

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**MICHAEL GYDA, III,
Plaintiff,**

v.

**TEMPLE UNIVERSITY, TEMPLE
UNIVERSITY SCHOOL OF MEDICINE,
TEMPLE UNIVERSITY DEPARTMENT
OF CAMPUS SAFETY SERVICES,
KIMI HATTON, Ph.D., ROBERT
SUHADOLNIK, Ph.D., and DAWN
MARKS, Ph.D.,**

Defendants.

CIVIL ACTION

NO. 98-1374

DUBOIS, J.

MAY 23, 2000

MEMORANDUM

I. INTRODUCTION

On March 16, 1998, Michael Gyda, III (“plaintiff”) filed a nine-count Complaint against defendants Temple University–Of the Commonwealth System of Higher Education (“Temple University”)¹, Robert Suhadolnik, Ph.D., Dawn Marks, Ph.D, and Kimi Hatton, Ph.D. Plaintiff’s Complaint alleges various wrongful acts by all these defendants, including sexual harassment, reverse discrimination, defamation, breach of implied contract, intentional interference with prospective economic advantage, intentional infliction of emotional distress, and negligence.

¹Plaintiff named Temple University, Temple University School of Medicine and Temple University Department of Campus Safety Services as defendants in the Complaint. The proper corporate name for these defendants is Temple University–Of the Commonwealth System of Higher Education.

Since filing his Complaint, plaintiff has reached a settlement with Dr. Hatton. On June 30, 1999, by Stipulation of Dismissal, plaintiff's Complaint against Dr. Hatton and her counterclaims against plaintiff were dismissed with prejudice (see Doc. 60).

Presently before the Court is the Motion for Summary Judgment on all counts filed jointly on March 16, 1999 by defendant Temple University, and Drs. Suhadolnik and Marks (the "individual defendants") (see Doc. 30).

II. FACTS

In August, 1992 plaintiff applied to and was accepted in Temple University's Ph.D. Program in Biochemistry. Prior to enrolling in Temple University's program, plaintiff attended two years of medical school at Hahneman University, where he was dismissed in 1987 for poor academic performance. Plaintiff had also completed a master's degree at Drexel University in Biological Sciences and had worked for four years as a research scientist prior to arriving at Temple University.

At Temple University, Ph.D. candidates are required to perform laboratory research under the direction of a faculty advisor. The student typically receives a stipend as part of this arrangement. Dr. Dianne Soprano was initially assigned as plaintiff's faculty advisor and he joined her laboratory in September 1992. He remained there until December 1994. By the end of that period, however, plaintiff had become increasingly dissatisfied with his situation in Dr. Soprano's laboratory. He believed he could further advance his studies in a different laboratory with a different faculty adviser. Plaintiff informed Dr. Robert Suhadolnik, Director of Temple University's Graduate Program in Biochemistry, and Dr. Dawn Marks, the Assistant Dean for

Graduate Studies at Temple University, of his discontent and he eventually requested a change of faculty advisors.

Temple University granted plaintiff's request on December 16, 1994. Plaintiff chose Dr. Kimi Hatton as his new faculty advisor and he began working in her laboratory later that month.² Soon after starting in this new laboratory, plaintiff and Dr. Hatton began a romantic affair. Their relationship lasted only a few weeks, until late January or early February 1995. At that time, plaintiff informed Dr. Hatton of his desire that they maintain a purely professional relationship in the future.

In deposition testimony Dr. Hatton testified that soon after beginning the affair she became uncomfortable. She stated that she was therefore extremely relieved by plaintiff's request that they end the affair. Plaintiff testified at his deposition that once he said he wanted to end the affair Dr. Hatton made no further sexual comments or advances toward him. Moreover, plaintiff testified that neither party sought to renew the relationship once it was over.

Plaintiff continued to work in Dr. Hatton's laboratory for over a year after he terminated the affair. However, the remainder of plaintiff's time in Dr. Hatton's laboratory was not trouble-free. According to plaintiff, his rejection of Dr. Hatton caused her to begin to treat him in a hostile, rude and harassing manner. He testified that Dr. Hatton began to verbally criticize his work product and work habits, and that she subjected him to unjustifiably harsh and unwarranted

²Plaintiff was in the midst of litigation against Hahneman University for, among other things, alleged discrimination in connection with his discharge from Hahneman's medical school in 1987. In order to accommodate plaintiff's scheduled trial against Hahneman, Dr. Hatton allowed plaintiff to postpone his start date in her laboratory.

criticism soon after their relationship ended. By contrast, according to Dr. Hatton, plaintiff's problems were his own doing. She testified that plaintiff began slacking on his laboratory duties, and that he stopped completing his laboratory requirements, such as participation in a "journal club," whereby he was responsible for maintaining files on current scientific literature. Dr. Hatton also testified that plaintiff failed to keep regular hours, would miss work without calling in and would leave the laboratory without informing her of his whereabouts.

