



plaintiff for the exercise of his constitutional rights.

## **I. BACKGROUND**

The facts, as alleged in plaintiff's Second Amended Complaint, are as follows: Plaintiff, Stephen E. Moiles, began his employment with the Marple Newtown School District ("the District") on July 1, 1995, as an Assistant Principal in the Marple Newtown High School. Second Amended Complaint at ¶ 18. Before he was hired, in January 1992, plaintiff received from the Pennsylvania Department of Education ("DOE") a Level I Administrative Certificate allowing him to work as an elementary, or secondary-level principal. Id. at ¶ 19. As of January 28, 1998, plaintiff's Level II Administrative Certificate lapsed.<sup>1</sup> Id. at ¶ 20. On November 6, 1998, the District suspended plaintiff from his employment without pay until he could obtain, retain, or reinstate his Level II Administrative Certificate. Id. at ¶ 21. The District did not afford plaintiff a pre-suspension hearing. Id.

Plaintiff then took the required steps to obtain a Level II Certificate from the DOE. Id. at ¶ 22. One required step is the procurement of a letter attesting to plaintiff's satisfactory service as an administrator for the three preceding years. Id. Plaintiff requested such a letter from defendant Superintendent Chopra. Id. Defendant Chopra agreed to attest to plaintiff's satisfactory service for the academic years 1995-1996 and 1997-1998, but not for the academic year 1996-1997. Id. at ¶ 23. Plaintiff alleges that Superintendent Chopra knew that plaintiff had performed at a satisfactory level for all three academic years and that plaintiff deserved

---

<sup>1</sup> The facts as presented in plaintiff's Second Amended Complaint specify the receipt of a Level I Certificate and the lapsing of a Level II Certificate; that Complaint does not state how or when plaintiff obtained a Level II Certificate. The parties agree, however, that the professional Certificate at issue in this case is a Level II Certificate.

attestation for satisfactory service in all three years. Id. at ¶ 24. Without the required attestation, plaintiff could not receive his Level II Certificate. Id. at ¶ 32. On March 23, 1999, the defendant members of the School Board terminated plaintiff due to his failure to maintain his certification. Id. at ¶ 33. Plaintiff received neither prior notice from the District nor an opportunity to be heard prior to termination of his employment. Id.

After his termination, plaintiff appealed the denial of his certification to the Certification Appeal Committee of the DOE, which conducted a hearing on October 6, 1999. Id. at ¶ 35.<sup>2</sup> On or about January 28, 2000, the Secretary of Education issued his decision in favor of plaintiff, approving his application for a Level II Certificate. Id. at ¶ 36. Plaintiff's Professional Certificate as a Secondary Principal was made retroactive to August 1999. Id. After receiving his Level II Certificate, plaintiff, through counsel, sought reinstatement by the District, but defendants refused to reinstate plaintiff. Id. at ¶ 37.

Plaintiff filed a Complaint on September 6, 2001. Defendants filed a Motion to Dismiss, in response to which, plaintiff filed an Amended Complaint on December 31, 2001. Then, on February 6, 2002, plaintiff filed the Second Amended Complaint which is the subject of the pending Motion to Dismiss.

In the Second Amended Complaint, plaintiff seeks relief in four counts. The first three counts are against the defendant School District and thirteen individual defendants, twelve of whom comprise the Marple Newtown School District School Board, and one of whom, Raj Chopra, is the Superintendent of the School District. In Count I, plaintiff pleads a claim directly

---

<sup>2</sup> Though not mentioned in the Second Amended Complaint, plaintiff also pursued an administrative appeal of his termination.

under the Fourteenth Amendment for violation of his due process rights. In Count II, plaintiff seeks relief under 42 U.S.C. § 1983 on the ground that defendants violated plaintiff's substantive due process rights. In Count III, plaintiff asserts a claim under §1983, a claim for violation of his procedural and substantive due process rights.

In Count IV, plaintiff seeks relief against only defendants Chopra and School Board Member Rodman S. Rothermel. In that Count, pled under §1983, plaintiff alleges a conspiracy between the two named defendants (and potentially others) to deprive plaintiff of his constitutional rights.

