

# Exhibit A

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Andrew HaLevi, Ph.D.,  
Plaintiff,

v.

Charleston County School District,  
Defendant.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-10-00123

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

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**SC Court of Appeals**

THIS MATTER came before this Court on Wednesday, June 17, 2020 concerning the Motion for Summary Judgment filed by Defendant Charleston County School District ("CCSD"), pursuant to Rule 56, SCRCF, concerning all claims brought against them by the Plaintiff Andrew HaLevi ("Plaintiff" or "HaLevi"). This Court issued a "Form 4" order denying the motion on Thursday, June 25, 2020.

Thereafter, on Monday, July 6, 2020, CCSD filed a timely Motion to Alter or Amend the initial decision of the Court. This motion was heard before the Court on Wednesday, September 23, 2020. Attorneys for both parties submitted briefs and presented oral arguments to the Court on all claims presented in the case.

After considering all pleadings and arguments made by counsel, this Court hereby GRANTS the Defendant's Motion to Alter or Amend, GRANTS the Defendant's Motion for Summary Judgment, and DISMISSES all claims brought by Plaintiff in this matter with PREJUDICE, with each side to bear its own costs and fees.

PLAINTIFF'S CLAIMS

Plaintiff is a former principal at Clark Academy, an alternative program within CCSD for at-risk high school students. He was eventually reassigned from this position in May 2016 based

on an incident related to his actions regarding a then-16-year old female student named Erica Hamilton. Specifically, Plaintiff boarded a school bus, demanded that the student remove and return pants she was given due to a perceived dress code violation. After retrieving the pants, Plaintiff left the student without pants and scantily-clad in front of fellow students on the bus.<sup>1</sup>

Plaintiff was not fired due to this incident. Rather, following a period of paid administrative leave over the summer, he accepted a reassignment to teach at Stall High School in the 2016-17 academic year without a loss of pay.

Following the 2016-17 academic year, CCSD offered to continue to employ Plaintiff as a teacher for the 2017-18 academic year. Plaintiff refused the offer, and instead decided to accept a teaching position in Israel, where he currently lives and works.

In his Complaint, Plaintiff has brought three claims:

- Plaintiff's First Cause of Action is for **Defamation**, based on (1) the "innuendo" resulting from his being placed on a paid leave following his confrontation with Erica, and subsequently being reassigned to a teaching position, (2) CCSD's alleged "repeated failure to speak up on his behalf and support his actions," and (3) comments made by School Board Member Chris Collins in response to a media inquiry from *The Chronicle*, a newspaper in the Charleston area.
- Plaintiff's Second Cause of Action is for an alleged **Violation of Due Process under State Constitution and State Law**, based on Plaintiff's allegation that CCSD's actions deprived Dr. HaLevi of a "property interest" without due process because "Dr. HaLevi's grievance was first delayed and then Dr. HaLevi was denied a hearing before the Board." During the pendency of the case, Plaintiff also asserted a claim based on an alleged "liberty interest."
- Plaintiff's Third Cause of Action is for an alleged **Breach of the Covenant of Good Faith and Fair Dealing**, based on his employment contract for the 2015-16 academic year, and CCSD's alleged "deliberate failure to

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<sup>1</sup> Due to Plaintiff's actions, the student and her mother brought suit against Plaintiff and CCSD in *Erica Hamilton and Linda Hamilton v. Andrew HaLevi, Charleston County School District and Charleston County*, C/A No.: 2018-CP-10-01864 (the "Erica Hamilton Lawsuit"). That case is now resolved.

publically support Dr. HaLevi in his administrator position; its failure to properly investigate the bus incident; its failure to publicize accurate facts about the bus incident; its refusal to restore Dr. HaLevi to his administrator position; and its failure to correct the public record and restore Dr. HaLevi's reputation after the Department of Education found there was no basis for any disciplinary action against him...".

For the reasons detailed below, these claims must be dismissed with prejudice.

### FACTUAL RECORD

#### **A. Plaintiff's Confrontation with Erica Hamilton.**

On April 22, 2016, Plaintiff was serving as the head official of the Clark Academy, an alternative high school with a small enrollment and very low teacher-student ratio designed to assist troubled students to graduate from high school. One of the students, Erica Hamilton, was then 16 years old and arrived at school that day in a dress that Plaintiff thought violated the school's dress code. Erica was wearing "boxer" style or "boy short" style panties under her dress. Plaintiff insisted that Erica put on pants – like hospital scrubs – in order to return to class, but throughout the morning, Erica refused to do so. After the lunch period, Erica agreed to wear the hospital scrubs and returned to class.

