

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

<b>GAIL JACKSON,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>vs.</b>	:	
	:	
<b>COATESVILLE AREA SCHOOL DISTRICT,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>JOHN H. HAMILTON, JR., PRESIDENT, COATESVILLE AREA SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>LEONARD A. FREDERICKS, MEMBER, COATESVILLE AREA SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>THOMAS W. LEWIS, MEMBER, COATESVILLE AREA SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>LINDA R. MESSINGER MEMBER, COATESVILLE AREA SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>CLARENCE W. SMITH, MEMBER, COATESVILLE AREA SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	

**DEBORAH L. THOMPSON  
MEMBER, COATESVILLE AREA  
SCHOOL BOARD,**

**and**

**KIRK H. WITMER,  
MEMBER, COATESVILLE AREA  
SCHOOL BOARD,**

**and**

**KAREN ALLISON SCHMIDT,  
MEMBER, COATESVILLE AREA  
SCHOOL BOARD,**

**and**

**DR. RUSSELL H. VREELAND,  
FORMER MEMBER, COATESVILLE  
AREA SCHOOL BOARD,**

**Defendant(s)**

**NO. 99-1495**

**MEMORANDUM**

**DUBOIS, J.**

**AUGUST 21, 2000**

In this civil rights action, plaintiff Gail Jackson (“plaintiff”) seeks redress for two instances of allegedly discriminatory conduct by her employer--one in 1996 and one in 1998--and four alleged instances of defamation. Presently before the Court are two motions for summary judgment, one filed by defendants Coatesville Area School District (“District”), John Hamilton, Leonard Fredericks, Thomas Lewis, Linda Messinger, Clarence Smith, Deborah Thompson, Kirk

Witmer, and Russell Vreeland (the “District defendants”) and one filed by defendant Karen Allison Schmidt;<sup>1</sup> and a motion to amend the Amended Complaint filed by plaintiff.

## **I. BACKGROUND**

### **A. Plaintiff’s employment history**

Plaintiff, an African American woman, was hired as a teacher by the District in 1970 for the 1970-1971 school year. Plaintiff has worked in various teaching and administrative positions for the District throughout her career. In 1987, the then-superintendent of the District, Dr. Henry Horner, recommended plaintiff for the position of principal of the Friendship School in the District; however, the School Board refused to appoint plaintiff to that position. According to plaintiff, Dr. Horner called her at home to inform her that the School Board rejected her application because she was black.<sup>2</sup>

In 1988, plaintiff was promoted to an administrative position in the District’s central office--Supervisor of Federal Programs. She continued to advance in the central office, holding the positions of Director of Federal Programs/Research and Evaluation and Assistant to the Superintendent.

### **B. The 1996 reorganization plan**

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<sup>1</sup>Defendants Hamilton, Fredericks, Lewis, Messinger, Smith, Thompson, Witmer, Vreeland and Schmidt (the “individual defendants” and, together with the District, “defendants”) comprised the Coatesville Area School Board (“School Board”) in February, 1998. At other times relevant to this case, some or all of these defendants were not members of the School Board. Where relevant, the composition of the School Board at a given point in time will be noted.

<sup>2</sup>Although plaintiff mentions this incident in her complaints, it is not the basis of any of her claims.

In late 1995, Dr. Louis Laurento--the District Superintendent--requested and received plaintiff's permission to include her in a proposed reorganization of the District's administrative structure. On January 22, 1996, Laurento submitted his reorganization plan to the School Board<sup>3</sup> (the "1996 plan"); under this plan, plaintiff would have been promoted to Assistant Superintendent and seven other individuals--Robert Wright, Frank DeHaut, Nicholas Malobobich, Lee Washington, Charles Carroll, Michael Leonard and Herman Keitt--would also have been reassigned or promoted.

The School Board rejected the 1996 plan, concluding that it was too expensive. Instead, the School Board adopted its own reorganization plan later in 1996, assigning additional duties to current staff members with no pay increases and with fewer title changes than would have occurred under the 1996 plan.

