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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the 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Unpublished Opinion No. 2016-UP-160 (S.C. Ct.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 III

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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF OCONEE

3 MARIAM R. NOORAI,
4 Plaintiff,

5 vs. Case No.: 2010-CP-37-279

6 SCHOOL DISTRICT OF PICKENS COUNTY,
7 SCHOOL DISTRICT OF OCONEE COUNTY,
8 AND GARY CULLER, DONALD BOGGS,
9 RICHARD HUDAK, EARNESTINE WILLIAMS,
10 AND DR. KELLY PEW IN THEIR INDIVIDUAL CAPACITIES,

11 Defendants.

12 Volume III

13 D E P O S I T I O N

14 WITNESS: MARIAM NOORAI

15 DATE: Monday, August 6, 2012

16 TIME: 9:40: a.m.

17 LOCATION: 3691 Blue Ridge Blvd.
18 Walhalla, South Carolina

19 TAKEN BY: Attorney for the Defendants

20 REPORTED BY: LISA GARSON
21 Court Reporter

22 -----

23

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EARNESTINE WILLIAMS
20 GARY CULLER

21 (INDEX AT REAR OF TRANSCRIPT)

22

23

24

25

1 MARIAM R. NOORAI, being first duly sworn,

2 testified as follows:

3 EXAMINATION

4 BY MR. BARLOW:

5 Q. Ms. Noorai, good to see you again. We broke or
6 recessed the deposition back in March. The same rules
7 will apply today. I'm not going to go back over the
8 rules unless you think I ought to.

9 A. No. You do not need to.

10 Q. Thank you. I just wanted to finish up the
11 deposition and don't want to plow over too much old
12 ground. I want to figure out what's been going on since
13 March, now that we're into August.

14 A. Yes, sir.

15 Q. So tell me what you've been doing since March.

16 A. Well, that's a lot of --

17 MR. BRANDT: Object to the form of the
18 question. That's wide open.

19 BY MR. BARLOW:

20 Q. Have you been working since March?

21 A. Do I have an official job? No.

22 Q. Do you have an unofficial job? Been
23 volunteering?

24 A. Volunteering.

25 Q. Who have you volunteered with?

1 A. I've been doing a lot of work with the Tamassee
2 DAR School. This is starting my third year as Junior
3 American Citizen Club adviser. We are started our brand
4 new project.

5 It's been in the paper. They're making Braille
6 flags for blind Veterans to have distributed around
7 Veteran's Day. We've made pillows for wheelchairs for
8 Veterans at the Richard M. Campbell Veteran's Nursing
9 Home.

10 Q. Where is that?

11 A. Anderson. We received national awards at the
12 end of June by the Daughters of the American Revolution
13 for the community service and different projects that
14 we've done.

15 Q. Have you earned any income from any source
16 since March?

17 A. No, sir.

18 Q. How about the status of your auto case?

19 A. I haven't heard anything.

20 Q. That's still pending?

21 A. I assume. Yes, sir.

22 Q. Have you given any depositions or any sworn
23 testimony in that case since March?

24 A. No, sir.

25 Q. Have you applied for any jobs in the Pickens

1 County School District since March?

2 A. Yes, sir.

3 Q. What have you applied for?

4 A. Too many to be able to tell you at this time.

5 Q. Do you have a list of those somewhere?

6 A. Yes. And I believe they do too as well.

7 MR. BRANDT: We'll be happy to compile a list
8 and give it to you.

9 BY MR. BARLOW:

10 Q. Thank you. How about with the School District
11 of Oconee County --

12 A. Yes, sir. I have.

13 Q. Let me finish before you start.

14 A. Oh, I'm sorry.

15 Q. No. That's fine. We did a good job -- I was
16 looking back at the transcript, and I think we did a good
17 job of that last time. I just want to start off on the
18 right track here.

19 And we would have a list of those jobs, but
20 have you kept up with those as well?

21 A. Yes, sir.

22 Q. School districts -- other than Pickens and
23 Oconee, where else have you applied since March?

24 A. Greenville County, Anderson School District 1,
25 Anderson School District 2, Anderson School District 3,

1 Anderson School District 4, Anderson School District 5,
2 Charleston County School District, Tri-County Tech,
3 Clemson University.

4 Q. And would you have a list of the positions that
5 you have applied for at all of those?

6 A. Yes, sir.

7 Q. Have you had any interviews with Greenville?

8 A. Yes. I have.

9 Q. For what position did you interview?

10 A. I interviewed for an English position at
11 Carolina High School. I interviewed for a position at
12 the middle school in Taylors.

13 I've interviewed -- I'm sorry. I've had
14 several in Greenville. It's hard to think off the top of
15 my head.

16 Q. This is March to now timeframe?

17 A. Yes, sir.

18 Q. Have you had any offers?

19 A. No, sir.

20 Q. But you have a list of those somewhere.

21 A. Yes. I have the dates when I went for the
22 interviews in Greenville.

23 Q. Would you have a list of the people that you
24 interviewed with as well?

25 A. Well, with the principals. I may not remember

1 all the people they had in the room.

2 Q. Were those done in a team approach?

3 A. Some were. Some weren't.

4 Q. How about Carolina High School? Was that a
5 team approach?

6 A. It was principal and coach.

7 Q. How about Taylors?

8 A. It was the principal and assistant principal.

9 I was also interviewed at League Academy. It was a
10 principal, team leader, teachers, and other teachers, and
11 an instructional coach.

12 Q. And you have heard back from them that you did
13 not get those?

14 A. I have not heard back from League Academy.

15 Q. But you heard back from the others?

16 A. From Carolina and the one in Taylors, yes. But
17 not the others.

18 Q. How about as far as Anderson 1? Have you had
19 any interviews with Anderson 1?

20 A. Not with Anderson 1.

21 Q. How about Anderson 2?

22 A. No. I have not.

23 Q. And I bet you'll guess where I'm going next.

24 Anderson 3.

25 A. No interviews with Anderson 3.

- 1 Q. Anderson 4?
- 2 A. Yes, sir.
- 3 Q. Which school?
- 4 A. Pendleton High School. And the interview was
- 5 just with the principal.
- 6 Q. Do you remember the principal's name?
- 7 A. Not off the top of my head.
- 8 Q. What was the outcome of that?
- 9 A. I haven't heard.
- 10 Q. Okay. Is that the only school that you
- 11 interviewed with in Anderson 4?
- 12 A. Yes.
- 13 Q. How about Anderson 5?
- 14 A. I was interviewed at Glenview Middle School.
- 15 Q. And who interviewed you there?
- 16 A. The principal and three of the 8th grade
- 17 English teachers.
- 18 Q. Have you heard back from them yet?
- 19 A. Yes. I received a rejection.
- 20 Q. Do you know who the successful candidate was?
- 21 A. No, sir.
- 22 Q. For any of the positions that you did not get,
- 23 that we've talked about, have you done any research to
- 24 see who the successful candidates were --
- 25 A. No, sir.

1 Q. -- and compared your qualifications with them?

2 A. No, sir.

3 Q. Do you plan to do that?

4 A. I haven't thought about it.

5 Q. How about in Charleston? Have you interviewed?

6 A. Yes, sir.

7 Q. For what positions did you interview down
8 there?

9 A. At one school. Thomas C. Cario Middle School.
10 It's in Mount Pleasant. The principal is Mr. Bragg. I
11 had two interviews.

12 Q. Have you heard back on a decision on those yet?

13 A. Yes. I was rejected.

14 Q. And presumably you don't know who the
15 successful candidate or candidates were?

16 A. No, sir.

17 Q. How about Tri-County Tech? Have you
18 interviewed there?

19 A. I've had three interviews at Tri-County Tech.

20 Q. And again, just so we're clear, in the March to
21 now timeframe?

22 A. No. In 2011.

23 Q. Okay. What type of jobs there?

24 A. Again, a variety.

25 Q. You have applied there since March.

1 A. Yes. When there was a position that I meet the
2 requirements for, that I'm able to do the work, I apply.

3 Q. Other than what we've already talked about,
4 Greenville, Anderson districts, Charleston, and
5 Tri-County Tech, any other applications that you've
6 submitted to school districts in South Carolina?

7 A. Well, I also mentioned Clemson University, but
8 no other public school district.

9 Q. How about private schools or charter schools?

10 A. I haven't found any jobs when I've searched.

11 Q. How about in Georgia?

12 A. No, sir. I don't have the money to move, and
13 when I have checked in the past for the connecting school
14 districts in Georgia, there were none posted.

15 Q. When was the last time that you would have
16 checked in Georgia?

17 A. Might have been last year.

18 Q. How about North Carolina? Same?

19 A. No. I have not checked in North Carolina.

20 Q. Going back to our prior deposition. I think we
21 left off -- I was asking you questions about your notes
22 from your October 1, 2009, meeting with Earnestine
23 Williams. I'll show you Exhibit 27.

24 I asked a few questions about that. I think I
25 was about done but wanted to give you the opportunity --

1 was there anything that you remember about that meeting
2 that you don't have in here?

3 MR. BRANDT: I just need a clarification of the
4 question. I'm not sure I understand it. You want to
5 know if there is anything that she wants to add to this?

6 MR. BARLOW: Correct.

7 MR. BRANDT: Okay. Take your time to review
8 that and what he's asked you is if you have anything to
9 add to that let him know.

10 THE WITNESS: It seems to be all there is that
11 I recall. May I make just one comment to my attorney?

12 MR. BARLOW: Probably not.

13 THE WITNESS: Okay.

14 MR. BARLOW: After the deposition you can talk.

15 THE WITNESS: Okay.

16 BY MR. BARLOW:

17 Q. Have you had any conversations with Earnestine
18 Williams since October 1, 2009?

19 A. Have I -- you mean verbal conversations with
20 her? No, sir.

21 Q. How about in writing?

22 A. I received a letter from her.

23 Q. Have you written back or sent e-mails to her?

24 A. No, sir. Not that I recall.

25 Q. Going back to the jobs that you've interviewed

1 for, has your tenure at R.C. Edwards come up in those
2 interviews?

3 A. Yes, sir.

4 Q. And how do you deal with that?

5 A. Well, they normally ask me about my position
6 and the job that I had there and what I did and the
7 classroom, my lessons. All sorts of questions that they
8 ask about any teacher and what you've done.

9 Q. Do they ask why you left there?

10 A. Some do.

11 Q. Who did? Do you remember?

12 A. Not off the top of my head. No.

13 Q. But some. More than one?

14 A. I think so.

15 Q. How did you respond to that?

16 A. I said that it was no longer a safe place for
17 me to stay, and that although it was a place that I
18 thought I would stay for my full tenure as a teacher, I
19 could no longer stay there. I can't remember exact words
20 but that was --

21 Q. Did you elaborate on why you thought it was not
22 a safe place?

23 A. I don't feel comfortable elaborating on that
24 during an interview because that's not why -- I'm there
25 for a job.

1 Q. Were you asked to elaborate on it?

2 A. I think there may have been one or two that
3 have asked for more specifics.

4 Q. And your response would be what?

5 A. I don't recall how I handled it, but I didn't
6 get into specifics.

7 Q. On those applications that you submitted for
8 the jobs, did you tell them that Mr. Culler's certificate
9 was under investigation?

10 A. When I fill out the applications, and they want
11 to understand why I don't give permission for my former
12 supervisor to be contacted, I want them to understand
13 that I have a valid reason, that things have happened, so
14 that they will not contact him, and it will not prevent
15 me from getting any other jobs.

16 Q. Getting back to the question. Do you put that
17 information on there that we've seen on other
18 applications?

19 A. If there's a place for me to write that on the
20 applications, I do.

21 Q. Did you mention that you have a lawsuit
22 pending?

23 A. On an application?

24 Q. No. In any interviews. Did that come up at
25 all?

1 A. I think in one interview.

2 Q. Which one was that? Do you remember?

3 A. It was an interview that was set up with Keith
4 Russell. He already knew about it and wanted to talk to
5 me about it. He is in Greenville County.

6 Q. Okay. That was the next question. Any other
7 interviews that have come up?

8 A. In an interview setting? Not that I recall.

9 Q. Let's go back to -- this was from the prior
10 deposition. I just wanted to go back to it a little bit.
11 Your interview with Jami Verderosa for the West-Oak
12 Middle position was in June of 2009.

13 A. Correct.

14 Q. You interviewed with Jami Verderosa in a team
15 of how many people?

16 A. As far as I can recollect, two assistant
17 principals, and then, I would think, two or three
18 teachers.

19 Q. And did your -- the Pickens -- your job at R.C.
20 Edwards or why you left R.C. Edwards come up in that
21 meeting or interview?

22 A. I remember discussing that I was offered a
23 continuing contract, but that I chose not to sign it. I
24 don't specifically remember if they asked from 2009 why I
25 didn't sign it.

1 Q. Did you tell them why you didn't sign it?

2 Whether they asked you or not, did you tell them?

3 A. I really just don't recall, sir. I'm sorry.

4 Q. That's fine. And did you mention not feeling
5 safe at R.C. Edwards during that interview?

6 A. I don't recall.

7 Q. Did you mention that you'd been sexually
8 harassed by a student in that interview?

9 A. No, sir.

10 Q. Did you mention anything about Mr. Culler's
11 certificate being under investigation? Or taking action
12 against his certificate during that interview.

13 A. No, sir. That hadn't happened yet.

14 Q. Did you mention any plans to do that?

15 A. No, sir. I had no plans and did not mention
16 it.

17 Q. Did anything else come up in your interview
18 about your tenure at R.C. Edwards?

19 A. Again, they wanted to know why I was so
20 successful. Students winning awards and about my
21 teaching styles. I was there for a long time. They took
22 me through the school. They looked through my
23 portfolios. They weren't done with my portfolios after
24 the tour, so I had to wait for them to finish.

25 Q. Did anyone ask you a question in that interview

1 that you thought was inappropriate?

2 A. No, sir.

3 Q. Ashley Palermo is one of the people that got
4 the job, right?

5 A. Yes, sir.

6 Q. Did you communicate with anybody about Ashley
7 Palermo? Any written communication about your
8 qualifications versus Ashley Palermo's qualifications?

9 A. I believe that I did.

10 Q. And who would you have discussed that with?

11 A. I would have discussed that with the SCEA.

12 Q. That would be Janet Stein?

13 A. Yes. And Joyce Wilson and the executive
14 director and the attorneys involved with the SCEA. And
15 also with Dr. Medford at Clemson University. And if
16 there were others, I can't recall at this time.

17 Q. Did you save copies of those communications?

18 A. I assume some of them. Yes.

19 Q. Have you gone back to look for those at all?

20 A. From 2009? Not at this time. No.

21 Q. We may want you to do that, so just hold onto
22 them.

23 A. Yes, sir. I understand.

24 Q. Sure. Has there been any period of time since
25 you left R.C. Edwards, that you have not been physically

1 able to work?

2 A. Depends on what your term of being physically
3 able to work.

4 Q. Well, let's say, being able to work a full
5 workday as a teacher.

6 A. As a teacher? No. There have been no times
7 that I am not physically able to work. I have a back
8 condition that restricts certain types of jobs that I can
9 or cannot do.

10 Q. What types of jobs does it exclude you from?

11 A. I cannot do anything that requires standing for
12 extended periods, sitting for extended periods, lifting
13 or carrying certain things over a certain amount of
14 weight.

15 There are limitations. You'd have to get that
16 from my doctors.

17 Q. But as we sit here, that's your recollection of
18 what the limitations are.

19 A. To the best of my ability.

20 Q. All right. And the back injury, the origin of
21 that was the car accident; is that correct?

22 A. Yes, sir.

23 Q. And that happened -- what year was the
24 accident?

25 A. 2005.

1 Q. So after you did not get the job -- trying to
2 get back on our chronology here.

3 After you did not get the job at West-Oak, what
4 did you do between summer of 2009 and October 2009?

5 A. In relation to what?

6 Q. In relation to trying to earn money or anything
7 like that.

8 A. I was on unemployment and I followed the
9 mandates that they had for making job contacts. They
10 only wanted me to apply for jobs that I had done in the
11 past, I think, during the first year.

12 I'm not clear on that. They had jobs for me to
13 apply for. I met my sessions and did as they wanted.
14 They wanted full-time employment.

15 Q. Did you have a particular person or counselor
16 that you were assigned to there?

17 A. You saw multiple people.

18 Q. Which office?

19 A. The Seneca office.

20 Q. Is your unemployment still going?

21 A. It ended at two years.

22 Q. What date would that have been? Do you
23 remember?

24 A. It was in June 2011.

25 Q. Have you applied for any substitute teaching

1 positions at any school district since summer of 2009?

2 A. I think that I have. I've applied for multiple
3 ones, where they required certified teachers at School
4 District of Pickens County, when they've become
5 available.

6 Q. Anywhere else?

7 A. I believe one of the Anderson School Districts,
8 but I can't recall which one.

9 Q. Have you gotten a call to substitute at either
10 Pickens or one of the Anderson Districts?

11 A. No, sir.

12 Q. You substituted actually before you got a
13 position at Pickens, didn't you?

14 A. Yes. They asked me to.

15 Q. Who is "they"?

16 A. My cooperating teacher, Marilyn Raines. Her
17 father was very ill, and she knew she'd be missing time.
18 Also the other eighth grade English teacher, Christine
19 Mathis, was trying to get pregnant, and she was having
20 problems. And then she got pregnant.

21 The principle, Smiley Sanders, they all
22 encouraged me to take it. They wanted me to fill in for
23 primarily eighth grade teachers. So in the fall of 2006,
24 I took the training that I needed to and I started
25 subbing immediately.

1 And I subbed through the spring. I think the
2 last day that I subbed for R.C. Edwards was the day
3 before I graduated from Clemson in May 2007. And I did
4 sub for seventh grade teachers and also an art teacher.
5 So sixth, seventh, and eighth.

6 Q. And the teachers that you subbed -- Marilyn
7 Raines was one?

8 A. She was the one that asked me to become a sub.
9 She was the primary.

10 Q. She was one of your references as well.

11 A. Yeah. She was my cooperating teacher for both
12 my practicum and my student teaching and was one of my
13 mentor teachers during my first year teaching.

14 Q. Have you asked for any advice on whether you
15 ought to substitute teach now or not from any mentoring
16 type? Dr. Medford or someone like that.

17 A. Not that I recall.

18 Q. So you were collecting unemployment from June
19 to October. So at the time that you met with Earnestine
20 Williams, you were on unemployment.

21 A. When I applied for unemployment, I believe in
22 July, they then had to send me the backpay. However that
23 works. Yes. I was on unemployment at the time.

24 Q. All right. And were you applying for positions
25 in places other than Oconee and Pickens in 2009?

1 A. Yes, sir. They had you make job searches.
2 They had you search in their office. You had to have a
3 certain number of job contacts each week, but they wanted
4 full-time employment as the main priority.

5 Q. Where else were you applying during that
6 timeframe?

7 A. Sir, I don't recall.

8 Q. Were you keeping records of that?

9 A. They have job logs that I had to complete and
10 turn in, have them checked when they would call. You had
11 to make job contacts, so whether that was in a position
12 or being found out that there was no position.

13 Q. All right. And when was your next contact with
14 someone with the Ocone School District after your
15 meeting with Earnestine Williams?

16 A. What do you mean by -- more specifically --

17 Q. By someone affiliated with the school district
18 as an employee, school board member, or otherwise, after
19 October 1st, 2009.

20 A. Do you mean like an interview? Or do you mean
21 through e-mail?

22 Q. Any kind of contact. Whatever. Telephone
23 call, bumped into at the grocery store, or anything like
24 that.

25 A. I would need to -- I'm not sure when different

1 e-mails fell in to answer that specifically. I would
2 need to see the specific e-mails. And I was applying for
3 jobs when they were available, so I'm not quite sure
4 exactly how I can answer that question without specifics.

5 Q. Let me ask this. Was your next
6 communication -- official communication with the School
7 District of Oconee County through an e-mail?

8 A. It may have been. I can't recall at this time.

9 Q. Fair enough. At some point you applied for a
10 summer school position; is that right?

11 A. Yes, sir. At Seneca Middle School as part of
12 the 21st Century Federal Grant Program.

13 Q. And that was a written application that you
14 submitted.

15 A. Well, through their WinOcular, is one of the
16 jobs that I applied for.

17 Q. Did you interview for that job?

18 A. Yes.

19 Q. Who did you interview with?

20 A. Tammy Brock.

21 Q. Did you interview with anyone else?

22 A. She was the only one present.

23 Q. All right. And you did not receive a summer
24 school position there at Seneca Middle; is that right?

25 A. That's correct.

1 Q. And you inquired of Tammy Brock as to why.

2 A. I received a letter of rejection from Tammy
3 Brock.

4 Q. All right. Then you had some discussion back
5 and forth with her through correspondence.

6 A. I believe so.

7 MR. BARLOW: I want to go ahead and mark this.

8 (Defendants' Exhibit 28, June 8, 2010 Letter
9 From Tammy Brock to Mariam Noorai, marked for
10 identification.)

11 (Defendants' Exhibit 29, June 1, 2010 Letter
12 From Mariam Noorai to Tammy Brock, marked for
13 identification.)

14 BY MR. BARLOW:

15 Q. Look at 29 first. Apparently there was some
16 undated and unsigned form letter that you received.

17 A. Yes. As I said I received a rejection letter
18 from Ms. Brock.

19 Q. And the second paragraph says, "On the advice
20 of counsel, please confirm that you were the only one
21 present during our meeting".