Following the lunch period, but unknown to Plaintiff, Erica exchanged clothes with one of her friends and was no longer wearing her dress. Instead, she was wearing the pants, an "Aeropostale" jacket, and her underwear.

Erica had not returned the pants by the end of the school day, so Plaintiff boarded Erica's bus. Plaintiff reported in his initial statement that he saw Erica in the last row of the bus, and told her he needed the pants before allowing the bus to proceed. While students on the bus were yelling, Plaintiff repeated that the bus would depart when he retrieved the pants.<sup>2</sup> Plaintiff did not confirm

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<sup>2</sup> At his deposition, Plaintiff attempted to distance himself from his initial statement by arguing that he was "trying to give a broad summary – of what happened. So if I had had more time and had the ability to explain, I would have said – I would have written that I told her that I needed to



CCSD Employee Relations officials Will Suggs and Beverly Varnado assisted Coker with the investigation into the incident, which concluded in one week. Suggs and Varnado interviewed Plaintiff on Monday, April 25, 2016. In his interview, Plaintiff took no responsibility for the confrontation, and blamed Erica entirely, based in part on his belief that Erica should have stopped the confrontation on the bus by explaining to him why she did not want to return the pants to him. CCSD also reviewed statements by various staff members, and because Erica would not come to school to be interviewed, CCSD reviewed her statement to police.

By April 29, 2016, CCSD had finished its investigation into the incident and issued an internal report, which found as follows:

This investigation into allegations that Andrew HaLevi acted in an aggressive, inappropriate, and unprofessional manner toward a student has not revealed any reason to believe his actions were of criminal intent. The investigation did reveal many concerns, including the following:

- Dr. HaLevi does not appear to have the skills needed to manage student behavior.
- Dr. HaLevi has not taken any responsibility for his failure to manage the incident that led to the investigation; rather, he has deflected all blame to others and has refused to see how he had multiple opportunities to make decisions that may have led to a positive outcome.
- Dr. HaLevi has jeopardized any confidence the stakeholders of Clark Academy may have had in his ability to lead the school.

**C. Plaintiff's Paid Administrative Leave and Reassignment.**

On May 2, 2016, Coker contacted Plaintiff to tell him that he was going to be replaced at Clark Academy. On May 3, 2016, CCSD's Executive Director Michele English-Watson indicated that three issues had "collectively compromised the District's confidence in your ability to lead a school" – failing to issue contracts appropriately, failure to manage the incident of April 22, 2016 appropriately, and systemic issues related to Plaintiff's ineffective decisions.

The letter also advised Plaintiff that “[w]ork assignments for you will be forthcoming,” and that she had not yet “determined what role you may have in Charleston County School District for the 2016-2017 school year; that information will be shared with you once a decision is made.”

Plaintiff sent a lengthy response to the District Superintendent on May 9, 2016, to which the Superintendent Postelwait responded by letter on May 13, 2016. Superintendent Postlewait stated that she approved the recommendation to place Plaintiff on administrative leave and to place an interim leader at Clark Academy, and that she would be involved in any decisions regarding Plaintiff’s future role in the District.

While on administrative leave, on July 26, 2016, Plaintiff met with Associate Superintendent Terri Nichols and Executive Director English-Watson, and indicated at the meeting that he would be open to a teaching position. At the meeting, he accepted a position as an English teacher at Stall High School for the 2016-2017 school year without loss of pay.

#### **D. Press Reports Concerning the Incident.**

The incident of April 22, 2016 was reported in the news media, but was not reported to Plaintiff’s satisfaction. Plaintiff wrote his own letter to the *Post and Courier*, which was published on May 4, 2016, in which he criticized the newspaper for “failing to follow basic principles of journalism when covering complex issues at Charleston area schools.”

On the same day, another Charleston newspaper, *The Chronicle*, published a story by Barney Blakeney entitled “Local Principal Likely to Be Reassigned after Demanding Student Take Off Her Pants.” The article reported that CCSD Board Member Chris Collins had opined that Plaintiff “should have been arrested when the incident occurred and then fired,” although Collins also noted that “CCSD administrators have indicated that HaLevi won’t be fired, but most likely

will be moved to another position.” Collins also opined that Plaintiff should not have demanded the pants, that “[y]ou don’t embarrass a child or cause her to be exposed in front of other students,” and that he thought Plaintiff should be fired, but did not think that there was board support to do it.

At his deposition, Collins confirmed that, in making these comments, he was not speaking for the Board of Trustees or CCSD, and that his comments “absolutely” did “not reflect the opinions of the school district or its board.” He also never claimed to be speaking on behalf of CCSD, and actually admitted that he had not even spoken to other Board Members about firing Plaintiff.