According to plaintiff, she was told later in 1996 that some school board members had made comments that plaintiff interpreted as racially motivated, including, "I'm sick of affirmative action, I don't believe in giveaways," and "while I may be a card-carrying John Bircher, I want it to be clearly understood that we're misunderstood as a group...I don't believe in welfare and subsidized housing, and it is not my fault that blacks are the ones who are the recipients of this." District's Memorandum in Support of its Motion for Summary Judgment ("District's Memorandum"), Ex. B., p 95. Plaintiff also states that she was told that some board

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<sup>3</sup>At this time, the School Board consisted of defendants Hamilton, Fredericks, Messinger, Smith, Vreeland as well as Patrick Sellers, Robert Saucier, Gayle Bair, and Roger McGuigan. Shortly after Laurento submitted the 1996 plan to the School Board, Saucier resigned and was replaced by Hugh Redditt.

members used her name in reference to the Assistant Superintendent position and the phrase, “those people.”<sup>4</sup>

**C. The 1998 reorganization plan**

In January, 1998, Laurento again proposed a reorganization plan to the School Board (the “1998 plan”).<sup>5</sup> The School Board accepted the 1998 plan in February, 1998. Under the 1998 plan, plaintiff was promoted to Assistant Superintendent. As part of this promotion, plaintiff negotiated and signed a new employment contract with the School Board.

Plaintiff’s contract contained an insurance provision stating, in relevant part, that plaintiff’s insurance coverage “shall continue in effect following retirement and/or termination from the [District] until [plaintiff] becomes eligible for insurance coverage providing for comparable categories and levels of benefits under a successor employer’s benefit plan or until she shall reach the Social Security normal retirement age.” Defendant’s Memorandum, Ex. G, p. 9. Upon receiving her contract, plaintiff was given an opportunity to review it and voice her objections to the School Board, which she did. Plaintiff expressed concern with this insurance provision in a meeting with the District solicitor--Bob Adams. After discussing this provision with Adams, plaintiff agreed to it, concluding it would not affect her because she would not be looking for employment outside of the District.

Plaintiff’s contract also provided for annual salary increases of at least 5% and larger increases depending on plaintiff’s ratings in annual performance evaluations. Plaintiff contends

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<sup>4</sup>One of the people to whom plaintiff attributes this statement is defendant Schmidt, who did not join the School Board until 1997.

<sup>5</sup>The School Board in 1998 was composed of the individual defendants in this case.

that Paul Bentley--the District's other Assistant Superintendent--received larger raises than did plaintiff.<sup>6</sup>

**D. The Schmidt letters**

On July 2, 1998, Schmidt--a member of the School Board at that time--sent a letter to Hamilton--then the president of the School Board--alleging that the plaintiff had misrepresented or lied to the School Board about the qualifications of a District employee--Charla Watson. The letter was also sent to the Superintendent's office. Bentley--serving as acting superintendent at that time--circulated the letter to the other members of the School Board, the District solicitor and the District's central administrative team. In a cover letter accompanying Schmidt's letter, Bentley asked all members of the School Board to keep the matter confidential. On July 20, 1998, the School Board decided not to investigate Schmidt's allegations.

On October 2, 1998, Schmidt sent another letter to Hamilton reiterating her claim that plaintiff misrepresented or lied to the School Board and calling for an investigation of the matter. Schmidt sent copies of this letter to all members of the School Board. The School Board took no action with respect to this letter.

On January 21, 1999, Schmidt sent Hamilton a letter detailing an encounter between plaintiff and John Barr--a District employee working in the Alternative Education program. According to Schmidt, plaintiff spoke to Barr about a meeting Barr had with Vreeland--telling Barr "if [plaintiff] thought [Barr] was in bed with Dr. Vreeland, she would run him out of Coatesville faster than he could turn his head." District's Memorandum, Ex. M, p. 1. Schmidt

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<sup>6</sup>The parties do not dispute that Bentley received larger annual pay increases than plaintiff. However, it is unclear from the record before the Court whether the raises were larger on a percentage basis, on an absolute basis, or both.

went on to claim that plaintiff told Barr a parable about a “contrary bird,” the lesson of which, plaintiff allegedly said, was, “When you are up to your neck in shit, don’t open your mouth.” Id. at 1-2. Schmidt requested an executive session of the School Board to discuss that incident.

