether conduct is sufficiently severe

or pervasive to submit a case to the jury. " . [S]ome behavior would be abusive in one setting, but not abusive in another setting." *Jennings*, 444 F.3d at 270. Relevant factors include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance ..." *Id.*, 444 F.3d at 269.

*9 In *Davis*, the Supreme Court cited policy guidelines of the Department of Education's Office of Civil Rights regarding student-on-student harassment. *See Davis*, 526 U.S. at 647. The guidelines in effect when the Court decided *Davis* provided:

[A school] should take immediate and appropriate steps to investigate or otherwise determine what occurred and take steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.

OCR, Title IX Guidelines, 62 Fed.Reg. At 12042.

Arguments by the Defendant Regarding Title IX Claim

Erskine asserts that its response was not deliberately indifferent to the plaintiff's assault claim; that the harassment was not severe, pervasive or objectively offensive; that the harassment did not deny the plaintiff access to Erskine's educational opportunities; and that Erskine's alleged acts did not proximately cause plaintiff's claimed damages. Defendant also contends that the plaintiff's claim of direct harassment is not actionable under Title IX since the alleged acts are not "gender-oriented."

Legal Analysis

The parties have cited this Court to no Fourth Circuit authority dealing with student-on-student sexual harassment under Title IX. Prior to *Davis*, the Fourth Circuit decided *Brzonkala v. Virginia Polytechnic Institute*, 132 F.3d 949 (4th Cir.1997), rehearing en banc granted, opinion vacated, 169 F.3d 820 (4th Cir.1999), affirming dismissal of claim under Violence Against Women Act; affirming district court's finding that the claim for disparate treatment should be dismissed based on sufficiency of the evidence; and vacating the district court's dismissal of the hostile environment claim under Title IX and remanding with instructions to hold the claim in abeyance pending a decision in *Davis*. The

Supreme Court issued an opinion on appeal of the case which concerned only the Violence Against Women Act. See *United States v. Morrison*, 529 U.S. 598, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000).

Although *Brzonkala* is not determinative of the analysis of this case, and its facts are certainly more egregious than the alleged facts herein, the discussion by a panel of the Fourth Circuit of the hostile environment aspect of the case is of interest by way of background as to the development of Title IX law. *Brzonkala* involved the gang rape of a Virginia Tech student by football players who allegedly received only minor punishment from the school. In discussing the hostile environment claim, the Court utilized Title VII principles as later approved by *Davis*: "Under Title VII, a plaintiff cannot recover because a fellow employee sexually harassed the plaintiff, but only because an employer could have, but failed to, adequately remedy known harassment." *Brzonkala*, 132 F.3d at 958. Accordingly, the Court reasoned that, "in a Title IX hostile environment action a plaintiff is not seeking to hold the school responsible for the acts of third parties (in this case, fellow students). Rather, the plaintiff is seeking to hold the school responsible for its own actions, i.e. that the school 'knew or should have known of the illegal conduct and failed to take prompt and adequate remedial action.'" *Id.* Analyzing the facts of the case, the Court stated:

*10 She alleges a legion of procedural irregularities in the hearing process, Virginia Tech's disregard for its own rules of finality, and its eventual decision to impose virtually no penalty for an admitted rape. These facts, if proven, would allow a jury to find that Virginia Tech's response to *Brzonkala*'s gang rape was neither prompt nor adequate

Id. at 961.

In *Jennings*, the Fourth Circuit (in a teacher-on-student case) similarly enumerated four elements to a hostile environment case under Title IX, after *Davis* and *Gebser*:

(1) that [the student] belongs to a protected group (e.g., a student at an institution covered by Title IX), (2) that she was subjected to harassment based on her sex, (3) that the harassment was sufficiently severe or pervasive to create an abusive educational environment; and (4) a cognizable basis [exists] for imputing institutional liability under Title IX

Jennings, 444 F.3d at 267.

Courts across the country have recently addressed issues since *Davis* relating to proof of Title IX claims, and the outcome is governed by the facts of the particular case. See *Zamora v. North Salem Cent. School Dist.*, 414 F.Supp.2d 418, 425 (D.N.Y.2006) ("While this Court acknowledges the Supreme Court's admonition in *Davis* that the deliberate indifference question is not a mere 'reasonableness standard' that transforms every school disciplinary decision into a jury question, in a case such as this, the issue seems best suited for a jury to consider the range of all known circumstances, from the District's apparently efficient response on February 26, 2004, to its earlier decision not to remove Gordon from the classroom or more closely monitor his interaction with students."), *Williams v. Board of Regents of University System of Georgia*, 441 F.3d 1287, 2006 WL 561815 (11th Cir.2006) (University student sufficiently alleged deliberate indifference by university in Title IX claim based on student-on-student harassment where university delayed in holding hearing and failed to inform athletes about policies), *Manfredi v. Mount Vernon Bd. of Educ.*, 94 F.Supp.2d 447 (S.D.N.Y.2000) (Title IX not violated where victim of sexual touching by another student was moved to another class as soon as school officials learned of incident), *Biggs v. Board of Educ. Of Cecil County, Md.*, 229 F.Supp.2d 437 (D.Md.2002) (school not liable where it took significant actions each time student complained of teasing), *Wilson v. Beaumont Independent School Dist.*, 144 F.Supp.2d 690 (E.D.Tx.2001) (Title IX violation not present where teacher reported incident and physically segregated the perpetrator from the rest of the class and principal transferred the alleged perpetrator to another school); *Vance v. Spencer County Public School Dist.*, 231 F.3d 253 (6th Cir.2000) (response to sexual harassment insufficient where the officials talked to the offenders), and *Gabrielle M. v. Park Forest-Chicago Heights*, 315 F.3d 817 (7th Cir.2003) (school officials immediately placed male elementary school student on one-day suspension and had a conference with his mother after first incident and referred him to receive certain services and moved him to another class after second incident).

*11 In the case at bar, the plaintiff alleges that the defendants violated Title IX by (1) repeatedly telling her that they were ill-equipped to handle her sexual assault claim; (2) failing to treat her with the sensitivity and patience demanded in the handling of sexual assault cases; (3) failing to promptly and properly investigate her sexual assault complaint; (4) failing to adopt CDA procedures and/or deviating from their existing CDA procedures in her case; (5) threatening her

with disciplinary action should she elect to pursue a CDA hearing and then imposing that disciplinary action without a fair and just hearing, (6) failing to properly educate and train Erskine faculty and staff in the handling of a sexual assault claim; and (7) failing to take timely, appropriate action to attempt to prevent interaction between the two students, such as requiring the perpetrator to change dorms, working out dining schedules, and avoiding contact in classes where possible.

*Denial of Motion for Summary
Judgment on Title IX Claim*

The Court finds that genuine issues of material fact exist as to the plaintiff's Title IX claim. First, the plaintiff alleges that Dean Wooley claimed to have conducted his own investigation into the matter and that the male student was very bright, very intelligent, and "going places." On January 7, 2003, the plaintiff and her mother met with Wooley and Agnew regarding her fears of running into her assailant on campus. They wanted a restraining order, but Dean Wooley said that a restraining order was not necessary because he would have a "heart-to-heart" talk with the male student. Despite this promise of a "heart-to-heart talk" with the male student, Plaintiff alleges that she continued to suffer frequent encounters with the student.

Second, Chief Estep¹⁵ received the no-contact order of the magistrate by facsimile from the plaintiff's mother after the student's arrest in April of 2003; Estep showed the facsimile to Dean Wooley. He recommended to Wooley that Erskine comply with the no-contact order by having the male student commute from off-campus. However, Dean Wooley responded that they are both students and both have a right to an education and that the male student had not been found guilty of any crime. Alternatively, Estep recommended that the male student be removed from Kennedy Dorm and relocated across campus because Kennedy Dorm was right next to the plaintiff's dorm, Bonner Dorm. This move was not implemented until the spring of 2004, seven or eight months after the setting of the bond conditions with actual notice to Erskine.

Third, the plaintiff argues that Erskine failed to follow its normal procedures both leading up to the CDA hearing and during the hearing itself. Plaintiff contends that when she pursued CDA disciplinary action against the male student, Defendants subjected her to disciplinary action for engaging

in sexual misconduct. This was so despite the fact that the only charge brought before the CDA Committee on the day of the hearing was whether or not the male student was guilty of sexual assault. Plaintiff alleges that, at the CDA hearing, Erskine substantially deviated from its normal CDA procedure: (1) Chief Estep was not allowed to testify despite the fact that it was usual practice for Estep to testify in cases involving criminal activity; (2) Plaintiff and the male student were made to appear before the CDA in the same room at the same time even though historically Erskine did not allow the accuser and the accused in the same room to promote free discussion, and (3) the CDA members and faculty never received Erskine's definition of sexual assault.

*12 The plaintiff additionally supports her allegations regarding the alleged deviations from normal disciplinary hearing procedure through the testimony of her expert witness, Dr. John Lowery. Defendants argue that the testimony of Plaintiff's expert should not be considered as a matter of law under Rule 702 of the Federal Rules of Evidence. However, in cases where expert testimony that is not scientific in nature is proffered, the district court has broad discretion to consider whatever factors bearing on the validity of the testimony that the court finds to be useful. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1999). Dr. Lowery earned a doctorate in Higher Education Administration and currently serves as an assistant professor of Higher Education and Student Affairs. He has co-authored numerous articles on the subject of higher education, and has served as an expert witness in a case where a student filed a lawsuit against Ohio State University for the manner in which the school handled her sexual assault case. Rule 702 FRE allows an expert to answer hypothetical questions and offer opinions not based on first-hand knowledge because his opinions presumably "will have a reliable basis in the knowledge and experience of his discipline." *Certain Underwriters at Lloyd's v. Sinkovich*, 232 F.3d 200, 203 (4th Cir.2000), citing *Daubert*. Defendants will be afforded the opportunity to conduct vigorous cross examination, present contrary evidence and insist on careful instruction on the burden of proof as traditional and appropriate means of attacking Plaintiff's expert testimony. *Daubert*, 509 U.S. at 596. The Court finds that the evidence presented by the plaintiff is sufficient even without the expert testimony of Dr. Lowery to withstand summary judgment on the Title IX claim. However, his opinions are summarized hereinbelow.

Dr Lowery provided several examples of Erskine's mishandling of Plaintiff's complaint. (1) By threatening Plaintiff with punishment should she bring charges against the male student or proceed with a CDA hearing. Lowery Dep , 51 and 69 (2) By changing existing hearing procedures, developing new procedures for her case, and generally deviating from the provisions of the college's Student Handbook, "The Pilot." *Id.*, 51-52.(3) By bringing in an outside individual to the hearing as the presiding officer because this had never been done before and clearly deviates from *The Pilot Id.*, 52 (4) By failing to take greater action at an earlier point in time, which also served to discourage Plaintiff from bringing charges. *Id.*, 55-56.(5) By failing to provide Plaintiff with the CDA policies and procedures prior to her making the decision of whether or not to proceed with a hearing (Making this policy available to Plaintiff would have allowed her to be prepared for what would happen if she proceeded. *Id.*, 121-122. There does not appear to be any indication of any other opportunity for Erskine to consider pursuing disciplinary action against Plaintiff for engaging in unbecoming conduct. *Id.*, 62-63) (6) By repeatedly telling the plaintiff through certain officials that Erskine was ill-equipped to handle this sort of complaint. *Id.*, 69 (7) By being denied procedural fair play under the provisions of *The Pilot*, which states that procedural fair play requires that a student be informed of the nature of the charges and be given a fair opportunity to refute them.¹⁶

*13 Fourth, the plaintiff alleges that she was raped and that she was referred to on campus as the "rape girl". She further alleges that, despite the condition of the bond specifying no contact, she continued to have continuous contact with the male student in the many instances described in this Order and in the record. She testified that she felt physically threatened when she was around him.

