THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
In The Circuit Court

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SC Court of Appeals

Honorable R. Lawton McIntosh, Circuit Court Judge

Appeal No.: 2017-002564

Martha "Linda" Lusk, Ph.D.....Appellant

v.

Jami L. Verderosa.....Respondent

RECORD ON APPEAL

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ELECTRONICALLY FILED - 2017 Nov 14 1:17 PM - OCONEE - COMMON PLEAS - CASE#2016CP3700113

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	CIVIL ACTION NO: 2016-CP-37-00113
Martha "Linda" Lusk, Ph.D., Plaintiff, v. Jami L. Verderosa, Defendant.	**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court for hearing on November 1, 2017 at the Oconee County Courthouse on Defendant Jami L. Verderosa's Motion for Summary Judgment. At the hearing, the Plaintiff was represented by Candy M. Kern-Fuller, Esq., and the Defendant was represented by Jeffrey C. Kull, Esq.

After consideration of the Motion, the arguments of counsel, the various memoranda and exhibits submitted by the parties, and after a review of the record, the Court hereby **GRANTS** Jami L. Verderosa's Motion for Summary Judgment for the reasons set forth below.

BACKGROUND

The Plaintiff was previously an Assistant Principal at West-Oak Middle School (West-Oak), which is one the schools operated by the School District of Oconee County (the "School District"). The Defendant was the Principal at West-Oak and as such was the Plaintiff's supervisor for several years.

In her Complaint, the Plaintiff alleges that the Defendant engaged in a campaign to attack her reputation by making false statements and by increasing her workload. In particular, the Plaintiff claims that the Defendant issued a letter of reprimand in 2012 and had it placed in the Plaintiff's

personnel file. The Plaintiff filed a formal grievance with the School District, seeking the removal of the letter of reprimand from her personnel file, but her grievance was denied by the School District.

The Plaintiff claims that, after her grievance was denied, the Defendant continued to issue reprimands against her until the spring semester of the 2012-2013 school year. In May 2013, the Superintendent transferred the Plaintiff to a different school within the School District. Since the 2013-2014 school year, the Plaintiff has been employed by the School District as an Adult Education teacher.

In 2014, the Plaintiff filed an administrative charge against the School District before the United States Equal Employment Opportunity Commission (the "EEOC") relating to her demotion to be a teacher at Adult Education. The Plaintiff alleged that the School District retaliated against her for filing the grievance relating to the first letter of reprimand she received from the Defendant. The Plaintiff also claimed that she was discriminated against based on her age. Defendant Verderosa was not a party to the EEOC proceeding. The Plaintiff's EEOC administrative charge was dismissed soon after it was submitted because it was not timely filed.

In this civil action, the Plaintiff asserts two causes of action: (1) defamation; and (2) tortious interference with contract.

ANALYSIS

I. Summary Judgment Standard

Summary judgment is proper if, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c) SCRCP; *Matsell v. Crowfield Plantation Community Services Assoc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App 2011). The Supreme Court has established that "'[t]he plain language of Rule 56(c)

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mandates the entry of summary judgment . . . against a party who 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.'" *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357-58, 650 S.E.2d 68, 71 (2007) (internal citations omitted).

II. The Plaintiff's defamation cause of action is barred by the two-year statute of limitations.

South Carolina Code § 15-3-550 provides that an action for defamation must be brought within two years. In this case, the undisputed testimony establishes that all the conduct the Plaintiff alleges against the Defendant occurred no later than May 2013 when the Plaintiff was transferred to a different school and the Defendant was no longer her supervisor. During discovery, the Plaintiff took the depositions of two of her friends who were teachers at West-Oak and remained there after the Plaintiff was transferred. Both of these witnesses verified that they knew of no comments by the Defendant relating to the Plaintiff after the Plaintiff was transferred in May 2013. The Plaintiff filed this civil action on February 24, 2016, many months after the expiration of the two-year statute of limitations.

In an attempt to avoid the two-year statute of limitations, the Plaintiff argues – without citation to evidence – that the Defendant repeated defamatory statements about her to the EEOC while the Plaintiff's EEOC charge was pending in 2014. In response to this argument, Earnestine Williams, the Assistant Superintendent for Human Resources, testified via affidavit that she handled the EEOC proceeding on behalf of the School District and did not inform the Defendant of the Plaintiff's EEOC proceeding. The Plaintiff's affidavit further verifies that she was not aware of the EEOC proceeding while it was pending and never made any statements about the Plaintiff to the EEOC at any time. The Plaintiff has not offered any evidence to refute this testimony. *See SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990) (ruling that to

avoid summary judgment the nonmoving party's "response, including affidavits or as otherwise provided by the rule, must set forth specific facts showing there is a genuine issue for trial."). The Court finds that the Plaintiff's defamation cause of action is barred by the two-year statute of limitations.

III. The Plaintiff's tortious interference with contract cause of action fails because the Plaintiff's contractual rights were not breached.

The Plaintiff alleges that she was an administrator at West-Oak and that the Plaintiff's conduct caused her to be demoted to the position of teacher. To prevail on a claim of tortious interference with contract, the Plaintiff must establish: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of its breach; (4) the absence of justification; and (5) resulting damage. *Eldeco, Inc. v. Charleston County School District*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). "Where there is no breach of the contract, there can be no recovery." *Id.* at 481, 642 S.E.2d at 732. The Court finds that there is no evidence that the Plaintiff's contract was breached.

The determination of whether the Plaintiff's contract was breached is governed by South Carolina Code § 59-24-15. This statute provides:

> Certified education personnel who are employed as administrators on an annual or multi-year contract will retain their rights as a teacher under the provisions of Article 3 of Chapter 19 and Article 5 of Chapter 25 of this title but no such rights are granted to the position or salary of administrator. Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract.

(emphasis added). The South Carolina Supreme interpreted this statute, holding:

> Pursuant to section 59-24-15, while a certified educator who is employed as an administrator on an annual or multi-year contract retains her rights as a teacher under the Teacher Act, those rights are not granted to the position or salary of administrator.

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Henry-Davenport v. School District of Fairfield County, 391 S.C. 85, 89, 705 S.E.2d 26, 28 (2011) (emphasis added).

At the time of her transfer, the Plaintiff had an annual administrative contract for the 2012-2013 school year and was assigned to serve as the Assistant Principal at West-Oak. Based on South Carolina Code § 59-24-15 and the Supreme Court's holding in *Henry-Davenport*, the Plaintiff had no rights to either her position or salary as administrator. As such, even though she was transferred to a different school in May 2013, before the end of the 2012-2013 school year, her contract was not breached.

In her memoranda, the Plaintiff concedes that she has no claim for tortious interference for any of her contracts after the 2012-2013 school year. Instead, she contends that she may maintain such a claim for the two months remaining in the 2012-2013 school year after she was transferred to a different school. In other words, she claims she can recover for tortious interference from the time she was transferred in May 2013 until the end of that school year on June 30, 2013.

The Plaintiff bases this claim on the last sentence of Section 59-24-15, which states: "Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract." (emphasis added). The Court finds this statutory language does not preserve the Plaintiff's claim relating to the last two months of the 2012-2013 school year. This statutory language preserved the rights to the position and salary of an administrator only to those public school employees who had administrative contracts when the statute was enacted in 1998 but only until that contract expired. *See Henry-Davenport v. School District of Fairfield County*, 832 F.Supp.2d 602, 609 (D.S.C. 2011) (interpreting the last sentence to mean that if "an administrator had rights under a contract to continue as an administrator when the statute

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was enacted, the statute states the administrator retained those rights until the contract expired.") (emphasis added).[1]

Therefore, the Plaintiff has failed to show that her transfer to a different school resulted in a breach of contract. Under South Carolina law, a public school administrator does not have the right to either the position or salary of an administrator. Instead, an administrator retains only the rights of a teacher. Because the Plaintiff remains employed as a teacher at the School District, her contractual rights were not breached.

CONCLUSION

As set forth above, even when the evidence is viewed in the light most favorable to the Plaintiff, the Plaintiff's defamation cause of action is barred by the two-year statute of limitations and the Plaintiff's tortious interference with contract cause of action fails based on South Carolina Code § 59-24-15. Therefore, Defendant Jamie L. Verderosa's Motion for Summary Judgment is hereby **GRANTED**.

IT IS SO ORDERED.

Honorable. R. Lawton McIntosh
Presiding Judge

Anderson, South Carolina
11-14, 2017

[1] In addition, it is undisputed that the School District continued to pay the Plaintiff the same salary for the remaining two months of the 2012-2013 school year even after she was transferred to the different school.

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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

v.

Jami L. Verderosa,

Defendant.

CONSENT ORDER TO DEFENDANT'S MOTION TO COMPEL

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 JUL 22 PM 1:27

This matter comes before the Court by consent of the parties as to the Defendants' Motion to Compel.

The Court hereby ORDERS:

1. The Defendant's Motion to Compel is granted.

2. The Plaintiff's Answers to Interrogatories and Responses to Requests for Production must be served on the Defendant by no later than Wednesday, July 27, 2016.

3. The Defendant shall notify the Plaintiff of any perceived deficiencies in Plaintiff's Answers and Responses by August 2, 2016, and the Plaintiff shall have until August 12, 2016 to cure any deficiencies.

4. The Plaintiff also stipulates that any emotional and/or mental distress type damages that she is seeking in this civil action are limited only to any presumed damages she may be entitled to recover as to her claim for defamation. The Plaintiff reserves her claim for lost wages.

5. The Defendant reserves the right to refile her request for attorneys' fees in the event that the Plaintiff's Answers and Responses are not complete after August 12, 2016.

I SO ORDER:

R. Scott Sprouse
Oconee County Court of Common Pleas

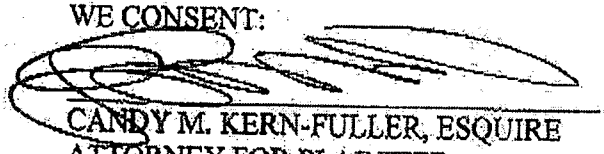
Walhalla, SC
July 22 2016

7

ENTERED
COMPUTER

Copies to:
Atty ___(P) Kevin Fuller (D) Mail
DSS ___ other ___
Mailed ✓ Boxed ___ handed ___

WE CONSENT:



CANDY M. KERN-FULLER, ESQUIRE
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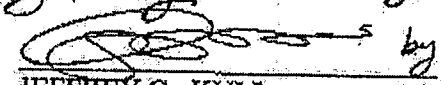
Easley,SC 29640

Jeffrey C. Kull by



by permission

JEFFREY C. KULL
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Columbia, South Carolina 29260
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RLS

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE)

Martha "Linda" Lusk, Ph.D., Plaintiff(s)

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 FEB 24 A 9:12

CIVIL ACTION COVERSHEET

2016-CP-37- 113

vs.

Jami L. Verderosa, Defendant(s)

Submitted By: Candy M Kern-Fuller
Address: 200 East Main Street
Easley, South Carolina 29640

SC Bar #: 11392
Telephone #: 864-855-3114
Fax #: 864-855-3446
E-mail: candy@upstatelawgroup.com

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

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete**

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-NI-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☒ Slander/Libel (380)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: Candy M Kern-Fuller **Date:** February 23, 2016

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
Martha "Linda" Lusk, Ph.D.,	)	
Plaintiff,	)	**SUMMONS**
vs.	)	
Jami L. Verderosa,	)	
Defendant.	)	Docket No. 2016-CP-37-113

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 FEB 24 A 9:12

TO THE DEFENDANT ABOVE-NAMED: Jami L. Verderosa

YOU ARE HEREBY SUMMONED and notified that an action has been filed against you in this court. Within thirty (30) days of the day you receive this Summons, you must respond in writing to this Complaint by filing an Answer with this court. You must also serve a copy of your Answer to this Complaint upon the Plaintiff's Attorney at the address shown below. If you fail to answer the Complaint, judgment by default could be rendered against you for the relief requested in the Complaint.

February 23, 2016
Easley, South Carolina

Sarah E Meadows for Candy M. Kern-Fuller, Esq.
Attorney for Plaintiff

Print Name: Sarah E Meadows

Address: 200 East Main Street
Easley, South Carolina 29640

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE 10TH JUDICIAL CIRCUIT
COUNTY OF OCONEE)	
)	
Martha "Linda" Lusk, Ph.D.)	Case No.: 2016-CP-37-113
)	
Plaintiff,)	
)	
vs.)	**COMPLAINT**
)	
Jami L. Verderosa,)	**(Jury Trial Requested)**
)	
Defendant.)	
)	

OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 FEB 24 A 9:12

The Plaintiff, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

JURISDICTION AND PARTIES

1) Plaintiff is a citizen and resident of Oconee County, South Carolina;

2) Upon information and belief, Defendant Jami L. Verderosa is a citizen and resident of the State of Georgia who used to work with Plaintiff;

3) This action is for a total amount of damages not to exceed $74,999.99;

4) This Court has personal and subject matter jurisdiction over all parties and venue is proper in this Court;

BACKGROUND/FACTS

5) Plaintiff incorporates all prior allegations, where not inconsistent, as if fully set forth herein;

6) Plaintiff has a Bachelor's Degree from Furman University and a doctorate degree from the University of South Carolina. Plaintiff previously worked at the School District of Oconee County with the Defendant;

7) Despite being named Teacher of the Year three times, Defendant engaged in an intentional and malicious campaign to attack the honesty, integrity, virtue, or reputation of Plaintiff. This campaign

culminated in a meeting on or about February 25, 2013, wherein Defendant made numerous defamatory statements about Plaintiff to Ernestine Williams which besmirched and attacked the honesty, integrity, virtue, or reputation of Plaintiff and exposed Plaintiff to disgrace and ridicule, thus causing her damages, including a demotion;

8) In addition to the defamation, Defendant further ordered Plaintiff perform conflicting duties so as to tortiously interfere with Plaintiff's performance of her contracted employment duties;

9) As a result of the emotional distress Plaintiff was enduring as a result of the Defendant's actions, on or about March 4, 2013, Plaintiff accidently sent an e-mail to the wrong e-mail recipient and this caused Plaintiff's employer to place her on administrative leave, stripped of her administrative duties and demote her to a teaching position;

FOR A FIRST CLAIM
(SLANDER)

10) Plaintiff realleges all previous paragraphs as if fully restated herein;

11) Defendant made statements that were slanderous and slanderous *per se* which were meant to attack the honesty, integrity, virtue, or reputation of Plaintiff and exposed Plaintiff to disgrace and ridicule, thus causing her damages, including a demotion and other and further damages as to be shown to the triers of fact;

12) These statements regarding the Plaintiff were intentionally or recklessly slanderous/libelous and/or malicious and have caused Plaintiff special and per se damages;

13) Accordingly, Plaintiff would respectfully request that the triers of fact award Plaintiff such actual, special and punitive damages as it deems just and proper;

FOR A SECOND CLAIM
(TORTIOUS INTERFERENCE WITH CONTRACT)

14) Plaintiff realleges all previous paragraphs as if fully restated herein;

15) Plaintiff alleges that Defendant did intentionally and tortiously interfere with Plaintiff's contract with her employer thus causing Plaintiff's employer to terminate Plaintiff's contract and demote her

16) As a direct and proximate result of the intentional interference by Defendant with Plaintiff's contractual relations, Plaintiff has suffered actual damages;

17) Plaintiff further alleges that the actions taken by Defendant subject her to not only actual damages, but also punitive damages in an amount to deter her from such future similar acts;

18) Accordingly, Plaintiff alleges he is entitled to actual and punitive damages as may be determined by a jury of his peers, and for costs of this action;

WHEREFORE, having fully stated her claims against Defendant, the Plaintiff respectfully prays for relief as follows:

1) A jury trial on all claims;
2) Actual and compensatory damages, as permitted under the law of the State of South Carolina;
3) Such other and further relief as this Court and a jury of Plaintiff's peers deem just and proper.

Susan E. Meadows for Candy M. Kern-Fuller, Esq.

Candy M. Kern-Fuller, Esq. #11392
UPSTATE LAW GROUP, LLC
200 East Main Street
Easley, South Carolina 29640
864-855-3114
864-855-3446 (Facsimile)

ATTORNEY FOR PLAINTIFF

Date: 8/23/16

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

v.

Jami L. Verderosa,

Defendant.

ANSWER

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 MAR 28 A 11:42

TO: CANDY M. KERN-FULLER, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE PLAINTIFF ABOVE NAMED:

Now comes this Defendant, Jami L. Verderosa ("this Defendant"), answering the Plaintiff's Complaint herein, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

2. This Defendant admits the allegations of Paragraph 1 of the Plaintiff's Complaint upon information and belief.

3. This Defendant admits the allegations of Paragraphs 2 and 3 of the Plaintiff's Complaint.

4. Paragraph 4 of the Plaintiff's Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed required, this Defendant states that she is not a proper party to this lawsuit pursuant to the provisions of the South Carolina Tort Claims Act.

BACKGROUND FACTS

Copies to:
Atty ✓ (P)_____(D)_____
DSS_____other_____
Mailed ✓ Boxed____handed____

ENTERED COMPUTER

5. In response to Paragraph 5 of the Plaintiff's Complaint, the Defendant repeats and realleges its response in paragraphs 1 through 4 above as if fully set forth verbatim herein.

6. In response to Paragraph 5 of the Plaintiff's Complaint, this Defendant admits that the Plaintiff and Defendant both worked together at West-Oak Middle School for several years and admits the remaining allegations contained in Paragraph 6 upon information and belief.

7. This Defendant denies the allegations of Paragraphs 7, 8, and 9 of the Plaintiff's Complaint.

FOR A FIRST DEFENSE AS TO A FIRST CLAIM
(Slander)

8. In response to Paragraph 10 of the Plaintiff's Complaint, the Defendant repeats and realleges its response in paragraphs 1 through 9 above as if fully set forth verbatim herein.

9. This Defendant denies the allegations in Paragraphs 11, 12, and 13 of the Plaintiff's Complaint.

FOR A FIRST DEFENSE AS TO A SECOND CLAIM
(Tortious Interference with Contract)

10. In response to Paragraph 14 of the Plaintiff's Complaint, the Defendant repeats and realleges its response in paragraphs 1 through 13 above as if fully set forth verbatim herein.

11. This Defendant denies the allegations of Paragraphs 15, 16, 17, and 18 of the Plaintiff's Complaint and denies that the Plaintiff is entitled to make any recovery as prayed for in her Complaint or otherwise.

FOR A SECOND DEFENSE

12. The Complaint fails to state a claim upon which relief can be granted and, accordingly, the Defendant is entitled to judgment as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

13. This Defendant cannot be held liable under the state law causes of action because the South Carolina Tort Claims Act does not allow recovery against a governmental employee who acts within the scope of his official duty. S.C. Code § 15-78-70.

FOR A FOURTH DEFENSE

14. The Defendant would show that the Plaintiff's claims against the Defendant are barred by the applicable Statute of Limitations.

FOR A FIFTH DEFENSE

15. This Defendant would show that the Plaintiffs have failed to state a claim for which damages are recoverable under any applicable law because this Defendant did not act improperly, in a grossly negligent manner, or with the intent to cause any damage in any respect and, therefore, Plaintiff's claims should be dismissed as a matter of law.

FOR A SIXTH DEFENSE

16. This Defendant is entitled to immunity as to claims asserted against it by the Plaintiff.

FOR A SEVENTH DEFENSE

17. This Defendant would show that she acted at all times in good faith, without any wrongful or malicious intent and with a reasonable belief that her conduct did not give rise to any tort or claim for damages and nor did it violate any public policy or law of South Carolina or the United States.

FOR AN EIGHTH DEFENSE

18. Plaintiff's claims are barred, in whole or in part, by the doctrine of governmental and/or sovereign immunity.

FOR A NINTH DEFENSE

19. The Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to her own acts or omissions which combined and concurred with any actionable conduct on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without the conduct of the Plaintiff such injuries or damages would not have occurred. The Defendant pleads such conduct on the part of the Plaintiff and would ask that this Court compare the negligence of the Plaintiff and any actionable conduct of the Defendant (which is denied) and if it is determined that the Plaintiff's conduct was greater than any actionable conduct of the Defendant (which actionable conduct is denied), then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's conduct is equal to or less than any actionable conduct of the Defendant (which actionable conduct is denied), then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own conduct.

FOR A TENTH DEFENSE

20. The Plaintiff's claims against the Defendant are barred, in whole or in part, in that the Plaintiff has failed to mitigate their damages, if any.

FOR AN ELEVENTH DEFENSE

21. The Defendant assert all the provisions, limitations, defenses, and immunities of the South Carolina Tort Claims Act, South Carolina Code §15-78-10 et seq., including, but not

limited to, South Carolina Code §15-78-60 (2), (4), (5), (14), (23) and (25) of South Carolina Code §15-78-200.

FOR A TWELFTH DEFENSE

22. The Plaintiff is not entitled to recover punitive damages or attorneys' fees or pretrial interest from the Defendant pursuant to South Carolina Code §15-78-120.

FOR A THIRTEENTH DEFENSE

23. At most, the acts alleged by the Plaintiff are governed by South Carolina Code § 15-78-120 so any potential recovery (which is denied) is subject to the statutory cap on damages.

FOR A FOURTEENTH DEFENSE

24. The Defendant would show that she cannot be held liable for the Plaintiff's alleged damages because the Plaintiff's contract was not interfered with or breached and she has not alleged a valid claim for interference with contract.

FOR A FIFTEENTH DEFENSE

25. The Defendant would show that she is immune from suit based on qualified immunity.

FOR A SIXTEENTH DEFENSE

26. The Plaintiff's Complaint should be dismissed because she has failed to prosecute this action against the real Defendant in interest.

FOR AN SEVENTEENTH DEFENSE

27. The Defendant specifically reserves the right to assert any further defenses as may be revealed by additional information acquired during discovery or otherwise from any other party herein. The Defendant further reserves the right to amend this Answer to the Plaintiffs' Complaint to assert any other applicable defenses, to assert any applicable cross and/or counterclaims, and to implead any other applicable parties.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed with costs. The Defendant demands a jury trial of all genuine issues of material fact.

MURPHY & GRANTLAND, P.A.

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Columbia, South Carolina
March 24, 2016

ELECTRONICALLY FILED - 2017 Mar 24 2:44 PM - OCONEE - COMMON PLEAS - CASE#2016CP3700113

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	CIVIL ACTION NO: 2016-CP-37-00113
Martha "Linda" Lusk, Ph.D., Plaintiff, v. Jami L. Verderosa, Defendant.	**MOTION FOR SUMMARY JUDGMENT**

TO: CANDY M. KERN-FULLER, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Defendant, Jami L.Verderosa, will move before the presiding judge of the Oconee County Court of Common Pleas at the Oconee County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order granting summary judgment in favor of the Defendant Jami L. Verderosa.

The Plaintiff alleges two causes of action: (1) defamation and (2) tortious interference with contract. Even when viewing all the evidence in the light most favorable to the Plaintiff, the Defendant is entitled to judgment in her favor as a matter of law on the following grounds:

(1) As for the Plaintiff's defamation claim, the statute of limitations for defamation is two years, South Carolina Code § 15-3-550, and the Plaintiff waited three years before filing her civil action;

(2) The alleged statements were not "published."

(3) The alleged statements were first made by the Plaintiff herself to the District administration;

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(4) As for the Plaintiff's tortious interference with contract claim, pursuant to South Carolina Code § 59-24-15, the Plaintiff did not have a contractual right to an administrative position. See Henry-Davenport v. School District of Fairfield County, 391 S.C. 85, 705 S.E.2d 26 (2011) ("Pursuant to section 59-24-15, while a certified educator who is employed as an administrator on an annual or multi-year contract retains her rights as a teacher under the Teacher Act, those rights are not granted to the position or salary of administrator.").

(5) The Plaintiff's contract was not interfered with because she continues to be employed as a teacher by the School District;

(6) The Defendant did not interfere with the Plaintiff's contract as a matter of law. The Plaintiff's contract at most allowed her to be employed as a teacher, not an administrator.

(7) The Plaintiff's tortious interference claim is also barred by the two-year statute of limitations at South Carolina Code § 15-78-110 for tort claims against a governmental entity. The Defendant's alleged conduct was within the scope of her official duties.

WHEREFORE, the Defendant respectfully moves the Court to enter judgment in her favor with costs assessed against the Plaintiff and for other relief the Court deems appropriate. This Motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure

and will be supplemented and supported by such affidavits, depositions, discovery responses, memoranda of law, and such other documents as appropriate.

MURPHY & GRANTLAND, P.A

S/ Jeffrey C. Kull
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Columbia, South Carolina
March 24, 2017

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ELECTRONICALLY FILED - 2017 Apr 06 6:19 PM - OCONEE - COMMON PLEAS - CASE#2016CP3700113

STATE OF SOUTH CAROLINA COUNTY OF OCONEE Martha "Linda" Lusk, Ph.D., Plaintiff, v. Jami L. Verderosa, Defendant.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2016-CP-37-00113 **DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

TO: CANDY M. KERN-FULLER, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE PLAINTIFF ABOVE NAMED:

This Memorandum in Support of Motion for Summary Judgment is being filed by the Defendant in support of the her Motion for Summary Judgment filed with this Court on March 24, 2017. The Defendant respectfully requests an Order granting summary judgment in her favor and in support thereof states as follows:

Plaintiff's Claims

The Plaintiff alleges two causes of action: (1) defamation; and (2) tortious interference with contract. This lawsuit was filed on February 24, 2016, almost three years after the Plaintiff was reassigned to a teaching position at a different school and was no longer being supervised by the Defendant.

Facts

The Plaintiff is an employee of the School District of Oconee County ("SDOC") and has been for many years. She is currently a teacher in the Adult Education Program at Code Learning Center. (Exhibit A: Plaintiff's Dep. p. 11).

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For many years, the Plaintiff was an Assistant Principal at West-Oak Middle School ("WOMS"). Starting in the 2009-2010 School Year, the Defendant became the Principal at WOMS, thereby becoming the Plaintiff's direct supervisor. The Plaintiff had applied for the position as Principal at WOMS, but the Defendant was appointed as Principal instead of the Plaintiff. (Exhibit A: Plaintiff's Dep. pp. 39-40)

The Plaintiff complains that the Defendant placed a disciplinary letter in her personnel file in March 2012. This letter addressed a complaint that a parent of a student had made to the SDOC concerning the Plaintiff. In particular, the parent complained that the Plaintiff had made comments to the student implying that the student was a criminal. The letter from the Defendant directed the Plaintiff to be careful how she addressed students in the future. (Exhibit A: Plaintiff's Dep. pp. 41-46, 61-62). The Plaintiff admits there were no false statements in the Defendant's March 2012 letter. (Id. at p. 64).