The School Board directed Laurento to investigate the incident involving plaintiff and Barr. On February 6, 1999, while Laurento’s investigation was proceeding, an article appeared in a local newspaper--the “Daily Local News”<sup>7</sup>-- containing facts similar to the ones in Schmidt’s January 21, 1999 letter. Upon completion of his investigation, Laurento concluded that Barr was not pursuing a claim against plaintiff and there was no substance to Schmidt’s allegations, and he so reported to the School Board. The School Board determined that no further action should be taken, and the matter was closed.

## **II. PROCEDURAL HISTORY**

Plaintiff filed a Complaint in this Court on March 25, 1999. On May 26, 1999, the District filed a motion to dismiss, which plaintiff opposed on June 11, 1999. On August 5, 1999, this Court issued an order granting the motion to dismiss in part and denying the motion in part. Specifically, the Court granted the motion with respect to plaintiff’s claims against the District for defamation and intentional infliction of emotional distress on the ground that the District was immune from such claims under the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8545, and denied the motion with respect to plaintiff’s claims under 42 U.S.C. § 1981.

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<sup>7</sup>It appears the newspaper in which the article appeared was the “Daily Local News,” a daily newspaper published in West Chester, Pennsylvania. The parties identify the newspaper by various names. In her Amended Complaint and in her deposition testimony, plaintiff refers to the newspaper as the “Local Daily News.” In their motion for summary judgment, Coatesville defendants refer to the newspaper as the “Daily Local.”

Plaintiff filed an Amended Complaint on August 16, 1999. In her Amended Complaint, plaintiff asserts causes of action against the District and the individual defendants for violations of 42 U.S.C. § 1981 (“§ 1981”) (Counts I and II) and against the individual defendants for defamation (Count III).<sup>8</sup> The District defendants filed an Answer on October 12, 1999; Schmidt filed an answer on October 19, 1999.

On January 14, 2000, the District defendants filed a motion for summary judgment. Plaintiff filed a response on January 26, 2000. Schmidt filed a motion for summary judgment on January 18, 2000. Plaintiff filed an answer on January 31, 2000.

On July 21, 2000, plaintiff filed a motion to amend the Amended Complaint to include a claim under 42 U.S.C. § 1983 (“§ 1983”) and 18 Pa.C.S.A. §§ 5725, 5726. Defendants filed a joint response on August 3, 2000; plaintiff filed a reply on August 15, 2000.

### **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 Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986). “[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

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<sup>8</sup>At plaintiff’s deposition, plaintiff’s counsel stated that Counts I and II were asserted only against the District and Count III was asserted only against the individual defendants. In the response to the District’s motion, plaintiff’s counsel now states that he misunderstood defense counsel at that time and never meant to make such a statement. Because the Court’s analysis of the § 1981 claims is applicable to the individual defendants and the District, the Court need not resolve what effect, if any, such an agreement had on plaintiff’s case.

jury finding in that party's favor." J.E. Mamiye & Sons, Inc. v. Fidelity Bank, 813 F.2d 610, 618 (3d Cir. 1987).

In considering a motion for summary judgment, the evidence must be considered in the light most favorable to the non-moving party. Adickes v. S.H. Kress and Co., 398 U.S. 144, 159 (1970). 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 v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986). 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. Plaintiff's § 1981 claims**

Coatesville defendants argue that plaintiff's § 1981 claims are subject to summary judgment because Count I is barred by the statute of limitations, § 1981 provides no cause of action against municipal entities, plaintiff has not established a prima facie case under the McDonnell-Douglass framework, plaintiff failed to respond to defendants' legitimate, non-discriminatory reasons for their actions, and punitive damages are not permitted against a municipality.

Section 1981 provides, in relevant part,

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the

security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and no other. 42 U.S.C.A. § 1981(a) (West Supp. 2000).