Collins also reported that he actually intended his statements to be very critical of CCSD, in that he believed that CCSD’s African-American employees were treated more harshly than white CCSD employees, and that he believed Plaintiff would not be fired because he is white. Doubling down on his criticism of CCSD, Collins testified that he believed that “certain board members...didn’t want African-Americans to be in a high position” and specifically accused Board Members Coats and Ducker of harboring these racist sentiments.

#### **E. Plaintiff’s Grievances and Departure from CCSD.**

After accepting his position, Plaintiff filed a grievance with CCSD on August 29, 2016, which *inter alia* alleged that he had been denied “due process rights” and demanded that CCSD’s Board of Trustees hear his case in executive session. The Chair of the Board of Trustees, Cindy Coats, responded by letter on October 18, 2016, and directed Plaintiff to follow the proper grievance process described in Policy GBK. After Plaintiff requested and received guidance from

CCSD's General Counsel as to the grievance process, Plaintiff's grievance went through the following steps:

- Plaintiff submitted his grievance to Jennifer Coker on or about November 7, 2016. Plaintiff met to discuss his grievance with Coker on November 28, 2016, and received a five-page written response from Coker dated December 12, 2016. Coker addressed each of Plaintiff's issues except his complaint about the comments of Board of Trustee member Chris Collins.
- Plaintiff appealed Coker's decision to the next-level supervisor, Executive Director Michele English-Watson, which was heard on January 11, 2017. English-Watson issued a written response on January 26, 2017, in which she upheld Coker's decision.
- Plaintiff appealed English-Watson's decision to the next appropriate official, Interim Chief Academic Officer Valerie Evans Harrison, which was heard on February 15, 2017. Following her review, Harrison issued a written response on March 2, 2017 upholding CCSD's decision to transfer Plaintiff from Clark Academy.
- Plaintiff appealed Harrison's decision to Superintendent Postlewait, who held the grievance conference on April 20, 2017. Following her review of the case, Superintendent Postlewait found that "the heart of the matter is whether you exercised good judgment in the handling of the April 22, 2016, incident" and that she did not believe Plaintiff exercised such good judgment. She also pointed to perceived inconsistencies in his representations to the District, and noted that Plaintiff had received significant due process. She also noted that she based her decision on Plaintiffs' handling of the incident of April 22, 2016, and not on the other issues referenced in English-Watson's letter of May 3, 2016.
- Plaintiff appealed Superintendent Postlewait's decision to CCSD's Board of Trustees, which was placed on the Board's agenda for the Board's meeting on June 26, 2017. According to Board meeting minutes, following executive session, the Board voted to uphold Superintendent Postlewait's decision by a vote of 9-0. The Board Chair notified Plaintiff of its decision by letter dated June 29, 2017.

Following the 2016-17 academic year, Plaintiff turned down the teacher contract that CCSD offered him for the 2017-18 academic year. Shortly thereafter, he left for Israel and began teaching in the fall of 2017 at the Jerusalem School for the Arts. This lawsuit followed.

### LEGAL STANDARD

Under Rule 56, SCRPC, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Summary judgment is appropriate when “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.” *Gecy v. S.C. Bank & Tr.*, 422 S.C. 509, 516, 812 S.E.2d 750, 754 (S.C. App. 2018). “[I]n 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.” *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

### LEGAL DECISION

#### I. PLAINTIFF HAS FAILED TO PRESENT EVIDENCE SUFFICIENT TO AVOID SUMMARY JUDGMENT ON HIS DEFAMATION CLAIM.

Plaintiff seeks to support his defamation claim on three bases:

- (1) his being placed on a paid leave following his confrontation with Erica, and being reassigned to a teaching position, which defamed him by “innuendo,”
- (2) CCSD’s alleged “repeated failure to speak up on his behalf and support his actions,” and
- (3) comments made by Chris Collins in response to a media inquiry from *The Chronicle*, a newspaper in the Charleston area.

For the reasons listed below, none of these bases are sufficient to support a defamation claim against CCSD, and for that reason, Plaintiff’s defamation claim must be dismissed.

**A. Plaintiff's "innuendo" defamation claim – based on being placed on paid leave and reassigned to a teaching position – is not actionable under South Carolina law.**

Plaintiff alleges that CCSD defamed him by "innuendo," specifically by placing him on a paid leave after the incident of April 22, 2016, and by failing to return plaintiff to work promptly after the incident and a subsequent demotion of plaintiff from administrator to teacher were defamatory.

These allegations, and the undisputed facts in the record, do not support a claim for defamation by "innuendo." There are four elements required to state a claim for defamation: (1) a false and defamatory statement; (2) an unprivileged publication of false and defamatory statement to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Fountain v. First Reliance Bank*, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (2012).

