

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

BRIDGET FLYNN : CIVIL ACTION
 :
 v. :
 :
 LA SALLE UNIVERSITY :
 and MARGUERITE AMBROSE : NO. 97-4542

MEMORANDUM AND ORDER

HUTTON, J.

September 9, 1998

Presently before the Court are Defendants' Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (Docket No. 8), Plaintiff's response thereto (Docket No. 10), and Defendant's Reply Brief (Docket No. 13). For the reasons stated below, the Defendants' motion is **GRANTED**.

I. BACKGROUND

Taken in the light most favorable to the nonmoving party, the facts are as follows. In the Fall of 1993, Plaintiff Bridget Flynn ("Flynn" or "Plaintiff") enrolled at La Salle University. During the Fall Semester of 1993 and Spring Semester of 1994, Plaintiff took general undergraduate studies. In the Fall Semester of 1994, Flynn was admitted to the La Salle University School of Nursing and began taking nursing classes.

Many of the classes at the School of Nursing have a theory component and clinical component. The theory component involves classroom instruction and students are given a letter

grade. The clinical component involves "hands-on" instruction at a hospital and students are graded on a pass/fail basis. Students must receive a passing grade in both components to successfully complete the course.

This case involves the interaction between Flynn and La Salle University Professor Marguerite Ambrose. In the Fall Semester of 1994, Plaintiff took a class called Nursing 307, the Foundations of Practice. Professor Ambrose taught the theory component of Nursing 307. In October of 1994, Flynn asked Ambrose for an extension of time to complete a required paper for the course. Professor Ambrose denied this request even though Ambrose routinely gave other students in that course similar extensions. In November of 1994, Plaintiff again requested an extension because of personal illness and her involvement in a custody hearing involving her son. Professor Ambrose again denied her an extension in November. In denying the request, Plaintiff alleges that Ambrose told her that she was "lazy" and that she "did not like" Plaintiff. Flynn Dep. at 38. Plaintiff then approached Cynthia Capers, then Nursing Program Director and later acting Dean, who required Ambrose to accept the paper four days late. Plaintiff received an F on this paper and Plaintiff alleges that Ambrose gave her an F in retaliation for seeking Capers' intervention.

In December of 1994, Professor Ambrose informed Capers that Flynn was in danger of failing Nursing 307. Capers met with

Flynn and informed her that Ambrose said she was in danger of failing the course. Flynn told Capers that Ambrose was acting unfairly and retaliating by giving her an F in the course because she sought Capers' intervention with the late paper. Subsequently, Plaintiff went to Assistant Dean Mary Ledva to discuss her conflict with Ambrose. Ledva told her not to be concerned and to see whether further conflicts arose.

Plaintiff received a D in Nursing 307 from Professor Ambrose. Plaintiff alleges that when she went to receive her grade, Ambrose said "it's going to follow you for the rest of your life." Flynn Dep. at 33. After this incident, Plaintiff met with acting Dean Gloria Donnelly who told her to discuss it with either Ledva or Capers. Thereafter, Flynn again met with Assistant Dean Ledva. Flynn told Ledva that she earned a C in the course, not the D that she received from Ambrose. Ledva told Flynn not to worry about the grade or Ambrose, because she could continue to progress with her studies at La Salle. In addition, Ledva told Flynn that more than 50% of the class received a D from Ambrose.

In the Summer of 1995, Plaintiff sought an externship with Einstein Medical Center. Flynn requested a recommendation from Ambrose in order to secure this externship. Flynn alleges that Ambrose's explanation for not giving her a recommendation was that Flynn would "embarrass" the La Salle Nursing Program. Flynn Dep. at 69. Flynn did not receive an externship at Einstein

Medical Center, but instead obtained a job at a nursing home which Ledva approved as an externship with La Salle. This externship, however, was to be graded and supervised by Ambrose. During the Summer, Ambrose required that all externship students submit journals concerning their work. Flynn mailed her first two journal entries and called Ambrose to ensure Ambrose received them. Ambrose told Flynn that if any of her journals were late, Flynn would fail the externship. Flynn then met with Ledva and expressed her fear that Ambrose would flunk her whether or not Flynn mailed her journal entries on time. Ledva suggested that Plaintiff take a different course and withdraw from her externship with Ambrose. Based on this recommendation, Plaintiff withdrew from the externship.

