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Designated by Order of the Court for the publication of court and other legal notices,
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Franklin County, PA 17201–2291, contains reports of cases decided by
the various divisions of the Franklin County Branch of the Court of Common Pleas
of the 39th Judicial District of Pennsylvania and selected cases from other counties.

Catherine M. Dusman, Plaintiff vs. Joseph O. Padasak, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Civil Action No. 2013-4009

HEADNOTES

Summary Judgment

1. Under Pa. R.C.P. 1035.3, a non-moving party may survive summary judgment by pointing out one or more genuine issues of material fact in the record or evidence establishing facts essential to the cause of action which the motion for summary judgment states have not been produced.

2. To survive summary judgment, the "non-moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor." Washington v. Baxter, 719 A.2d at 737.

3. If the non-moving party fails to adduce evidence which establish a genuine issue of material fact or establish facts essential to a cause of action or defense, the court must grant the motion for summary judgment. Pa. R.C.P. 1035.3.

Nanty-Glo

4. Under Nanty-Glo, the moving party cannot rely only upon its own affidavits or depositions to establish the absence of genuine issues of material fact. DeArmitt v. New York Life Ins. Co., 73 A.3d 578, 594 (Pa. Super. 2013) (citing Borough of Nanty-Glo v. American Surety Co. of New York, 163 A. 523, 524 (Pa. 1932)).

5. "However clear and indisputable may be the proof when it depends on oral testimony, it is nevertheless the province of the [fact-finder] to decide, under instructions from the court, as to the law applicable to the facts." DeArmitt, 73 A.3d at 594.

6. The purpose of summary judgment is not "to provide for trial by affidavits or trial by depositions," such that the Court could be seen as usurping the role of the fact-finder. DeArmitt, 73 A.3d at 595.

7. Affidavits and oral depositions alone cannot resolve issues of material fact. DeArmitt, 73 A.3d at 595.

8. A court cannot grant summary judgment where the moving party attempts to establish a lack of genuine issues of material fact solely on the basis of oral testimony. DeArmitt, 73 A.3d at 595.

Defamation

9. To prove defamation, the plaintiff must present evidence the following seven factors: (1) the defamatory character of the communication; (2) its publication by the defendant; (3) its application to the plaintiff; (4) the understanding by the recipient of its defamatory meaning; (5) the understanding by the recipient of it as intended to be applied to the plaintiff; (6) special harm resulting to the plaintiff from its publication; and (7) abuse of a conditionally privileged occasion. Kelley v. Pittman, 150 A.3d 59, 67 (Pa. Super. 2016) (citing Porter v. Joy Realty, Inc., 872 A.2d 846, 849 n. 6 (Pa. Super. 2005)).

10. A statement is defamatory in nature "if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." Agriss v. Roadway Exp., Inc., 483 A.2d 456, 461 (Pa. Super. 1984)

(quoting Restatement Second of Torts §559 (1977)).

11. The defamatory statement need not have actually harmed the subject's reputation, but merely had the "general tendency . . . to have such an effect." Agriss, 483 A.2d at 461.

12. A communication may also be considered defamatory "if it ascribed to another conduct, character or a condition that would adversely affect his fitness for the proper conduct of his proper business, trade or profession. Maier v. Maretti, 671 A.2d 701, 704 (Pa. Super. 1995) (citing Gordon v. Lancaster Osteopathic Hospital Ass'n, 489 A.2d 1364 (Pa. Super. 1985)).

13. If a court finds that a communication is not capable of having any sort of defamatory meaning, rather than possibly being interpreted as either innocent or defamatory, trial is not necessary, and summary judgment may be entered. Maier, 671 A.2d at 704.

14. The following factual considerations must be made to determine whether a communication is defamatory: "[T]he court must consider the effect the statement would fairly produce, or the impression is would naturally engender, in the minds of the average persons among whom it is intended to circulate. The words must be given by judges and juries the same significance that other people are likely to attribute to them. Furthermore, the nature of the audience hearing the remarks is a critical factor in determining whether the communication is defamatory. It is also important to note communications which may annoy or embarrass a person are not sufficient as a matter of law to create an action in defamation." Maier, 671 A.2d at 704.

15. A statement is defamatory per se if it "ascribes to another conduct, character, or a condition that would adversely affect his fitness for the proper conduct of his business, trade, or profession." Pelagatti v. Cohen, 536 A.2d 1337, 1345 (Pa. Super. 1987).

16. However, the truth is an absolute defense to defamation. Pelagatti, 536 A.2d at 1345-46.

False Light

17. To establish false light, the plaintiff must show that "the false light in which the other was placed would be highly offensive to a reasonable person, and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." Coleman v. Ogden Newspapers, Inc., 142 A.3d 898, 905 (Pa. Super. 2016) (citing Restatement (Second) of Torts §652E).

Intentional Infliction of Mental Distress

18. To establish a claim for intentional infliction of emotional distress, a plaintiff must show that "(1) a person who by extreme and outrageous conduct (2) intentionally or recklessly causes (3) severe emotional distress to another." Manley v. Fitzgerald, 997 A.2d 1235, 1241 (Pa. Cmwlth. 2010)

19. Extreme and outrageous conduct is defined as "[C]onduct which is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" Johnson v. Caparelli, 625 A.2d 668, 672 (Pa. Super. 1993) (citing Restatement (Second) of Torts §46, comment d).

Appearances:

Paul J. Cianci, Esquire *for Defendant*

J. McDowell Sharpe, Esquire *for Plaintiff*

OPINION

Before Meyers, J.

PROCEDURAL HISTORY

On October 4, 2013, Catherine Dusman initiated the present action by filing a Praecipe for Writ of Summons. Dusman filed a Complaint on August 25, 2014, claiming two counts of Defamation, one count of False Light, one count of Violation of Constitutional Right to Privacy, and one count of Intentional Infliction of Mental Distress.

On September 18, 2014, the Defendant, Joseph Padasak, filed a Notice of Filing of Removal. Once the case was removed to the United States District Court, Middle District of Pennsylvania, Padasak filed a Motion to Dismiss Dusman's Complaint citing common law and statutory immunity. On October 8, 2014, Dusman filed an Amended Complaint, and on October 14, 2014, she filed a Motion for Remand citing lack of jurisdiction by the Federal Court. On October 15, 2016, the Honorable United States District Judge John E. Jones, III granted Plaintiff's Motion for Remand and remanded the case to Franklin County.