The Court also notes that plaintiff has loosely stated a claim in a number of paragraphs of the Second Amended Complaint that defendants unconstitutionally retaliated against him for exercising his constitutional rights. See, e.g., Second Amended Complaint at ¶ 52.

Defendants' Motion to Dismiss the Second Amended Complaint raises a number of arguments as to why plaintiff has failed to state any claims upon which relief can be granted, three of which arguments the Court deems relevant for discussion in this Memorandum: (1) plaintiff's procedural due process claims are time-barred by the statute of limitations; (2) alternatively, plaintiff cannot state a claim for violation of his procedural due process rights because he was not deprived of a constitutionally protected property interest; and (3) because plaintiff had no constitutionally protected property interest, plaintiff cannot state a claim for deprivation of his liberty interest in his reputation.

## **II. DISCUSSION**

At the outset, the Court notes that some of the claims pled in plaintiff's Second Amended Complaint do not necessitate any independent consideration in this Memorandum. First, plaintiff

has voluntarily withdrawn his substantive due process claims in Counts II and III of the Second Amended Complaint. Second, plaintiff's Count I claim seeking relief directly under the Fourteenth Amendment, if meritorious, "can be sufficiently vindicated by an action under 42 U.S.C. § 1983 and there is no need or right to assert a cause of action directly under the Constitution." United States v. Bohn, 1999 WL 1067866, at \*3 (E.D. Pa. Nov. 9, 1999) (citing Rogin v. Bensalem, 616 F.2d 680, 686-87 (3d Cir. 1980)). Thus, the Court's decision on plaintiff's claims in Counts II, III, and IV will be dispositive of plaintiff's Count I claims. Finally, plaintiff's Count IV conspiracy claim alleges a conspiracy under § 1983. Because the Court concludes that plaintiff has not stated a claim upon which relief can be granted under § 1983, the conspiracy claim must also fail, and does not necessitate any further analysis.<sup>3</sup>

The Court, therefore, limits its substantive consideration to plaintiff's Count II and III claims that (1) plaintiff was denied his constitutional right to procedural due process in defendants' termination of his employment without notice or an opportunity to be heard ("termination claim"); and (2) plaintiff was denied his constitutionally protected liberty interest in his reputation without due process ("reputation claim"). For the reasons stated below, the Court concludes that, taking as true the allegations in plaintiffs' Second Amended Complaint – as the Court must in deciding defendants' Motion under Fed. R. Civ. P. 12(b)(6) – neither plaintiff's termination claim nor his reputation claim state a claim upon which relief can be granted.

In addition to discussing the above two claims, the Court will briefly address plaintiff's

---

<sup>3</sup> The Court's ruling on the conspiracy claim is without prejudice to plaintiff's right to allege a conspiracy as part of a retaliation claim in a third amended complaint.

“retaliation” claim. Because it is not clear what plaintiff is alleging in that claim, the Court will grant plaintiff leave to file a third amended complaint stating a “retaliation” claim arising out of plaintiff’s exercise of his constitutional rights.

**A. TERMINATION CLAIM**

Procedural due process requires that before depriving an individual of a constitutionally protected property interest, a state actor must provide the individual with notice and an opportunity to be heard. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985); Abbott v. Latshaw, 164 F.3d 141, 146 (3d Cir. 1998). Plaintiff alleges that he was provided with neither notice nor an opportunity to be heard before or after his termination on March 23, 1999. The Court concludes, however, that plaintiff may not pursue a remedy for this purported denial of due process because, first, plaintiff’s claim is barred by the statute of limitations, and, second, plaintiff fails the threshold inquiry of the due process analysis in that he cannot demonstrate a constitutionally protected property interest.