In the Fall of 1995, Plaintiff met with Assistant Dean Ledva and Nursing Program Director Capers and voiced her complaints with the Nursing School in general as well as her conflicts with Ambrose. Ledva suggested that she speak with Dean Donnelly. Plaintiff refused to meet with Dean Donnelly because Donnelly had already told her to see Ledva concerning any of these matters.

Also in the Fall of 1995, Flynn took a class called Ethical Dilemmas. She received a grade of "NR," which stands for Not Recorded. Flynn Dep. at 83-84. Patricia Becker, who was Flynn's professor for Ethical Dilemmas, allowed Flynn extra time after the completion of the semester to finish her course work for

the class. Id. Plaintiff did not complete her course work for that class. Plaintiff alleges she experienced difficulties in completing her course work for the class due to the stress of having a class with Ambrose again during the Spring Semester of 1996. Id. Eventually, Ledva told Flynn she was not permitted any more time to complete her course work. Id. Plaintiff received an F in that course.

In the Spring Semester of 1996, Flynn registered for the course Nursing 409. Professor Ambrose was the only professor who taught the theory component of this course during the Spring Semester of 1996. A few minutes prior to the first examination in that class, Ambrose approached her and said she had an important letter pertaining to Plaintiff's status as a student at La Salle. Ambrose said she would give Flynn the letter after the examination. Plaintiff further alleges that the letter concerned a trivial issue and that she was unable to concentrate during the examination due to Ambrose's comments. Thus, Plaintiff alleges, Ambrose's comments caused Flynn to receive an F on the examination. After receiving the F, Ambrose told Flynn that she would not successfully complete her work that semester and should consider dropping out of La Salle. Flynn Dep. at 104. Based on Ambrose's comments, Flynn again met individually with acting Dean Donnelly, Assistant Dean Ledva and Nursing Program Director Capers. At these meetings, Flynn informed Ledva, Donnelly and Capers of her conversation with

Ambrose. Flynn also stated that she believed Ambrose would fail her even though three examinations remained in the class. Flynn requested to withdraw from the class. Ledva, Capers and Donnelly permitted Flynn to withdraw from Ambrose's class.

In the Fall Semester of 1996, Plaintiff did not register for any classes because the classes she required to graduate were only offered in the Spring. In the Fall of 1996, however, Flynn met with Ledva to discuss registering for the necessary classes in the Spring Semester of 1997. In order to graduate, Flynn only needed to pass three classes, one of which was Nursing 409. Flynn requested she not be assigned to any course taught by Ambrose.

Thus, Flynn again registered for Nursing 409. Again, Professor Ambrose was the only professor who taught the theory component of this class. In addition, Professor Ambrose also taught one of two clinical components of this class. La Salle assigned Plaintiff to the clinical component of Nursing 409 taught by Professor Ambrose despite Plaintiff's conflicts with Ambrose.

Flynn asked Capers, who had become acting Dean, to change her assignment to Ambrose's class, but Capers refused. Flynn also called newly appointed Nursing Program Director, Eileen Giardino, to request a change of her assignment to Ambrose's class. Plaintiff alleges that Giardino never returned her calls.

During the Spring Semester of 1997, Flynn again experienced problems with Ambrose in class. Plaintiff alleges that

Ambrose humiliated and intimidated her during class. During one class, Plaintiff asked Ambrose a question concerning a project. Ambrose refused to answer and told the class it was a "dumb" question. Flynn Dep. at 119. During yet another class, Ambrose asked Flynn and a classmate to answer a case study. Flynn began to answer but Ambrose interrupted her and told the class that her answer was wrong. Later that week, a few minutes prior to an examination, Ambrose told the class only one case study group failed because they were "lazy" and "careless." Flynn alleges Ambrose was referring to her and that her comments influenced her performance on the examination. Flynn Dep. at 128.

In January of 1997, Plaintiff again met with Ledva and Capers concerning her conflicts with Ambrose. Plaintiff alleges that they refused to resolve the situation. In February of 1997, the Plaintiff withdrew from all three nursing classes that she had registered to take that semester. Plaintiff alleges she withdrew from all her classes because of the stress associated with having Ambrose instruct both the theory and clinical component of Nursing 409. After withdrawing from these classes, Plaintiff never returned to La Salle and was unable to receive her degree in Nursing.