Fifth, the plaintiff took a medical leave from school during her first semester and lost scholarships due to her drop in grades. This and other evidence is sufficient to show deprivation of educational opportunities to withstand a motion for summary judgment.

Based upon the evidence presented, at this juncture, and looking at the evidence in the light most favorable to the plaintiff, the court denies the defendant's motion for summary judgment on the Title IX claim.¹⁷ The Court must take the facts in a light most favorable to the plaintiff that a sexual assault by the male student occurred; that she feared the male student; that a judicial officer ordered the parties to have no

contact and that the school officials knew of the conditions of the bond yet deliberately chose to ignore it for a period of time; that repeated contacts occurred on campus, including assignment by the school of the perpetrator as a lab assistant to a class in which the plaintiff was enrolled. While Erskine did take some action in response to the situation, a jury issue is created whether it was deliberately indifferent and whether it responded in a manner that was or was not clearly unreasonable in light of the circumstances of the case.

Intentional Infliction of Emotional Distress

Defendants also move for summary judgment on the outrage claim, alleging that the plaintiff's evidence does not support such a claim as a matter of law. A claim for intentional infliction of emotional distress requires a plaintiff to show. (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from its conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the defendant's actions caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it." *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 596 S.E.2d 42, 48 (2004). "It is a matter for the court, not a jury, to determine in the first instance whether the conduct in question can reasonably be regarded as so extreme and outrageous as to permit recovery." *Williams v. Grimes Aerospace Co.*, 988 F.Supp. 925, 942 (D.S.C.1997) Unless the defendant's alleged actions are so extreme and outrageous as to exceed all possible bounds of decency, summary judgment is appropriately entered in the defendant's favor. *See Gattison v. S C State College*, 318 S.C. 148, 456 S.E.2d 414, 419 (Ct.App.1995) The judge should submit the issue to the jury only when reasonable persons might differ on this issue. *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651, 655-56 (Ct.App.1994).

*14 The Court finds that the defendants' conduct in this case fails to rise to the "extreme and outrageous" level required to satisfy the second element of an outrage claim. The alleged acts of the defendants that the plaintiff claims are outrageous include the alleged failure to remove Plaintiff from on-campus encounters with the male student, the alleged failure to investigate Plaintiff's complaint in a timely manner, the refusal to allow Estep to testify at the CDA hearing, allegedly

distributing Plaintiff's medical records to the CDA members without Plaintiff's consent, and Carson's allegedly defaming Plaintiff in the letter he wrote upholding the PAC's decision on Plaintiff's CDA appeal. These alleged acts were not "so extreme and outrageous as to exceed all possible bounds of decency and regarded as atrocious and utterly intolerable in a civilized community."¹⁸

The Court further notes that 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). The tort of outrage may also be preempted by a federal statute. *Id.* at 441, 445 S.E.2d 651. In the instant case, the basis for most of the acts the plaintiff claims are outrageous conduct also serve as the basis for her Title IX claim which the Court is allowing her to pursue.

Therefore, the motion for summary judgment is granted as to the outrage claim

Defamation

Finally, the defendants contend that the court should grant summary judgment in their favor on the defamation claim. Plaintiff stipulated at the hearing that the defamation cause of action against defendant Wooley should be dismissed.

Proof of the tort of defamation requires the complaining party to show. (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857, 860 (2002). A statement putting into question a woman's chastity is actionable without proof of special damage S.C.Code Ann. § 15-75-10 (1976), as amended

Plaintiff first contends that defendant Agnew published to the CDA statements regarding plaintiff having an STD (sexually transmitted disease), when she actually had a PID (pelvic inflammatory disease). The defendant contends that all statements made by Agnew and Carson were true and thus not defamatory and that any statements made in connection with or during the CDA "hearing" were protected by the doctrine of qualified privilege.

In a defamation action, the defendant may assert the affirmative defense of qualified privilege *Fulton v. Atlantic Coast Line R. Co.*, 220 S.C. 287, 67 S.E.2d 425, 428 (1951). "The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty, and is not restricted within any narrow limits." *Conwell v. Spur Oil Co. of Western South Carolina*, 240 S.C. 170, 125 S.E.2d 270, 275 (1962). Accordingly, if such privilege exists, the plaintiff may not recover without proving actual malice or that the scope of the privilege has been exceeded *Swinton Creek Nursery v. Edisto Farm Credit, A.C.A.*, 334 S.C. 469, 514 S.E.2d 126, 134 (1999). To prove actual malice, the plaintiff must show that the defendant acted "recklessly or wantonly, or with conscious disregard of the plaintiff's rights." *Cooper v. Laboratory Corp. of America Holdings, Inc.*, 150 F.3d 376, 381 (4th Cir 1998), quoting *Constant v. Spartanburg Steel Prod., Inc.*, 316 S.C. 86, 447 S.E.2d 194, 196 (1994).

^{*15} The court must decide as a matter of law whether an occasion gives rise to a qualified or conditional privilege *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743, 749 (Ct.App 2001). "A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable." *Id.* Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business *Id.*

With regard to the plaintiff's claim of defamation against Agnew, in her brief she argues first that Agnew told the CDA that the plaintiff had an STD, when the medical records mentioned a PID. She also indicates that Agnew insinuated that the plaintiff had an STD. The defendant Agnew submitted an affidavit in support of the motion for summary judgment in which she averred that her statement to the CDA regarding the STD was simply in response to a request by the committee for a review of her conversations with the plaintiff. According to the affidavit, Agnew simply recounted the content of those conversations ¹⁹

Once the moving party has brought into question whether there is a genuine issue for trial on a material element of the non-moving party's claims, the non-moving party bears the burden of coming forward with specific facts which show a genuine issue for trial Fed.R.Civ.P. 56(e); *Matsushita*

Electrical Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). The non-moving party must come forward with enough evidence, beyond a mere scintilla, upon which the fact finder could reasonably find for it *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

In the case at bar, the plaintiff has brought forth no evidence to controvert the allegations of Agnew's affidavit as to the context of her statements to the CDA. Plaintiff has not contended by affidavit or otherwise that Agnew inaccurately or falsely recounted to the CDA the substance of her conversations with the plaintiff or offered any evidence that Agnew's actions were malicious or reckless. The Court finds that the statements by Agnew were not defamatory as a matter of law, where the plaintiff has not contested that they were made at the hearing and only in connection with recounting her conversations with the plaintiff as requested by the CDA. Moreover, the Court finds that the occasion of the CDA hearing was covered by the doctrine of qualified privilege and that no rational trier of fact could conclude, based on the evidence presented, that Agnew abused the qualified privilege or acted in bad faith. Therefore, the defamation claim is dismissed as to Agnew.

Plaintiff also alleges that Carson published a "statement that Plaintiff engaged in consensual sex with (the male student)" to professors Lowry and Wingard. The letter actually states: "I can in no way condone the sexual involvement which was consensual up to the point of debate between the two parties." (See exhibit 19 to Carson Depo.) Defendant Carson contends that his letter simply reflects what the plaintiff freely admits in this case, that she allowed the male student to remove her clothes and perform oral sex on her, the parties merely debate whether the male student raped the plaintiff.

*16 The Court agrees with defendant Carson that the letter does not state that the plaintiff consented to sexual intercourse with the male student and finds that the letter does not contain a false statement regarding the plaintiff, where she admits that she allowed the male student to perform oral sex on her. Moreover, the letter was published only to Lowry, a member of the CDA, and Wingard, who normally serves as chairman of the CDA but recused himself in this case since the plaintiff had already discussed her allegations with him. Therefore, the Court finds that, even if the letter contained a defamatory statement, the communication to both Lowry and Wingard was covered by qualified privilege since the letter was the President's official letter showing his concurrence

with the CDA and PAC decisions and both Lowry and Wingard had official involvement in the CDA. In addition, the plaintiff admits that she discussed the alleged sexual assault with Wingard, so he was already aware of the matter. The Court finds that the statements by Carson in the letter were qualifiedly privileged and that the plaintiff has not shown that the letter was sent with malice or with reckless disregard of the plaintiff's rights or that the scope of the privilege was exceeded. The motion for summary judgment is granted as to Dr. Carson on the defamation cause of action.

Since the motion for summary judgment has been granted as to the individual defendants who allegedly defamed the plaintiff, summary judgment is also granted to defendant Erskine on this cause of action as its liability is premised upon the conduct of its agents, Agnew and Carson.

Civil Conspiracy

The Court issued a Minute Entry on February 6, 2006 finding that the plaintiff had withdrawn the claim for civil conspiracy at the hearing held on February 3, 2006. However, the plaintiff has covered this issue in her proposed order. Therefore, although the Court believes the plaintiff conceded this claim at the hearing, in an effort to avoid any confusion on the issue the Court will consider the matter. The plaintiff contends that the defendants acted individually and in concert for the purpose of injuring the plaintiff in their actions and inactions described herein.

The Court finds that summary judgment should be granted to all defendants on this point. "No conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." *McMillan v. Oconee Memorial Hospital*, 367 S.C. 559, 626 S.E.2d 884 (2006). Therefore, no conspiracy could exist among Erskine and its employees, where they were clearly acting within the scope of their employment.

In addition, the plaintiff has failed to prove the required elements of civil conspiracy. "Civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff thereby causing him special damage." *Future Group, II v. Nationsbank*, 324 S.C. 89, 478 S.E.2d 45, 50 (1996). The tort of civil conspiracy has three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) causing plaintiff special damage.

Kuznik v. Bees Ferry Associates, 342 S.C. 579, 538 S.E.2d 15, 31 (2000). In order to establish a conspiracy, a plaintiff must produce either direct or circumstantial evidence from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise. *First Union Nat. Bank of South Carolina v. Soden*, 333 S.C. 554, 511 S.E.2d 372, 383 (Ct.App.1998). "A conspiracy is actionable only if overt acts pursuant to the common design proximately cause damage to the party bringing the action." *Id.*

*17 In the case at bar, the Complaint does not plead specific facts in furtherance of the conspiracy, instead, the Complaint simply restates alleged wrongful acts pled in relation to the plaintiff's other claims for damages. See *Todd v. S.C. Farm Bureau Mutual Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (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). Because Plaintiff has not asserted any additional acts in furtherance of the alleged conspiracy, the claim for civil conspiracy is dismissed. See *Todd*, 278 S.E.2d at 611.

Plaintiff's conspiracy claim also fails as a matter of law because Plaintiff has failed to plead or prove special damages. See *Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91, 95 (Ct.App.1989); *Robinson v. Metts*, 86 F.Supp.2d 557, 563 (D.S.C.1997). In order to satisfy the third element of a civil conspiracy claim, a plaintiff must allege and prove damages that occurred because of the conspiracy itself, in addition to any damages alleged because of any other claims. See *Metts*, 86 F.Supp.2d at 563. Plaintiff has not alleged and cannot prove any special damages in relation to her civil conspiracy claim

as required under South Carolina law. Instead, Plaintiff's civil conspiracy count merely realleges the same damages Plaintiff claims to have suffered in relation to her other claims. See Complaint.

Finally, Plaintiff has produced no 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. See *First Union Nat. Bank of South Carolina v. Soden*, 333 S.C. 554, 511 S.E.2d 372, 383 (Ct.App.1998). Because the record is devoid of any evidence suggesting or proving that any of the Defendants undertook any enterprise for the purpose of injuring Plaintiff, she cannot establish the second element of civil conspiracy.

Conclusion

The defendant's motion for summary judgment is DENIED as to the plaintiff's Eighth Cause of Action brought pursuant to Title IX. The motion for summary judgment is GRANTED as to the plaintiff's FIFTH cause of action for intentional infliction of emotional distress. The motion for summary judgment is GRANTED as to the Seventh Cause of Action for defamation. The motion for summary judgment is GRANTED as to the Tenth Cause of Action for civil conspiracy.