In a claim for defamation by "innuendo," the "insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain." 398 S.C. at 441-42, 730 S.E.2d at 309 (emphasis added). Plaintiff's argument in this case fails for the same reason that the argument failed in *Fountain*, where a plaintiff alleged that First Reliance Bank's refusal to extend him a loan "insinuated that he was an unfit businessman." 398 S.C. at 442, 730 S.E.2d at 309. The Supreme Court found that summary judgment was appropriately granted, noting as follows:

Under the proper standard, we believe Fountain failed to adduce facts sufficient to withstand summary judgment that Ewart's statement was defamatory by innuendo. During his deposition, Fountain claimed the statement was "inappropriate" and "he just wouldn't say it being a banker," **but this falls far short of establishing an implied defamatory meaning.** Moreover, even assuming that Fountain did present sufficient evidence to establish a defamatory meaning through innuendo, the alleged defamation—that Fountain had a checkered business and financial history and was therefore a poor lending risk—was indisputably true. Without contradiction, the record reveals Fountain participated in a failed business venture and has a history of neglecting to repay his obligations. Thus, even assuming Fountain adduced sufficient evidence that the statement implied through innuendo

that he was a poor lending risk, it could not be deemed defamatory because it was unquestionably true.

398 S.C. at 443-44, 730 S.E.2d at 310 (emphasis added).

For the same reason, Plaintiff's "insinuation" or "innuendo" argument fails. CCSD placed Plaintiff on a paid leave while CCSD investigated the incident by questioning students, staff members, and Plaintiff himself. It is undisputed that this is the normal protocol followed by CCSD in like instances. The investigation found, as Plaintiff himself admits, that he took Erica's pants and left her exposed to other students only in her panties. It is unsurprising that CCSD (1) took the time necessary to complete its investigation, (2) took time over the summer to determine Plaintiff's next assignment, and (3) lost faith in Plaintiff's ability as a leader due to his handling of the incident.

Further, it also does not matter that Plaintiff thought that CCSD could have handled the matter differently. It is undisputed that CCSD followed normal protocol, and was well within its authority to investigate the matter, interview witnesses, and draw the conclusion that it did, which notably did not result in Plaintiff's termination.

In this regard, Plaintiff's claim even pales in comparison to other defamation by "innuendo" claims that have been dismissed, and where employees were actually fired. For instance, in *Johnson v. Dillard's Inc.*, 2007 WL 2792232, at \*18 (D.S.C. Sept. 24, 2007), there was no defamation by "innuendo" even where the plaintiff could show that she was escorted out of the store by the off-duty police officer, because there was no evidence that the "positive assertion" was false and malicious and that its meaning was plain. In *Hampton v. Conso Prod., Inc.*, 808 F.Supp. 1227, 1237 (D.S.C. 1992), the court found that a reasonable trier of fact could not find that the defendant acted maliciously in requesting the plaintiff to go on medical leave and receive medical treatment at the defendant's expense, where the plaintiff alleged that these acts

gave the impression to others that the plaintiff was mentally ill and/or in need of medical confinement. Likewise, the court dismissed an “innuendo” claim where the plaintiff was fired in close proximity to an altercation between the plaintiff and his supervisor, allegedly leaving other employees “with the mindset that [plaintiff] had done something improper,” because plaintiff “has not alleged facts to show that the meaning was plain.” *Simmons v. Sci. Int’l Applications Corp.*, 2012 WL 761716, at \*3-4 (D.S.C. Feb. 13, 2012), *report and recommendation adopted*, 2012 WL 761726 (D.S.C. Mar. 8, 2012). *See also, Fredrich v. Dolgencorp, LLC*, No. 3:13-CV-01072-JFA, 2014 WL 4417407, at \*16 (D.S.C. Sept. 8, 2014) (“Aside from bare allegations and the fact that he was terminated, Plaintiff has failed to provide evidence that the Defendant’s actions on the day of his termination amounted to any defamatory conduct insinuating that he stole money, that he was incompetent as a store manager, or that he was prejudice. An employer terminating an employee for misconduct cannot by itself be held to be defamatory, something more is needed.”).

Furthermore, and similar to the finding in *Fountain*, it is also true that Plaintiff’s undisputed actions compromised CCSD’s faith in Plaintiff’s ability to serve in an administrative leadership role. As in *Fountain*, this is a complete bar to this basis of Plaintiff’s defamation claim.

For this reason, Plaintiff’s defamation claim based on an “innuendo” theory must be dismissed with prejudice.