District defendants argue that § 1981 does not provide a cause of action against municipal actors such as the District,<sup>9</sup> citing Jett v. Dallas Indep. School Dist., 491 U.S. 701 (1989). In that case, the Supreme Court held that municipal actors were not subject to liability under § 1981 and that § 1983 provides the exclusive remedy against municipalities for violations of § 1981 rights. See id. at 731. In 1991, Congress responded by amending § 1981 to include a provision that, “The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.” 42 U.S.C.A. § 1981(c) (West Supp. 2000) (the “Jett amendment”).

There is a conflict among the Courts of Appeals as to whether the Jett amendment subjects municipal actors to liability under § 1981. Compare Dennis v. County of Fairfax, 55 F.3d 151, 156 n.1 (4th Cir. 1995) (holding that the Jett amendment did not change the law that municipalities can only be sued for violations of § 1981 rights under § 1983) and Johnson v. City of Fort Lauderdale, 903 F. Supp. 1520 (S.D.Fla. 1995), aff’d 114 F.3d 1089 (11th Cir. 1997) with Federation of African Amer. Contractors v. City of Oakland, 96 F.3d 1204, 1214-1215 (9th Cir. 1996) (holding that the Jett amendment creates a cause of action against municipal actors under § 1981 subject to the same causation requirements as under § 1983).

The Third Circuit has not resolved this question and this Court need not do so in this case, for two reasons. First, even those courts which permit § 1981 claims to proceed against

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<sup>9</sup>For purposes of civil rights statutes, a School District is treated as a municipality. See Collins v. Chichester School Dist., Civ. No. 96-6039, 1997 WL 411205, at \*2 (E.D.Pa. July 22, 1997).

municipal actors have applied to those § 1981 claims the policy or custom requirement for § 1983 cases as set forth in Monell v. Dep't of Social Services, 436 U.S. 658 (1978).<sup>10</sup> See, e.g., Federation of African Amer. Contractors, 96 F.3d at 1214-15; McHenry v. Pennsylvania State Sys. Of Higher Educ., 50 F. Supp.2d 401, 415-16 (E.D.Pa. 1999); Meachum v. Temple Univ., 42 F. Supp.2d 533, 539-40 (E.D.Pa. 1999); Poli v. SEPTA, Civ. A. No. 97-6766, 1998 WL 405052 at \*12 (E.D.Pa. July 7, 1998) Second, even if the District is subject to liability under § 1981 in this case, it is entitled to summary judgment on plaintiff's § 1981 claims, for the reasons set forth below. Thus, the Court will assume, without deciding, that the District is subject to liability under § 1981 provided the requirements of Monell are satisfied.

A claim of workplace discrimination under § 1981 is analyzed under the framework set forth by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) for Title VII cases. See Stewart v. Rutgers, The State University, 120 F.3d 426, 432 (1997). Under the McDonnell Douglas framework, plaintiff must establish a prima facie case of discrimination by proving: (1) that she is a member of a protected class; (2) that she is qualified for the position at issue; (3) that she suffered an adverse employment action; and, (4) such an action occurred under circumstances that give rise to an inference of unlawful discrimination. See Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410-11 (3d Cir. 1999).

If the plaintiff succeeds in establishing a prima facie case, the burden shifts to defendants to articulate some legitimate, nondiscriminatory reason for plaintiff's treatment. See id. at 410. While the burden of production may shift under this framework, "[t]he ultimate burden of

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<sup>10</sup>Monell held that a municipality can only be liable under § 1983 where the municipality itself causes the violation through implementation of a policy or custom. See Monell, 436 U.S. at 694.

persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.” Texas Dep’t of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981).

In the event a defendant meets this burden of production, a plaintiff must present evidence that the reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. See Jones, 198 F.3d at 410. A plaintiff may defeat a motion for summary judgment by pointing to some evidence--either direct or circumstantial--from which a fact finder “would reasonably either: (1) disbelieve the employer’s articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer’s action.” Id. at 413.

#### **1. Count I--the 1996 plan**

In Count I of the Amended Complaint, plaintiff asserts a cause of action under § 1981 based on the School Board’s rejection of the 1996 plan. Under the 1996 plan, plaintiff would have been promoted to Assistant Superintendent and seven other individuals would have been promoted or reassigned. The School Board rejected the 1996 plan and adopted its own reorganization plan later in 1996, assigning additional duties to current staff members with no pay increases.