AND IT IS SO ORDERED.

Footnotes

- 1 This case is very fact-intensive. A brief timeline of some important events follows: In November of 2002, the alleged assault occurred; the plaintiff reported it to her resident hall director and met with Ms. Agnew, as Dean of Women, and Lt. Stahl of the Erskine Public Safety Office; Dean Wooley met with the male student, with Plaintiff's parents at their request, and had discussions with President Carson and Chief Estep of Erskine's Department of Public Safety; and the plaintiff took a medical withdrawal from Erskine. In January of 2003, the plaintiff and her mother met with Wooley and Agnew; Chief Estep questioned the male student. A dining hall schedule was established for the spring 2003 term. In April of 2003, the alleged assailant was arrested and bail was set with the condition that the accused stay away from the victim, with no contact. In July of 2003, the plaintiff requested a hearing before the College Discipline and Appeals Committee (CDA); the hearing was held in August of 2003. The plaintiff appealed to the Presidential Appeals Committee (PAC), and a hearing was held in October of 2003. In November of 2003, the plaintiff's mother complained again of contact by the male student with her daughter. In February 2004, the male student was required to move to another dormitory. In January 2005, the South Carolina Attorney General's Office notified Erskine it would not proceed with the criminal charges.
- 2 Defendants assert that the plaintiff visited the male student, whom she had been seeing for several weeks, at his dorm room. The defendants argue, based on the plaintiff's deposition testimony, that the plaintiff and the alleged assailant voluntarily became unclothed and that the plaintiff consented to him performing oral sex on her. Plaintiff does not appear to dispute these allegations. However, the plaintiff does assert that the sexual intercourse with the male student was not consensual.

- 3 The record reflects that Kennedy Dorm and Bonner Dorm are located next door to each other.
- 4 Dr. Don Weatherman is Erskine's Executive Vice President of Academics and a dean of the College. He has been employed with Erskine since July 1999, and supervises much of the faculty. Weatherman Dep., 5.
- 5 Dr. Brad Christie is an English professor at Erskine for the last 15 years and also was appointed to the CDA that heard the plaintiff's case. Christie Dep., 6-7
- 6 Dr. John Wingard has served Erskine as a professor of Philosophy for the last 6 years. Wingard Dep., 5.
- 7 Bill Patrick served as the attorney for Erskine College in the handling of the plaintiff's case at the time of the CDA hearing. Patrick Dep., 6.
- 8 Gid Alston has served Erskine for 18 years as a professor and chair of the Dept. of Health, Physical Education, Sports Management and Athletic Training. Alston Dep., 15-19. He also served on the CDA for the plaintiff's case. Alston Dep., 8-9.
- 9 Rich Schelp has served Erskine as an associate professor of physics for the last six years. Schelp Dep., 5.
- 10 Tracey Spires is employed at Erskine as Director of Institutional Research. Spires Dep., 5. He has also served on the PAC.
- 11 Cory Young served Erskine as an Admissions counselor for 4-5 years at Erskine. Young Dep., 6.
- 12 Steve Sniteman has been employed with Erskine for twelve years and currently serves as a professor of Family Studies and also performs marketing and graphic design functions for Erskine.
- 13 Dr. John Chase served as Erskine's President for seven years beginning in 1998, but is currently on sabbatical. Carson Dep., 5
- 14 In *Jennings*, a member of the women's soccer team at the University of North Carolina brought a Title IX case against the university based upon vulgar comments and questions by the coach regarding her dating and/or sexual relationships. The Court found that there was no evidence of touching, threatening or ogling by the coach and that "no reasonable jury could find that [the coach] sexually harassed" the student. Therefore, the Title IX claim failed to satisfy the requirement that the harassment be severe and pervasive
- 15 Chief Estep was not only the chief public safety officer at Erskine, but he also gave State's evidence at the preliminary hearing held in the criminal proceeding against the alleged perpetrator of the rape (Estep depo., 20)
- 16 While portions of Dr. Lowery's testimony may not be admissible as impermissible legal conclusions, his testimony as to the CDA hearing process appears relevant, helpful to the jury, and admissible. The Court notes that the defendant has filed a motion in limine as to Dr. Lowery's testimony. The Court is inclined to allow the expert testimony except insofar as it may seek to state an opinion as to a legal conclusion. Opinions as to whether Erskine was "deliberately indifferent" or in violation of Title IX would be improper legal conclusions.
- 17 While the record contains sufficient evidence to withstand a motion for summary judgment without considering the OCR findings, the Court also takes note of the findings by the OCR that Erskine violated Title IX. After investigation, the OCR concluded that Erskine "did not take reasonable, prompt and effective action to resolve the [sexual assault] allegation once it had knowledge of the Complainant's allegations of sexual assault as required by the Title IX regulation." 34 C.F.R. Section 106.
- 18 Even callous, offensive, or extremely insensitive behavior does not necessarily establish the tort of outrage. See *Hawkins v. Greene*, 311 S.C. 88, 427 S.E.2d 692, 694 (Ct.App.1993), *Shipman v. Glenn*, 314 S.C. 327, 443 S.E.2d 921, 922 (Ct.App.1994).
- 19 Agnew's affidavit indicates that she holds a BS in health and physical education, a MED in health education, and a Doctor of Education in health education. She has also taught courses in health education

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United States District Court,
D. South Carolina,
Columbia Division.

Dr. Walter C. HOWARD, Plaintiff,

v.

ALLEN UNIVERSITY, Dr. Charles E. Young,
and Dr. Pamela M. Wilson, Defendants.

C/A No. 3:11-2214-MBS-SVH. | Feb. 27, 2012.

Attorneys and Law Firms

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Debbie Whittle Durban, Nelson Mullins Riley and Scarborough, Columbia, SC, for Defendants

Opinion

REPORT AND RECOMMENDATION

SHIVA V HODGES, United States Magistrate Judge

*1 In this employment discrimination case, plaintiff Walter C. Howard ("Plaintiff") is suing his former employer Allen University ("Allen") and two Allen employees, Dr. Charles E. Young ("Young") and Dr. Pamela M. Wilson ("Wilson"), in their individual capacities (collectively "Defendants"). Plaintiff alleges a retaliation claim pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. ("Title VII"). Plaintiff's complaint also alleges claims of defamation and civil conspiracy under South Carolina law.

This matter comes before the court on the motions to dismiss filed by Defendants Young and Wilson pursuant to Fed.R.Civ.P. 12(b)(6). [Entry # 9, # 10]. Plaintiff filed a response to the motions [Entry # 18], and Young and Wilson filed a joint reply [Entry # 23]. The motions to dismiss having been fully briefed, they are ripe for disposition.

Also pending before the court is Plaintiff's motion to amend the complaint, filed simultaneously with Plaintiff's response to the motions to dismiss. [Entry # 19]. Defendants filed a response to the motion [Entry # 26], and Plaintiff filed a

reply. [Entry # 27]. The motion to amend is likewise ripe for disposition.

All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(g) (D.S.C.). Because the motions to dismiss are dispositive, this report and recommendation is entered for the district judge's consideration. For the reasons that follow, the undersigned grants Plaintiff's motion to amend and recommends the district court grant in part and deny in part Young and Wilson's motions to dismiss.

I. Factual and Procedural Background¹

Plaintiff is an African-American born in 1944 who began working at Allen in 2005 as its Vice President for Academic Affairs. [Entry # 1 at ¶ 7]. In 2007, Plaintiff claims Allen eliminated the position of Vice President for Student Affairs and consolidated those duties with those he maintained based on the quality of his work performance. *Id.* at ¶ 9. Plaintiff alleges he received a salary increase at the end of the 2007-08 academic year "as a reward for overall outstanding accomplishments," and effective January 2009, he was promoted to Senior Vice President for the College for Professional Adults with his salary increasing to \$90,900. *Id.* at ¶¶ 9, 10, 11. In his position as Senior Vice President, Plaintiff claims to have supervised three associate vice presidents and two staff members; provided leadership in strategic planning, curriculum development, faculty/staff development, enrollment management, and marketing and promotion for the College of Professional Adults; and overseen a budget of \$20 million. *Id.* at ¶ 11.

About October 2008, Dr. Sonya Melton ("Melton"), then the Vice President of Enrollment Management to Associate Vice President of Enrollment Management, was allegedly demoted by Young, as the President of Allen, after she filed a charge of sexual harassment and retaliation against Allen and accused Young of sexual harassment and retaliation. *Id.* at ¶ 12. Plaintiff claims Melton was placed under his direct supervision beginning in January 2009. *Id.* at 13.

*2 Plaintiff alleges Young directed him to assist in retaliating against Melton by "documenting her every move and creating a file on her so that she would resign her employment." *Id.* at ¶ 14. Plaintiff claims that when he objected to Young's treatment of Melton, Young threatened

to strip Plaintiff of his authority and deny him funding for his department *Id.*

Plaintiff alleges that about April 2010, Young directed him to prepare a false, negative performance evaluation of Melton. *Id.* at ¶ 15 Plaintiff alleges that he refused, and Young threatened to make him "administratively invisible" by removing his staff and budget and reassigning his job duties. *Id.* at ¶¶ 15, 16 Plaintiff alleges that over the next several months, Young "made good on his threats" by reassigning Plaintiff's staff and job duties, eliminating his budget, directing him to report to a building where he was the only employee on the floor, and forbidding other employees from interacting with him. *Id.* at ¶ 17.

Plaintiff claims Young was placed on administrative leave for his actions related to Melton around August 2010 and Wilson assumed the interim presidency of Allen *Id.* at ¶ 18. Plaintiff alleges "Young continued to serve in the president role and confer with Dr. Wilson regarding Plaintiff's employment during his alleged administrative leave." *Id.*

Also in August 2010, Plaintiff retained counsel and proceeded with a grievance against Young regarding his demotion. *Id.* at ¶ 19. He notified Allen that he intended to file a charge of retaliation with the South Carolina Human Affairs Commission ("SCHAC"). *Id.*

Plaintiff claims that around October 2010, he was *de facto* demoted when Wilson removed him from the Senior Management Team and directed him to report to the Vice President of Academic Affairs. *Id.* at ¶ 20. Plaintiff alleges that after his demotion, he met with Allen's counsel and its human resources agent on December 1, 2010, and he stated that his SCHAC retaliation charge was in process and would soon be served on Allen. *Id.* at ¶¶ 21, 22.

Plaintiff claims he was terminated by Wilson through a letter he received on December 14, 2010. *Id.* at ¶ 23. He alleges neither Wilson nor Allen has ever articulated a reason for his termination *Id.* at ¶ 24. Plaintiff contends he "clearly was terminated for raising Dr. Young's retaliatory treatment of him and Dr. Melton to the Allen Board of Trustees and to Dr. Wilson, for questioning Dr. Wilson's continuation of Dr. Young's retaliation against him, and for pursuing a charge of discrimination with SHAC/EEOC." *Id.* at ¶ 25 He alleges he continues to suffer emotional distress and other mental and physical health problems, lost wages, and reduced earning capacity as a result of his treatment by Defendants. *Id.* at ¶ 26.