Once the case was remanded to Franklin County, Padasak filed Preliminary Objections on October 28, 2014, with a corresponding Memorandum of Law in Support.[1] Padasak's Preliminary Objections were listed for oral argument in April 2015. On May 21, 2015, the Court overruled Padasak's Preliminary Objections in part and sustained them in part, resulting in the dismissal of Count IV, Violation of Constitutional Right of Privacy. In its Opinion, this Court found that Padasak did not qualify as a high public official for common law immunity purposes. This Court also held that although it was too early to decide whether statutory immunity applied to Padasak, there were sufficient facts alleged, which, if accepted as true, could establish malice as to statements made in the scope of his duties as Superintendent of Chambersburg Area School District (CASD). However, this Court also ruled that Padasak's statements made to two former CASD assistant superintendents were not within the scope of his duties, and therefore statutory immunity would not apply.

Padasak filed an Answer to the Amended Complaint with New Matter [hereinafter "Answer with New Matter"] on June 16, 2015. Dusman filed a Reply to Padasak's New Matter on July 8, 2015. However, on June 22, 2015, Padasak filed a Motion for Certification for an Interlocutory

1 The parties waived conflict raised by the Court on January 7, 2015.

Appeal with corresponding Memorandum of Law in Support. Dusman filed an Answer and Memorandum in Opposition to Padasak's Motion on July 13, 2015. On July 17, 2015, the Court denied Padasak's Motion and no interlocutory appeal by permission was granted. Padasak's request for the Commonwealth Court to authorize the interlocutory appeal was also denied by the Honorable Senior Judge James Gardner Colins of the Commonwealth Court of Pennsylvania on September 4, 2015.

Since then, numerous case management stipulations have been filed by the parties. On April 21, 2017, Padasak filed a Motion for Summary Judgment with corresponding Memorandum of Law in Support [hereinafter "Defendant's MSJ"], which is presently before the Court. Dusman filed a Statement of Uncontested and Contested Material Facts Precluding Defendant's Motion for Summary Judgment [hereinafter "Plaintiff's Statement"] on May 22, 2017. Dusman also filed a Brief in Opposition to Defendant's Motion for Summary Judgment [hereinafter "Plaintiff's Brief in Opposition"] on July 10, 2017. Oral argument on Defendant's Motion was heard on August 3, 2017.

This matter is now ripe for decision by this Court.

FACTUAL HISTORY

A. Statements About Dusman's Commission

The underlying events of this case involve statements made by Padasak to various individuals regarding Dusman. On or around October 5, 2012, Padasak allegedly made false statements to Andrew Nelson, Sarah Herbert, and Melissa Cashdollar, who were elementary school principals under Dusman's direct supervision at the time. Amended Complaint ¶6. Padasak informed these individuals that Dusman did not have the proper commission and was therefore no longer able to legally supervise them. Id. Moreover, Padasak stated that the school district would likely be significantly fined for her lack of commission and that Dusman should therefore be fired. Id. Padasak admits that these statements were made within the scope of his duties and specifically denies that he said she should be fired. Answer with New Matter ¶6.

Dusman also alleges that at a later date, Padasak generally made similar false statements and other then unknown defamatory statements to Dr. Ted Rabold and Dr. P. Duff Rearick. Amended Complaint ¶7. Neither of these individuals was employed by or affiliated with CASD at the time. Id. Padasak admits that within the scope of his duties as Superintendent, he told these two individuals that Dusman did not have a valid commission to serve as Assistant Superintendent for CASD. Answer with New Matter ¶7.

However, Padasak denies that he made any false or defamatory statements to these two individuals. Id.

Dusman further contends that at a later date, Padasak made similar false statements as to her commission to Lauren Stickell, who was a teacher in CASD and was president of the teacher's union at the time. Amended Complaint ¶8. Padasak admits that during the scope of his duties as Superintendent for CASD, he told Ms. Stickell that Dusman did not have the proper commission. Answer with New Matter ¶8. Furthermore, Padasak denies that he made any false or defamatory statements to Ms. Stickell. Id.

Although she admits she did not in fact have a valid commission at the time of these incidents, Padasak knew that she would still be allowed to supervise principals under Pennsylvania law and that no fine would have been imposed on CASD. Amended Complaint ¶9. Rather, Dusman avers that Padasak knowingly made these false statements as to her commission to maliciously discredit her, resulting in her demotion from Assistant Superintendent on March 23, 2013. Id. at ¶10. As a result of these statements, Dusman contends that her professional and public reputation was damaged, and her authority was undermined. Id. at ¶12-13. Moreover, because Padasak allegedly knew that his statements were false, he therefore cast Dusman in a false light and was therefore publicly humiliated. Id. at ¶¶27-29.

B. Statements Regarding Dusman's Tuscarora School District Interview

In November 2012, Dusman applied for the position of Superintendent for the Tuscarora School District. Amended Complaint ¶16. Dusman asserts that another employee of CASD and close friend of Padasak's, Chris Bigger, also applied for the same position. Id. at ¶17. Padasak denies any such close relationship with Mr. Bigger. Answer with New Matter ¶17. Dusman alleges that during this interview process, she took credit for successfully implementing a standards-based report card system from kindergarten to third grade in CASD. Amended Complaint ¶18. However, Mr. Bigger also took credit for this system during his interview. Id. at ¶10. Thereafter, Dusman alleges that, while acting outside the scope of his duties, Padasak had a conversation with Clifford A. Smith, the President of the Board of Directors for the Tuscarora School District, in which Padasak stated that Dusman had lied about being responsible for the system. Id. at ¶20. Soon after, Dusman was informed that she was no longer a candidate for the Tuscarora Superintendent position. Id. at ¶21. Padasak claims he never made such a statement to Mr. Smith and therefore did not impact her employability. Answer with New Matter ¶¶20-21.

On the whole, Padasak asserts that none of his states "were false, materially misleading, and/or were rendered with reckless disregard as to

the truth or falsity of the information." Id. at ¶25.Relatedly, in his New Matter, Padasak asserts that Dusman's claims are barred by the statute of limitations, consent, and estoppel.[2] Answer with New Matter ¶¶42-44. Moreover, Padasak asserts that his statements as to Dusman's lack of commission were true, and statements made to Mr. Smith were made in good faith. Id. at ¶¶46, 49. In total, Padasak claims that because all of the statements he made were either true or made in good faith, Dusman's claims should be barred under statutory or common law immunity. Id. at ¶¶47-56. As stated above, the Court has already determined that common law high public official immunity does not apply to Padasak, but the applicability of statutory common law is still in question.