By February 1996 plaintiff's conduct had become disruptive to other students in Dr. Hatton's laboratory. Plaintiff spoke loudly and often used swear words, sexual innuendo and sexually explicit language that other members of the laboratory could hear. Plaintiff also stored pornographic pictures on his computer and kept sexually explicit materials on display in his work area.

On February 16, 1996 Dr. Xavier Mayo, a postdoctoral fellow at Temple University's Fels Institute for Cancer Research and Molecular Biology, reported to E. Premkumar Reddy, the Chairman of the Department of Biochemistry and Molecular Biology, that plaintiff had verbally assaulted him on two occasions in Dr. Hatton's laboratory. Dr. Reddy reported the incident to campus security, and the matter was referred to the University Disciplinary Committee ("UDC") for resolution. Plaintiff was angered by the UDC investigation. As a result, on May 7, 1996 he left Dr. Hatton's laboratory, abandoning his research, without word as to when or whether he would return. On May 14, 1996 the UDC found plaintiff guilty of "interfering or attempting to interfere with or disrupting the conduct of classes or any other normal or regular activities of the University."

By early 1996, at the latest, plaintiff reported his brief affair with Dr. Hatton's and his subsequent difficulties in her laboratory to Drs. Suhadolnik and Marks. A faculty meeting was scheduled for June 16, 1996 for the sole purpose of addressing this situation. Plaintiff requested permission to audiotape that meeting; when the participants objected to his doing this, the meeting was adjourned and nothing was accomplished. Subsequently, on or about July 1, 1996, Dr. Suhadolnik had a private meeting with plaintiff in Dr. Suhadolnik's office. At the conclusion of that meeting Dr. Suhadolnik presented to plaintiff a memorandum containing remarks and observations which, according to plaintiff, Dr. Suhadolnik said he intended to make at the June 16, 1999 meeting. Plaintiff objected to the contents of the memorandum, however, because it did not reflect his views or concerns on any of the issues. Following this meeting with Dr. Suhadolnik, plaintiff broke off communication with Temple University and its representatives, and he refused to return to Dr. Hatton's laboratory, where he had not worked since May 7, 1996.

Beginning in May 1996 Dr. Hatton and other members of Temple University's Biochemistry Department made attempts to get plaintiff to return to the Ph.D. program. On August 2, 1996 Dr. Hatton wrote to plaintiff to inform him that he had been absent from the laboratory for three months, and to encourage him to return in order to avoid any possible negative consequences. Also on August 2, 1996 Drs. Suhadolnik and Reddy wrote plaintiff to encourage him to return to the program and to provide a deadline by which time plaintiff had to report to Dr. Hatton's laboratory. In response to these overtures, on August 9, 1996 plaintiff officially resigned his position in Dr. Hatton's laboratory and withdrew from the Ph.D Biochemistry program at Temple. Since that time plaintiff has not returned to Temple

University's campus for any reason.

On or about September 8, 1996 plaintiff filed formal charges of sexual harassment and retaliation against Dr. Hatton through Temple University's Office of Affirmative Action. This was the first time plaintiff had notified the Office of Affirmative Action that he believed he had been subjected to sexual harassment; he claims he did not report the matter sooner because he feared retaliation by Dr. Hatton and others in the Biochemistry Department. The Office of Affirmative Action investigated plaintiff's complaint and found that because Dr. Hatton engaged in a romantic relationship with plaintiff there was a "reasonable basis" for believing that a violation of the Temple University Sexual Harassment policy had occurred. The investigation also concluded that there was no basis for believing that plaintiff was the victim of a hostile work environment. Dr. Hatton was ultimately given a verbal and written reprimand by Temple University for her involvement in the affair.

On or about January 21, 1997 Temple University's Department of Campus Safety Services ("Campus Safety") issued a memorandum to all shift commanders stating that plaintiff was prohibited from entering university property because he had made threats to a faculty member. Some time thereafter, an enlarged reproduction of plaintiff's university I.D. picture along with the above-mentioned memorandum was posted in a number of locations around Temple University's campus. Plaintiff first learned of the existence of the Campus Safety memorandum in May 1997 from a former classmate.