**1. Statute of Limitations**

The statute of limitations for plaintiff’s § 1983 claims is two years. See Sameric Corp. of Del., Inc. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998) (citing 42 Pa. C.S.A. § 5524) (explaining federal rule requiring application to § 1983 of Pennsylvania’s two-year statute of limitations for personal injury claims). “A section 1983 cause of action accrues when the plaintiff knew or should have known of the injury upon which its action is based.” Id. Defendant argues that, because plaintiff’s cause of action accrued when he was terminated on March 23, 1999, and because plaintiff filed his Complaint more than two years later, on September 6, 2001, his cause of action is time-barred by the statute of limitations.

Plaintiff raises two arguments in response. First, plaintiff argues that he did not gain “standing” to bring this cause of action until the DOE reinstated his professional certification on January 29, 2000, and, therefore, the statute of limitations should run from that date. Second, plaintiff argues that defendants’ continued refusals to reinstate him constituted a “continuing violation.” The Court addresses these arguments in turn.

**a. “Standing”**

In support of his “standing”<sup>4</sup> argument, plaintiff cites Centifanti v. Nix, 865 F.2d 1422 (3d Cir. 1989). In that case, Centifanti, an attorney, was suspended from the practice of law in Pennsylvania in 1980. Id. at 1425. In 1983, he filed a petition for reinstatement with the Disciplinary Board of the Supreme Court of Pennsylvania, and the Board subsequently issued an opinion recommending that the Supreme Court of Pennsylvania reinstate Centifanti. Id. Centifanti then sought leave to file a brief in support of the petition in the Supreme Court of Pennsylvania. Id. On July 9, 1986, however, that court simultaneously denied the petition for reinstatement and Centifanti’s request to file a brief. Id.

On January 2, 1987, Centifanti filed in federal court a Complaint against the Supreme Court of Pennsylvania claiming that the rules governing attorney reinstatement violated his procedural due process rights by denying him an opportunity to be heard before the court decided his petition. Id. at 1425-26. The Supreme Court defendants argued, inter alia, that Centifanti’s action was filed beyond the two-year statute of limitations. Id. at 1432. The action, defendants argued, accrued when Centifanti first filed his petition for reinstatement, in 1983, because this

---

<sup>4</sup> Plaintiff’s “standing” argument does not address his constitutional standing to sue under Article III of the Constitution. Instead, his argument might more accurately be characterized as an “accrual of action” argument.

was the time he first learned of the procedural rules governing reinstatement petitions. Id.

The Third Circuit rejected this argument on the ground that “Centifanti did not have standing to challenge the rules until he had suffered or was about to suffer an actual injury.” Id. at 1433. That “actual injury” did not occur “until the Pennsylvania Supreme Court denied his petition in July of 1986, or at least until the hearing committee and the Disciplinary Board recommended his reinstatement.” Id. Both of those dates were less than two years before Centifanti filed his Complaint.

In this case, plaintiff argues that Centifanti supports a determination that plaintiff did not gain standing to sue until after the DOE reinstated his professional certification. Plaintiff attempts to draw an analogy to Centifanti based solely on the fact that, like Centifanti seeking reinstatement to the bar, plaintiff sought reinstatement to his employment. The Court rejects this argument. Plaintiff places far too much reliance on the word “reinstatement.” The core of the due process claim in Centifanti was that the reinstatement procedures did not provide constitutionally required procedural safeguards. By contrast, in this case, the core of plaintiff’s cause of action is that he was terminated without due process. Thus, his cause of action accrued at the time he was terminated. See, e.g., Smith v. City of Enid, 149 F.3d 1151, 1155 (10th Cir. 1998) (citing Lawshe v. Simpson, 16 F.3d 1475, 1480 (7th Cir. 1994); Hoesterey v. City of Cathedral City, 945 F.2d 317, 320 (9th Cir. 1991); Rubin v. O’Koren, 621 F.2d 114, 116 (5th Cir. 1980)) (stating that several circuits have adopted “an accrual rule which would trigger the statute of limitations in procedural due process claims when the employer notifies the employee of the adverse employment decision”). Because plaintiff was terminated more than two years before he filed his Complaint, the Third Circuit’s “standing” analysis in Centifanti is inapposite

and does not affect the statute of limitations defense.