22 Had you hired legal counsel at that point?

23 A. No. That was the counsel of my father.

24 Q. So you had not hired a lawyer.

25 A. Absolutely. No, sir.

1 Q. And then you received Exhibit 28 as the
2 response to that -- Exhibit 29.

3 A. Yes, sir.

4 Q. And during this time, were you having
5 discussions with anybody, other than Tammy Brock, with
6 the School District of Oconee County?

7 A. Not that I recall.

8 (Defendants' Exhibit 30, June 16, 2010 Letter
9 From Mariam Noorai to Tammy Brock, marked for
10 identification.)

11 BY MR. BARLOW:

12 Q. Have you had a chance to look at Exhibit 30?

13 A. Yeah.

14 Q. I would like you to read it -- let me ask you
15 this first.

16 Between the time that we broke in March and
17 now, have you done anything? Gone back and looked at
18 anything.

19 A. Absolutely nothing.

20 Q. Well, take a look at it then while get a little
21 more coffee, and if you need a break at any time
22 certainly let us know.

23 A. Thank you.

24 Q. During your interview with Tammy Brock, did the
25 question of why you left R.C. Edwards come up?

1 A. Yes. I believe she asked a couple of times.

2 Q. What was your response to her?

3 A. I don't remember my exact response, but I don't
4 believe I said very much.

5 Q. Would you agree that it's relevant for a future
6 employer to know why you left your former employer?

7 A. I'm assuming that they have questions that they
8 need to ask.

9 Q. Would that be one of them?

10 A. It could be.

11 Q. Have you ever had any responsibility for hiring
12 anyone?

13 A. No, sir.

14 Q. How about any classes? Did you take college
15 courses, or anything like that, on management? Or
16 anything like that.

17 A. No, sir.

18 Q. So you weren't philosophically opposed to her
19 asking you the question why you left R.C. Edwards.

20 A. No, sir.

21 Q. You don't remember what your exact response to
22 her would have been to that question.

23 A. No, sir. That was back in 2010. I don't
24 recall.

25 Q. Do you recall telling her that you felt unsafe

1 at that school?

2 A. I really don't recall what I said.

3 Q. Do you recall generally what you might have
4 discussed as far as R.C. Edwards?

5 A. It would have been very little. She did most
6 of the talking the entire interview.

7 Q. Do you consider that to be a negative?

8 A. No, sir. She was explaining about the program
9 and what it required.

10 Q. Did you mention at that point having been
11 subjected to an assault by a student? Did you mention
12 that in the interview?

13 A. No, sir. Not that I recall.

14 Q. You mentioned it in the follow-up letter.

15 A. Yes. I did.

16 Q. And the principal and assistant principal are
17 being reviewed by the Office of South Carolina Department
18 of Education. Did that come up in the interview? I'm
19 looking at Exhibit 30.

20 A. That did not come up in the interview.

21 Q. Would you agree that the tone of this is fairly
22 aggressive? Exhibit 30.

23 A. I don't see it as aggressive.

24 Q. What did you expect the response to be to this?

25 A. I see this as a victim writing and trying to

1 explain the unfairness of what happened to this person.

2 Q. Do you have any evidence that Tammy Brock had
3 any communication with anybody at Pickens in making this
4 decision?

5 A. No, sir.

6 Q. As far as these other positions that you've
7 applied for since really June of 2009, do you have any
8 evidence that Earnestine Williams communicated with any
9 of the prospective employers?

10 Do you have any direct evidence? Or any
11 evidence, circumstantial or otherwise.

12 A. On my own evidence, no. As I said, I know in
13 the countersuit, Mr. Culler claims that all school
14 districts in the area are sharing and passing around my
15 confidential application.

16 Q. Do you have any reason to believe that
17 Earnestine Williams, right here, communicated with
18 Greenville County School District about you?

19 A. I mean, she could.

20 Q. Do you have any reason to believe that she did
21 that?

22 A. What exactly do you mean?

23 Q. Do you think she did that?

24 A. She may have.

25 Q. Do you know whether she did or not?

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1 A. No. I do not know whether she did.

2 Q. Do you have any reason to think she might have?

3 A. It's possible.

4 Q. How about with Charleston County School

5 District?

6 A. Could be possible. I don't know.

7 Q. But you have no evidence of that ever

8 happening.

9 A. No, sir.

10 Q. You have no witnesses from that school

11 district, for example, that are going to tell us that

12 Earnestine Williams called them up and told them not to

13 hire you.

14 A. No, sir.

15 Q. And not the Anderson school districts either.

16 A. No, sir.

17 (Defendants' Exhibit 31, January 24, 2011,

18 E-mail from Mari Noorai to Tammie Fletcher, marked for

19 identification.)

20 Q. Do you know who Jackie Coldwell is?

21 MR. BRANDT: Last name?

22 MR. BARLOW: C-O-L-D-W-E-L-L.

23 THE WITNESS: I can't recall Exhibit 31.

24 BY MR. BARLOW:

25 Q. Do you have any evidence that anyone else

1 employed with the School District of Oconee County has
2 kept you from getting a job in one of the other school
3 districts?

4 A. Not that I can recall.

5 Q. Do you recognize this document? Exhibit 31.

6 A. Yes, sir.

7 Q. Can you tell me what that is?

8 A. This was when I was involved with unemployment
9 and what they had me do with job contacts. So I wasn't
10 sure if I needed to apply as a substitute teacher.

11 I ended up applying for others instead, so I
12 didn't follow through with this.

13 Q. One more step you would have had to do in order
14 to be a substitute teacher would be to do substitute
15 training.

16 A. Substitute training and having the TP test, but
17 unemployment said they preferred me to apply for
18 full-time.

19 Q. So that's your reason.--

20 A. I applied for other jobs and made my contacts
21 all over.

22 Q. All right. Who were the people that you had
23 direct communication with at the State Department of
24 Education? Anybody other than Janet Stein?

25 A. She was South Carolina Education Association.

1 Q. Right. But you had contact with people at the
2 Department of Education too. Did you not?

3 A. Through the governor's office victim crime
4 ombudsman.

5 Q. Who did you contact?

6 A. I did meet with Jack Singletary, Paul Basart,
7 (phonetic). I can't remember the other woman's name off
8 the top of my head.

9 Q. Did you meet with them personally?

10 A. Yes, sir.

11 Q. In Columbia?

12 A. Yes, sir.

13 Q. How long was the meeting?

14 A. It was very long at their request.

15 Q. Were you asking them to take any particular
16 action?

17 A. I had contacted crime victim ombudsman and
18 through them the governor's office. They had the
19 Department of Education certificate of misconduct over
20 the issue of not reporting my sexual physical assault by
21 the student.

22 Q. What action, if any, was taken?

23 A. They said it would take years. Certificates
24 were being reviewed. I would have to come back down and
25 testify, and there would be some action taken -- whether

1 action or nonaction. It would take years, and I'd have
2 to testify.

3 Q. When was the last time you talked to someone
4 from the Department of Education?

5 A. I haven't talked to them.

6 Q. Since when?

7 A. I guess shortly after the meeting.

8 Q. That would have been what year?

9 A. I believe it was in 2010.

10 Q. Before or after the summer school job that you
11 applied for?

12 A. That was before. I believe it was in May that
13 I met with them and this letter says June.

14 Q. All right. So the last communication that you
15 had with the Department of Education was May of 2010.

16 A. Yes. I can't recall the date off the top of my
17 head.

18 Q. Have you sent an e-mail asking for the status
19 of your complaint?

20 A. No, sir. Because following that I had an
21 attorney, and I was told not to make any more contacts.

22 MR. BARLOW: All right. And so you followed
23 that advice and have not. All right. Let me take about
24 five minutes. I think I'm about done.

25 (A recess transpired.)

1 BY MR. BARLOW:

2 Q. Okay. Just a few more questions, and I think
3 we'll be able to wrap up. Your ADEPT status when you
4 left Pickens was what?

5 A. I had a perfect score.

6 Q. Were you going to be under evaluation for the
7 '09-'10 year when you signed your contract?

8 A. No. I was offered a continuing contract or ten
9 year contract, which was very rare for a second year
10 teacher.

11 Q. Did you have discussions about your contract
12 status during your interview with Jamie Verderosa? Do
13 you recall?

14 A. I believe I told her that I was offered a
15 continuing contract, and that I chose not to sign it.
16 But other than that I don't recall.

17 Q. Your mother is giving a deposition this
18 afternoon. Do you know if she's had communication with
19 anybody with the School District of Oconee County about
20 your job status, or application status, on your behalf,
21 since October 2009?

22 A. I know she has talked to Fred Hamilton.

23 Q. We talked about Mr. Hamilton a little bit in
24 the last deposition. Has she talked to anyone else that
25 she's shared with you?

1 A. No. She's talked to Rosemary Bills from the
2 School Board, but, again, I don't know exactly when and
3 definitely not anything recently.

4 Q. When you traveled for interviews in Greenville,
5 did your mom go with you to those?

6 A. Usually someone did go with me.

7 Q. Who typically would go with you? If not mom,
8 who?

9 A. I guess my mom. And if there were some friends
10 that were going that had something to do in Greenville,
11 they would ride. But no one went into the interviews.

12 Q. How about in Anderson?

13 A. If I didn't drive myself, she was in the car.
14 Again, but not in the building. Not in the interview.
15 She was running her errands.

16 Q. I think the rest of the questions I can ask
17 your mom. Thanks for your time again this morning.

18 Let me ask you this. What do you plan to do?
19 Is there anything else that you plan to do following this
20 deposition to be able to testify at trial in this case?

21 MR. BRANDT: I'm going to object to that
22 question. It's overly broad. I'm not sure what it
23 means, but I object to the form of the question. You
24 answer the best you can.

25 THE WITNESS: I mean, I have no plans at the

1 time. I didn't review anything before this.

2 MR. BARLOW: Fair enough. All right. I would
3 just ask that and we'll follow-up with some sort of
4 records request.

5 MR. BRANDT: Whatever we have you can look.

6 FURTHER EXAMINATION

7 BY MS. DICKEY:

8 Q. I'm Ms. Dickey. We've met several times. I
9 have some follow-up questions from the last time we met.
10 Did you ever fill out applications for CERRA?
11 The Center for Education Recruitment, Retention, and
12 Advancement.

13 A. Yes. I believe that I have applications
14 through CERRA starting from when I did my practicum
15 student teaching.

16 Q. All the way through?

17 A. Yes, ma'am.

18 Q. Do you go through CERRA to update your
19 applications as you apply to more places?

20 A. I think I have in the past.

21 Q. Do you know who has access to applications that
22 teachers, or people who want to be teachers, that they
23 place on the CERRA web site?

24 A. I believe that you can select districts or
25 areas that you want them to look at your CERRA

1 application.

2 Q. Since I initially deposed you in January, you
3 have added Marilyn Raines as a defendant in this lawsuit.

4 A. Yes, ma'am.

5 Q. Tell me why you decided to add Ms. Raines as a
6 defendant.

7 A. That was a decision made by the attorney
8 following the deposition.

9 Q. Did you have any input into Ms. Raines being
10 added as a defendant? Did you want to add her yourself?

11 A. After speaking to the attorney and his
12 explanation, I agreed to it.

13 Q. And Ms. Raines was your mentor teacher,
14 correct?

15 A. She was cooperating during my practicum and
16 student teaching, and she was one of two mentor teachers
17 during my first year teaching.

18 Q. What type of relationship did you have with
19 Ms. Raines while you were a student teacher?

20 A. While I was a student teacher, I guess it was
21 as a cooperating teacher. Her father was very ill, and I
22 ended up doing a lot of teaching in my practicum that I
23 was not supposed to do.

24 During my student teaching, I helped carry her
25 workload through that whole first year. And when the

1 other eighth grade teachers were absent, she would send
2 me across the hall to teach the honors courses for the
3 other eighth grade teacher, instead of the substitute
4 teacher.

5 Q. Do you have a personal relationship with her?

6 A. No, ma'am.

7 Q. Did you ever go to Ms. Raines for advice about
8 anything concerning teaching?

9 MR. BRANDT: Objection to form.

10 THE WITNESS: We discussed teaching and
11 different things. I don't remember going with specific,
12 you know, advice. We discussed lessons and units, and
13 she did evaluate me through records that Clemson has.

14 BY MS. DICKEY:

15 Q. How about when you came the teacher at Edwards?
16 How was your relationship with Ms. Raines?

17 A. Again, it was as a colleague. I, again,
18 assisted. My class was the language arts strategies
19 class. I tried to make sure that I was keeping my units
20 and lessons connected to what they were doing.

21 If there was something that she had trouble
22 with, or needed someone to additionally head, I would do
23 that for her. I tried to plan with her and to assist, so
24 that we worked as a unit and the students saw the
25 connection.

1 Q. Now, since you've added Ms. Raines as a
2 defendant in this lawsuit, I want to know what
3 specifically did Marilyn Raines do to you that caused you
4 some sort of harm.

5 A. Well, I guess the statements that you had
6 turned over during the deposition that she wrote that
7 were untrue and false. Things that she had written.
8 Documents that you had produced.

9 Q. Are you talking about her reference letters and
10 that sort of thing?

11 A. Yes. And to Ms. Cartilage. It's believed that
12 she is the one that went to the door to get the door
13 unlocked, so that Mr. Culler could come in on that last
14 day.

15 Q. She's the person who did what now?

16 A. Came to the door that was locked. She knew
17 that I would unlock the door for her, and that's what
18 followed with Mr. Culler coming in directly after her.

19 Q. You talked about when you were writing your
20 resignation letter.

21 A. Yes.

22 Q. You said it was believed -- what makes you
23 believe it was Ms. Raines that unlocked that door?

24 A. Because it was looked when she came in and it
25 was supposed to lock on the way back out and it didn't.

1 And when Ms. Bridges came in, she made some statement
2 that Marilyn -- that the door didn't relock when she
3 left.

4 Q. Do you know if Ms. Raines knew that the door
5 was supposed to have been locked?

6 A. Yes. She knew it was locked, and she couldn't
7 get in. She had to keep knocking on it, until I came to
8 let her in.

9 Q. Do you have indication that Ms. Raines didn't
10 lock the door back so Mr. Culler could come back in?

11 A. You'd have to ask her that.

12 Q. So you don't know why the door remained
13 unlocked after she left.

14 A. No.

15 Q. You don't think she just forgot to lock it.

16 A. All I know is what Ms. Bridges said when she
17 came in after.

18 Q. What was that that Ms. Bridges said again?

19 A. She made some comment about that Marilyn did
20 something. She messed up and the door didn't lock.

21 Q. So based on the letter that Ms. Raines wrote to
22 Wendy Cartilage with the State Department and her
23 references, that's the harm that you're talking about.

24 A. Well, they're inaccurate statements.

25 Q. Do you remember what those inaccurate

1 statements are?

2 A. I would have to see the documents and pull and
3 go through all that. And then you can compare them
4 against the other reference letters and all the
5 statements she had written to me and documented with
6 Clemson University.

7 Q. And she wrote references to Clemson.

8 A. She did evaluations for Clemson. She wrote
9 letters to me. Thank-you letters documenting my teaching
10 and my abilities.

11 Q. Did you have any conversations with Marilyn
12 Raines after you left the employment with R.C. Edwards?

13 A. Yes.

14 Q. Do you remember when you had those
15 conversations?

16 A. I met with her during the summer.

17 Q. The summer of '09.

18 A. Yes.

19 Q. Where did you meet with her?

20 A. We met at a restaurant in downtown Central.
21 She had been at the dentist. I can't remember the name.
22 It's a deli.

23 Q. What did you speak about at that deli?

24 A. I don't recall the entire conversation, but we
25 discussed about Mr. Culler preventing me from getting the

1 job at West-Oak Middle School and what happened. And she
2 said she knew that was going to happen.

3 Q. Did Marilyn Raines say to you that Mr. Culler
4 prevented you from getting the job at West-Oak?

5 A. I said that. She said she knew that was going
6 to happen.

7 Q. Did you go into what the "that" was that was
8 going to happen?

9 A. No. I did not ask her what the that was.

10 Q. Were there any other conversations or meetings
11 that you had with Ms. Raines?

12 A. Well, still, she also said she knew there would
13 be problems for me getting jobs because all of my
14 employment was at Edwards, and that was going to cause me
15 problems with getting a future teaching position.

16 Q. Did she go into why she thought that would
17 cause a problem?

18 A. She just said because all of my references
19 would be coming out of Edwards and Pickens County.

20 Q. Now, you've also added a claim for intentional
21 infliction of emotional distress, sometimes called
22 outrage, against Gary Culler, since the last time.

23 What conduct of Mr. Culler do you consider to
24 be extreme or outrageous? What did he do to you that you
25 consider to be extreme or outrageous?

1 A. Can you please show me the actual charges, so I
2 can refresh myself? And I'll be able to explain.

3 Q. You need a copy of the complaint?

4 A. Yes. Because I'm actually on some medication,
5 so it would be easier for me to refresh everything. I'm
6 sorry. I'm on Clonopin.

7 Q. I'm asking what conduct of Mr. Culler did you
8 consider to be extreme or outrageous? If you need to
9 look at the complaint, feel free.

10 A. Can you repeat the question?

11 Q. What conduct of Mr. Culler did you consider to
12 be extreme and outrageous?

13 A. Well, throughout the school year, the hostile
14 work environment, the harassment, the threats. He was
15 always telling me what he was going to force me to do.
16 He would force me to do something that he wouldn't force
17 anyone else to do.

18 For example, when I first came back from having
19 gallbladder surgery, he forced me to have a meeting to
20 discuss the yearbook. He was told by the assistant
21 principal beforehand, who also was in the room, and Mary
22 Bridges said, I told Gary this was not the time to have
23 this meeting with you.

24 So it was just a constant attack on me while I
25 was there. It was the forcing of writing the letter of

1 resignation, with his threats, that I believed 100
2 percent, when he told me that if I didn't write this
3 letter of resignation I would lose my teaching
4 certificate.

5 Before that threat was made, he tried to force
6 me to sign my contract, and I told him that I would not
7 do anything to jeopardize my certificate because I know
8 if you sign a contract at one school district and then
9 you go and sign one at another school district, you can
10 lose your certificate. It can be suspended.

11 So I made that clear that that was something of
12 the utmost importance. So when he was threatening me
13 about if I didn't write this letter right then, I would
14 never be able to teach again in South Carolina. I would
15 lose my certificate. And his whole behavior in the room,
16 and the things that occurred, caused emotional, mental --
17 all sorts of distress.

18 And it unfortunately did not stop. When he
19 mailed me that letter addressed not with his handwriting,
20 with the king of hearts love stamp, no return address --
21 it was a threatening letter and it was very disturbing.

22 As I said before in the earlier deposition, I
23 had to take it to law enforcement and have all that
24 documented. It was documented with my counselor. It's
25 just the whole thing. As we discussed before, it's the

1 whole package, and it's meant to, you know, inflict pain
2 and emotional distress of that nature.

3 Everything that he did while I was there,
4 especially towards the end when he realized that I didn't
5 sign my contract. The anger costing me the job. It's
6 all there, just as it says.

7 Q. When you say, Cost you the job, are you saying
8 that Gary Culler cost you the job where?

9 A. At West-Oak Middle School.

10 Q. How did he do that? How did Gary Culler cost
11 you the job at West Oak?

12 A. When he was contacted, whatever he said, cost
13 me the job at West-Oak Middle School.

14 Q. Who told you that Gary Culler was contacted?

15 A. Earnestine Williams.

16 Q. And that's at this October 1st --

17 A. Yes. She said it was policy that Oconee County
18 always contacts the current or former principal.

19 Q. So what you testified to back in January --
20 what you've added to your complaint is the basis of your
21 outrage claim.

22 A. Right. And it has caused emotional distress.
23 When I was in that room and he came in, I was in a
24 complete breakdown. When my sister came to switch
25 vehicles because it was raining, and I needed her SUV so

1 my desk and furniture would not get wet in the back of my
2 pickup truck, and the door was locked. I was in such a
3 state of shock and distress that it took her and the
4 bookkeeper, Susan Roland, to keep banging on the door and
5 making gestures for me to even come to the door to unlock
6 it.

7 And then I was afraid to leave the room to go
8 down and exchange cars because I was afraid that I would
9 be encountered by him again, and he would go off and
10 attack me again.

11 Q. How did he attack you?

12 A. Verbally attacking me.

13 Q. In Mary Bridges' office.

14 A. Yes.

15 Q. Did you see a doctor or therapist after you
16 left your employment with Pickens County School District?

17 A. Yes. I have a counselor.

18 Q. What kind of counselor is it?

19 A. She has a Ph.D. I went to see my internist,
20 and he had recommended that I see a counselor.

21 Q. So she is basically a therapist. What does she
22 specialize in?

23 A. I'm not sure.

24 Q. Some people are marriage --

25 A. No. I'm not sure. But she worked at Clemson

1 University and was involved in the School of Education,
2 so she has background on the education issues, so she was
3 able to understand my specific situation.