Plaintiff brought a complaint based on the following events and named La Salle University and Professor Ambrose as Defendants. Plaintiff brings her action based on four counts.

Count I alleges La Salle breached its contract with Plaintiff. Count II alleges tortious interference with contractual relations by Ambrose. Count III alleges intentional infliction of emotional distress by Ambrose. Finally, Count IV alleges that La Salle is liable to Flynn for the "intentional and/or negligent infliction of emotional distress" caused by Ambrose based on respondeat superior.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate "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." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

B. Breach of Contract

Plaintiff asserts that she is entitled to relief as a result of La Salle's breach of contract with Plaintiff. In order to prove a breach of contract under Pennsylvania law, a plaintiff must show: (1) the existence of a valid and binding contract to which the plaintiff and defendants were parties; (2) the contract's essential terms; (3) that plaintiff complied with the contract's terms; (4) that the defendant breached a duty imposed by the contract; and (5) damages resulting from the breach. See Gundlach v. Reinstein, 924 F. Supp. 684, 688 (E.D. Pa. 1996) (listing elements required in breach of contract case between university and student), aff'd without op., 114 F.3d 1172 (3d Cir. 1997).

Under Pennsylvania law, students may sue a university or college for breach of contract. See Dillon v. Ultrasound Diagnostic Sch., Nos. CIV.A.96-8342, 97-1268, 97-6477, 1997 WL 805216, at *1 (E.D. Pa. Dec. 18, 1997) ("Pennsylvania law permits students to sue a university or college for breach of contract."); Linson v. Trustees of Univ. of Pa., No. CIV.A.95-3681, 1996 WL 479532, at *8 (E.D. Pa. Aug. 21, 1996) (noting that Pennsylvania law permits student to sue their colleges or universities); Gundlach, 924 F. Supp. at 688 ("A review of the relevant Pennsylvania authority reveals that a student may bring a contract action to enforce the specific promises made by his university."); Ross v. Pennsylvania State Univ., 445 F. Supp. 147, 152 (M.D. Pa. 1978) ("A student has a reasonable expectation based on statements of policy by Penn State and the experience of former students that if he performs the required work in a satisfactory manner and pays his fees he will receive the degree he seeks."); see also Barker v. Trustees of Bryn Mawr College, 278 Pa. 121, 122, 122 A. 220, 221 (Pa. 1923) ("[The] relation between student and the college is solely contractual in nature."). Thus, Pennsylvania courts will recognize contract claims based on a university or college's specific promise. See Britt v. Chestnut Hill College, 429 Pa. Super. 263, 270, 632 A.2d 557, 560 (1993) ("[A]n institution may make a contractual obligation to a student which it is not free to later ignore."); Cavaliere v. Duff's Business Inst., 413 Pa. Super.

357, 365, 605 A.2d 397, 401 (1992) ("'[I]f the contract with the school were to provide for certain specified services, such as for example, a designated number of hours of instruction, and the school failed to meet its obligation, then a contract action with appropriate consequential damages might be viable.'" (quoting Paladino v. Adelphi Univ., 454 N.Y.S.2d 868, 873 (App. Div. 1982)); Reimer v. Tien, 356 Pa. Super. 192, 211, 514 A.2d 566, 575 (1986) ("In admitting appellant to its school, appellees contracted to provide a medical education, as well as certain necessities that could be expected at any learning institution.").

In this case, the Plaintiff alleges La Salle breached the contract between herself and La Salle by: (1) assigning her to classes taught by Ambrose and refusing her request to be assigned to classes taught by professors other than Ambrose; (2) failing to provide a grievance procedure adequate to resolve her grievance with Ambrose; and (3) failing to allow her to take classes and attempt to pass them.¹ See Pl. Mem. of Law in Opp'n to Defs.' Mot.

¹ The Plaintiff lists three other contractual obligations that Defendant La Salle owed to the Plaintiff. Those contractual obligations are: (1) to award Plaintiff a degree if she met the requirements; (2) to provide certain procedural avenues to challenge specific actions; and (3) a promise of collegiality and collaboration between learners and teachers, and reciprocity and input on matters of curriculum. See Pl. Mem. of Law in Opp'n to Defs.' Mot. for Summ. J. at 6. The Plaintiff, however, offers no evidence that La Salle violated these contractual obligations. See id. Because a party opposing summary judgment must rely upon more than mere allegations, general denials, or vague statements, the Court finds that summary judgment is appropriate with respect to these claims. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992) (noting that party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements).

for Summ. J. at 6-7. The Court considers each of these arguments in turn.