The Plaintiff filed a grievance regarding the disciplinary letter to the SDOC administration. The Assistant Superintendent (who is now the Superintendent) reviewed the Plaintiff's grievance and found that the letter that the Defendant had placed in the Plaintiff's personnel file was not unfair. In response to the grievance, the Assistant Superintendent sent a letter to the Plaintiff explaining what the parent's allegation was against the Plaintiff (i.e., that the Plaintiff had implied in her comments that the student was a criminal). The Assistant Superintendent also found that the letter that the Defendant placed in the Plaintiff's personnel file was not a letter of reprimand but instead was a reminder for the Plaintiff to use her words more carefully when disciplining students. (Exhibit A: Plaintiff's Dep. pp. 65, 75-76).

The Plaintiff's deposition in this case was taken in August 2016, more than four years after the disciplinary letter was placed in her personnel file. Up until her deposition, the Plaintiff insisted

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that no one with the School District ever explained to her what she allegedly said to the student. (Exhibit A: Plaintiff's Dep. pp. 41-44). However, the Plaintiff admitted that in 2012 she had received the letter from the Assistant Superintendent who reviewed her grievance. She also admitted in her deposition that the Assistant Superintendent informed her in the letter that the student believed that the Plaintiff was implying that she was a criminal. (Id. p. 76). So, even though the Plaintiff had insisted for more than four years that no one at the School District had ever told her what the student was upset about, the Plaintiff admitted that the Assistant Superintendent's letter specifically informed her what the offending statement was. Nevertheless, after reviewing the 2012 letter from the Assistant Superintendent during her deposition, the Plaintiff testified that she must have "overlooked" this part of the letter because she probably did not read the entire letter. (Id. p. 76).[1]

In her deposition, the Plaintiff admitted that she believed by March 2012 that the Defendant had defamed her character. The Plaintiff also claimed that by March 2012 she believed that the Defendant had damaged her reputation (Dep. pp. 71-72).

The Plaintiff claims that her relationship with the Defendant deteriorated after the disciplinary letter of March 2012 was placed in her personnel file. She complains that the

[1] The Plaintiff also appealed the Assistant Superintendent's findings to the Board of Trustees – even though now she admits that she did not read the Assistant Superintendent's entire letter. In her May 15, 2012 letter to the Superintendent, she again insisted that "[t]o this day I do not know the inappropriate comment that I made to the student . . . ," even though the Assistant Superintendent's letter clearly informed her of the offending comment. (Exhibit A: Plaintiff's Dep. 91-92).

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Defendant sent her several letters and an email from May 2012 through January 2013 (the "subsequent correspondence") relating to various disciplinary matters. (Dep. pp. 81, 122).[2]

Earnestine Williams is the Assistant Superintendent for Human Resources at the SDOC. The Plaintiff took her deposition in this case in November 2016.

Ms. Williams testified that none of the subsequent correspondence from the Defendant to the Plaintiff was placed in the Plaintiff's personnel file. (Exhibit B: Williams Dep. p. 85). Instead, Ms. Williams testified that she learned about the subsequent correspondence from the Plaintiff, not the Defendant. In particular, Ms. Williams explained that the Plaintiff would telephone Ms. Williams to complain that the Defendant had written her up for various issues. In addition, the Plaintiff would send letters to the Defendant responding to the subsequent correspondence, and then the Plaintiff would send a copy of her letters to Ms. Williams. (Id. pp. 84-85). So, it was the Plaintiff, not the Defendant, who reported the subsequent disciplinary matters involving the Plaintiff to the Assistant Superintendent for Human Resources. (Id. pp. 84-85) (Q: "So the only reason that you knew about these incidents . . . was because Dr. Lusk [the Plaintiff] had provided you the information? A: Right."). The Plaintiff admits that when the Defendant sent her the subsequent correspondence that she -- the Plaintiff -- would often telephone Ms. Williams to inform her about it. (Exhibit A: Plaintiff's Dep. pp. 119-21).

At no time did the Plaintiff ask Ms. Williams to reassign the Plaintiff to a different school. Ms. Williams never had any reason to believe that the Defendant had any plan to try to have the Plaintiff reassigned. (Exhibit B: Williams Dep. p. 83).

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[2] The Plaintiff also claims that the Defendant made comments to Ms. Williams about another incident that occurred in the first part of February 2013, but the Plaintiff admits that she has "no clue" as to when this alleged conversation occurred. (Exhibit A: Plaintiff's Dep. p. 133).

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In February 2013, Ms. Williams and the three other members of the management team at the SDOC – which did not include the Defendant -- decided to reassign the Plaintiff from her position as Assistant Principal at WOMS to a position as teacher at the Code Learning Center. (Exhibit B: Williams Dep. pp. 85-86). At that time, Ms. Williams requested that the Defendant send to her a copy of the subsequent correspondence she had sent to the Plaintiff -- the same correspondence that the Plaintiff had already told Ms. Williams about before February 2013. (Id. pp. 86-90).

The Plaintiff was informed by Ms. Williams on February 28, 2013, that she would be reassigned to a teaching position. Ms. Williams sent the Plaintiff a letter on March 4, 2013, confirming the reassignment. (See id. pp. 83-84). The last time the Plaintiff heard the Defendant make any comments or see anything that the Defendant wrote about her was in 2013. (Exhibit A: Plaintiff's Dep. pp. 30-32). Thereafter, the Plaintiff waited a few days shy of three (3) years before she filed this civil action against the Defendant.

Standard of Review

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A motion for summary judgment shall be granted '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.'" Id. (quoting Rule 56(c), SCRCP). In determining whether a genuine issue of fact exists, the evidence and all factual inferences drawn from it must be viewed in light most favorable to the nonmoving party. Sauner v. Pub. Serv. Auth. Of South Carolina, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003).

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Argument

I. The Court should grant summary judgment in favor of the Defendant as to the Plaintiff's defamation claim on several grounds.

A. The defamation claim is barred by the two-year statute of limitations.

The statute of limitations for defamation claims under South Carolina law is two years. South Carolina Code § 15-3-550 specifically provides that an action for libel or slander must be brought within two years.

In this case, the Plaintiff does not allege that the Plaintiff made any defamatory statements about her after February 2013, when the Plaintiff was informed by the SDOC administration that she was being reassigned to a teaching position. The Plaintiff filed this civil action in February 2016, three (3) years after the last alleged defamatory statements. As such, the Plaintiff's defamation cause of action against the Defendant is barred by the two-year statute of limitations as a matter of law.

B. In addition, the Plaintiff's defamation claim lacks merit because the alleged statements were not "published" by the Defendant.

In order to properly plead a claim for defamation, the Plaintiff must allege that (1) a false and defamatory statement was published; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006) (citing Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002)).

"Self-publication of an allegedly defamatory statement cannot support a defamation action against the originators of the statement." Thomas v. Dillion School District Four, 2015 WL

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5554508 (D.S.C. 2015) (citing Murray v. Homnan, Inc., 344 S.C. 129, 145, 542 S.E.2d 743, 751 (Ct. App. 2001). In Dillon School District Four, the School District fired the Plaintiff after determining that she had misappropriated payroll information. The Plaintiff sued the School District, claiming that the District had defamed her by having her removed from District property by a police officer and by disclosing to the community that she had been fired for theft. Id. at *18.

The District Court granted summary judgment in favor of the School District on the Plaintiff's defamation claim. The Court determined that there was no evidence that the School District made any comments to the community. Instead, the Court found the evidence showed that it was the Plaintiff, not the Defendant, who disclosed the information to members of the community. As such, the Court found that the Plaintiff's "self-publication" of the alleged defamatory statements would not support a cause of action against the School District for defamation. Dillon School District Four, 2015 WL 5554508 at *19.

Likewise in this case, the Plaintiff cannot point to any disclosure to the public by the Defendant of the communications between the Plaintiff and the Defendant. Instead, the Plaintiff admits that it was her normal procedure to contact Ms. Earnestine Williams, the Assistant Superintendent for Human Resources, when she received the communications from the Defendant:

Q: When she [the Defendant] would give you a write up you would call Earnestine generally? That was your procedure, you would talk to Earnestine about it?

A: Yes.

Q: Tell her what's going on? And you would tell her what Jami [the Defendant] was saying and then you would tell her your response?

A: Yes, I would.

(Exhibit A: Plaintiff's Dep. pp. 119-20). The Plaintiff conceded that she contacted Ms. Williams about the write-ups whenever she deemed it important enough and even telephoned her one time at Ms. Williams' home. (Id. at pp. 120-21). Ms. Williams confirmed that Dr. Lusk was informing her about the write-ups either by telephone or by correspondence. (Exhibit B: Williams Dep. p. 90).

The Plaintiff complains about the numerous write-ups that she received from the Defendant in 2012 and early 2013, but it was the Plaintiff, not the Defendant, who was reporting these matters to the SDOC administration. As such, it was the Plaintiff, not the Defendant, who published the information to the administration. Therefore, the Plaintiff's cause of action for defamation fails as a matter of law, because the Plaintiff was the one responsible for publishing the statements.

C. In addition, the Plaintiff's cause of action for defamation lacks merit because there was no unprivileged publication.

One of the essential elements of a defamation cause of action is that the alleged publication cannot be privileged. Erickson, 368 S.C. at 465, 629 S.E.2d at 664. If the publication is privileged, the publication is not actionable. "[O]ne who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privileged is not abused." Harris v. Tietex Int'l Ltd., 417 S.C. 533, 540, 790 S.E.2d 411, 415 (Ct. App. 2016) (quoting Manley v. Manley, 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Ct. App. 1987)). "Whether an occasion gives rise to a qualified or conditional privilege is generally a question of law for the Court." Id. "[A] qualified privilege attache[s] to communications between an employer and employee when the occasion was a bona fide inquiry by the employer into alleged misconduct of the employee." Wright v. Sparrow, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989).

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In Harris, the plaintiff's supervisor wrote three internal memos describing the plaintiff's poor job performance, which he shared with other managers. The Plaintiff was fired for poor performance. Harris, 417 S.C. at 536-37, 790 S.E.2d at 413-14. The Plaintiff sued his employer for defamation. The trial court granted summary judgment in favor of the employer.

In affirming summary judgment in favor of the employer, the Court of Appeals ruled that the internal memos were subject to a conditional privilege because they concerned communications concerning the Plaintiff's work performance. Id. at 541-42, 790 S.E.2d at 416. The Court also found that the Plaintiff failed to show that supervisor acted with actual malice in drafting the memos.

In this case, the subsequent correspondence between the Defendant and the Plaintiff should be subject to the qualified privilege even more so than the internal memos in Harris. In Harris, the supervisor contemporaneously shared the internal memos with other members of management. In this case, the Defendant did not initially share the subsequent correspondence with anyone besides the Plaintiff. It was the Plaintiff, not the Defendant, who reported the subsequent correspondence to the Assistant Superintendent. It was only after the Assistant Superintendent had been informed about the subsequent correspondence by the Plaintiff that she directed the Defendant to send her copies of the subsequent correspondence. In addition, no inference can be drawn from the facts that the Defendant acted with actual malice in drafting the subsequent correspondence – which she shared initially only with the Plaintiff. The subsequent correspondence was limited in scope to only job performance issues and was not shared with anyone else besides the Plaintiff. The Plaintiff has not produced any evidence that any of the subsequent correspondence would have ever been provided to the SDOC administration had she not been the one who reported it to the Assistant Superintendent. In sum, even when viewed in the light most favorable to the Plaintiff,

the Defendant's sending a copy of the subsequent correspondence to the Assistant Superintendent – at the direction of the Assistant Superintendent -- was a privileged communication.

II. Summary judgment should be granted in favor of the Defendant at to the Plaintiff's cause of action for tortious interference with contract because there was no breach of contract.

The Plaintiff complains that the Defendant interfered with her contract as an administrator. In fact, she claims that her contract was terminated. (Complaint ¶ 15). These claims lack merit.

To establish a cause of action for tortious interference with contract, the Plaintiff must establish: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of its breach; the absence of justification; and (4) resulting damage. Eldeco v. Charleston County School District, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). The Plaintiff cannot establish that her contract was breached.

Henry-Davenport v. School District of Fairfield County, 391 S.C. 85, 705 S.E.2d 26 (2011), controls this case. In that case, the Supreme Court answered a certified question submitted by the United States District Court for the District of South Carolina. See Henry-Davenport v. School District of Fairfield County, 832 F. Supp. 2d 602 (D.S.C. 2011). The Plaintiff in that case was demoted from her position as the Deputy Superintendent to the Director of Food Services. The Plaintiff challenged her demotion, claiming her rights were violated under the South Carolina Teacher Employment and Dismissal Act, South Carolina Code § 59-25-410. Id. at 604.

In deciding the certified question, the South Carolina Supreme Court relied on the provisions of South Carolina Code § 59-24-15, which provides in pertinent part:

> Certified education personnel who are employed as administrators on an annual or multi-year contract will retain their rights as a teacher under the provisions of Article 3 of Chapter 19 and Article 5 of Chapter 25 of this title but no such rights are granted to the position or salary of administrator.

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(emphasis added). Based on the plain meaning of the statute, the Court held: "[W]hile a certified educator who is employed as an administrator on an annual or multi-year contract retains her rights as a teacher under the Teacher Act, those rights are not granted to the position or salary of administrator." Id. at 89, 705 S.E.2d at 28.

In this case, none of the Plaintiff's rights under her contract were breached. Even though she was employed as an Assistant Principal, she had no contractual right under South Carolina law to either her position as an administrator or even to her salary. The Plaintiff was reassigned to be a teacher, which was the only right she was entitled to under her contract. Simply put, the Plaintiff's claim for tortious interference with contract fails as a matter of law. Her contract was not breached.

Conclusion

For all the reasons stated in her Motion and this Memorandum, the Defendant respectfully requests that the Court grant her Motion for Summary Judgment.

MURPHY & GRANTLAND, P.A

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Columbia, South Carolina
April 6, 2017

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF OCONEE C.A. NO. 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

vs.

Jami L. Verderosa,

Defendant.

Deposition of ***MARTHA "LINDA" LUSK, Ph.D.***

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 25th day of August 2016, commencing at approximately 12:36 p.m. attended by counsel as follows:

EXHIBIT A 35

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A. No, I have never been a member, but I have gone to College Street Baptist Church.
Q. In what town?
A. Walhalla. And I attended Westminster Baptist Church.
Q. On a regular basis?
A. No, I would just go when they had different events and stuff and people invited me.
Q. Who's the pastor at Eastlan Baptist Church?
A. Mr. Sanders.
Q. Mr. Sanders?
A. Reverend Sanders.
Q. Reverend Sanders. Have you consulted with Reverend Sanders about your lawsuit or anything to do with it?
A. No, sir; I haven't really consulted anybody about it.
Q. You work at Code Academy now?
A. Yes, sir; I do.
Q. Do you enjoy your work?
A. Yes, sir; I do.
Q. Do you enjoy your colleagues there?
A. Outstanding people.
Q. And were you Teacher of the Year there?
A. Yes, sir; I was.

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something, 74,200 and something. I can't tell you. It's like 1,500 more than we made last year. I can't tell you directly.

Q. How much were you making the last year at West-Oak Middle?

A. Ballpark, I would say around 96,000. It may 500 more or less. I don't really know. I don't really keep up with those direct figures.

Q. Now, you went from West-Oak Middle to Code Academy; correct?

A. Yes, sir; I did.

Q. How much did you make your first year at Code Academy?

A. I made the full salary of what I made -- would have made if I had stayed at West-Oak Middle.

Q. And that would have been the school year 2013/2014?

A. Correct.

Q. So you didn't lose any money that year?

A. I did not lose any money that year.

Q. And then 2015/2016 how much do you think you lost?

A. Let's see, last year -- those two years I made like 72,000 something, 72,000 something, like 72,400. These are just ballpark figures.

Q. I understand. So you think 24,000 a year, 96,000 minus 72,000?

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don't want to socialize with you any more?

A. I don't have any of that.

Q. Do you believe anyone thinks less highly of you because of anything that Jami Verderosa said about you?

A. I would think so.

Q. And what would that be? First of all, who do you think thinks less highly of you?

A. A administrator.

Q. Who?

A. I can't name anybody directly in particular. But people don't want to associate with you when you're not one of the group.

Q. Well, who doesn't want to associate with you now because you're not one of the group?

A. I can't answer that.

Q. You just don't know?

A. I don't know.

Q. Well, do you socialize with your colleagues at Code Academy?

A. We have a good time at Code Academy. We're treated with respect. We have a Christmas luncheon. We have all that socialization that -- we do a lot of mix and mingle at the school.

Q. Yes, ma'am.

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anything, other than today in her deposition? When's the last time you ever her make any comment?

A. What comments are we talking about?

Q. Any comment whatsoever. I mean, when's the last time you heard her say any words?

A. The last time I heard her speak to me was April the 25th, 2013.

Q. And what did she say?

A. She came -- I was going to send my contract to the -- back to the district office and she -- she never did do this before, she popped in the door and she said, "We're back." And where they had been back was from a luncheon they had taken the kids.

Q. Okay. She was just telling you she was back in the building?

A. Yes, she just came up to the door and said, "We're back."

Q. Did you take that to mean that she was trying to be mean to you or anything like that?

A. No, but like you said, she probably just emphasizing to me -- but she never did that before.

Q. And where had she been again?

A. Do what?

Q. Where had she been?

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A. Taking -- they would have rewards student for -- I don't know if it was good grades or -- probably -- it probably was good grade, honor roll kids that they probably took to some restaurant uptown.

Q. When's the last time you ever saw anything that Ms. Verderosa wrote about you?

A. She -- that was in 2013 when she probably wrote that I did not -- no, that was the district -- when -- about the [redacted] case, about not recording a discipline. That was like January 2013 when she recorded that I did not place in the information correctly.

Q. And you considered that to be a write up against you?

A. Yes, it was.

Q. And ---

A. I received a written reprimand.

Q. And you think that's -- and by the way, let's just for the record -- let's just say [redacted]. Okay?

A. Okay. Don't say people's last name?

Q. Students. Okay?

A. Okay.

Q. You think that was probably the last write up that you got?

A. And I got a -- it was included in the write up by

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the district office about not going to Tamassee-Salem.

Q. That might have been the last write up?

A. That was when Ms. Williams wrote in there about not going to Tamassee Salem. Let me think if that was it. Yes.

Q. That was what Ms. Williams wrote not what ---

A. No, but she gave that to Ms. Williams.

Q. Yeah. Please let me finish my question. Okay?

A. Okay.

Q. I'm going to go way back in time, 1970. Okay?

A. Okay.

Q. Did you graduate from Furman in 1970?

A. Yes, sir; I did.

Q. Got a Bachelor's degree?

A. Yes.

Q. Were you a librarian from 1970 to '72 at Slater Marietta High?

A. Yes, sir.

Q. 1972 you graduated from Clemson with a Master's degree?

A. Yes, sir.

Q. That was in Administration and Supervision?

A. Yes, sir.

Q. Where did you work from '72 to '79?

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have anything to do ---

A. No.

Q. --- with you not getting those jobs as principal that you applied for before 2004?

A. Correct.

Q. You transferred to West-Oak Middle School in 2007; correct?

A. Yes.

Q. That's when they opened the school; correct?

A. Yes.

Q. Now, how far was Westminster Middle from West-Oak Middle?

A. We're on the same piece of property.

Q They closed the old school and opened a new?

A. Yes, they did.

Q. So you transferred to the new; correct? And they also changed just from assistant principal to assistant principal for instruction. Is that right, ---

A. Yes, sir.

Q. --- in 2007?

A. Yes, sir.

Q. And in April 2009 you applied to be principal at West-Oak Middle School when Mr. Riccardi left; right?

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A. Yes, sir.
Q. And that's when Ms. Verderosa got the job; right?
A. Yes.
Q. And in that same year you applied to be principal at Oakway Intermediate?
A. Yes.
Q. You didn't get that job; right?
A. Yes, sir.
Q. Now, did Ms. Verderosa keep you from getting the principal job at Oakway Intermediate?
A. There would be no reason for that.
Q. March 2010 you applied to be principal at Oakway Intermediate again; is that correct?
A. Yes, sir.
Q. In fact, you listed Jami Verderosa as a reference on that?
A. Yes, sir.
Q. She didn't keep you from getting that job, did she?
A. There's no reason for that.
Q. June 2011 this is the summer of 2011 you applied to be principal at Westminster Elementary. Do you remember that?
A. Yes, sir.
Q. And you listed Jami as a reference at that time; is that correct?

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A. Yes, sir.

Q. She didn't keep you from getting that job, did she?

A. No, sir.

Q. That takes us up to March 7, 2012. Dr. Thorsland in -- March 7, 2012 is the date I have, but March -- let's say March 2012, Dr. Thorsland and Jami met with you about an incident when a student was upset because she claimed that you called her a criminal. Do you remember that meeting?

A. Yes, I do.

Q. And you knew at that time that that was the allegation that the student thought you called her a criminal; right?

A. I -- I did not know what the meeting was about until I got into the meeting. Did not know why I was called in until I went into the meeting.

Q. Okay. And Dr. Thorsland told you, "The meeting is because a parent called me to complain about what you said to a student"?

A. He never told me what the statement was. I never knew that the statement was that I directly called a student a criminal. I do not -- no one has ever told me that. No one has ever written in any notation. They said I made an inappropriate comment. If it was so significant to give me a

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written reprimand why didn't they say, "Dr. Lusk, you called the kid -- you called the student a criminal." I never knew what -- I never knew what was -- I said to the child. Can I clarify what I said?

Q. Sure. Yeah, go ahead.

A. Ms. Verderosa told me -- I always did what she told me to do. She told me to go get the kid. Okay? And we were walking down the hall. I always try to encourage children to be the best that they can. I said, "What do you want to be when you grow up in life?" If she said a vet, I would never have gotten written up, but she said she wanted to be a lawyer. And I made that comment, I said, "In life that's good that you want to be a lawyer." She said she was going to go to Harvard or some place up there to be in law school. I told -- all I ever told the kid, I said, "There are different types of lawyers. You can go into real estate. You can be a divorce lawyer. You can deal with criminal cases. There's all branches of lawyer." That's all I ever said to the kid. And I don't see why it got misconstrued that I -- in all my years of teaching, and I've been around a long time, I don't think anybody can ever say that I said a harmful

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word to a kid. And I would never -- and I need to be written up if I called a kid a criminal, but I'll testify today I never called a kid a criminal.

Q. Now, did you tell Dr. Lusk -- excuse me, did you tell Dr. Thorsland and Jami in the meeting that you said "you can be a criminal lawyer" to the child?

A. I told them -- I told them what I said on here. I said, I walked down the hall, and I said -- I told the kid exactly what I said. And the bad part about it, I should probably never have talked to the kid. If she was a vet, there would nothing ever been said. She just said -- and she was a smart kid. And she said, "I want to be a lawyer." And I can't see why they --

Q. How do you know -- I apologize. You keep going.

A. I can't see why they take a child's word over an experienced administrator and write you up with your first written reprimand when nobody would listen to you.

Q. Now, you filed a grievance and you had a recorded conversation with Dr. Lucas; right?

A. Yes, sir. And really Dr. Thorsland shouldn't really have heard the grievance because he was in on the writing up part.

Q. And when you talked to Dr. Lucas, when you had that

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recorded grievance hearing, did you explain that you didn't -- that you didn't call the person -- the student a criminal?

A. But nobody ever told me that I called her a criminal. They said I made an inappropriate comment. To this day, until we came in and Ms. Verderosa said, I never heard the word that I called a student a criminal. And I requested that to be removed from my file, the inappropriate comment. If it was significant to tear my career and put me on professional death -- what I went through is a professional death. If it was sufficient enough to tell me I would have quote, "Dr. Lusk, you called a kid a criminal -- a student a criminal."

Q. The write up that Jami gave to you, and you can call it -- you consider it a write up; right?

A. It was a reprimand. It went to -- first reprimand I ever sent -- was sent. It went directly to Ms. Williams and it went in my personnel file.

Q. Now, did it say that you made an improper ---

A. It said, "an inappropriate comment."

Q. So the letter that Jami wrote said that you had made an improper comment?

A. It was about like that. It was -- I "had made an

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inappropriate comment to a student."

Q. Okay. That's what you think it says; correct?

A. Yes. And I personally don't think I should ever have been written up for that.

Q. Okay. Now, Dr. Thorsland reviewed the situation; correct?

A. Yes, he did.

Q. And he issued a letter; correct?

A. Yes, he did.

Q. And he said he didn't think it should -- the letter should be taken out of your file; correct?

A. Yes, he did.

Q. So he disagreed with you?

A. Yes, he did.

Q. Now, you understand that people can have difference of opinion on matters; correct?

A. Yes, I do.

Q. And you don't think Dr. Thorsland was trying to intentionally do any harm to you?

A. Can I give my opinion? Can I express ---

Q. Sure.

A. Okay. I think someone in the district told Mr. (sic) Verderosa, "Get every inkling that you can on Dr. Lusk and we'll support you 100 percent." I don't have any idea who that might be. That was

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just my clarification, because in normal procedure -- I think if I were probably principal, I would have placed the -- you can have a written reprimand placed in your file at the principal level, but this went directly -- I was assumed guilty -- they assumed that I was guilty. And I'm going to tell you something, to this day no one in the district office would ever listen to nothing I ever said.

Q. So I just want to make sure, you made a pretty bold claim there that somebody in the district office said to Jami to -- tell me again what this person in the district office said to Jami?

A. I just feel that someone said, "Get whatever you can and we will support you 100 percent."

Q. And who did that?

A. I don't know.

Q What evidence do you have to ---

A. I don't have any evidence. But why did she go full force?

Q. What information do you have to support what your claim is?

A. A good administrator went down for five -- in less than five months. The professional career was over -- destroyed overnight. It was a professional

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number. And I have no idea what the number would be. I called it one time. And it did not have that circle. I put the circle.

Q. Now, I'm going to start giving you ---

BY MR. KULL:

Can we get a copy of this original, please?

BY MS. KERN-FULLER:

I can make a copy.

BY MR. KULL:

That'll be great. I'll take it home.

(MR. KULL MARKS ONE-PAGE DOCUMENT AS DEFENDANT'S EXHIBIT NO. 1; ATTACHED TO DEPOSITION).