4 Q. What was her name?

5 A. Cheryl Warner.

6 Q. Do you still see Dr. Warner?

7 A. She is actually in the process of leaving
8 Clemson and transferring to Indiana.

9 Q. What medicine did you say you were on right
10 now?

11 A. Right now I'm on Clonopin.

12 Q. Does that affect your ability to be able to
13 remember?

14 A. It's a sedative.

15 MS. DICKEY: I don't have anything else.

16 MR. BARLOW: Can I ask one more?

17 FURTHER EXAMINATION

18 BY MR. BARLOW:

19 Q. When was the last time that you saw Cheryl
20 Warner for counseling?

21 A. The last time?

22 Q. Yes, ma'am.

23 A. It was the last week in July. I believe the
24 last Thursday in July. I've had some e-mails back and
25 forth with her.

1 Q. July 2012?

2 A. Yes, sir. And she has recommended another
3 counselor for me to contact, that she set up, and I'm
4 going to be doing that once all this settles down. And
5 I'm seeing my internist on Wednesday.

6 Q. What is the name of the other counselor? Do
7 you know that?

8 A. I think her name is Marie O'Hara. I'm not
9 sure. She gave me a list of several.

10 MR. BARLOW: Thank you. That was actually
11 three questions.

12 Thank you for indulging me.

13 (The deposition concluded at 11:00 a.m.)

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1 CERTIFICATE OF REPORTER

2 I, Lisa A. Garson, Court Reporter and Notary
3 Public for the State of South Carolina at Large, do
4 hereby certify:

5 That the foregoing deposition was taken before
6 me on the date and at the time and location stated on the
7 1st page of this transcript; that the deponent was duly
8 sworn to testify to the truth, the whole truth and
9 nothing but the truth; that the testimony of the deponent
10 and all objections made at the time of the examination
11 were recorded stenographically by me and were thereafter
12 transcribed; that the foregoing deposition as typed is a
13 true, accurate and complete record of the testimony of
14 the deponent and of all objections made at the time of
15 the examination to the best of my ability.

16 I further certify that I am neither related to
17 nor counsel for any party to the cause pending or
18 interested in the events thereof.

19 Witness my hand, I have hereunto affixed my
20 official seal this 20th of August, 2012, at Greenville,
21 Greenville County, South Carolina.

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Lisa A. Garson,
Court Reporter
Notary Public
State of South Carolina
My Commission Expires:
December 19, 2019

1 I N D E X

2 PAGE

3 EXAMINATION

4 BY MR. BARLOW 383

5 FURTHER EXAMINATION

6 BY MS. DICKEY 414

7 BY MR. BARLOW 425

8 Reporter's Certificate 427

9 E X H I B I T S

10 Defendants'

11 28 June 8, 2010 Letter From Tammy Brock to Mariam Noorai 403

12 29 June 1, 2010 Letter From Mariam Noorai to Tammy Brock 403

13 30 June 16, 2010 Letter From Mariam Noorai to Tammy Brock 404

14 31 January 24, 2011, E-mail from Mari Noorai to Tammie 408

15 Fletcher

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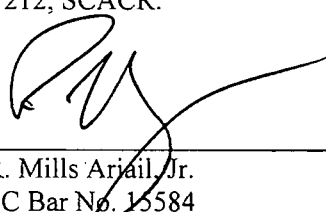
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Supplemental Record on Appeal complies with Rule 210(g), SCACR and Rule 212, SCACR.

August 12, 2015



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Certificate of Counsel

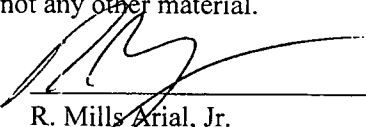
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SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 2, 2015



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

RECEIVED

J. Cordell Maddox, Jr., Circuit Court Judge

AUG 17 2015

Case No.: 2011-CP-37-279

SC Court of Appeals

Mariam R. Noorai Appellant,

v.

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

PROOF OF SERVICE

I certify that I have served the Appellant's Supplemental Record on Appeal by
depositing a copy of it in the United States Mail, postage prepaid, on August ____, 2015,
to all counsel of record listed below.

August 13, 2015


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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

Mariam R. Noorai, Appellant,

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, Respondents.

Appellate Case No. 2014-001282

Appeal From Oconee County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-160
Heard March 7, 2016 – Filed April 6, 2016

AFFIRMED

R. Mills Ariail, Jr., of Law Office of R. Mills Ariail, Jr.,
of Greenville, for Appellant.

David T. Duff and Laura Callaway Hart, both of Duff,
White & Turner, LLC, of Columbia, for Respondents
School District of Pickens County, Gary Culler, Donald
Boggs, Richard Hudak, Marilyn Raines, and Dr. Kelly
Pew.

Thomas Kennedy Barlow and Mary Allison Caudell,
both of Childs & Halligan, P.A., of Columbia, for
Respondents School District of Oconee County and
Ernestine Williams.

PER CURIAM: Appellant Mariam R. Noorai appeals the circuit court's order granting Respondents' motions for summary judgment. Appellant argues the circuit court erred by granting summary judgment on her claims for negligent misrepresentation, breach of contract, breach of contract accompanied by fraudulent acts, and intentional infliction of emotional distress. Appellant further claims the circuit court failed to conduct a full and proper summary judgment hearing.¹ We affirm.

1. We find the circuit court properly granted summary judgment to Respondents School District of Pickens County (SDPC) and Gary Culler on Appellant's claim for negligent misrepresentation because Appellant failed to produce evidence showing a genuine issue of material fact existed with regard to whether she suffered a pecuniary loss as a proximate result of SDPC and Culler's alleged misrepresentations. *See Carolina Chloride, Inc. v. Richland Cty.*, 394 S.C. 154, 164, 714 S.E.2d 869, 873 (2011) (requiring a plaintiff to show she suffered a pecuniary loss as a proximate result of her reliance on the misrepresentation to recover on a claim of negligent misrepresentation); *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007) (explaining for a plaintiff to defeat a motion for summary judgment a court must determine "a genuine issue of material fact exists for each essential element of the plaintiff's claim"). In Appellant's affidavit and deposition,² Appellant attributed her employment difficulties to "comments" and "negative information" provided to prospective

¹ Appellant appeals the grant of summary judgment only on the causes of action naming Respondents School District of Pickens County and Gary Culler as defendants. Thus, the grant of summary judgment on Appellant's other causes of action, which included the actions against the other respondents, is conclusive. *See In re Morrison*, 321 S.C. 370, 372 n.2, 468 S.E.2d 651, 652 n.2 (1996) (noting that an unappealed ruling precludes consideration of the issue on appeal).

² We considered only the portions of Appellant's deposition that were actually presented to the circuit court. *See* Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal.").

employers by employees of SDPC and claimed she was unable to obtain new employment because of the "references going out" from SDPC's district office. Thus, the only evidence of a pecuniary loss showed the loss was due to negative employer references, rather than the alleged misrepresentations regarding a letter of resignation and her teaching certificate. Appellant failed to offer any evidence showing her inability to obtain new employment was due to the alleged misrepresentations.

To the extent Appellant argues she suffered a pecuniary loss because SDPC used the letter of resignation to deny her unemployment benefits, Appellant failed to argue this issue to the circuit court, and we found no evidence contained in the materials provided to the circuit court to support this assertion. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

2. We find the circuit court properly granted summary judgment to SDPC and Culler on Appellant's claim for breach of contract accompanied by fraudulent acts because Appellant failed to produce evidence showing a genuine issue of material fact existed with regard to whether SDPC or Culler breached the contract between SDPC and Appellant. First, the circuit court properly granted summary judgment to Culler on this issue because he and Appellant were never in a contractual relationship. *See Armstrong v. Collins*, 366 S.C. 204, 223, 621 S.E.2d 368, 377 (Ct. App. 2005) ("Having a contract is a prerequisite to proving breach of contract accompanied by a fraudulent act."). Second, the circuit court properly granted summary judgment to SDPC on this issue because Appellant failed to offer any evidence tending to show SDPC breached its contract with Appellant. The contract between SDPC and Appellant required SDPC to employ Appellant for the 2008-2009 school year and compensate her pursuant to a district salary schedule, and it is undisputed SDPC complied with these obligations. Thus, there is no genuine issue of material fact regarding whether SDPC breached its contract with Appellant. *See id.* (explaining a plaintiff must show a breach of contract to succeed on a cause of action for breach of contract accompanied by fraudulent acts).

To the extent Appellant argues covenants of good faith and fair dealing and statutory provisions were "implied into" her contract with SDPC, Appellant failed to raise these issues to the circuit court, and thus, they are unpreserved. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be

raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

3. We find the circuit court properly granted summary judgment to Culler on Appellant's claim for intentional infliction of emotional distress (IIED) because Appellant failed to produce evidence showing a genuine issue of material fact existed with regard to whether Culler's conduct was sufficiently extreme and outrageous. See *Gattison v. S.C. State Coll.*, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (Ct. App. 1995) (explaining that to prevail on a claim for IIED a plaintiff must show "the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, and utterly intolerable in a civilized community"); *Hansson*, 374 S.C. at 358, 650 S.E.2d at 72 (noting the circuit court "plays a significant gatekeeping role in analyzing a defendant's motion for summary judgment" on a claim for IIED); *Gattison*, 318 S.C. at 151-52, 456 S.E.2d at 416 (explaining the circuit court must submit this issue to the jury only after it makes an initial determination the defendant's conduct was extreme and outrageous enough to permit recovery). In the light most favorable to Appellant, Culler's actions were not so extreme and outrageous so as to exceed all bounds of decency.

Furthermore, the circuit court properly granted summary judgment to Culler on this issue because Appellant failed to produce evidence showing a genuine issue of material fact existed with regard to whether Appellant's emotional distress was sufficiently severe. See *Hansson*, 374 S.C. at 358, 650 S.E.2d at 72 (explaining if the conduct was extreme and outrageous enough to permit recovery, the circuit court should next proceed "with a similar inquiry into whether [the plaintiff]'s resulting emotional distress was sufficiently 'severe'"). Appellant claimed she suffered from post-traumatic stress disorder and anxiety and Culler's actions made her feel uncomfortable, intimidated, and depressed. Appellant asserted several instances of crying and grinding her teeth at night due to these events. We find Appellant's allegations regarding her emotional distress were insufficient to proceed on a claim for IIED because they were "mere bald assertions" uncorroborated by any other evidence. See *id.* ("[A] party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions."); *id.* at 358-59, 650 S.E.2d at 72 ("[T]he court must look for something 'more'—in the form of third party witness testimony and other corroborating evidence—in order to make a prima facie showing of 'severe' emotional distress.").

4. We deny Appellant's request to remand this case to the circuit court for a more complete hearing because Appellant expressly waived any objection to the circuit court's abbreviated hearing. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A plethora of cases from the appellate entities of this state recognize that constitutional rights may be waived.").

AFFIRMED.

SHORT, THOMAS, and KONDUROS, JJ., concur.

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
Appellate Case 2014-001282

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Mariam R. Noorai.....Appellant,

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.

PETITION FOR REHEARING FROM APPELLANT MARIAM R. NOORAI

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S.C. Code Ann. § 59-26-40.....	1
S.C. Code Ann. § 59-63-330.....	2
S.C. Code Ann. § 59-63-335	2

ARGUMENT

Appellant respectfully submits that the Court may have failed to consider or afforded the improper weight to Appellants' evidence submitted to the Court, and therefore Appellant petitions this Honorable Court for a rehearing based on the following:

1. Appellant provided sufficient evidence to show a genuine issue of material fact about whether she suffered a pecuniary loss as a proximate cause of Respondents' misrepresentations.

This Court failed to consider many pieces of evidence showing that Respondents made actionable misrepresentations to Appellant. This Court failed to consider that (1) Respondent Culler misrepresented to Appellant that Appellant was required to sign a letter of resignation "that day" because she chose not to renew her contract, and (2) Respondent Culler would automatically "pull" her teaching certificate if she failed to sign the forced resignation letter. These representations are false. First, Appellant's contract contains no term requiring her to sign a letter of resignation. S.C. Code Ann. § 59-26-40, the statute that governs Appellant's contract, does not require a letter of resignation. The contract expires automatically. Second, Respondents did not have the authority to *automatically* revoke Appellant's teaching certificate if she failed to sign a resignation letter. S.C. Code Ann. §§ 59-25-159 to -160 provide that Appellant's certificate could only be revoked for "good cause" and lists twelve categories, none of which contains the failure to sign a resignation letter. S.C. Code Ann. § 59-25-170 provides that Appellant's certificate could not be revoked or suspended without written notice to Appellant and a hearing. These misrepresentations to Appellant effectively forced her resignation and led to the negative references that Respondent Culler provided to other schools. Accordingly, but for the misrepresentations, Appellant never would have left the school, and never would have suffered the pecuniary loss of continually being denied employment due to the

false information. Appellant requests that the Court grant a rehearing to reconsider this evidence.

2. Appellant provided sufficient evidence to show a genuine issue of material fact about whether Respondents breached the contract between Appellant and Respondents.

Appellant had a contract with Respondent School District of Pickens County ("SDPC"). This contract provided for employment for the 2008-2009 school year. Implied into this contract are S.C. Code Ann. §§ 59-24-60 & 59-63-335, which impose a *mandatory* duty on school administrators to report criminal conduct to law enforcement authorities. Appellant testified that the criminal conduct was never reported to law enforcement. (Supp. R. p. 89, lines 3-6, p. 107, lines 1-12.) Also implied into Appellant's contract is S.C. Code Ann. § 59-63-330 imposes a mandatory duty on SDPC to report school-related crimes to the South Carolina Department of Education. SDPC did not do so. (Supp. R. p. 122, lines 12-17). Accordingly, there is a genuine issue of material fact, and Appellant requests that this Court grant a rehearing to reconsider this evidence.

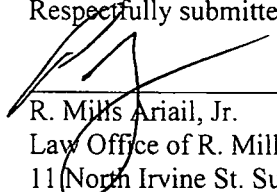
3. Appellant provided sufficient evidence to show a genuine issue of material regarding Appellant's intentional infliction of emotional distress claim.

Respondent Culler repeatedly berated, belittled, and yelled at Appellant for reporting the incidents that happened to her. When Culler forced Appellant to sign a resignation letter, he was so worked up and excited that he had an erection. This incident alone is extreme and outrageous, and is certainly so when considered as systematic pattern of conduct. This incident "exceed[s] all possible bounds of decency . . . [and is] utterly intolerable" in a civilized community. *Gattison v. S.C. State Coll.*, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (Ct. App. 1995).

Second, Appellant provided sufficient evidence to show that her emotional distress was sufficiently severe. In *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 73

(2007), cited by the Court in its opinion, the appellant's emotional damages "rested on his testimony that he lost sleep at night and [was] grinding his teeth in his sleep." The *Hansson* appellant never received treatment or medication from any other physician or counselor, did not lose any time from work, and did not affect his ability to perform his job. *Id.* Here, Appellant developed post-traumatic stress disorder. Here, Appellant can no longer find work as a result of Respondent Culler's systematic abuse. These cases are distinguishable. Appellant requests that this Court reconsider the substantial evidence showing the emotional distress that Respondent Culler's caused Appellant.

Respectfully submitted,



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April 20, 2016
Greenville, South Carolina

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

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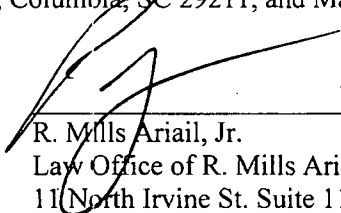
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Gary Culler, Donald Boggs, Richard Hudak, Earnestine Williams, Marilyn
Raines and Dr. Kelly Pew in their individual capacities,

Of whom the School District of Pickens County and Gary Culler

are Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing on all interested parties by sending a copy via email and US Mail on April 20, 2016, addressed to the Respondents' attorneys of record, Laura Callaway Hart and David T. Duff, PO Box 1486, Columbia, SC 29202, Thomas Kennedy Barlow, PO Box 11367, Columbia, SC 29211, and Mary Allison Caudell, PO Box 11367, Columbia, SC 29211.



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The South Carolina Court of Appeals

Mariam R. Noorai, Appellant,

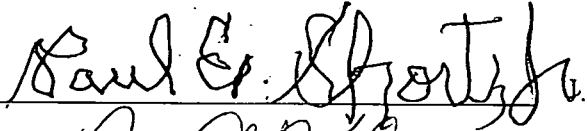
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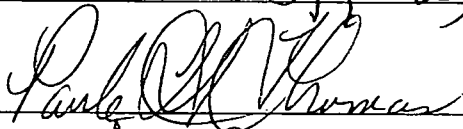
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Appellate Case No. 2014-001282

ORDER

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






_____ J.

Columbia, South Carolina

FILED

May 20, 2016

cc:

Thomas Kennedy Barlow, Esquire

Laura Callaway Hart, Esquire

David T. Duff, Esquire
R. Mills Ariail, Jr., Esquire
Mary Allison Caudell, Esquire
The Honorable J. Cordell Maddox, Jr.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
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AUG 27 2015
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Raines and Dr. Kelly Pew in their individual capacities, Respondents.

FINAL BRIEF OF APPELLANT MARIAM R. NOORAI

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court erroneously grant summary judgment in favor of the School District of Pickens County, and against Ms. Noorai, on the negligent misrepresentation cause of action, given that Ms. Noorai presented admissible summary judgment evidence in support of each element of this cause of action?

2. Did the Circuit Court erroneously grant summary judgment in favor of the School District of Pickens County, and against Ms. Noorai, on the breach of contract cause of action, given that Ms. Noorai presented admissible summary judgment evidence that Principal Culler and other employees breached the implied covenant of good faith and fair dealing, and the South Carolina statutory provisions, implied by law into her contract?

3. Did the Circuit Court erroneously grant summary judgment in favor of the School District of Pickens County, and against Ms. Noorai, on the breach of contract accompanied by fraudulent acts cause of action, given that Ms. Noorai presented admissible summary judgment evidence not only of a breach of her contract but of conduct by school district employees that amounted to dishonesty in fact and unfair dealing?

4. Did the Circuit Court erroneously grant summary judgment in favor of Principal Culler and against Ms. Noorai on the intentional infliction of emotional distress cause of action, given that Ms. Noorai presented admissible summary judgment evidence of all elements of this claim?

5. Did the Circuit Court, in violation of Rule 56, SCRCP, and Ms. Noorai's state and federal due process rights, commit reversible by terminating the summary judgment

before Ms. Noorai's attorney had the opportunity to make responsive arguments on her behalf?

STATEMENT OF THE CASE

On March 21, 2011, Plaintiff-Appellant Mariam N. Noorai filed a civil action for damages against the following Defendants: the School District of Pickens County ("SDPC"), the School District of Oconee County ("SDOC"), Gary Culler, Donald Boggs, Richard Hudak, Earnestine Williams, Marilyn Raines and Dr. Kelly Pew in the Court of Common Pleas for Oconee County, South Carolina. (Supp. R. p. 2). In this action, the Plaintiff alleged that she was injured by the tortious conduct and breach of contract by the Defendants. The Plaintiff sought to recover damages for these injuries.

The Defendants SDPC, Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines, and Dr. Kelly Pew filed an Answer on May 18, 2011, denying liability and raising various affirmative defenses. The Defendants SDOC and Earnestine Williams, filed an Answer on April 28, 2011, denying liability and raising various affirmative defenses.

On June 11, 2012, the Plaintiff filed a Second Amended Complaint in the action. (R. p. 9). The Defendants SDPC, Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines, and Dr. Kelly Pew filed an Answer on June 29, 2012, denying liability and raising various affirmative defenses. (R. p. 30). The Defendants SDOC and Earnestine Williams filed an Answer on June 22, 2012, denying liability and raising various affirmative defenses.

On February 11, 2014, the SDPC, Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines and Dr. Kelly Pew moved for summary judgment on all claims. On

February 11, 2014 Defendants SDOC and Earnestine Williams also moved for summary judgment on all claims. The matter came before the Honorable J. Cordell Maddox, Jr., Circuit Court Judge, on April 17, 2014 for a hearing. The Circuit Court, however, ended the hearing after hearing argument on only the first two causes of action. By Order filed May 13, 2014, the Court granted summary judgment in favor of all Defendants and against the Plaintiff on all claims. (R. p. 70).

On June 11, 2014, the Plaintiff filed and served a Notice of Appeal.

STATEMENT OF FACTS

In August of 2007, the SDPC hired Mariam R. Noorai to work as an eighth grade English/Language Arts teacher at R.C. Edwards Middle School in Pickens County, South Carolina, for the 2007 to 2008 school year. (Supp. R. p. 40, lines 1-7). The SDPC also tasked her with teaching the yearbook class and with producing the school's yearbook. (R. p. 13, para. 10; Supp. R. p. 41, lines 13-24). Pursuant to her contract with the SDPC, Mr. Noorai received a salary of approximately \$40,000 for performing these duties. (R. p. 206 p. 24, lines 5-8). At this time, the SDPC employed Dr. Chuck Pressley as the Edwards principal. (Supp. R. p. 40, lines 5-7).

Ms. Noorai began teaching English and writing to the eighth grade students and also taught the yearbook class. She performed her employment duties in an exemplary and highly professional manner. In February of 2008, however, a student at Edwards sexually assaulted Ms. Noorai. She reported the incident to Dr. Pressley. Under Dr. Pressley's leadership, the school pressed charges against the student and law enforcement arrested him. The student was placed on homebound instruction and Ms. Noorai was relieved from having to teach him again. (R. p. 2, para. 4).