DISCUSSION

I. APPLICABLE STANDARD: SUMMARY JUDGMENT

Summary judgment should be granted when "an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action . . . which in a jury trial would require the issues to be submitted to a jury." Pa. R.C.P. 1035.2(1). To evaluate a motion for summary judgment, the court must apply the following standard laid out by the Supreme Court of Pennsylvania in Washington v. Baxter:

> As with all summary judgment cases, we must view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. In order to withstand a motion for summary judgment, a non-moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor. Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Finally we stress that summary judgment will be granted only in those cases which are free and clear from doubt.

719 A.2d 733, 737 (Pa. 1998) (internal citations and quotations omitted). The non-moving party is obligated under Pennsylvania Rule of Civil Procedure 1035.3 to respond to a motion for summary judgment within thirty days of service indicating either of the following:

> (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more

2 None of these arguments were addressed in Padasak's Motion for Summary Judgment.

witnesses testifying in support of the motion, or

(2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

Pa. R.C.P. 1035.3(a). The non-moving party may not solely "rest upon the mere allegations or denials of the pleadings." Id.

II. ANALYSIS

A. NANTY-GLO

Dusman asserts that Padasak's Motion for Summary Judgment should be denied because his Motion rests solely on the affidavits and oral depositions of witnesses. Plaintiff's Brief in Opposition at 2. Although Padasak claims this argument is a red herring to distract the Court from the lack of evidence produced by Dusman to establish the requisite elements of her causes of action, this Court will address this argument before it addresses the sufficiency of the evidence produced as to each of Dusman's claims in turn.

Under Nanty-Glo, the moving party cannot rely only upon its own affidavits or depositions to establish the absence of genuine issues of material fact. DeArmitt v. New York Life Ins. Co., 73 A.3d 578, 594 (Pa. Super. 2013) (citing Borough of Nanty-Glo v. American Surety Co. of New York, 163 A. 523, 524 (Pa. 1932)). "However clear and indisputable may be the proof when it depends on oral testimony, it is nevertheless the province of the [fact-finder] to decide, under instructions from the court, as to the law applicable to the facts." Id. The purpose of summary judgment is not "to provide for trial by affidavits or trial by depositions," such that the Court could be seen as usurping the role of the fact-finder. Id. at 595. Affidavits and oral depositions alone cannot resolve issues of material fact. Id. Therefore, a court cannot grant summary judgment where the moving party attempts to establish a lack of genuine issues of material fact solely on the basis of oral testimony. Id.

Here, if Padasak is attempting to establish the non-existence of any dispute of material fact, he must do so with evidence beyond the extensive affidavits and depositions taken in this case, no matter how apparent it may seem from the record. The following oral testimony has been set forth in the record pertaining to Padasak's pending Motion for Summary Judgment:

- Affidavit of Melissa Cashdollar (Defendant's MSJ, Ex. 6);
- Affidavit of Sarah Herbert (Defendant's MSJ, Ex. 7);
- Affidavit of Andrew Nelson (Defendant's MSJ, Ex. 8);

- Affidavit of Dr. P. Duff Rearick (Defendant's MSJ, Ex. 9);
- Affidavit of Dr. Ted Rabold (Defendant's MSJ, Ex. 10);
- Deposition of Clifford Smith (Defendant's MSJ, Ex. 11);
- Portions of deposition of Plaintiff Catherine Dusman (Defendant's MSJ, Ex. 12); and
- Portions of deposition of Defendant Joseph Padasak (Defendant's MSJ, Ex. 14).

Given the nature of Dusman's underlying claims pertaining to in-person conversations, naturally the only evidence of the contents and interpretations of those conversations comes in the form of oral testimony of some kind. However, no matter how apparent the testimony may seem to favor one side or another, the Court at this juncture is not in a position to assess the credibility of this testimony to resolve any disputes of material fact.

On the other hand, Padasak has presented documentary evidence which establishes that his statement that Dusman did not have a valid commission was true at the time in all three conversations. The following documentary evidence has been set forth in the record pertaining to Padasak's pending Motion:

- Emails from Jennifer Cooksey (CASD HR Department Employee) to Dusman that Dusman's commission had not yet gone through as of October 2, 2012, despite thinking it had been handled (Defendant's MSJ, Ex. 4);
- Memorandum dated October 5, 2012, from Padasak to Dusman stating that since Dusman did not have a valid commission, she would serve as an Administrative Assistant to the Superintendent and all principals would report to Padasak until she obtained the proper commission (Defendant's MSJ, Ex. 5); and
- Dusman's commission, effective August 23, 2009 to August 22, 2013.

However, this documentary evidence does nothing to resolve any issues of fact pertaining to the motive or circumstances of Padasak's statements or even addresses Dusman's claims for defamation regarding a conversation between Padasak and Mr. Smith. Therefore, under Nanty-Glo, Padasak would not be permitted to rely on the many affidavits and depositions he presented in order to establish there is no genuine dispute of material fact warranting a grant of summary judgment.

However, Padasak is not arguing an absence of material fact warranting summary judgment. Rather, the basis of Padasak's request for summary judgment is that Dusman has produced no facts which could

allow a jury to find in her favor. The affidavits and depositions presented by Padasak establish the absence of any facts at all, not the absence of a dispute of material fact. In other words, there can be no dispute of fact because Dusman has presented no facts. As such, the Court will analyze each of Dusman's claims in light of the evidence in the record to determine whether sufficient evidence has been adduced by Dusman such that a jury could find in her favor and she may survive summary judgment.

B. COUNT ONE: DEFAMATION

Dusman asserts that on various occasions described in more detail herein, Padasak defamed her by informing certain individuals that she did not have a valid commission and would not be able to supervise until she received a valid commission. Dusman asserts generally that these defamatory statements harmed her reputation and undermined her abilities as Assistant Superintendent.