II. Discussion

A. Plaintiff's Motion to Amend the Complaint

In an apparent response to Young and Wilson's motions to dismiss filed on September 26, 2011, Plaintiff filed a motion to amend the complaint on October 24, 2011. [Entry # 19]. Under the proposed amendments, Plaintiff seeks to have (1) the retaliation claim proceed only against Allen and dropped as to Young and Wilson; (2) the defamation claim proceed against all three Defendants rather than only against Young; and (3) the civil conspiracy claim pled against Young and Wilson in the alternative to the defamation claim. [Entry # 19-1]. Because the court's ruling on the motion to amend directly impacts the analysis of Young and Wilson's motions to dismiss, the undersigned first addresses the motion to amend

*3 "[L]eave [to amend] shall be freely given when justice so requires." Fed.R.Civ.P. 15(a) "A motion to amend should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *HCMF Corp v Allen*, 238 F.3d 273, 276 (4th Cir 2001) (internal quotation marks omitted)

Defendants oppose Plaintiff's motion to amend only in part and request that the court deny the motion "as it relates to the addition of Wilson to [Plaintiff's] defamation claim and his amendment related to his civil conspiracy claim." [Entry # 26 at 7]. Defendants argue such amendments would be futile, but do not claim the amendments would be prejudicial to them or that there has been bad faith on the part of the Plaintiff in seeking the amendments. Defendants do not appear to oppose Plaintiff's dropping the retaliation claim against Young or the assertion of the defamation claim against Allen.

Defendants' futility arguments opposing the motion to amend reiterate the substantive arguments made in support of their motions to dismiss. In addition, Young and Wilson's reply brief in support of their motions to dismiss addressed the claims set forth in the proposed amended complaint. The undersigned, therefore, grants Plaintiff's motion to amend the complaint because, *inter alia*, Defendants have not opposed certain of the proposed amendments and have had a full opportunity to substantively address the amended claims in their briefing on the motions to dismiss. The undersigned's analysis of Young and Wilson's motions to dismiss *infra* is based on Plaintiff's amended complaint. [Entry # 19-1].

B. Young and Wilson's Motions to Dismiss

1. Standard of Review

To survive a motion to dismiss under Fed.R.Civ.P. 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). The court is "not required to accept as true the legal conclusions set forth in a plaintiff's complaint." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir.1999). Indeed, "[t]he presence of a few conclusory legal terms does not insulate a complaint from dismissal under Rule 12(b)(6) when the facts alleged in the complaint cannot support the legal conclusion." *Young v. City of Mount Ranier*, 238 F.3d 567, 577 (4th Cir.2001).

2. Analysis

a. Retaliation Claim

Young argues Title VII does not provide for individual liability and Plaintiff's retaliation claim against him must be dismissed on that basis. [Entry #9-1 at 4] Plaintiff's amended complaint does not assert a retaliation claim against Young, but rather asserts the cause of action only against Allen. Defendant Allen has not moved to dismiss any of the claims against it. The undersigned therefore finds it unnecessary to make a recommendation regarding this cause of action.

b. Defamation Claim

*4 Plaintiff claims Young defamed him by removing his job duties, budget, and staff; accusing him of lacking the knowledge, skills, and experience to grow enrollment at Allen; and making verbal statements to senior staff at Allen that Plaintiff lacked the integrity to be an effective senior administrator. [Entry #19-1 at ¶¶ 34, 36]. Plaintiff similarly alleges Wilson defamed him by continuing actions taken by Young, further demoting Plaintiff, having his name removed from the university directory and organizational chart, and terminating his employment without providing any reason. *Id.* at ¶ 35. Young and Wilson argue Plaintiff has failed to state a claim for false insinuation defamation, that Young's alleged statements were not defamatory, and any acts or statements by either Young or Wilson were qualifiedly privileged [Entry #9-1 at 4-8, Entry #26 at 2-4]

To recover for defamation under South Carolina law, the complaining party must show: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857, 860 (S.C.2002)

(1) False Insinuation Defamation

Under South Carolina, "a defamatory insinuation may be made by actions or conduct as well as by word." *Tyler v. Macks Stores of South Carolina, Inc.*, 275 S.C. 456, 272 S.E.2d 633, 634 (S.C.1980). Defamation "need not be accomplished in a direct manner" and a "mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain." *Id.* "The meaning of a communication is that which the recipient correctly, or mistakenly but reasonably, understands that it was intended to express." *Cooper v. Lab Corp of Am. Holdings, Inc.*, 150 F.3d 376, 381 (4th Cir.1998) (quoting *Restatement (Second) of Torts* § 563 in defamation case under South Carolina law).

On a motion to dismiss, the court must accept the facts pled by a plaintiff as true. Young and Wilson argue, however, that even if they committed the acts alleged by Plaintiff, "the meaning of such acts is hardly plain, much less false and malicious." [Entry #9-1 at 5; Entry #26 at 3]. Young and Wilson further argue that Plaintiff has pled no facts to support the conclusion that others at Allen who observed Plaintiff's employment changes would automatically infer that he was not satisfactorily performing his job. *Id.* Young and Wilson contend there could have been many reasons that Allen might have altered Plaintiff's employment status and that Plaintiff's conclusion that third parties would have concluded he was unfit for his position is pure speculation. [Entry #9-1 at 5].

Given Plaintiff's relatively rapid rise to Senior Vice President for the College for Professional Adults and the fact that he was allegedly subsequently demoted to a position with no supervisory authority, no budget, and no interaction with other employees, the undersigned cannot conclude at this stage of the litigation that there was no defamatory insinuation in Young and Wilson's alleged actions. Accepted as true and in the light most favorable to Plaintiff, the allegations provide a sufficient basis for Plaintiff's claim of false insinuation defamation. Consequently, the undersigned recommends denying the motions to dismiss on this point.

(2) False Statement Defamation

*5 Plaintiff alleges Young defamed him by making "verbal statements to senior staff at Allen that Plaintiff lacked the integrity to be an effective senior administrator."² [Entry # 19-1 at 7]. Young contends such statements, even if made, are not defamatory because they are statements of opinion. [Entry # 9-1 at 6].

A statement is defamatory if it tends "to impeach the honesty or integrity or reputation, or publish the natural or alleged defects, of one who is alive, and thereby to expose him to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation." *Scott v. McCain*, 272 S.C. 198, 250 S.E.2d 118, 120 (S.C.1978) (internal quotations omitted). "Though falsity is an element of defamation and although truth is a complete defense, a defamatory statement is presumed to be false under common law." F. Patrick Hubbard & Robert L. Felix, *The South Carolina Law of Torts* 485 (3d ed.2004). The court makes an initial determination whether the statement is susceptible of having a defamatory meaning. *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345, 347 (S.C.1997). "[T]he law in South Carolina allows the context of the words themselves and the circumstances under which the words are spoken to be considered in determining whether there is a defamatory meaning and whether it is actionable...." *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319, 324 n. 4 (S.C.App.2001)

Relying on *Gertz v. Welch, Inc.*, 418 U.S. 323, 339-40, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), Young argues that statements of opinion are not, as a matter of law, defamatory unless they also convey a false statement of fact. The Supreme Court has observed, however, that its language in *Gertz* "has become the opening salvo in all arguments for protection from defamation actions on the ground of opinion, even though the case did not remotely concern the question." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990). In *Milkovich*, the Supreme Court clarified that, in *Gertz*, it did not intend "to create a wholesale defamation exemption for anything that might be labeled 'opinion' " because doing so would "ignore the fact that expressions of 'opinion' may often imply an assertion of objective fact." *Id.*

The question before the court then is whether Young's alleged statement—"that Plaintiff lacked the integrity to be an effective senior administrator"—implies an assertion of objective fact. Young focuses on the word "integrity" in Plaintiff's allegation and argues that whether someone has integrity is a subjective opinion and not something that can be proven true or false. [Entry # 9-1 at 7]. The remainder of the allegation, however, is more significant to the undersigned. Young's alleged statement implies that Plaintiff was not an effective senior administrator. Whether Plaintiff adequately performed his duties as a senior administrator may be measured by objective evidence. Thus, the alleged statement is more than mere opinion and the opinion argument advanced by Young is inapplicable. Young does not challenge the remaining defamation elements as they relate to his alleged statement. Therefore, the undersigned recommends denying Young's motion to dismiss Plaintiff's defamation claim on his alleged statement.³

(3) Qualified Privilege

*6 Young and Wilson argue the allegedly defamatory acts and statement are qualifiedly privileged because they were made in good faith in the usual course of business [*Id.*, Entry # 26 at 3-4]. Plaintiff responds that the privilege is inapplicable under the circumstances alleged. [Entry # 18 at 6].

Under the affirmative defense of qualified privilege, "one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused." *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 514 S.E.2d 126, 134 (S.C.1999). "A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable." *Constant v. Spartanburg Steel Prods., Inc.*, 316 S.C. 86, 447 S.E.2d 194, 196 (S.C.1994). The privilege may be lost, however, "by the manner of its exercise." *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743, 749 (S.C.App.2001). The person invoking the privilege must not exceed the scope of the occasion, engage in any unnecessary defamation, or act with actual malice. *Id.*

Although the question of whether an occasion gives rise to a qualified privilege is generally one for the court, the question of whether the privilege has been abused is one for the jury. *Swinton* at 134. "Factual inquiries, such as whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused." *Id.*

Young and Wilson argue Plaintiff has pled no facts showing the privilege was exceeded. [Entry # 9-1 at 7-8, Entry # 26 at 3-4]. However, Plaintiff alleges that the communications and actions described in the complaint "were motivated primarily by Plaintiff's refusal to participate in Dr. Young's retaliatory actions against Dr. Melton" [Entry # 19-1 at ¶ 38]. Assuming without deciding that the qualified privilege applies, the undersigned recommends finding that this allegation alone is sufficient to raise the question of whether the privilege has been abused and prevents dismissal grounded in application of the qualified privilege.

Because the undersigned recommended a finding *supra* that Plaintiff's complaint states a claim for defamation based on Young and Wilson's alleged actions and Young's alleged statement, the undersigned recommends the district court deny Young and Wilson's motions to dismiss Plaintiff's defamation claim.

c. Civil Conspiracy Claim

Plaintiff asserts, alternatively to his defamation claim, a claim of civil conspiracy against Young and Wilson. [Entry # 19-1 at ¶¶ 40-45]. Young and Wilson seek dismissal of Plaintiff's civil conspiracy claim arguing that he has failed to plead an overt act in furtherance of the conspiracy or show the existence of special damages. [Entry # 23 at 3]. They also argue Plaintiff's civil conspiracy claim must be dismissed because intracorporate immunity applies and, as an allegedly at-will employee, Plaintiff cannot maintain a civil conspiracy based on his termination or alleged demotion [Entry # 9-1 at 11; Entry # 26 at 6].

*7 "A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 626 S.E.2d 884, 886 (S.C.2006). "A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint." *Hackworth v. Greywood at Hammett,*

LLC, 385 S.C. 110, 682 S.E.2d 871, 874 (S.C.App.2009). In other words, the acts pled in furtherance of the conspiracy must be "separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim." *Hackworth* at 875. "Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." *Id.* at 874. "Special damages are those elements of damages that are the natural, but not the necessary or usual, consequence of the defendant's conduct." *Id.* "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." *Id.*

In support of their motions to dismiss, Young and Wilson first argue that Plaintiff's civil conspiracy claim does not meet federal pleading requirements. [Entry # 9-1 at 9; Entry # 26 at 4]. They contend Plaintiff's claim is nothing more than a "naked assertion" of conspiracy without sufficient factual support. [Entry # 9-1 at 9]. Because Plaintiff includes factual allegations in support of his claim, the undersigned recommends declining to dismiss Plaintiff's civil conspiracy cause of action on this basis.