In February and March of 1998, plaintiff asked Dr. Hatton to provide letters of recommendation on his behalf to other Graduate Studies programs. Dr. Hatton provided each

school with a letter describing the nature of plaintiff's work in her laboratory and the dates he worked there. Although he was not accepted by any of the programs to which he applied, plaintiff is not aware of any false or negative references by Dr. Hatton.

III. STANDARD OF REVIEW

“If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law[,]” summary judgment shall be granted. Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986). The Supreme Court has explained that Rule 56(c) requires “the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Therefore, “a motion for summary judgment must be granted unless the party opposing the motion can adduce evidence which, when considered in light of that party’s burden of proof at trial, could be the basis for a jury finding in that party’s favor.” J.E. Mamiye & Sons, Inc. v. Fidelity Bank, 813 F.2d 610, 618 (3d Cir. 1987) (citing Anderson and Celotex Corp.).

In considering a motion for summary judgment, the evidence must be considered in the light most favorable to the non-moving party. See Adickes v. S.H. Kress and Co., 398 U.S. 144, 159 (1970) (quoting United States v. Diebold, 369 U.S. 654, 655 (1962)). However, the party opposing summary judgment “must do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,

586 (1986). Therefore, “[i]f the evidence [offered by the non-moving party] is merely colorable or is not significantly probative, summary judgment may be granted.” Anderson, 477 U.S. at 249-50 (citations omitted). On the other hand, if reasonable minds can differ as to the import of the proffered evidence that speaks to an issue of material fact, summary judgment should not be granted.

IV. DISCUSSION

A. Counts 1-4: Discrimination, Retaliation, Harassment and Section 1983 Claims.

Counts 1-3 of Plaintiff’s Complaint assert claims against all defendants for reverse discrimination, retaliation, and sexual harassment in violation of 42 U.S.C.A. §§ 2000e et. seq. (“Title VII”), 20 U.S.C.A. §§ 1681 et. seq. (“Title IX”), and 43 Pa. C.S.A. § 951 et. seq. (“PHRA”), respectively. Count 4 alleges a violation of Plaintiff’s Civil Rights pursuant to 42 U.S.C.A. § 1983 (“Section 1983”).

The claims in Counts 1-4 are all based on the same underlying set of allegations by Plaintiff. See Complaint, at ¶¶ 13-45, 53-54, 61-62, 70-71. As a result, the Court has grouped these related counts together for purposes of its analysis.

1. Claims Against the Individual Defendants – Drs. Suhadolnik and Marks.

Counts 1-4 of the Complaint assert claims against all remaining defendants – that is, Temple University, and Drs. Suhadolnik and Marks. However, in Plaintiff’s Response to Defendants’ Motion for Summary Judgment plaintiff agreed to withdraw the causes of action alleged in Counts 1-4 against Drs. Suhadolnik and Marks. See Plaintiff Michael Gyda’s Memorandum of Law in Support of His Response to Defendants’ Motion for Summary Judgment

(“Plaintiff’s Memo.”) (Doc. 32, filed April 5, 1999), at 9. Accordingly, Counts 1-4 against the individual defendants will be marked withdrawn with prejudice by the Court.

2. Claims Against Defendant Temple University.

a. Reverse Discrimination (Counts 1-3).

In Counts 1-3 of the Complaint plaintiff alleges that he was the victim of reverse discrimination by defendant Temple University in violation of Title VII, Title IX and the PHRA, respectively. However, in Plaintiff’s Response to Defendants’ Motion for Summary Judgment plaintiff agreed to withdraw these causes of action. See Plaintiff’s Memo., at 9-10. Accordingly, Counts 1-3 against defendant Temple University will be marked withdrawn with prejudice by the Court.

b. Retaliation (Counts 1-3).

Counts 1-3 of plaintiff’s Complaint also allege that plaintiff was the victim of retaliation by defendant Temple University in violation of Title VII, Title IX and the PHRA, respectively. According to plaintiff, he engaged in protected conduct when he reported to Temple University officials that he had been the subject of sexual harassment in Dr. Hatton’s laboratory, and he was subsequently constructively discharged.

In order to prove a prima facie case of retaliation under Title VII, Title IX and the PHRA, a plaintiff must show: (1) that he engaged in protected activity; (2) that the employer took an adverse employment action after or contemporaneous with the employee's protected activity, and (3) that there is a causal link between the protected activity and the discharge. See Farrell v. Planters Lifesavers Co., 206 F.3d 271, 278 (3d Cir. 2000); Woodson v. Scott Paper Co., 109 F.3d

913, 919 (3d Cir. 1997) (applying this prima facie test to retaliation cases arising under Title VII, see 42 U.S.C.A. § 2000e-3(a), and the PHRA, see 43 Pa.C.S.A. § 955(d)); Weaver v. Ohio State Univ., et. al., 71 F.Supp.2d 789 (S.D. Ohio 1998), aff'd 194 F.3d 1315 (6th Cir. 1999) (applying this test to retaliation cases arising under Title VII and Title IX, see 20 U.S.C.A. § 1681).