DIRECT EXAMINATION RESUMED BY MR. KULL:

Q. I'm going to hand you another document, Exhibit Number 1. Do you recognize this document?

A. Yes.

Q. Is this the letter that you didn't like that went into your personnel file? Is that -- is this the letter?

A. (No response).

Q. Is this the letter?

A. Yes, sir.

Q. It says, "This letter is a follow up to your meeting with Dr. Thorsland and myself on March 7, 2012. The purpose of this meeting was to address a

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concern from a parent. The parent stated you had made an inappropriate comment to her daughter." Does that say that Dr. Thorsland and Jami said that you made an inappropriate comment?

A. The purpose is to address a concern from the parent. The parent said you made an inappropriate comment.

Q. Okay. So who said that you made an inappropriate comment?

A. The parent.

Q. It wasn't Dr. Thorsland or Jami that said that; right?

A. Yes.

Q. And it goes on to say, "You clarified the conversation for Dr. Thorsland and myself. In future instances I am requesting you to choose your words carefully when speaking with students and parents. Conversations can be taken out of context. We have discussed perceptions and reality. In this situation the student had a different perception." Now, do you understand that to mean that the -- that what Jami was saying is that the student misperceived what you said?

A. Yes, but why did this go to my personnel file. Because if it would have been -- if it was in the

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whole machinery for me to go, it's important for me to know what the comment was.

Q. My question to you was, is there anything in here that is false that Jami said?

A. They wrote it up how they saw it with the parent. But to me -- they wrote it up what they saw as a parent.

Q. Show me any false statement in this document. Okay?

A. Okay.

Q. Where is it?

A. There's not any.

Q. Now, when you met with Dr. Thorsland, he was the assistant superintendent at that time; correct?

A. I met with Ms. Verderosa and Dr. Thorsland. And when I met that day, I went over -- they had -- everything was fine. They said, "We just came down to clarify what you said."

Q. And did Dr. Thorsland tell you that he had gotten a call from the parent of that child?

A. I never knew who really directly got the phone call. I didn't know if she got it or he got it. I really didn't interpret. When I had the meeting they just said they had a parent complain. And I'm saying, I didn't know which one it went to.

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(OFF THE RECORD).

(MR. KULL MARKS TWO-PAGE DOCUMENT AS DEFENDANT'S EXHIBIT NO. 2; ATTACHED TO DEPOSITION).

DIRECT EXAMINATION RESUMED BY MR. KULL:

Q. Let me show you what's marked as Exhibit Number 2 now. Can you tell me what that is?

A. That's a grievance I filed.

Q. And the date of that grievance was when?

A. March the 8th, 2012.

Q. And you wanted to remove -- what you were asking for: "removal of the written reprimand from all files, return to the good working relations of 2009/2010." You wanted to "be treated with professionalism and respect and not be reprimanded in front of others"; correct?

A. Correct.

Q. Who had you been reprimanded in -- who had Jami reprimanded you in front of?

A. In front of -- when she screamed when I was trying to get MAP testing.

Q. And you've already told me who that was. It was just ---

A. Patti Williams, Mr. Jarrell and Lynn Lyles.

Q. Is there anybody else ---

A. There could have been, but I can't remember. I was

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Q. She wanted to know where you were?

A. Well, you could see me on the -- I meant they have a camera right there back -- I was standing right there.

Q. Well, do you know if she -- when she asked that question if she was at a monitor where she would be able to see you on the screen?

A. She could see it if she was looking on her screen.

Q. Well, do you know if she was even in her office?

A. I have no idea.

Q. Well, it's legitimate for her to ask where you are if she doesn't know where you are.

A. Well, you don't correct your assistant directly so everybody can hear it.

Q. Well, what you just said is, "Are you doing car duty?" Is that what she said?

A. She didn't say that.

Q. What did she say?

A. She said, "Are you at your car duty yet" or something of that nature.

Q. Okay. And when was that? What year?

A. Do what?

Q. What year was that?

A. Okay. That was the end of 2012.

Q. Any other time that she reprimanded you on the

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I had any part -- I don't know where this attachment come, but I -- I don't think it was mine. I think I just did the one page grievance and it was done. I don't -- I don't remember that attachment. It may -- I don't know how it got there.

Q. Okay. And you don't know who wrote it?

A. I don't know. I don't know about it.

Q. Said, "She wouldn't even let me talk and proceeded to add further defamation to my character with others present."

A. I would -- no. And I wouldn't ever -- like "continuing," I wouldn't have written that up there. This is continuing from that page.

Q. Well, by this date, March 12, did you feel that Ms. Verderosa had defamed your character?

A. Did I feel what?

Q. That she had defamed your character?

A. She defamed my reputation.

Q. By reprimanding you in front of others?

A. Yes.

Q. And you knew that by -- you were aware of that by March of 2012?

A. Let me read this. What was the question?

Q. By March of 2012 did you feel and believe that Ms.

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Verderosa had defamed your character?

A. She defamed my reputation.

Q. Okay.

A. Is reputation character?

Q. Defamed your reputation by ---

A. Yes, she did.

Q. By March 2012 you were aware of that; correct?

A. Yes.

(MR. KULL MARKS ONE-PAGE DOCUMENT AS DEFENDANT'S EXHIBIT NO. 3; ATTACHED TO DEPOSITION).

DIRECT EXAMINATION RESUMED BY MR. KULL:

Q. The next exhibit is going to be Exhibit 3. Do you know what that is? What is that document?

A. That document is my contract.

Q. And for what year is that?

A. 2012.

Q. And that's your signature at the bottom?

A. Yes, sir.

Q. April 21, 2012?

A. Yes.

Q. And this second paragraph says, "This agreement is an administrator contract as defined in Section 59-26-40." Do you see that?

A. Yes.

Q. What does that mean? What's 59-26-40?

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A. Yes.

Q. When you signed this document, you knew that this contract could be changed by the administration if they followed procedure; correct?

A. Yes.

(MR. KULL MARKS ONE-PAGE DOCUMENT AS DEFENDANT'S EXHIBIT NO. 4; ATTACHED TO DEPOSITION).

DIRECT EXAMINATION RESUMED BY MR. KULL:

Q. I show you next what's marked as Exhibit Number 4. What document is this?

A. That is the response from Dr. Thorsland about the written reprimand.

Q. Okay. And about a third of the way down it says, "Your grievance form lists four remedies" and they are: "removal of the written reprimand from all your files, return to the good working relations of 2009/2010, being treated with professionalism and respect and not being reprimanded in front of others, walkie-talkie, et cetera." That's what your grievance said; correct?

A. Yes.

Q. Then it goes on to say, "I investigated your concerns and have made the following judgments: I cannot support removing the letter dated March 8, 2012 from your file. My investigation revealed

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that the student still feels strongly that you were implying that she was a criminal when you asked if she was going to be a criminal lawyer." Now, did you receive this document in April of 2012?

A. Yes, I did.

Q. Well, wasn't Dr. Thorsland telling you what the complaint was in that sentence?

A. I probably overlooked that part.

Q. Well, you understand that that's what he's telling you, that that's what the complaint was; correct?

A. Yes.

Q. So you did know in 2012 that the student --

A. I did not look at it. I was given the letter, but once I knew that the grievance -- it was going to stay as it was, I never looked at that part.

Q. You just overlooked that part?

A. I overlooked it. But how come that could not be placed in the reprimand?

Q. And then it says, "While you gave a different account of what you said," which you did; right?

A. Yes.

Q. "The letter from Ms. Verderosa did not reprimand but rather reminded you to be careful in choosing your words with students." Is that what Ms. Verderosa said?

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overlooked anything do you?

A. I don't think intentionally.

(MR. KULL MARKS TWO-PAGE DOCUMENT AS DEFENDANT'S EXHIBIT NO. 5; ATTACHED TO DEPOSITION).

DIRECT EXAMINATION RESUMED BY MR. KULL:

Q. The next exhibit is, what, Number 5 there?

A. Yes.

Q. What is Number 5?

A. That is the concern that Ms. Verderosa brought to my attention in May of 2012.

Q. And the first one had to do with entering discipline in PowerSchool under the incorrect student name. Is that right?

A. Yes, sir.

Q. Did you enter discipline in PowerSchool under the incorrect student name?

A. Yes, I did. Because at that time I had a vision problem and it was one student either lower than higher than I should have put in.

Q. And Concern Number 2, "Contacting the wrong parent regarding a discipline matter of another student." Did you do that?

A. No. And let me explain why I say no. There were two eighth grade students called [redacted]. One was ---

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A. Okay. Okay.

Q. This will go a lot faster. Okay?

A. Okay.

Q. Before you called, did you look at the photograph of the right [redacted]?

A. No, I did not. I called the main office for them to find a number. I think my computer was down or not working. I don't know why I called the main office. I usually looked at my own computer.

Q. Did you tell Laura Cobb to get you the name of the correct [redacted]?

A. I didn't know there were two of them at that time.

Q. So this is Laura Cobb's fault?

A. I don't think you can blame anybody in particular. I think it was -- we all make human error. And I don't think at that time I knew there were two [redacted].

Q. So did you just make an honest mistake?

A. I don't think it was a mistake.

Q. So you contacted the right parent?

A. I thought I did.

Q. But ma'am you know that you contacted the wrong parent. Now you know that; right?

A. I knew after the parent called.

Q. And what did the parent do to the child?

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A. The parent said that he scolded the child or spanked the child or something. I don't know exactly what he said. But like several months later I told that parent, I said, "I apologize for calling you. And I'm sorry that both boys had the same death of the grandparent." And she said, "I don't really mind." That was the mother. She said, "I don't mind. Maybe he needed it."

Q. So it didn't bother you either that the wrong boy got the spanking?

A. It just showed me that his daddy was vicious. I would not have spanked my child. Well, anyway ---

Q. Do you have any children?

A. (No response).

Q. Do you have any children?

A. No, I don't.

Q. "Strategic Plan data," that's the Concern 4. Did you call the State Department to get your password changed?

A. To get ---

Q. To get a new password?

A. After Ms. Verderosa gave me the number and she wrote it down. I went to Ms. Verderosa and I said, "My log in" -- they only gave us a temporary log in for like two or three days as assistant principal.

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Q. Why did you think that you got a written reprimand because you had talked to Mrs. -- to Earnestine?

A. I can't give an answer for that.

Q. Okay. Do you have any information that would support that statement?

A. Probably not.

Q. And then it said, "I made three attempts to solve the issue without involving the grievance process." What were the three attempts?

A. The three attempt was to -- I talked to Ms. Williams -- I can't give you the attempt, but at that time I made three attempts to do it, but I can't tell you directly. I talked to Ms. Williams.

Q. Three times?

A. What?

Q. Do you think you talked to her three times?

A. I probably talked to her two times. I didn't probably talk to her three times.

Q. Then it says --

A. I didn't really want to file a grievance. I had nothing -- I had no gripe with my principal. And I really didn't -- I did not want to go that route.

Q. And then it says, "To this day I do not know the inappropriate comment that I made to the student in the designated reprimand."

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A. Because I overlooked the para -- when Dr. Thorsland agree not to remove it, I never read what else was in that letter.

Q. I mean, what you're saying is, Dr. Thorsland told you in that letter, you just overlooked it?

A. I overlooked the second -- the first paragraph, I said he decided and it's in my file. And I did not pursue it.

(MR. KULL MARKS ONE-PAGE DOCUMENT AS DEFENDANT'S EXHIBIT NO. 8; ATTACHED TO DEPOSITION).

DIRECT EXAMINATION RESUMED BY MR. KULL:

Q. Going now to Exhibit Number 8. What is that document?

A. That is Dr. Lucas' response about board policy. About the board not hearing it. I don't think they thought it was serious enough to hear.

Q. Say that again.

A. I think the board probably didn't think it was serious enough to hear. I mean, they mainly deal with firing and hiring of teach -- I mean, dismissal of teacher.

Q. And you understand that they might not think it was all that serious based on Dr. Thorsland's letter where he mentioned what the statement was?

A. Dr. Torsland ---

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note; correct? And is Exhibit Number 14 your rebuttal where you explained all that?

A. Yes, it is.

Q. And you sent that to Ms. Verderosa?

A. Yes, I did.

Q. Now, you talked EArnestine about this whole situation too, about the same time that it happened; correct?

A. I talked to her about the drug note?

Q. Yes.

A. I can't remember talking to her about the drug note.

Q. If she says that you did talk to her about the drug note at about the same time it happened, you wouldn't disagree with that, would you?

A. I can't remember talking to her about the drug note. I was in constant contact with her, but I can't remember every con -- I didn't document every conversation because I thought she was helping me.

Q. Now, when you say you're in constant contact, when Jami would give you a write up and these are all in 2012; correct?

A. Yes.

Q. When she would give you a write up you would call Earnestine generally? That was your procedure, you

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would talk to Earnestine about it?

A. Yes.

Q. Tell her what's going on? And you would tell her what Jami was saying and then you would tell her your response?

A. Yes, I would.

Q. Now, you don't remember specifically about the drug note, but you do remember that generally that was your procedure, when you got a write up -- and you got a write up about the drug note; correct?

A. Yes.

Q. Your general procedure was ---

A. I didn't call her every time I got a write up. I ---

Q. Well, you just said you were in constant contact with ---

A. Well, I didn't mean it that way. But I wanted help. Nobody would help me on intimidation, bullying and harassment. It was a witch hunt to get me.

Q. All right. So would it be fair to say on -- most of the time when Jami gave you a write up, and we're talking about in the -- in 2012. That's when you got most of your write ups; right? Correct?

A. Yes.

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Q. In 2012 if you got a write up your general procedure was, call Earnestine, tell her what Jami said and give them your ---

A. That wasn't my general procedure. I'd call her if I thought it was important enough to call her.

Q. So when you said you were "in constant contact" with ---

A. I didn't mean it that way, but I was in -- I didn't mean it exactly that way.

Q. What did you mean when you said you were in "constant contact" with her?

A. Well, I wanted help and nobody helped me with intimidation, workplace bullying and harassment. But the board knew it. The trustee knew it. The assistant superintendent knew it. And nobody would help me.

Q. Actually you called Earnestine at home one time, didn't you?

A. Yes, I did.

(MR. KULL MARKS ONE-PAGE DOCUMENT AS DEFENDANT'S EXHIBIT NO. 15; ATTACHED TO DEPOSITION).

DIRECT EXAMINATION RESUMED BY MR. KULL:

Q. Exhibit Number 15, tell me what that is, please.

A. I don't get to explain none of these?

Q. Oh, you already explained about the drug note.

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A. Was that -- but there were other stuff.

Q. The point of the matter is, you had a chance to explain it to Earnestine -- to Jami and you wrote letters to her, and that's your letter; correct?

A. Uh-huh (affirmative response).

Q. And that's all in 2012. Is that correct, that's all in 2012?

A. Yes.

Q. And this next one, 15, that's in 2012?

A. But may I may make a comment?

Q. Sure. Is Exhibit 15 also in 2012?

A. Uh-huh (affirmative response).

Q. What day is it? Actually it's January 2013; correct?

A. May I make a comment?

Q. Tell me, is Exhibit 15 from January 2013?

A. Yes, it is. May I make a comment?

Q. Please do.

A. Okay. I feel just all of a sudden, in the last 30 minutes we are being -- I'm being slammed papers and stuff. Do you realize that this is my -- death of my professional career and this is important? It's just not something to go through. And I'm not being hateful to you, but it's -- you know, we just see it and then I'm not given any way to respond to

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SCHOOL DISTRICT OF OCONEE COUNTY
CONTRACT FOR PROFESSIONAL SERVICES

This agreement is by and between the Board of Trustees of the School District of Oconee County and **Lusk, Martha L** (The Employee).

This agreement is a(n) **Administrator** contract as defined in Section 59-26-40 (Rev. 2004) of the Code of Laws of South Carolina.

The Board agrees to employ the Employee in a professional position for **215** days during the 2012-2013 school year, which includes 10 days of inservice training. The Employee's assignment for the 2012-2013 contract term is **Assistant Principal - Instruction, (1.00) WEST OAK MIDDLE SCHOOL** however, it is understood that all assignments are tentative and may be changed by the administration upon notice to and consultation with the Employee in accordance with Board policy.

The employee shall maintain throughout the life of this contract the required qualifications of a teacher, including a valid South Carolina Teaching Credential, as well as the "highly qualified" certification to perform his or her teaching assignment, as that term is defined in the No Child Left Behind Act and all South Carolina State Board of Education implementing rules and regulations. Failure to maintain such professional qualification(s) during the contractual period shall constitute grounds for termination of this contract.

The District agrees to pay the Employee according to the salary schedule adopted by the Board. This salary schedule will be made available as soon as practicable. Loss or reduction in any amount of anticipated or appropriated state, local or federal funding may, at the discretion of the District, require a pro-rata reduction of salary; a reduction in the term of this contract and pro-rata reduction in salary, i.e., a furlough consistent with State law; or a termination of this agreement. Furthermore, any decline in student enrollment, elimination or change in course programming, or temporary closing of school or District operations because of emergency circumstances may require a pro-rata reduction in term and/or salary. Any such actions will be based on the recommendation of the Superintendent and must be approved by the Board. Any position eliminations will be handled in accordance with Board Policy GBKA (Reduction in Force).

The Employee agrees to render acceptable service, perform all assigned duties, and comply with all District policies, rules, and regulations, including attendance at required school or District meetings and activities. The administration may assign reasonable extracurricular activities to the Employee. Each extracurricular assignment, including coaching assignments, is for the stated school year only, and no expectations are created concerning assignments for future years. All extracurricular assignments are discretionary with the administration and may be made or terminated at any time, upon notice to and consultation with, the Employee.

This offer of employment is subject to receipt of a criminal record history report from the South Carolina Law Enforcement Division, which reveals no good and just cause for its withdrawal.

This agreement is not valid unless authorized by the Board and signed by the District Superintendent. To be valid, this agreement must be signed by the Employee and returned to the Superintendent or his/her agent on or before **April 25, 2012.** If, during the term of this agreement, it is found that any part of this contract is illegal under federal or state law, the remainder of the agreement not affected by such ruling shall remain in force and effect.

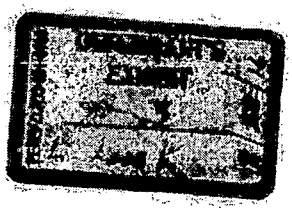
Special Conditions:

Martha L Lusk
Employee

April 21, 2012
Date

R. Marcus Lund

April 12, 2012
Date



STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,
Plaintiff,

vs.

Jami L. Verderosa,
Defendant.

CERTIFIED COPY

DEPOSITION OF
EARNESTINE R. WILLIAMS

DATE TAKEN:	November 1, 2016
TIME BEGAN:	3:08 p.m.
TIME ENDED:	5:29 p.m.
LOCATION:	Upstate Law Group 200 East Main Street Easley, South Carolina
REPORTED BY:	Rusti Davis, Court Reporter EXPEDITE COURT REPORTING P.O. Box 25882 Greenville, South Carolina 29616 864-509-0914 expeditereporting@gmail.com

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EXHIBIT B 69

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EXAMINATION

BY MR. KULL:

Q. Did Jami ever ask or suggest to you in any way that she wanted Dr. Lusk to be reassigned?

A. No.

Q. Did you ever have any reason to believe that Jami had any plan to try to get Dr. Lusk reassigned?

A. No.

Q. Did you have any reason to think that Jami had any reason to -- the phrase, get rid of Dr. Lusk, has been used today. Any reason to believe that?

MS. KERN-FULLER: Objection. Calls for speculation.

A. No.

Q. Okay. Now, did you at one point -- do you recall writing a letter to Dr. Lusk in March of 2013?

A. Yes.

Q. Okay. And is that after the decision had been made to reassign Dr. Lusk?

A. Yes.

Q. And had you met with Dr. Lusk before that, before you sent that letter?

A. Yes.

Q. Okay. Now, in your letter, did you go

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through various incidents that had been -- did you go through various incidents relating to Dr. Lusk's performance at West-Oak?

A. Yes.

Q. Okay. Now, in the incidents that were reported -- recorded in your letter, how did you find out about those? How did you find out about most of those incidents?

A. Actually, Dr. Lusk would call me, and she actually sent me a letter. Well, she sent a letter to Jami about those concerns, and she gave me a copy of it.

Q. Dr. Lusk gave you a copy of the letter?

A. Dr. Lusk gave me a copy of the letter.

Q. Okay. And did it respond to several of these incidents that are reported in your March 2013 letter?

A. Yes.

Q. Okay. And before you got that letter, had Doctor -- had Jami Verderosa provided you any information about those incidents?

A. No.

Q. Okay. So the only reason that you knew about these incidents, by the time that the decision to reassign Dr. Lusk, the only reason you knew about

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them was because Dr. Lusk had provided you the information?

A. Right.

Q. Okay. And had she given you some of the correspondence that's referenced in this letter?

A. Actually, her letter listed some of those exact things.

Q. Okay. And do you know one way or the other whether any of this correspondence that's listed in your letter of March 2013, do you know if -- do you know one way or the other if it's in Dr. Lusk's personnel file?

A. The letter of reprimand, that first letter that she complained about, would be in there. The other letters, I had not seen.

Q. Okay. So is it also fair to say that the management -- who made the decision to reassign Dr. Lusk?

A. Dr. Lucas.

Q. Okay. And did he do it in consultation with the management team?

A. Right.

Q. And who was on the management team at that time?

A. At that time it was Dr. Lucas,

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Superintendent; Michael Thorsland, Assistant Superintendent of Operations; Diane England, Assistant Superintendent of Instruction; me. And Gloria Moore is on the management team as executive director of finance, but she would not have sat in on that particular meeting.

Q. Okay. Now, do you remember when you met with Dr. Lusk to tell her about the reassignment?

A. Yes.

Q. When?

A. It would have been right after I sent -- right before I sent the letter, the end of February.

Q. Of 2013?

A. Right.

Q. Okay. Now, all the incidents that you recorded in this letter relating to Dr. Lusk's performance at West-Oak, is it fair to say that you had been informed about those primarily by Dr. Lusk well before February of 2013?

A. Yes. Other than, I think she mentioned an incident about not going to a meeting at Tamassee-Salem, and that would have been an additional one that I did not know about. But the others actually were things she either called me about or put in the two letters that she sent me.

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Q. Okay. And did Dr. Lusk, well before February 2013, indicate to you that she felt harassed by Jami?

A. She did. In her letters, she did comment about that.

MR. KULL: Okay. Thank you very much.

MS. KERN-FULLER: I have a few follow-ups.

THE DEPONENT: Okay.

EXAMINATION

BY MS. KERN-FULLER:

Q. Does the management team regularly make decisions about assistant principals?

A. Yes.

Q. So they manage both the principals and the assistant principals?

A. Yes.

Q. Did Ms. Verderosa have any input in your decision to reassign Dr. Lusk?

A. She did not.

Q. You didn't consult with her at all before reassigning Dr. Lusk?

A. Huh-uh.

Q. Is that a no?

A. No. I would have asked her -- I did ask her to submit documentation that she had regarding

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the concerns at West-Oak, yes.

Q. Ms. Verderosa?

A. Yes.

Q. You asked her to submit that prior to the management team making its decision to reassign Dr. Lusk?

A. No.

Q. Then why did you ask her to submit those?

A. I needed to review the information.

Q. For what purpose?

A. To look to see if things were legally in line for reassignment.

Q. So you looked at that before the final decision was made to reassign Dr. Lusk?

A. If I recall, Dr. Lucas did meet with us the end of February to talk with Dr. Lusk about the concerns at West-Oak Middle.

Q. And that was based on the information you had received from Ms. Verderosa?

A. Right.

Q. Okay. And when was the final decision made to reassign Dr. Lusk?

[Interruption.]

MS. KERN-FULLER: Hold on one second.

[Discussion off the record.]

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Q. [By Ms. Kern-Fuller] Do you recall when Dr. Lusk was reassigned?

A. Yes. In February, the end of February, when we met.

Q. Okay. So you all met at the end of February. You had received information from Ms. Verderosa?

A. Uh-huh.

Q. And then Dr. Lusk was informed that she was being reassigned?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. Okay. Mr. Kull asked you if you had received any information, other than what you had received from Dr. Lusk. Is it HR's procedure to discipline or take adverse action against an employee based on things that they tell HR are happening to them?

A. Who are the they? Clarify, please.

Q. Well, I'll be more specific. You testified, in response to Mr. Kull's questions, that you did not know about all of these incidents that were listed in Dr. Lusk's letter until you received the letter from Dr. Lusk. Did I understand your

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testimony correctly on that?

A. No. That's incorrect.

Q. Okay. Tell me --

A. I knew about the concerns in -- the letter that I wrote, is that what you're saying?

Q. Yes.

A. Yeah. Dr. Lusk would call me and tell me about the incidents that happened.

Q. And she was calling you --

A. And then she sent a letter. 'Cause I asked her for specifics, when she said she was being harassed, what is -- what's happening that's causing you to be harassed. And then she would say, well, I did this or this. And I said, well, that's not harassment. That's just a principal making you aware of a concern so that you can do better or not repeat that same incident.

Q. And my question is, did I understand your testimony correctly that you then used her letter, which was sent to you at your request, about her concerns for being harassed as the basis for the reassignment?

A. No.

Q. Okay.

A. No.

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Q. So what other information did you receive upon which you based the decision as part of this management team to reassign her?

A. It was the letters that she had been made aware of from Jami but also the concerns that we had.

Q. What concerns did you have?

A. Dr. Lusk did not take criticism or self-reflect. And as an administrator, it was always, well, I did this because of this. And so because of those concerns that came up from not just talking with me, but everybody else that she was making concerns with.

Q. And those only arise -- arose after Ms. Verderosa came to West-Oak, right?

A. I can't say that.

Q. Well, you told me prior in your testimony that there were no write-ups or concerns in her personnel record prior to that first reprimand, right?

A. As far as HR. But I can't tell you what was at a building level, and I don't know who -- other administrators that she worked with.

Q. Well, did you have a copy of her 2008-2009 goal setting by Paul Ricciardi?

A. I haven't seen that.

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Q. That wouldn't be in your files?

A. I could look and see, but I have not seen that.

Q. You haven't seen the note at the end of it that says, Dr. Lusk is progressing towards the completion of her goals. She is doing a good job as assistant principal at West-Oak Middle School?