Young and Wilson further argue that Plaintiff merely incorporates the allegations supporting his other causes of action rather than alleging separate and independent acts in furtherance of the conspiracy as required under South Carolina law. [*Id.*, Entry # 26 at 4]. Plaintiff contends his allegation that "Young and Wilson conferred and discussed on numerous occasions how to injure Plaintiff personally and in his employment" satisfies this element of civil conspiracy. [Entry # 18 at 7]. Young and Wilson rely on *Hackworth, Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607, 611 (S.C.1981), *rev'd on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (S.C.App.1984), *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (S.C.1985), and *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 538 S.E.2d 15, 31 (S.C.App.2000), in arguing for dismissal on this element. In those cases, the courts held that a civil conspiracy claim may not proceed where the facts underlying the cause of action are identical to those facts pled in support of other causes of action in the same case. See *Todd*, 278 S.E.2d at 293 (finding claim for civil conspiracy was properly dismissed because it did "no more than incorporate the prior allegations and then allege the existence of a civil conspiracy"), *Hackworth*, 682 S.E.2d at 875 (stating that the factual allegations underlying

the breach of contract and civil conspiracy causes of action were "identical"); *Kuznik*, 538 S.E.2d at 31 (holding plaintiff could not maintain a conspiracy cause of action where he "merely realleged the prior acts complained of in his other causes of action"). In the instant case, Plaintiff has pled facts specific to the civil conspiracy cause of action that are not pled elsewhere in the amended complaint. For that reason, the undersigned recommends a finding that Plaintiff has met the minimum threshold of alleging separate and independent acts in furtherance of the alleged civil conspiracy.

*8 With regard to the South Carolina requirement that causes of action for civil conspiracy plead "special damages," Young and Wilson argue Plaintiff has failed to satisfy this element. [Entry # 9-1 at 10; Entry # 26 at 4]. Plaintiff argues that he has alleged special damages flowing from the alleged conspiracy, "including damages for Plaintiff's unemployment and damaged reputation." [Entry # 18 at 7]. Plaintiff's defamation claim likewise pleads "special damages, including but not limited to loss of reputation, mental anguish, emotional distress, pain and suffering, damage to his profession and occupation, and ability to earn income now and in the future." [Entry # 19-1 at ¶ 38]. The undersigned finds there is no difference between the damages pled in support of the conspiracy and defamation claims; thus, the undersigned recommends a finding that Plaintiff has failed to satisfy the special damages element of his civil conspiracy claim. See *Parkman v. Univ. of South Carolina*, 44 Fed. Appx. 606, 620 (4th Cir 2002) (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").

Plaintiff argues that pleading civil conspiracy as an alternative to defamation prevents dismissal of his conspiracy claim. [Entry # 18 at 7]. He contends that "because it is pled in the alternative, the civil conspiracy claim is not duplicative of the other claims with regard to its factual allegations and damages sought." *Id.* at 7-8. The undersigned is not persuaded by this argument. In *Hackworth*, the South Carolina Court of Appeals

held that a party may plead alternative theories in cases involving civil conspiracy; however, "when a party wishes to assert multiple causes of action, including civil conspiracy, it must allege facts in furtherance of the conspiracy and special damages that are separate and independent of the other acts and damages that underlie the causes of action within the same complaint." 682 S.E.2d at 876. The court went on to state that "because a conspiracy only becomes actionable 'once overt acts occur which proximately cause damage to the [plaintiff],' it is necessary for the plaintiff to plead special damages apart from the damages listed as part of other claims in the complaint." *Id.* (quoting *Todd*, 278 S.E.2d at 611). Plaintiff cannot avoid pleading special damages by couching his conspiracy claim as an alternative to defamation. Thus, the undersigned recommends finding that Plaintiff's amendment re-casting his conspiracy claim as an alternative claim does not save the claim from dismissal for failure to plead special damages.

Because the undersigned recommends dismissal of Plaintiff's civil conspiracy claim for failure to plead special damages, it is not necessary for the undersigned to address Young and Wilson's remaining arguments that intracorporate immunity applies and Plaintiff's conspiracy claim cannot lie because he was an at-will employee. The undersigned notes, however, that whether the alleged conspiratorial acts were in furtherance of the legitimate business interests of Allen and whether Plaintiff was an at-will employee appear to be factual determinations that would preclude the dismissal of Plaintiff's conspiracy claim on those grounds alone.

III. Conclusion and Recommendation

*9 For the foregoing reasons, the undersigned grants Plaintiff's motion to amend the complaint [Entry # 19]. The undersigned recommends Young and Wilson's motions to dismiss [Entry # 9, # 10] be denied as to Plaintiff's defamation claim and granted as to Plaintiff's civil conspiracy claim.

IT IS SO RECOMMENDED.

Footnotes

- 1 In reviewing the sufficiency of Plaintiff's complaint under Fed.R.Civ.P. 12, the court construes the complaint liberally, accepts all uncontroverted, well-pleaded factual allegations as true, and views all reasonable inferences in Plaintiff's favor. See *Scheuer v. Rhodes*, 416 U.S. 232, 234-37, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). The factual allegations in the complaint [Entry # 1] and amended complaint [Entry # 19-1] are identical.
- 2 Plaintiff alleges Young accused him of lacking the knowledge, skills, and experience to grow the enrollment at Allen [Entry # 19-1 at ¶ 36]. Plaintiff does not allege that any third parties overheard these statements and thus has not pled the statements were published to

third parties. To the extent Plaintiff intends to rely on this allegation in support of his defamation claim, the undersigned recommends finding the allegation insufficient to support a defamation claim.

- 3 The undersigned notes that under South Carolina law, slander is "actionable *per se*" if it charges a plaintiff with "unfitness in one's business or profession." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497, 501-02 (S.C.1998). Plaintiff has not raised this issue in opposition to Young and Wilson's motions to remand and the undersigned has accordingly based the recommendations herein only on the arguments advanced by the parties.

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STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Mariam R. Noorai,
Plaintiff,

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

vs.

**DEFENDANTS SCHOOL DISTRICT OF
OCONEE COUNTY AND EARNESTINE
WILLIAMS' MOTION FOR SUMMARY
JUDGMENT**

Sch. Dist. of Pickens Co., Sch. Dist. of
Oconee Co., and Gary Culler, Donald
Boggs, Richard Hudak, Earnestine
Williams and Dr. Kelly Pew, in their
individual capacities,
Defendants.

Defendants, Earnestine Williams and the School District of Oconee County, hereby move the Court pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting them judgment as a matter of law on Plaintiff's claims against them.

As grounds for the motion, Defendants would show that:

- (1) Plaintiff cannot establish the elements for a cause of action for negligence/gross negligence against these Defendants as a matter of law;
- (2) Plaintiff cannot establish genuine issues of material fact as to all of the elements of her fifth cause of action for defamation against these Defendants;
- (3) Even assuming *arguendo* that Plaintiff could establish the elements of a defamation claim, Defendants can establish as a matter of law that any statements made by these Defendants of and concerning the Plaintiff were privileged as a matter of law; and
- (4) Plaintiff cannot establish that Defendant Earnestine Williams engaged in any civil conspiracy against Plaintiff as a matter of law.

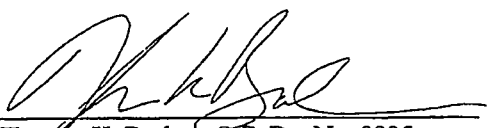
The grounds for this motion will be more fully set forth in a supporting memorandum of law which will be filed with the Court at a later date. In addition to their memorandum of law,

Defendants Earnestine Williams and the School District of Oconee County will also rely on the pleadings, papers, records, files, depositions, and other discovery in this matter, as well as the applicable statutory and case law and the South Carolina Rules of Civil Procedure.

Respectfully submitted,

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August 9, 2013

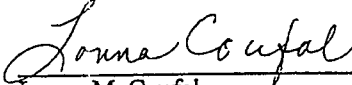
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CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **DEFENDANTS OCONEE COUNTY SCHOOL DISTRICT AND EARNESTINE WILLIAMS' MOTION FOR SUMMARY JUDGMENT**, by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 9th day of August, 2013:

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RECEIVED

APR 10 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J Cordell Maddox, Jr, Circuit Court Judge

Case No 2011-CP-37-279

Mariam R Noora

Appellant,

v

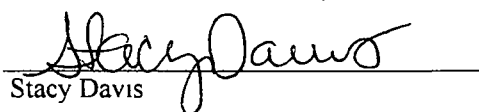
The School District of Pickens County, The School District
of Oconee County, and Gary Culler, Donald Boggs,
Richard Hudak, Earnestine Williams, Marilyn Rames,
and Dr Kelly Pew in their individual capacities

Respondents

PROOF OF SERVICE

I certify that I have served the Record on Appeal by depositing a copy of it in the
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

APR 10 2015

SC Court of Appeals

Case No. 2011-CP-37-279
Appellate Case No. 2014-001282

Miriam R. Noorai

Appellant,

v.

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

Respondents.

**RECORD ON APPEAL
VOLUME II**

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STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

Mariam R. Noorai,)
)
Plaintiff,)

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

vs.)

**DEFENDANTS SCHOOL DISTRICT OF
OCONEE COUNTY AND EARNESTINE
WILLIAMS' MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Sch. Dist. of Pickens Co., Sch. Dist. of)
Oconee Co., and Gary Culler, Donald)
Boggs, Richard Hudak, Earnestine)
Williams and Dr. Kelly Pew, in their)
individual capacities,)

Defendants.)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	
 Mariam R. Noorai,	)	
	)	C.A. No. 2011-CP-37-279
Plaintiff,	)	
	)	DEFENDANTS SCHOOL DISTRICT OF
vs.	)	OCONEE COUNTY AND EARNESTINE
	)	WILLIAMS' MEMORANDUM IN
Sch. Dist. of Pickens Co., Sch. Dist. of	)	SUPPORT OF MOTION FOR
Oconee Co., and Gary Culler, Donald	)	SUMMARY JUDGMENT
Boggs, Richard Hudak, Earnestine	)	
Williams and Dr. Kelly Pew, in their	)	
individual capacities,	)	
	)	
Defendants.	)	

I. INTRODUCTION

Defendants, School District of Oconee County ("SDOC") and Earnestine Williams, moved for summary judgment on August 12, 2013. After withdrawals of Plaintiff's counsel and unavoidable continuances, this matter is set for hearing on April 7, 2014. SDOC and Ms. Williams submit that no genuine issues of material fact exist and they are entitled to judgment as a matter of law on Plaintiff's claims against them for the reasons set forth below.

II. FACTS

SDOC and Ms. Williams adopt and incorporate by reference the facts pertaining to Ms. Noorai's employment with School District of Pickens County ("SDPC") contained in the SDPC defendants' motion for summary judgment.

Ms. Noorai has never been employed by SDOC. Prior to filing this lawsuit, she applied for and was not hired for teaching positions at West Oak Middle School in the summer of 2009 and a summer school grant-funded teaching position at Seneca Middle School in the late spring/summer of 2010.

Ms. Noorai first applied for two vacant English teaching positions at West Oak Middle School in SDOC or around June 2009. (Verderosa Dep. pp. 13-15.) She was interviewed by a team of teachers and administrators at West Oak Middle. (Verderosa Dep. pp. 17-29, 31.) Based on her interview, Ms. Noorai was not a finalist for either position and her references were not contacted. (Verderosa Dep. pp. 36-39, 48-49, 61-62, 65, 70-72, 78; Williams Dep. pp. 38-39, 55-56.) It is undisputed that SDOC only checks references for finalists for teaching positions. (Williams Dep. pp. 38-39; Verderosa Dep. pp. 35-38.) Obviously, checking references for every applicant would be inefficient and a waste of time.