1. Statements to Andrew Nelson, Sarah Herbert, and Melissa Cashdollar

The only evidence in the record as to this conversation comes in the form of affidavits from the three principals and the deposition of Padasak. This record reflects that in early October 2012, three CASD principals were called to a meeting with interim Human Resources Director, Barry Purvis, and Padasak, which was so vaguely described that it bothered them. Defendant's MSJ, Ex. 6 at 2. Ms. Cashdollar recalls being "shaken a bit by being called in without being given a reason." Id. As to the content of the conversation, Ms. Cashdollar does not recall Padasak using the word "audit" to describe how CASD had learned that Dusman did not have a valid commission. Id. Ms. Cashdollar also did not recall Padasak using the word "fine" in the context that the CASD may have been punished because of Dusman's lack of a valid commission. Id. Ms. Cashdollar also recalls that Padasak informed the principals that they should report directly to him until Dusman received her updated commission. Id. According to Ms. Cashdollar, she was reporting to Dusman again within two weeks of that meeting. Id. at 3. Ms. Herbert's Affidavit contains an identical account to Ms. Cashdollar's. Defendant's MSJ, Ex. 7.

Mr. Nelson's Affidavit reflects a similar recollection in that he was concerned that he was being called into a meeting with the Superintendent without being informed about the purpose of the meeting beforehand. Defendant's MSJ, Ex. 8 at 2. Mr. Nelson recalled being told that Dusman did not have a valid commission, but does not recall who said that. Id. He also does not recall anyone saying that Dusman could or should be fired. Id. He was also unsure as to whether a "fine" was mentioned, but admittedly did not register some things that were said during the meeting because he

was concerned about why he was there. Id. Like Ms. Cashdollar and Ms. Herbert, Mr. Nelson was told to report to Padasak until Dusman received a valid commission, but he was back to reporting to Dusman within a couple weeks. Id. All three principals agree that during the time in which they were to report to Padasak instead of Dusman, none of them had to do so because no issues or need for reporting arose in that time.

Padasak's deposition also sheds light on the language used in his pleadings and the possible intent behind his statements to the three principals. Padasak stated that the term "audit" used in paragraph six of Padasak's Answer with New Matter meant that the Pennsylvania Department of Education (PDE) had informed the CASD in a routine bi-annual review that Dusman's commission was not up to date. Defendant's MSJ, Ex. 14 at 21-23. Padasak's Answer with New Matter also stated that when he told the three principals the CASD could possibly be "fined" for Dusman's lack of verification, which to Padasak meant that certain subsidies would be withheld from the state as they had been in the past when certification issues arose. Id. at 23-24. Although paragraph six of Padasak's Answer with New Matter denies that he told the three principals Dusman should be fired, during his deposition, Padasak said he did in fact tell the three principals that Dusman could have been fired, despite knowing at the time that she was not going to be fired. Id. at 26, 29; Plaintiff's Statement of Uncontested and Contested Material Facts, Ex. 1 at 32. Padasak also stated that although anyone can supervise without a commission, school board leadership, counsel and Padasak decided that Dusman should not supervise until she received a valid commission. Id. at 38-39. If Padasak had thought Dusman could continue to legally supervise, it would have been "no big deal," but he believed she should not continue to supervise because that was the decision made by board leadership and counsel for CASD. Id. at 48.

Viewing these facts in the light most favorable to Dusman, the Court finds that the record lacks sufficient adduced evidence such that a jury could not find in Dusman's favor. To prove defamation, the plaintiff must present evidence the following seven factors:

(1) The defamatory character of the communication;

(2) Its publication by the defendant

(3) Its application to the plaintiff

(4) The understanding by the recipient of its defamatory meaning;

(5) The understanding by the recipient of it as intended to be applied to the plaintiff;

(6) Special harm resulting to the plaintiff from its publication; and

(7) Abuse of a conditionally privileged occasion.

Kelley v. Pittman, 150 A.3d 59, 67 (Pa. Super. 2016) (citing Porter v. Joy Realty, Inc., 872 A.2d 846, 849 n. 6 (Pa. Super. 2005)). To survive summary judgment, the "non-moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor." Washington, 719 A.2d at 737.

A statement is defamatory in nature "if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." Agriss v. Roadway Exp., Inc., 483 A.2d 456, 461 (Pa. Super. 1984) (quoting Restatement Second of Torts §559 (1977)). The defamatory statement need not have actually harmed the subject's reputation, but merely had the "general tendency . . . to have such an effect." Id. A communication may also be considered defamatory "if it ascribed to another conduct, character or a condition that would adversely affect his fitness for the proper conduct of his proper business, trade or profession. Maier v. Maretti, 671 A.2d 701, 704 (Pa. Super. 1995) (citing Gordon v. Lancaster Osteopathic Hospital Ass'n, 489 A.2d 1364 (Pa. Super. 1985)). If a court finds that a communication is not capable of having any sort of defamatory meaning, rather than possibly being interpreted as either innocent or defamatory, trial is not necessary, and summary judgment may be entered. Id. The Court in Maier sets out what sort of factual considerations must be made to determine whether a statement is considered defamatory:

> In determining whether the communication is defamatory, the court must consider the effect the statement would fairly produce, or the impression is would naturally engender, in the minds of the average persons among whom it is intended to circulate. The words must be given by judges and juries the same significance that other people are likely to attribute to them. Furthermore, the nature of the audience hearing the remarks is a critical factor in determining whether the communication is defamatory. It is also important to note communications which may annoy or embarrass a person are not sufficient as a matter of law to create an action in defamation.

Id. Therefore, in the instant case, to determine whether Padasak's alleged statements regarding Dusman's commission were in fact defamatory, the Court must consider to whom the statement was made, the context, and any evidence in the record which could show how the statements affected the listeners.

Most apparent to the Court is that although Padasak seems to

recall making certain statements as to Dusman's commission and ability to supervise, the conversation seemed to have no lasting impact on the principals since they at no point even needed to report to Padasak during the two weeks or so before Dusman received her valid commission. Based on the evidence in the record, there is not even a clear picture of what exact statements were made to the principals other than Padasak's account because the principals do not remember in any detail the contents of the conversation. None of the principals remember any statements about whether Dusman should be fired or even recall the use of the words "audit" or "fine" which have been highlighted by Dusman as defamatory. Although it may have been embarrassing for Dusman's subordinates to report to a different supervisor for a short period of time because she did not have a commission, the statement itself was true and the temporary change in authority had no practical or lasting impact on those individuals. As such, there is no evidence in the record that the three principals understood any statements made to them about Dusman by Padasak as having any sort of defamatory meaning.