A. I haven't seen that.

Q. Okay. Did you have any knowledge of any other former principals that had any concerns about Dr. Lusk prior to when Ms. Verderosa arrived at West-Oak Middle School?

A. No.

MS. KERN-FULLER: I don't think I have any further questions.

MR. KULL: All right. Thank you very much.

THE REPORTER: Did you want to instruct her on reading?

MR. KULL: We'll read and sign.

THE REPORTER: Did you want a copy, Mr. Kull?

MR. KULL: Yes, please.

[Whereupon, at 5:29 p.m., the taking of the deposition was concluded.]

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CERTIFICATE

I, the undersigned, Rusti Davis, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition of EARNESTINE R. WILLIAMS was taken on the 1st day of November, 2016;

That the within named deponent was sworn to tell the truth and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto and made a part of the deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In Witness Whereof, I have hereunto set my hand and seal this 8th day of November, 2016.

Rusti Davis

Rusti Davis
Notary Public for South Carolina
My Commission Expires 9/17/2017

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE)	
)	
Martha "Linda" Lusk, Ph.D.,)	
Plaintiff(s),)	**MEMORANDUM IN OPPOSITION TO SUMMARY JUDGMENT**
vs.)	
)	
Jami L. Verderosa,)	
Defendant(s).)	Docket No. 2016-CP-37-113

Plaintiff, responding to Defendant's Motion for Summary Judgment, would respectfully show as follows:

I. BACKGROUND INFORMATION

Plaintiff is employed by the Oconee County School District currently as an adult education teacher at Code Academy. Plaintiff has been employed by the Oconee County School District ("OCSD") for over the past 30 years. Plaintiff is a Ph.D., having earned her doctorate degree in 1982 **(See Ex. A, pp. 33-34)**. Plaintiff was also teacher of the year several times.

Beginning in or about March of 2012, Defendant began a campaign of maligning Plaintiff to her peers and the OCSD District Administration in an effort to get Plaintiff terminated or demoted. At that time, Plaintiff had over 27 years of impeccable service to OCSD without a SINGLE disciplinary action. However, as a result of Defendant's tortious acts, Defendant succeeded on March 4, 2013, in having Plaintiff demoted from an Assistant Principal to an adult education teacher. **(See Ex. B)** Specifically, the OCSD stated in the letter:

> **As a result of the many ongoing concerns mentioned above as well as other concerns documented via email to you from Mrs. Verderosa, we are no longer confident in your ability to serve as an administrator. I shared with you that your assignment as an assistant principal at West Oak Middle School will end effective the end of the school year. Your new assignment for 2013-14 per Board approval will be to work as a teacher at Adult Ed/Code Academy at the Code Learning Center. We will work to assist you in your new role and help make**

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However, as a result of the demotion, Plaintiff was IMMEDIATELY stripped of many of her responsibilities as an Administrator for AY-2012-2013, placed on Administrative Leave at Defendant's instigation on April 26, 2013 (**Ex. C**), and then she was assigned additional duties for the upcoming 2013-2014 school year. Thereafter, her salary was reduced from approximately $96,000. per year to $74,000.00 per year beginning in the 2014-2015 school year and all years forward. (**Id.; Ex. A, p. 211**).

Defendant defamed Plaintiff in her profession by stating to third parties (who were other teachers that were NOT privileged communications) that:

1) She "didn't know what she was doing regarding MAP testing; (**Ex. A, pp. 156-157**)
2) She couldn't have done a PowerPoint presentation; (**Ex. A, p. 80**)
3) That she didn't attend a meeting that she clearly attended; (**Ex. D**)
4) Repeating this slanderous information to the EEOC as part of their investigation following Plaintiff's February 27, 2014 Charge of Discrimination; (**Ex. E**)

I. STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c),: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). 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. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). If triable issues exist, those issues must

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go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005). (*Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505, 2006 S.C. LEXIS 259 (S.C. 2006)). 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 in order to withstand a motion for summary judgment, abrogating Shelton v. LS K, Inc., 374 S.C. 294, 648 S.E.2d 307; Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495, Hancock v. Mid-South. Mgmt. Co., 381 S.C. 326, 673 S.E.2d 801 (2009).

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (S.C. 2008), rehearing denied.

II. CREDIBILITY AND INCONSISTENCIES

Defendant has argued in her memorandum points based on the testimony of Ms. Williams and Defendant. Plaintiff asserts that such testimony calls for credibility determinations and that both Williams' and Verderosa's is suspect based on several inconsistencies in their testimony.

For example, Verderosa has asserted that Plaintiff "self-published" the defamatory statements. In support of this, Defendant asserts that "Ms. Williams testified that none of the subsequent correspondence from the Defendant to the Plaintiff was placed in the Plaintiff's personnel file." **(Def. memo, p. 5)** However, the letter of March 4, 2013, from Williams to Lusk clearly was placed in Ms. Lusk's personnel file and included a summary of the defamatory correspondences from Defendant. **(Ex. B)**. Additionally, Defendant asserts that Plaintiff self-published the correspondence and provided OCSD the correspondence, but logically, if that were the case, why would Ms. Williams have requested that Defendant "send to her a copy of the subsequent correspondence she had sent to Plaintiff"? **(Def. Memo, p. 5)**

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There are also discrepancies on how many grievances Defendant has had filed against her. Defendant claimed two – Plaintiff and a Ms. Parker. **(Ex. G, p. 76)**. However, Ms. Williams reluctantly admitted under cross-examination, and only after prodding with specific facts, that it was actually at least three. **(Ex. H, p. 72-73)**.

Also, after Plaintiff gave OCSD a list of names who could support the defamatory treatment she was receiving from Defendant, each of those teachers were called into a meeting near Defendant's office. When questioned about who set up that meeting, Williams stated it was Mr. Odom. **(Ex. H., pp. 25-26)**. However, Mr. Odom *replaced* Plaintiff as Assistant Principal and, therefore, could NOT have been the one to set up those meetings. **(Ex. A, p. 195).**

III. LAW AND APPLICATION

Defamation *per se*

If the defamation is actionable *per se*, the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. Parrish v. Allison, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Ct. App. 2007). "Slander is actionable *per se* only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; **or (5) unfitness in one's business or profession."** Parrish v. Allison, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Ct. App. 2007) (Emphasis added)

In this case, the Defendant published orally and in writing statements about Plaintiff being unfit in her business or profession. These statements were originally made in 2013, but were **republished** in 2014 after Plaintiff filed her Charge of Discrimination with the EEOC on or about February 27, 2014. As such, there remains facts in controversy about whether all the acts of defamation are out of statute in this matter as this case was filed on February 24, 2016.

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Facts also remain in controversy about whether the defamatory statements were, in fact, privileged. Defendant argues that a qualified privilege attaches to communications between an employer and employee when the occasion was a bona fide inquiry by the employer into alleged misconduct. (Def. Memo, p.8) However, this communication was *initiated* by Defendant. It also doesn't excuse the statements made to co-workers of Plaintiff who were not in management and the republishing of these defamatory statements during the EEOC investigation.

As such, material facts remain in controversy on Plaintiff's defamation claim such as to preclude summary judgment.

Tortious Interference with Contract

The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC, 406 S.C. 596, 753 S.E.2d 840 (2012)

Where the allegations of the complaint give rise to competing inferences on a question of material fact, dismissal is not appropriate. *Jensen v. South Carolina Dept. of Social Services,* 297 S.C. 323, 377 S.E.2d 102 (Ct.App.1988).

In the Camp case, the Court found that where Camp's complaint alleged Mrs. Johnson had "contracted his services for the loan closing" and he had begun title investigation that those allegations were sufficient to allege an existing contract. The complaint further alleged Camp attempted in good faith to resolve the prior dispute with Springs. From this allegation it may be inferred Springs' interference with the Johnson contract was without justification. Accordingly, we affirm the Court of Appeals' ruling finding the complaint sufficient to state a cause of action

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for tortious interference with an existing contract. Camp v. Springs Mortg. Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305–06 (1993).

Defendant relies heavily upon the case of The Henry-Davenport v. School District of Fairfield County, 391 S.C. 85 (2011) to state that no breach could be procured from Plaintiff's contract. However, that case is distinguishable from the case *sub judice*.

Specifically, in the Henry-Davenport case, "[t]he respondents challenged their demotions, arguing that they were 'dismissed or nonrenewed as principals' and 'were entitled to a full, adversarial hearing as provided' by section 59–25–460 of the Teacher Act. *Id.*, 313 S.E.2d at 296. Henry-Davenport v. Sch. Dist. of Fairfield Cty., 391 S.C. 85, 87–88, 705 S.E.2d 26, 27 (2011). However, the case also clearly noted that, "Section 59–24–15 provides:

> Certified education personnel who are employed as administrators on an annual or multi-year contract will retain their rights as a teacher under the provisions of Article 3 of Chapter 19 and Article 5 of Chapter 25 of this title but no such rights are granted to the position or salary of administrator. ***Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract.***"

Henry-Davenport v. Sch. Dist. of Fairfield Cty., 391 S.C. 85, 87, 705 S.E.2d 26, 27 (2011) (Emphasis Added).

In this case, Defendant interfered with Plaintiff's contract ***for the remainder of the 2012-2013 academic year***. As such, facts remain in controversy as to this cause of action.

IV. CONCLUSION

For these reasons, Summary Judgment should be denied and this matter should proceed to trial, currently scheduled for the week of May 8, 2017.

s/ Candy M. Kern-Fuller, Esq.
Candy M. Kern-Fuller, Esq. (S.C. Bar No. 11392)
Upstate Law Group, LLC
200 E. Main Street
Easley, SC 29640
Telephone: 864-855-3114
Facsimile: 864-855-3446

Dated: April 11, 2017

Attorney for Plaintiffs

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EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

COURT OF COMMON PLEAS
C.A. NO. 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,
Plaintiff,
vs.
Jami L. Verderosa,
Defendant.

Deposition of MARTHA "LINDA" LUSK, Ph.D.

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 25th day of August 2016, commencing at approximately 12:36 p.m. attended by counsel as follows:

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A. '72 to '79? I did not work '72 to '73 because I was working on my Master's. And then I worked at College Street School from '73 to '83. And I went on a leave of absence from '79 to '80 to do the doctorate.

Q. Were you ever teacher of the year at College Street?

A. Yes, sir; I was.

Q. How many times?

A. One time.

Q. And who voted on that?

A. The teachers.

Q. How many teachers at College Street, just approximately?

A. Probably 18.

Q. What did you teach at College Street?

A. I taught fifth grade language, art and reading. And then I was -- after that I was a media specialist at -- I think they called them librarian at that time and that was from '73 to '83.

Q. When you returned from your leave of absence you came back to College Street?

A. Yes, sir; I did.

Q. And you got your doctorate in 1982?

A. Yes, sir; I did.

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Q. In 1983 you transferred to Westminster Middle School as a librarian still?
A. Yes.
Q. Were you teacher of the year at Westminster Middle?
A. Yes.
Q. How many times?
A. One.
Q. Was that of the entire district or of that school?
A. No, just at that school.
Q. And how many teachers at that school approximately?
A. We probably had about 42 to 45.
Q. Who chose teacher of the year at that school?
A. The teachers.
Q. It looks like you applied to be principal at Northside Elementary in '83. Does that sound right?
A. Yes, sir.
Q. And then '84 to '85 you taught computer science at Westminster Middle; is that right?
A. Yes, sir; I did.
Q. So you had computer background; correct?
A. Yes, sir; I did. I was the first computer teacher in I guess the school.
Q. In where?
A. In the school.

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been reprimanded?

A. He did not check in the right way.

Q. Okay.

A. And some of the people -- Mr. Jarrell told me he had never seen an administrator correct another administrator in front of -- a principal correcting another administrator in front of him.

Q. How do you know that Dr. Thorsland didn't do his investigation in the right way?

A. Well, I know that he pulled Shandra Brannon out and asked Shandra, did you -- she was outraged that she was pulled out of a class and didn't do the PowerPoint presentation for Dr. Lusk.

Q. Okay. We're still talking about the reprimands first.

A. Okay.

Q. You said Dr. Thosland didn't do a proper investigation into you being reprimanded. How do you know he didn't do a proper investigation?

A. He did a -- he did an investigation, but it was quick and smooth.

Q. Number 5 ---

A. But you can't determine what one -- the way an administrator handles something.

Q. You don't think Dr. Thorsland intentionally

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file in the courthouse; correct?
A. Uh-huh (affirmative response).
Q. And you knew that -- is that a "yes"?
A. I didn't know it would say demotion with an erroneous email.
Q. Who put that in your Complaint? Who did that?
A. That wasn't the whole point of the -- gist of the lawsuit though. That how the paper interpreted. We didn't give a written write up about it.
Q. Keith Wilkes, what's he going to say?
A. Keith Wilkes will probably -- he wrote that letter.
Q. Have you talked to him lately?
A. (No response).
Q. Have you talked to him lately?
A. No, I haven't talked to him since I left.
Q. Ashley, you say Verbeck?
A. L-E-B-E-S-Q-U-E, something like that. She's at Seneca Middle.
Q. And you claim that Ms. Verderosa said to her -- whispered to her that you didn't know what you were doing about MAP testing?
A. That was what was told.
Q. You didn't hear that?
A. A teacher heard it.
Q. Who?

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A. Cindy Parker.
Q. Cindy Parker. And what room was this in?
A. I don't know.
Q. Well, ma'am, I think what you said was, while you were giving this talk, Ms. Verderosa whispered that to Ms. Verbeck
A. That was what Cindy Parker told Kristen Gray ---
Q. Kristen Gray.
A. Well, anyway, one teacher told another and Ashley will confirm that the comment was made.
Q. Have you talked to Ashley?
A. I have no reason to.
Q. And what room was this that you were making this presentation on when this occurred?
A. Probably was an eighth grade room, which would have been probably Ashley's room. No, it was Patti Gosnell's room because we took all the EOA teachers down to Patty Gosnell's room. And I had given the presentation. Verderosa poked her and said, "You need to get up. Dr. Lusk doesn't -- not a clue." And usually ---
Q. So you heard that?
A. No, I didn't. But Ashley will testify.
Q. But Cindy Parker told you that she heard it?
A. She heard that Ashley said it.

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defamation of your character that you're going around smelling? "I'm going to address you before the parents picked up on it."

Q. Then that conversation you had with Dr. Lucas was in 2012?

A. Yes, sir.

Q. Now, who took your place after you left?

A. Mr. Odom.

Q. And when did he start?

A. He started in 2013.

Q. When?

A. In July the 1st, 2013. He didn't go directly on that day, but he probably went on June the 20th -- July the 20th.

Q. When are textbooks taken up?

A. When are textbooks what?

Q. Yes, ma'am. When are textbooks taken up?

A. Taken up?

Q. Yeah.

A. All textbooks are taken up -- if you work in a normal school, the textbooks are taken up two or three weeks prior to it. If you're working for a principal wanting to harass and bully you, we took them up the last week of school. 2,400 books at the last week of school and I didn't have to take

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Q. When we were reviewing Discovery?
A. Yes. I had -- I had no idea that this -- where this came from.
Q. When Mr. Kull was asking you about your salary, what was the first year that your salary was reduced from approximately $96,000 a year to 74,000 and some change?
A. The 2014/'15 school year and then this year.
Q. So your salary has continued to be in the $74,000 range this school year?
A. It was like 72,000 for the last two years, and then this year we got a pay increase and it's 74,000 or something.
Q. So that's for academic year 2016? 2017 it will be that too?
A. Yes.
Q. And you estimated that you plan to retire in the academic years 2017/2018?
A. I really don't know. I can quit today. I can quit. I'm not going to give an answer on this, because I enjoy working.

BY MS. KERN-FULLER:

Excuse me one second. I'm sorry.

(OFF THE RECORD).

CROSS-EXAMINATION RESUMED BY MS. KERN-FULLER:

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concerns documented via email to you from Ms. Verderosa, we are no longer confident in your ability to serve as an administrator." Did I read that correctly?

A. Does that mean that she had other emails about me?

Q. Did I read that statement correctly, that it says, "As a result of the many ongoing concerns mentioned above as well as the other concerns documented via email to you from Ms. Verderosa we are no longer confident in your ability to serve as an administrator."

A. I never -- I never received -- I was told in some conversation that Ms. Verderosa had a whole bundle of email.

Q. Have you ever seen this ---

A. I have never seen any emails, but I was told that she had a lot of email.

Q. And so this lists a March 8 bullet point; a May 2nd, 2012 bullet point; September 7th, 2012 bullet point; September 21st, 2012 bullet point; November 19th, 2012 bullet point; December 19th, 2012 bullet point; January 22nd, 23rd -- 2013 bullet point; and then the February 5th incident regarding Tamassee-Salem Middle School; and then whenever this email was. Now, all of those incidents post date your

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grievance that is Exhibit 2; right?

A. Yeah. And I cannot understand why they were too concerned in January and February if I had not filed the grievance, they probably would never have been brought up. It was like throwing in the other student -- why did the principal wait to five months later to give me a write up about the student?

Q. Prior to you filing your grievance that's Exhibit 2, did you have 27 years of impeccable service to the district?

A. Yes, ma'am; I did. And I've never -- at the most in all my years I had five parents complain through all those years that ever went probably anywhere.

Q. Now, this statement that is the second paragraph in Exhibit 16, does that form the basis that you believe that Ms. Verderosa tortuously interfered with your employment with Oconee County School District to cause you to be demoted?

A. Yes, ma'am.

BY MR. KULL:

Object to the form.

CROSS EXAMINATION RESUMED BY MS. KERN-FULLER:

Q. Do you believe that it is part of a principal's job to provide truthful information about their

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EXHIBIT B

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School District of Oconee County
414 South Pine Street • Walhalla, South Carolina 29691
(864) [illegible]
www.oconee.k12.sc.us
"Education is Everybody's Business"

VIA Hand Delivery
March 4, 2013

Dr. Linda Lusk
West Oak Middle School

Dear Dr. Lusk:

The purpose of this letter is to follow up with my meeting with you on Thursday, February 28, 2013 during which I met with you to discuss your job assignment for the 2013-14 school year. As you recall, Dianne England, Assistant Superintendent of Instruction was present. During the meeting, I shared with you that we would be making administrative changes at West Oak Middle School due to the ongoing concerns regarding your performance. As you are aware, Jami Verderosa, Principal at West Oak Middle wrote to you and shared many concerns with you about your performance throughout the school year. Some of the major concerns shared with you included the following:

- Letter dated March 8, 2012 addressed issues about an inappropriate comment you made to a student while handing a discipline matter. The parent was very upset and contacted Michael Thorsland, Assistant Superintendent of Operations regarding the incident.
- Letter dated May 2, 2012 addressed 4 major concerns which included the following:
  - Entering discipline in power school under the incorrect student name
  - Contacting the wrong parent regarding a discipline matter of another student
  - Not investigating discipline thoroughly and contacting the parent before suspending a special education student
  - Strategic Plan data in the student achievement section was not correct
- Letter dated September 7, 2012 addressed the meeting to discuss your GBT goals and assistance needed. There was a concern shared in which you gave a cell phone back to the student and not the parent/guardian. As you know this is a violation of district policy.
- Letter dated September 21, 2012 addressed concerns regarding a discipline matter in which you brought two students into your office in which one was threatening to fight the other student and asked that they hug each other. As you are aware, the parents were very upset about how this situation was handled.
- Letter dated November 19, 2012 addressed concerns in which two discipline entries in PowerSchool were entered under the wrong students' names again. Mrs. Verderosa asked if you needed help or additional training.
- Letter dated December 19, 2012 addressed concerns in which you failed to follow up appropriately when a note was shared with you about a student distributing drugs in the school. You failed to retain the note for documentation during the investigation.
- Email dated January 22, 2013 suspension discipline was entered incorrectly for a student

Other significant incidents of concerns addressed included you sending a teacher a copy of another teacher's walk-through observation. There was also a concern in which you were supposed to attend a meeting at Tamassee Salem Middle High School on Tuesday, February 5th. You did not attend the meeting as

EXHIBIT
A

Mrs. Verderosa that you would not be attending. You remained at the school. When asked why you did not speak with Mrs. Verderosa, you stated that she does not communicate with you. During our meeting, when the above concerns were shared with you, you stated that Mrs. Verderosa was harassing and bullying you due to the fact that you had filed a grievance. However, as you know Michael Thorsland, Assistant Superintendent of Operations addressed the concerns in your grievance dated March 21, 2012 and these concerns were not substantiated. You also appealed his decision to Dr. Lucas, Superintendant and the decision was upheld. You later requested that the board hear your grievance and this request was denied. During our phone conversation on November 2, 2012, you stated that things were better, "I am over it" and that you were trying to "do my job to the best of my ability." On November 7, I wrote to you regarding your letter to Mrs. Verderosa dated September 19, 2012 to ask again about your concerns about being harassed. You stated that you were being harassed because Ms. Verderosa was "nit picking" about things. As stated in my letter to you, District Administration did meet with Ms. Verderosa at that time regarding your concerns and this was not about retaliation. During our meeting we also shared with you that these were legitimate concerns and issues involving parents that any building administrator would need to address with an assistant principal. You also stated that the issues were over-played to make you look bad and that you were working under a lot of pressure and that you were not sure what rock Mrs. Verderosa will throw at you next.

As a result of the many ongoing concerns mentioned above as well as other concerns documented via email to you from Mrs. Verderosa, we are no longer confident in your ability to serve as an administrator. I shared with you that your assignment as an assistant principal at West Oak Middle School will end effective the end of the school year. Your new assignment for 2013-14 per Board approval will be to work as a teacher at Adult Ed/Code Academy at the Code Learning Center. We will work to assist you in your new role and help make your transition as smooth as possible. Questions regarding reassignment procedures are outlined in SDOC Board Policy GCK-R Professional Staff Assignments and Transfers. This policy states, *"If, in the opinion of the superintendent, a reassignment would be in the best interest of the district, the superintendent or his/her designee will advise the employee of the reassignment and confirm the reassignment in writing to the employee."* A copy of this policy is attached. You stated that you were not happy with this reassignment and that you would fight this decision and asked that we reconsider.

As we discussed, in an effort to work with you and assist you during this transition, your salary will remain at the current level (including days and administrative supplement) for the 2013-14 school year only. Additional responsibilities will be assigned to you by your supervisor for the 2013-14 school year for the additional 25 contract days. As we also discussed, this is to confirm that your salary during any subsequent years you are employed with the District will be commensurate with the position and number of days to which you are assigned. Finally, you should feel free to apply for any other available positions for which you are qualified, should you be interested in a different assignment. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Ernestine R. Williams
Assistant Superintendent of Human Resources

Cc: Jami Verderosa, Principal West Oak Middle
Personnel File

Attachments: Policy GCK-R *Professional Staff Assignments and Transfers*

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EXHIBIT C

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School District of Oconee County
414 South Pine Street · Walhalla, South Carolina 29691
(864) 886-4400
www.oconee.k12.sc.us
"Education is Everybody's Business"

Certified and Regular Mail
April 26, 2013

Dr. Linda Lusk
P.O. Box 846
Central, SC 29630

Dear Dr. Lusk:

I am writing to follow up with our meeting on Friday, April 26, 2013, during which I met with you to discuss the concerns in which you were placed on Administrative Leave. The decision to place you on leave was precipitated when you erroneously emailed a confidential document you had addressed to me and two other Assistant Superintendents. As you know this letter contained confidential information about other employees. Earnestine Williams who serves as Assistant Superintendent of Human Resources was present at our meeting.

During the meeting, I shared with you that I was extremely disappointed and this incident has further caused me to question your ability to handle things that require tremendous skills. You apologized and stated that you did not intentionally send the email to the employee. As you know, you appealed your job reassignment to the Board of Trustees on April 15, 2013. The Board voted to affirm the decision I made regarding your job assignment for 2013-14 as a teacher. Due to the ongoing concerns, I shared with you the following expectations for the remainder of the 2012-13 school year:

- You are on Administrative Leave with full pay and benefits effective Friday, April 26 until Monday, May 6, 2013
- You will report to the District Office on May 6 at 7:30 to discuss your assignment at Code Learning Center which will begin after our meeting
- Your email account has been suspended and you are no longer allowed on campus at West Oak Middle School
- We will make arrangements for someone to meet you at the school at a mutually agreed time after school or on a Saturday to remove your personal items from West Oak Middle School.

You gave me your keys to the building and proxy card. You also gave me you laptop computer. In summary, I would like for you to reflect upon the concerns we shared with you regarding your performance and inability to accept responsibility for your actions in handling situations. Please understand that you need to focus on your new assignment at Code Learning Center and move forward.

If you need to discuss any concerns that I have referenced in this letter, please contact me for an appointment.

Sincerely,

Michael Lucas, Ed.D
Superintendent

cc: Personnel File

EXHIBIT 18

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EXHIBIT D

ELECTRONICALLY FILED - 2017 Apr 11 1:24 PM - OCONEE - COMMON PLEAS - CASE#2016CP3700113

Dr. Linda Lusk
West-Oak Middle School
llusk@oconee.k12.sc.us

March 13, 2013

Mrs. Earnestine Williams
Assistant Superintendent of Human Resources
414 South Pine Street
Walhalla, South Carolina 29691

Dear Mrs. Williams:

In reference to my letter dated March 4, 2013, I am heartbroken that my career with the District is ending in this fashion. There is no doubt in my mind that because I filed a grievance about my workplace environment that I am suffering consequences from that action. I did not have complete freedom from reprisal.

My workplace environment has been a nightmare created by Ms. Jami Verderosa. It can best be described as an environment of bullying, harassment, intimidation, retaliation and the most outrageous micromanagement conducted by Ms. Verderosa. She focused on procedural trivia and obsessively observed and controlled all of my work in order to induce fear and anxiety to such levels that I lost my self-esteem. These tactics were for the ultimate purpose of eliminating me from my administrative role.

I will attempt to address some of the written concerns she made which are all unfounded and unsubstantiated.

Letter dated March 9, 2012. I have never been told what alleged inappropriate comment I made to a student. I would appreciate having the exact comment in writing so I may properly defend myself. When I met with Dr. Michael Thorsland and Ms. Verderosa, they did not tell me exactly what I was being accused of. I went through the entire grievance process last year without any knowledge of the specifics of the allegedly inappropriate comment I was accused of. Yet I was reprimanded and this reprimand set the stage for Ms. Verderosa's retaliatory actions toward me.