Ms. Williams had no involvement in the West Oak decision and was unaware of Ms. Noorai's application or candidacy at that time. (Williams Dep. pp. 10-13, 24, 31, 39-40, 42-46, 99.) In fact, Ms. Williams was not even aware Ms. Noorai had applied for a position at West Oak Middle School until Ms. Noorai requested a meeting with Ms. Williams several months later. (Williams Dep. pp. 12-13.) Because Ms. Noorai was not a finalist for West Oak Middle positions, no one from West Oak or SDOC contacted Defendant Culler, Ms. Noorai's former principal at Edwards Middle School in SDPC, or any other SDPC teacher or administrator with regard to Ms. Noorai's candidacy for the position she sought at West Oak Middle. (Verderosa Dep. pp. 37-39; Culler Dep. pp. 97-99; Williams Dep. pp. 38-39, 60, 86.) Likewise, no agent of SDPC contacted any SDOC administrator or teacher with regard to Ms. Noorai's suitability for the vacancies. (Verderosa Dep. pp. 37-39, 53-54; Williams Dep. pp. 60, 86; Culler Dep. pp. 97-99; Pew Dep. pp. 64-65.) Ms. Noorai concedes she has no evidence that Ms. Williams ever contacted Mr. Culler or anyone else at SDPC. (Noorai Dep. pp. 357-359, 367-368.)

A few months after her unsuccessful application at West Oak Middle, Ms. Noorai requested a meeting with Ms. Williams, the Assistant Superintendent for Human Resources. Ms. Williams met with Ms. Noorai on October 1, 2009. (Williams Dep. pp. 11-13, 43-45.) Ms. Williams was unaware of the reason Ms. Noorai desired the meeting, but Ms. Williams

listened to Ms. Noorai's concerns and advised her that completing substitute teacher training and taking some substitute teaching assignments would help her "get her foot in the door" and improve her candidacy. (Williams Dep. pp. 11-13, 43-45; Noorai Dep. pp. 369-371.) Ms. Noorai concedes that she has no evidence that Ms. Williams communicated any aspect of their meeting or made any statement regarding Ms. Noorai at any time. (Noorai Dep. pp. 407-409.) Aside from meeting Mr. Culler at depositions, Ms. Williams had never spoken with him at all, let alone about Ms. Noorai. (Williams Dep. pp. 60, 86; Culler Dep. pp. 97-99.) Ms. Williams' undisputed testimony is that she has not communicated with anyone regarding Ms. Noorai's employment with SDPC (Williams Dep. p. 86), and this is consistent with the testimony of relevant SDPC deponents. (Pew Dep. pp. 64-65; Culler Dep. p. 97.)

Ms. Noorai's next application for employment with SDOC was for a summer school position at Seneca Middle School in the late spring of 2010. (Noorai Dep. pp. 402-407 & Dep. Exhs. 28-30) She was interviewed by Tammy Brock, who was in charge of the summer school grant. Ms. Noorai was not selected for a summer school position because more qualified candidates were available. (Brock Dep. pp. 26-32.) Ms. Brock explained that in her view, Ms. Noorai was not a good candidate for a summer school position working with at-risk children because Ms. Noorai shared in her interview that she did not sign her contract of employment with SDPC at the end of the 2009 school year because of "a student issue" at Edwards Middle School. (Brock Dep. pp. 30-33; Noorai Dep. pp. 404-407.) Unlike Ms. Noorai, the other candidates had significant experience working with the group to be served by the summer school grant. (Brock Dep. pp. 46-47.) Ms. Brock had no contact with Mr. Culler or any SDPC representative with regard to Ms. Noorai. (Brock Dep. pp. 30, 42-44.) Ms. Noorai concedes that she has no evidence that Ms. Brock had any communication with SDPC with regard to the decision not to hire Ms. Noorai. (Noorai Dep. p. 407.) Al Leroy, the Seneca Middle School

Principal, also testified that he had no contact with SDPC or Mr. Culler regarding Ms. Noorai's application and candidacy for the summer school position. (Leroy Dep. pp. 30-31.)

After she was not hired for the summer school position, Ms. Noorai sent a letter threatening legal action. (Noorai Dep. Exh. 30.) Ms. Noorai has never completed substitute teacher training with SDOC. (Noorai Dep. p. 371.) She has continued to apply for and has been rejected for employment in Anderson, Greenville, and Charleston. (Noorai Dep. pp. 385-390.) Ms. Noorai does not contend that SDOC has done anything to prevent her from obtaining a job in any of those districts. (Noorai Dep. pp. 407-409.)

Ms. Noorai filed this case on March 22, 2011. Since that filing, Ms. Noorai has applied for many jobs at SDOC regardless of qualifications. (Noorai Dep. pp. 377-378.) SDOC has decided not to interview and consider Ms. Noorai for vacant positions due to her pending litigation against SDOC, which SDOC officials believe to be without merit. (Lucas Dep. pp. 54-57.)

III. ARGUMENT

A. Plaintiff's Defamation Claim Against SDOC Fails As A Matter Of Law.

Plaintiff's Fifth Cause of Action is styled "defamation" against only defendants SDPC, SDOC, and Culler. (Compl. ¶¶ 73-80.) She does not identify any particular employee of SDOC who made any alleged defamatory statement about her, and does not identify any defamatory statement in the Amended Complaint. "In order 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." *Erickson v. Jones St. Publishers, L.L.C.*, 629 S.E.2d 653, 664 (2006); *Castine v. Castine*, 743 S.E.2d 93, 96 (S.C. Ct. App. 2013).

First, Ms. Noorai can offer no evidence of any defamatory communication by any SDOC employee. The Complaint identifies no such statements, and Ms. Noorai's affidavit identified no such statements. At her deposition, Ms. Noorai admitted she has no evidence that Ms. Williams has ever spoken about her to anyone and did not say anything Ms. Noorai considered to be inappropriate in their meeting. (Noorai Dep. pp. 374, 377.) She has not identified any other potentially defamatory statement ever made by a SDOC employee. The failure to prove a defamatory communication is fatal to her defamation claim.

Second, Ms. Noorai cannot show publication of any statement to a third party. As she admits, she has no evidence that Ms. Williams or any other SDOC employee had *any* communication about her to a third party, let alone a defamatory communication. (Noorai Dep. p. 377.) Because Ms. Noorai cannot satisfy these elements of her defamation claim, that cause of action fails as a matter of law.

**B. Even if Plaintiff Could Prove Any Alleged Defamatory Communication,
It Would Have Been Privileged As A Matter of Law.**

Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business. *Constant v Spartanburg Steel Prods., Inc.*, 447 S.E.2d 194, 196 (S.C. 1994). In general, the question whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. *Murray v. Holman*, 542 S.E.2d 743, 749 (S.C. 2001). The privilege applies unless the Plaintiff can show actual malice. See *Eubanks v. Smith*, 354 S.E.2d 898, 902 (S.C. 1987). As noted, Ms. Noorai has not pleaded or alleged any defamatory statement or defamatory action taken by any employee or agent of SDOC. Any intra-corporate communication regarding Ms. Noorai within SDOC, even if it could be proven by Ms. Noorai, thus would be privileged as a matter of law and Ms. Noorai has demonstrated no actual malice. See *Fulton v. Atl Coast Line R. Co.*, 67 S.E.2d

425 (S.C. 951).¹

**C. Plaintiff Cannot Establish The Elements Of A Civil Conspiracy Claim
Against Defendant Williams As A Matter of Law.**

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." *McMillan v. Oconee Mem. Hosp., Inc.*, 626 S.E.2d 884, 886 (S.C. 2006), *Cricket Cove Ventures, LLC v. Gilland*, 701 S.E.2d 39 (S.C. Ct. App. 2010). "It is well-settled in South Carolina that the tort of civil conspiracy contains three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) causing plaintiff special damage." *Cowburn v. Leventis*, 619 S.E.2d 437, 453 (S.C. Ct. App. 2005). "In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." Some evidence that the alleged conspirators "acted with malice towards" the plaintiff is required. *Waldrep Bros. Beauty Supply, Inc. v. Wynn Beauty Supply Co., Inc.*, 992 F.2d 59, 63 (4th Cir. 1993) (applying South Carolina law). Here, Ms. Noorai cannot establish those elements.

Ms. Noorai can produce no evidence that Ms. Williams "combined" with any other defendant. Ms. Williams' clear testimony is that she has never had any contact or communication with SDPC employees regarding Plaintiff. (Williams Dep. pp. 60, 86.). Ms. Noorai's testimony does nothing to dispute or undercut Ms. Williams' testimony and she can point to no other evidence that Ms. Williams acted in concert with SDPC with regard to any aspect of Ms. Noorai's employment with SDPC or prospective employment with SDOC. (Noorai Dep. pp. 357-359, 368, 374, 377).

¹ Ms. Noorai cannot maintain a defamation claim against a public body like the School District in this context under the Tort Claims Act because she must prove "actual malice" by a School District employee. Because SDOC cannot be liable for its employees' actions outside the scope of employment under S.C. Code Ann. § 15-78-60(17), Plaintiff's defamation claim against SDOC as an entity would necessarily be barred by the Tort Claims Act and fail as a matter of law.

Further, Ms. Noorai has produced no evidence that reasonably leads to the inference that Ms. Williams positively or tacitly came to a mutual understanding with anyone 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. *See First Union Nat. Bank of S. Carolina v. Soden*, 511 S.E.2d 372, 383 (S.C. Ct. App. 1998). It is not enough to simply allege that conspiracies are generally secret and difficult to prove. South Carolina courts have consistently held evidence must amount to more than speculation and conjecture to submit a case to the jury. *See Ellis v. Oliver*, 473 S.E.2d 793, 795 (S.C. 1996). Because the record is devoid of any evidence suggesting or proving that Ms. Williams undertook any enterprise for the purpose of injuring Ms. Noorai, let alone one in concert with the SDPC defendants, she cannot establish any evidence of Ms. Williams' involvement in any civil conspiracy to harm Ms. Noorai as a matter of law.

D. Plaintiff's Third Cause Of Action Styled "Negligence/Gross Negligence" Is Not A Viable Cause Of Action In This Context Under South Carolina Law And Must Be Dismissed.

In her Third Cause of Action in the Amended Complaint, Plaintiff alleges that SDOC has negligently failed to hire her for various positions based solely on her self-assessment that she is the most qualified candidate for every job for which she might apply. Obviously, SDOC believes that it has hired more qualified candidates for each position that Ms. Noorai has applied. However, even if Ms. Noorai could somehow objectively prove that she was more qualified on paper than the candidates hired for these jobs, nothing in South Carolina statutory or common law provides a rejected applicant a cause of action in tort against a prospective employer who chooses another candidate. Employers in this state are allowed to set their own qualifications for jobs and there is simply no duty to select a candidate with the best college grades or most degrees. Nothing requires employers to ignore an applicant's attitude, demeanor, maturity, judgment or lack thereof, or actual ability to perform the job. Otherwise, every rejected

applicant for every job in this State could potentially have a claim for "negligent failure to hire," if he or she did not get a job she desired, simply by claiming better qualifications than the successful candidate. Federal and state discrimination laws not alleged in the Complaint afford job applicants appropriate protection from being rejected on the basis of race, sex, age, disability, or other protected characteristics or activities. Even in that context, federal courts have systematically granted summary judgment on the basis that "[i]t is the perception of the decision maker which is relevant, not the self-assessment of the plaintiff." *Evans v Technologies Applications & Serv. Co.*, 80 F.3d 954, 960–61 (4th Cir. 1996), and absent discrimination or retaliation under federal law, the decision as between the candidates is a business judgment within the defendant's discretion, which the Court will not disturb. See *Holland v. Washington Homes, Inc.*, 487 F.3d 208 (4th Cir. 2007).

In summary, absent any claim of discrimination, there is no basis or reason for the court to recognize a tort cause of action for disgruntled job applicants. Employers need the discretion to hire the candidates they believe are the best fit for their businesses or organizations, and recognizing such a claim in this context would open the floodgates of general tort liability by subjecting any and every hiring decision to potential judicial scrutiny and damages. Accordingly, SDOC is entitled to summary judgment on Plaintiffs' "negligence/gross negligence" claim.