1. Assigning her to classes taught by Ambrose

Plaintiff alleges that La Salle should have assigned her to classes other than those taught by Ambrose because the school knew of her conflict with Ambrose. In Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, however, Plaintiff offers no evidence that La Salle promised to assign her to classes taught by professors other than Ambrose.² Therefore, because the Court can find no evidence that La Salle promised to assign Plaintiff to classes taught by professors other than Ambrose, the Court concludes that this claim must fail.

2. Failing to Provide Procedures to Resolve Plaintiff's Conflicts with Ambrose

Plaintiff next argues that La Salle breached its contractual obligation to provide the Plaintiff a mechanism to resolve her conflict with Ambrose. Plaintiff offers the deposition testimony of Assistant Dean Ledva who stated that the Plaintiff should expect that the University provide Plaintiff a mechanism to resolve her disputes with Ambrose. Ledva Dep. at 58. Plaintiff also offers the La Salle Student Handbook as evidence because it

² In Plaintiff's Complaint, she alleges that La Salle breached the contract by failing to assign her to class taught by professors other than Ambrose. See Pl.'s Compl. ¶ 39. However, Plaintiff fails to even address this issue in her Memorandum of Law in Support of her Motion in Opposition to Defendants' Motion for Summary Judgment.

did not provide a grievance procedure to resolve conflicts between herself and Ambrose, but only to resolve disputes concerning a final grade, discrimination, or sexual harassment.³ Finally, Plaintiff offers a letter to the Plaintiff from interim Dean Capers which stated that "internal processes established within the School and University must be used to discuss situations between faculty and students." See Letter from Cynthia Flynn Capers, Interim Dean, La Salle University School of Nursing, to Bridget Flynn, La Salle University School of Nursing Student (Feb. 7, 1997). Plaintiff offers this letter as evidence of La Salle's failure to provide a grievance procedure because La Salle informed her of this procedure only after she decided to withdraw from La Salle. See Pl. Mem. of Law in Opp'n to Defs.' Mot. for Summ. J. at 6-7.

Plaintiff asserts that this evidence is sufficient to create a genuine issue for trial that La Salle breached its contract with the Plaintiff. This Court disagrees. The Plaintiff failed to offer evidence that La Salle promised to provide a policy to resolve her conflicts with Ambrose, and therefore, cannot be liable for breach of contract for failing to do so. A student's expectations, a handbook that fails to address a student's grievance, and a letter informing a student of an "informal" grievance procedure to resolve disputes between students and

³ Despite her complaints concerning the grades she received from Ambrose, Plaintiff failed to invoke the procedures in the Handbook in her many conversations with Ledva, Donnelly, and Capers to challenge her grade.

professors are not sufficient evidence to show that La Salle promised to provide a mechanism to resolve disputes between Plaintiff and Ambrose. See Gundlach, 924 F. Supp. at 689 (dismissing student's claim against school because student failed to identify specific benefits allegedly promised by his school beyond "the full benefits and privileges of enrollment"); Linson, 1996 WL 479532, at *8 (stating that breach of contract actions by students against their colleges or universities are viable as long as they allege the specific manner in which the school breached the contract); Cavaliere, 605 A.2d at 401 ("[I]f the contract with the school were to provide for certain specified services, such as for example, a designated number of hours of instruction, and the school failed to meet its obligation, then a contract action with appropriate consequential damages might be viable." (quoting Paladino, 454 N.Y.S.2d at 873)).

In addition, when the Plaintiff discovered the informal procedure used at La Salle to resolve Plaintiff's conflicts with Ambrose is irrelevant. The issue is whether, if at any time, La Salle promised to provide a procedure to resolve disputes between students and professors as a part of its contract with Plaintiff. Again, Plaintiff failed to offer evidence demonstrating that La Salle agreed to provide this procedure as an essential term of

their contract.⁴ Therefore, this Court must conclude that La Salle cannot be liable for failing to provide a grievance procedure to resolve Plaintiff's dispute with a professor when the University made no promise to provide such a procedure.