Similarly, there is no evidence in the record that Padasak's reputation or ability to perform her supervisory duties was even affected, let alone harmed, after she received her valid commission. The three principals reported to Padasak for only around two weeks according to their accounts, and during that time, none of them actually had to report to Padasak for any reason. There is no evidence in the record of subsequent insubordination such that this court or any fact-finder could infer that Dusman experienced any harm in her reputation or decrease in her ability to supervise. Even if the record showed that the principals recalled use of alleged defamatory terms such as "audit" and "fine," there is no evidence proffered by Dusman to establish that her person, economic status, or reputation was harmed in any way. Although Dusman claimed in her deposition that she was damaged by her inability to supervise the principals for that time period, the principals asserted that they didn't have need to report to Padasak during the short time in which Dusman did not have a valid commission. Plaintiff's Brief in Opposition, Ex. C at 70. Dusman also admitted that the purported damage she felt to her reputation was "about all the things that have happened," and was "not specifically about the commission." Id. at 72-73. In light of Dusman's own testimony, no reasonable fact-finder could conclude that she suffered any special harm as a result of Padasak's true statement. Rather, Padasak passed on the decision made by the Board to not permit Dusman to supervise while she did not have a valid commission. As such, Dusman's statements support only a finding that the Board's decision harmed her, not the statements of Padasak who acted only as a messenger. In the absence of any specific instances of insubordination or harassment and absent any

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medical records indicating physical or mental harm resulting from Padasak's statements, the Court cannot find any evidence in the record of special harm to Dusman.

Since no evidence has been adduced by Dusman regarding the defamatory character of Padasak's statements and any resulting special harm, both of which are essential issues to a claim of defamation, the Court finds that a jury could not find Padasak liable for defamation in this instance. Therefore, Padasak's Motion for Summary Judgment at Count I for Defamation as to the conversation between Padasak and Andrew Nelson, Sarah Herbert, and Melissa Cashdollar is GRANTED.

2. Statements to Dr. Ted Rabold and Dr. P. Duff Rearick

The only evidence in the record as to the contents and interpretations of Padasak's alleged conversations with Dr. Rabold and Dr. Rearick comes in the form of Affidavits by each, and Padasak's deposition. Dr. Rearick's Affidavit states that although he has had a few conversations with Padasak about Dusman, the two did not discuss (1) her failure to obtain a valid commission, (2) her inability to supervise subordinates as a result, (3) or that the CASD could also be fined as a result. Defendant's MSJ, Ex. 9 at 1-2.

Dr. Rabold's Affidavit states that he and Padasak had worked together CASD and kept in touch after Dr. Rabold left the CASD to serve as superintendent of the Tuscarora School District. Defendant's MSJ, Ex. 10 at 1. Dr. Rabold did not recall whether he ever spoke with Padasak about Dusman's lack of a valid commission, her resulting inability to supervise, or that CASD could be fined for her lack of commission. Id. at 1-2. Dr. Rabold's understanding is that someone without a valid commission cannot serve as an assistant superintendent. Id.

Paragraph seven of Padasak's Answer with New Matter states he informed both former assistant superintendents that Dusman did not have a valid commission. Although the former assistant superintendents recall speaking with Padasak about Dusman, they do not remember or remembered not discussing Dusman's lack of commission. However, in his deposition, Padasak stated that around the time when he was instructed to not renew Dusman's contract, he contacted both former assistant superintendents for their advice, since both previously served as assistant superintendents in CASD. Plaintiff's Statement, Ex. 1 at 96. Padasak stated that CASD school board leadership had instructed him to gather documentation about Dusman, he reached out to the two former assistant superintendents for advice on the type of document that he should use, which included the commission. Id. at 103. Although the school board had issued a directive to Padasak that Dusman's contract was not to be renewed, Padasak did not view Dusman's

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appointment as Early Childhood Coordinator as a demotion. Id.

Beyond Padasak's own statements, there is no statement from either former assistant superintendent that Padasak made any statements to them regarding Dusman's lack of commission. In fact, even if there is a dispute as to whether these conversations occurred, there is still no evidence in the record that any potential statements made by Padasak to the two former assistant superintendents were defamatory in nature or caused her any harm. Dusman did in fact not have a valid commission for a period of time. Also, like the three principals, Dr. Rabold did not even remember the content of his conversations with Padasak. Moreover, Dr. Rearick specifically denies even discussing Dusman's commission. No harm could have come to Dusman's reputation in the eyes of any witness who does not remember or believe that the allegedly defamatory conversation even took place. Moreover, the former assistant superintendents had no supervisory role over Dusman, and did not even work in the same school district at the time. There is no evidence in the record that Dusman received any sort of harassment or had any contact at all with the two former assistant superintendents after these conversations took place which could establish that her reputation or person was harmed in any way. Therefore, no reasonable fact finder could attribute Padasak's potential statements to the two former assistant superintendents as causing specific harm in the form of Dusman being "demoted" to the position of Early Childhood Coordinator because they had no role in the school board making that decision.

Because Dusman has failed to present any evidence that Padasak's statements to Dr. Rabold and Dr. Rearick that Dusman did not have a valid commission at one point, had any lasting impact on the two former assistant superintendents such that a reasonable jury could find that the statements themselves affected Dusman's reputation, authority, employment or economic status in any way. Similarly, there is no evidence in the record that Dusman experienced any special harm of any kind after Padasak allegedly made statements to the two former assistant superintendents. Padasak's admission that he told the former assistant superintendents Dusman did not have a commission does not successfully combat the fact that there is no evidence in the record to establish that the statement was defamatory or resulted in special harm to Dusman. Therefore, Padasak's Motion for Summary Judgment at Count I for Defamation as to the conversation between Padasak and Dr. Rearick and Dr. Rabold is GRANTED.

3. Statements to Lauren Stickell

The only evidence in the record as to the content of Padasak's conversation with Ms. Stickell comes from Padasak's deposition. No affidavit or deposition of Ms. Stickell is in the record. Paragraph eight of

Padasak's Answer with New Matter states that he told Ms. Stickell, who was president of the teacher's union for CASD at that time, that Dusman did not have a valid commission at the time, which was true. Padasak further clarified this encounter in his deposition stating that he remembered Ms. Stickell approaching him in the parking lot of the middle school to ask why Dusman was not supervising the principals. Plaintiff's Statement, Ex. 1 at 110. He stated that he tried to be evasive in answering Ms. Stickell's question. Id.