E. Any Dispute Regarding Ms. Verderosa's Testimony Is Irrelevant To Plaintiff's Proof of Any Of Her Claims Against Ms. Williams And SDOC, The Only SDOC Defendants In This Case, And Does Not Create A Genuine Issue of Material Fact.

Ms. Verderosa is not an individual defendant in this case. Ms. Noorai does not contend that Ms. Verderosa defamed her, conspired against her, or engaged in "negligence/gross negligence" toward her. She attributes a single statement to Ms. Verderosa in her futile effort to create a genuine issue of material fact to avoid summary judgment. However, whether

Ms. Verderosa did or did not tell Ms. Noorai that "after checking references, we did not offer you the position," is not a genuine or material factual dispute for purposes of Ms. Noorai's claims against the SDOC defendants because:

- It is not defamatory or capable of any defamatory meaning and was published to no one other than Ms. Noorai.
- It does nothing to establish that Defendant Williams engaged in some type of civil conspiracy with the SDPC Defendants to injure Plaintiff.
- There is simply no cause of action for "negligent failure to hire" a job applicant in South Carolina.

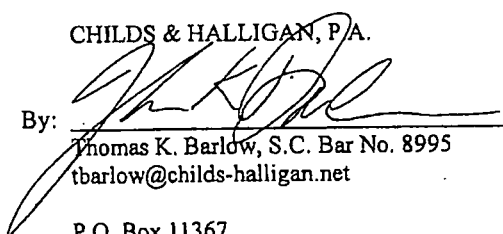
Thus, any claimed factual dispute regarding Ms. Noorai's recollection of Ms. Verderosa's alleged statements and Ms. Verderosa's testimony on that issue does not create a genuine issue of material fact preventing summary judgment in her case against SDOC or Ms. Williams. *See Smith v. Breedlove*, 661 S.E.2d 67, 71 (S.C. 2008) (identifying a genuine issue of fact that is not "material" cannot prevent summary judgment).

IV. CONCLUSION

For all of the foregoing reasons, Plaintiff's evidence fails to satisfy each element of her alleged causes of action and Defendants SDOC and Ms. Williams are entitled to judgment as a matter of law on all claims.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

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Attorney for Defendants School District of Oconee
County and Earnestine Williams

April 2, 2014

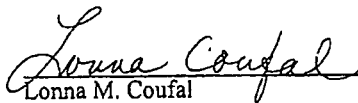
Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **DEFENDANTS SCHOOL DISTRICT OF OCONEE COUNTY AND EARNESTINE WILLIAMS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 2nd day of April, 2014:

S. Paul Aaron, Esq.
S. Paul Aaron, P.A.
P.O. Box 1862
Clemson, SC 29633

David T. Duff, Esq.
Laura Callaway Hart, Esq.
Duff, White & Turner, LLC
3700 Forest Drive, Suite 404
Columbia, SC 29204


Lonna M. Coufal

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Mariam R. Noorai,
Plaintiff,

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

vs.

Sch. Dist. of Pickens Co., Sch. Dist. of
Oconee Co., and Gary Culler, Donald
Boggs, Richard Hudak, Earnestine
Williams and Dr. Kelly Pew, in their
individual capacities,

Defendants.

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OCONEE COUNTY AND EARNESTINE
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STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.

DEPOSITION OF TAMMY ALEXANDER BROCK

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of Tammy
Alexander Brock was taken at the law offices of Larry C.
Brandt, 3691 Blue Ridge Boulevard, Walhalla, South
Carolina, on Monday, October 15th, 2012, commencing at 2:32
p.m.

COPY

KAREN BELANGER
CERTIFIED VERBATIM REPORTER, MASTER

FOOTHILLS COURT REPORTING
864-991-2570

1 Q. But what I'm saying is, you said they just have to be
2 certified.

3 A. Yes, sir, that's all the grant states.

4 Q. And they would be, let's say, middle school certified
5 in a subject.

6 A. Right.

7 Q. Or high school certified in a subject, or elementary
8 certified in a subject.

9 A. I don't know about the specifics of their
10 certification. I just know they all held
11 certificates.

12 Q. My question is, if you had the social services, would
13 that be a middle school certification or would it
14 have been high school certification? Social
15 sciences.

16 A. For our purposes?

17 Q. Yes, your program.

18 A. That would not have been something I would have
19 considered. As long as they held a certificate, then
20 I was meeting the requirements of the grant.

21 Q. Tell me, walk me through how you conducted the
22 interview process for that job, those jobs.

23 A. For candidates who are unfamiliar with the grant, I
24 spent a great deal of time discussing with them what
25 the grant was about, our expectations for the grant,

1 the purpose of the grant through the district. There
2 was a lot of time spent on those particular issues.
3 Then we moved beyond that. I believe I had handouts
4 for them, showing them things that had been done in
5 the past through the program, expectations of what we
6 planned to do that year through the program. So a
7 lot of explanation, because it was not a traditional
8 summer school. I wanted to make sure they completely
9 understood. I also wanted to make sure they
10 completely understood the clientele of that program
11 not being your average middle school student. These
12 were students who were at a point of -- well, they
13 were students who were facing failure, as far as
14 their school was concerned. They were students who
15 were challenged in the classroom, both academically
16 and behavior-wise. So I wanted to make sure they
17 were very conscious of the type of students that we
18 would be serving in the program. And from there, I
19 ask the general questions. Why would you be
20 interested in this program? Explain to me why you
21 feel you're qualified for this program. And just
22 some general types of conversation. And we just had
23 general conversation about education and the process
24 of education.

25 Q. Did you keep notes during those interviews?

1 A. I did.

2 Q. And do you still have those notes?

3 A. I do not.

4 Q. What did you do with them?

5 A. They were thrown away, just --

6 Q. You didn't send them, forward them to the district
7 office?

8 A. Did I send them forward?

9 Q. Yes, to HR.

10 A. There probably were copies made, at Mr. Leroy's
11 level, and he's the one who did all the hiring. I
12 only did recommendations. I did no hiring.

13 Q. Even for these jobs?

14 A. Even for these jobs, yes, sir.

15 Q. But do you specifically recall sharing your notes
16 with Mr. --

17 A. Leroy?

18 Q. -- Leroy?

19 A. Yes, sir.

20 Q. When you went in, in interviewing these candidates,
21 did the interviews all occur one right behind the
22 other or was it --

23 A. It was over a period of three days.

24 Q. -- over days?

25 MR. BARLOW:

1 Let him finish the question.

2 WITNESS:

3 Okay, I'm sorry.

4 EXAMINATION RESUMED BY MR. BRANDT:

5 Q. Over the period of three days, were there like a
6 first round and a second? You eliminated a few and
7 then came back in with more interviews? Or just
8 interview each one of them, one time?

9 A. Interviewed once.

10 Q. When you went into those interviews, had you already
11 sat down and written out or formulated the questions
12 that you were going to ask them, or did you just wing
13 it each interview?

14 A. No, sir, the questions were written, and I believe
15 each candidate got a copy of the questions.

16 Q. And those questions, are they still preserved
17 somewhere for review?

18 A. Those are general questions that we pull from, that
19 are pretty typical interview questions within our
20 school. So, yes, I'm sure they are preserved
21 somewhere.

22 Q. So typical interview questions that would have been
23 used to hire a full-time teacher --

24 A. That's correct.

25 Q. -- in a regular school year?

1 A. That's correct.

2 Q. And you would have gone over those. Did you add
3 anything to those questions, considering this was a
4 special program?

5 A. Not that I recall.

6 Q. Do you know Gary Culler?

7 A. Do I know who?

8 Q. I think it's Gary Culler, C-U-L-L-E-R.

9 A. No, sir.

10 Q. Have you ever had any contact with him whatsoever,
11 either by phone or otherwise --

12 A. No, sir.

13 Q. -- to your recollection?

14 A. No.

15 Q. Ms. Noorai, of course, had left Edwards Middle School
16 a year before. Did you inquire of her, as to why she
17 left?

18 A. I believe I asked her twice why she left.

19 Q. What did she tell you?

20 A. She told me that there was a student issue.

21 Q. Did you inquire into it, even further?

22 A. I just -- probably clarification. I don't remember
23 exactly.

24 Q. You stated that you asked her twice about it.

25 A. Uh-huh (affirmative).

1 going to be asked to teach Algebra, which is what
2 ninth-grade students take. So with that knowledge,
3 it was more important to me, for him especially to be
4 certified in that area.

5 Q. So basically the certification in the areas, that's
6 what you preferred. That was a preferred situation
7 there?

8 A. For math.

9 Q. Yes, but you didn't put that premium on English or
10 social services or sciences?

11 A. No, sir, because the basics were being taught.

12 Q. Did you call or check any references of any of these
13 candidates?

14 A. The four that we hired, I did not call, but I assume
15 that Mr. Leroy did.

16 Q. So you, at least on your screening, never checked
17 with anybody's references?

18 A. No, sir.

19 Q. Any of the seven?

20 A. No, sir.

21 Q. You did not attempt to call Edwards Middle School, to
22 find out why she left?

23 A. No, sir.

24 Q. Even though you were alerted and concerned about --

25 A. No, sir.

1 Q. Have you ever had an occasion to talk about Ms.
2 Noorai with Ms. Verderosa, at West Oak Middle?

3 A. No, sir.

4 Q. Or Dr. Rosemary Wise?

5 A. No, sir.

6 Q. Or Dr. Lusk?

7 A. No, sir.

8 Q. How about Wendy Cody? Do you know her?

9 A. No, sir, I have no idea who that is.

10 Q. Wanda? Is it Wanda?

11 A. I have no idea who that is.

12 Q. Do you know Ashley Palermo?

13 A. Ashley who?

14 Q. Palermo?

15 A. No, sir.

16 Q. Amanda Chasereau? C-H-A-S-E-R-E-A-U.

17 A. No, sir.

18 Q. And I believe it's Linda Lusk. Do you know her?

19 A. I do know her.

20 Q. You do know her?

21 A. Uh-huh (affirmative).

22 Q. How do you know her?

23 A. She's the assistant principal at West Oak Middle
24 School, where my children attended school.

25 Q. Did you ever talk to her about Mari?

1 A. No, sir.

2 Q. Even since this lawsuit came up?

3 A. No, sir.

4 Q. Other than that summer program that one time, did you
5 do the interviewing for the after-school program too?

6 A. Yes, sir.

7 Q. Other than for those two programs, have you done any
8 of the interviewing, been on any interviewing teams
9 for teachers?

10 A. No, sir.

11 Q. Prior to interviewing any of these people for the
12 job, did you check with Oconee County policy,
13 procedures to determine how you were going to conduct
14 interviews?

15 A. No, sir.

16 Q. Had you ever been to any meetings where the team
17 approach to the interview had been discussed prior to
18 interviewing Ms. Noorai?

19 A. No, sir. In 32 years, I had never been interviewed
20 by a team.

21 Q. How many times have you been interviewed by Oconee
22 School District in that 31 years?

23 A. Probably twice.

24 Q. And when was the last time?

25 A. In 1990.

1 Q. Meaning that it was there, that the school used on
2 all candidates for all jobs if they're not accepted,
3 if they're not ended up hired?

4 A. You know, I really don't know.

5 Q. You stated that these students in the summer were
6 basically students that were failing, and you were
7 trying to push them along. Wouldn't that fact demand
8 that the best qualified teachers in the specific
9 subject be hired, if at all possible, rather than --

10 MR. BARLOW:

11 Object to form. Go ahead. You can answer the
12 question.

13 EXAMINATION RESUMED BY MR. BRANDT:

14 Q. -- just somebody that was certified?

15 A. For many of these students, it was more an objection
16 to school, not a lack of ability. So it was as
17 important for us to provide a learning environment
18 that was conducive, as much as it was to provide a
19 plethora of knowledge for those students. We wanted
20 them to feel comfortable when they walked into those
21 high school classrooms, if they were successful in
22 the program.