3. Failing to Allow Plaintiff to take Classes and Attempt to Pass Them

Plaintiff's final contractual claim alleges that La Salle breached its contractual obligation to allow students to take courses and pass them. La Salle admits that allowing students to take classes and attempt to pass them was an essential term of the contract with Plaintiff. See Defs.' Mem. of Law in Support of Defs.' Mot. for Summ. J. at 10. Plaintiff argues that La Salle was in breach of contract when it refused to allow Flynn to complete course work in her Ethical Dilemmas class in order to change her grade of NR (Not Recorded) to a letter grade. See Pl. Mem. of Law in Opp'n to Defs.' Mot. for Summ. J. at 7. Eventually, the NR grade became an F for the course. The Plaintiff offers no evidence and, instead, simply relies on the statement that "La Salle has not produced any evidence to even explain why Flynn was not permitted to complete the course work and obtain a grade." See id.

⁴ Even if the informal procedure described to Plaintiff in interim Dean Capers' letter to Plaintiff can be construed as a promise by La Salle, Plaintiff offered no evidence that Plaintiff sought to invoke this procedure when Capers informed her of its existence or that La Salle failed to follow this informal procedure. See Gundlach, 924 F. Supp. at 688 (listing plaintiff's compliance with contract's terms and defendant's breach of duty imposed by contract as essential terms to breach of contract action in Pennsylvania).

This statement does not satisfy Plaintiff's burden of offering sufficient evidence of a genuine issue for trial that La Salle breached its contract with Plaintiff. See Gundlach, 924 F. Supp. at 688 (stating that, in breach of contract action by student against university, plaintiff must show defendant breached a duty imposed by the contract). Plaintiff did not provide the Court with any evidence of her breach of contract claim beyond the conclusory allegations in her Complaint that La Salle breached its contract with Plaintiff. Because conclusory allegations and vague statements are insufficient in opposition to summary judgment, this Court grants summary judgment in favor of the Defendants on Plaintiff's breach of contract claim. See Mauriello v. University of Med. & Dentistry, 781 F.2d 46, 51 (3d Cir. 1986) ("[I]f after review of the facts, it appears that under the applicable law the plaintiff has failed to establish a claim, then judgment must be entered for the defendant."), cert. denied, 479 U.S. 818 (1986).

In sum, the Court finds that summary judgment is appropriate with respect to Count I.

C. Tortious Interference with Contractual Relations

Plaintiff Flynn next asserts that she is entitled to relief as a result of Defendant Ambrose's tortious interference with contractual relations between Plaintiff and Defendant La Salle. Under Pennsylvania law, a plaintiff must establish four elements to sustain a claim for tortious interference: (1) the

existence of one or more contracts between plaintiff and a third party; (2) defendant's purpose or intent to harm the plaintiff by preventing completion of a contractual relationship; (3) improper conduct, which is neither privileged nor justified, on the part of the defendant; and (4) actual legal harm resulting from the defendant's actions. See Nathason v. Medical College of Pa., 926 F.2d 1368, 1392 (3d Cir. 1991).

Pennsylvania law will only recognize a tortious interference with contractual relations claim where the defendant interfered with a plaintiff's contract with a third party. See A.D.E. Food Servs. Corp. v. City of Phila., No. CIV.A.95-7485, 1996 WL 590906, at *9 (E.D. Pa. Oct. 11, 1996) ("[A] tortious interference with contract claim will only lie where a defendant has interfered with a plaintiff's contract with a third party." (quoting Labalokie v. Capital Area Intermediate Unit, 926 F. Supp. 503, 509 (M.D. Pa. 1996)); Glazer v. Chandler, 414 Pa. 304, 308, 200 A.2d 416, 418 (1964) ("Every case in Pennsylvania granting recovery for this tort has involved a defendant interference with known contracts or business relations existing between third parties and a plaintiff."). Thus, the existence of two parties to the contract and one party who tortiously interferes with that contract is essential to a claim of tortious interference with contractual relations. See Daniel Adams Assocs. v. Rimbach Publ'g, Inc., 360 Pa. Super. 72, 78, 519 A.2d 997, 1000 (1987) ("Essential

to a right of recovery under [the tort of interference with contract] is the existence of a contractual relationship between the plaintiff and a 'third person' other than the defendant. By definition, this tort necessarily involves three parties. The tortfeasor is one who intentionally and improperly interferes with a contract between the plaintiff and a third person." (citations omitted)).