Dusman has presented no further evidence of the conversation, whether Ms. Stickell viewed the true statement as defamatory, or what sort of harm resulted from Padasak telling Ms. Stickell that Dusman did not have a valid commission at the time. The only evidence in the record suggests that Ms. Stickell prompted Padasak to tell her why Dusman was no longer supervising the principals to which Padasak gave a simple and truthful answer. There was no alleged resulting damage from this statement. There is no indication anywhere in the record that it harmed Dusman's reputation or person in the eyes of Ms. Stickell or anyone else. In the absence of any factual allegations to contradict the statements made by Padasak, the Court finds that Dusman has failed to adduce sufficient facts as to the defamatory nature of Padasak's comments to Ms. Stickell and any resulting harm such that a jury could not find in her favor. Therefore, Padasak's Motion for Summary Judgment at Count I for Defamation as to the conversation between Padasak and Lauren Stickell is GRANTED.

There can be no dispute of fact where no evidence has been proffered by Dusman to create a dispute of fact or by which a jury could find in her favor. Therefore, as to Count I for Defamation, Padasak's Motion for Summary Judgment is GRANTED. Count I is DISMISSED in its entirety.

C. COUNT TWO: DEFAMATION

1. Statements to Clifford A. Smith

Dusman alleges that Padasak further defamed her in a conversation with Clifford A. Smith, the President of the Board of Directors for the Tuscarora School District, by informing Mr. Smith that Dusman had lied during her interview for Superintendent of Tuscarora School District about being responsible for implementing standards-based report cards in CASD. Amended Complaint ¶20. As a result, Dusman claims that she was no longer a candidate for the Superintendent position. Amended Complaint ¶21. However, these allegations are unsupported in the record by any evidence such that a jury could find in Dusman's favor. Rather, the evidence in the record of Mr. Smith's deposition testimony directly contradicts Dusman's inferences that Padasak's conversation had an effect on her not getting the Tuscarora Superintendent position.

Mr. Smith personally recruited Chris Bigger from CASD as a potential candidate for the same superintendent position that Dusman interviewed for in Tuscarora School District. Plaintiff's Statement, Ex. 2 at 10-12. During their respective interviews, both Dusman and Mr. Bigger took credit for the standards based report card system implemented in CASD. Id. at 14. Mr. Smith goes on to state in his deposition that independent of this single issue, Mr. Bigger was clearly a superior candidate to Dusman after the first round of interviews, but that they gave Dusman a second interview "out of courtesy." Id. at 13. Mr. Smith asserted quite concisely that Dusman's "first interview was bad," and "just was not as good as Chris' and we were done." Id. Moreover, Mr. Smith denied that he or any other member of the Tuscarora Board spoke to Padasak about the standards based report card system. Id. at 15. However, Mr. Smith did articulate that the retiring Superintendent, Rebecca Erb, told the Board that she would seek clarification on who was responsible for the standards based report card system, but was unaware of who she had contacted from CASD for that information. Id. Unfortunately, according to Mr. Smith, despite this question of who was responsible for the standards based report card system, the Tuscarora Board had already decided that they were not going to hire Dusman. Id. at 16.

Padasak admits only that some time after the interview process was completed, Mr. Smith reached out to him, but at no point stated to him that Dusman had lied about the standards based report card system during her interview with Tuscarora. Defendant's Answer with New Matter ¶20. Relatedly, Padasak stated in his deposition that he spoke to Mr. Smith several days after the interview process had been completed, but was unaware of whether the decision had already been made to not hire Dusman. Plaintiff's Brief in Opposition, Ex. B at 123. The only context in which the two may have discussed the standard-based report cards was in the context of discussing the candidate which Tuscarora actually hired, which was not Mr. Bigger. Id. at 125. Therefore, the two participants of the alleged defamatory conversation state no conversation occurred in which Padasak even spoke with Mr. Smith about the standards based report card system, let alone made any comment about Dusman that hindered her employability with Tuscarora.

Although Ms. Erb did contact Padasak a day after the interviews to determine whether Mr. Bigger or Dusman was responsible for the standards based report card system, at no point in her Complaint or further pleadings does Dusman contend that Padasak made any defamatory statements about her to Ms. Erb which may or may not have affected her chances of being hired. See Plaintiff's Brief in Opposition, Ex. B at 121. Therefore, any statements made by Padasak to Ms. Erb are irrelevant to the Court's present

inquiry of Padasak's conversation with Mr. Smith.

Even though a conversation between Padasak and Mr. Smith took place at some point after the interview process, there is no evidence that anything Padasak said during that conversation was defamatory or had any impact on Tuscarora's hiring decisions. Dusman attempts to create a dispute of material fact using the deposition testimony of Phillips Miracle, who purports to have knowledge of a conversation that took place between Padasak and Mr. Smith. Plaintiff's Statement, Ex. 2 at 23-24. Mr. Miracle stated that a couple months after the Tuscarora interviews, Padasak had informed him that Dusman had applied for the open Superintendent position. Id. at 23. Padasak told Mr. Miracle that he had received a phone call from Mr. Smith asking who was lying about an idea that both Mr. Bigger and Dusman had taken credit for during their interviews. Id. at 24. Mr. Miracle did not testify as to any statements made by Padasak to Mr. Smith in response. Rather, Mr. Miracle stated that he only remembered that whatever area was being questioned was Mr. Bigger's responsibility. Id. Although Dusman seeks to use this testimony as evidence that Padasak made a defamatory statement to Mr. Smith in response to his question, these statements merely bolster Padasak's statement that some time after the interview he had spoken with Mr. Smith. Mr. Miracle's testimony provides no insight on any statements made by Padasak to Mr. Smith in response to his question, and instead interposes his own memory of what Mr. Bigger's responsibilities were during his time at CASD.