Despite this highly disturbing incident, Ms. Noorai continued to perform her employment duties in an exemplary and highly professional manner. She received high ADEPT teaching standards scores and the yearbook published under her supervision was widely viewed as a success. (R. p. 13 at 11). At the end of the 2007 to 2008 school year, the SDPC offered Ms. Noorai a second employment contract entitled Contract for Employment for the 2008-2009 school year. (R. p. 191). The agreement provided that it was an "Annual First Year" contract as defined by S.C. Code Ann. § 59-26-40; that Ms. Noorai would render teaching services for 190 days for the 2008-2009 school year; and that the SDPC would pay for these services during the "life of this contract. . . ."

She signed the contract. The new contract provided for a salary "right above" \$40,000. (Supp. R. p. 45, lines 13-17; Supp. R. p. 59, lines 12-13).

After Ms. Noorai signed this contract, the SDPC announced that the Defendant Gary Culler had been assigned to be the principal at Edwards. Ms. Noorai did not know Mr. Culler before this appointment. (Supp. R. p. 45, line 24-p.46, line 1). The SDPC also changed Ms. Noorai's teaching duties. As she explained in her deposition:

We were now on an A/B schedule, so it was no longer a semester long course I taught half team six in the fall and team five in the spring. It was then a class where I had to teach an A/B switching schedule. And also the District had required that I was not to teach a writing class. I was to enrich and enhance all English language arts standards for eighth grade and English I.

(Supp. R. p. 46, lines 8-15). Because Ms. Noorai was also required to teach the yearbook class, the new teaching duties placed greater stress on her and required her to give up a daily planning period in order to teach all the classes. (Supp. R. p. 48, lines 1-5). In fact, Ms. Noorai "had the heaviest workload of any core teacher in the school." (Supp. R. p. 49, lines 10-16).

During the 2008 to 2009 school year, the SDPC also employed: Donald Boggs and Mary Bridges as the Edwards assistant principals; Marilyn Raines as the head of the Edwards English Department; and Richard Hudek as an Edwards industrial arts teacher. In addition, the SDPC employed Dr. Kelly Pew as the Assistant Superintendent of Human Resources for the SDPC. (R. p. 12, paras. 4-6, 8-9).

As the 2008 to 2009 school year progressed, Principal Culler began to harass, intimidate, and bully Ms. Noorai in violation of her contract. Principal Culler made Ms. Noorai feel "uncomfortable from the beginning" of their relationship. (R. p. 207 at 36, line 8). Ms. Noorai noticed that Principal Culler looked at her in a "leering" fashion. He also had a strange habit of "cornering" her in a room or a hall when he talked to her, so as to block the exit. In addition, Mr. Culler was "very argumentative" with and "aggressive" toward Ms. Noorai. (R. p. 207 at 36, lines 13-23; Supp. R. p. 55, line 24-p. 56, line 2). Ms. Noorai found Mr. Culler's conduct toward her to be "intimidating" and, eventually, she became "scared" of him. (Supp. R. p. 56, lines 5-12). She decided that the best plan was to avoid him as much as possible. (Supp. R. p. 56, lines 21-23).

As the 2008 school year progressed, Principal Culler's harassment, intimidation, and bullying of Ms. Noorai escalated. The first incident of this behavior arose from a student plagiarizing incident in November of 2008. Following her discovery of plagiarism by the student, Ms. Noorai reported the student to Mr. Boggs for discipline. (Supp. R. p. 60, lines 4-23). Mr. Boggs, however, simply gave the student a "zero" for the assignment and took no further disciplinary action. (Supp. R. p. 63, lines 21-25). Believing that further discipline was warranted, according to discipline policy as written in the R. C. Edwards Middle School Handbook for the 2008-2009 school year, Ms.

Noorai reported the situation to Principal Culler. Although Principal Culler agreed that further discipline was warranted, (Supp. R. p. 67, line 16-p. 68, line 2), he never imposed any further discipline on the student. Instead, Principal Culler told Ms. Noorai that Mr. Boggs was unhappy that Ms. Noorai had complained to Principal Culler. (Supp. R. p. 68, lines 15-21). In this regard, Principal Culler confronted Ms. Noorai and, "in loud, intimating and angry terms denounced the Plaintiff for consulting with Culler after Boggs had 'handled' the student's discipline." (R. p. 13, para. 14).

Despite her conflicts with Principal Culler, Ms. Noorai in December of 2008 signed a letter of intent with the SDPC that indicated that she intended to stay at Edwards. (Supp. R. p. 70, lines 3-4, 12-19). Ms. Noorai nonetheless felt overwhelmed by having to teach 10 classes plus the yearbook class. She considered leaving the Pickens County School District for the Oconee County School District because of her workload. (Supp. R. p. 72, line 24, p. 73, lines 17-23).

As the year progressed, the new and heavier workload imposed on Ms. Noorai began to impact her ability to perform her teaching duties at the highest level. Ms. Noorai expressed concerns about her heavy workload to Marilyn Raines and Principal Culler. (Supp. R. p. 49, lines 11-12). Ms. Raines advised Ms. Noorai to resign from teaching the yearbook class. (Supp. R. p. 49, lines 24-25). Principal Culler also initially seemed sympathetic to Ms. Noorai's work load problems and, in December of 2008, told her he would not force her to be the yearbook adviser for the 2008-2009 school year. (Supp. R. p. 51, lines 16-25, p. 52, lines 1-8). Ms. Noorai took Mr. Culler at his word and thanked him. (Supp. R. p. 52, lines 6-11).

Ms. Noorai nonetheless decided to explore her options and, in January of 2009, applied for a position in the Oconee County School District. (Supp. R. p. 76, lines 1-2). She interviewed with the Oconee County School District on February 10, 2009. (Supp. R. p. 90, lines 4-7).

During the spring semester of 2009, three incidents occurred that underscored Ms. Noorai's concerns that Principal Culler was engaged in a pattern of harassment, intimidation, or bullying toward her and was also allowing others at the school to treat her in the same fashion. On January 27, 2009, during a class change, a male student at Edwards confronted Ms. Noorai in a locker area where the students kept their books. There were stairs "going out on either side" of the stairwell. (Supp. R. p. 91, lines 18-22). This was an area where there had been "past scuffles" and teachers knew "you had to be very vigilant." (Supp. R. p. 92, lines 4-6). The area was "right below Mr. Culler's office" and near the area where Mr. Boggs usually stationed himself during class changes. (Supp. R. p. 128, lines 7-8).

The male student was larger, wider, and taller than Ms. Noorai. (Supp. R. p. 93, lines 5-6). He "began singing a very inappropriate sexually explicit song in which he inserted my name." He kept repeating the lyric "I'm ready to go right now" with her name in the lyrics. (Supp. R. p. 93, lines 11-21).

Ms. Noorai in a loud voice told the student "this is not appropriate. You need to stop." (Supp. R. p. 93, lines 24-25). She expected Mr. Boggs, or some other teacher, to hear her loud voice and rescue her, but "nobody did." (Supp. R. p. 94, line 20). As Ms. Noorai explained in her deposition, however, the student:

[J]ust kept on, and I was pinned because I was at the stairwell, and I could have fallen down the stairwell. The railing that's between going down and

going up was at my back. And he came and wrapped himself around me as he's singing these lyrics about being obsessed with me and wanting to have sex right then. And he pinned himself, and I was only slightly able to turn so that it wasn't full frontal contact between his organs, I guess, and mine. . . . And it was very uncomfortable because that was extremely inappropriate. And I was scared about falling down the steps, and there was nothing I could do to stop it.

(Supp. R. p. 94, lines 2-16). Finally, the student "let go, had a smile on his face, and he just walked away." (Supp. R. p. 95, lines 21-22).

Ms. Noorai immediately filed a complaint in Mr. Boggs' office. She filled out a "referral" form describing the incident and explaining that the student had "pinned" then "hugged her" while singing the lyrics. (Supp. R. p. 97, lines 4-24). Although Ms. Noorai did not characterize the incident as a physical or sexual assault in her referral, she considered the incident to be both a physical and sexual assault. (Supp. R. p. 98, lines 18-24).

She missed school the next day. Ms. Noorai did not report the assault to the police because she assumed the school district would do so. (Supp. R. p. 104, lines 2-11).

The student subsequently assaulted another student. Although the student was briefly suspended for this assault, Mr. Culler and Mr. Boggs incredibly allowed the student - after the suspension ended - to return to Ms. Noorai's class without any additional discipline whatsoever. (Supp. R. p. 122, lines 12-17). Having to face in class every day the very person who had sexually assaulted her without being disciplined, Ms. Noorai not surprisingly began to develop symptoms of post-traumatic stress disorder. As she explained in her affidavit:

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.

(R. p. 2, para. 5).

The second and third disturbing incidents occurred in April of 2009. Ms. Noorai's health began to decline. Her gall bladder basically stopped functioning. On April 2, 2009, doctors operated on Ms. Noorai for gall bladder problems. (R. p. 3, para. 8). Following this surgery, Ms. Noorai did not return to her teaching duties until April 15, 2009. On her first day back, Principal Culler called her into his office and told her he "had changed his mind" - he would require her to continue teaching the yearbook class for the 2009-2010 year. (Supp. R. p. 165, lines 12-21). He also told her that she "would have a bigger workload because it was a larger class." (Supp. R. p. 149, lines 9-10). He ignored her fragile physical and emotional condition and put more pressure on her. (R. p. 3, para. 8).

On April 23, 2009, Ms. Noorai, in accordance with school policy, kept a student beyond the end of the class period so he would be able to complete an exam. She gave the student a pass to explain his late arrival to his second period shop class with Mr. Hudak. (R. pp. 208-209 at 123, lines 19-25, 124, lines 13-18). On this day, Ms. Noorai was in a very weak and very pale condition as a result of her recent surgery. She still had "a tube sticking out of me." (R. p. 210 at 126, lines 17-18).

Mr. Hudak returned the student to Ms. Noorai with a note that the student would not be accepted to his class. The note also directed Ms. Noorai to send the student the next day. (Supp. R. p. 142, lines 1-4). At the end of the second period, Mr. Hudak, a "big, puffy, muscular, large man," (R. p. 210 at 126, line 14), "stormed into the hallway

outside Plaintiff's classroom doorway, verbally berating and belittling her in front of students. Verbally angered and with the intent to harass and intimidate Plaintiff, Hudak then stormed from the classroom...." (R. p. 17, para. 29). As Ms. Noorai recalled the incident in her deposition:

And I went down there and he started verbally berating me and screaming at me for being unprofessional for keeping a student. And he just went off and was screaming and shouting as my students were walking into my classroom. . . . He was screaming and shouting. It didn't matter what I said, he didn't hear me. He was gesticulating with his finger. I mean, it was a horrible, screaming, shouting thing. He was so angry that when he stood to leave, because it was getting ready for the late bell to ring . . . , he then stood back, slammed into one of my eighth grade students who was trying to enter my classroom. The girl hit the door and slammed her head, and I had to send another student to get ice for injury that Mr. Hudak caused and completely ignored.

(R. p. 211 at 127, lines 13-25, 128, lines 1-7). Ms. Noorai was quite frightened and "in fear of "Mr. Hudak during this incident. (R. p. 216 at 140, lines 1-5).

The Hudak incident was reported to Mr. Culler. Mr. Culler took no meaningful disciplinary action against Mr. Hudak but simply told Ms. Noorai to avoid him. (R. p. 18, para. 33). Mr. Hudak began sending intimidating emails to Ms. Noorai. (R. pp. 2-3, para. 6). In particular, Mr. Hudak on May 1, 2009, sent Ms. Noorai "a horrible, aggressive, nasty e-mail" that accused her of being unprofessional and further claiming that Principal Culler agreed she had been unprofessional. The email stated:

You seem to have lost sight that what you did was wrong. Keeping a student out of your class without that permission from that teacher is inconsiderate and unprofessional. . . . And then compounding the offense by putting a student in the middle of conflicting directions is worse.

(Supp. R. p. 153, lines 11-14, p. 154, lines 6-8).

The email upset Ms. Noorai so badly she "almost fainted." (R. p. 213 at 133, lines 17-22). She complained to Principal Culler who told her to stop having contact with

Mr. Hudak. Specifically, he told her “there will be no more contact and no apologies on either side.” (R. p. 215 at 139, lines 11-12).

By the end of the school year, Ms. Noorai “had endured so much that ... [she] felt forced to resign and seek employment elsewhere.” (R. p. 3, para. 7).

She “suffered both emotional and physical health problems as result of ...[her] treatment at the school as well from ...[her] excessive work load which included being in charge of the yearbook.” (R. p. 3, para. 7).

By contract dated May 15, 2009, the SDPC offered Ms. Noorai a “continuing contract” for the 2009 and 2010 school year. The contract required her to indicate her acceptance of the agreement by signing and returning the original to the SDPC superintendent. “(R. p. 217 at 146, lines 15-24).

Ms. Noorai decided that she could not continue her 2008 to 2009 workload for another year. She decided that she had to be relieved of the yearbook duties in order to continue. She told Principal Culler that “if I was going to be required or forced to do yearbook, that I would be unable to sign my contract.” (R. p. 220 at 151, lines 18-19). Ms. Noorai also was uncertain as to whether she wanted to return to Edwards for another school year because the environment at Edwards “was no longer a safe environment for me or my students.” (R. p. 221 at 152, lines 12-13).

On May 22, 2009, Mr. Culler summoned Ms. Noorai to his office to discuss whether she would sign the SDPC contract. Despite her misgivings about renewing her contract, Ms. Noorai was still open to signing the contract. As the meeting progressed, however, Principal Culler treated her in a “belittling manner.” He called her a “little writing teacher.” (R. p. 222 at 153, lines 7-12). He told her to sign the contract but

promised her that if she found another job in a month, he would "let her out" of the contract. The meeting ended on this note. (R. pp. 222-223 at 153, line 23-25, 154, lines 1-2).

By Memorial Day, Ms. Noorai had made her decision that she would *not* sign the contract. (R. p. 223 at 154, lines 6-9). She informed Assistant Principal Mary Bridges of her decision and that she had rejected Principal Culler's suggestion that she sign the contract and then break it if she got a new job. (Supp. R. p. 171, lines 19-25, p. 172, lines 1-3). Although Ms. Noorai did not have another job, she had scheduled a June 1, 2009 interview for a job opening at West Oak Middle School in Oconee County. (Supp. R. p. 172, lines 9-17).

Following her interview for the West Oak job, Ms. Noorai returned to Edwards later that day. When she went to check her mail, Principal Culler confronted her and told her "that he wanted me to write a letter of resignation so that he could interview" for her soon to be vacant position. (R. p. 225 at 159, lines 9-10).

On Thursday, June 4, 2009, Ms. Noorai met with Mary Bridges. Bridges told her "that Mr. Culler wanted her to tell me that if I did not write my [letter] [sic] of resignation that day, my certificate would be pulled and I would never teach again in the state of South Carolina." (R. pp. 227-228 at 161, lines 23-25, p. 162, line 1; R. p. 20, para. 43). Ms. Bridges also told her that "Gary doesn't think you're not going to write it, but he wants you to know what the consequences are and it's very serious." (R. p. 228 at 162, lines 21-23). Principal Culler also told her he would pull her certificate:

Q. Did Mr. Culler tell you directly that he would pull your certificate?

A. Yes.

Q. Okay.

A. He told me it was automatic. That he would pull it.

Q. So he said if you didn't sign your contract-

A. If I did not write the letter of resignation, my certificate to teach in South Carolina would be pulled automatically.

Q. Okay. But he didn't say that he would pull it, he said it would automatically be pulled, correct?

A. He said that, you know, he would have-because it's his say so it would be pulled. It did imply that it came from him.

...

Q. So he said that he would pull your certificate if you didn't draft the letter of resignation?

A. Yes, ma'am.

(Supp. R. p. 194, lines 21-25, p. 195, lines 1-11, 18-21). Ms. Noorai believed that Principal Culler had the authority to pull her teaching certificate "because Mary Bridges had said that he could. When I mentioned that to Marilyn Raines, she didn't say. So I trusted what they said." (Supp. R. p. 197, lines 2-6).

Fearful of having her teaching license pulled and worn down by the abusive conduct of Mr. Culler, Ms. Noorai went to Assistant Principal Bridges' office and began preparing a letter of resignation. Mr. Culler entered the office while she was working on the letter and began "berating" Ms. Noorai. Ms. Noorai noticed that Principal Culler actually seemed to take pleasure in berating her. Even worse, she notice that after a while he appeared to be having an erection:

So then sometime later the door opened and Mr. Culler came in there, and he was very angry. And he was screaming, and he was going off. He came and he closed the door. He's standing with a bright red face. He was

so angry. He was screaming. He had excitement. He had pleasure on his face because he seemed to take pleasure of the fact that I was completely scared, that I was completely crying, that it was – I was just in a state. It was horrible. . . . Then his face kind of changed a little bit, and it appeared that he was having an erection and he came forward to get in the seat that was in front of me and he sat down and his tone kind of changed. And he kept going off, “I thought I had explained it to you the first time. I needed you to write this letter.”

(R. pp. 233-234 at 167, lines 20-25, 168, lines 6-11). Principal Culler kept screaming at Ms. Noorai and refused to leave the office despite her requests. Finally, she told him “I’ll give in.” (R. p. 234 at 168, lines 16-20). Culler finally left the office and Ms. Noorai completed the letter of resignation. Ms. Noorai was extremely upset by this point and started crying after he left the office. (R. p. 235 at 169, lines 1-6; R. pp. 20-21, paras. 45 & 46; *see also* Supp. R. p. 192, lines 22-25 (“Q. Now would you say that you were harmed in some sort of way by having to draft this letter of resignation? A. Yes, emotionally.”)).

In late June of 2009, Ms. Noorai reported Mr. Culler’s abusive behavior to Dr. Pew, the SDPC Assistant Superintendent of Human Resources. (R. p. 238 at 184, lines 5-10). Dr. Pew instructed Principal Culler to write a letter of recommendation for Ms. Noorai but otherwise brushed off her complaints. In a letter subsequently written to Ms. Noorai, Dr. Pew even claimed that Ms. Noorai had misunderstood what Principal Culler had meant by telling her he would “pull” her teaching certificate. She subsequently sent Ms. Noorai an email advising her that since “I was no longer employed; therefore, there was no grievance and that this was the end of it.” (Supp. R. p. 209, lines 1-7).

In July of 2009, Ms. Noorai received a letter from Dr. Pew. In this letter Dr. Pew addressed her complaint that the Edwards officials had failed to report the sexual assault by the student. Dr. Pew told Ms. Noorai that she was mistaken. Dr. Pew claimed that

"law enforcement had been contacted and the situation had been handled and addressed."

(Supp. R. p. 106, lines 3-6). Ms. Noorai thereafter went to the sheriff's department to get a copy of the report. (Supp. R. p. 89, lines 3-6). She was informed that no report from Edwards concerning the incident could be found:

A. There was no such report. And at that time the resource -school resource officer Teddi Pallis was working at the desk, I guess the front desk.

Q. Okay.

A. And so the sheriff's department pulled her to come and say "Teddi, we can't find this report." And so she had an absolute look of shock. She said she had not heard about what had happened to me and that she had already had a file and she used her hand to gesture quite a thick file on this student and this would have been information that she should have been given at the school from the administrators.

(Supp. R. p. 107, lines 1-12).

Ms. Noorai left Edwards in the summer of 2009. With her exemplary teaching credentials and a written letter of reference from Principal Culler, she expected to have no problems getting the job at West Oak in Oconee County.

Indeed, Earnestine Williams of the School District of Oconee County told her she was the "the top candidate for the eighth grade position" and that her references were "quite good." (Supp. R. p. 228, lines 8-9; R. p. 245 at 218, line 22). Viewing the evidence and inferences in the light most favorable to the Plaintiff, however, Principal Culler contacted West Oak officials and orally made false and defamatory representations about Ms. Noorai that resulted in her not getting this job. Ms. Noorai subsequently learned that Principal Culler "had cost [her] the job" when she met with Ms. Williams. (Supp. R. p. 199, lines 11-12). Ms. Williams told her that "based on what Mr. Culler had said was the

reason I did not get the job.” (Supp. R. p. 213, lines 2-3). As Ms. Noorai explained in her deposition:

A. What I was told by Earnestine Williams in Oconee was that based on what Mr. Culler told West Oak and what Jami Verderosa, the new principal came and told her, was I went from being the top candidate for the eighth grade position to not being selected for that position. As Ms. Verdosa had told me on the phone, “After checking your references, we were unable to give you a job at this time.” And she also told me that she couldn’t remember exactly what was said by Mr. Culler that related to her by Ms. Verdosa, but it was something about what kind of teacher I was, whether budding or how I manage the classroom, she reassured me multiple times that Mr. Culler did not make reference to me being sexually assaulted by a student, but she kept reiterating that based on what Mr. Culler said cost me the job.

(Supp. R. p. 228, lines 5-21). Ms. Williams candidly told Ms. Noorai that “but for the reference Mr. Culler gave to Ms. Verderosa, I would have been the leading candidate for the Oconee position.” (R. p. 4, para. 11).

Rebuffed at West Oak, Ms. Noorai subsequently interviewed with two female administrators at Lakeside Middle School in Anderson 5. These administrators told her “untrue things about myself and my teaching.” (Supp. R. p. 218, lines 7-8). Specifically, they told Ms. Noorai that they understood that “I always had problems....like my induction year. I had all these problems in my induction year, which were not true.” (Supp. R. p. 218, lines 16-19). They also told her that they understood “that I had never been a core subject teacher, that I was only like a related arts teacher, which was not true. And they also tried to imply that I wasn’t offered a contract.” (Supp. R. p. 218, lines 22-25). Viewing the evidence and inferences in the light most favorable to the Plaintiff, the foregoing false information was provided to them by Principal Culler.