Defendant Temple University focuses on the causation prong of this test in order to attack plaintiff's prima facie case of retaliation. Temple University begins by claiming that plaintiff did not report his claim of gender discrimination to it until on or about September 8, 1996, the date he filed formal charges of sexual harassment and retaliation against Dr. Hatton through Temple's Office of Affirmative Action. Next, Temple University contends that all of the adverse actions alleged by plaintiff occurred before September 8, 1996 (e.g., Dr. Hatton's and others' referral to the UDC occurred in May 1996; plaintiff left Dr. Hatton's laboratory in May 1996; and plaintiff's withdrawal from the University occurred in August 1996). Therefore, Temple University argues, plaintiff "cannot show any connection between his protected conduct and [Defendant Temple University's] alleged adverse actions." See Defendants' Memorandum of Law in Support of their Motion for Summary Judgment ("Defendants' Memo.") (Doc. 30, filed Mar. 16 1999), at 15. The Court disagrees.

Contrary to Temple University's assertion that plaintiff did not report his alleged harassment until September 8, 1996, there is evidence that plaintiff reported the problems he was having in Dr. Hatton's laboratory to Drs. Suhadolnik and Marks by early 1996. Moreover, the record reflects that a faculty meeting was scheduled for June 16, 1996 for the specific purpose of addressing plaintiff's situation, and that another meeting took place on or about July 1, 1996

between plaintiff and Dr. Suhadolnik. This evidence supports plaintiff's argument that Temple University had actual or constructive notice of plaintiff's complaints well before September 8, 1996 and raises a genuine issue of material fact as to the causal connection between plaintiff's protected conduct and the alleged adverse actions by Temple University. Accordingly, the Court will deny Defendants' Motion for Summary Judgment with respect to plaintiff's claims of retaliation against Temple University in Counts 1-3 of the Complaint.

c. Quid Pro Quo Sexual Harassment (Counts 1-3).

Counts 1-3 of plaintiff's Complaint further allege that plaintiff was the victim of quid pro quo sexual harassment by defendant Temple University in violation of Title VII, Title IX and the PHRA, respectively.³ According to plaintiff, following plaintiff's decision to terminate his affair with Dr. Hatton on or about late January or early February 1995, she began to treat him in an extremely hostile, rude and harassing manner.

In order to establish a prima facie case for quid pro quo sexual harassment under Title VII and the PHRA, a plaintiff must show: (1) that he belongs to protected group; (2) that he was subjected to unwelcome sexual harassment; (3) that the harassment complained of was based on sex; and (4) that his reaction to unwelcome behavior affected tangible aspects of his compensation, or terms, conditions or privileges of employment. See Virgo v. Riviera Beach Assoc., Ltd., 30 F.3d 1350, 1361 (11 th Cir. 1994) (Title VII); Hoy v. Angelone, et. al., 691 A.2d 476, 480 & n.5 (Pa. 1997) (PHRA); see also McGraw v. Wyeth-Ayerst Labs., Inc., 1997 WL 799437 *3 (E.D. Pa. Dec. 1997) ("To make out a claim for quid pro quo sexual harassment, an

³Plaintiff does not make any claim of hostile work environment sexual harassment.

employee must show that a supervisor conditioned tangible job benefits on the employee's submission to unwelcome sexual conduct or penalized [him] for refusing to engage in such conduct.”). Similarly, to state a claim for quid pro quo sexual harassment under Title IX, a plaintiff must establish that a tangible educational action resulted from a refusal to submit to sexual demands. See Crandell v. New York College of Osteopathic Medicine, 87 F. Supp. 2d 304, 314 (S.D.N.Y. 2000).

Defendant Temple University argues that plaintiff's claim of quid pro quo sexual harassment must fail because plaintiff has not established that Dr. Hatton conditioned any tangible job or educational benefits on plaintiff's submission to unwelcome sexual conduct or otherwise penalized him for refusing to engage in such conduct. According to Temple University, plaintiff's allegations and deposition testimony establish that after plaintiff broke off his relationship with Dr. Hatton, she did not approach plaintiff with any unwelcome sexual advances or requests for sexual favors. Thus, Temple University contends, plaintiff can not establish one of the essential elements for a claim of quid pro quo sexual harassment. The Court disagrees.