**B. CCSD’s Alleged “Failure to Speak Up” on Behalf of Plaintiff.**

In his deposition, Plaintiff explained this basis for his defamation action as follows:

Q. I think you’ll agree with me that CCSD does not control what *The Post and Courier* says and does?

...

A. -- I agree that they’re not the ones editing the paper, but I certainly don’t agree that the school district doesn’t have a responsibility to be fair and consistent when providing information to – to the newspaper.

Q. Okay. How is it unfair or inconsistent in that regard?

A. The district clearly knew early on that I didn't do anything illegal. They also should have known, based upon a proper investigation, that I didn't do anything unprofessional or lack of -- or use poor judgment, which later the state, you know, concluded.<sup>3</sup> At a minimum, even if they came to the initial conclusion, they should have responded to -- to my pointing out that factually these things are simply wrong in the report. So they had a -- they had a responsibility to provide, at a minimum, accurate information based upon a proper investigation.

(emphasis added).

Thus, Plaintiff is attempting to conjure an affirmative "duty" of an employer to contact a newspaper to publish the opinions of an employee regarding an investigation into his misconduct. This theory of defamation is unknown in South Carolina, and appears to be unknown throughout the United States. A few moments of reflection are sufficient to determine why such a theory is unavailing. If it were so, every public entity and every employer in South Carolina would have the duty to issue a statement -- presumably to the satisfaction of the employee -- whenever the employee believed that a news report of an investigation into his or her conduct reflected poorly or inaccurately on him or her. *See Neloms v. Charleston Cty. Sch. Dist.*, 2019 WL 6092279, at \*14 (D.S.C. June 19, 2019), *report and recommendation adopted*, 2019 WL 4409459 (D.S.C. Sept. 16, 2019) ("An employer's refusal to issue a public statement at its employee's behest, however, generally does not give rise to a standard defamation claim.").

Therefore, to the extent that Plaintiff relies on this theory to support his defamation claim, it must be dismissed with prejudice.

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<sup>3</sup> Plaintiff may be referencing the decision of the State Board of Education ("State Board") in which the South Carolina Department of Education ("SCDE") requested that the Board suspend Plaintiff's educator certificate. On September 12, 2017, the State Board found that the SCDE presented insufficient evidence to justify suspending Plaintiffs' license. For reasons stated in Defendant's Motion in *Limine*, this evidence is inadmissible. In any event, it is irrelevant to Plaintiff's defamation claim, as Plaintiff himself testified under oath that he was not relying on the state's licensure decision to support his defamation claim.

**C. CCSD is not a proper defendant regarding statements made by Board Member Chris Collins.**

Finally, Plaintiff relies on certain statements attributed in the media to Chris Collins, a CCSD Board Member, to support his defamation claim against CCSD. For the reasons listed below, Plaintiff's reliance on these statements to support his defamation claim is misplaced.

It is undisputed that Collins admitted that he was not acting as an agent of CCSD, or a spokesman for CCSD or its Board, concerning this matter. The South Carolina Tort Claims Act (SCTCA) expressly states that "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" is an exception to South Carolina's waiver of immunity. S.C. Code Ann. § 15-78-60(17). "Scope of official duty" means (1) acting in and about the official business of a governmental entity and (2) performing official duties. S.C. Code Ann. § 15-78-30(i). *Benekritis v. Johnson*, 882 F. Supp. 521, 528 (D.S.C. 1995) (suit barred under SCTCA where after-school pickup basketball game conducted in gymnasium one mile from the school was not "official business" of school district and its employee participants were not performing "official duties"); *Farr v. Lott*, 2019 WL 2051300, at \*1 (S.C. App. May 8, 2019) (lawsuit barred against governmental entity under SCTCA where public employee was not acting in the scope of his employment). For this reason alone, CCSD is not a proper defendant concerning Plaintiff's defamation claim, which must be dismissed.

**D. Because Plaintiff was a "Public Official" for purposes of his defamation claim, he is barred from asserting a defamation claim against CCSD under the South Carolina Tort Claims Act.**

Furthermore, I find that, for purposes of his defamation claim, Plaintiff was a "public official" and therefore required to show that the person making a defamatory claim was acting

with “actual malice.” *Gause v. Doe*, 317 S.C. 39, 42, 451 S.E.2d 408, 409 (S.C. App. 1994). For this reason, under the SCTCA, the defamation claim against CCSD is barred and must be dismissed.