It is also well settled Pennsylvania law that a corporate entity and its agents are not distinct parties for contracting purposes. See Daniel Adams Assocs., 519 A.2d at 1000 ("A corporation is a creature of legal fiction which can 'act' only through its officers, directors and other agents."). A corporation's agents, therefore, cannot tortiously interfere with its contracts. See Labalokie, 926 F. Supp. at 509 ("As a general rule, under Pennsylvania law a corporate entity and its agents are not distinct parties for purposes of contracting and thus a corporation's agents cannot tortiously interfere with its contracts."). This general rule, however, is limited to circumstances in which an agent's conduct occurs within the scope of employment. See id.

Thus, in the context of this case, the crucial issue is whether Ambrose acted in the scope of her authority. On the one hand, Ambrose may be considered a third party to the contract between La Salle and Flynn if Ambrose acted outside the scope of

her authority. If, on the other hand, Ambrose acted within the scope of her authority, she cannot be considered a third party, but rather, would be considered acting on behalf of La Salle and cannot be liable for tortious interference of contractual relations.

In this case, Plaintiff failed to provide sufficient evidence that Defendant Ambrose acted outside the scope of her authority as a Professor at La Salle University. Plaintiff argues that this claim should survive summary judgment because Plaintiff's deposition testimony is "replete with examples of statements made by Ambrose to her that reflect an intention on Ambrose's part to prevent Flynn from graduating." See Pl. Mem. of Law in Opp'n to Defs.' Mot. for Summ. J. at 7. The Plaintiff, however, failed to demonstrate how those statements fall outside the scope of Ambrose's employment.

Plaintiff also asserts that this claim should survive summary judgment based on the deposition testimony of Nursing Program Director Giardino and Zane Wolf, faculty member and new Dean of La Salle University's School of Nursing. Plaintiff argues this evidence demonstrates that Ambrose acted outside the scope of her employment due to her history of mistreatment and conflict with students at La Salle and Holy Family College where Ambrose taught before coming to La Salle. See id. Plaintiff does not produce any evidence in support of these allegations, but rather, simply states that "the testimony of Wolf and Giardino supports Flynn's

contentions that Ambrose had a history of maltreatment and conflict with students." See id.

Defendants correctly argue that Plaintiff's arguments against summary judgment lack sufficient evidence. Plaintiff failed to come forward with any evidence that Ambrose was not acting within the scope of her employment with La Salle, and thus, considered a third party for purposes of Plaintiff's claim. Indeed, in her Complaint, Plaintiff admits that Ambrose acted in the scope of her employment.⁵ Moreover, this Court finds any evidence of Ambrose's past conflict with students at La Salle and Holy Family College irrelevant. The crucial issue in this case is whether Ambrose acted within the scope of her employment with La Salle in her dealings with the Plaintiff. Therefore, because Plaintiff failed to offer evidence beyond general allegations and vague statements, this Court finds that summary judgment is appropriate on Count II.

D. Intentional & Negligent Infliction of Emotional Distress

Finally, Plaintiff asserts that she is entitled to relief because Ambrose committed intentional and/or negligent infliction of emotional distress. Plaintiff also asserts that La Salle is

⁵ Paragraph 49 of Plaintiff's Complaint states: "La Salle is liable to Flynn for the intentional and/or negligent infliction of emotional distress caused by Ambrose because Ambrose's conduct as described above occurred within the scope of her employment."

liable for Ambrose's commission of these torts based on respondeat superior.⁶

1. Intentional Infliction of Emotional Distress

The Supreme Court of Pennsylvania has not explicitly recognized the tort of intentional infliction of emotion distress. However, lower Pennsylvania courts have allowed plaintiffs to proceed "where the conduct in question 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." Rinehimer v. Luzerne Co. Comm. College, 539 A.2d 1298, 1305 (Pa. Super.) (internal quotation omitted), appeal denied, 555 A.2d 116 (Pa. 1988).