Even viewing this evidence in the light most favorable to Dusman, this Court finds that Dusman has failed to present any evidence that would permit this Court to find that Padasak made defamatory statements to Mr. Smith which prevented Dusman from receiving the Superintendent position at Tuscarora School District. Rather, the testimony of Mr. Smith himself establishes that the decision to not hire Dusman was based on her poor interview and was made regardless of who was found to be responsible for the standards based report card system. There is no evidence of adverse consequences to Dusman by which any fact-finder could even infer that Padasak made a damaging statement to Mr. Smith about Dusman. They spoke well-after the interview process had completed and the hiring decision had been made. As such, there is no evidence in the record of defamation because there has been no evidence that Padasak made any statements to Mr. Smith about Dusman at all, let alone any defamatory statements which impacted her employment opportunities. Beyond Mr. Smith stating that Dusman was not selected regardless of who was responsible for the standards based report card system, there is no evidence in the record that Padasak even made a statement that had any sort of impact on a party such that this Court or a jury could consider it defamatory or find special harm.

Therefore, given the substantial insufficiency of any evidence in the record to create a dispute of material fact or allow a jury to find in favor of Dusman, Padasak's Motion for Summary Judgment as to Count Two is GRANTED and Count Two is DISMISSED.

D. Defamation Per Se

In response to Padasak's Motion for Summary Judgment, Dusman asserts that all of Padasak's statements alleged in Counts I and II were defamatory per se. Plaintiff's Brief in Opposition at 7. A statement is defamatory per se if it "ascribes to another conduct, character, or a condition that would adversely affect his fitness for the proper conduct of his business, trade, or profession." Pelagatti v. Cohen 536 A.2d 1337, 1345 (Pa. Super. 1987) (holding statements that an attorney had committed improper or illegal actions in his practice such that his integrity and reputation was negatively affected were sufficient for a jury to find defamation per se). However, the truth is an absolute defense to defamation. Id. at 1345-46.

The truth resounds in this case. Dusman admits that she did not have a valid commission at the time. Padasak states in his deposition that although Dusman did not need a commission to supervise, the CASD Board, CASD counsel and Padasak decided that Dusman should not supervise until she had a valid commission. This short period of time in which the three principals were directed to report instead to Padasak lasted only one to three weeks based on various parties' memories. Similarly, the three principals admit that at no point during that time did they have to report anything to Padasak because no issue arose during that time. Based on the record, all parties seem to agree that status quo returned relatively quickly. Relatedly, there is no evidence or claims in the record beyond Dusman's generic claims of an injured reputation that Dusman actually suffered any consequences professionally or personally which were not specifically intended by the CASD. Rather, Dusman was unable to supervise because the CASD specifically chose to not have her supervise during that short time period. As stated in the above sections, there is no evidence in the record that Dusman struggled with enforcing policies due to a lack of respect or credibility in her subordinates. There is no evidence of insubordination or harassment. There is nothing in the record to suggest that Dusman experienced any special or general harm to her person or career. Therefore, no fact-finder could find in Dusman's favor that Padasak's statement that she could not supervise was defamatory per se.

Dusman also alleges that Padasak's alleged statements to Mr. Smith that Dusman lied during her interview with Tuscarora School District are also defamatory per se because they prevented her from being hired as Superintendent. However, as stated more thoroughly above, there is not a the

slightest indication in the record that Padasak spoke to Mr. Smith within such a time period that anything Padasak said could have had any impact on the Tuscarora hiring process. Rather, Padasak and Mr. Smith spoke some time after the interview process had completed and the Tuscarora School District had already decided not to hire Dusman because of her poor first interview. Similarly, there is no evidence in the record that during that conversation Padasak spoke about the standards based report card program, let alone stated that Dusman lied about taking credit for it. There is no evidence in the record which supports a jury finding that Padasak said anything defamatory to Mr. Smith, let alone anything that caused Dusman to lose out on a job opportunity because the Tuscarora School District already had its mind made up. As such, there is insufficient evidence in the record such that no jury could find Padasak stated anything defamatory per se to Mr. Smith.

Therefore, the Court finds that due to a lack of evidence in the record, which could create a dispute of material fact, no reasonable jury could find that any of Padasak's statements, alleged or proven, could be found to be defamatory per se.

E. COUNT THREE: FALSE LIGHT

In addition to the two claims of Defamation, Dusman also alleges false light against Padasak for the true statements Padasak made to the aforementioned individuals regarding Dusman's lack of valid commission, and the CASD decision to not have her supervise principals until she received a valid commission. Specifically, Dusman alleges that Padasak knew that her lack of Commission was not discovered by an audit, knew or should have known that the district would not have been fined, and knew or should have known that Dusman did not lose the ability to supervise due to her lack of commission. Amended Complaint ¶28. To establish false light, the plaintiff must show that "the false light in which the other was placed would be highly offensive to a reasonable person, and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." Coleman v. Ogden Newspapers, Inc., 142 A.3d 898, 905 (Pa. Super. 2016) (citing Restatement (Second) of Torts §652E).

In the instant case, insufficient evidence has been asserted by Dusman such that a jury could find Padasak liable for false light. There is no evidence in the record that Padasak told anyone at all that Dusman could or should have been fired, so no jury could find that such a statement cast Dusman in a false light.

Relatedly, Padasak confirms that the term "audit" refers to the normal bi-annual state review of certifications and commissions. Defendant's MSJ, Ex 14 at 22-23. There is no evidence in the record to contradict this

meaning of the word "audit" because none of the principals recall Padasak using this term and this term is not alleged or asserted to have been used in any other conversation. Therefore, a jury could not find that Padasak knew Dusman's lack of commission was discovered in an audit, when Padasak claims without contradiction by any other party that the deficiency was revealed in a bi-annual audit done by the state.

A reasonable jury also would not be able to find that Padasak should have known that the CASD would not be fined as a result of Dusman's lack of commission. As with the term "audit," Padasak clarified in his deposition that the term "fined" as he used it meant that the state would withhold subsidies from the school district. Defendant's MSJ, Ex. 14 at 24. Padasak stated that in previous audits, the state had withheld certain subsidies "because of certification issues." Id. at 25. Dusman presents no evidence to contradict Padasak's use of the term "fined" in this context. If Padasak believed the CASD could be fined in light of previous experiences regarding certifications and the state withholding subsidies, a jury could not reasonably find, in the absence of any contradictory evidence, that Padasak should have known the district would not be fined.

Similarly, a reasonable jury could not conclude that Padasak should have known that Dusman did not lose her ability to supervise. Padasak stated in his deposition that CASD Board leadership, CASD counsel, and Padasak decided that Dusman should not supervise, and Padasak was directed to inform the principals as much. Plaintiff's Statement, Ex. 1 at 39. There is no evidence in the record that Padasak told any of the named individuals that Dusman was legally unable to supervise. Rather, Padasak was passed on a decision made by the CASD. Therefore, the question of whether Padasak should have known as a matter of law that Dusman could still supervise is irrelevant in light of the fact that the CASD leadership decided she should not.