Defendants argue that plaintiff has not presented evidence that the rejection of the 1996 plan occurred under circumstances which give rise to an inference of discrimination. In addressing that argument, the Court must “determine whether a plaintiff has presented sufficient evidence so that we should consider a defendant’s proffered reasons for its decision....” Id. at 412.

Plaintiff's evidence with respect to discrimination in rejecting the 1996 plan consists of the following testimony: (1) plaintiff was told of statements made by school board members about "those people" in reference to the Assistant Superintendent position; (2) plaintiff heard one school board member--she does not identify which one in her deposition testimony--say he was a "card-carrying John Bircher" and he "did not believe in welfare and subsidized housing." District's Memorandum, Ex. B, p. 95; (3) Laurento told plaintiff "race would be a factor in [her] promotability...[and] that the Coatesville Area School Board and the Coatesville area is racist." Id. at 96.

The Court concludes that plaintiff's evidence is insufficient to give rise to an inference of discrimination in the School Board's decision to reject the 1996 plan. Plaintiff offered no evidence that she was treated differently than any other District employee when the School Board rejected the 1996 plan. The 1996 plan would have affected eight District employees, four of whom were black and four of whom were white, and the School Board rejected the plan with respect to all of them. Moreover, plaintiff provided no context for the statements of the School Board members to support her conclusion that they considered her race in promoting her. Specifically, plaintiff did not personally hear the statements about "those people" and did not know the circumstance under which they were made. Similarly, plaintiff offered no evidence that the statement about affirmative action and subsidized housing was in any way relevant to the School Board's decision making process. Finally, Laurento's statement, although potentially relevant, is hearsay because he is not a party and it is therefore insufficient to support denial of a motion for summary judgment. See In re Paoli R.R. Yard PCB Litigation, 35 F.3d 717, 770 (3d Cir. 1994).

Furthermore, assuming, arguendo, that plaintiff established a prima facie case of discrimination, she did not adduce evidence of pretext sufficient to survive summary judgment. Defendants presented evidence that the rejection of the 1996 plan was financially motivated. Laurento testified that the School Board told him, “[Y]ou can reorganize, but we don’t want to spend any additional money,” and that the School Board did not like the pay increases involved in the 1996 plan. District’s Memorandum, Ex. C, p. 53. Hamilton and Smith stated in their depositions that the School Board voted against the plan because it was too costly. The Court concludes that such evidence constitutes a legitimate, non-discriminatory reason for the School Board’s actions.

The evidence of a legitimate, non-discriminatory reason for the School Board’s action required plaintiff to present some evidence--either direct or circumstantial--from which a fact finder could reasonably either disbelieve defendants’ articulated legitimate reasons for rejecting the 1996 plan or believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of such rejection. See Jones, 198 F.3d at 413. Plaintiff offered no such evidence. Although Smith and Hamilton stated that they harbored personal suspicions that the School Board’s decision was based, in part, on race, neither man offered any evidence to support this position. At his deposition, Hamilton testified that he had no evidence that the School Board’s rejection of the 1996 plan was based on plaintiff’s race. District’s Memorandum, Ex. D, p. 16. Hamilton further testified that he had no discussions with other School Board members, Laurento, or administrative staff for the District in which anyone said that plaintiff’s race was a factor in the rejection of the 1996 plan. See id. at 17.

Smith testified at his deposition that no member of the School Board ever said anything in front of him to the effect that plaintiff's race was a factor in the decision to reject the 1996 plan. To the contrary, he stated that the other members of the School Board always justified their decision to reject the 1996 plan on the basis of cost and that they "felt they could get a better use of the dollar by ...their plan." District's Memorandum, Ex. E, p. 20. Smith also testified that a majority of the School Board who voted against the plan raised the issue of the plan being too "top-heavy," i.e., it had too many high-salaried employees. See id. at 21.

The Court concludes plaintiff's evidence would not allow a factfinder to reasonably either disbelieve the School Board's articulated legitimate reason or believe that "... an invidious discriminatory reason was more likely than not a motivating or determinative cause of the School Board's action." Jones, 198 F.3d at 413. Accordingly, the Court will grant defendants' motions for summary judgment as to Count I of plaintiff's Amended Complaint.