During an interview at Lakeview Middle School, the principal told Ms. Noorai that “she had been told that if something little, just some little something happens, that

I'm just going to walk out and leave my job and not come back." (Supp. R. p. 225, lines 23-25, p. 226, lines 1-3). A principal in Anderson 5 called one of Ms. Noorai's references "and told her that my file in Anderson 5 was full of red flags." (Supp. R. p. 219, lines 20-24). Even worse, the principal told the reference that "these red flags were going to prevent her from interviewing me for a position." (Supp. R. p. 220, lines 12-14). Viewing the evidence and inferences in the light most favorable to the Plaintiff, the foregoing false information was provided to the principal by Principal Culler.

The principal at Hillcrest told Ms. Noorai in an interview that Dr. Medford had told him that "there were issues coming from my former employer." (Supp. R. p. 221, lines 3-4). According to this official, he believed that that an issue with a student had led to another student being attacked and "it ended up embarrassing the principal so, therefore he forced me to write a letter of resignation. The Hillcrest principal also had the understanding that I was not offered a contract." (Supp. R. p. 221, lines 15-16). Viewing the evidence and inferences in the light most favorable to the Plaintiff, the foregoing false information was provided to the principal by Principal Culler.

Another principal told her that reference letter written by Mr. Culler "was a very negative reference letter. That it implies to a principal that there were problems." Supp. R. p. 221, lines 23-25, 205, lines 1-2).

Ms. Noorai also interviewed at the Greenville Middle School. An official there told her that what her former employer had told him about Ms. Noorai would be the deciding factor in whether he would offer me a job. (Supp. R. p. 223, lines 9-14). He did not offer her a job and Ms. Noorai therefore believes Principal Culler told him negative things about her. (Supp. R. p. 224, lines 12-16).

The employment "freeze out" traceable to Principal Culler and the SDPC has continued to this day. Despite her exemplary teaching credentials, Ms. Noorai has been unable to find other employment in her field. As she explained in her affidavit:

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.

(R. p. 4, para. 10).

As of the date of the filing of the Complaint, March of 2011, "Plaintiff has been continually denied employment opportunities with both SDOC and SDOC and the record created by Culler is now keeping her from any meaningful position in her educational field." (R. p. 21, para. 51).

ARGUMENT

Rule 56, SCRCP, provides that summary judgment is proper only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the

nonmoving party." Wachovia Bank v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 39 (2013), quoting Quail Hill, LLC v. County of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). An appellate court reviewing a grant of summary judgment applies the same standard used by the trial court. Doe ex rel. Doe v. Wal-Mart Stores, Inc., 393 S.C. 240, 244, 711 S.E.2d 908, 910 (2011).

The Appellant respectfully submits that, applying the foregoing standards, the Circuit Court erred in granting summary judgment on the following claims:

(1) the negligent misrepresentation claim asserted against the SDPC in Count Two;

(2) the breach of contract and breach of contract accompanied by fraudulent acts claims asserted against the SDPC in Count Three;

(3) the intentional infliction of emotional distress claims asserted against Principal Culler in Count Eight;

As will be seen, material questions of fact exist as to the Plaintiff's right to recover on the foregoing claims, and there is no ground for entering judgment in favor of the Respondents as a matter of law.

I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE SDPC ON THE NEGLIGENT MISREPRESENTATION CLAIM

Count Two of the SAC asserts a negligent misrepresentation claim against the SDPC arising from the false representations by its employees that Ms. Noorai was required to write a resignation letter and that Principal Culler would pull her teaching

certificate if she failed to do so. To recover for negligent misrepresentation, a plaintiff must prove six elements:

To establish liability for negligent misrepresentation, the plaintiff must show by a preponderance of the evidence: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the representation; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

Turner v. Milliman, 392 S.C. 116, 123, 708 S.E.2d 766 (2011). At the summary judgment stage, a plaintiff need produce only a scintilla of evidence on each element. *Id.*

Viewing the evidence and the inferences therefrom in the light most favorable to the Plaintiff, the record contains evidence of all six elements. Specifically, the record contains evidence that Principal Culler and Assistant Principal Mary Bridges, in the course of their employment for the SDPC, represented to the Plaintiff:

(1) that she was required to sign a letter of resignation “that day” because she chose not to renew her contract; and

(2) that Principal Culler would automatically “pull” her teaching certificate if she failed to do so. (*See Supp. R. p. 178, lines 18-21* (“Q. So . . . [Principal Culler] said that he would pull your certificate if you didn’t draft the letter of resignation? A. Yes, ma’am[.]”)); *R. p. 227 at 161, lines 23-25, 162, line 1*) (Assistant Principal Bridges told Ms. Noorai “that Mr. Culler wanted her to tell me that if I did not write my[letter] [sic] of resignation that day, my certificate would be pulled and I would never teach again in the state of South Carolina”).

The record further contains evidence that both representations are false. Ms. Noorai's contract for employment for the 2008 and 2009 school year contains no term requiring her to sign a letter of resignation. (R. p. 191). To the contrary, the contract clearly states that it is an Annual First Year contract as defined by S.C. Code Ann. § 59-26-40. This statute likewise does not require a teacher to write a resignation letter under any circumstances. The contract provides for a fixed 190 day term for the 2008-2009 school year. At the end of this term, the contract expires automatically. There is no further employment, unless the school district offers, and the teacher accepts, another annual contract, or a continuing contract.

Further neither the SCDC, Principal Culler, nor Assistant Principal Bridges had authority to *automatically* revoke Ms. Noorai's teaching certificate if she failed to sign the letter of resignation. S.C. Code Ann. § 59-25-159 provides that a teacher's certificate may be revoked, or suspended, only for "just cause." S.C. Code Ann. § 59-25-160 defines 12. categories of conduct that qualify as "just cause" for certificate suspension or revocation. Refusing to sign a resignation letter is not listed as "just cause" for termination, or suspension. Further, even when just cause for termination or suspension exists, a teaching certificate cannot be *automatically* revoked as Principal Culler represented. S.C. Code Ann. § 59-25-170 provides that a teaching certificate may not be revoked or suspended unless written notice has been given to the teacher and a hearing has been held.

The evidence presented to the Circuit Court is consistent with this law. Ms. Noorai testified that, after she signed the letter of resignation in reliance on the foregoing representations, she called the South Carolina Education Association "and they told me

that that was not the case. That no one would have their license pulled for not writing a letter of resignation.” (Supp. R. p. 216, line 24-25, p. 200, lines 1-2). Dr. Pew in her letter to Ms. Noorai effectively conceded that no automatic certificate revocation could occur and speculated that Ms. Noorai had “misunderstood” Principal Culler:

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.

(July 8, 2009 Letter from Dr. Kelly Pew to Ms. Noorai).

The record further contains evidence that the SCDC, Principal Culler, and Assistant Principal Bridges owed Ms. Noorai a duty to exercise reasonable care to communicate truthful information to her. The South Carolina Supreme Court has adopted Restatement (Second) of Torts § 552 as the standard of liability for negligent misrepresentation. MI-Lee Acquisition v. Deloitte Touche, 327 S.C. 238, 238 n.3, 489 S.E.2d 470, 470 n.3 (1997) (“[w]e adopt the § 552 standard of liability for the reasons set forth in the Court of Appeals’ decision”). Section 552 provides in pertinent part:

(1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transaction, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

MI-Lee Acquisition v. Deloitte Touche, 327 S.C. 238, 238 n.2, 489 S.E.2d 470, 470 n.2 (1997), quoting Restatement (Second) of Torts § 552(1). The facts are undisputed that Culler and Bridges made the foregoing false representations to Ms. Noorai in the course of their employment for the SDPC, and that they made the representations to guide Ms. Noorai as to what they represented to be the proper way to end her employment with the

SDPC . Culler, Bridges, and the SDPC accordingly owed Ms. Noorai a duty “to exercise reasonable care or competence” both to obtain and communicate truthful information to her.

Although a pecuniary interest is not required for negligent misrepresentations made in the course of employment, see Restatement (Second) of Torts § 552(1) (emphasis added) (“[o]ne who, in the course of his business, profession or employment, *or in any other transaction* in which he has a pecuniary interest...”), Culler, Bridges, and the SDPC also had a pecuniary interest in making the representations. (See Supp. R. p. 198, lines 18-19 (stating that by requiring her to resign, “the District wouldn’t have to pay for two positions”)). As Dr. Pew admitted in her deposition, the purpose of requiring resignation letters was to prevent duplicative hirings for the same position. She further explained that “in 2008, 2009 we were in such economic....we would never have wanted to over-hire.” (R. p. 357 at 54, lines 3-4). The SDPC even conceded in their summary judgment brief that “the District did not want to be in a position where Plaintiff changed her mind about leaving.” (R. p. 122 at 5, note 4). In addition, the resignation letter provided a basis for the SDPC to deny paying unemployment compensation to Ms. Noorai. (See Supp. R. p. 182, lines 4-6 (“[T]he letter of resignation has been used to try to stop the unemployment.”)).

Ms. Noorai, at the time she signed the resignation letter, believed that Principal Culler had the authority to pull her teaching certificate. (Supp. R. p. 197, lines 2-6). Certainly, given that both the Principal and the Assistant Principal were in charge of hiring and firing at the school, and both told her the same thing, she had every reason to

believe that these school administrators were telling her the truth. She reasonably relied on the false representation and drafted and signed a resignation letter.

Ms. Noorai suffered significant economic loss as a result of the negligent misrepresentation. She went from being the top candidate at West Oak to not being offered the position. The officials at West Oak and the other schools to which Ms. Noorai applied used the "resignation letter" as grounds for denying Ms. Noorai's employment application. Viewing the evidence in the light most favorable to the Plaintiff, these officials all concluded that Ms. Noorai had never been offered a contract for the 2009-2010 school year because she was not a worthy candidate for reemployment. They concluded she had been forced to resign. The principal at Lakeview Middle School concluded that Ms. Noorai was the type of employee who would resign during the school year for trifling reasons. (Supp. R. p. 225, lines 23-25, p. 226, lines 1-3 ("[S]he had been told that if something little, just some little something happens, that I'm just going to walk out and leave my job and not come back.")).

The SDPC also subsequently used this letter to deny her unemployment benefits. The false and negligently made representations, therefore, were both the cause in fact and the proximate cause of her inability to obtain other employment, her loss of unemployment benefits, and the emotional distress she experienced as a result.

With the evidence supporting each element of the negligent misrepresentation claim thus properly identified, each of the various rulings of the Circuit Court in granting summary judgment for the SDPC on this count are obviously error. First, the Court ruled as a matter of law that the resignation letter requirement and the teaching revocation threat *were not false representations* but were true representations. In this regard, the

Circuit Court relied on defense witnesses who asserted “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.” (R. p. 82 at 13). This ruling is clearly erroneous for two different reasons. This ruling obviously misconstrues *the content of the misrepresentations* made by Principal Culler and Assistant Principal Bridges. Culler did not say that Ms. Noorai’s teaching certificate would be pulled *if she obtained another job* – he flatly told Ms. Noorai that he would “automatically” pull her teaching certificate if she refused to sign the letter of resignation that day:

A. He told me it was automatic. That he would pull it.

Q. So he said if you didn’t sign your contract-

A. If I did not write the letter of resignation, my certificate to teach in South Carolina would be pulled automatically.

Q. Okay. But he didn’t say that he would pull it, he said it would automatically be pulled, correct?

A. He said that, you know, he would have-because it’s his say so it would be pulled. It did imply that it came from him.

...

Q. So he said that he would pull your certificate if you didn’t draft the letter of resignation?

A. Yes, ma’am.

(Supp. R. p. 194, lines 21-25, p. 195, lines 1-11, 18-21).

In addition, the ruling is erroneous because, as previously discussed, South Carolina law did not allow for an automatic revocation, or suspension, of Ms. Noorai’s teaching certificate and because her contract did not require her to sign a letter of

resignation. Further, even accepting that Ms. Noorai “misunderstood” what Culler and Bridges told her about the revocation of her teaching certificate, the jury could still find an actionable misrepresentation here because the jury could find that Culler and Bridges failed to exercise reasonable care to explain the consequences of refusing to sign the resignation letter. Hence, the summary judgment by the Circuit Court cannot be upheld on grounds that there is *no evidence in the record of false representations* made by the SDPC employees.

Second, the Circuit Court granted summary judgment on grounds that, right or wrong, both Culler and Bridges actually believed 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.” (R. p. 83 at 14). The Circuit Court reasoned that “[e]ven if they were mistaken in their belief, their representation was on a matter of law and is not actionable.” (R. p. 83 at 14). But once again, the Circuit Court misperceived the content of the false representation made - Culler and Bridges told Ms. Noorai her teaching certificate would be pulled automatically solely because she refused to write and sign a resignation letter that day. Neither witness submitted sworn evidence that he or she believed *this* representation to be true. Further, there is zero evidence in the record that the representation was on a matter of law. To the contrary, Dr. Pew conceded in her deposition testimony that the resignation letter requirement was simply a *practice* of the SDPC to avoid over hiring. (R. p. 357 at 54, lines 3-4). Given that the SDPC used the resignation letter to deny Ms. Noorai unemployment benefits, there is a serious question as to the legality of this practice. In any event the “practice” is certainly a breach of

contract. As previously noted, Ms. Noorai's 2008-2009 contract with the SDPC says nothing about her having to write a "resignation letter" to terminate the agreement. To the contrary, the contract by its express terms is for a 190 day period and expires at the end of the period.

The Circuit Court alternatively ruled that, if Culler and Bridges were merely mistaken, this mistake would not by itself be actionable because they had a duty only "to take reasonable care which Mr. Culler and Mrs. Bridges did." (R. p. 83 at 14). This part of the ruling is not only erroneous but reflects an abdication of the judge's duties to fairly try the case. The statement that Culler and Bridges had a duty only "to take reasonable care which Mr. Culler and Mrs. Bridges did" is copied verbatim from the SDPC Memorandum at 26 ("the Defendants' duty of care to Plaintiff was not to be right, but simply to take reasonable care, which Mr. Culler and Ms. Bridges did") (R. p. 143). The assertion amounts to a ruling that Culler and Bridges were not negligent as a matter of law. Under South Carolina law, however, as long as there is some evidence of a breach of duty, whether a party failed to exercise reasonable care is always a question for the jury. Westchester Fire IMs. Co. v. Bollin, 186 S.C. 45, 90 S.E. 327 (1916) ("[n]egligence is a question for the jury"); Miller v. City of Camden, 317 S.C. 28, 31, 451 S.E.2d 401, 403 (Ct.App. 1994), aff'd as modified, 329 S.C. 310, 494 S.E.2d 813 (1997) (stating negligence is mixed question of law and fact with existence and scope of duty being questions of law and breach of duty being a question for the jury). Here, in addition to Ms. Noorai's testimony that the administrators made erroneous representations about matters on which they should have been experts, even Dr. Pew admitted in her letter that

there were “misunderstandings” by both Bridges and Culler. There accordingly is at least a scintilla of evidence that they were negligent.

Third, the Circuit Court erroneously dismissed Count Two on grounds that the “Pickens District had no pecuniary interest in misrepresenting its need for a written notice of resignation.” (R. p. 83 at 14). As discussed above, there was admissible summary judgment evidence that the very purpose of the resignation letter requirement was to protect the economic interests of the SDPC by preventing duplicative hirings. In addition as previously noted, the “no pecuniary interest” ruling fails as a matter of law – under Restatement (Second) of Torts § 552(1) as adopted in MI-Lee Acquisition v. Deloitte Touche, 327 S.C. 238, Note 2 489 S.E.2d 470 (1997), a pecuniary interest is not required if the defendant makes the false representation in the course of his employment.

Fourth, although the false representations were made to Ms. Noorai by both the principal and assistant principal of Edwards, the Circuit Court also ruled that Ms. Noorai could not justifiably rely on the representations. (R. p. 83 at 14). In this regard, the Circuit Court ruled as a matter of law that Ms. Noorai “allowed several days to elapse after being told of the requirement before she actually wrote the letter of resignation on June 4, 2009, during which she had the opportunity to investigate the truth of the Pickens Districts representations to her.” (R. p. 84 at 15). Apparently, the Circuit Court believed that Ms. Noorai should have hired a lawyer at this point to review her contract and research the law. As a point of fact as documented in her 2012 deposition by SCPC attorney, Ms. Noorai only learns about the threat to pull her certificate on the afternoon of June 4th, never having days to investigate. South Carolina appellate courts, however,

have repeatedly emphasized that justifiable reliance is almost always a question for the jury:

The general rule is that questions concerning reliance and its reasonableness are factual questions for the jury. In Starkey v. Bell, 281 S.C. 308, 315 S.E.2d 153 (Ct. App. 1984), the Court stated that issues of reliance and its reasonableness going as they do to subjective states of mind and applications of objective standards of reasonableness, are preeminently factual issues for the trier of facts.

Unlimited Servs., Inc. v. Macklen Enters., Inc., 303 S.C. 384, 401 S.E.2d 153 (1991). The ruling is also directly contradictory to Circuit Court's ruling that, even if Culler and Bridges were mistaken, they exercised reasonable care. Surely, if Ms. Noorai was required as a matter of law to investigate their false representations for truthfulness, Culler and Bridges could not make the representations in the exercise of reasonable care without making the same investigation.

Finally, the Circuit Court erroneously ruled that Ms. Noorai "cannot establish that she suffered a pecuniary loss as a proximate result of her reliance on the District's representation." (R. p. 84 at 15). In this regard, the Circuit Court noted that Ms. Noorai had decided to reject the contract the SDPC offered her for the 2009-2010 school year. Viewing the evidence in the light most favorable to the Plaintiff, however, the Circuit Court overlooked that the letter of resignation played a causal role in the decision of at least four of the other schools to refuse to offer the superbly qualified Ms. Noorai a job. In addition, the Circuit Court overlooked the evidence that the SDPC used the resignation letter to deny Ms. Noorai unemployment benefits:

A. I also know by writing he letter of resignation,....it appeared as if I was breaking my contract, that I was not fulfilling the terms of what I signed. And I also know that in terms of unemployment, that was what was used by the District to deny my unemployment that the state gave me based on the harassment that I suffered....

(Supp. R. p. 197, lines 24-25, p. 198, lines 1-5). Finally, the Circuit Court ignored the severe emotional distress that Ms. Noorai suffered in conjunction with the foregoing economic losses.

The summary judgment entered in favor of the SDPC and against Ms. Noorai on Count Two must be reversed and the case remanded for trial.

II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE SDPC ON THE BREACH OF CONTRACT CLAIM

A. Viewing the evidence and inferences in the light most favorable to Ms. Noorai, the jury could find that the SDPC breached the 2008 to 2009 School Year Annual Contract with Ms. Noorai

Count Three alleges both a breach of contract by the SDPC, and a breach of contract accompanied by fraudulent acts. With respect to the breach of contract claim, the Plaintiff contends that the conduct of the SDPC employees during the 2008-2009 school year breached the implied covenant of good faith and fair dealing, and other implied terms, that were contained in the SDPC's 2008 to 2009 School Year Annual Contract with Ms. Noorai.

"Every contract entered into in this State embodies in its terms all applicable laws of the State just as completely as if the contract expressly so stipulated." Parker v. Byrd, 309 S.C. 189, 193, 420 S.E.2d 850 (1992) *quoting* Inabinet v. Royal Exchange Assur. of London, 165 S.C. 33, 36, 162 S.E. 599, 600 (1932). S.C. Code Ann. §§ 59-24-60 and 59-63-335 imposes a mandatory duty on school administrators to report criminal conduct to law enforcement authorities and S.C. Code Ann. § 59-63-330 imposes a mandatory duty on school administrators to report school related crimes to the State Department of Education. Both obligations accordingly are implied into Ms. Noorai's contract as a

matter of law. Viewing the evidence in the light most favorable to Ms. Noorai, the jury could easily find that the SDPC breached the contract by failing to report the sexual assault to the authorities.¹

In addition to the statutes that are implied in Ms. Noorai's contract, "[t]here exists in every contract an implied covenant of good faith and fair dealing." Parker v. Byrd, 309 S.C. 189, 193-94, 420 S.E.2d 850, 853 (1992) quoting Tharpe v. G.E. Moore Co., 254 S.C. 196, 201, 174 S.E.2d 397, 399 (1970). The jury could easily find that the bullying, intimidation, and harassment of Ms. Noorai by Principal Culler and Mr. Hudak breached the implied covenant of good faith and fair dealing. The provisions of the Safe School Climate Act are also implied into Ms. Noorai's contract. This Act prohibits the harassment, intimidation, and bullying of students:

(A) A person may not engage in:

(1) harassment, intimidation, or bullying; or

(2) reprisal, retaliation, or false accusation against a victim, witness, or one with reliable information about an act of harassment, intimidation, or bullying.

S.C. Code Ann. § 59-63-130. The Act further requires "each local school district to adopt a policy prohibiting harassment, intimidation, or bullying at school." S.C. Code Ann. § 59-63-140(A). The jury could easily find that this statute also provides a standard of good faith and fair dealing applicable to the treatment of *teachers*. The harassment, intimidation, and bullying of Ms. Noorai by the SDPC employees Culler, Hudak, Boggs, and Bridges thus would be a breach of contract by the SDPC.