**b. Continuing violation**

In making his continuing violation argument, plaintiff similarly relies on the Third Circuit's Centifanti decision.<sup>5</sup> Specifically, plaintiff relies on the court's conclusion "that Centifanti remains suspended from the practice of law, and thus he alleges what is in essence a continuing wrong. His cause of action continues to accrue on each day of the alleged wrong."<sup>6</sup> Centifanti, 865 F.2d at 1432-33. Plaintiff in this case argues that he, similarly, remains terminated from his employment and that defendants have repeatedly denied his requests that he be reinstated – continuing wrongs which render his Complaint timely filed under the continuing violation doctrine.

The Court concludes, however, that plaintiff advocates an application of the continuing violation doctrine more extensive than that countenanced by the Third Circuit's most recent discussion of the doctrine in Cowell v. Palmer Township, 263 F.3d 286 (3d Cir. 2001).<sup>7</sup> Cowell involved the defendant Township's placement of liens on the plaintiffs' property in 1992 and

---

<sup>5</sup> Plaintiff also cites to language in Brook v. Thornburgh, 497 F. Supp. 560, 561 (E.D. Pa. 1980) providing that "an unconstitutional refusal by a state official to reinstate a wrongfully fired employee is a continuing constitutional violation." The quoted language is inapplicable to plaintiff's "continuing violation" argument. It is excerpted from the Brook court's analysis as to whether the plaintiff in that case could pursue injunctive relief against a state entity under Ex Parte Young, 209 U.S. 123 (1908), an issue entirely different from the continuing violation analysis for statute of limitations purposes.

<sup>6</sup> In Centifanti, the court cast its continuing violation and standing analyses as alternative reasons to support its rejection of the Supreme Court defendants' statute-of-limitations defense.

<sup>7</sup> The Court notes that the United States Supreme Court's recent decision in Nat'l R.R. Passenger Corp. v. Morgan, 122 S. Ct. 2061 (2002), addressing alleged continuing violations in a Title VII case, does not impact the equitable continuing violation doctrine at issue in this case. Id. at 2077.

1993. Id. at 288-89. In 1999, plaintiffs filed their § 1983 action alleging that the placement of the liens violated their substantive due process rights. Id. at 289. In response to the defendant's statute-of-limitations argument, the plaintiffs argued that (1) the liens constituted continuing violations until they were lifted or expunged in 1998 and (2) the defendants engaged in a campaign of harassment against the plaintiffs that extended beyond the imposition of the liens. Id. at 293-94

In addressing the plaintiffs' argument, the court explained that "courts should consider at least three factors" in analyzing a purported continuing violation: (1) "whether the violations constitute the same type of discrimination, tending to connect them in a continuing violation"; (2) "whether the acts are recurring or more in the nature of isolated incidents"; and (3) "whether the act had a degree of permanence which should trigger the plaintiff's awareness of and duty to assert his/her rights and whether the consequences of the act would continue even in the absence of a continuing intent to discriminate." Id. at 292 (citing West v. Phila. Elec. Co., 45 F.3d 744, 755 n.9 (3d Cir. 1995); Berry v. Bd. of Supervisors of La. State Univ., 715 F.2d 971, 981 (5th Cir. 1983)). The third factor, degree of permanence, "is the most important of the factors." Id. (citing Berry, 715 F.2d at 981). When applying these factors, "[t]he focus...is on affirmative acts of the defendants." Id. at 293 (citing, *inter alia*, Del. State College v. Ricks, 449 U.S. 250, 258 (1980)).

Based on this analysis, the Third Circuit rejected both of the plaintiff's continuing violation arguments in Cowell. As to the first argument, that the liens in and of themselves constituted continuing violations, the court concluded that, because of the focus on "affirmative acts of the defendants," the "mere existence of the liens does not amount to a continuing

violation.” Id. As to the second argument, with respect to a “campaign of harassment,” the Cowell court concluded, as relevant to this case, that the “degree of permanence” prong of the continuing violation analysis weighted heavily against the plaintiffs. “[P]laintiffs were aware of the wrongfulness of the liens,” the court stated, “when the liens were imposed in 1992 and 1993.” Id. at 295 (emphasis added). In light of this fact, the court concluded that allowing “plaintiffs to proceed with their substantive due process claim now would be unfair to the Township and contrary to the policy rationale of the statute of limitations.” Id.