## **2. Count II--the 1998 plan**

In Count II of the Amended Complaint, plaintiff asserts a cause of action under § 1981 on the ground that the contract terms she accepted as part of the 1998 plan were less favorable than those offered to other District employees. In support of this claim, plaintiff presented evidence that she was discriminated against in the terms and conditions of her employment--she received a less favorable insurance provision in her contract than did other members of the District's central administrative staff and she received smaller pay increases than Bentley, the other Assistant Superintendent. The Court concludes that such evidence is sufficient to establish a prima facie case of discrimination, and turns to defendants' stated reasons for their actions.

Defendants articulated legitimate, non-discriminatory reasons for their actions. With respect to the insurance provision, Hamilton stated in his deposition that the District included an identical provision in every contract offered under the 1998 plan for financial reasons. According to Hamilton, the District was “trying to set some precedence [sic] in terms of employees leaving, carrying health benefits to the next employer and receiving those health benefits....We couldn’t afford to do that, so we wanted to start and, I agree, we need to start somewhere, and we offered that as an option in her contract.” District’s Memorandum, Ex. D, p. 38. With respect to the pay differential, defendants offered evidence that Bentley and plaintiff were paid differently because they were not similarly qualified--Bentley has served as an Assistant Superintendent since 1988, ten more years than plaintiff, and holds a Doctor of Education degree, while plaintiff holds a Masters in Education.

In light of the evidence of legitimate, non-discriminatory reasons for plaintiff’s treatment presented by defendants, plaintiff, in order to survive the motions for summary judgment, must point to some evidence--either direct or circumstantial--from which a fact finder would reasonably either disbelieve defendants’ articulated legitimate reasons for rejecting the 1996 plan or believe that “... an invidious discriminatory reason was more likely than not a motivating or determinative cause of such rejection.” Jones, 198 F.3d at 413. Plaintiff failed to do so.

The only evidence presented to establish that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the District’s actions is Smith’s testimony that, in his opinion, if plaintiff had rejected the insurance provisions placed in plaintiff’s contract, “some of the people might have used that as ammunition to stop her from being Assistant Superintendent.” Plaintiff’s Memorandum in Opposition to District’s Motion,

Ex. 17, p. 27. Smith went on to state that he was only offering “my opinion. I can’t speak for any of the other eight people [on the School Board].” Id.

The Court concludes that Smith’s speculation as to the outcome had plaintiff not accepted the insurance provision does not constitute evidence from which a reasonable factfinder could disbelieve the District’s stated reasons or believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the District’s actions. Moreover, plaintiff offered no evidence that the District’s stated reason for the difference in plaintiff’s and Bentley’s pay was false or that the an invidious discriminatory reason was a motivating or determinative cause of any such difference. Accordingly, the Court will grant defendants’ motions for summary judgment as to Count II of plaintiff’s Amended Complaint. Because the Court has concluded that summary judgment will be granted on plaintiff’s § 1981 claims based on an analysis of the McDonnell Douglass framework, it need not address defendants’ other arguments as to the § 1981 claims.

**B. Plaintiff’s defamation claims**

In Count III of the Amended Complaint, plaintiff asserts claims against the individual defendants for defamation based on their circulation of the three Schmidt letters--dated July 2, 1998, October 2, 1998 and January 21, 1998--and for publication of the story in the “Daily Local News” on February 6, 1999. Defendants argue that the Court should grant summary judgment as to the defamation claims because plaintiff has not established the defamatory character of the publications at issue, plaintiff has not established the publication element of a defamation claim and defendants are immune from suit under the doctrine of absolute high public official immunity and under the Political Tort Subdivision Immunity Act, 42 Pa.C.S.A. § 8541 et seq. In

her motion, defendant Schmidt also argues that, to the extent the defamation claim against her is based on the July 2, 1998 letter, it is barred by the statute of limitations. For the reasons stated below, the Court concludes that defendants are immune from suit under the doctrine of absolute high public official immunity and need not reach defendants' other arguments.