¹ Although Dr. Pew claimed that the incident had in fact been reported, Ms. Noorai's contrary testimony based on her visit to law enforcement shows that material questions of fact exist on this point.

In granting summary judgment for the SDPC on this claim, the Circuit Court properly noted that the Plaintiff contended that the SDPC employees had engaged in “dishonesty in fact and unfair dealing with Plaintiff as to actions and remedies under the contract.” (R. p. 86 at 17). The Circuit Court, ignoring the established law of the this state, nonetheless erroneously ruled that the only obligation owed by the SDPC to the Plaintiff was “to employ her as a teacher for the school year 2008-2009 and to compensate her in accordance with the adopted salary schedule.” (R. p. 87 at 18). This construction of the contract by the Circuit Court is obviously reversible error. The statutory law of this state and the duty to act in good faith and to deal fairly with an employee are implied into the contract. Indeed, this Court has recognized that a term will be implied into a contract whenever necessary to effectuate the intention of the parties:

[N]either law nor equity requires every term or condition to be set forth in a contract. Where an implied term is necessary to effectuate the intention of the parties, the law will supply it. The unexpressed provision may be inferred from the language of the contract itself, or by looking to the external facts and circumstances surrounding the bargain, or by proving a general custom and usage of including certain terms as part of similar contracts.

Maccaro v. Andrick Dev. Corp., 280 S.C. 96, 100, 311 S.E.2d 91, 94 (Ct. App. 1997).

Viewing the evidence in the light most favorable to Ms. Noorai, the jury could easily find that the SDPC breached the implied statutory obligations and the implied covenant of good faith and fair dealing as a result of the acts and omissions set forth above. The summary judgment entered in favor of the SDPC and against Ms. Noorai on the breach of contract claim therefore must be reversed.

B. The evidence also establishes a breach of contract accompanied by fraudulent acts

Under South Carolina law:

To establish a claim for breach of contract accompanied by a fraudulent act, a party must show: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach.

Conner v. City of Forest Acres, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002).

For purposes of this cause of action, a "fraudulent act" is broadly defined as "any act characterized by dishonesty in fact or unfair dealing." *Id.* at 466, 560 S.E.2d at 612. "Fraud, in this sense, 'assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.'" *Id.* quoting Sullivan v. Calhoun, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921).

Breach of contract accompanied by a fraudulent act requires proof of fraudulent intent relating to the breaching of the contract and not merely to its making, and such proof may or may not involve false representations. Ball v. Canadian Am. Exp. Co., 314 S.C. 272, 276, 442 S.E.2d 620, 623 (Ct. App. 1994). "Fraudulent intent is normally proved by circumstances surrounding the breach." Floyd v. Country Squire Mobile Homes, Inc., 287 S.C. 51, 54, 336 S.E.2d 502, 503-04 (Ct. App. 1985). "The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character." *Id.* at 54, 336 S.E.2d at 504.

Viewing the evidence and the inferences in the light most favorable to Ms. Noorai, the jury could also find that the SDPC through its employees acted with fraudulent intent in the course of breaching Ms. Noorai's contract. Certainly, the false

representation that Ms. Noorai was required to sign the resignation letter or her teaching certificate would be automatically revoked was blatant dishonesty by Culler and Bridges as well as unfair dealing.

In granting summary judgment on this claim, the Circuit Court found there was no evidence of any *fraudulent* act by the SDPC. This ruling, however, is erroneous because it ignores the dishonest misrepresentation that Ms. Noorai was required to sign the resignation letter or her teaching certificate would be automatically revoked. The jury could infer from the evidence that both Culler and Bridges knew their misrepresentation about the resignation letter and teaching certificate were untrue and that they were intentionally acting to mislead Ms. Noorai.

Somewhat inexplicably, the Circuit Court also ruled that the fraudulent act was the same act Ms. Noorai contended amounted to the breach of her contract. As discussed in Part IIA, however, the SDPC breached the contract through the many acts and omissions discussed above. Hence, the evidence shows both a breach of contract *and separate fraudulent acts* by the SDPC employees. The Circuit Court finally found no evidence of an intent to deceive the Plaintiff. But the jury could easily infer such an intent from Culler's and Bridges' insistence that she sign the resignation letter "that day" or her teaching certificate would be automatically pulled.

The summary judgment entered in favor of the SDPC and against Ms. Noorai on the breach of contract accompanied by fraudulent act claim therefore must be reversed.

III. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF PRINCIPAL CULLER

Count Eight asserts a claim against Principal Culler for the intentional infliction of emotional distress. Under South Carolina law, a plaintiff must prove the following elements to recover for the intentional infliction of emotional distress:

- (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 plaintiffs emotional distress; and
- (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68 (2007), quoting Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981).

In granting summary judgment for Principal Culler on this count, the Circuit Court found as a matter of law that the conduct of Principal Culler could not be regarded as "so extreme or outrageous as to be beyond all possible bounds of decency and regarded as atrocious and utterly intolerable in a civilized community." (R. p. 102 at 33). Viewing the evidence and inferences in the light most favorable to Ms. Noorai, this ruling is erroneous. As the testimony recounted in the Statement of Facts shows, Principal Culler repeatedly harassed, intimidated, and bullied Ms. Noorai during the 2008 to 2009 school year. He "leered" at her, he cornered her in school rooms when he berated her, and was unduly argumentative and aggressive with her. When she returned from gall bladder surgery with a tube sticking out of her and in a weak condition, he chose this time to tell her he had changed his mind about relieving her from yearbook duties. Principal

Culler also refused to discipline teacher Hudak for his own harassment, intimidation, and bullying of Ms. Noorai following the student plagiarizing incident.

In finding that Principal Culler's conduct did not reach the "beyond human decency" standard, the Circuit Court also ignored the two incidents that raised Culler's conduct far beyond that of the normal abusive and abrasive boss. First, the Circuit Court ignored that Culler not only did not report the student who sexually assaulted the Plaintiff to law enforcement, or the State Board of Education, *but sent him back to Ms. Noorai's class after a short 5 day suspension*. She accordingly had to face the student who sexually assaulted her in class every day. Second, the Circuit Court ignored that, when Principal Culler berated her about the resignation letter in the close confines of the office, he displayed a visible erection. Principal Culler clearly took great pleasure in bullying Ms. Noorai and this pleasure even manifested itself in a sexual component. Finally, the jury could find that Culler made false statements about Ms. Noorai to other school administrators that cost her the West Oak job and other employment. The jury could easily find that this conduct, in conjunction with the other abusive conduct of this man, so extreme or outrageous as to be beyond all possible bounds of decency and regarded as atrocious and utterly intolerable in a civilized community."

The Circuit Court alternatively erroneously ruled that Ms. Noorai's claims of outrageous conduct "are also included as the basis for other causes of action. Her remedy is in the other causes of action, not in the tort of outrage." (R. p. 102 at 33). This ruling is erroneous because S.C. Code Ann. § 15-78-60(17) provides that a government entity is not liable for "employee conduct ... which constitutes intent to harm...." The SDPC as a matter of law could not be held liable for Principal Culler's intentional conduct designed

to humiliate, abuse, and cause Ms. Noorai to suffer emotional distress. Moreover, a plaintiff cannot recover damages for the negligent infliction of emotional distress if no physical injury is caused; hence, Ms. Noorai cannot recover her emotional distress damages on her negligence claims in the absence of physical injury. Finally, the Circuit Court found that the emotional distress suffered by the Plaintiff was not sufficiently severe to be actionable. Viewing the evidence in the light most favorable to the Plaintiff, however, the jury could find that the severe symptoms of post traumatic stress disorder to which the Plaintiff testified in her affidavit and deposition are so severe that no reasonable man could expect to endure it.

The summary judgment entered in favor of the Defendant Culler and against the Plaintiff on Count Eight accordingly must be reversed.

IV. THE JUDGMENT BELOW SHOULD BE REVERSED AND REMANDED FOR A PROPER SUMMARY JUDGMENT HEARING

If the Court is not inclined to reverse the summary judgment entered in favor of the Defendants the SDPC and Culler and remand for trial, the Court should at the very least reverse the judgment and remand for a full and proper summary judgment hearing. Any other result would violate the Plaintiff's state and federal due process rights.

On April 7, 2014, the Circuit Court held a hearing on the summary judgment motions filed by the Defendants. Ms. Noorai was not present at this hearing. By this date, the Plaintiff was represented by new counsel. But new counsel had not had time to prepare a brief in opposition to the summary judgment motion. Hence oral argument by counsel at the hearing was the only avenue remaining by which legal arguments could be made in opposition to the voluminous summary judgment brief and submissions made by the Defendants.

After the Defendants made their arguments on Count One, the Plaintiff's attorney asked the Court to deny the motions for summary judgment. The Plaintiff's attorney further asserted that "there is....a scintilla of evidence that would suggest these causes of action to go forward." (R. p. 59 at 12, lines 2-7). Counsel thereafter made arguments in opposition to the defense arguments on Counts One and Two.

At the conclusion of the response arguments made on Count Two, however, the Circuit Court terminated the hearing and advised counsel for both parties that he would take the matter under advisement. He noted that he had been provided depositions, the affidavits, the defense memorandum, and the file. (R. p. 67 at 20, lines 23-25). The Circuit Court thereafter asked counsel if anyone objected to the Court reading these materials and then ruling:

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

(R. p. 68 at 21, lines 1-4). Neither attorney objected to this procedure. The Circuit Court thereafter issued its Order based strictly on the submissions made in these materials. (R. pp. 70-105).

The Plaintiff respectfully submits that the Court's termination of the hearing under these circumstances constitutes plain, reversible error. Rule 56 *requires* the Court to hold a hearing on a summary judgment motion. (Rule 56, SCRCP)("[t]he motion shall be served at least 10 days before the time fixed for the hearing"). There is no provision in Rule 56 that allows for a partial hearing such as occurred in this case. Because no summary judgment opposition brief had been filed, no legal arguments had been made on the Plaintiff's behalf, except for those arguments made on Counts One and Two before

the Court terminated the hearing. *The record thus contains no legal arguments whatsoever on Counts Three - Eight.* Moreover, no evidence was submitted on the Plaintiff's behalf except for her affidavit, even though the record contains substantial evidence that raises questions of fact on many key factual issues. Even worse, the Circuit Court - with only the defense brief to read - had no choice but to accept the Defendants' frequent mis- characterization of the Plaintiff's claims and the Defendants' mis- characterization of the evidence bearing on those claims. Not surprisingly, the defense summary judgment brief became the Circuit Court's Order. (R. pp. 70-105).

Under South Carolina appellate procedure practice, the general rule is that "an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review." If the Court strictly applies this rule to the appeal, this means all of the arguments made in the Initial Brief of Appellant on Counts Three -Eight are not preserved for appellate review because they were not raised to the Circuit Court.

Under these circumstances, the Plaintiff has been denied her state and federal due process rights. As the South Carolina Supreme Court has explained, the touchstone of due process is the opportunity to be heard:

The United States Supreme Court has said the fundamental touchstone of due process is the opportunity to be heard. Goss v. Lopez, 419 U.S. 565, 579, 95 S.Ct. 729, 739, 42 L.Ed.2d 725 (1975). The Supreme Court further stated that the type of hearing required to be provided will depend upon the nature of the case. Id. at 579, 95 S.Ct. at 738.

Stinney v. Sumter School District, 391 S.C. 547, 707 S.E.2d 397 (2011).

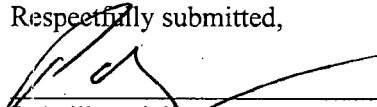
The Plaintiff has not yet received a fair opportunity to be heard. The Court accordingly should reverse the summary judgment entered in favor of the Defendants the

SPDC and Culler, and should remand for a proper and complete summary judgment hearing.

CONCLUSION

For the reasons stated, the summary judgment entered in favor of the Defendants the SDPC and Gary Culler, and against Ms. Noorai, should be reversed on the specified claims and the case remanded for trial. In the alternative, the summary judgment entered in favor of the Defendants the SDPC and Gary Culler, and against Ms. Noorai, should be reversed and the case remanded for a proper summary judgment hearing.

Respectfully submitted,



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August 25 2015
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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

AUG 27 2015

SC Court of Appeals

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

Mariam R. Noorai.....Appellant,

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.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant Mariam R. Noorai
complies with Rule 211(b), SCACR.

August 25, 2015



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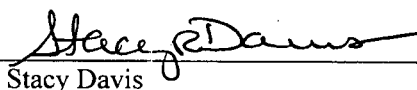
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The School District of Pickens County, The School District
of Oconee County, and Gary Culler, Donald Boggs,
Richard Hudak, Earnestine Williams, Marilyn Raines,
and Dr. Kelly Pew in their individual capacities Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Final Brief by depositing a copy of it in
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THE STATE OF SOUTH CAROLINA
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Mariam R. Noorai,

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School District of Pickens County,
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Hudak, Ernestine Williams, Marilyn
Raines, and Dr. Kelly Pew, in their
individual capacities,

Respondents.

**FINAL BRIEF OF RESPONDENTS
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RICHARD HUDAK, MARILYN RAINES
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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court properly grant summary judgment to the School District of Pickens County on Appellant's cause of action for negligent misrepresentation when any pecuniary loss to Appellant resulted from her own action in declining to continue to be employed by the District and when she failed to produce competent evidence that the District made false statements for its own pecuniary benefit or that she justifiably relied on such statements?
2. Did the circuit court properly grant summary judgment to the School District of Pickens County on Appellant's cause of action for breach of contract accompanied by a fraudulent act when Appellant failed to produce competent evidence that the District breached its contract, that the District's breach was dishonest or made with the intent to deceive Appellant, or that the District perpetrated an independent fraudulent act in connection with its alleged breach of contract?
3. Does the Fourth Cause of Action include a separate claim against the School District of Pickens County for simple breach of contract in addition to its stated claim of breach of contract accompanied by a fraudulent act, and, if so, may Appellant make new arguments about her contract at this stage?
4. Did the circuit court properly grant summary judgment to the Respondent Culler on Appellant's cause of action for intentional infliction of emotional distress when Appellant failed to produce competent evidence that Culler's conduct was extreme or outrageous or that he intentionally or recklessly inflicted severe emotional distress on Appellant?
5. May Appellant appeal the termination of the hearing on Respondents' motions for summary judgment when she consented to the circuit court forgoing additional oral argument in favor of reviewing and considering the written submissions of the parties and when the circuit court afforded her an opportunity to be heard?

STATEMENT OF THE CASE

This is an appeal from the circuit court's grant of summary judgment on May 13, 2014 to the Respondents, the School District of Pickens County ("the Pickens District"), the School District of Oconee County ("the Oconee District"), and their employees who had been named as defendants in the case. The Appellant, Mariam R. Noorai, a former teacher and employee of the Pickens District and a job applicant to the Oconee District, asserted multiple causes of action, including various tort claims and breach of contract accompanied by a fraudulent act, against the Respondents.

Appellant filed suit against the Respondents on March 22, 2011, and subsequently amended her Complaint twice. She filed her Second Amended Complaint on June 11, 2012, complaining that the Pickens District was negligent and grossly negligent in the manner in which it allegedly failed to protect her and in which it handled her notice that a student should be disciplined for what she asserted was a sexual assault (First Cause of Action); that the Pickens District negligently misrepresented to her the conditions of her resignation from employment (Second Cause of Action); that the Oconee District was negligent and grossly negligent because it failed to hire her (Third Cause of Action); that the Pickens District and the principal of her school, Respondent Gary Culler, were liable for breach of contract accompanied by a fraudulent act in connection with her teaching contract (Fourth Cause of Action); that the Pickens District, the Oconee District, and Culler defamed her (Fifth Cause of Action); that Respondent Richard Hudak, a teacher employed by the Pickens District, assaulted her (Sixth Cause of Action); that Respondents Dr. Kelly Pew, Donald Boggs, and Marilyn Raines, all employees of the Pickens District, and Respondent Ernestine Williams, an employee of the Oconee

District, conspired to remove her from employment and damage her in her profession (Seventh Cause of Action); and that Culler intentionally inflicted severe emotional distress on her (Eighth Cause of Action). Appellant sought actual damages from Pickens District and the Oconee District; she sought actual and punitive damages from the remaining Respondents.

The Pickens District and its employees Culler, Boggs, Hudak, Raines, and Pew filed an Answer to the Second Amended Complaint on June 29, 2012, denying liability and asserting various affirmative defenses. The Oconee District and its employee Williams filed an Answer to the Second Amended Complaint on June 22, 2012, also denying liability and asserting various affirmative defenses.

The Pickens District and its employees Culler, Boggs, Hudak, Raines, and Pew filed a motion for summary judgment on January 29, 2013, which was scheduled to be heard on February 19, 2013. That hearing was continued at the request of Appellant's then-attorney. (R. p. 566). Appellant's then-attorney sought and was granted permission to be relieved as her counsel, and dispositive motions were postponed to allow sufficient time to retain new counsel. (R. pp. 567-70). These Respondents filed an amended motion for summary judgment on August 13, 2013. The hearing on this amended motion was scheduled for October 24, 2013, but was continued to allow Appellant's new counsel additional time to review and prepare. (R. p. 571). Another hearing on the Respondents' amended motion for summary judgment was scheduled for December 9, 2013, but was continued at the request of Appellant's counsel because Appellant was unavailable. (R. p. 572). The motions for summary judgment for all parties were heard on April 7, 2014, more than one year after the initial motions were filed.

At the hearing on April 7, 2014, the presiding judge, after hearing oral arguments on some of Appellant's claims and, after soliciting but receiving no objections from counsel to forgoing further oral argument in favor of his review of the written submissions by all parties, took the matter under advisement. The circuit court subsequently issued an order dated May 13, 2014, finding that Appellant had failed to establish the existence of genuine issues of material fact and that the Respondents were entitled to summary judgment on all causes of action.

Appellant filed a notice of appeal on June 11, 2014. In her brief to this court, she argues that the circuit court erred in dismissing her claims against the Pickens District for negligent misrepresentation (Second Cause of Action) and breach of contract accompanied by a fraudulent act (Fourth Cause of Action) and her claim against Culler for intentional infliction of emotional distress claim (Eighth Cause of Action). Further, Appellant argues that, in addition to the breach of contract accompanied by fraudulent act, she also alleged and produced sufficient evidence of a simple breach of contract against the Pickens District in the Fourth Cause of Action to survive summary judgment.

Appellant does not argue that the circuit court erred in granting summary judgment to the other Respondents on the remaining causes of action. Thus, the grant of summary judgment in favor of the Respondents on the First Cause of Action (negligence against the Pickens District), the Third Cause of Action (negligence against the Oconee District), the Fourth Cause of Action against Culler (breach of contract accompanied by a fraudulent act), the Fifth Cause of Action (defamation against the Pickens District, the Oconee District, and Culler), the Sixth Cause of Action (assault against Hudak), and the

Seventh Cause of Action (civil conspiracy against Boggs, Raines, Pew, and Williams) were abandoned and are not at issue in this appeal.

STATEMENT OF FACTS

Preliminary Note: The Pickens District and Culler object to the following matter to which Appellant cites in the Statement of Facts section of her Initial/Final Brief as it was not presented to the circuit court and cannot, therefore, be included in the Record on Appeal: Deposition of Mariam R. Noorai at pages 23, 28, 29, 31, 32, 34, 35, 38, 39, 42, 44, 46, 50, 51, 53, 55, 56, 59, 73, 75, 76, 77, 78, 80, 81, 87, 89, 90, 105, 111, 125, 136, 137, 148, 149, 155, 176, 177, 178, 180, 192, 201, 202, 203, 204, 205, 207, 208, 209, and 211.

The Pickens District and Culler also object to the use of the allegations asserted in Appellant's Second Amended Complaint ("the Complaint") as competent evidentiary support in her Statement of Facts.

In addition, in her Complaint, in three days of deposition, and in her affidavit, Appellant disagreed with and complained of several management actions and student disciplinary decisions at the school where she was employed. Many of these incidents formed the basis for several causes of action that were dismissed, but that she does not raise as issues in this appeal. The alleged facts relating to the following causes of action, which were dismissed and are not at issue in Appellant's appeal, are not relevant to the arguments in this appeal:

- That the Pickens District was negligent in not properly disciplining a student and not reporting to law enforcement what she now refers to as a "sexual assault" on her by the student;
- That the principal of her school, Gary Culler, breached her teaching contract and was dishonest and unfair in his representations concerning her actions and

remedies under the contract, thus incurring individual liability for breach of contract accompanied by fraudulent act;

- That the Oconee District was negligent in relying upon what Appellant contends were false statements by Culler about her employment and, therefore, failing to hire her;
- That the Pickens District, the Oconee District, and Culler defamed her by communicating false information about her employment at the Pickens District;
- That another teacher at her school, Richard Hudak, assaulted her during a disagreement about whether Appellant could prevent a student from attending Hudak's class by holding the student in her class for longer than its scheduled time; and
- That Pickens District employees Pew, Boggs and Raines and Oconee District employee Williams conspired to damage her in her profession and render her unemployable.