In the instant case, Plaintiff failed to provide sufficient evidence to maintain a claim for intentional infliction of emotional distress. In opposing Defendants' motion, Plaintiff claims that the determination of whether Ambrose's conduct rises to the level of outrageousness required for recovery must be left to

⁶ In her Complaint, Plaintiff also asserts a claim of negligence against La Salle. See Pl.'s Compl. ¶ 49 ("In the alternative, La Salle is liable to Flynn because it negligently and/or recklessly failed to prevent Ambrose from acting as described above and causing emotional harm to Flynn."). Plaintiff offers, nor can this Court find, any evidence that La Salle owed or breached any duty to the Plaintiff. See Linson, 1996 WL 637810, at *9-10 (granting summary judgment on student's negligence claim against university for failing to provide a grievance procedure because court found no recognizable duty). The Plaintiff fails to address this claim in their Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment. Accordingly, this Court finds that summary judgment is appropriate with respect to Count IV in so far as it alleges a negligence claim against La Salle.

the factfinder. See Pl. Mem. of Law in Opp'n to Defs.' Mot. for Summ. J. at 8. Other than this general statement of law, Plaintiff offered no evidence to support her allegation that the actions of Ambrose was outrageous.

This Court agrees with Defendants' argument that summary judgment is appropriate because Plaintiff failed to produce any evidence of outrageousness on Ambrose's part. Although there may have been personality conflicts between the Plaintiff and Ambrose, the evidence does not support a finding that Ambrose's conduct was outrageous. Ambrose's demeaning comments and humiliation of Plaintiff in class are not enough under Pennsylvania law. See Kazatsky v. King David Mem. Park, 527 A.2d 988, 991 (Pa. 1987) ("[L]iability [for intentional infliction of emotional distress] clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities."). While Ambrose may be the professor every La Salle nursing student hopes they can avoid as an instructor, her conduct hardly rises to the level of outrageousness required for a claim of intentional infliction of emotional distress. Therefore, summary judgment on Counts III and IV, which allege intentional infliction of emotional distress, shall be granted.

2. Negligent Infliction of Emotional Distress

Pennsylvania courts have narrowly applied the tort of negligent infliction of emotional distress to three categories of

cases. First, Pennsylvania courts have allowed "bystander" cases, where the plaintiff directly perceives injury to a close relative and suffers foreseeable harm. See Sinn v. Burd, 404 A.2d 672 (Pa. 1979). Second, Pennsylvania allows "pre-existing duty" cases, where the defendant owes the plaintiff a pre-existing contractual or fiduciary duty. See Crivellaro v. Pennsylvania Power & Light Co., 491 A.2d 207 (Pa. Super. 1985). Finally, the court in Brown v. Philadelphia College of Osteopathic Med., 449 Pa. Super. 667, 674 A.2d 1130, 1133-35 (Pa. Super. 1996), identified the impact rule as a third way to sustain a claim for negligent infliction of emotional distress. The Brown court described the impact rule as follows: "[W]here the plaintiff . . . sustains bodily injury, even though trivial or minor in character, which are accompanied by fright or mental suffering directly traceable to the peril in which the defendant's negligence placed the plaintiff, then mental suffering is a legitimate element of damages." Id.

Defendants correctly argue that Flynn's claim does not fit into any of these categories. Plaintiff presented no evidence that she witnessed injury to a close relative. Moreover, Plaintiff did not offer any evidence that La Salle and Ambrose owed a pre-existing duty of care either through a contractual or fiduciary duty owed to her. Finally, Plaintiff makes no claim that her cause of action falls within the impact rule. Because Plaintiff's claim for negligent infliction for emotional distress does not fit into

any of the categories recognized by Pennsylvania courts, her claim must fail. Therefore, summary judgment on Count IV, which alleges negligent infliction of emotional distress, shall be granted.

III. CONCLUSION

For the foregoing reasons, the Court will grant summary judgment in favor of Defendants on all counts of the complaint.

This Court's Final Judgment follows.

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

BRIDGET FLYNN : CIVIL ACTION
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v. :
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LA SALLE UNIVERSITY :
and MARGUERITE AMBROSE : NO. 97-4542

FINAL JUDGMENT

AND NOW, this 9th day of September, 1998, upon consideration of Defendants' Motion for Summary Judgment, IT IS HEREBY ORDERED that the Defendants' Motion is **GRANTED**.

JUDGMENT is entered in favor of Defendants and against Plaintiff.

BY THE COURT:

HERBERT J. HUTTON, J.