The Cowell court’s analysis is instructive in this case. First, plaintiff’s argument that defendants’ denials of his requests for reinstatement constitute continuing violations improperly removes the focus from the “affirmative acts of the defendants.” Id. at 293. The affirmative act at issue in this case is defendants’ termination of plaintiff – not their refusal to reinstate him.<sup>8</sup> Second, the Cowell court’s emphasis on the “degree of permanence” factor demonstrates the impropriety of plaintiff’s reliance on the fact that he continues to suffer the results of his termination. As stated above, supra § II.A.1.a., the core of plaintiff’s procedural due process claim is that he was terminated without constitutionally required procedural safeguards. Just as

---

<sup>8</sup> Although the Third Circuit has not specifically held that refusals to reinstate do not constitute continuing violations, other courts addressing the issue have reached this conclusion. See, e.g., DeNovellis v. Shalala, 124 F.3d 298, 310 (1st Cir. 1997) (citing De Leon Otero v. Rubero, 820 F.2d 18, 20 (1st Cir. 1987) (holding defendants’ refusal to reinstate plaintiff “was not a separate act of discrimination, but rather a consequence of his initial demotion”); Valles Velazquez v. Chardon, 736 F.2d 831, 833 (1st Cir. 1984) (holding demotion followed by defendant’s repeated refusals to reinstate plaintiff did not constitute a continuing violation)); Piraino v. U.S. Postal Serv., 69 F. Supp. 2d 889, 897 (E.D. Tex. 1999) (citing Ricks, 449 U.S. at 258; Berry, 715 F.2d at 981) (“Subsequent denials of reinstatement are merely the continuing effects of the original decision. If continued denials of unemployment are merely the natural consequence of the initial denial of reinstatement, there is no continuing violation.”). This Court concludes that the analyses conducted by other courts on the question comport with the Third Circuit’s focus on a defendant’s affirmative acts.

the plaintiffs in Cowell “were aware of the wrongfulness of the liens when the liens were imposed in 1992 and 1993,” id. at 295, plaintiff in this case was aware of the purported wrongfulness of his termination at the time of his termination – on March 23, 1999.

Adoption of plaintiff’s arguments would effectively eviscerate statutes of limitations in procedural due process cases like this one. Allowing terminated employees to establish a continuing violation by repeatedly asking for reinstatement, or merely stating that they continue to suffer the effects of a wrongful termination, is “contrary to the policy rationale of the statute of limitations.” Accordingly, the Court rejects plaintiff’s argument that defendants’ conduct in this case amounted to a continuing violation and concludes that plaintiff’s claims are barred by the two-year statute of limitations for § 1983 actions.

## **2. Property Interest in Continued Employment**

Assuming, arguendo, that plaintiff’s procedural due process claims were timely filed, the Court also concludes that plaintiff’s termination claim must fail because he cannot meet the threshold requirement of a procedural due process claim – that he possessed a constitutionally protected property interest in his employment.

The question whether plaintiff possessed such a property interest implicates state law. Indep. Enters. Inc. v. Pittsburgh Water and Sewer Auth., 103 F.3d 1165, 1177 (3d Cir. 1997) (citing Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972)). Under Pennsylvania law, tenured public school employees, like plaintiff, who also qualify as professional employees, are statutorily granted the right to notice and a hearing before dismissal. 24 P.S. § 11-1127. Accordingly, whether public school employees possess a property interest in their employment, and thus are entitled to such procedural protections, hinges on their classification as “professional

employees”<sup>9</sup> under 24 P.S. § 11-1101. As demonstrated in long-standing Pennsylvania case law, an essential question in determining whether a public school employee is a professional employee is whether the employee maintains the proper professional certification.