Letter dated September 7 - Cell Phone Incident: In accordance with district policy I took a cell phone away from an eighth grader on a Thursday. The mother came at eight o'clock Friday to pick up the phone. I told her she could have the phone on Monday. The father came at one o'clock Friday to pick up the phone and I also told him he could not have the phone until Monday according to district policy.

[redacted]

EXHIBIT 15

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At car rider duty on Monday I did not see either parent and was unable to return the phone. The mother called the District Office on Tuesday reporting that her son should be able to use his phone after 3:15. Ms. Verderosa erroneously stated that the parent was upset because I gave her son the phone. On Wednesday the mother called and stated that she would be out of town and her son needed the phone. I am empowered as an administrator to make that decision. I supported policy when taking the phone and keeping it for two days.

Breaking District Policy - Nepotism. A review of district policy should be conducted in the matter of Ms. Verderosa allowing her husband to do three homebound cases at this time.

September 21 - Two Students About to Fight. In the midst of major M A P testing Mrs. Lyles stated that two female students had issues. She reported that the students were upset with each other. One was in the guidance office and the other was in class. I asked each student if she was comfortable talking with each other. I did not force them to go into my office to talk. I did not know that the victim was upset. I talked with the two students about 15 minutes and gave them the option when leaving my office of doing nothing, shaking hands, or exchanging a quick hug.

During our peer mediation training, opposing parties are placed together to remediate issues with the mediator. Recently one of the counselors wanted to place two girls together who had issues. I told her that was not the way Ms. Verderosa wanted to handle the problem.

September 2012 - Parent Conference Evolving from Sept 21 Student Confrontation. It was the worst parent conference that I have ever experienced. Ms. Verderosa allowed one girl's mother to verbally attack me three times. Ms. Verderosa gleefully enjoyed every moment of these outbursts. The father was supported; the mother was not. I was actually afraid that the mother was going to physically attack me.

Visit to Tamassee-Salem Middle School. The assistant principals met to set up visits to four schools, namely: Walhalla, Seneca, West-Oak Middle, and Tamassee Middle School. I visited Walhalla in December. The APIs visited our school in December.

The visit for Tamassee-Salem Middle was February 5 and Seneca Middle February 7. I did not go to Tamassee-Salem Middle on February 5. Ms. Verderosa sent me an email several days later requesting an explanation for why I did not go to the two schools. I replied to her that I had a nail in my front tire. Ms. Verderosa responded back that "I hope that you got that fixed." They had to re-schedule the visit to Seneca. She did not know that. She was seeking to target me in both situations.

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Advisory Meeting - February 21, 2013. I attended an Advisory Meeting on February 2, 2013 at the Hamilton Career Center at the principal's request. I enjoyed the program and a few days later Ms. Verderosa asked a subordinate, Ms. Renee Brooks, the following questions: "Did Dr. Lusk attend the program?" "When did she arrive?" "When did she leave?" I do not skip meetings.

SUMMARY.

I am filing a grievance about my demotion and my workplace environment. There is insufficient evidence to support this decision.

I have been working in one of the worst environments that any employee could have to endure. I am not the only victim. Recently another employee who is very popular with parents and students came forward with statements about how she has been mistreated and victimized by Ms. Verderosa for the last three years.

I have enjoyed working in the district and am a highly respected administrator. I am saddened that my career has been tarnished by the outrageous behavior of one individual. I have prayed for God's guidance on how to handle this situation. I have suffered great stress and anxiety at the hands of my immediate superior.

There are many rude emails to me. In the documentation Ms. Verderosa select situations to put me in the worst light and show me as incompetent. This situation has placed unnecessary pressure on my health as I strove to put on a happy face and do my best for the students.

Finally, I request that any decision about my future at West-Oak Middle be held until all levels of my grievance are heard. Thank you for your time in reviewing this situation.

Sincerely,

Dr. Linda Lusk

Dr. Linda Lusk

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EXHIBIT E

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EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

[X] FEPA
[X] EEOC 14C-2014-00331

South Carolina Human Affairs Commission and EEOC
State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)	Home Phone (incl. Area Code)	Date of Birth
Ms. Martha L. Lusk	(864) 318-7343	12-02-1950

Street Address: P O Box 846, Central, SC 29630 — City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name	No. Employees, Members	Phone No (Include Area Code)
OCONEE COUNTY SCHOOL DISTRICT	500 or More	(864) 886-4400

Street Address: 414 South Pine Street, Walhalla, SC 29691 — City, State and ZIP Code

Name	No. Employees, Members	Phone No (Include Area Code)

Street Address — City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN
[X] RETALIATION [X] AGE [ ] DISABILITY [ ] GENETIC INFORMATION
[ ] OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE
Earliest: 05-4-2013 Latest: 05-4-2013

[ ] CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s))

I was involuntarily transferred and demoted from Assistant Principal to an Instructor at Adult Education, on or about May 4, 2013, by Dr. Lucas. I had previously filed a grievance (March 21, 2012), concerning discriminatory treatment by Ms. Verderosa. I asserted my rights not to be bullied and filed this grievance to remove a written reprimand from my file. This reprimand served as retaliation for exposing my workplace environment which consisted of intimidation, retaliation, harassment, bullying, and outrageous micromanagement by Ms. Verderosa. After filing this grievance, I was subjected to nit picking and trivial fault-finding. Thereafter, I was demoted. I contend I was treated in such manner because I complained of the discriminatory treatment and because of my age.

I therefore believe that I was discriminated against because of my age (63) and in retaliation for my opposition to employment practiced declared unlawful by the South Carolina Human Affairs Law, as amended, and Age Discrimination in Employment Act, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

2/27/14 Martha L Lusk
Date Charging Party Signature

NOTARY (When necessary for State and Local Agency Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

Martha L Lusk

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

2/27/14

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EXHIBIT F

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Board Appeal – April 15, 2013

Policy/Basis for My Action

Policy CFC	The superintendent is responsible for the assignment of all administrators Compulsory transfers are subject to grievance procedures and review by the Board of Trustees
Policy GCR	Provides for the structure of reassignment based on the needs of the district
Section 59-24-15	Administrators retain status as a teacher under provisions of the law

Issues of Concern Regarding Administrative Performance in 2012-13

- Handling of student discipline (letter dated May 3, 2012)
- Performance of standard duties assigned while serving as Assistant Principal (MAP – memo dated September 7, 2012)
- Handling of a discipline matter (Parent meeting requested regarding Dr. Lusk's handling of the situation; Letter dated September 21, 2012)
- Handling of data entry regarding student discipline (Letter dated November 19, 2012)
- Handling of a discipline matter – Failure to act in a timely and appropriate manner (Letter dated December 19, 2012)
- Handling of a discipline matter; 5 day suspension coded as 3-days (Email dated January 22, 2013)

Decision to Reassign

In consultation with members of the management team during the week of February 25, 2013, I requested that Earnestine Williams and another member of the management team meet with Dr. Lusk regarding my decision to reassign her for 2013-14. I stated that we would hold her salary at the existing level for one year, and this information would be a part of her contract. She is to be reassigned to Code Learning Center to serve students in the Adult Education program. Because of her extended contract, other duties would be assigned to her by the director of the facility. Her contract would revert to that of teacher during the 2014-15 school year. I have used this same format in the reassignment of administrators in the past.

Appeal to Board of Trustees

Letter dated March 13 to Earnestine Williams in which she states, "I am filing a grievance about my demotion and my workplace environment. There is insufficient evidence to support this decision."

Appeal regarding reassignment scheduled. I met with Dr. Lusk on March 18, 2013, and I sent a memorandum regarding the appeal of the reassignment to the Board of Trustees on March 19, 2013.

Appeal date scheduled for Monday, April 15, 2013.

Request of the Board of Trustees

I request that the Board of Trustees uphold my decision to reassign Dr. Linda Lusk for the 2013-14 school year to the position of teacher at Code Learning Center.

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EXHIBIT G

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

COURT OF COMMON PLEAS
C.A. NO. 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

vs.

Jami L. Verderosa,

Defendant.

Deposition of JAMI L. VERDEROSA

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 25th day of August 2016, commencing at approximately 12:36 p.m. attended by counsel as follows:

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A. I look up ---
Q. --- then what ---
A. I don't ask my secretary to do that. I don't have a secretary. The principals have a bookkeeper. There is not a principal secretary at the middle school, so I look up the phone number myself.
Q. Have you ever had any employees other than Dr. Lusk file grievances against any discipline or any actions you've taken against them?
A. There was a grievance after Dr. Lusk left West-Oak Middle School, but that was not because I took any disciplinary action against that employee.
Q. But the grievance was against you?
A. Yes, it was.
Q. And who was that from?
A. Cindy Parker.
Q. And what was that regarding?
A. That was regarding three things that I recall. One was regarding our door locks on the doors, or her lock, and not locking. And she felt that she was not handled appropriately in being -- when we taught her how to lock the door because we were having trouble with those locks at West-Oak Middle School after that. She was concerned about two or three units that she was teaching English I

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EXHIBIT H

Q. And are those retained in that same ledger?

A. In a ledger. Not the same ledger but in a ledger.

Q. Okay. And I'm asking you these questions so that if I were to make a request for copies of those, that's something that you know where it's at and would be accessible?

A. Correct.

Q. Okay. Do you know if other teachers shared Dr. Lusk's concern with you that she was being set up for failure?

A. No.

Q. Now, you went out and you interviewed some teachers as a result of Dr. Lusk's concerns, right?

A. Correct.

Q. And when you did those interviews, how did you set up those interviews?

A. Clarify what you mean.

Q. You did those at the school?

A. Correct.

Q. At West-Oak?

A. Correct.

Q. And who did you contact to set up those interviews?

A. I want to say it was -- it could have been

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one of the assistant principals, which would have been Mr. Odom.

Q. Mr. Odom reported at that time to Ms. Verderosa?

A. Yes.

Q. Do you know for sure if it was Mr. Odom you spoke to, or did you speak to Ms. Verderosa?

A. I did not speak to her.

Q. So you asked Mr. Odom to set up meetings with those teachers?

A. I did.

Q. Where did those meetings take place?

A. In a conference room.

Q. Where is the conference room located?

A. Up front.

Q. In the office?

A. Yes.

Q. And where is that conference room in -- spatially in relation to the principal's office?

A. It's adjacent to the principal's office.

Q. And so it would be fair to say that during those meetings, Ms. Verderosa could see everybody that went into that conference room?

A. Correct.

Q. Was she present the day that you did those

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grievance after Dr. Lusk left?

A. It probably would have been.

Q. Was there a special education teacher also at West-Oak that filed a grievance regarding Ms. Verderosa?

A. I don't recall.

Q. Do you recall a special education teacher there by the name of H. T.?

A. Yes.

Q. Do you recall if she filed a grievance?

A. She did, yes.

Q. So that was three grievances then, right, Dr. Lusk, Ms. Parker, and this special ed teacher?

A. Yes.

Q. But you don't recall if Ms. McMillan also filed one?

A. I don't. I don't.

Q. You don't recall if the music teacher filed one?

A. I don't.

Q. And did the special education teacher, as part of her grievance, state that she cried every night about her working conditions at that school?

A. I don't recall her saying that.

Q. Was it the district's solution to move that

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teacher to another school?

A. She was put at another school, yes.

Q. But Dr. Lusk wasn't?

A. No.

Q. How many grievances have to be filed against a principal before the school district takes notice and addresses the concerns at that school?

MR. KULL: Object to the form.

A. I don't -- there's -- I don't know of a number.

Q. Has there been any other principal that has had three or four grievances filed against them before they were dealt with?

A. I don't necessarily have that information. I mean, we have grievances filed occasionally.

Q. Since you have been the assistant superintendent for HR, are you aware of any other principal that has had three or four grievances filed by employees against them?

A. I can't say at this time, no.

Q. You can't recall any other at this time?

A. At this time. I do know grievances have been filed, but how many at each school, I don't have that information.

Q. What's the usual number of district surveys

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE C.A. NO.: 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

vs.

Jami L. Verderosa,

Defendant.

DEPOSITION OF

EARNESTINE R. WILLIAMS

DATE TAKEN: November 1, 2016

TIME BEGAN: 3:08 p.m.

TIME ENDED: 5:29 p.m.

LOCATION: Upstate Law Group
200 East Main Street
Easley, South Carolina

REPORTED BY: Rusti Davis, Court Reporter
EXPEDITE COURT REPORTING
P.O. Box 25882
Greenville, South Carolina 29616
864-509-0914
expeditereporting@gmail.com

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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

v.

Jami L. Verderosa,

Defendant.

REPLY BRIEF

TO: CANDY M. KERN-FULLER, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE PLAINTIFF ABOVE NAMED:

NOW COMES the Defendant, Jami Verderosa, and submits this Reply Brief in support of her Motion for Summary Judgment, and states:

The Plaintiff alleges two causes of action: (1) defamation; and (2) tortious interference with contract.

I. Defamation

The statute of limitations for defamation claims is two years. South Carolina Code § 15-3-550. In her Memorandum in Opposition, the Plaintiff alleges that the Defendant made 3 defamatory comments about the Plaintiff. (Plaintiff's Memo p. 2). The Plaintiff asserts in her Memo that "[t]hese statements were originally made in 2013." (Plaintiff's Memo p. 4).

As such, the two-year statute of limitations as to Plaintiff's defamation cause of action expired no later than 2015. The Plaintiff did not file this civil action until February 24, 2016, well past the two-year statute of limitations. Therefore, the Plaintiff's claim for defamation is barred by the two-year statute of limitations.

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The Plaintiff makes only one attempt to argue that the two-year statute of limitations does not bar her defamation claim. Without citing to any evidence in the records, the Plaintiff asserts that Defendant Verderosa "repeated" the alleged defamatory statements about the Plaintiff in 2014 in response to the EEOC charge of discrimination that the Plaintiff filed against the School District of Oconee County. This argument lacks merit for two reasons:

First, the undisputed evidence shows that Defendant Verderosa did not make any statements to the EEOC at any time. The Plaintiff filed her EEOC claim alleging age discrimination against the School District of Oconee County. Although the Plaintiff referenced Defendant Verderosa in the text of her EEOC charge, Defendant Verderosa was not a named party to that action.

Assistant Superintendent Earnestine Williams was the administrator of the School District who was responsible for handling the School District's response to the EEOC regarding the Plaintiff's allegations. At no time did Assistant Superintendent Williams inform Defendant Verderosa of the EEOC charge. The EEOC charge was dismissed by the EEOC only three (3) months after it was filed because the Plaintiff missed the limitations period in that proceeding also. (Exhibit A: Williams Affidavit ¶¶ 3-7). In addition, Defendant Verderosa has verified by Affidavit that she was not aware of the EEOC charge and did not make any statements to the EEOC. (Exhibit B: Verderosa Affidavit). As such, there is no evidence to support the Plaintiff's unsubstantiated argument that Defendant Verderosa "repeated" the alleged statements to the EEOC in 2014. Therefore, the two-year statute of limitations bars the Plaintiff's defamation claim.

Second, even if Defendant Verderosa had "repeated" any of the alleged statements to the EEOC, any such statements would be absolutely privileged under South Carolina law. See

alleged defamatory statements in the course of a VFW court martial and were sued for defamation. The South Carolina Court of Appeals held that these statements were not actionable because they were absolutely privileged:

> We hold the absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relation to it.

Id. at 430, 392 S.E.2d at 467. In addition to protecting statements made in affidavits and at the court martial, the Court applied the absolute privilege to the statements made by the witnesses during the investigation leading up to the court martial proceeding. Id. at 431, 392 S.E.2d at 467.

Likewise in this case, if the absolute privilege applies to statements made in the course of a proceeding like a VFW court martial, they would also apply in an EEOC proceeding. As such, even if Defendant Verderosa "repeated" any statements (which she did not) in response to the Plaintiff's claims in the course of the EEOC proceeding, those statements would be absolutely privileged. See, Mack v. Delta Air Lines, Inc., 639 Fed. Appx. 582, 586 (11th Cir. 2016) (ruling letter sent to EEOC during its investigation "fell within the scope of the EEOC's 'quasi-judicial' administrative process and is entitled to absolute privilege."); see also, Woodward v. Weiss, 932 F.Supp.2d 723, 727 (D.S.C. 1996) (extending absolute privilege to expert reports).

In sum, the Plaintiff concedes the alleged defamatory statements were originally made no later than 2013. As such, the Plaintiff missed the two-year statute of limitations by waiting until 2016 to file her defamation cause of action. In addition, the only evidence shows that the Defendant did not "repeat" the statements in 2014 to the EEOC. The undisputed evidence shows that Defendant Verderosa was not aware of the EEOC charge and made no statements to the EEOC. (Exhibit B: Verderosa Affidavit; Exhibit A: Williams Affidavit). Also, even if the Defendant did make statements to the EEOC, those statements would be absolutely privileged.

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Therefore, the Defendant respectfully requests that the Court dismiss the Plaintiff's defamation cause of action based on the two-year statute of limitations.

II. Tortious Interference with Contract

The Plaintiff acknowledges in her Memorandum in Opposition that she must prove, among other things, that the Plaintiff intentionally procured the breach of her contract. The Plaintiff has not produced any evidence that her contract was breached or that the Defendant intentionally procured the breach of her contract.

First, the Plaintiff's contract was not breached. The South Carolina Supreme Court answered a question certified to it by the United States District Court relating to the rights of a public school administrator in Henry-Davenport v. School District of Fairfield County, 391 S.C. 85, 705 S.E.2d 26 (2011). Relying on South Carolina Code § 59-24-15, the Supreme Court ruled that an "educator who is employed as an administrator on an annual or multi-year contract retains her rights as a teacher under the Teacher Act, [but] those rights are not granted to the position or salary of administrator." Id. at 89, 705 S.E.2d at 28 (emphasis added). In other words, an administrator at a public school – like the Plaintiff was in 2013 – had no contractual rights to the position or salary of an "administrator." The only contractual right a public school administrator has is to remain as a teacher.

South Carolina Code § 59-24-15 states:

> Certified education personnel who are employed as administrators on an annual or multi-year contract will retain their right as a teacher under the provisions of [the Teacher Act] but no such rights are granted to the position or salary of administrator. Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract.

(emphasis added). The Supreme Court in Henry-Davenport, noting that this provision was enacted in 1998, held: "We believe the 1998 enactment – specifically the provision 'but no such

rights are granted to the position or salary of administrator' – is clear and manifestly reflects legislative intent to expressly exclude such rights to an administrator." Id. at 89, 705 S.E.2d at 28.

In this case, the Plaintiff – like all other public school administrators – has no contractual right to the position or salary of administrator. Her only contractual right was to remain as a "teacher." In this case, it is undisputed that the Plaintiff was never deprived of her position as a teacher. In fact, she remains a teacher at the School District of Oconee County even today.

In her Memorandum in Opposition, the Plaintiff concedes that she had no contractual right to remain an administrator after the 2012-2013 school year. Instead, the Plaintiff contends that the Defendant "interfered with Plaintiff's contract for the **remainder of the 2012-2013 academic year**." (Plaintiff's Memo p. 6) (emphasis in original). As such, the Plaintiff has limited her claim to the approximately two (2) months from when she was transferred to a new school in May 2013 until the end of that school year, which was June 30, 2013. (Plaintiff's Memo at pp. 1-2, 6).

The Plaintiff bases her argument on the last sentence of South Carolina Code § 59-24-15, which states: "Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract." (emphasis added). The Plaintiff claims that gave her the contractual right to remain at her prior school until June 30, 2013.

This argument fails for four reasons. First, this last sentence of the statute does not give a present-day administrator the contractual right to retain her salary or position for the remainder of a school year. The last sentence of the statute applied only to administrator contracts that gave rights to position and salary before the 1998 statute was enacted. The last sentence states that an administrator "who presently is under a contract granting such rights" – to the position and salary of an administrator – gets to retain those rights. This last sentence of the statute does not apply to

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the Plaintiff's contract for the 2012-2013 school year because that contract did not exist in 1998 when the statute was enacted.

The United States District Court in Henry-Davenport v. School District of Fairfield County, 832 F.Supp.2d 602 (D.S.C. 2011), explained what this last sentence of § 59-24-15 means. After the United States District Court received the answer to its certified question from the South Carolina Supreme Court – which held that an administrator does not have rights to either the administrative position or to its salary, the Plaintiff argued to the District Court that it should not apply § 59-24-15 to limit her contractual rights under her particular administrator contract. The District Court disagreed, finding that the last sentence of the statute meant that the limitations of the statute applied to administrator contracts executed after 1998. The District Court ruled: "If an administrator had rights under a contract to continue as an administrator when the statute was enacted, the statute states the administrator retained those rights until the contract expired." Id. at 609 (emphasis added). In other words, the last sentence grandfathered in only administrator contracts that existed when the statute was enacted in 1998. Because the Plaintiff's administrative contract in Henry-Davenport was executed after the 1998 enactment of § 59-24-15, the Court ruled that the limiting provisions of § 59-24-15 must apply and that the Plaintiff did not retain any rights to the position or salary of administrator even though she had an "administrator" contract. Id. at 608-09.

The same applies to this case. The last sentence of § 59-24-15 applies only to administrator contracts that existed when the statute was enacted in 1998. Because the Plaintiff's 2012-2013 contract was executed after 1998, the last sentence of the statute does not give Plaintiff any rights to the position or salary of an administrator even to the end of the 2012-2013 school year.

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Second, even if the last sentence of § 59-24-15 could somehow apply to administrator contracts executed after 1998, the Plaintiff did not have the type of administrator contract that granted her a right to remain in the position and salary of an administrator for the remainder of the 2012-2013 school year. In her deposition, the Plaintiff was asked about her 2012-2013 contract. The Plaintiff admitted that her contract for 2012-2013 contained the following provision:

> However, it is understood that all assignments are tentative and may be changed by the administration upon notice to and consultation with the employee in accordance with board policy.

(Exhibit C: Plaintiff's Dep. pp. 72-74 with quote on p. 74) (emphasis added). The Plaintiff was asked what "tentative" meant in the contract. She replied: "That's just your tentative work place, which you can be moved." (Id. at p. 74). The Plaintiff was also asked: "When you signed this document, you knew that this contract could be changed by the administration if they followed procedure; correct?" The Plaintiff replied, "yes." (Id. at p. 75).

What the Plaintiff's testimony establishes is that she did not have the type of administrator contract that gave her the right to retain the salary or position of administrator even for the 2012-2013 school year. Her position and salary could be changed by the administration at any time without breaching her contract. In addition, the Plaintiff does not attempt to make any showing that the administration failed to follow its procedure when it transferred her to a new building for the last two months of the 2012-2013 school year, and neither could she. Board Policy GCK-R provides that "[i]f, in the opinion of the superintendent, a reassignment would be in the best interest of the district, the superintendent or his/her designee will advise the employee of the reassignment and confirm the reassignment in writing to the employee." (Plaintiff's Memo Exhibit B, p. 2). The District complied with its procedure. The South Carolina Supreme Court has acknowledged: "We are of the opinion that policy decisions concerning where an employee will best serve the

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school district are better left to school officials, not the courts." Snipes v. Andrews, 280 S.C. 320, 323, 313 S.E.2d 294, 296 (1984).

Third, even if the last sentence of the statute could somehow be interpreted to give the Plaintiff the right to remain in the status and salary of administrator for the remaining two months of the 2012-2013 school year, she did retain that status and salary. When the Plaintiff was transferred to the new school in May of 2013 for the last two months of the school year, she was not given teaching duties. Her personnel job description was not changed. She continued to be required to work the same number of days of service as the other administrators in the District. In addition, the Plaintiff's salary remained the same – not only for the remainder of the 2012-2013 school year but also for the entire 2013-2014 school year. (Exhibit B: Williams Affidavit ¶ 13).

Last, even if the last sentence of § 59-24-15 applied to the Plaintiff's contract for the remainder of the 2012-2013 school year (which respectfully it does not), it was not Defendant Jami Verderosa who intentionally procured the breach of that contract for the last two months of the semester. The Plaintiff has attempted in this case to suggest that Defendant Verderosa came up with a plan to get the District Office administration to reassign the Plaintiff. Defendant Verderosa denies this allegation in its entirety. However, even assuming for purposes of summary judgment that the Plaintiff's contention is correct, the Plaintiff has failed to produce any evidence that Defendant Verderosa was involved in any way in getting the Plaintiff reassigned for the final two months of the 2012-2013 school year.

The Plaintiff was notified of her reassignment for the next year by letter dated March 4, 2013, which the Plaintiff has attached to her Memorandum in Opposition. This letter clearly states that the Plaintiff would remain in her same administrative position – at the same salary – at the

same school for the remainder of the 2012-2013 school year. (Exhibit B: Williams Affidavit attachment B). In other words, nothing would change until the end of the school year.

The reason the Plaintiff was thereafter reassigned to another school for the remaining two months of the 2012-2013 school year was because the Plaintiff – not the Defendant – erroneously sent an email on April 25, 2013, containing confidential information to a secretary at the school where the Plaintiff had been allowed to stay to finish out the school year. It was only after this misstep by the Plaintiff that the Superintendent met with the Plaintiff and placed her on administrative leave for a week and moved her to a new school for the remaining two months of the school year. (Exhibit B: Williams Affidavit ¶¶ 10-12). The Plaintiff has not produced any evidence that Defendant Verderosa participated in any way in the Superintendent's decision to reassign her to a new school for the remaining two months of the school year. In fact, Assistant Superintendent Williams has verified that the Defendant did not attend the Superintendent's meeting with the Plaintiff, in which the Plaintiff admitted that she erroneously sent the confidential email and apologized for doing so. (Exhibit B: Williams Affidavit ¶ 11). In sum, the Defendant did not procure any breach of the Plaintiff's contract for the remaining two months of the 2012-2013 school year.

WHEREFORE, Defendant Verderosa respectfully moves the Court to grant judgment in her favor. The Plaintiff's defamation claim is barred by the two-year statute of limitation. The Plaintiff's claim for tortious interference with contract claim fails because South Carolina Code § 59-24-15 makes clear that the Plaintiff had no contractual right to the status or salary of an administrator. Under South Carolina law, a public school administrator has a contractual right to be a "teacher" but not an administrator. The Plaintiff's contract was not interfered with, because she has remained a teacher at the School District continuing even to today.

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The Defendant also stands on it prior arguments in its Motion for Summary Judgment and in its Memorandum in Support of its Motion for Summary Judgment previously filed with the Court.

MURPHY & GRANTLAND, P.A

S/ Jeffrey C. Kull
Jeffrey C. Kull (I.D.# 65449)
Attorney for the Defendant
P.O. Box 6648
Columbia, South Carolina 29260
Phone: (803)-782-4100
Email: JKull@murphygrantland.com

Columbia, South Carolina
August 24, 2017

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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

v.