The doctrine of high public official immunity is an unlimited privilege that exempts high public officials from lawsuits for defamation provided the statements made by the official are made in the course of his official duties and within the scope of his authority. See *Matta v. Burton*, 721 A.2d 1164, 1166 (Pa. Commw. Ct. 1998). The privilege applies even if the statements made by the official are false and motivated by malice because the purpose of the privilege is to preserve society's interest in the unrestrained discussion of public matters, even where such discussion results in uncompensated harm to another's reputation. See *id.*

The determination whether a particular official is a high public official entitled to this immunity is determined on a case-by-case basis and depends on the nature of the official's duties, the importance of his office, and whether he has policy-making functions. See *id.* The Court concludes that the members of the School Board--entrusted with making policy for the District--are high public officials entitled to this immunity. See *id.* (concluding that a school board director is a high public official entitled to such immunity). Accordingly, the Court will address the question of whether the statements at issue in this case were made in the course of official duties and within the scope of authority.

In *Matta*, the defendant school board director wrote a letter to the editor of a newspaper accusing the plaintiff of misconduct and malfeasance in the way he handled a school renovation project. See *id.* at 1165. The *Matta* court concluded that the letter was written in the course of

the defendant's official duties and within the scope of his authority because, as school board director, he was tasked with overseeing such projects and because the public had a clear interest in being informed of mismanagement of such a project. See id. at 1167. Accordingly, the court ruled that the defendant was immune from suit on the letter to the editor because the "[p]rotection of the public interest was her intent, and that is the basis of immunity from liability for defamation for high public officials." Id.

In this case, the letters about which plaintiff complains dealt with her alleged lying and/or misrepresentation to the School Board and about her inappropriate conduct in managing employees within the District. Defendants, as members of the School Board, were tasked with overseeing the management of District employees and District operations in general. Moreover, the issues on which the letters and the article in the Daily Local News centered-- misrepresentation, mismanagement and threatening conduct by an Assistant Superintendent of the School District--were issues about which the public has a right to be informed. The Court concludes that, to the extent any speech occurred, it was within the scope of the individual defendants' duties as School Board members and with the scope of their authority. Accordingly, the Court will grant defendants' motions for summary judgment as to Count III of plaintiff's Amended Complaint on the basis of the high public official immunity defense.

### **C. Plaintiff's Motion to Amend the Amended Complaint**

In her Motion to Amend the Amended Complaint ("motion to amend"), plaintiff alleges that, while she was at work on June 30, 2000, she received a telephone call from her attorney and

they discussed this case. According to the motion to amend, the “complete text of that conversation was left in the plaintiffs’ [sic] answering service maintained by Bell Atlantic without attribution to any party.” Motion to Amend, p. 3. Plaintiff further alleges in the motion to amend that employees of the District, acting at the School Board’s direction, recorded this conversation and subsequently “played the entire conversation into the plaintiff’s answering system to intimidate and frighten her into discontinuing her ongoing civil rights suit.” Id. at 4. Plaintiff now seeks to amend her Amended Complaint to assert causes of action under § 1983 for a violation of her rights under the 4th amendment and 18 Pa.C.S.A. §§ 5725, 2726.

A party may amend his pleading once as a matter of course before any responsive pleadings have been filed. See Fed.R.Civ.P. 15(a). If a responsive pleading has been served, a party may amend his pleading only with leave of the court, and such leave “shall be freely given when justice so requires.” Id. Denial of a motion for leave to amend is within the discretion of the district court. See Averbach v. Rival Mfg. Co., 879 F.2d 1196, 1203 (3d Cir. 1989). “Factors the trial court may appropriately consider in denying a motion to amend include undue delay, undue prejudice to the opposing party, and futility of amendment.” Id. (citing Forman v. Davis, 371 U.S. 178, 182 (1962)); see In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410 (3d Cir. 1997).

Plaintiff filed her motion to amend on July 21, 2000--long after defendants filed their motions for summary judgment. The Court has determined that the motions for summary judgment should be granted, thereby disposing of the entire case. Moreover, the allegations raised in the motion to amend do not arise from the same factual nexus as those set forth in plaintiff’s Amended Complaint. Accordingly, the Court will deny plaintiff’s motion to amend

without prejudice to plaintiff's right to file a separate action covering the allegations contained in the motion to amend.