Moreover, there is insufficient evidence proffered by Dusman such that a jury could find that Padasak's comments would be highly offensive to a reasonable person. The terms "audit" and "fine," though potentially alarming, would not highly offend a reasonable person when they refer to standard practices of state monitoring of school certifications and commissions as is the case here. As stated above, the record establishes that Padasak may have used these terms, but only in his conversation with the three principals, who themselves do not recall hearing Padasak use those terms. A jury is unlikely to conclude that the terms would be highly offensive if the audience allegedly hearing them does not even recall their use. There is no evidence in the record that supports a finding that the CASD's decision to not allot Dusman to supervise without a valid commission would be

highly offensive to a reasonable person. In light of the fact the Dusman did not have a valid commission at the time, a jury could not find it highly offensive for the CASD Board to independently decide that she should not supervise principals during that period of time. There is no evidence in the record that a jury could find Padasak's communication of the CASD's decision regarding Dusman's supervisory responsibilities was cast in a false light to any party.

In the instances described above in which Dusman would even be able to establish that a conversation took place or that any statement was made about Dusman by Padasak in those conversations, none of the statements attributed to Padasak could be found to have cast Dusman in a false light. They are based in Padasak's understanding of the situation at the time, which has not been contradicted by any evidence from Dusman such that a dispute of material fact would exist to survive summary judgment. Therefore, Padasak's Motion for Summary Judgment as to Count III false light is GRANTED and Count III is DISMISSED.

F. COUNT FIVE: INTENTIONAL INFLICTION OF MENTAL DISTRESS

Dusman's final claim alleges that Padasak's conduct was extreme and outrageous, intentional or reckless, and caused Dusman emotional distress that was so severe, that she still needed treatment and medication for a year after the underlying events occurred. Amended Complaint ¶¶38-41. Dusman's reported emotional distress caused "anxiety, sleeplessness and sleep deprivation, high blood pressure and family strain." Id. at ¶40.

To establish a claim for intentional infliction of emotional distress, a plaintiff must show that "(1) a person who by extreme and outrageous conduct (2) intentionally or recklessly causes (3) severe emotional distress to another." Manley v. Fitzgerald, 997 A.2d 1235, 1241 (Pa. Cmwlth. 2010) (holding police officers arresting people with probable cause as empowered by law was not extreme or outrageous conduct). Extreme and outrageous conduct is defined as the following:

> [C]onduct which is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

Johnson v. Caparelli, 625 A.2d 668, 672 (Pa. Super. 1993) (citing Restatement (Second) of Torts §46, comment d).

In the instant case, there is an overwhelming absence of any facts from which a jury could reasonably conclude Padasak's statements were extreme or outrageous. The CASD made a decision to not allow Dusman to supervise while she did not have a valid commission. Padasak was directed to inform the principals of these circumstances, indicating that Dusman's deficiency had been discovered in an audit and could lead to the CASD being fined. Padasak was also prompted by Ms. Stickell as to why Dusman would not be supervising the principals and responded with the truth that Dusman did not have a valid commission. Padasak did not speak with the two former assistant superintendents in any context other than to get their advice on how to handle a situation in which an assistant superintendent does not have a valid commission. Based on Mr. Miracle's testimony, Padasak was prompted by Mr. Smith well after Tuscarora interviews to determine whether Dusman or Mr. Bigger was lying about being responsible for the standards based report card system. There is no evidence in the record that Padasak called Dusman a liar. Furthermore, despite claiming physical symptoms of emotional distress, no evidence has been adduced by Dusman such that a jury could find she suffered physically manifested emotional stress.

In light of these facts, which are unchallenged by any evidence presented by Dusman, a reasonable jury could not find that Padasak's statements were extreme or outrageous. There is no evidence in the record that Padasak made any false statements about Dusman. Rather, he was passing on a policy decision by the CASD to three principals, answering questions from Ms. Stickell and Mr. Smith, and seeking advice from two prior assistant superintendents. None of these actions or any of the statements established to have been made by Padasak during those conversations could possibly be considered "utterly intolerable in a civilized community." Despite Dusman's attempts to establish that all of Padasak's statements "were used as part of a ploy to ensure that Cathy was demoted from" her position as assistant superintendent in CASD, there is no evidence in the record to support this allegation. Plaintiff's Brief in Opposition at 8.

In light of the lack of evidence in the record from which a reasonable jury could conclude that Padasak's conduct was extreme or outrageous, Padasak's Motion for Summary Judgment as to Count V intentional infliction of emotional distress is GRANTED. Count V is DISMISSED.

G. STATUTORY IMMUNITY

For the reasons stated above, the lack of evidence presented by Dusman in this case such that no genuine dispute of material fact exists is dispositive of Padasak's Motion for Summary Judgment. For that reason, the Court finds it is unnecessary to evaluate the applicability of statutory

immunity to any of Padasak's alleged actions or statements. As stated in this Court's Opinion on Preliminary Objections dated May 21, 2015, common law high public official immunity does not apply to Padasak, and likely the same factual issues addressed in that Opinion, such as whether Padasak's statement were made within the scope of his duties and whether he acted maliciously or by willful misconduct, would still remain to be decided by a jury. As such a ruling on whether statutory immunity applies at this time would be inappropriate and unnecessary.

CONCLUSION

Based on the lack of evidence adduced by Dusman to create a dispute of material fact such that a jury could potentially find in Dusman's favor as to any of her claims, Padasak's Motion for Summary Judgment is GRANTED and this case is DISMISSED.

ORDER OF COURT

AND NOW THIS 11th day of October, 2017, upon review of Defendant's Motion for Summary Judgment, filed on April 21, 2017, Plaintiff's Statement of Uncontested and Contested Material Facts, filed on May 22, 2017, and Plaintiff's Brief in Opposition, filed on July 10, 2017, and upon independent review of the record and applicable law,

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is GRANTED. Plaintiff's case is DISMISSED in its entirety.

This Order is pursuant to the attached Opinion.

Pursuant to Pa.R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order, including a copy of this Order, to each party, and shall note in the docket the giving of such notice and the time and manner thereof.