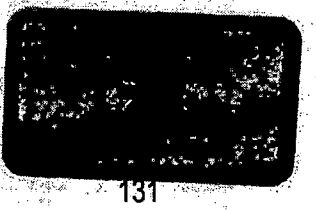
Jami L. Verderosa,

Defendant.

AFFIDAVIT OF EARNESTINE WILLIAMS

PERSONALLY APPEARED BEFORE ME, the undersigned, who after being duly sworn, deposes and says that I have knowledge of and testify as follows:

1. I am the Assistant Superintendent for Human Resources at the School District of Oconee County and have been since 2007.
2. I was involved in the School District's decision in February 2013 to reassign Dr. Linda Lusk to a teaching position at Adult Education to commence at the beginning of the 2013-2014 school year.
3. The next year, in February 2014, Dr. Lusk filed an administrative charge against the School District of Oconee County with the Equal Employment Opportunity Commission (EEOC). Dr. Lusk's administrative charge did not name Jami Verderosa as a party, although it did make allegations against Ms. Verderosa.



4. As Assistant Superintendent for Human Resources, I was tasked with ensuring that the School District responded to the administrative charge in a timely and proper manner.

5. The EEOC dismissed Dr. Lusk's administrative charge in May 2014 (less than 3 months after it was filed), because Dr. Lusk filed her administrative charge late. Exhibit A is the EEOC's dismissal of Dr. Lusk's administrative charge.

6. At no time while Dr. Lusk's EEOC charge was pending did I inform Jami Verderosa that the charge was pending.

7. At no time while the EEOC charge was pending did I have any contact with Jami Verderosa regarding the EEOC charge. Ms. Verderosa was not a named party to the EEOC charge, so I did not believe it was necessary to involve her in the EEOC proceeding, which was pending for only a short time.

8. In her Memorandum in Opposition to Summary Judgment, the Plaintiff contends I made a mistake in my deposition testimony as to who set some particular meetings up at her school. The Plaintiff's contention is correct. In my deposition, I identified Assistant Principal "Mr. Odom." That is not correct. The name of the Assistant Principal at that time was "Mr. Evatt." I mixed up the names. However, the fact remains that another District administrator and I interviewed individuals at West-Oak Middle School who Dr. Lusk had identified.

9. Dr. Lusk has filed with the Court my letter to her dated March 4, 2013. In my letter, I informed Dr. Lusk that she would be reassigned from West-Oak Middle School to another school. However, Dr. Lusk would be allowed to remain in her current position at the same salary at West-Oak Middle School for the remainder of the 2012-2013 school year, which means June 30, 2013. My letter is attached as Exhibit B.

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10. On April 21, 2013, Dr. Lusk accepted the School Board's offer to become a teacher at Adult Education for school year 2013-2014, which would start on July 1, 2013.

11. Within a few days of accepting the School Board's offer to become a teacher at Adult Education for the next school year, Dr. Lusk erroneously sent an email to a staff member at West-Oak Middle School which contained confidential information. This email continued to make complaints against Jami Verderosa. Upon learning of this email, Dr. Michael Lucas, who was the Superintendent of the School District at that time, met with Dr. Lusk regarding this email. I have personal knowledge of this because I attended this meeting between Dr. Lucas and Dr. Lusk. Dr. Lusk apologized for her actions in sending the email to a staff member. Jami Verderosa was not involved in this meeting.

12. As a result of Dr. Lusk's conduct, Dr. Lucas decided to place Dr. Lusk on paid administrative leave for a week and to relocate her to another school as of May 6, 2013. Dr. Lucas' letter to Dr. Lusk is attached as Exhibit C. Dr. Lusk previously filed this document with the Court. Dr. Lusk did not file a grievance or ask for a hearing relating to Dr. Lucas' decision to relocate her to another school building.

13. My staff in Human Resources handled the personnel paperwork to move Dr. Lusk to the Adult Education building as of May 6, 2013. However, her job description was not changed at that time. She was not given any teaching duties until after the conclusion of the 2012-2013 school year. She continued to receive the same salary as she was making at West-Oak Middle School. Her job description did not change until July 1, 2013, which was the first day of the 2013-2014 school year. Effective July 1, 2013, Dr. Lusk's job description was changed from Assistant Principal to Teacher. As an accommodation to Dr. Lusk, the School District kept her salary for the 2013-2014 school year at the same

level as when she was Assistant Principal at West-Oak Middle School even though her official job description changed to teacher for the 2013-2014 school year.

EARNESTINE WILLIAMS

SWORN to and subscribed before me
This 21 day of August. 2017.

(L.S.)
Notary Public for SC
My Commission Expires: 8/5/20

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EEOC Form 161 (11/09) **U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

DISMISSAL AND NOTICE OF RIGHTS

To: **Martha L. Lusk**
P O Box 840
Central, SC 29630

From: **Greenville Local Office**
301 North Main St
Suite 1402
Greenville, SC 29601

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
14C-2014-00331	Charlotte E. Watts, Investigator	(864) 241-4412

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☒ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Enclosure(s)

Patricia B. Fuller,
Local Office Director

(Date Mailed)

cc: **Jeffrey C. Kull**
Murphy & Grantland, PA
P.O. Box 8648
Columbia, SC 29260

EXHIBIT A

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School District of Oconee County
414 South Pine Street - Walhalla, South Carolina 29691
(864) 638-4400
www.oconee.k12.sc.us
"Education is Everybody's Business"

VIA Hand Delivery
March 4, 2013

Dr. Linda Lusk
West Oak Middle School

Dear Dr. Lusk:

The purpose of this letter is to follow up with my meeting with you on Thursday, February 28, 2013 during which I met with you to discuss your job assignment for the 2013-14 school year. As you recall, Dianne England, Assistant Superintendent of Instruction was present. During the meeting, I shared with you that we would be making administrative changes at West Oak Middle School due to the ongoing concerns regarding your performance. As you are aware, Jeni Vanderveen, Principal at West Oak Middle wrote to you and shared many concerns with you about your performance throughout the school year. Some of the major concerns shared with you included the following:

- Letter dated March 8, 2012 addressed issues about an inappropriate comment you made to a student while handling a discipline matter. The parent was very upset and contacted Michael Thornhill, Assistant Superintendent of Operations regarding the incident.
- Letter dated May 2, 2012 addressed 4 major concerns which included the following:
  - Entering discipline in powerschool under the incorrect student name
  - Contacting the wrong parent regarding a discipline matter of another student
  - Not investigating discipline thoroughly and contacting the parent before suspending a special education student
  - Strategic Plan data in the student achievement section was not correct
- Letter dated September 7, 2012 addressed the meeting to discuss your EOC goals and assistance needed. There was a concern shared in which you gave a cell phone back to the student and not the parent/guardian. As you know this is a violation of district policy.
- Letter dated September 21, 2012 addressed concerns regarding a discipline matter in which you brought two students into your office in which one was threatening to fight the other student and asked that they hug each other. As you are aware, the parents were very upset about how this situation was handled.
- Letter dated November 19, 2012 addressed concerns in which two discipline entries in PowerSchool were entered under the wrong students' names again. Mrs. Vanderveen asked if you needed help or additional training.
- Letter dated December 19, 2012 addressed concerns in which you failed to follow up appropriately when a note was shared with you about a student distributing drugs in the school. You failed to retain the note for documentation during the investigation.
- Email dated January 22, 2013 suspension discipline was entered incorrectly for a student

Other significant incidents of concerns addressed included you sending a teacher a copy of another teacher's with through observation. There was also a concern in which you were supposed to attend a meeting at Tamassee Salem Middle High School on Tuesday, February 5th. You did not attend the meeting or

EXHIBIT
B

Lusk000062

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Mrs. Verderosa that you would not be attending. You remained at the school. When asked why you did not speak with Mrs. Verderosa, you stated that she does not communicate with you. During our meeting, when the above concerns were shared with you, you stated that Mrs. Verderosa was harassing and bullying you due to the fact that you had filed a grievance. However, as you know Michael Thorsland, Assistant Superintendent of Operations addressed the concerns in your grievance dated March 21, 2012 and these concerns were not substantiated. You also appealed his decision to Dr. Lucas, Superintendent and the decision was upheld. You later requested that the board hear your grievance and this request was denied. During our phone conversation on November 2, 2012, you stated that things were better, "I am over it" and that you were trying to "do my job to the best of my ability." On November 7, I wrote to you regarding your letter to Mrs. Verderosa dated September 19, 2012 to ask again about your concerns about being harassed. You stated that you were being harassed because Ms. Verderosa was "nit picking" about things. As stated in my letter to you, District Administration did meet with Ms. Verderosa at that time regarding your concerns and this was not about retaliation. During our meeting we also shared with you that these were legitimate concerns and issues involving parents that any building administrator would need to address with an assistant principal. You also stated that the issues were over-played to make you look bad and that you were working under a lot of pressure and that you were not sure what trick Mrs. Verderosa will throw at you next.

As a result of the many ongoing concerns mentioned above as well as other concerns documented via email to you from Mrs. Verderosa, we are no longer confident in your ability to serve as an administrator. I shared with you that your assignment as an assistant principal at West Oak Middle School will end effective the end of the school year. Your new assignment for 2013-14 per Board approval will be to work as a teacher at Adult Ed/Code Academy at the Code Learning Center. We will work to assist you in your new role and help make your transition as smooth as possible. Questions regarding reassignment procedures are outlined in SDOC Board Policy GCK-R Professional Staff Assignments and Transfers. This policy states, *"If, in the opinion of the superintendent, a reassignment would be in the best interest of the district, the superintendent or his/her designee will advise the employee of the reassignment and confirm the reassignment in writing to the employee."* A copy of this policy is attached. You stated that you were not happy with this reassignment and that you would fight this decision and asked that we reconsider.

As we discussed, in an effort to work with you and assist you during this transition, your salary will remain at the current level (including days and administrative supplement) for the 2013-14 school year only. Additional responsibilities will be assigned to you by your supervisor for the 2013-14 school year for the additional 25 contract days. As we also discussed, this is to confirm that your salary during any subsequent years you are employed with the District will be commensurate with the position and number of days to which you are assigned. Finally, you should feel free to apply for any other available positions for which you are qualified, should you be interested in a different assignment. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Dr. Tamekia R. Williams
Assistant Superintendent of Human Resources

Cc: Jami Verderosa, Principal West Oak Middle
Personnel File

Attachments: Policy GCK-R *Professional Staff Assignments and Transfers*

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School District of Oconee County
414 South Pine Street · Walhalla, South Carolina 29691
(864) 886-4400
www.oconee.k12.sc.us
"Education is Everybody's Business"

Certified and Regular Mail
April 26, 2013

Dr. Linda Lusk
P.O. Box 846
Central, SC 29630

Dear Dr. Lusk:

I am writing to follow up with our meeting on Friday, April 26, 2013, during which I met with you to discuss the concerns in which you were placed on Administrative Leave. The decision to place you on leave was precipitated when you erroneously emailed a confidential document you had addressed to me and two other Assistant Superintendents. As you know this letter contained confidential information about other employees. Earnestine Williams who serves as Assistant Superintendent of Human Resources was present at our meeting.

During the meeting, I shared with you that I was extremely disappointed and this incident has further caused me to question your ability to handle things that require tremendous skills. You apologized and stated that you did not intentionally send the email to the employee. As you know, you appealed your job reassignment to the Board of Trustees on April 15, 2013. The Board voted to affirm the decision I made regarding your job assignment for 2013-14 as a teacher. Due to the ongoing concerns, I shared with you the following expectations for the remainder of the 2012-13 school year:

- You are on Administrative Leave with full pay and benefits effective Friday, April 26 until Monday, May 6, 2013
- You will report to the District Office on May 6 at 7:30 to discuss your assignment at Code Learning Center which will begin after our meeting
- Your email account has been suspended and you are no longer allowed on campus at West Oak Middle School
- We will make arrangements for someone to meet you at the school at a mutually agreed time after school or on a Saturday to remove your personal items from West Oak Middle School.

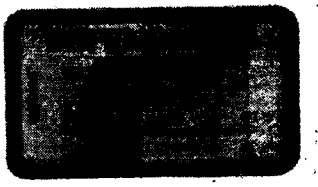
You gave me your keys to the building and proxy card. You also gave me you laptop computer. In summary, I would like for you to reflect upon the concerns we shared with you regarding your performance and inability to accept responsibility for your actions in handling situations. Please understand that you need to focus on your new assignment at Code Learning Center and move forward.

If you need to discuss any concerns that I have referenced in this letter, please contact me for an appointment.

Sincerely,

Michael Looper, Ed.D
Superintendent

cc: Personnel File



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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

v.

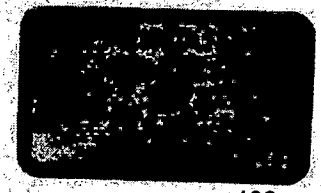
Jami L. Verderosa,

Defendant.

AFFIDAVIT OF JAMI VERDEROSA

PERSONALLY APPEARED BEFORE ME, the undersigned, who after being duly sworn, deposes and says that I have knowledge of and testify as follows:

1. In her Memorandum in Opposition to Summary Judgment filed on April 11, 2017, the Plaintiff argues that I repeated certain defamatory comments about her to the EEOC as part of the EEOC's investigation of the Charge of Discrimination that Dr. Lusk filed against the School District of Oconee County.
2. The Plaintiff attached a copy of her EEOC charge to her Memorandum in Opposition. It says it was filed in February of 2014.
3. The Plaintiff's EEOC charge was filed against only the School District of Oconee County. It was not filed against me.
4. The School District of Oconee County did not inform me that the Plaintiff had filed a EEOC charge.
5. I was not involved in any way in responding to the EEOC charge. I was not interviewed by the EEOC or by the School District regarding the Plaintiff's EEOC charge.



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6. I was not aware of the EEOC charge that the Plaintiff filed until sometime after February 2016 – after the Plaintiff sued me in this civil action.
7. I have not made any defamatory statements regarding the Plaintiff at any time. I was no longer her supervisor as of the spring of 2013, and I cannot recall making any statements about her since that time – except to my attorney in this civil action and in a deposition that I was required to give in this civil action in 2016.
8. In sum, I did not make any statements to the EEOC at any time because I was not aware of the EEOC charge filed by the Plaintiff against the School District and I was not involved in any way in responding to the EEOC charge.

Jami Verderosa

JAMI VERDEROSA

SWORN to and subscribed before me
This 16 day of August, 2017.

Cathy Jo Slagle (L.S.)
Notary Public for Virginia
My Commission Expires: July 31, 2020

CATHY JO SLAGLE
NOTARY PUBLIC
REG. #7681617
MY COMMISSION EXPIRES
07/31/2020
COMMONWEALTH OF VIRGINIA

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF OCONEE C.A. NO. 2016-CP-37-00113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

vs.

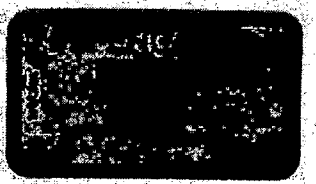
Jami L. Verderosa,

Defendant.

COPY

Deposition of ***MARTHA "LINDA" LUSK, Ph.D.***

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 25th day of August 2016, commencing at approximately 12:36 p.m. attended by counsel as follows:



DEPOSITIONS AND ..., INC.
(864) 585-0642

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Verderosa had defamed your character?

A. She defamed my reputation.

Q. Okay.

A. Is reputation character?

Q. Defamed your reputation by ---

A. Yes, she did.

Q. By March 2012 you were aware of that; correct?

A. Yes.

(MR. KULL MARKS ONE-PAGE DOCUMENT AS DEFENDANT'S EXHIBIT NO. 3; ATTACHED TO DEPOSITION).

DIRECT EXAMINATION RESUMED BY MR. KULL:

Q. The next exhibit is going to be Exhibit 3. Do you know what that is? What is that document?

A. That document is my contract.

Q. And for what year is that?

A. 2012.

Q. And that's your signature at the bottom?

A. Yes, sir.

Q. April 21, 2012?

A. Yes.

Q. And this second paragraph says, "This agreement is an administrator contract as defined in Section 59-26-40." Do you see that?

A. Yes.

Q. What does that mean? What's 59-26-40?

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A. That's just a policy that they go by. The rules of writing a contract.

Q. It says, "Of the Code of Laws of South Carolina."

A. Which paragraph are you talking about?

Q. Right here.

A. The second -- the third ---

Q. "This agreement is an administrator contract as defined in Section 59-26-40 of the Code of Laws of South Carolina." What is Section 59-26-40 of the Code of Laws of South Carolina"?

BY MS. KERN-FULLER:

Objection. Calls for legal conclusion. You can answer.

WITNESS ANSWERS:

A. That would be just the procedure they followed to give a contract, would it not be?

Q. Do you have any understanding of what that means?

BY MS. KERN-FULLER:

Same objection. You can answer.

WITNESS ANSWERS:

A. That you must do as they tell you to do in the contract.

Q. Did you ever look up Section 59-26-40?

A. I knew all the codes in the past.

Q. Well, what does that one say?

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BY MR. KERN-FULLER:

Same objection.

WITNESS ANSWERS:

A. It just say that you -- I really don't know.

Q. Okay. And the next paragraph says, "The board agrees to employ the employee in a professional position for 215 days during the 2012/2013 school year, which includes ten days of in service training." Do you see that?

A. Yes.

Q. "The employee's assignment for the 2012/2013 contract term is Assistant Principal-Instruction 1.0 West-Oak Middle School." Do I have it right so far?

A. Yes.

Q. Then it says, "However, it is understood that all assignments are tentative and may be changed by the administration upon notice to and consultation with the employee in accordance with board policy." Do you see that?

A. Yes.

Q. What does the word "tentative" mean?

A. That's just your tentative work place, which you can be moved.

Q. Okay. And it says, "may be changed"; correct?

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A. Yes.
Q. When you signed this document, you knew that this contract could be changed by the administration if they followed procedure; correct?
A. Yes.
(MR. KULL MARKS ONE-PAGE DOCUMENT AS DEFENDANT'S EXHIBIT NO. 4; ATTACHED TO DEPOSITION).
DIRECT EXAMINATION RESUMED BY MR. KULL:
Q. I show you next what's marked as Exhibit Number 4. What document is this?
A. That is the response from Dr. Thorsland about the written reprimand.
Q. Okay. And about a third of the way down it says, "Your grievance form lists four remedies" and they are: "removal of the written reprimand from all your files, return to the good working relations of 2009/2010, being treated with professionalism and respect and not being reprimanded in front of others, walkie-talkie, et cetera." That's what your grievance said; correct?
A. Yes.
Q. Then it goes on to say, "I investigated your concerns and have made the following judgments: I cannot support removing the letter dated March 8, 2012 from your file. My investigation revealed

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ELECTRONICALLY FILED - 2017 Aug 29 12:46 PM - OCONEE - COMMON PLEAS - CASE#2016CP3700113

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Martha "Linda" Lusk, Ph.D.,	)	
Plaintiff(s),	)	**MEMORANDUM IN OPPOSITION TO**
vs.	)	**SUMMARY JUDGMENT**
	)	
Jami L. Verderosa,	)	
Defendant(s).	)	Docket No. 2016-CP-37-113
	)	

Plaintiff, responding to Defendant's Motion for Summary Judgment, would respectfully show as follows:

I. BACKGROUND INFORMATION

Plaintiff is employed by the Oconee County School District currently as an adult education teacher at Code Academy. Plaintiff has been employed by the Oconee County School District ("OCSD") for over the past 30 years. Plaintiff is a Ph.D., having earned her doctorate degree in 1982 **(See Ex. A, pp. 33-34)**. Plaintiff was also teacher of the year several times.

Beginning in or about March of 2012, Defendant began a campaign of maligning Plaintiff to her peers and the OCSD District Administration in an effort to get Plaintiff terminated or demoted. At that time, Plaintiff had over 27 years of impeccable service to OCSD without a SINGLE disciplinary action. However, as a result of Defendant's tortious acts, Defendant succeeded on March 4, 2013, in having Plaintiff demoted from an Assistant Principal to an adult education teacher. **(See Ex. B)** Specifically, the OCSD stated in the letter:

> **As a result of the many ongoing concerns mentioned above as well as other concerns documented via email to you from Mrs. Verderosa, we are no longer confident in your ability to serve as an administrator. I shared with you that your assignment as an assistant principal at West Oak Middle School will end effective the end of the school year. Your new assignment for 2013-14 per Board approval will be to work as a teacher at Adult Ed/Code Academy at the Code Learning Center. We will work to assist you in your new role and help make**

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However, as a result of the demotion, Plaintiff was IMMEDIATELY stripped of many of her responsibilities as an Administrator for AY-2012-2013, placed on Administrative Leave at Defendant's instigation on April 26, 2013 (**Ex. C**), and then she was assigned additional duties for the upcoming 2013-2014 school year. Thereafter, her salary was reduced from approximately $96,000. per year to $74,000.00 per year beginning in the 2014-2015 school year and all years forward. (**Id.**; **Ex. A, p. 211**).

Defendant defamed Plaintiff in her profession by stating to third parties (who were other teachers that were NOT privileged communications) that:

1) She "didn't know what she was doing regarding MAP testing; (**Ex. A, pp. 156-157**)
2) She couldn't have done a PowerPoint presentation; (**Ex. A, p. 80**)
3) That she didn't attend a meeting that she clearly attended; (**Ex. D**)
4) Repeating this slanderous information to the EEOC as part of their investigation following Plaintiff's February 27, 2014 Charge of Discrimination; (**Ex. E**)

I. STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c),: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). 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. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). If triable issues exist, those issues must

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go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005). (*Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505, 2006 S.C. LEXIS 259 (S.C. 2006)). 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 in order to withstand a motion for summary judgment, abrogating Shelton v. LS K, Inc., 374 S.C. 294, 648 S.E.2d 307; Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495. Hancock v. Mid-South. Mgmt. Co., 381 S.C. 326, 673 S.E.2d 801 (2009).

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (S.C. 2008), rehearing denied.

II. CREDIBILITY AND INCONSISTENCIES

Defendant has argued in her memorandum points based on the testimony of Ms. Williams and Defendant. Plaintiff asserts that such testimony calls for credibility determinations and that both Williams' and Verderosa's is suspect based on several inconsistencies in their testimony.

For example, Verderosa has asserted that Plaintiff "self-published" the defamatory statements. In support of this, Defendant asserts that "Ms. Williams testified that none of the subsequent correspondence from the Defendant to the Plaintiff was placed in the Plaintiff's personnel file." **(Def. memo, p. 5)** However, the letter of March 4, 2013, from Williams to Lusk clearly was placed in Ms. Lusk's personnel file and included a summary of the defamatory correspondences from Defendant. **(Ex. B)**. Additionally, Defendant asserts that Plaintiff self-published the correspondence and provided OCSD the correspondence, but logically, if that were the case, why would Ms. Williams have requested that Defendant "send to her a copy of the subsequent correspondence she had sent to Plaintiff"? **(Def. Memo, p. 5)**

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There are also discrepancies on how many grievances Defendant has had filed against her. Defendant claimed two – Plaintiff and a Ms. Parker. **(Ex. G, p. 76)**. However, Ms. Williams reluctantly admitted under cross-examination, and only after prodding with specific facts, that it was actually at least three. **(Ex. H, p. 72-73)**.

Also, after Plaintiff gave OCSD a list of names who could support the defamatory treatment she was receiving from Defendant, each of those teachers were called into a meeting near Defendant's office. When questioned about who set up that meeting, Williams stated it was Mr. Odom. **(Ex. H., pp. 25-26)**. However, Mr. Odom *replaced* Plaintiff as Assistant Principal and, therefore, could NOT have been the one to set up those meetings. **(Ex. A, p. 195).**

Further, on August 15, 2017, two other witnesses (Cyndi Parker and Juanita McMillan) were deposed in this matter. **(Ex. I** and **Ex. J**, respectively). As a result of those depositions, Ms. Parker testified about witnessing comments made toward Dr. Lusk that, as the hearer of those verbal comments as well as Ms. Verderosa's non-verbal behavior, she perceived Verderosa as intending to reflect negatively on Dr. Lusk's professional abilities. **(Ex. I, pp. 3-5, 7)**. Ms. McMillan concurred that she also perceived Ms. Verderosa's language and non-verbal behavior to convey to her as the hearer of those statements that Ms. Verderosa questioned Dr. Lusk's professional abilities. **(Ex. J, pp. 20-21, 107-108)**. Similarly, she witnessed the tortious interference with contract by Ms. Verderosa when she placed so much work on Lusk after Charlotte Sherriff retired in an effort to "run her off." **(Ex. J, pp. 21-23, 31, 45, 57).** McMillan also stated that it was Verderosa's goal to take Lusk's "respect … I think that's the worst thing you can do to somebody, and to try to hurt them, you know, in the community or hurt them like that, that's the worst thing you can do to a person." **(Ex. J., p. 32, 72-73)**. Ms. McMillan also suffered efforts by Verderosa to interfere with her employment through defamatory write-ups.

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(Ex. J, p. 41). Clearly, in the School District's own reasoning to Dr. Lusk as to why they demoted and transferred Dr. Lusk and placed her on Administrative leave for the remainder of the 2012-2013 academic year, they cited the numerous defamatory statements Verderosa made about Dr. Lusk and based their decision, in addition to those written concerns of Verderosa, on the "other concerns documented via email to you from Mrs. Verderosa" as to why they "are no longer confident in [Lusk's] ability to serve as an Administrator."

As a result of the many ongoing concerns mentioned above as well as other concerns documented via email to you from Mrs. Verderosa, we are no longer confident in your ability to serve as an administrator. [shared

(Ex. K, Att. A)

III. LAW AND APPLICATION

Defamation *per se*

If the defamation is actionable *per se,* the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. Parrish v. Allison, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Ct. App. 2007). "Slander is actionable *per se* only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; **or (5) unfitness in one's business or profession."** Parrish v. Allison, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Ct. App. 2007) (Emphasis added)

In this case, the Defendant published orally and in writing statements about Plaintiff being unfit in her business or profession. These statements were originally made in 2013, but were **republished** to the Board of Trustees (**Ex. L**) in April of 2013 and, again, after Plaintiff filed her Charge of Discrimination with the EEOC on or about February 27, 2014. As such, there remains facts in controversy about whether acts of defamation on or after February 27, 2014 remain in statute as this matter was filed on February 24, 2016.