## **V. CONCLUSION**

The Court will grant the motions for summary judgment as to plaintiff's § 1981 claims against the District and the individual defendants based on both the 1996 plan and the 1998 plan. The Court will grant summary judgment as to plaintiff's defamation claims against the individual defendants. The Court will deny plaintiff's motion to amend without prejudice to plaintiff's right to file a separate action covering the allegations in the motion to amend.

An appropriate order follows.

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

<b>GAIL JACKSON,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>vs.</b>	:	
	:	
<b>COATESVILLE AREA SCHOOL DISTRICT,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>JOHN H. HAMILTON, JR., PRESIDENT, COATESVILLE AREA SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>LEONARD A. FREDRICKS, MEMBER, COATESVILLE AREA SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>THOMAS W. LEWIS, MEMBER, COATESVILLE AREA SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>LINDA R. MESSINGER MEMBER, COATESVILLE AREA SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>CLARENCE W. SMITH, MEMBER, COATESVILLE AREA SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	

<b>DEBORAH L. THOMPSON</b>	:	
<b>MEMBER, COATESVILLE AREA</b>	:	
<b>SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>KIRK H. WITMER,</b>	:	
<b>MEMBER, COATESVILLE AREA</b>	:	
<b>SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>KAREN ALLISON SCHMIDT,</b>	:	
<b>MEMBER, COATESVILLE AREA</b>	:	
<b>SCHOOL BOARD,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>DR. RUSSELL H. VREELAND,</b>	:	
<b>FORMER MEMBER, COATESVILLE</b>	:	
<b>AREA SCHOOL BOARD,</b>	:	
	:	
<b>Defendant(s)</b>	:	<b>NO. 99-1495</b>

**ORDER**

AND NOW, to wit, this 21st day of August, 2000, upon consideration of Defendant Coatesville Area School District's and Individual Defendants Hamilton, Fredericks, Lewis, Messinger, Smith, Thompson, Witmer and Vreeland's Motion for Summary Judgment (Document No. 16, filed January 14, 2000), Plaintiffs Answer in Opposition to Defendants Motion for Summary Judgment (Document No. 18, filed January 26, 2000), Defendant Karen Allison Schmidt's Motion for Summary Judgment (Document No. 17, filed January 18, 2000), Plaintiffs Answer in Opposition to Defendants Motion for Summary Judgment (Document No. 19, filed January 31, 2000), Plaintiff's Motion to Amend and Supplement the Complaint (Document No. 26, filed July 21, 2000), Defendants Joint Answer to Plaintiff's Motion to

Amend and Supplement the Complaint (Document No. 27, filed August 3, 2000), and Plaintiffs Reply Brief in Support of the Motion to Amend and Supplement the Complaint (Document No. 29, filed August 15, 2000), for the reasons stated in the attached Memorandum, it is **ORDERED** as follows:

1. Defendant Coatesville Area School District's and Individual Defendants Hamilton, Fredericks, Lewis, Messinger, Smith, Thompson, Witmer and Vreeland's Motion for Summary Judgment is **GRANTED** and **JUDGMENT IS ENTERED** in favor of defendants Coatesville Area School District, John Hamilton, Leonard Fredericks, Thomas Lewis, Linda Messinger, Clarence Smith, Deborah Thompson, Kirk Witmer, and Russell Vreeland, and against plaintiff Gail Jackson;

2. Defendant Karen Allison Schmidt's Motion for Summary Judgment is **GRANTED** and **JUDGMENT IS ENTERED** in favor of defendant Karen Allison Schmidt, and against plaintiff Gail Jackson; and,

3. Plaintiff Gail Jackson's Motion to Amend and Supplement the Complaint is **DENIED WITHOUT PREJUDICE** to plaintiff's right to file a separate action covering the allegations set forth in Plaintiff's Motion to Amend and Supplement the Complaint.

**BY THE COURT:**

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**JAN E. DUBOIS, J.**