Defendant Temple University's Office of Affirmative Action concluded that there was a “reasonable basis” for believing that Dr. Hatton had violated the university's sexual harassment policy. Moreover, plaintiff testified that his adverse employment consequences began soon after he told Dr. Hatton that he wanted to discontinue their affair and maintain a purely professional relationship. Although there is evidence that Dr. Hatton was relieved to hear that plaintiff wanted to end their affair, see Deposition of Dr. Hatton (“Hatton dep.”), at 36, there is also

evidence that her feelings were “ambivalent and conflicted” after the breakup, see id. at 37. This evidence supports plaintiff’s argument that Dr. Hatton was upset by his breaking off their affair, and raises a genuine issue of material fact as to the causal connection plaintiff alleges between his rejection of Dr. Hatton and her making his life more difficult in the laboratory in return. See Walker v. Macfrugals Bargains, Closeouts, Inc., et. al., 1994 WL 693387 (E.D. La. 1994) (holding that a claim for quid pro quo sexual harassment survived the defendant’s motion for summary judgment where an employee’s refusal to resume a sexual relationship with her supervisor did not lead to any economic loss, such as poor performance reviews, lost pay raises or formal discipline, but instead resulted in a “more difficult” work life, as created by unwarranted criticism and verbal reprimands). Accordingly, the Court will deny Defendants’ Motion for Summary Judgment with respect to plaintiff’s claims of quid pro quo sexual harassment against Temple University in Counts 1-3 of the Complaint.

d. Section 1983 (Count 4).

In Count 4 of the Complaint plaintiff charges that by the discriminatory, retaliatory and harassing conduct alleged in Counts 1-2, in violation of Title VII and Title IX, defendant Temple University also violated plaintiff’s Civil Rights pursuant to Section 1983.

Section 1983, of itself, “does not create any substantive rights; it creates only a remedy for the violation of a substantive federal right.” Groman v. Township of Manalpan, 47 F.3d 628, 633 (3d Cir. 1995), citing Oklahoma City v. Tultte, 471 U.S. 808, 816 (1985). However, both Title VII and Title IX contain comprehensive enforcement and remedial schemes for violations of their substantive provisions. These schemes are meant to provide the exclusive remedy for

violations of those statutes. See Washington v. Department of Veterans Affairs, 1998 WL 754464, *2 (E.D. Pa. 1998) (Title VII provides exclusive remedies); Bougher v. University of Pittsburgh, 713 F. Supp. 139 (W.D. Pa. 1989) (Title IX provides exclusive remedies).

Although plaintiff may proceed on his retaliation and quid pro quo claims against Temple University, as alleged in Counts 1-2, under both Title VII and Title IX, he is barred from making a Section 1983 claim on the same underlying facts. Accordingly, the Court will grant summary judgment in favor of defendant Temple University with respect to Plaintiff's Section 1983 claim in Count 4.

B. Count 5: Defamation.

In Count 5 of the Complaint plaintiff states a defamation claim against all remaining defendants. Upon review of the record, it appears to the Court that plaintiff bases this claim on two incidents: (1) when Dr. Hatton allegedly “provided extremely negative and false references about him to more than one Graduate Studies program;” and (2) when Temple University and Temple Campus Security allegedly “published defamatory statements by circulating a memorandum on Jan. 21, 1997 to all shift commanders prohibiting plaintiff from entering Temple University facilities.”

A defamatory statement, under Pennsylvania law, “is one that 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” Jones v. Johnson & Johnson, et. al., 1997 WL 549995 *7 (E.D. Pa. 1997), aff'd 166 F.3d 1205 (3d Cir. 1998) (quoting U.S. Healthcare, Inc. v. Blue Cross of Greater Philadelphia, 898 F.2d 914, 923 (3d Cir.), cert. denied, 498 U.S. 816 (1990)). In order

to establish a claim for defamation under Pennsylvania law, a plaintiff must show: (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. See Miketic v. Baron, 675 A.2d 324, 327 (Pa. Super. 1996); Elia v. Erie Ins. Exchange, 634 A.2d 657, 659 (Pa. Super. 1993).

1. Claim Against the Individual Defendants – Drs. Suhadolnik and Marks.

The individual defendants move for summary judgment as to Count 5 on the ground that they did not publish either of the statements that plaintiff alleges to have defamed him. The Court agrees. There is no evidence in the record to suggest that either Dr. Suhadolnik or Dr. Marks played any role in the publication of either the letters of reference to Graduate Studies programs or the Campus Safety memorandum of January 21, 1997. As a result, plaintiff can not establish that they published a defamatory statement, which is one of the essential elements in an action for defamation. See 42 Pa. C.S.A. § 8343(a)(2) (West 1998). Accordingly, the Court will grant summary judgment in favor of Drs. Suhadolnik and Marks with respect to the defamation claim in Count 5 of the Complaint.