To answer that question in this case, defendants point the Court to the Pennsylvania Commonwealth Court’s decision in Occhipinti v. Bd. of Sch. Dirs. of Old Forge Sch. Dist., 464 A.2d 631 (Pa. Commw. Ct. 1983). In that case, the plaintiff teacher, Occhipinti, had an interim teaching certificate that expired on May 31, 1977, shortly after which she was terminated. Id. at 631. She then appealed her termination to the Secretary of Education and, subsequently, to the Commonwealth Court. Id. at 632. On appeal, the Commonwealth Court ruled that, under the Pennsylvania School Code, an employee’s maintaining a valid professional certificate is “by statute, fundamental to classification as a professional employee.” Id. (citing 24 P.S. § 11-1101(1)).<sup>10</sup> Because Occhipinti’s certificate expired on May 31, 1977, as of June 1, 1977, she ceased to be a professional employee. Id. Thus, the court held, the Secretary of Education had no jurisdiction over Occhipinti’s appeal of her termination. Id.

The import of Occhipinti is that, upon the lapsing of a professional certificate, a public school employee immediately loses professional employee status. This rule of law was dispositive in plaintiff’s own efforts to administratively appeal his termination. As the Commonwealth Court explained in its disposition of plaintiff’s appeal, when plaintiff “allowed his certification to lapse he became statutorily incompetent to execute the duties of the position

---

<sup>9</sup> Pennsylvania’s Public School Code refers to employees as “employees.”

<sup>10</sup> That statute provides, in relevant part: “The term ‘professional employe’ shall include those who are certificated....” 24 P.S. § 11-1101(1).

for which he was hired.” Moiles v. Bd. of Sch. Dirs. of Marple Newtown Sch. Dist., No. 777 C.D. 2000, slip op., at 5 (Pa. Commw. Ct. May 2, 2001).<sup>11</sup> The court then followed the disposition of Occhipinti and held that Moiles could not appeal his termination. Id. at 5-6.

Based on the Commonwealth Court’s Occhipinti decision, as reaffirmed in Moiles, this Court concludes that, under Pennsylvania law,<sup>12</sup> plaintiff was no longer a professional employee immediately after his professional certification lapsed on January 28, 1998. This conclusion effectively ends the procedural due process inquiry. As of January 29, 1998, plaintiff was not entitled to the procedural protections statutorily granted to professional employees under 24 P.S. § 11-1127. Stated otherwise, as of January 29, 1998, plaintiff had no property interest in his continued employment. Accordingly, when plaintiff’s employment was terminated, he was not deprived of a constitutionally protected property interest, and he may not state a claim for a violation of his procedural due process rights.

Plaintiff raises a number of arguments in response to this position, none of which are persuasive. First, plaintiff argues that, even without professional employee status, he was still entitled to procedural due process protections under Pennsylvania’s Local Agency Law, 2 Pa. C.S.A. §§ 551-555, which requires, inter alia, that employees of local agencies, including school districts, be provided with procedural due process protections before their employment is terminated. 2 Pa. C.S.A. § 553. Plaintiff’s citation to the Local Agency Law does not advance

---

<sup>11</sup> A copy of the Commonwealth Court’s opinion in Moiles is appended to Defendants’ Motion to Dismiss at Ex. C.

<sup>12</sup> Defendants argue that plaintiff is collaterally estopped from relitigating the issue of his professional employment status. Because the Court concludes that defendants substantive position as to plaintiff’s professional status is correct as a matter of Pennsylvania law, the Court deems it unnecessary to analyze defendants’ collateral estoppel argument.

his cause, however, because, as the Supreme Court of Pennsylvania has held, an employee is only entitled to due process protections under that law if the employee can “establish a legitimate expectation of continued employment through either a contract or statute.” Short v. Borough of Lawrenceville, 696 A.2d 1158, 1158 (Pa. 1997). In light of this principle, plaintiff’s Local Agency Law argument brings plaintiff back to the starting point. The only statute plaintiff can rely on to establish a “legitimate expectation of continued employment” is the Public School Code, which, as discussed, provides procedural protections – and, thus, an expectation in continued employment – only to professional employees who are certificated. Plaintiff was no longer a certificated professional employee as of January 29, 1998. Plaintiff’s Local Agency Law argument thus does not provide any ground to support a procedural due process claim.