While South Carolina appellate courts have not yet ruled that a high school principal is a “public official” for the purposes of defamation claims, the preponderance of courts that have considered the matter have found that principals are public officials for these purposes.<sup>4</sup> See *Cronin v. Pelletier*, 2018 WL 3965004, at \*2 (Conn. Super. Ct. July 26, 2018) (principal of a public high school was a public official under the principles of the law of defamation); *Collins v. Taos Bd. of Educ.*, 893 F. Supp. 2d 1193, 1205 (D.N.M. 2012) (“After considering the case law, the Court predicts that the New Mexico Supreme Court would classify a public school principal as a public official within the meaning of *Rosenblatt*.”); *Williams v. Detroit Bd. of Educ.*, 523 F. Supp. 2d 602, 610 (E.D. Mich. 2007), *aff’d*, 306 Fed. App’x 943 (6th Cir. 2009) (“This Court is persuaded by the Supreme Court of Vermont’s reasoning in *Palmer* and the opinions of other courts concluding that principals are public officials to the extent their defamation claims involve communications relating to their conduct as principals.”); *Warren v. Birmingham Bd. of Educ.*, 739 So. 2d 1125, 1133 (Ala. Civ. App. 1999) (affirming trial court’s holding that an elementary school principal was a public official); *Jee v. New York Post Co.*, 671 N.Y.S.2d 920, 924 (Sup. Ct. 1998), *aff’d*, 260 A.D.2d 215, 688 N.Y.S.2d 49 (1999) (Principal must be considered a “public official” for the purposes of the defamation law.); *Johnson v. Robbinsdale Indep. Sch.*

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<sup>4</sup> While one South Carolina case found that *assistant* principals are not “public officials” for purposes of defamation law, South Carolina appellate courts have not addressed whether *principals* are such “public officials.” *Goodwin v. Kennedy*, 347 S.C. 30, 44, 552 S.E.2d 319, 327 (S.C. App. 2001). *Goodwin* observed a split in authority from other jurisdictions over whether a principal is such a “public official,” but since *Goodwin* was decided, the preponderance of cases nationwide classifies principals as “public officials” for purposes of defamation claims.

*Dist. No. 281*, 827 F.Supp. 1439, 1443 (D. Minn. 1993) (finding that “public school principals criticized for their official conduct are public officials” where principal sued students’ parents after they wrote a letter critical of the principals’ conduct); *Palmer v. Bennington School District*, 159 Vt. 31, 615 A.2d 498 (1992), (summary judgment properly granted to the school district on the principal’s defamation claim, holding that he was a “public official” and that he failed to show that the school board published the statements with “actual malice.”); *Junior–Spence v. Keenan*, 1990 WL 17241, at \*4 (Tenn. Ct. App. Feb. 28, 1990) (finding that principal was a public official because she was an authority figure and a government representative to the students and parents with whom she dealt and her actions affected the taxpayers in the State); *Stevens v. Tillman*, 855 F.2d 394, 403 (7th Cir. 1988) (finding that principal was a public official where “her performance as public official was open to public comment” and, while not an elected public official, “she possessed great discretion over the operation of the [school]” and “how she used that discretion was the subject of legitimate public debate”); *State v. Defley*, 395 So.2d 759, 761 (La. 1981) (concluding that a school supervisor would be considered a public official because the position “ ‘is such that the public has an independent interest in the qualification and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees,’”); *Reaves v. Foster*, 200 So.2d 453, 456 (Miss. 1967) (holding that school principal was a public official, reasoning that statements criticizing her acts were “fair comment in a matter concerning a large sector of the county’s population, in the handling of a matter connected with government, and in an effort by those involved to better conditions in the school as they deemed it” and that the State Constitution “provides ... a common school system, and the laws provide for the selection of the trustees and county superintendents, and the

appointment by the superintendent and board of trustees of the principal to be in charge of a school where the young of the county are given an opportunity to secure an education at the taxpayers' expense."); *Kapiloff v. Dunn*, 27 Md. App. 514, 343 A.2d 251, 258 (1975) (finding that a high school principal was a public official under the *New York Times* standard and that the principal's "suitability for the position was a matter of public or general interest or concern").

For this reason alone, CCSD is not a proper party regarding Plaintiff's defamation claim. As a public official, Plaintiff must show that the defendant acted with "actual malice" in order to state a defamation claim. As set forth in *Scott v. McClain*, 272 S.C. 198, 250 S.E.2d 118, 120 (1978)

When a libel action is brought by a public official against critics of his official conduct, the constitutional guarantees of freedom of speech and press prohibit the public official from recovering damages for a defamatory falsehood relating to his official conduct unless the libelous statement was made with actual malice that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

272 S.C. at 201, 250 S.E.2d at 120 (citations omitted) (emphasis added); *Botchie v. O'Dowd*, 315 S.C. 126, 432 S.E.2d 458 (1993) (plaintiff was a "public official" for the purposes of his defamation action against his employer, and was therefore required to prove actual malice).