2. Claim Against Defendant Temple University.

With respect to defendant Temple University's Motion for Summary Judgment on Count 5, the Court will address the two alleged defamatory statements separately.

First, Temple University moves for summary judgment in connection with the letters of

reference written by Dr. Hatton on the ground that plaintiff has produced no facts to establish the defamatory character of any references contained in those letters. The Court agrees. The evidence in the record shows that the letters in question stated only the dates during which plaintiff worked in Dr. Hatton's laboratory and the nature of the projects on which he worked. The letters contained no false or negative statements which could harm Plaintiff's reputation in the community. See Sample Letter, attached as Exhibit S to Defendants' Memo. Moreover, when asked at his deposition whether he was aware of any specific false or negative references Dr. Hatton sent to Graduate Studies programs, plaintiff testified that he did not know of any. See Depositino of Plaintiff ("Gyda dep."), at 287-88. As a result, plaintiff can not establish that Dr. Hatton published any defamatory statements concerning him.

Second, Temple University moves for summary judgment in connection with the Campus Safety memorandum of January 21, 1997 on the ground that everything contained in that document was truthful. Although truth is an absolute defense to such a claim, the Court will not grant Temple University's motion for summary judgment with respect to the Campus Safety memorandum on the facts presented. The record reflects that the Campus Safety memorandum stated that plaintiff was prohibited from entering Temple University property and that campus police had received information that plaintiff had threatened a member of the university. Plaintiff admitted during his deposition that he once threatened his former faculty advisor, Dr. Soprano. However, the evidence establishes that the threat was made around the time plaintiff started working in Dr. Hatton's laboratory, that is, in late 1994 or early 1995. See Gyda dep., at 352-53.

There was a gap of approximately two years from the time plaintiff threatened Dr. Soprano until the time the Campus Safety memorandum was issued. Although plaintiff may have threatened a faculty member in late 1994 or early 1995, that fact can not operate to shield Temple University as a matter of law from potential liability for defamation related to a document published in January of 1997. See, e.g., Goldstein v. Kinney Shoe Corporation, 931 F. Supp. 595, 599 (N.D. Ill. 1996) (Rejecting truth as a defense to defamation where the “truth” was not relevant to the time period at issue in the defamation allegation). As a result, the Court concludes that plaintiff is entitled to have a jury determine whether the Campus Safety memorandum was defamatory.

Accordingly, the Court will grant summary judgment in favor of defendant Temple University with respect to plaintiff’s claim of defamation in Count 5 as it relates to letters of reference provided by Dr. Hatton to Graduate Studies programs. The Court will deny defendant Temple University’s Motion for Summary Judgment on Count 5 as it relates to the Campus Safety memorandum of January 21, 1997.

C. Counts 6 & 7: Breach of Implied Contract & Intentional Interference with Prospective Economic Advantage.

In Count 6 of the Complaint plaintiff charges all remaining defendants with breach of implied contract. However, in Plaintiff’s Response to Defendants’ Motion for Summary Judgment plaintiff agreed to withdraw this cause of action. See Plaintiff’s Memo., at 15. In Count 7 plaintiff charges Dr. Hatton alone with intentional interference with prospective economic advantage. However, as noted earlier in this Memorandum Dr. Hatton has been dismissed from the case by stipulation of the parties. Accordingly, Count 6 against all

defendants will be marked withdrawn with prejudice by the Court. With respect to Count 7, Dr. Hatton's motion for summary judgment will be denied as moot.

D. Count 8: Intentional Infliction of Emotional Distress.

In Count 8 of the Complaint plaintiff charges all remaining defendants with intentional infliction of emotional distress. Plaintiff bases these claims upon the same facts that support his claims for discrimination, retaliation, sexual harassment and defamation, in Counts 1-4.

Under Pennsylvania law, to prevail on a claim of intentional infliction of emotional distress a plaintiff must establish "extreme and outrageous" conduct by the defendants. Jacques v. AKZO Int'l Salt, Inc., 619 A.2d 748, 754 (Pa. Super. 1993). This standard imposes a high threshold for liability, and it "clearly does not extend to mere insults, threats, annoyances, petty oppressions, or other trivialities." Kazatsky v. King David Mem'l Park, Inc., 527 A.2d 988, 991 (Pa. 1987). Moreover, it is a question for the court whether as a matter of law the conduct alleged reaches the requisite level of outrageousness. Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988).