Plaintiff next argues that defendants should be estopped from challenging his property interest in his employment because his loss of professional status was due to defendant Chopra’s refusal to attest to plaintiff’s satisfactory service. Plaintiff is incorrect. As discussed above, his loss of professional status had nothing to do with defendants’ actions, but, rather, was caused solely by the lapsing of plaintiff’s certificate. Plaintiff makes no allegation that defendants’ conduct caused this lapsing. Thus, the record before the Court, the Second Amended Complaint, provides no support for plaintiff’s argument that defendants should be estopped from challenging plaintiff’s property interest.

Finally, plaintiff argues that because he remained an employee after the lapsing of his professional certificate – that is, because the District did not immediately suspend or terminate him – he maintained a legitimate expectation of, and therefore a property interest in, continued employment. The Court concludes, however, that plaintiff’s alleged expectation in continued

employment was not a legitimate one. The Court reaches this conclusion in light of the Commonwealth Court’s holding, in a similar case, that “[i]f an employee is issued a professional employee contract without meeting the statutory requirements of such status, that contract will be disregarded and the employee will not be considered a professional employee.” Collins v. Lebanon County Vocational Tech. Sch., 660 A.2d 231, 234 n.4 (Pa. Commw. Ct. 1995). Under this rule of law, once plaintiff lost his professional employee status, he could not be considered a professional employee even if defendants wanted to confer such status upon him.<sup>13</sup> Thus, plaintiff could not have legitimately held any expectation of continued employment.

In sum, none of plaintiff’s arguments undermine defendants’ position that plaintiff had no property interest in his continued employment as of the time his professional certification lapsed on January 28, 1998. As of that date, plaintiff did not have a constitutionally protected property interest in continued employment. For that reason, his termination is not actionable in a procedural due process claim.

## **B. REPUTATION CLAIM**

The Supreme Court “has recognized that an individual has a protectible interest in reputation.” Ersek v. Township of Springfield, 102 F.3d 79, 83 (3d Cir. 1996) (citing Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971)). Thus, if an individual can establish a protectible interest in reputation, “notice and an opportunity to be heard are essential.” Constantineau, 400

---

<sup>13</sup> To the extent that plaintiff’s argument might be interpreted as an equitable estoppel claim – that defendants are equitably estopped from challenging his professional status in light of their treating him as a professional employee – that argument may not be viewed in a different light. The net effect of such an argument is to create an equitable estoppel exception to Pennsylvania’s at-will employment rule, an exception that the Supreme Court of Pennsylvania has rejected. Short, 696 A.2d at 1158 (citing Stumpp v. Stroudsburg Municipal Auth., 658 A.2d 333, 336 (Pa. 1995)).

U.S. at 437. Before arriving at the question of notice and an opportunity to be heard, however, “[i]t is clear that...a plaintiff must show a stigma to his reputation plus some concomitant infringement of a protected right or interest.” Ersek, 102 F.3d at 83 n.5.

The Third Circuit has explained this threshold analysis as “the formidable barrier” imposed by Paul v. Davis, 424 U.S. 693 (1976), which held, in the words of the Third Circuit, “that reputation alone is not an interest protected by the Due Process Clause.” Clark v. Township of Falls, 890 F.2d 611, 619 (3d Cir. 1989). Specifically, the “barrier” imposed by Paul provides that harm to reputation “is actionable under 42 U.S.C. § 1983 only if it occurs in the course of or is accompanied by a change or extinguishment of a right or status guaranteed by state law or the Constitution.” Id. (emphasis added). This and other language in Clark has been read to require that an individual pursuing a reputation due process claim, like plaintiff, must demonstrate both a harm to reputation and the denial of a constitutionally protected property interest. Ersek, 102 F.3d at 83 n.5. Under this analysis, plaintiff’s claim must fail, because, as discussed, supra § II.A.2, the Court has concluded that plaintiff’s termination did not amount to a deprivation of a constitutionally protected property interest.