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Facts also remain in controversy about whether the defamatory statements were, in fact, privileged. Defendant argues that a qualified privilege attaches to communications between an employer and employee when the occasion was a bona fide inquiry by the employer into alleged misconduct. **(Def. Memo in Support of SJ, p. 8)** However, this communication was *initiated* by Defendant. It also doesn't excuse the statements made to co-workers of Plaintiff who were not in management **(See Exhibits I & J)** and the republishing of these written defamatory statements during the EEOC investigation as part of the School District's Position Statement to the EEOC **(Exhibit K)**.

Defendant has argued that the EEOC investigation is part of an absolute privilege, citing a Court martial case. However, no such privilege exists in EEOC investigations and that issue would be one of first impression for our Courts. Matters As such, material facts remain in controversy on Plaintiff's defamation claim such as to preclude summary judgment.

Tortious Interference with Contract

The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC, 406 S.C. 596, 753 S.E.2d 840 (2012)

Where the allegations of the complaint give rise to competing inferences on a question of material fact, dismissal is not appropriate. Jensen v. South Carolina Dept. of Social Services, 297 S.C. 323, 377 S.E.2d 102 (Ct.App.1988).

In the Camp case, the Court found that where Camp's complaint alleged Mrs. Johnson had "contracted his services for the loan closing" and he had begun title investigation that those allegations were sufficient to allege an existing contract. The complaint further alleged Camp

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attempted in good faith to resolve the prior dispute with Springs. From this allegation it may be inferred Springs' interference with the Johnson contract was without justification. Accordingly, we affirm the Court of Appeals' ruling finding the complaint sufficient to state a cause of action for tortious interference with an existing contract. Camp v. Springs Mortg. Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305–06 (1993).

Defendant relies heavily upon the case of The Henry-Davenport v. School District of Fairfield County, 391 S.C. 85 (2011) to state that no breach could be procured from Plaintiff's contract. However, that case is distinguishable from the case *sub judice*. Specifically, in the Henry-Davenport case, "[t]he respondents challenged their demotions, arguing that they were 'dismissed or nonrenewed as principals' and 'were entitled to a full, adversarial hearing as provided' by section 59–25–460 of the Teacher Act. *Id.*, 313 S.E.2d at 296. Henry-Davenport v. Sch. Dist. of Fairfield Cty., 391 S.C. 85, 87–88, 705 S.E.2d 26, 27 (2011). However, the case also clearly noted that, "Section 59–24–15 provides:

> Certified education personnel who are employed as administrators on an annual or multi-year contract will retain their rights as a teacher under the provisions of Article 3 of Chapter 19 and Article 5 of Chapter 25 of this title but no such rights are granted to the position or salary of administrator. ***Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract.***"

Henry-Davenport v. Sch. Dist. of Fairfield Cty., 391 S.C. 85, 87, 705 S.E.2d 26, 27 (2011) (Emphasis Added).

In this case, Defendant interfered with Plaintiff's contract ***for the remainder of the 2012-2013 academic year***. Clearly, the administrative leave Plaintiff was placed on was at Defendant's initiation when, in fact, Defendant committed a similar act and received no discipline for it.

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As such, facts remain in controversy as to this cause of action for that time period, which was clearly within the three year statute of Dr. Lusk filing this suit. This case was filed on February 24, 2016. Specifically, Ms. Williams stated in her March 4, 2013, letter to Plaintiff that:

> As a result of the many ongoing concerns mentioned above as well as other concerns documented via email to you from Mrs. Verderosa, we are no longer confident in your ability to serve as an administrator. I shared

(Exhibit K)

Ms. Verderosa attempts to argue that Dr. Lusk's tortious interference claim is limited to two years because it falls subject to the S.C. Tort Claims Act. However, "[a] governmental entity is not liable for a loss resulting from ... employee conduct outside the scope of his official duties **or** which constitutes actual fraud, **actual malice, intent to harm**, or a crime involving moral turpitude." S.C. Code Ann. §15–78–60(17); See also Eldeco, Inc. v. Charleston Cty. Sch. Dist., 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007)(Emphasis added). Therefore, in addition to the material facts in controversy, the actions as alleged (which must be taken in a light most favorable to the non-moving party – Dr. Lusk) do NOT fall subject to the Tort Claims Act and Ms. Verderosa is not protected by the same nor does she gain the advantage of a blanket two year statute of limitations.

IV. CONCLUSION

For these reasons, Summary Judgment should be denied and this matter should proceed to trial.

s/ Candy M. Kern-Fuller, Esq.
Candy M. Kern-Fuller, Esq. (S.C. Bar No. 11392)
Upstate Law Group, LLC
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Easley, SC 29640
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Facsimile: 864-855-3446

Dated: August 29, 2017 **ATTORNEY FOR PLAINTIFF**

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EXHIBIT I

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE CASE NO. 2016-CP-37-113

Martha "Linda" Lusk, Ph.D.,
Plaintiff,
vs.
Jami L. Verderosa,
Defendant.

EXCERPTS OF DEPOSITION OF
CYNDI PARKER

DATE TAKEN:	August 15, 2017
TIME BEGAN:	9:42 a.m.
TIME ENDED:	2:00 p.m.
LOCATION:	Oconee School District Office 414 South Pine Street Walhalla, South Carolina 29691
REPORTED BY:	Kaylyn K. Brantner, CVR Certified Verbatim Reporter

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EXPEDITE COURT REPORTING
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.....On behalf of the Defendant

ALSO ATTENDING: Earnestine Williams
Martha "Linda" Lusk
Jami L. Verderosa (Via telephone.)

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* * * * *

EXAMINATION RESUMED

Q. So when you said you were sitting beside Ashley, you overheard Ms. Verderosa's comment; is that correct?

A. Yes. That Dr. Lusk didn't have a clue.

Q. And as the hearer of that comment, you understood that or perceived that to be that Ms. Verderosa was saying that Dr. Lusk did not have the professional abilities to complete this assignment?

A. Yes.

Q. Did you ever hear any comments from Ms. Verderosa that she was setting up Dr. Lusk for failure?

A. Did I hear her say that? No. But did I witness that? Yes.

Q. Tell me how you witnessed that.

A. With the MAP testing particular, for one person -- the program had changed somewhat, and here again, it was difficult and rather unreliable at the time, and for one person to step in where three others had been doing MAP testing, and for someone who had never been familiar with the MAP testing to step in and be the one responsible for setting up all of the computers each morning as

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the teachers were testing for -- and all of the makeups, it would've been nearly impossible for a single person to have done that who had been aware of MAP testing for a long time. Especially with the number of makeups and completions that we needed. There were numerous times in faculty meetings when she would roll her eyes. A lot of what Ms. Verderosa did was in gestures, and again, having her arms crossed, rolling her eyes, shaking her head, like, you know, and she would shake her head, like, I can't believe she's saying that. Those mannerisms were directed at numerous people. With Dr. Lusk, there was an incident that -- where we were all -- there were several of us at a GT English meeting, and we were there to discuss vertical and horizontal alignment to try to make our GD program more effective, and as we were talking -- our county had been encouraging teachers to go to other schools within our county to observe, and Dr. Lusk began -- told us that Pickens County had already been doing some of this and had made a suggestion about it would not be unheard of for Oconee teachers to go and observe in Pickens County. Once Dr. Lusk got done, Ms. Verderosa

said Linda, that doesn't have a thing in the world with what we're talking about. It was more hateful than that, but that is what she said, and I remember being very embarrassed for Dr. Lusk. Dr. Lusk did not retaliate. Did not say a thing back to her. It was very demeaning, in my opinion, and Dr. Lusk did know what she was talking about because it fit directly into the fact that if another district close to us had already been successful in doing what we were sitting there attempting to do, why reinvent the wheel? Why not borrow from them if they would allow that? Why not work with them?

Q. And as the hearer of that comment by Ms. Verderosa, did you also perceive that to be a statement about Dr. Lusk's qualities in her profession and that it was a demeaning statement that she was not qualified?

A. Yes.

MR. KULL: Object to the form.

EXAMINATION RESUMED

BY MS. KERN-FULLER:

Q. You can answer.

A. Yes. Number one, calling Dr. Lusk Linda, I think, in many cases -- and she did that fairly

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often, and while it is not absolutely uncommon for a teacher -- I'm sorry. While it's not unacceptable, I guess would be the better word, for a teacher to call an administrator by his or her first name, nobody in the building other than Ms. Verderosa generally called Dr. Lusk by her name, and when Ms. Verderosa would address her as Linda, it was a stripping, sort of. Especially in front of other teachers. Generally speaking, administrators call us by our last names in front of others, and generally speaking, teachers do the same. It's a sign of or a show of respect of position, degree, whatever.

* * * * *

EXAMINATION RESUMED

Q. Now, Mr. Kull asked you about statements that Dr. Lusk submitted in support of her grievance, which you stated you didn't know about until her lawsuit hit the paper in 2016?

A. Right.

Q. And I believe my question that I asked you was did you ever observe Dr. Lusk making negative comments about Ms. Verderosa or not supporting Ms. Verderosa prior to the time she left WOMS?

A. No, I did not.

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Q. And the comments regarding Exhibit 1, which was the affidavit, you testified that Ms. Verderosa -- I'm sorry. Not affidavit. E-mail -- you testified that Ms. Verderosa came to your hall after this e-mail was sent; is that correct?
A. Yes, ma'am.
Q. And that would've been on April 26th of 2013?
A. Yes, ma'am.
Q. And I believe your testimony was that the comments that she made about how things were going to improve and be more positive you construed as negative reflections on Dr. Lusk's performance in her professional capacity?
MR. KULL: Object to the form.
THE DEPONENT: Yes, I did.

EXAMINATION RESUMED

BY MS. KERN-FULLER:
Q. The comments about I wonder where she is that were made on the radio by Ms. Verderosa --
A. That was -- she would come down and make those in person. Like, she would inquire if Dr. Lusk were somewhere, and then, well, I wonder where she is. You know, that kind of thing.
Q. Did that leave you as the hearer of those comments to feel like those were negative

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reflections on Dr. Lusk's performance in her professional capacity?

A. Yes. That she should have been one place, and she was not.

* * * * *

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CERTIFICATE

I, the undersigned, Kaylyn K. Brantner, CVR, Notary Public in and for the State of South Carolina, do hereby certify that the deposition of CYNDI PARKER was taken on the 15th day of August, 2017, that the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath; that all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 28th day of August, 2017.

_____

Kaylyn K. Brantner, CVR
Notary Public for South Carolina
My Commission Expires: 4/12/20

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EXHIBIT J

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE CASE NO. 2016-CP-37-113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

vs.

Jami L. Verderosa,

Defendant.

DEPOSITION OF JUANITA McMILLAN

DATE TAKEN: August 15, 2017

TIME BEGAN: 2:34 p.m.

TIME ENDED: 5:11 p.m.

LOCATION: Oconee School District Office
414 South Pine Street
Walhalla, South Carolina 29691

REPORTED BY: Kaylyn K. Brantner, CVR
Certified Verbatim Reporter

EXPEDITE COURT REPORTING
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.....On behalf of the Defendant

ALSO ATTENDING: Earnestine Williams,
Martha "Linda" Lusk
Jami L. Verderosa (Via telephone.)

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Q. I understand.
A. It was as though she were talking to us that we should have known not to let a parent speak and, you know, what we did was against district policy. It was -- she always -- and I'm sure Ms. Williams can tell you. Any -- she always played everything by the book. She would find something some way where, you know, it was a very huge, egregious thing that happened, you know, like this. I mean, I had no idea what the parent was going to say. I had -- you know, but I should've known better, and I think that lasted about my whole planning period. I was about 90 minutes, and through it all, Dr. Lusk took up for her the entire time.
Q. Did that make you angry?
A. Very.
Q. And did Ms. Verderosa raise her voice?
A. Yes.
Q. Do you recall her saying anything derogatory about Dr. Lusk and what Dr. Lusk should have done to stop this as the administrator there?
A. I think that's why we had the meeting. Yes.
Q. Do you recall what Ms. Verderosa said?
A. No, I don't. I just -- I remember the meeting

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very well.
Q. As the hearer of the statements by Ms. Verderosa, did you take from those statements that she was criticizing Dr. Lusk's professionalism and professional competency?
MR. KULL: Object to the form.
THE DEPONENT: Of course.
EXAMINATION RESUMED
BY MS. KERN-FULLER:
Q. When you had conferences with students and parents that involved Dr. Lusk and Ms. Verderosa, did you ever witness Ms. Verderosa rolling her eyes at Dr. Lusk's statements?
A. Yes. Or saying they were not significant.
Q. As the hearer of those statements, did you consider those statements by Ms. Verderosa to be demeaning of Dr. Lusk's professional competency?
MR. KULL: Same. Object to the form.
THE DEPONENT: Of course, yes.
EXAMINATION RESUMED
BY MS. KERN-FULLER:
Q. Do you recall when Charlotte Sheriff (phonetic) retired?
A. Yes.
Q. Whose duties where Charlotte Sheriff's duties

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given to by Ms. Verderosa after she retired?
A. Dr. Lusk.
Q. And that was in addition to the duty she already had as an assistant principal?
A. Yes, ma'am.
Q. Were Charlotte Sheriff's duties, any of those given to anyone else other than Dr. Lusk?
A. Not to my knowledge.
Q. Do you recall when Dr. Lusk was assigned MAP testing?
A. Yes.
Q. And if I understand it correctly, MAP testing occurs in the fall and the spring?
A. Yes.
Q. Do you recall when Charlotte Sheriff did the MAP testing prior to Dr. Lusk taking it over?
A. Yes.
Q. Do you recall if she had assistance in doing that?
A. Yes.
Q. Who assisted her?
A. Patty Williams, Debbie Snipes. I'm sure there was more. It was pretty much the guidance, you know, and any extra because this is a very -- it's a huge thing. I mean, you've got to boot up

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ever computer. You've got to put in every password. It's not like -- it didn't used to be -- it's not like that now, but that's the way it used to be. It was a huge task.

Q. And if something happened during the testing, did those children have to come back for make-up testing?

A. Yes.

Q. Do you recall if Dr. Lusk had any help doing those initial tests or make-up tests?

A. Not to my knowledge. Any make-up test student, she came to my door, she got the student, she's the one that administered the test, and she did all the makeups, and there was, I'm sure, hundreds in a school that side.

Q. And was she still showing up every morning to do this morning duty with you on top of that?

A. Yes.

Q. And was she still doing the discipline for her grade level?

A. Yes.

Q. On top of all this MAP testing?

A. Yes.

Q. Now, in the spring of 2013, was there any kind of human resources investigation at West Oak Middle

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A. Have-not.
Q. Did you ever make a statement during that investigation that the way that Dr. Lusk was treated was despicable?
A. Oh, yes. Heartless.
Q. Who did you make that statement to?
A. I think I might have made that in that meeting. I may have said that in that meeting that it was very heartless and despicable.
Q. And that was the meeting with Ms. Jedlicka and Ms. Williams?
A. It could have been. I think -- I know I probably said something to that effect.
Q. What did you mean by those statements? Can you give me examples of --
A. I don't know the specifics on what Ms. Verderosa did. I don't know anything specifically other than what I saw. I thought that Dr. Lusk's workload was ridiculous, and especially not being able to have any assistance. That's crazy. I mean, we all try to help each other. You should not punish or make people feel bad about helping somebody if they need help, and that's despicable. I don't feel like she was given -- and this is my personal thought, but I always

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thought that Ms. Verderosa very much -- you had Dr. Lusk, and you had Dr. Wise, and you had Ms. Verderosa, and I think she always felt that that degree -- I think that degree bothered her. That's just my personal opinion, but I think once you take somebody's respect, you can't harm them anymore. I think that's the worst thing you can do to somebody, and to try to hurt them, you know, in the community or hurt them like that, that's the worst thing you can do to a person.

Q. What things did Ms. Verderosa do that you believed took Dr. Lusk's respect and hurt her in the community?

A. I think she deserved more than a sentence on -- see, I was gone. When all this happened, I had my kids in Myrtle Beach on a trip, and, you know, my phone was blowing up. Oh, my gosh. Dr. Lusk is gone. You know, so immediately I get to my computer, and I start looking for an e-mail, and it was Dr. Lusk is -- something to the effect no longer with us or will be -- it was just very -- you know, for somebody that had given their life and so much caring, and I thought, gosh, I wonder if that's how they'll do me if I -- I wonder if I'll get more than a sentence, you know. I just

bad. I've never been talked to like that by another adult ever.

Q. And so do I understand that you believe that she falsely wrote you up for items?

A. Oh, yeah. Absolutely, and it was not -- more than one person had told me that she wanted to get rid of me. I mean, many people told me that.

Q. And in your letter of April 12th, you said there are so many instances and behaviors that I could share with you, but they have been shared with human resources and it has been documented?

A. Yea. She told me it had.

Q. Okay. So the she being Ms. Williams?

A. Verderosa.

Q. Ms. Verderosa had told you?

A. I guess that's what I was meaning.

Q. Okay. Had you met with Ms. Jedlicka and Ms. Williams prior to this letter of April 12th of 2013?

A. Gosh. I cannot remember. I know I had called Ms. Williams, but I was too scared. I was too scared of still being there with her being my boss, and I was afraid it would not be confidential, and that's why I didn't pursue it.

Q. Had you before this letter of April 12th sent

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Q. Do you feel that Dr. Lusk was set up for failure by Ms. Verderosa?
A. Yes.
Q. And you said you never filed a grievance against Ms. Verderosa?
A. No.
Q. Why?
A. While I think it is reprehensible the way she treated Dr. Lusk, I knew that I wanted a place in this district, and filing a grievance -- I mean, I don't wish anything bad. I mean, I really don't. I just want some, you know justice. I mean, people should not be treated like that, you know -- but anyway, I didn't file one because I knew there was plenty being filed, and I didn't have to, and when Scott Bedenbaugh called me and told me this job was opening up at the elementary school, it wasn't a hard decision. I mean, it was hard leaving the kids, but I don't think -- I know I could not have worked there again another year.
Q. And you said you knew plenty of grievances were being filed. Did you know Dr. Lusk was filing a grievance?
A. I would think that she would. I mean, I would

Q. And do you think that was to cause Dr. Lusk disrepute in the community?
A. I think that would be -- I think that would be easier for her if that's what the perception was.
Q. Easier for whom?
A. For Ms. Verderosa. It would be much easier for the fall to be on Dr. Lusk.
Q. Do you believe that the things that you witnessed at WOMS regarding Ms. Verderosa and Dr. Lusk that Ms. Verderosa interfered with Dr. Lusk's employment at WOMS?
MR. KULL: Object to the form.
THE DEPONENT: I believe that her workload was ridiculously burdensome. It was more than -- I've never really actually -- I don't know what the job description of an assistant principal is, but I think to have her responsibilities that she had alone with no help, that was -- just in the MAP testing alone should be very clear the her workload was ridiculous.
Q. Do you feel that was to run her off?
A. Yes.
Q. Did you experience similar things that you felt like you were given additional duties and problems and roadblocks by Ms. Verderosa to run

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There's a lot of people that would think less of what she does. I mean, you know, those of us who know her do not feel any less of a person. I think she's terrific, but, you know --

Q. That's what I'm asking. Who would think less highly of her as a person or would think less highly of her character?

A. Well --

Q. Do you know of anyone?

A. Specific names?

Q. Sure. Why do you think that question is funny?

A. Because I mean, you know, people out in the community -- this is not Atlanta or Columbia. This is a small place. You know, when somebody leaves and there's no explanation and they're going from an administrative job to a teaching position, of course. The rumor mills go crazy. You know, if you want specific people, I can't give you specific people. It's just a community as a whole.

Q. Do you think any less highly of Dr. Lusk as a person or her character as a result of anything that happened at WOMS?

A. No because she's a dear friend of mine, but I know her.

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Q. Have you ever heard anyone say that they -- anything to the effect of that they think less highly of Dr. Lusk as a person because of anything that happened at WOMS?
A. You're going to ask me for a specific person?
Q. Anyone.
A. I can't even think of a specific enough to say, you know, Susie said what happened to Dr. Lusk. I mean, a lot of people have approached me that have said did Dr. Lusk get fired? Why is Dr. Lusk at the Adult Ed now? Why did they get rid of Dr. Lusk? I mean, that's what I heard for a long time that first year, and like I say, when it all went down, I wasn't even there. I was gone on a trip.
Q. Okay. Has anyone said that Dr. Lusk was reassigned because of her job performance?
A. I have -- just rumor mills.
Q. Okay. Have you ever heard --
A. The people that do not know her.
Q. Okay. Does -- have you ever heard Jami Verderosa making any statements about why Dr. Lusk was reassigned?
A. No. We didn't get anything but one e-mail. You saw what -- that's what the faculty got.

A. Right.
Q. It didn't apply to the athletes either, did it?
A. The way -- I asked that question many times -- many, many, many, many times -- and for sports, they were eligible the semester before they were playing, so if they were going to play football, they couldn't have failed in the spring or, you know, before school was out. They weren't eligible then, but it never worked out that way. They always -- it was -- you know, and if you were failing at Christmas, then you couldn't play basketball or you couldn't play baseball or something. You know, but it was, like, what you did the semester before, but they could be failing everything and still play. It was crazy.
Q. So if an athlete won the state championship and was going to the state championship in Columbia or the national championship, they could do with failing grades that semester?
A. That semester they could.
Q. But your kids couldn't?
A. No.
Q. Was the reassignment of Dr. Lusk actually a demotion?
A. Well, of course everybody thought that. Yes.

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Q. Well, when you go from an administrator down to a teacher, isn't that a demotion?
A. I would think so.
Q. Is that the way that you perceived it?
A. Yeah. I think everybody perceived it that way.
Q. And doesn't --
A. Everybody that I talked to about it. Yeah.
Q. And doesn't a demotion seem to indicate an actin of wrong doing or professional incompetence?
MR. KULL: Object to the form.
THE DEPONENT: Yes.

EXAMINATION RESUMED

BY MS. KERN-FULLER:
Q. Now, the disagreements that you had with Ms. Verderosa, would those disagreements in any way cause you to give untruthful testimony today?
A. No.
Q. Would it cause you to give untruthful testimony at trial?
A. Absolutely not. And as I said before, I mean, all I can tell you is the truth, and I don't want my job to be in jeopardy.
Q. I understand that.
A. It was very -- you know, it was hard, you know, when you're sitting out there and you have three

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CERTIFICATE

I, the undersigned, Kaylyn K. Brantner, CVR, Notary Public in and for the State of South Carolina, do hereby certify that the deposition of JUANITA McMILLAN was taken on the 15th day of August, 2017, that the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath; that all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 28th day of August, 2017.

_____

Kaylyn K. Brantner, CVR
Notary Public for South Carolina
My Commission Expires: 4/12/20

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EXHIBIT J

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE CASE NO. 2016-CP-37-113

Martha "Linda" Lusk, Ph.D.,

Plaintiff,

vs.

Jami L. Verderosa,

Defendant.

DEPOSITION OF JUANITA McMILLAN

DATE TAKEN: August 15, 2017

TIME BEGAN: 2:34 p.m.

TIME ENDED: 5:11 p.m.

LOCATION: Oconee School District Office
414 South Pine Street
Walhalla, South Carolina 29691

REPORTED BY: Kaylyn K. Brantner, CVR
Certified Verbatim Reporter

EXPEDITE COURT REPORTING
Traci L. Barr & Associates
Post Office Box 25882
Greenville, South Carolina 29616
(864) 509-0914
ExpediteReporting@gmail.com

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APPEARANCES:

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(864) 855-3114

.....On behalf of the Plaintiff

JEFFREY C. KULL, ESQUIRE
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia, South Carolina 29206
Jkull@murphygrantland.com
(803) 782-4100

.....On behalf of the Defendant

ALSO ATTENDING: Earnestine Williams,
Martha "Linda" Lusk
Jami L. Verderosa (Via telephone.)

Q. I understand.
A. It was as though she were talking to us that we should have known not to let a parent speak and, you know, what we did was against district policy. It was -- she always -- and I'm sure Ms. Williams can tell you. Any -- she always played everything by the book. She would find something some way where, you know, it was a very huge, egregious thing that happened, you know, like this. I mean, I had no idea what the parent was going to say. I had -- you know, but I should've known better, and I think that lasted about my whole planning period. I was about 90 minutes, and through it all, Dr. Lusk took up for her the entire time.
Q. Did that make you angry?
A. Very.
Q. And did Ms. Verderosa raise her voice?
A. Yes.
Q. Do you recall her saying anything derogatory about Dr. Lusk and what Dr. Lusk should have done to stop this as the administrator there?
A. I think that's why we had the meeting. Yes.
Q. Do you recall what Ms. Verderosa said?
A. No, I don't. I just -- I remember the meeting

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very well.
Q. As the hearer of the statements by Ms. Verderosa, did you take from those statements that she was criticizing Dr. Lusk's professionalism and professional competency?
MR. KULL: Object to the form.
THE DEPONENT: Of course.
EXAMINATION RESUMED
BY MS. KERN-FULLER:
Q. When you had conferences with students and parents that involved Dr. Lusk and Ms. Verderosa, did you ever witness Ms. Verderosa rolling her eyes at Dr. Lusk's statements?
A. Yes. Or saying they were not significant.
Q. As the hearer of those statements, did you consider those statements by Ms. Verderosa to be demeaning of Dr. Lusk's professional competency?
MR. KULL: Same. Object to the form.
THE DEPONENT: Of course, yes.
EXAMINATION RESUMED
BY MS. KERN-FULLER:
Q. Do you recall when Charlotte Sheriff (phonetic) retired?
A. Yes.
Q. Whose duties where Charlotte Sheriff's duties

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given to by Ms. Verderosa after she retired?
A. Dr. Lusk.
Q. And that was in addition to the duty she already had as an assistant principal?
A. Yes, ma'am.
Q. Were Charlotte Sheriff's duties, any of those given to anyone else other than Dr. Lusk?
A. Not to my knowledge.
Q. Do you recall when Dr. Lusk was assigned MAP testing?
A. Yes.
Q. And if I understand it correctly, MAP testing occurs in the fall and the spring?
A. Yes.
Q. Do you recall when Charlotte Sheriff did the MAP testing prior to Dr. Lusk taking it over?
A. Yes.
Q. Do you recall if she had assistance in doing that?
A. Yes.
Q. Who assisted her?
A. Patty Williams, Debbie Snipes. I'm sure there was more. It was pretty much the guidance, you know, and any extra because this is a very -- it's a huge thing. I mean, you've got to boot up

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ever computer. You've got to put in every password. It's not like -- it didn't used to be -- it's not like that now, but that's the way it used to be. It was a huge task.