The Pickens District and Culler confine their Statement of Facts to those circumstances that are relevant to the following causes of action which Appellant argues were improperly dismissed by the trial court:

- That after Appellant had decided and announced that she would not return to teach at her school the following year, the Pickens District negligently misrepresented to her that she was required to submit a written letter of resignation;
- That the Pickens District breached Appellant's teaching contract and was dishonest and unfair in its representations concerning her actions and remedies under the contract, thus incurring liability for breach of contract accompanied by fraudulent act; and
- That Culler is liable for intentional infliction of emotional distress because he allegedly harassed her during and after the school year 2008-2009.

Statement of Relevant Record Facts: Appellant was employed by the Pickens District as an English/Language Arts teacher at Edwards Middle School during the school year 2008-2009. (R. p. 191). The Respondent Culler served as the principal of the school during the 2008-2009 school year. Appellant expressed dissatisfaction to other District

personnel about his administration of the school. She voiced disagreement with the manner in which Culler handled some incidents of student conduct and discipline (R. p. 13, ¶¶ 13-14; R. p. 14, ¶ 16; R. p. 15, ¶ 21; R. p. 352, lines 7-15); she complained about not being informed of and thus not being able to attend the awarding of an honor received by her students (R. p. 14, ¶ 19; R. p. 319, lines 6-17); and she complained that Culler winked at her and made her feel uncomfortable (R. p. 351, lines 10-18). She complained directly to Culler about a disagreement she had with a fellow teacher, Richard Hudak (R. p. 324, line 23-p. 325, line 19) and was disappointed that Culler did not support her position (R. p. 18, ¶¶ 33-35; R. p. 215, lines 2-12).

During her two years of employment by the Pickens District and as a part of her job, Appellant taught language arts and yearbook classes and also served as the school yearbook advisor. (R. p. 206, lines 13-20). While Appellant was employed by the Pickens District, her teaching evaluations were positive. (R. p. 347, lines 1-6). The Pickens District offered her a contract to teach for the 2009-2010 school year, but Appellant declined to accept it. (R. p. 217, line 11-p. 218, line 10; R. p. 220, line 23-p. 221, line 3; and R. p. 264). Although each of her employment contracts and offers stated that school administration "may assign reasonable extra-curricular activities to teachers" (R. p. 264), Appellant objected to continuing to serve as the yearbook advisor in addition to her English teaching duties in 2009-2010. (R. p. 328, lines 11-13).

On the recommendation of Culler, the Pickens District offered "a continuing teaching contract" to Appellant for the 2009-2010 school year, a year ahead of schedule. (R. p. 264; R. p. 348, line 12-p. 349, line 16). A continuing contract represents a promotion and a higher level of job protection compared to an annual contract, which is

the contract Appellant held during the 2008-2009 school year. *See generally* S.C. Code Ann. § 59-26-40. At the time Appellant 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. Thus, the Pickens District treated Appellant more favorably than the law required by offering her a continuing contract when it did.

The offer of a continuing teaching contract to Appellant was made on May 15, 2009, when the Pickens District offered written employment contracts to all teachers for the following school year. All teachers desiring employment in 2009-2010 were instructed to sign and return the contracts to their school principals no later than May 25, 2009. (R. p. 217, line 11-p. 218, line 8). The contract form contains this deadline on its face. (R. p. 264). When Culler did not receive a signed contract from Appellant, he and Mary Bridges, an assistant principal, met with Appellant to discuss whether she intended to sign her contract and return to teach at the school the following year. (R. p. 327, lines 22-25; R. p. 410, ¶ 7). Culler was aware that Appellant at the time was seeking 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. (R. p. 329, lines 3-15). At the time, Culler was unable to promise Appellant that she would be relieved of this duty because he did not know whether any other teachers qualified to teach yearbook would be hired for the 2009-2010 school year (R. p. 322, line 18-p. 323, line 13); budget constraints facing the Pickens District due to the recession in 2009 limited the District's options. In light of the fact that Appellant had not yet secured other employment, Culler encouraged her to sign the proffered employment contract instead of risking potential

unemployment for the following school year. (R. p. 328, lines 2-15; R. pp. 410-411, ¶ 7).

Despite Culler's urging, Appellant did not sign the contract.

Because Appellant, like all teachers, was employed only year-to-year, her failure to sign the proffered contract for the 2009-2010 school year was equivalent to a resignation from her continued employment. However, because the Pickens District did not wish to fill the potential vacancy created by Appellant's departure until she confirmed her decision not to return to the school, it requested that she submit a written notice or letter of resignation, a standard procedure in the Pickens District. (R. p. 354, line 10-p. 357, line 4). Both Culler and Mary Bridges told Appellant that if she were not planning to return to teach at the school, she needed to submit a written notice of resignation so that they could begin the process of finding a replacement for her. (R. p. 225, lines 8-12; R. p. 411, ¶ 8).

By June 4, 2009, Appellant's last day at the school, she had not submitted her written notice of resignation. Bridges requested that she do so, in order to "tie up a loose end." (R. p. 411-412, ¶ 8). Because the equipment in Appellant's classroom had already been packed up for removal, Bridges allowed Appellant to use the computer in Bridges' office to type the resignation letter, which Appellant described as an upsetting process. (R. p. 228, line 20-p. 229, line 16). While she was working on this task, Culler came into the room. Culler testified that he entered the room because he "heard she was upset and I did not want an employee of mine in there upset." (R. p. 333, line 25-p. 334, line 3). Appellant, however, said that Culler was angry, although she did not explain the reason for his anger, and that he had an erection while he spoke with her about the need for a written resignation notice. (R. p. 233, line 20-p. 234, line 15). Appellant eventually

completed and submitted a 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.” (R. p. 266).

Appellant applied for teaching positions in other school districts, including the Oconee District, both before and after she left her employment in the Pickens District, 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.” (R. p. 401, lines 2-5).

After the school year and her employment ended, Appellant reported concerns about the circumstances surrounding her resignation to Pew, then Assistant Superintendent of Human Resources for the Pickens District. On June 30, 2009, Pew met with Appellant to hear her concerns, which was the first time Pew was made aware of them, although they included incidents that Appellant alleged occurred more than a year earlier. (R. p. 350, lines 12-18; R. p. 353 lines 17-24; R. p. 360, lines 7-17). Appellant provided Pew with a 25-page statement laying out a litany of complaints against Culler, all of which were different from the reason Appellant gave for her resignation in the letter she had submitted three weeks earlier. (R. pp. 268-292). Included among her complaints to Pew was an allegation that Culler disregarded her welfare and broke state law and school policy by not reporting what she characterized as a “sexual assault” on her by a student in a crowded school stairwell during change of classes on January 27, 2009. (R.

pp. 270-271).¹ In fact, Culler was not aware of the incident or of Appellant's complaints about it until after the school year ended when Pew brought it to his attention. (R. p. 319, line 18-p. 320, line 2). Culler was neither consulted nor involved in the investigation or student discipline resulting from the January 27, 2009 incident; Donald Boggs, the assistant principal of the school, and Teddi Palis, the School Resource Officer who is employed by the Pickens County Sheriff's Department, handled that matter. (R. p. 320, lines 1-18; R. pp. 403-404, ¶¶ 3-5).

Upon learning of Appellant's complaints, Pew investigated her allegations, including speaking with Culler, who was also unaware of many of Appellant's listed complaints, particularly those about him. (R. p. 350, line 18-p. 351, line 5; R. p. 351, lines 16-18 (Culler was "very shocked and concerned when he heard that complaint")) and (R. p. 352, lines 9-10). Pew concluded that while there may have been misunderstandings, no improper conduct by Culler had occurred and notified Appellant of this determination. (R. pp. 362-364). Subsequently, on October 13, 2009, Culler provided a letter of recommendation for Appellant. (R. p. 344).

On or about March 18, 2010, Appellant filed complaints of misconduct against Culler and Donald Boggs, an assistant principal at the school, with the South Carolina State Department of Education ("the SDE"). (R. pp. 300-304). The SDE investigated Appellant's complaints and closed the cases on or about July 28, 2010, without taking any action. (See R. pp. 188-189). Subsequently, based solely on the complaints she had herself filed and which the SDE had closed with no finding of misconduct, Appellant

¹ Appellant also brought this complaint to the State Department of Education (R. pp. 300-304) and the Pickens County Sheriff's Department (R. pp. 259-262). Culler was not disciplined by the State Department of Education or charged by the Sheriff's Department with any wrongdoing. (R. pp. 188-189; R. pp. 259-262).

included statements on her employment applications to other school districts in 2011 claiming that Culler's educator certificate was under review by the State Department of Education because of misconduct, *see, e.g.*, R. p. 309. On January 5, 2011, Culler wrote Appellant, requesting that she stop falsely representing to other school districts that his certificate was under review for misconduct. (R. p. 298). Appellant alleged that she found Culler's letter threatening and particularly objected to the use of a "King of Hearts" postage stamp containing the word "LOVE" on the envelope in which it had been delivered to her. (R. p. 28). Appellant said she believed Culler or someone at his direction deliberately used the postage stamp to upset her. "His choice of postage stamp was very upsetting to me . . . and very unprofessional." (R. p. 246, line 24-p. 247, line 1). Appellant filed this lawsuit approximately two months later.

ARGUMENT

I. Standard of Review

In considering whether an order of summary judgment by a trial court was appropriate, an appellate court applies the same standard of review as the trial court. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). An order of summary judgment under Rule 56, SCRCP, 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) "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Byerly v. Connor*, 307 S. C. 441, 445, 415 S.E.2d 796, 799 (1992). "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 non-moving party.” *David*, 367 S.C. at 247, 626 S.E.2d at 3.

A party opposing a motion for summary judgment may not rest on the mere allegations of his pleadings, but must set forth specific facts showing that there is a genuine issue of material fact to be considered by a jury. *Thomas v. Waters*, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994). If 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), the opposing party fails to establish the existence of a genuine issue of 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*, 367 S.C. at 250, 626 S.E.2d at 5 (“summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner”). Thus, in opposing the Pickens District's Motion for Summary Judgment, Appellant could not rest on the mere allegations of her Complaint or her suspicions, but was required to 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, 70-71, 580 S.E.2d 433, 439 (2003).

II. The Circuit Court Properly Granted Summary Judgment to these Respondents.

Appellant's case is built primarily on suspicion and speculation rather than admissible evidence. She failed to produce admissible facts showing the existence of a genuine issue of material fact requiring the consideration by a jury, and the trial court properly granted summary judgment to the Respondents.

A. The Pickens District is entitled to summary judgment because Appellant failed to establish the essential elements of negligent misrepresentation by the District.

In her cause of action for negligent misrepresentation, Appellant claims that the Pickens District, through Culler as principal of Edwards Middle School and Pew as Assistant Superintendent for Human Resources, falsely represented that she was required to submit a letter of resignation. (R. p. 22, ¶ 57). She also claims that Culler, through Assistant Principal Mary Bridges, falsely told her that her license to teach would be "pulled" or cancelled if she did not submit a resignation letter. (R. p. 20, ¶ 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. (R. p. 23, ¶¶ 62-63).

To establish a claim of negligent misrepresentation by the Pickens District, Appellant must prove: (1) a false representation made by the Pickens District to the Appellant; (2) a pecuniary interest by the Pickens District in making the statement; (3) a duty of care owed by the Pickens District to see that truthful information was communicated to the Appellant; (4) the Pickens District breached the duty by failing to exercise due care; (5) Appellant justifiably relied on the representation; and (6) Appellant 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). Appellant does not produce evidence to support the necessary elements of negligent misrepresentation.

1. Appellant cannot establish that she suffered a pecuniary loss as a proximate result of her reliance on the Pickens District’s representation.

Perhaps the strongest argument against Appellant’s right to recover against the Pickens District on a negligent misrepresentation claim is that Appellant was not damaged through her submission of a written notice of resignation. Accordingly, although the element of resulting pecuniary loss appears at the end of the list of elements constituting negligent misrepresentation, the Pickens District discusses it before addressing the remaining elements.

The pecuniary loss Appellant claims as a result of the alleged misrepresentation that she was required to submit a written notice of resignation is that she is no longer employed. (R. p. 23, ¶ 63). However, Appellant herself decided not to return to teach at Edwards Middle 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. The letter of resignation was of no consequence to her lack of employment; Appellant did not lose her job and was not prevented from obtaining further employment because of the resignation letter, regardless of whether the Pickens District falsely stated its resignation requirements to her.

Appellant argues that her written notice of resignation from the Pickens District served as grounds for other school districts not to hire her and to prevent her from receiving unemployment benefits. First, this argument and the testimony Appellant cites as support for this claim were not presented to the trial court and cannot not, therefore, be included in the Record or considered by the appellate court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998); Rule 210(c), SCACR. Second, the testimony is speculative and hearsay and, for those reasons, is incompetent evidence and, therefore, insufficient to defeat summary judgment.

Appellant cannot establish that her lack of employment in 2009-2010 and later was due to and proximately caused by a misrepresentation by the Pickens District. Her lack of employment was instead due to her own decision and actions. Even if the Pickens District misrepresented the manner in which teachers must notify it of their resignations,

Appellant was not damaged because her decision not to return to her position was independent and separate from the alleged misrepresentation.

2. The Pickens District exercised reasonable care and made no false representation to Appellant regarding its request for a written notice of resignation.

Although the practice of requiring a written resignation notice was not included in Appellant's one-page employment contract (R. p. 191) or in statute, several witnesses provided testimony that the practice of the Pickens District was to require a written notice of resignation. Appellant 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 Appellant, the evidence and all reasonable inferences that may be drawn from it establish that the Pickens District exercised reasonable care and that the alleged misrepresentation of which Appellant complains was in fact not false, but true.

Pew, who as Assistant Superintendent for Human Relations was responsible for overseeing the employment of teachers by the Pickens District, testified that the Pickens District's practice was to ask for and collect written resignation letters or notices from those teachers who do not sign contracts of employment for the following year and who intend to resign. As she explained,

[O]ur contracts clearly say they have ten days to sign their contract. However, our practice is, that if a person intends to resign, we ask that they write a resignation letter. 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.

(R. p. 354, line 13-p. 355, line 5).

Culler testified consistently with Pew: it was the Pickens District's procedure to request a written resignation letter from any teacher who did not choose to accept and sign a proffered contract. (R. p. 330, lines 19-22). Mary Bridges, the assistant principal, agreed that the Pickens 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 viewed the procedure and described it to Appellant as simply "needing to 'tie up a loose end.'" (R. p. 411-412, ¶ 8). Appellant herself confirmed the gist of this testimony by Pew, Culler and Bridges: she said that 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" (R. p. 225, lines 8-12; *see also* R. p. 226, lines 4-9).

Pew also testified that the Pickens District had never had a teacher in that situation refuse to provide a resignation letter. (R. p. 355, lines 6-16). Culler similarly had never known a departing teacher not to turn in a resignation letter when requested. (R. p. 333, lines 5-6). The Pickens District had never encountered this situation with any other teacher; it was uncharted territory.

Appellant cannot establish that the Pickens District, through Culler, Bridges, or 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 Pickens 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 Appellant, from having the Pickens District mistakenly replace them with new hires. As 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." (R. p. 355, lines 16-21).

Appellant 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 position. Culler and Bridges apparently believed that to be the case. Bridges stated that she was concerned that if Appellant refused to provide formal written notice of resignation and subsequently obtained another teaching position elsewhere, she could be at risk of having her teaching certificate revoked by the State Department of Education. (R. p. 411, ¶ 8). Culler had a similar concern. (R. p. 331, line 4-p. 332, line 4). Indeed, if a teacher does not resign but takes employment with another district without obtaining a release from her contract, she can be deemed to have abandoned her teaching position, which is, in fact, cause for the State Department of Education to revoke the teacher's certificate. *See* S.C. Reg. 43-206.

Even if Bridges and Culler were mistaken in their belief that Appellant's teaching certificate could be at risk if she failed to submit a resignation letter at the end of the contract period, their representation was a statement about a future event and, therefore, was not actionable. *Sauner*, 354 S.C. at 408, 581 S.E.2d at 167 (2003). In addition, their

representation regarding whether Appellant could or would lose her teaching certificate was on a matter of law, which is also not actionable. *See Carolina Chloride, Inc.*, 394 S.C. at 166-68, 714 S.E.2d at 875-76 (county is not liable for a mistaken representation regarding a matter of law); *Quail Hill, LLC*, 387 S.C. at 240, 692 S.E.2d at 508 (misrepresentations as to matters of law are not actionable).

Moreover, a mistaken representation is not, by itself, actionable. The Pickens District's duty of care to Appellant was not to be right, but simply to take reasonable care. There is no evidence that either Culler or Bridges acted unreasonably in their efforts to protect Appellant from the consequences of her actions. *See AMA Mgt. Corp.*, 309 S.C. at 223, 420 S.E.2d at 874.

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

3. The School District of Pickens County had no pecuniary interest in misrepresenting its need for a written notice of resignation from Appellant.

Appellant alleges that the Pickens District had a pecuniary interest in falsely telling her that it needed a written resignation letter from her. However, the only reasonable inference from the evidence is that the requirement of a written notice of resignation did not serve the pecuniary interest of the Pickens District, but instead was intended to protect Appellant's teaching position in case of a misunderstanding and she did not intend to resign. As Pew testified,

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.

(R. p. 354, lines 16-24).

Appellant argues that the Pickens District had a pecuniary interest in requiring a written resignation notice because such a written confirmation would protect the Pickens District from over-hiring if it hired a replacement for a teacher who subsequently changed her mind and chose to remain in her position.² In fact, however, a teacher who does not sign her contract by the due date has no legal right to remain in her position because the offer of employment to her expired on the date specified for the return of the signed contract. The Pickens District may, through a sense of loyalty to its employees, choose to accommodate such a teacher by again employing her for the following school year, but it has no legal obligation to do so. Indeed, if the Pickens District has already hired a replacement, its budget may not allow it to also employ the teacher who belatedly expresses a wish to return. The written confirmation of resignation is a pro forma writing intended to protect those teachers who sign contracts, but misplace them or forget to return them. Requiring written notices of resignation protects against such mistakes and misunderstandings. As with written acceptances of contracts, written notices or letters of resignation provide the Pickens District with clear statements of intentions from all those

² Appellant's departure from the Pickens 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. Because of these budgetary constraints, the Pickens District was particularly wary of being in a position where Appellant, or any other teacher, 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." (R. p. 357, lines 3-4).

to whom it has offered contracts of employment and prevent it from hiring new teachers to fill positions that teachers actually intend to retain.

Appellant also speculates that the Pickens District had a pecuniary interest in requiring a written resignation letter because the letter allowed the Pickens District to avoid paying unemployment compensation to Appellant. Appellant's support for this claim is her own hearsay and speculation (*see* Appellant's Brief at 25), which was not presented to the trial court for consideration. It is, therefore, neither competent as evidence to defeat summary judgment, nor included in the Record on Appeal.

Because Appellant failed to establish that the Pickens District had a pecuniary interest in making the alleged misrepresentation, there is a 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, thus, no issue of material fact to be decided by a jury on this issue, and summary judgment for the Pickens District on Appellant's Second Cause of Action should be affirmed.

4. Appellant cannot establish that she justifiably relied on the Pickens District's representations to her.

Aside from the fact that the representation by the Pickens District – that it required a written notice of resignation – was not false, Appellant cannot establish that she justifiably relied on the Pickens 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).

Appellant had a contractual relationship with the Pickens District and a concomitant duty to inform herself about the conditions and requirements of her employment, as well as the Pickens District's requirements and procedures for ending that employment. Culler expressly discussed with Appellant the Pickens District's procedure of requiring a written resignation letter during a meeting on June 1, 2009 (R. p. 226, lines 4-15), yet by the last day Appellant worked at the school on June 4, she still had not submitted the letter. She resisted supplying a written notice of resignation, suspecting that the Pickens District was misinforming her about its need for such notice. In fact, she testified that she "did not think it sounded correct" (R. p. 225, lines 15-16) and said that she drafted the letter "under duress" (R. p. 224, lines 7-9). Under these circumstances, she should and could have investigated this issue further, but she did not.

In addition, Appellant did not raise the issue with Pew until she met with Pew on June 30, 2009, after Appellant had already submitted her resignation letter. In submitting her written resignation on June 4, she could not have relied on anything Pew told her, as she alleges, because those communications did not occur until after the fact.

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

The trial court's decision to order summary judgment in favor of the Pickens District on this claim should be affirmed because Appellant did not and cannot establish falsity for the pecuniary interest of the Pickens District or her own justifiable reliance on and pecuniary loss as a result of a false representation.

B. Respondent School District of Pickens County is entitled to summary judgment because Appellant failed to establish that the District either breached its contract with her, with or without fraudulent intent, or that it committed a separate fraudulent act in connection with the alleged.

Appellant's claim of breach of contract accompanied by a fraudulent act in the Fourth Cause of Action is apparently based on the contract between Appellant and the Pickens District, pursuant to which she was employed as a teacher during the school year 2008-2009.³ Appellant claims that the Pickens District 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.⁴ She alleges that the fraudulent acts by the Pickens District consisted of "dishonesty in fact and unfair dealing with Plaintiff as to actions and remedies available to her under the contract." (R. p. 24, ¶ 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

³ The 2008-2009 contract was the only contract Plaintiff had at the time of the alleged wrongdoing. She had no contract with the District for the school year 2009-2010 because she rejected the offer from the District of continued employment.

⁴ Appellant asserted, but abandoned, her claim in the Fourth Cause of Action that Culler was individually liable for the same breach of contract accompanied by a fraudulent act.