1. Claim Against the Individual Defendants – Drs. Suhadolnik and Marks.

Upon review of the record, the Court does not find any evidence to support a claim of intentional infliction of emotional distress against either of the individual defendants that remain in this case. There is no evidence that Drs. Suhadolnik and Marks ever discriminated against plaintiff, or that they sexually harassed him, or that they published any defamatory statements about him. Rather, upon viewing the facts in the light most favorable to plaintiff, the only related claim upon which plaintiff survives summary judgment is on the theory that Drs. Suhadolnik and

Marks may have retaliated against him for engaging in protected activity. See supra. However, Plaintiff has failed to demonstrate that any such retaliation rose to the level of outrageousness necessary to support a claim of intentional infliction of emotional distress as a matter of law. Accordingly, the Court will grant summary judgment in favor of Drs. Suhadolnik and Marks with respect to Plaintiff's claim of intentional infliction of emotional distress in Count 8 of the Complaint.

2. Claim Against Defendant Temple University.

The Court similarly finds plaintiff's claim of intentional infliction of emotional distress against defendant Temple University to be unsupported by the evidence in the record. As noted above, plaintiff has withdrawn his claim of reverse discrimination. Moreover, the Court has concluded that plaintiff failed to establish that the alleged retaliation against him rose to the level of outrageousness necessary to support a claim of intentional infliction of emotional distress. See supra. Thus, the only remaining bases for plaintiff's claim of intentional infliction of emotional distress against defendant Temple University are: (1) the conduct supporting his claim of quid pro quo sexual harassment, and (2) the Campus Safety memorandum of January 21, 1997 supporting his defamation claim.

With respect to the quid pro quo sexual harassment basis, Title VII preempts claims for intentional infliction of emotional distress where the two claims are supported by identical factual allegations. See Jansen v. Packaging Corp. of America, 123 F.3d 490, 493 (7th Cir. 1997). With respect to the second basis, the Campus Security memorandum, the Court concludes as a matter of law that plaintiff has failed to demonstrate the requisite level of

outrageousness to support a claim of intentional infliction of emotional distress.⁴ Accordingly, the Court will grant summary judgment in favor of defendant Temple University with respect to plaintiff's claim of intentional infliction of emotional distress in Count 8.⁵

E. Count 9: Negligence.

In Count 9 of the Complaint plaintiff alleges that all of the remaining defendants were negligent in connection with the discrimination, retaliation and sexual harassment charged in Counts 1-4. According to plaintiff, defendants were "negligent in supervising and retaining Dr. Hatton as a faculty member once they had actual or constructive notice of her improprieties, and were negligent in enforcing their own internal policies and procedures dealing with harassment and retaliation." Complaint, at ¶ 100.

Under Pennsylvania law, the elements of an action for negligence are: (1) a duty, or obligation, recognized by law, requiring an actor to conform to a certain standard of conduct; (2) a failure on the actor's part to conform to the standard required; (3) a causal connection between conduct and a resulting injury; and (4) an actual loss or damage resulting to interests of another.

⁴The Court also notes that plaintiff's defamation claim based on the Campus Safety memorandum has survived defendant Temple University's motion for summary judgment. Under Pennsylvania law of defamation "no person shall have more than one cause of action for damages for . . . [any] tort founded upon any single publication . . ." See 42 Pa. C.S.A. § 8341(b) (single publication limitation).

⁵A claim for intentional infliction of emotional distress is also subject to a statute of limitations of two years from the time the cause of action accrued. See 42 Pa. C.S.A. § 5524(7) (West 1999); Bougher v. University of Pittsburgh, 882 F.2d 74, 79 (3d Cir. 1989). However, because the Court concludes as a matter of law that plaintiff can not establish any conduct that was sufficiently outrageous to support his claims of intentional infliction of emotional distress in Count 8, it need not consider defendants' statute of limitations argument.

See Kearns v. Minnesota Mutual Life Ins. Co. 75 F. Supp.2d 413, 422 (E.D. Pa. 1999).

1. Claim Against the Individual Defendants – Drs. Suhadolnik and Marks.

Upon review of the record, the Court does not find any evidence to support plaintiff's claim of negligent supervision by the individual defendants. There is no evidence that either Dr. Suhadolnik or Dr. Marks had a duty to supervise Dr. Hatton or that they ever supervised Dr. Hatton during any relevant time. Moreover, there is evidence that neither had the authority to hire or fire Dr. Hatton, see Affidavit of Doctor Marks (dated Mar. 12, 1999), at ¶¶ 3-4, and plaintiff has not produced any evidence to the contrary. As a result, the Court concludes that neither Dr. Suhadolnik nor Dr. Marks owed a duty of care to plaintiff with respect to the supervision of Dr. Hatton. Accordingly, the Court will grant summary judgment in favor of Drs. Suhadolnik and Marks with respect to plaintiff's claim of negligence in Count 9 of the Complaint.