Q. And if something happened during the testing, did those children have to come back for make-up testing?

A. Yes.

Q. Do you recall if Dr. Lusk had any help doing those initial tests or make-up tests?

A. Not to my knowledge. Any make-up test student, she came to my door, she got the student, she's the one that administered the test, and she did all the makeups, and there was, I'm sure, hundreds in a school that side.

Q. And was she still showing up every morning to do this morning duty with you on top of that?

A. Yes.

Q. And was she still doing the discipline for her grade level?

A. Yes.

Q. On top of all this MAP testing?

A. Yes.

Q. Now, in the spring of 2013, was there any kind of human resources investigation at West Oak Middle

A. Have-not.
Q. Did you ever make a statement during that investigation that the way that Dr. Lusk was treated was despicable?
A. Oh, yes. Heartless.
Q. Who did you make that statement to?
A. I think I might have made that in that meeting. I may have said that in that meeting that it was very heartless and despicable.
Q. And that was the meeting with Ms. Jedlicka and Ms. Williams?
A. It could have been. I think -- I know I probably said something to that effect.
Q. What did you mean by those statements? Can you give me examples of --
A. I don't know the specifics on what Ms. Verderosa did. I don't know anything specifically other than what I saw. I thought that Dr. Lusk's workload was ridiculous, and especially not being able to have any assistance. That's crazy. I mean, we all try to help each other. You should not punish or make people feel bad about helping somebody if they need help, and that's despicable. I don't feel like she was given -- and this is my personal thought, but I always

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thought that Ms. Verderosa very much -- you had Dr. Lusk, and you had Dr. Wise, and you had Ms. Verderosa, and I think she always felt that that degree -- I think that degree bothered her. That's just my personal opinion, but I think once you take somebody's respect, you can't harm them anymore. I think that's the worst thing you can do to somebody, and to try to hurt them, you know, in the community or hurt them like that, that's the worst thing you can do to a person.

Q. What things did Ms. Verderosa do that you believed took Dr. Lusk's respect and hurt her in the community?

A. I think she deserved more than a sentence on -- see, I was gone. When all this happened, I had my kids in Myrtle Beach on a trip, and, you know, my phone was blowing up. Oh, my gosh. Dr. Lusk is gone. You know, so immediately I get to my computer, and I start looking for an e-mail, and it was Dr. Lusk is -- something to the effect no longer with us or will be -- it was just very -- you know, for somebody that had given their life and so much caring, and I thought, gosh, I wonder if that's how they'll do me if I -- I wonder if I'll get more than a sentence, you know. I just

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bad. I've never been talked to like that by another adult ever.

Q. And so do I understand that you believe that she falsely wrote you up for items?

A. Oh, yeah. Absolutely, and it was not -- more than one person had told me that she wanted to get rid of me. I mean, many people told me that.

Q. And in your letter of April 12th, you said there are so many instances and behaviors that I could share with you, but they have been shared with human resources and it has been documented?

A. Yea. She told me it had.

Q. Okay. So the she being Ms. Williams?

A. Verderosa.

Q. Ms. Verderosa had told you?

A. I guess that's what I was meaning.

Q. Okay. Had you met with Ms. Jedlicka and Ms. Williams prior to this letter of April 12th of 2013?

A. Gosh. I cannot remember. I know I had called Ms. Williams, but I was too scared. I was too scared of still being there with her being my boss, and I was afraid it would not be confidential, and that's why I didn't pursue it.

Q. Had you before this letter of April 12th sent

Q. Do you feel that Dr. Lusk was set up for failure by Ms. Verderosa?
A. Yes.
Q. And you said you never filed a grievance against Ms. Verderosa?
A. No.
Q. Why?
A. While I think it is reprehensible the way she treated Dr. Lusk, I knew that I wanted a place in this district, and filing a grievance -- I mean, I don't wish anything bad. I mean, I really don't. I just want some, you know justice. I mean, people should not be treated like that, you know -- but anyway, I didn't file one because I knew there was plenty being filed, and I didn't have to, and when Scott Bedenbaugh called me and told me this job was opening up at the elementary school, it wasn't a hard decision. I mean, it was hard leaving the kids, but I don't think -- I know I could not have worked there again another year.
Q. And you said you knew plenty of grievances were being filed. Did you know Dr. Lusk was filing a grievance?
A. I would think that she would. I mean, I would

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Q. And do you think that was to cause Dr. Lusk disrepute in the community?
A. I think that would be -- I think that would be easier for her if that's what the perception was.
Q. Easier for whom?
A. For Ms. Verderosa. It would be much easier for the fall to be on Dr. Lusk.
Q. Do you believe that the things that you witnessed at WOMS regarding Ms. Verderosa and Dr. Lusk that Ms. Verderosa interfered with Dr. Lusk's employment at WOMS?
MR. KULL: Object to the form.
THE DEPONENT: I believe that her workload was ridiculously burdensome. It was more than -- I've never really actually -- I don't know what the job description of an assistant principal is, but I think to have her responsibilities that she had alone with no help, that was -- just in the MAP testing alone should be very clear the her workload was ridiculous.
Q. Do you feel that was to run her off?
A. Yes.
Q. Did you experience similar things that you felt like you were given additional duties and problems and roadblocks by Ms. Verderosa to run

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There's a lot of people that would think less of what she does. I mean, you know, those of us who know her do not feel any less of a person. I think she's terrific, but, you know --

Q. That's what I'm asking. Who would think less highly of her as a person or would think less highly of her character?

A. Well --

Q. Do you know of anyone?

A. Specific names?

Q. Sure. Why do you think that question is funny?

A. Because I mean, you know, people out in the community -- this is not Atlanta or Columbia. This is a small place. You know, when somebody leaves and there's no explanation and they're going from an administrative job to a teaching position, of course. The rumor mills go crazy. You know, if you want specific people, I can't give you specific people. It's just a community as a whole.

Q. Do you think any less highly of Dr. Lusk as a person or her character as a result of anything that happened at WOMS?

A. No because she's a dear friend of mine, but I know her.

Q. Have you ever heard anyone say that they -- anything to the effect of that they think less highly of Dr. Lusk as a person because of anything that happened at WOMS?
A. You're going to ask me for a specific person?
Q. Anyone.
A. I can't even think of a specific enough to say, you know, Susie said what happened to Dr. Lusk. I mean, a lot of people have approached me that have said did Dr. Lusk get fired? Why is Dr. Lusk at the Adult Ed now? Why did they get rid of Dr. Lusk? I mean, that's what I heard for a long time that first year, and like I say, when it all went down, I wasn't even there. I was gone on a trip.
Q. Okay. Has anyone said that Dr. Lusk was reassigned because of her job performance?
A. I have -- just rumor mills.
Q. Okay. Have you ever heard --
A. The people that do not know her.
Q. Okay. Does -- have you ever heard Jami Verderosa making any statements about why Dr. Lusk was reassigned?
A. No. We didn't get anything but one e-mail. You saw what -- that's what the faculty got.

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A. Right.
Q. It didn't apply to the athletes either, did it?
A. The way -- I asked that question many times -- many, many, many, many times -- and for sports, they were eligible the semester before they were playing, so if they were going to play football, they couldn't have failed in the spring or, you know, before school was out. They weren't eligible then, but it never worked out that way. They always -- it was -- you know, and if you were failing at Christmas, then you couldn't play basketball or you couldn't play baseball or something. You know, but it was, like, what you did the semester before, but they could be failing everything and still play. It was crazy.
Q. So if an athlete won the state championship and was going to the state championship in Columbia or the national championship, they could do with failing grades that semester?
A. That semester they could.
Q. But your kids couldn't?
A. No.
Q. Was the reassignment of Dr. Lusk actually a demotion?
A. Well, of course everybody thought that. Yes.

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Q. Well, when you go from an administrator down to a teacher, isn't that a demotion?
A. I would think so.
Q. Is that the way that you perceived it?
A. Yeah. I think everybody perceived it that way.
Q. And doesn't --
A. Everybody that I talked to about it. Yeah.
Q. And doesn't a demotion seem to indicate an actin of wrong doing or professional incompetence?
MR. KULL: Object to the form.
THE DEPONENT: Yes.

EXAMINATION RESUMED

BY MS. KERN-FULLER:
Q. Now, the disagreements that you had with Ms. Verderosa, would those disagreements in any way cause you to give untruthful testimony today?
A. No.
Q. Would it cause you to give untruthful testimony at trial?
A. Absolutely not. And as I said before, I mean, all I can tell you is the truth, and I don't want my job to be in jeopardy.
Q. I understand that.
A. It was very -- you know, it was hard, you know, when you're sitting out there and you have three

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CERTIFICATE

I, the undersigned, Kaylyn K. Brantner, CVR, Notary Public in and for the State of South Carolina, do hereby certify that the deposition of JUANITA McMILLAN was taken on the 15th day of August, 2017, that the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath; that all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 28th day of August, 2017.

_____

Kaylyn K. Brantner, CVR
Notary Public for South Carolina
My Commission Expires: 4/12/20

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EXHIBIT K

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M&G
MURPHY & GRANTLAND, P.A.

Jeffrey C. Kull
Direct dial 803-454-1243
jkull@murphygrantland.com

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April 25, 2014

Sent Via E-Mail and U.S. Mail
Charlotte Watts
Greenville Local Office
U.S. Equal Employment Opportunity Commission
301 North Main Street, Suite 1402
Greenville, SC 29601

Re: Martha L. Lusk vs. Oconee County School District
SCHAC No.: 1-14-131A, RET
EEOC No.: 14C-2014-00331C
Claim No.: 21406806 / SS-0666
Insured: Oconee County School District
Date of Loss: 05-04-13
Our File No.: 1295-0057

Dear Ms. Watts:

This firm represents the Oconee County School District relating to a charge filed by its employee, Martha Lusk. The School District filed it Response to the charge on April 1, 2014.

This letter provides a supplement to the School District's previously filed response.

In addition to its previous response, the School District now raises a statute of limitations defense. Lusk filed her charge more than 350 days after being notified by the School District that she was being reassigned from an administrative position to a teaching position.

In her charge, the employee incorrectly claims that the date the alleged discrimination took place was May 4, 2013 (which is a Saturday). She filed her charge on February 27, 2014, which is 299 days after May 4, 2013.

However, in reviewing the record more closely, it is clear that Lusk used the wrong date for when the alleged discrimination occurred. Lusk claims that she was discriminated against when she was reassigned from her position as Assistant Principal to a teaching position. She claims this is a demotion. This reassignment occurred on March 4, 2013 – not May 4, 2013 as Lusk states in her charge.

Attached as Exhibit A find a copy of the letter the School District sent to Lusk on **March 4, 2013**, explaining that the School District was "no longer confident in your ability to serve as an administrator." This letter also explained that she would be reassigned to a teaching position for the next school year.

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull
Alice P. Adams Tim J. Newton Peter E. Farr Chris A. Majure Ashley B. Stanton J. Ryan Oates Wesley B. Sawyer Jason P. Luther
*Member-American Board of Trial Advocates

Lusk was aware of this employment action because she filed a grievance to contest the reassignment on March 14, 2013. Attached as exhibit B find a copy of the grievance that Lusk filed. In her grievance form, Lusk stated that "[m]y grievance is being demoted out of my administrative position." Lusk waited at least 350 days (March 14, 2013 until February 27, 2014) before filing her charge.

The ADEA requires the employee to file a charge with the EEOC "within 300 days after the alleged unlawful practice occurred." 29 U.S.C. § 626 (d) (1) (B).[1] For purposes of determining when the statute of limitations runs, the unlawful practice occurs when the plaintiff is informed of the allegedly discriminatory practice or decision. Delaware State Coll. v. Ricks, 449 U.S. 250, 258 (1980); Jeandron v. Board of Regents of Univ. of Md., 510 Fed. Appx. 223 (4th Cir. 2013); see also, Davidson v. America Online, Inc., 337 F.3d 1179, 1187 (10th Cir. 2003) (holding cause of action accrues on "the date the employee is notified of an adverse employment decision.").

Lusk failed to file her charge on time. She waited at least 350 days after being notified of her reassignment before first filing her charge. The School District requests that the EEOC dismiss Lusk's charge.[2]

Sincerely,

s/ Jeffrey C. Kull

Jeffrey C. Kull

JCK/mwt
Attachment

[1] The School District also reserves the right to argue if necessary in the future that Lusk also failed to comply with the statute of limitations by not filing a charge with SCHAC or the EEOC within 180 days.

[2] Lusk was late filing her charge even if she tried to claim that the statute of limitations did commence until the decision to reassign her on March 4, 2013 was not yet a final decision because she appealed it to the Board. That argument would lack merit for two reasons. First, the appeal period does not toll the statute of limitations. See Delaware State, 449 U.S. at 260-61. Also, Lusk's appeal was denied on April 16, 2013. (See attached Exhibit C.). This final decision was made 317 days before Lusk filed her charge.

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School District of Oconee County
414 South Pine Street - Walhalla, South Carolina 29691
(864) 886-4400
www.oconee.k12.sc.us
"Education is Everybody's Business"

VIA Hand Delivery
March 4, 2013

Dr. Linda Lusk
West Oak Middle School

Dear Dr. Lusk:

The purpose of this letter is to follow up with my meeting with you on Thursday, February 28, 2013 during which I met with you to discuss your job assignment for the 2013-14 school year. As you recall, Dianne England, Assistant Superintendent of Instruction was present. During the meeting, I shared with you that we would be making administrative changes at West Oak Middle School due to the ongoing concerns regarding your performance. As you are aware, Jami Verderosa, Principal at West Oak Middle wrote to you and shared many concerns with you about your performance throughout the school year. Some of the major concerns shared with you included the following:

- Letter dated **March 8, 2012** addressed issues about an inappropriate comment you made to a student while handling a discipline matter. The parent was very upset and contacted Michael Thorsland, Assistant Superintendent of Operations regarding the incident.
- Letter dated **May 2, 2012** addressed 4 major concerns which included the following:
  - Entering discipline in power school under the incorrect student name
  - Contacting the wrong parent regarding a discipline matter of another student
  - Not investigating discipline thoroughly and contacting the parent before suspending a special education student
  - Strategic Plan data in the student achievement section was not correct
- Letter dated **September 7, 2012** addressed the meeting to discuss your GBE goals and assistance needed. There was a concern shared in which you gave a cell phone back to the student and not the parent/guardian. As you know this is a violation of district policy.
- Letter dated **September 21, 2012** addressed concerns regarding a discipline matter in which you brought two students into your office in which one was threatening to fight the other student and asked that they hug each other. As you are aware, the parents were very upset about how this situation was handled.
- Letter dated **November 19, 2012** addressed concerns in which two discipline entries in PowerSchool were entered under the wrong students' names again. Mrs. Verderosa asked if you needed help or additional training.
- Letter dated **December 19, 2012** addressed concerns in which you failed to follow up appropriately when a note was shared with you about a student distributing drugs in the school. You failed to retain the note for documentation during the investigation.
- Email dated **January 22, 2013** suspension discipline was entered incorrectly for a student

Other significant incidents of concerns addressed included you sending a teacher a copy of another teacher's walk-through observation. There was also a concern in which you were supposed to attend a meeting at Tamassee Salam Middle High School on Tuesday, February 5th. You did not attend the meeting an

EXHIBIT
A

Mrs. Verderosa that you would not be attending. You remained at the school. When asked why you did not speak with Mrs. Verderosa, you stated that she does not communicate with you. During our meeting, when the above concerns were shared with you, you stated that Mrs. Verderosa was harassing and bullying you due to the fact that you had filed a grievance. However, as you know Michael Thorsland, Assistant Superintendent of Operations addressed the concerns in your grievance dated March 21, 2012 and these concerns were not substantiated. You also appealed his decision to Dr. Lucas, Superintendent and the decision was upheld. You later requested that the board hear your grievance and this request was denied. During our phone conversation on November 2, 2012, you stated that things were better, "I am over it" and that you were trying to "do my job to the best of my ability." On November 7, I wrote to you regarding your letter to Mrs. Verderosa dated September 19, 2012 to ask again about your concerns about being harassed. You stated that you were being harassed because Ms. Verderosa was "nit picking" about things. As stated in my letter to you, District Administration did meet with Ms. Verderosa at that time regarding your concerns and this was not about retaliation. During our meeting we also shared with you that these were legitimate concerns and issues involving parents that any building administrator would need to address with an assistant principal. You also stated that the issues were over-played to make you look bad and that you were working under a lot of pressure and that you were not sure what rock Mrs. Verderosa will throw at you next.

As a result of the many ongoing concerns mentioned above as well as other concerns documented via email to you from Mrs. Verderosa, we are no longer confident in your ability to serve as an administrator. I shared with you that your assignment as an assistant principal at West Oak Middle School will end effective the end of the school year. Your new assignment for 2013-14 per Board approval will be to work as a teacher at Adult Ed/Code Academy at the Code Learning Center. We will work to assist you in your new role and help make your transition as smooth as possible. Questions regarding reassignment procedures are outlined in SDOC Board Policy GCK-R Professional Staff Assignments and Transfers. This policy states, ***"If, in the opinion of the superintendent, a reassignment would be in the best interest of the district, the superintendent or his/her designee will advise the employee of the reassignment and confirm the reassignment in writing to the employee."*** A copy of this policy is attached. You stated that you were not happy with this reassignment and that you would fight this decision and asked that we reconsider.

As we discussed, in an effort to work with you and assist you during this transition, your salary will remain at the current level (including days and administrative supplement) for the 2013-14 school year only. Additional responsibilities will be assigned to you by your supervisor for the 2013-14 school year for the additional 25 contract days. As we also discussed, this is to confirm that your salary during any subsequent years you are employed with the District will be commensurate with the position and number of days to which you are assigned. Finally, you should feel free to apply for any other available positions for which you are qualified, should you be interested in a different assignment. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Earnestine R. Williams
Assistant Superintendent of Human Resources

Cc: Jami Verderosa, Principal West Oak Middle
Personnel File

Attachments: Policy GCK-R *Professional Staff Assignments and Transfers*

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FILE: GBK/E

GRIEVANCE FORM

This form is to be completed in the filing of a grievance under policy GBK, Staff Complaints and Grievances.

Full name: Martha Linda Lusk

Job assignment: API

Location (school or department): West-Oak Middle

Supervisor's name and position: Ms. Jami Verderosa, Principal

If you feel your supervisor is not the person who should address your grievance, give the name and position of the person you feel should address your grievance: _____

State the action you feel was in error and what state or federal law or board policies, regulations and/or rules were violated, misinterpreted or misapplied. Use the back of this form, if necessary:

My grievance is being demoted out of my administrative job because I filed a previous grievance (March 8, 2012) about my workplace environment which still consists of intimidation, retaliation, harassment, bullying, and outrageous micromanagement.

Date the action occurred: 3/4/13

The charges or inappropriate comment were never disclosed in the written reprimand. I told my side of the incident but was unable to defend the comment properly. Ms. Verderosa spent too much time profiling and over-documenting me instead of addressing the issues. She overplayed situations to put me in the worst light as to portray me as an incompetent employee

State what you are asking to be done in this matter -- identify the remedy you seek:

1. To retain my administrative position at West-Oak Middle School.
2. To be totally free from micromanagement because it is not a leadership style but an avenue to get rid of unwanted employees.

Signature Linda Lusk

Date 3/14/13

Present this form to your direct supervisor, even if you feel he/she was not responsible for the error. He/She will be responsible for passing it to the appropriate person, as necessary.

School District of Oconee County

EXHIBIT B

SCHOOL DISTRICT OF OCONEE COUNTY
414 South Pine Street, Walhalla, South Carolina 29691
Phone: 864.886.4400 • Facsimile: 864.886.4403
www.oconee.k12.sc.us

-Via Certified Mail, Regular Mail, and Password Protected Email-

April 16, 2013

Dr. Linda Lusk
P. O. Box 846
Central, South Carolina 29630

Dear Dr. Lusk:

The Board of Trustees for the School District of Oconee County considered your appeal regarding your job assignment for 2013-14 during an executive session held on April 15, 2013. The Board of Trustees returned to open session later in the evening and voted to affirm the decision I made regarding your job assignment for 2013-14.

As a reminder, your assignment in 2013-14 will be at Code Learning Center under the supervision of Mr. Gene Williams, Director. Your salary will remain at the current level (including days and administrative supplement) for the 2013-14 school year only. Additional responsibilities will be assigned to you for the additional 25 contract days next year.

Please note that any salary during subsequent years you are employed will be commensurate with the position and number of days for which you are assigned.

Please let me know if you have any questions regarding the decision of the Board of Trustees in this matter.

Sincerely,

Michael Lucas, Ed.D.
Superintendent

✓Human Resource Services – Employee File

EXHIBIT
C

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EXHIBIT L

Board Appeal Hearing Documentation – April 15, 2013

Employee: Linda Lusk, Assistant Principal **School:** West Oak Middle School

Nature of Concern: Grievance – Employee reassignment from Administrator to Teacher

Remedy Sought: Employee request that any decision about reassignment be held until all levels of grievance have been heard due to the following:

- Filing a grievance about my demotion and my workplace environment. There is insufficient evidence to support this decision
- Working in the worst environments that any employee could have to endure (See employee letter dated **3-13-13**)

Summary of Documentation Included:

March 8, 2012	Letter from Verderosa addressing concerns about comment made to student
March 21, 2012	Employee Grievance Form received in Human Resources
April 3, 2012	Follow up letter from HR to confirm grievance meeting date
April 24, 2012	Follow up letter from Thorsland addressing Grievance concerns
May 3, 2012	Letter from Verderosa addressing 4 major concerns
May 15, 2012	Letter from Lusk to request appeal grievance to Board
May 22, 2012	Letter from Lucas – Board denied request to appeal
September 7, 2012	Letter from Verderosa – follow up review of GBE Goals
September 19, 2012	Letter from Lusk to Verderosa regarding GBE/Concerns
September 21, 2012	Letter from Verderosa addressing concerns about a student discipline matter
November 7, 2012	Letter from Williams to follow up with harassment concerns
November 19, 2012	Letter from Verderosa addressing concerns about entering incorrect student discipline information
December 19, 2012	Letter from Verderosa addressing concerns about a student discipline matter
December 20, 2012	Letter from Lusk to Verderosa responding to concerns
January 22, 2013	Email from Verderosa addressing concerns about entering incorrect student discipline
March 4, 2013	Letter from Williams regarding employee reassignment
March 13, 2013	Letter from Lusk requesting appeal of reassignment to Board
March 19, 2013	Letter from Lucas regarding Board Appeal Date **4-15-13**
Other Information	Policy CFC Assignment and Transfer of Building Administrators Policy GCK/R Professional Staff Assignments and Transfers South Carolina Code of Laws **Chapter 24 Section 59-24-15**

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State of South Carolina

County of Oconee

Court of Common Pleas

Martha Linda-aka Lusk PhD)
)
Plaintiff,)
v.)
)
Jami Verderosa,)
)
Defendant.)

Transcript of Record
2016-CP-37-00113

November 1, 2017
Oconee County, South Carolina

B E F O R E:

The Honorable Lawton McIntosh, Judge.

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

Candy Kern-Fuller, Esquire
Attorney for the Plaintiff

Jeffrey Kull, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

familiar with it.

MR. KULL: Sorry. That one's marked.

THE COURT: Thank you, sir. (Reading.)

Well, how do you explain the last comm -- the last sentence? It says, "Any such administrator presently is under a contract granting such rights shall retain that status until its expiration of that contract." I know that was -- the history is that it was enacted in 1998.

MR. KULL: That's exactly right. Actually, the -- it's the Henry Davenport. There are two Henry Davenport cases. One is a Supreme Court case. It was a -- it was a certified question from Judge Matthew Perry on the Federal Court.

THE COURT: Right.

MR. KULL: Well, the -- what the -- what the Supreme Court said was, "Yep. That's -- it says what it means. You have an -- an administrator doesn't have rights to the position or salary of an administrator."

And then the case went back to Judge Perry. And Judge Perry interpreted what the last sentence means. And he says this, "If an administrator -- what it basically says is, that's a grandfathering position.

other concerns documented via e-mail to you from Ms. Verderosa, we are no longer confident in your ability to serve as an administrator."

They based their decision upon the defamation that Ms. Verderosa was committing against Dr. Lusk. They based their decision to remove her midyear, breach her contract midyear, and take her out of an administrative position based solely on the defamatory statements of Ms. Verderosa.

And it is because of that that we believe that there is a scintilla of evidence that survives summary judgment, that a jury should decide whether or not they tortuously interfered with her contract with Oconee County School District.

Again, we're not talking about the contract for academic year of 2013, '14 for purposes of this argument. We're talking about the one for 2012, 2013. Clearly, they removed her as an administrator. She had a contract to be an administrator for 215 days. She committed no crimes of moral turpitude. What was alleged as the reason was she accidentally sent an e-mail to the wrong person. That was the final straw.

I asked Ms. Verderosa in her deposition, "Have you ever sent an e-mail to the wrong person? Have

you ever made an administrative error?" She said, "I'm sure I have in 30 years." She was there 27 years.

THE COURT: What was the nature of the e-mail?

MS. KERN-FULLER: It had to do with a student, just like we talked about another e-mail that Ms. Verderosa sent to the wrong person. It had to do with a student.

So if there's a confidentiality breach under FERPA that is so significant that we have to take a 27-year administrator and demote her, then why aren't the other administrative people being written up for it? Why is she being called a person that calls a child a criminal with no basis other than the child said, "Well, that's what I think she said."

And she explained a conversation they were having. It was time after time after time. And there's a culmination of events. And she's written up for minor things.

She was told she didn't appear for a meeting that she appeared at. And it's a culmination of events like that that shows a pattern that this particular person systemically tried to get this woman out and finally eventually succeeded. And

CERTIFICATE OF COUNSEL

Candy M. Kern-Fuller, Attorney for Appellant, does hereby certify, pursuant to Rule 209 of the SCACR, that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Candy Kern-Fuller (S.C. Bar No. 11392)
UPSTATE LAW GROUP, LLC
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Candy@UpstateLawGroup.com

March 28, 2018

ATTORNEY FOR APPELLANT

RECEIVED
JUN 06 2018
SC Court of Appeals