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 (Ct.App. 2012), *aff'd as modified on other grounds*, 410 S.C. 319, 764 S.E.2d 701 (2014); *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). Proof of the additional elements (i.e., 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.*

Appellant claims that the Pickens 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. (R. p. 24, ¶ 69). A review of the contract shows that it imposed no such obligations on the Pickens District. (*See* R. p. 191). For the reasons enumerated below, the Pickens District owed no such contractual duties to Appellant 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 Pickens District to Appellant were to employ her as a teacher for the school year 2008-2009 and to

compensate her in accordance with the adopted salary schedule. Appellant does not claim that the Pickens District breached those terms.

Second, the contract contained no terms transforming the duty of care under the law of torts into a contractual obligation. The Pickens District had no contractual duty to protect Appellant 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 Plaintiff District to inform Appellant of its procedures for resigning from her employment.

In fact, the Pickens District did not terminate Appellant's employment; her contract of employment expired of its own accord at the end of the contract period. Appellant's complaint that she was fraudulently told to write a resignation letter refers to the procedure adopted by the Pickens District for the protection of departing teachers like Plaintiff, as discussed *supra* at pp 17-19. The fact that the Pickens District obtained a resignation letter from her did not change or breach the terms of Appellant's employment with the Pickens District and did not result in any pecuniary loss to Appellant. The simple fact is that the Pickens District employed Appellant 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, Appellant 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 Pickens District did not misrepresent the terms of Appellant's employment or the means by which it ended, as is fully discussed *supra* at pp 17-19. Appellant speculates, but

provides no evidence to prove, that the Pickens District acted dishonestly or unfairly regarding her in connection with the end of her employment contract. As the South Carolina Court of Appeals 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" Appellant 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 Court of Appeals 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 354-55.

The fact that the Appellant was dissatisfied with the handling of her various complaints and grievances at the end of her employment with the Pickens District does not make the Pickens 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 Pickens District explained the various situations to the Appellant exactly as the Pickens District believed the situations to be and handled her complaints accordingly, albeit not to Appellant's satisfaction. There is no evidence that the Pickens 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 avoid summary judgment on this claim, Appellant must produce evidence that the Pickens District breached its contract with Appellant, that its breach of the contract was dishonest and done with the intent to deceive Appellant, and that it perpetrated an independent fraudulent act against Appellant in connection with its breach of the contract. The Appellant has no evidence to prove any of these elements, and, accordingly, the order granting summary judgment to the Pickens District on the Fourth Cause of Action for breach of contract accompanied by a fraudulent act should be affirmed.

C. The Fourth Cause of Action does not include a claim for breach of contract separate from the claim for breach of contract accompanied by a fraudulent act, and Appellant is barred from raising new arguments about her contract that were not presented to the trial court.

For the first time anywhere in these proceedings, Appellant argues in her brief that she asserted a separate claim of breach of contract within the Fourth Cause of Action, which she entitled "Breach of Contract Accompanied by Fraudulent Act." (R. p. 24, ¶¶

68-72). Appellant offers new arguments that by allegedly failing to comply with crime reporting statutes and the Safe School Climate Act, the Pickens District breached "implied statutory obligations" in her teaching contract. She further argues that by allegedly failing to act in good faith and fair dealing, the Pickens District breached a covenant of good faith and fair dealing implied in her teaching contract. Appellant's novel arguments cannot be considered by this court because they were not raised to or considered and ruled upon by the trial court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998); *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995).

Moreover, Appellant did not assert a simple breach of contract action; in her Fourth Cause of Action she asserted an action for breach of contract accompanied by fraudulent act, which the trial court dismissed, in part because it found the Pickens District did not breach its contract with Appellant. (See R. p. 87). Appellant's newly asserted "breach of contract" action is one that is not separate and apart from her cause of action for breach of contract accompanied by fraudulent action. To the contrary, the only breach of contract alleged within her Complaint is subsumed within the action for breach of contract with fraudulent act.

Appellant is prohibited from raising these new and novel arguments at this stage of her case to salvage what she can from her claim that the Pickens District is liable for breach of contract accompanied by fraudulent act. She did not present these arguments to the trial court, and the trial court did not consider or rule upon them. Therefore, they cannot be considered by this court.

D. Culler is entitled to summary judgment because Appellant did not and cannot establish that he intentionally inflicted severe emotional distress on her.

Appellant 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, Culler, as principal of the school, “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. . . .” (R. p. 27, ¶ 90). Appellant described a scenario in which Culler acted inappropriately in virtually every instance 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.*

In her Complaint, Appellant 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 Culler which she viewed as threatening because it suggested she was defaming him and because it bore a “King of Heart” stamp saying “LOVE.” (R. pp. 27-28, ¶¶ 91-92). Based on these allegations, the trial court granted summary judgment to Culler on the intentional infliction of emotional distress cause of action, finding Appellant failed to produce evidence that these incidents constituted intentional infliction of emotional distress.

In her brief to this court, Appellant also refers to other instances which she now argues constituted outrage: that Culler “leered” at her and was “unduly argumentative and aggressive with her”; that Culler “chose” a time when Appellant returned to school after

surgery “with a tube sticking out of her and in a weakened condition” to tell her she would have to continue serving as the yearbook advisor; that Culler refused to discipline Hudak, another teacher, after Hudak confronted Appellant for holding a student in her class past the end of the class period, causing the student to miss much of Hudak’s class; that Culler did not properly handle the student discipline and reporting of the alleged “sexual assault” of her by a student; and that Culler made false statements about Appellant that caused her not to be employed in other school districts. (Brief of Appellant pp. 35-36).

The tort of intentional infliction of emotional distress, or outrage, requires proof by Appellant 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 356-57, 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.

Appellant asserts that Culler behaved in an egregious and atrocious manner toward her throughout her employment and after it concluded. However, she did not produce evidence sufficient to establish the first, second, or fourth elements of the tort of intentional infliction of emotional distress.

1. Appellant produced no evidence that Culler intentionally or recklessly inflicted severe emotional distress on her.

Appellant produced no evidence that Culler “intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct.” She described two instances of allegedly egregious conduct on the part of Culler in her Complaint; she added other instances in her brief to this court that were not presented or addressed below.

The first instance of allegedly egregious conduct Appellant complained of in her Complaint occurred when 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. However, according to Culler and Bridges, who witnessed these interactions, Culler’s intention was to obtain written confirmation from Appellant that she truly intended to leave the school before he began interviewing for a replacement for her. Culler was also trying to protect her from what he believed might be possible action by the State Department of Education for abandoning her position if she stopped working without notice. The only competent evidence supports the conclusion that Culler did not intend to cause Appellant any distress.

Appellant also alleges that on her last day at the school, Culler “arranged to make [Appellant] 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 [Appellant] and to further inflict emotional distress on her demanding that she sign the letter immediately, which she was forced to do.” (R. p. 27, ¶ 91). The only evidence of Culler’s intention and state of mind at this point, however, is from Culler himself who said he went back into the room where Appellant was writing her resignation letter “because I heard she was upset and I did not want an employee of mine in there upset.” (R. p. 333, line 25-p. 334, line 3). Culler asked Appellant if writing the letter was upsetting her, to which she replied that she wanted to be left alone, so he left the room. (R. p. 334, lines 4-14).

In the second instance of allegedly egregious conduct described in the Complaint, Appellant claims that a letter written by Culler requesting that she stop falsely indicating on her applications for employment in other school districts that Culler’s educator certificate was being reviewed by the State Department of Education because of misconduct,⁵ was outrageous and atrocious. Culler’s letter was short, mild, and to the point. (See R. p. 298). Appellant claims that Culler’s intent to cause her emotional distress is somehow evidenced by the use of a stamp containing the word “LOVE” on the envelope in which the letter was mailed. (R. p. 28, ¶ 92). At the same time, however, she speculated that Culler had someone else address the letter “in order to disguise . . . to

⁵ Appellant wrote this statement on several of her employment applications in 2011, *see, e.g.*, R. p. 309, based on a complaint she herself had filed in 2010 with the State Department of Education, *see* R. pp. 300-304. In fact, the State Department of Education had investigated Plaintiff’s complaint and closed the case in 2010 without taking any action. *See* R. pp. 188-189.

ensure that I would open it, he also knew full well which stamp would have been used to cause me the most distress.” (R. p. 247, line 24-p. 248, line 3). In fact, Appellant does not know who addressed the letter or who chose the stamp. Her speculation about Culler’s intent, derived from the appearance of the envelope, cannot be credited.

Appellant failed to produce competent, admissible evidence on the element of intent. Her speculation does not create a genuine issue of material fact that 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 at 70.

2. Appellant produced no evidence of conduct by 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. Whether a defendant’s conduct may reasonably be regarded as so extreme and outrageous to permit recovery is a question for the court as a matter of law. *McSwain v. Shei*, 304 S.C. 25, 402 S.E.2d 890 (1991); *Fleming v. Rose*, 338 S.C. 524, 537, 526 S.E.2d 732, 739 (Ct.App. 2000), *rev’d on other grounds*, 350 S.C. 488, 567 S.E.2d 857 (2002).

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, *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, *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, *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (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, *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, *Wright v. Sparrow*, 298 S.C. 469, 381 S.E.2d 503 (Ct.App. 1989);
- Reference by newspaper to plaintiff's murdered daughter as a drifter and high school drop-out who had no family support, *Holtzscheiter v. Thomson*, 306 S.C. 297, 411 S.E.2d 664 (1991);
- Supervisor ridiculing speech impediment of plaintiff, who had cerebral palsy, and threatening to fire him, *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, *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. *See also Roberts v. Dunbar Funeral Home*, 288 S.C. 48, 51-52, 339 S.E.2d 517, 519 (Ct.App. 1986) (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 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., Melton v. Medtronic, Inc.*, 389 S.C. 641, 698 S.E.2d 886 (Ct.App. 2010) (shortly before patient’s scheduled surgery and after patient questioned cardiologist’s care and recommendations, cardiologist acted insensitively in telling patient “to get another doctor . . . and don’t even come back to my group,” but did not commit tort of intentional infliction of emotional distress).

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).

Appellant's descriptions of Culler's conduct do not suggest behavior that "exceeds all possible bounds of decency and is atrocious and utterly intolerable in a civilized society." Those descriptions include the following:

- Culler "made [her] uncomfortable from the very beginning" because he was argumentative and aggressive toward her (R. p. 207, lines 8-19);
- After Culler allegedly winked at Appellant in the office, she responded to a question from Bridges about whether Appellant 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.'" (R. p. 219, lines 16-18; R. p. 219, line 23-p. 220, line 1);
- When Appellant spoke to 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. (R. p. 220, lines 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." (R. p. 221, line 24-p. 222, line 6);
- Culler referred to her as "the little writing teacher" and addressed her in "a belittling manner," which she felt was not appropriate. (R. p. 222, lines 10-13);
- After a meeting in which 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." (R. p. 222, line 14-p. 223, line 7); and
- The letter from Culler requesting that Appellant stop stating that his educator certificate was under review "because of misconduct" caused Appellant to feel threatened and unsafe and "his choice of postage stamp was very upsetting to me . . . and very unprofessional." (R. p. 246, line 24-p. 247, line 4).

In describing the scene on June 4, 2009, when Culler and Bridges insisted that Appellant finally submit a written notice of resignation so that they could begin interviewing for a replacement for her position, Appellant describes a scenario which is unrecognizable to either of them. She depicts a scene in which 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 Bridges' office where Appellant was finally writing her resignation letter. Notably and tellingly, Appellant did not tell anyone at the time that Culler had an erection in her presence; nor did she include that detail in a 25-page detailed statement she provided to Pew a few weeks later. (*See R.* pp. 268-292). Bridges also stated that Appellant made no complaint to her at that time, or any other, of any kind of hostility or sexual harassment by Culler. (*R.* p. 412, ¶ 9).

To the contrary, Culler testified that he opened the door to Bridges' office to check on Appellant because he had been told that Appellant was upset and he "did not want an employee of mine in there upset." (*R.* p. 333, line 25-p. 334, line 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. (*R.* p. 334, lines 4-14).

Bridges' testimony supports that of Mr. Culler. She was aware that Appellant was upset about having to write the resignation letter, which Bridges did not understand since Appellant had already decided not to accept the offer of employment for the next school year. (*R.* pp. 411-412, ¶ 8). Bridges confirmed that Culler asked her to check on Appellant because she seemed upset, and that Appellant told her that writing the letter made her upset. According to Bridges, Appellant 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.” (R. p. 412, ¶ 9). Bridges also stated that Culler acted in a polite and solicitous manner when he earlier encouraged Appellant to sign her contract to protect against being unemployed (R. pp. 410-411, ¶ 7). Bridges was not aware that Appellant was upset by this conversation, *id.*, despite Appellant’s claim that she “left crying her eyes out.” (R. p. 223, lines 2-3).

Appellant’s additional arguments in her brief to this court that Culler intentionally or recklessly acted in an outrageous manner toward her are likewise ineffectual. As an initial matter, none of these additional incidents argued in Appellant’s brief were presented to the trial court as grounds for the claim of intentional infliction of emotional distress. They cannot, therefore, be considered by this court in connection with this claim. In addition, such alleged conduct, if true, is 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.

For example, Appellant’s claim that Culler “chose” a time when Appellant returned to school after undergoing surgery toward the end of the school year “with a tube sticking out of her and in a weakened condition” to tell her she would have to continue serving as the yearbook advisor (Appellant’s Brief at p. 35) does not describe extreme and outrageous behavior. This is particularly true given Culler’s obligation to ensure that his school, in a time of budgetary crisis, was properly staffed for the following year.

Appellant’s additional claim that Culler acted outrageously when he did not discipline another teacher, Hudak, for confronting Appellant in a disagreement over

whether Appellant should have kept a student in her class, making the student late to Hudak's class, *id.* at p. 36, is likewise insufficient to establish the tort of outrage. Further, these same facts underlie Appellant's cause of action against Hudak himself for assault, which the trial court dismissed on summary judgment and which Appellant does not appeal.

Appellant's additional claim that Culler did not properly handle the student discipline and reporting of the alleged "sexual assault" of her by a student, *id.*, ignores the undisputed fact that this incident was handled by school personnel other than Culler; Culler was neither involved nor consulted in the handling of this incident. (R. p. 320, lines 1-18; R. pp. 403-404, ¶¶ 3-5). Moreover, the trial court granted summary judgment to the Pickens District on Appellant's First Cause of Action based on these same factual allegations. Appellant does not appeal the dismissal of that claim and is, therefore, bound by the trial court's findings that its employees violated no duty to Appellant in its handling of the incident.

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

An analysis of Appellant's evidence in the light most favorable to her, and considering the legal precedent for this tort in South Carolina, demonstrates that

Appellant has not established that 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.

3. Appellant produced no evidence that she suffered from severe emotional distress such that no reasonable person could be expected to endure it.

In addition to failing to establish extreme and outrageous conduct by Culler, Appellant 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. at 359 fn 3, quoting Restatement (Second) of Torts § 46 cmt. j. As with the element of outrageous conduct, South Carolina courts apply a heightened burden of proof to the element of severe emotional distress. *Hansson*, 374 S.C. at 356, 650 S.E.2d at 71. 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, 328-29, 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).

Appellant's distress neither reached the level of severity contemplated in the case law, nor was it reasonable or proportionate to Culler's allegedly objectionable behavior. She testified that she felt "uncomfortable" (R. p. 207, line 8), she had "tears in my eyes" (R. p. 219 line 25-p. 220, line 1), she had to "catch her breath" (R. p. 220, line 14), she felt she was "being singled out" (R. p. 222, lines 4-5), she felt Culler belittled her, which was "not appropriate" (R. p. 222, lines 11-13), she left a meeting with Culler and Bridges "crying my eyes out the whole way home. . . . I was balling my eyes out. It was the most horrible, most painful thing." (R. p. 222, line 14-p. 223, line 6).

Appellant 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 Appellant, 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.

(R. p. 230, lines 9-18).

Appellant's response was, in the first place, not reasonable or proportionate to Culler's allegedly offensive behavior, particularly since her submission of the resignation letter should have eliminated her fear of losing her teaching certificate. If she were a person with a "peculiar susceptibility to such distress," she certainly did not establish that 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, Appellant'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. Further, Appellant's current claim that she suffers from post-traumatic stress syndrome, depression, or anxiety is without competent evidentiary support. She has produced no expert opinion to support a diagnosis of any emotional or mental condition, which requires special knowledge, skill, experience or training that Appellant, as a high school English teacher, does not possess. Appellant's lay opinion as to her mental condition and diagnosis is not competent to support this claim. Rule 701, SCRE.

The evidence, viewed in the light most favorable to Appellant, 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 they do not react, in such a highly emotional manner to the kind of run-of-the-mill, on the job conflicts described by Appellant. 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. at 359, fn 3, quoting Restatement (Second) of Torts § 46 cmt. j. Appellant’s distress was driven by her own imagination rather than Culler’s actions, and can only be viewed as exaggerated. Appellant’s evidence of her distress does not, therefore, establish that it was so severe that no reasonable person could be expected to endure it.

Appellant fails to produce evidence to satisfy the heightened burden of proving intentional infliction of emotional distress by Culler. The decision by the trial court to dismiss the Seventh Cause of Action against Culler should be affirmed.

E. The circuit court correctly granted summary judgment to the Respondents after hearing arguments from counsel and reviewing written submissions by the parties.

Appellant argues that the order of the trial court should be reversed and the case remanded for another hearing because the presiding judge did not hear oral arguments on every cause of action. Appellant asserts that she had no opportunity to prepare a brief in opposition to the Respondents’ motions for summary judgment, and the trial judge’s action in terminating the hearing and ruling on the written submissions of the parties

deprived her of her right to be heard, in violation of her constitutional due process rights. Appellant's argument should be rejected.

First, at the April 7, 2014 hearing, the presiding judge, after hearing oral arguments on some of Appellant's claims, solicited but received no objections from counsel to forgoing further oral argument in favor of his review of the written submissions by all parties. (R. p. 67, line 17-p. 68, line 23). Having consented to this procedure, Appellant cannot now argue that the trial judge erred in following it.

Second, Appellant submitted a sworn affidavit to the trial court for consideration. (See R. pp. 1-8). This affidavit contained eight pages outlining Appellant's claims and factual allegations. Her counsel represented to the court that this affidavit "explains her position." (R. p. 68, lines 10-11). The trial court confirmed that he "fully considered" her affidavit. (R. p. 70).

Finally, Appellant's argument that she lacked sufficient time to prepare a written response to the summary judgment motions is incorrect. These Respondents initially filed a motion for summary judgment on January 29, 2013, more than a year before the April 7, 2014 hearing. A hearing on their initial motion was scheduled for February 19, 2013, but was continued to allow additional discovery sought by Appellant's then-attorney. (See R. p. 566). Subsequently, by order filed June 6, 2013, the circuit court granted that attorney's request to be relieved as counsel, and, in acknowledgement of Respondents' concern that the case would be unduly delayed by the withdrawal of Appellant's counsel, gave Appellant 60 days within which to obtain new counsel. (See R. p. 567-570). Following the expiration of that time, these Respondents filed an amended motion for summary judgment on August 13, 2013. (See R. pp. 110-112). A hearing on the amended

motion was scheduled for October 24, 2013, but was continued on the request of Appellant's new counsel to allow time for him to familiarize himself with the case. (*See* R. p. 571). Another hearing was scheduled for December 9, 2013, but it was also continued at the request of Appellant's counsel because Appellant was not available on that date. (*See* R. p. 572). Appellant, thus, had more than a year after the filing of the initial summary judgment motions, six months after the filing of the amended summary judgment motion, and at least four months after her new counsel appeared on her behalf to prepare for the hearing on April 7, 2014.

Appellant had a full and fair opportunity to be heard and, moreover, consented to the trial court's procedure. She provides this court with no legally justifiable reason to remand the case for another hearing on the Respondents' motions for summary judgment. These Respondents request that this court affirm the findings and order of the trial court.

CONCLUSION

The Respondents, Pickens District and Gary Culler, respectfully submit that the evidence and any inferences to be drawn from it, viewed in the light most favorable to Appellant, do not establish that they can be liable to Appellant on any of the causes of action asserted by Appellant against them. They request that the Court of Appeals affirm the grant of summary judgment on the grounds stated by the circuit court.

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April 27, 2015
Columbia, South Carolina

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
Appellate Case No. 2014-001282

RECEIVED
APR 27 2015
SC Court of Appeals

Mariam 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.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondents School District of Pickens County, Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines and Dr. Kelly Pew complies with Rule 211(b), SCACR.

April 27, 2015


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THE STATE OF SOUTH CAROLINA
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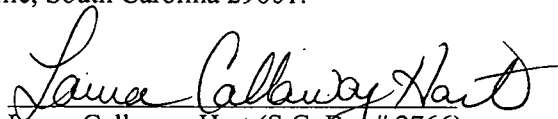
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PROOF OF SERVICE

I certify that I have served the Final Brief of Respondents School District of Pickens County, Gary Culler, Donald Boggs, Richard Hudak, Marilyn Raines and Dr. Kelly Pew on Mariam R. Noorai by depositing a copy of it in the United States Mail, postage prepaid, on February 6, 2015, addressed to her attorney of record, R. Mills Ariail, Jr., 11 North Irvine Street, Suite 11, Greenville, South Carolina 29601.

April 27, 2015


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