Under the SCTCA, a governmental entity<sup>5</sup> 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) (emphasis added). As stated in *Gause*, 317 S.C. 39, 42, 451 S.E.2d 408, 409 (S.C. App. 1994)

The SCTCA clearly excludes a governmental entity's liability for an individual's loss stemming from a state employee's conduct that constitutes actual malice. We therefore agree with the trial court that the SCTCA bars Gause's slander claim against the MBPD because Gause must prove the MBPD employee's conduct constituted actual malice in order to recover on this claim.

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<sup>5</sup> CCSD is, by statute, a "governmental entity" under the SCTCA. S.C. Code Ann. § 15-78-30(d) and (h).

317 S.C. at 42, 451 S.E.2d at 409.

In an effort to revive his defamation claim, Plaintiff has argued that he was not technically “principal,” as his administrative title as head of the Clark Academy was “Program Manager.” Nevertheless, there is a voluminous and undisputed record of Plaintiff’s own sworn testimony establishing that both CCSD and Plaintiff considered him to be the “Principal” of Clark Academy.

For these reasons, Plaintiff’s claim for defamation against CCSD based on the comments of Chris Collins must be dismissed with prejudice.

**II. PLAINTIFF CANNOT SUSTAIN HIS CLAIM FOR AN ALLEGED VIOLATION OF DUE PROCESS UNDER THE STATE CONSTITUTION AND STATE LAW.**

In his Complaint, Plaintiff references a “property interest” in continued employment, which is not relevant in any manner to this case, as CCSD never deprived Plaintiff of continued employment or other legally-recognized property interest. As set forth in South Carolina law, Plaintiff cannot grieve “position or salary” as an administrator under the Teacher Employment and Dismissal Act. *Henry-Davenport v. School District of Fairfield Co.*, 391 S.C. 85, 89, 705 S.E.2d 26, 28 (2011) (legislature, in enacting S.C. Code Ann. § 59-24-15,<sup>6</sup> overruled *Johnson v. Spartanburg County School Dist. No. 7*, 314 S.C. 340, 444 S.E.2d 501 (1994)).

The legislature enacted section 59-24-15 after the *Johnson* decision, and the plain language of the statute directly contradicts the holding in *Johnson*. The statute plainly states that an administrator has no rights in her “position or salary,” and the

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<sup>6</sup> S.C. Code Ann. § 59-24-15 provides that “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).

legislature made no exception or distinction concerning the administrator's status as a certified educator.

391 S.C. at 89, 705 S.E.2d at 28.

For this reason alone, Plaintiff cannot maintain a “due process” claim, as the State has explicitly determined – both through the legislature and the courts – that he has no property right to the position or salary of an administrator.

Furthermore, even if Plaintiff could demonstrate that he was denied a “property interest” – which he cannot – he cannot show that he was deprived of “due process.” If anything, he received significant due process, including several stages of an internal grievance where he presented the evidence he believed was favorable to him, meetings and reviews by numerous officials including the District Superintendent herself, and review by the Board of Trustees. “(D)ue process is flexible and calls for such procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S. Ct. 893, 902, 47 L. Ed. 2d 18 (1976); *Sundberg v. DiRocco*, 2017 WL 3394314, at \*13 (M.D. Pa. Aug. 8, 2017) (“Due process does not require flawless or perfect process. Neither does it require courtesy. Constitutionally adequate process alone suffices.”).

Finally, in his arguments to the Court, Plaintiff relied on a line of cases involving a person’s good name, reputation, honor, or integrity” in an effort to revive his claim. This theory is equally unavailing as a matter of law. Such cases have nothing to do with a “property interest.” Rather, they concern a more limited “liberty interest,” and they have no bearing on this case for the reasons set forth in *Johnson v. Morris*, 903 F.2d 996, 999-1000 (4th Cir. 1990) and *Foreman v. Griffith*, 81 Fed. App’x 432, 439-440 (4th Cir. 2003) (“Because the plaintiff remained employed by his public employer, we concluded that he suffered no damage to his employment status, and thus, could not be heard to complain that he had been made unemployable as the result of the

publication... We also concluded that any harm to the plaintiff's chances for career advancement with his public employer did not result from the publication of the reasons for his demotion, but from the reasons for the demotion itself.") (citing *Johnson*).

In short, Plaintiff cannot maintain a "due process" claim, and for these reasons, his due process claim must be dismissed with prejudice.