2. Claim Against Defendant Temple University.

The Court also finds that plaintiff's claim of negligent supervision against defendant Temple University fails to survive summary judgment. Plaintiff's negligence claim is grounded solely upon the discriminatory, retaliatory and sexually harassing conduct alleged in Counts 1-4. According to plaintiff, Temple University allowed Dr. Hatton to engage in unlawful conduct, then failed to remedy that behavior by not enforcing its existing policies and procedures.

Temple University argues that plaintiff's state common law claim of negligence is preempted by Pennsylvania's discrimination law applicable to this case, that is, the PHRA. The Court agrees. As the Third Circuit has noted, "where a Pennsylvania statute announces a public

policy supporting, and provides a remedy for, wrongfully discharged employees, no tort cause of action under the common law is available.” Murray v. Commercial Union Ins. Co., 782 F.2d 432, 437 (3d Cir. 1986). Accordingly, the Court will grant summary judgment in favor of defendant Temple University with respect to plaintiff’s claim of negligence in Count 9.

V. CONCLUSION

For all the foregoing reasons, Defendants’ Motion for Summary Judgment will be granted in part and denied in part.

An appropriate Order follows.

1. Defendants' Motion for Summary Judgment is **DENIED AS MOOT** with respect to all claims against Defendant Dr. Hatton – (see Counts 1-9);

2. Plaintiff's claims against defendants Drs. Suhadolnik and Marks arising under 42 U.S.C.A. §§ 2000e et. seq. ("Title VII"), 20 U.S.C.A. §§ 1681 et. seq. ("Title IX"), 43 Pa. C.S.A. § 951 et. seq. ("PHRA"), and 42 U.S.C.A. § 1983 ("Section 1983") are **MARKED WITHDRAWN WITH PREJUDICE** – (see Counts 1-4);

3. Plaintiff's claims of reverse discrimination against defendant Temple University arising under Title VII, Title IX, and the PHRA are **MARKED WITHDRAWN WITH PREJUDICE** – (see Counts 1-3);

4. Defendants' Motion for Summary Judgment is **GRANTED** with respect to plaintiff's claims against defendant Temple University arising under Section 1983 – (see Count 4);

5. Defendants' Motion for Summary Judgment is **GRANTED** with respect to plaintiff's claims against defendants Drs. Suhadolnik and Marks for defamation – (see Count 5);

6. Defendants' Motion for Summary Judgment is **GRANTED** with respect to plaintiff's claims against defendant Temple University for defamation as it relates to letters of reference provided by Dr. Hatton to Graduate Studies programs – (see Count 5);

7. Plaintiff's claims against all defendants for breach of implied contract are **MARKED WITHDRAWN WITH PREJUDICE** – (see Count 6);

8. Defendants' Motion for Summary Judgment is **GRANTED** with respect to plaintiff's claims against all defendants for intentional infliction of emotional distress – (see

Count 8);

9. Defendants’ Motion for Summary Judgment is **GRANTED** with respect to plaintiff’s negligence claims against all defendants – (see Count 9); and

10. In all other respects, Defendants’ Motion for Summary Judgment is **DENIED**.⁶

IT IS FURTHER ORDERED that Temple University – Of the Commonwealth System of Higher Education is substituted as a defendant for the following defendants named in the Complaint: Temple University, Temple University School of Medicine and Temple University Department of Campus Safety Services. The caption of the case shall hereafter read as follows:

MICHAEL GYDA, III,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 98-1374
	:	
TEMPLE UNIVERSITY – OF THE	:	
COMMONWEALTH SYSTEM OF	:	
HIGHER EDUCATION,	:	
Defendant.	:	
	:	

BY THE COURT:

JAN E. DUBOIS, J.

⁶By way of summary, the Court notes that the following claims survive summary judgment: (1) plaintiff’s claim against defendant Temple University for retaliation under Title VII, Title IX, and the PHRA (see Counts 1-3); (2) plaintiff’s claim against defendant Temple University for quid pro quo sexual harassment under Title VII, Title IX and the PHRA (see Counts 1-3); and (3) plaintiff’s claim against defendant Temple University for defamation based on the Campus Safety memorandum of January 21, 1997.