23 Q. Well, what gave you feeling of comfort with the rest
24 of these people, the people that were hired?

25 A. With Mr. Harrison, Mr. Harrison had worked the

1 program the year before. He came highly recommended
2 by Marjone Ford, because she worked with him as
3 director. She -- his ability to deal with the
4 students, his ability to be on their level, his
5 ability to accomplish the work at hand. His
6 understanding of that level of student. With Ms.
7 Gillespie, she was most familiar with our students.
8 She had worked with them in the after-school program,
9 a lot of them. She was comfortable with those
10 students. She had a tremendous knowledge of
11 material. With Candace Thress, it was a knowledge of
12 her -- of the material that her -- that she
13 possessed. Social studies is my area. So I was able
14 to get specific with her on curriculum within that
15 area. She seemed very knowledgeable. With Mr.
16 Shirley, Mr. Shirley had worked at West Oak High
17 School as an aide in a classroom of special-ed
18 students where he dealt with some of the
19 difficulties, learning disabilities, the difficulties
20 with behavior.

21 Q. My gathering then, of what you said, is that you
22 didn't write a letter. The letter that was sent to
23 the candidates that didn't get the jobs would have
24 been a form letter that was in the school files. And
25 Mr. Leroy would have sent that, not you.

2

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STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.



DEPOSITION OF GEORGE GARY CULLER

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of George Gary
Culler was taken at the law offices of Larry C. Brandt,
3691 Blue Ridge Boulevard, Walhalla, South Carolina, on
Tuesday, August 7th, 2012, commencing at 1:30 p.m.

COPY

KAREN BELANGER
CERTIFIED VERBATIM REPORTER, MASTER

FOOTHILLS COURT REPORTING
864-991-2570

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her letter?

A. Because I heard she was upset and I did not want an employee of mine in there upset.

Q. When you went in there, what did you tell her?

A. I did not tell her anything. I asked a question.

Q. What did you ask?

A. If writing that letter was making her that -- making her upset.

Q. Excuse me?

A. If writing that letter was making her upset.

Q. What did she say?

A. She said that she wanted to be alone.

Q. What did you do?

A. I walked out the door.

Q. At that point in time when she was in there writing that letter, did you have knowledge that she had interviewed for a job at West Oak?

A. Sometime around there I did, yes, sir.

Q. Did you intimate to her in any way that she had not been chosen for the job at West Oak?

A. No, sir.

Q. Do you know Ms. Verderosa?

A. No, sir.

Q. Do you know Rosemary Wise?

A. No, sir.

Q. Do you know -- is it Linda Lusk or the Lusk lady that was on that committee at West Oak? Do you know her?

A. I do.

Q. Is her first name Linda?

A. I do not know.

Q. How do you know her?

A. When I was a student teacher at Westminster Middle School many moons ago, she was an assistant principal.

Q. And did she ever call you in regards to Mari?

A. No, sir.

Q. Rosemary Wise ever call you in regards to Mari and why she was leaving your school?

A. No, sir.

Q. Verderosa, did she call you and ask about her?

A. No, sir.

Q. Did anybody that you know connected with the Oconee School District ever call you and talk to you about Mari?

A. No, sir.

Q. Did anybody ever send you a written request for a recommendation or your opinion of Mari as a teacher that was connected with the Oconee School District?

A. No, sir.

Q. Has anybody connected with any school district -- and

1 I'm talking about a formal way, calling you in a
2 formal sense of the word, their job, your job, with
3 any school district in the State of South Carolina
4 and requested information about Mari?

5 A. Yes, sir.

6 Q. Who?

7 A. I can't answer. I mean I don't know all of them.

8 Q. Would there be anybody from Greenville?

9 A. I think so. I think -- yes, sir.

10 Q. Who do you think called you from Greenville?

11 A. I think there was a school, Tanglewood maybe. Is
12 that a middle school in Greenville, Tanglewood?

13 Q. I'm assuming that, but -- it seems like something
14 that'd be over there.

15 A. And then there was -- I think there was a middle
16 school over there, League Academy.

17 Q. And who did you talk to? Do you recall the names?

18 A. One of them's last name is Hall, and the other one I
19 do not know. The other one I didn't speak to. They
20 just left a message.

21 Q. Did you ever call them back?

22 A. No, sir.

23 Q. Did you ever supply anything in writing to either of
24 those people that called and inquired?

25 A. No, sir.

3

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STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

vs.

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.

DEPOSITION OF AL DOUGLAS LEROY

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of Al Douglas
Leroy was taken at the law offices of Larry C. Brandt,
3691 Blue Ridge Boulevard, Walhalla, South Carolina, on
Monday, October 15th, 2012, commencing at 12:13 p.m.

COPY

KAREN BELANGER, CVR-M

FOOTHILLS COURT REPORTING
864-991-2570

1 knew the curriculum. she knew what we were doing.
2 She knew the nature of the grant and the program.

3 Q. Did Ms. Brock ever express to you concern she had
4 about Mari, about her relationship with her prior
5 principal or the reason she left Edwards Middle?

6 A. She did share that with me.

7 Q. What did she say?

8 A. She just said that she had a problem at a previous
9 school.

10 Q. How did she know that?

11 A. They had discussed it, in the interview.

12 Q. Did she have any knowledge about that before?

13 A. Not to my knowledge, no.

14 Q. Do you know whether Ms. Brock considered that, in
15 evaluating Mari?

16 A. I don't know that.

17 Q. Or how she considered it?

18 A. I don't know that for sure, no.

19 Q. Do you know Mr. Culler, Gary Culler at Edwards?

20 A. I'm familiar with him. I don't know him very well.

21 Q. Are you in any kind of social organizations or
22 activities --

23 A. No.

24 Q. -- with him?

25 A. Well, other than we play each other in athletics. So

1 from time to time, we'll speak at games and things
2 like that.

3 Q. Have you ever had a discussion with him about Ms.
4 Noorai?

5 A. No, I have not.

6 Q. To your knowledge, did Ms. Brock ever call Edwards
7 Middle School and talk with Mr. Culler prior to
8 hiring for that position?

9 A. Not to my knowledge. I don't know if she did or not.

10 Q. Have you ever asked her?

11 A. No, I did not.

12 Q. Do you know whether or not she knows Mr. Culler,
13 personally?

14 MR. BARLOW:

15 Object to the form. Go ahead.

16 EXAMINATION RESUMED BY MR. BRANDT:

17 Q. Do you know? And when I say she, Ms. Brock.

18 A. No, I don't know that they're familiar with each
19 other.

20 Q. And so your testimony is you have no knowledge, one
21 way or the other, whether she talked with him or not?

22 A. That is my testimony, for Ms. Brock's sake, yeah. I
23 know I did not.

24 Q. Yes. And have you ever called Pickens District and
25 asked for any kind of a recommendation concerning

4

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

CASE. NO. 2011-CP-37-279

Mariam R. Noorai,
Plaintiff,

VS.

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.

DEPOSITION OF RALPH MICHAEL LUCAS

Pursuant to Notice of Deposition and/or agreements
in the above entitled case, the Deposition of Ralph Michael
Lucas was taken at the law offices of Larry C. Brandt,
3691 Blue Ridge Boulevard, Walhalla, South Carolina, on
Monday, October 15th, 2012, commencing at 10:32 a.m.

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KAREN BELANGER, CVR-M

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1 back to Ms. Williams. I know that we are concerned
2 about confidentiality whenever -- for instance, at
3 the end of a board meeting, everything that Ms.
4 Williams shares goes back to Ms. Williams. And I
5 would think that's what the principals do. I haven't
6 done that in this district. So I don't know the
7 process.

8 Q. Since this matter came up and the lawsuit was filed,
9 did you read the complaint?

10 A. No.

11 Q. Have you ever talked with Ms. Verderosa about what
12 she did in the interview process, or may have done in
13 regards to checking references?

14 A. No.

15 Q. Have you dispatched anyone else in the district
16 office to interview them --

17 A. No.

18 Q. -- and to make that determination?

19 A. Ms. Williams would be -- that's her area. But, no,
20 I have not.

21 Q. And you have not told Ms. Williams to do that?

22 A. Not that I recall.

23 Q. Have you told Ms. Williams not to hire Mari, as long
24 as this lawsuit is --

25 A. I don't see us hiring Ms. Noorai in the district for

1 a variety of reasons.

2 Q. Give me those reasons.

3 A. Okay, they would be that we've been involved in this
4 frivolous lawsuit. I question integrity and honesty.

5 Q. Do what?

6 A. Question integrity and honesty. Based --

7 Q. Why?

8 A. -- on what I've seen in the paper, I know some of
9 those things were not accurate when it came it to
10 Oconee County.

11 Q. Like what?

12 A. That we conspired with Pickens. We didn't conspire
13 with Pickens. We haven't talked to Pickens.

14 Q. What else?

15 A. That's mainly it.

16 Q. Excuse me?

17 A. I said that's mainly it. We have to be concerned.
18 We've spent a lot of resources and time. So I don't
19 see us hiring Ms. Noorai.

20 Q. Are you aware that that may have been a lawyer's way
21 of stating a cause of action, as opposed to anything
22 Ms. Noorai may have said?

23 A. Huh-uh (negative).

24 Q. You've got to give a yes or no.

25 A. No. Sorry. I'm sure, Mr. Brandt, if you were being

1 sued by someone who wanted to be your secretary, it
2 might be difficult to hire that person to be your
3 secretary if you didn't feel you discriminated or did
4 anything wrong. And that's kind of the way we feel.

5 Q. Do you know Ashley Palermo?

6 A. No, not that I'm aware of.

7 Q. Do you know Amanda Chasereau? C-H-A-S-E-R-E-A-U.

8 A. Not that I'm aware of. They may be teachers in the
9 district and I don't know them.

10 Q. How many teachers have you got in the district?

11 A. A thousand, roughly between 900 and 1,000.

12 Q. Do you believe that Ms. Noorai has told the truth
13 about the reason that she left Edwards Middle School?

14 A. I don't have enough information about that. All I
15 know is that we were not involved in any conspiracy
16 with Pickens.

17 Q. How do you know she accused you of conspiracy?

18 A. It was in the newspaper.

19 Q. But you never chose to read the Complaint to see how
20 it was stated?

21 A. I haven't really -- I'll be honest with you. It was
22 like a zillion pages, and I scanned it. And I think
23 I sent it to Ms. Williams. Did I study it, read it
24 in detail, take notes? No.

25 Q. And other than that one thing from Ms. Stein, you've

1 not had any communication between the SCEA or the
2 State Department?

3 A. That one communication. That was it.

4 Q. And nobody's come up here, to try to interview you or
5 find out --

6 A. Only our attorney, to talk to me prior to this, you
7 know, deposition.

8 Q. Well, let me ask you this. If, by chance, a jury
9 returns a verdict against Oconee School District and
10 says you were wrong, would you hire her then?

11 MR. BARLOW:

12 object to the form. Go ahead.

13 WITNESS ANSWERS:

14 A. In this case, if a Court directed us to do, which a
15 Court has directed before -- Ms. Noorai has never
16 been an employee. So I don't think they would do
17 that.

18 EXAMINATION RESUMED BY MR. BRANDT:

19 Q. I didn't ask that. I said --

20 A. A Judge typically would say that we discriminated in
21 some fashion. I don't think we've discriminated.

22 Q. Not necessarily. Maybe they'd find you guilty of
23 conspiracy. But if they find you and direct and have
24 a verdict, a monetary verdict against the school
25 district, will it still be your position, even though