**III. PLAINTIFF CANNOT SUSTAIN HIS BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING BECAUSE HE CANNOT DEMONSTRATE ANY BREACH OF CONTRACT ON THE PART OF CCSD.**

Plaintiff stated that his Third Cause of Action is based on the following set of allegations in his Complaint:

The District's deliberate failure to publically support Dr. HaLevi in his administrator position; its failure to properly investigate the bus incident; its failure to publicize accurate facts about the bus incident; its refusal to restore Dr. HaLevi to his administrator position; and its failure to correct the public record and restore Dr. HaLevi's reputation after the Department of Education found there was no basis for any disciplinary action against him, breach the covenant of good faith and fair dealing in Dr. HaLevi's employment contract.

Under South Carolina law, an implied covenant of good faith and fair dealing exists in every contract. *Tharpe v. G.E. Moore Co.*, 254 S.C. 196, 174 S.E.2d 397 (1970). However, there is no breach of an implied covenant of good faith where a party to a contract has done what provisions of the contract expressly gave him the right to do. *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). Furthermore, and importantly, South Carolina law does not recognize a separate cause of action for "breach of an implied covenant of good faith and fair dealing." *RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 472, 597 S.E.2d 881, 884 (S.C. App. 2004).

In this case, Plaintiff does not – and cannot – claim that CCSD terminated his employment.

Rather, in sum, Plaintiff bases his breach of contract claim on his complaints that CCSD did not do what he wanted it to do – (1) agree to conduct an investigation into the Erica Hamilton incident as Plaintiff, not CCSD, saw fit, (2) have CCSD publicly agree that Plaintiff did nothing wrong in demanding that Erica remove her pants on the bus, and publish only those facts and opinions that he – not CCSD or other witnesses – believed were important, and (3) immediately restore him to his administrative position at Clark Academy. CCSD had absolutely no contractual duty to do any of these things.

Plaintiff may be dissatisfied with CCSD’s investigation, or the fact that the investigation found that he had acted improperly in demanding that Erica Hamilton remove her pants on the bus, or the fact that CCSD placed him on leave until the parties agreed that he could teach at Stall High School without loss of pay for the 2016-2017 academic year. Plaintiff’s contract does not guarantee that CCSD will act in a manner that satisfies him.

As stated above, Plaintiff has absolutely no contractual or statutory right to remain in the principal’s position at Clark Academy. Under South Carolina law, Plaintiff has no right to the position or salary of an administrator. *Henry-Davenport*, 391 S.C. at 89, 705 S.E.2d at 28 (plain language of S.C. Code Ann. § 59-24-15 states that a school administrator has no rights in her “position or salary” and the legislature made no exception or distinction concerning the administrator’s status as a certified educator). Indeed, the contract at issue states clearly as follows:

The District’s administrative assignments are discretionary with the Superintendent. In the event of any change in the District’s organizational chart, reduction in force, or whenever it is deemed in the best interest of the District, the Superintendent may reassign, upon notice to and consultation with the affected employee, consistent with S.C. Code Ann. § 59-24-15 (Supp. 1999).

Further, Plaintiff has failed abjectly to point to anything in the contract, the record, or in law that gives him the right to direct how CCSD conducts investigations into his own conduct, or

requires CCSD to follow his instructions as to how it responds to the findings of the investigation. In short, Plaintiff is attempting to conjure a claim for breach of the implied covenant of good faith and fair dealing without producing evidence of a breach of contract. *Adams*, 320 S.C. at 277, 465 S.E.2d at 85; *RoTec Servs.*, 359 S.C. at 472, 597 S.E.2d at 884; *Horton v. Darby Elec. Co.*, 360 S.C. 58, 599 S.E.2d 456 (2004) (former employee had no right of recovery against employer based on breach of employment contract and implied covenant of good faith and fair dealing, where the employer had good faith belief that it had sufficient good cause to terminate employee). This failure to produce evidence of a breach of contract is fatal to his claim.

For these reasons, Plaintiff's claim for breach of the implied covenant of good faith and fair dealing must be dismissed with prejudice.

#### CONCLUSION

For the reasons stated above, after considering all pleadings and arguments presented by counsel, this Court hereby GRANTS the Defendant's Motion to Alter or Amend, GRANTS the Defendant's Motion for Summary Judgment, and DISMISSES all claims brought by Plaintiff in this matter with PREJUDICE, with each side to bear its own costs and fees.

AND IT IS SO ORDERED.

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The Honorable Bentley Price  
Presiding Judge  
Ninth Judicial Circuit

\_\_\_\_\_, 2020  
Charleston, South Carolina



Charleston Common Pleas

**Case Caption:** Andrew HaLevi PhD , plaintiff, et al VS Charleston County School District  
**Case Number:** 2018CP1000123  
**Type:** Order/Dismissal

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766