Although Clark appears to be dispositive of plaintiff’s reputation claim, the Court acknowledges that more recent decisions have muddied the waters as to what a plaintiff must demonstrate to state a constitutional reputation claim. The requirement that a claimant “must show a stigma to his reputation plus some concomitant infringement of a protected right or interest” is now “commonly termed the ‘reputation-plus’ or ‘stigma-plus’ requirement.” Ersek, 102 F.3d at 83 n.5 (citing Laurence H. Tribe, American Constitutional Law 701 (2d ed.1988)). Some cases may be read to provide that “something less than a property interest, independently

protected by the Due Process Clause, could be a sufficient ‘plus.’” Id.

Nevertheless, plaintiff’s Complaint does not state a valid reputation claim. Even if the Complaint contained an allegation that plaintiff suffered the infringement of an interest sufficient to meet the “stigma-plus” requirement – which it does not<sup>14</sup> – plaintiff’s claim would fail for another reason. Specifically, he has failed to allege the degree of harm to his reputation required to render the purported harm actionable under § 1983. Plaintiff’s allegations of harm to reputation are limited to his assertion that defendants’ conduct “destroyed Plaintiff’s freedom to take advantage of other employment opportunities as an administrator and/or professional employee.” Complaint at ¶ 38. The Third Circuit, however, has held that “possible loss of future employment opportunities is patently insufficient to satisfy the requirement imposed by Paul that a liberty interest requires more than mere injury to reputation.” Clark, 890 F.2d at 620; see also Kelly v. Borough of Sayreville, 107 F.3d 1073, 1078 (3d Cir. 1997) (discussing Clark). The Court concludes that plaintiff’s pleadings suffer from the same flaw as those at issue in Clark – they only allege “possible loss of future employment opportunities,” allegations that are “patently insufficient” to state a claim for a deprivation of plaintiff’s liberty interest in his reputation. Clark, 890 F.2d at 620.

For the foregoing reasons, the Court concludes that plaintiff’s claims asserting a deprivation of his liberty interest in his reputation without due process are insufficient as a matter

---

<sup>14</sup> The Court notes that plaintiff’s argument that he possesses a constitutionally protected property interest in his reputation based on Article 1, Section 1 of the Pennsylvania Constitution has been rejected by another Court in this District. Manion v. Sarcione, 192 F. Supp. 2d 353, 356 (E.D. Pa. 2001) (“[E]ven with the elevated protection that reputation seems to be afforded in the Commonwealth, this favored status in and of itself does not secure reputation alone under the Fourteenth Amendment.”). This Court agrees with the reasoning of the Manion court, and, accordingly, rejects plaintiff’s argument.

of law. Accordingly, the Court will grant defendants' Motion to Dismiss with respect to that claim. In the event plaintiff concludes the facts establish a valid claim for loss of his liberty interest in his reputation under the analysis set forth in this Memorandum, he should file a motion seeking reconsideration of the Court's ruling on this issue.

### **C. RETALIATION CLAIM**

Plaintiff's Complaint loosely states a claim for "retaliation." See, e.g., Second Amended Complaint at ¶ 52 (alleging that "[d]efendants...retaliated against Plaintiff by failing to offer him reinstatement to or employment in available positions for which he was qualified and by failing to afford [plaintiff] a hearing after his Level II Administrative Certificate was issued in January 2000, and his professional status was reinstated"). Courts have long held that a state actor's retaliation against an individual for the individual's exercise of constitutional rights is actionable under § 1983. For example, "[a] person may state an independent cause of action for retaliation for the exercise of his or her right of access to the courts, regardless of whether the allegations of a deprivation of federal statutory or constitutional rights are meritorious." Higgins v. Beyer, 293 F.3d 683, 694 (3d Cir. 2002) (citing White v. Napoleon, 897 F.2d 103, 111-12 (3d Cir. 1990)).

Plaintiff does not explicitly state what constitutional rights he exercised to prompt defendants' alleged retaliation such that the retaliation would be actionable under § 1983. The Court will, however, grant plaintiff leave to file a Third Amended Complaint stating a "retaliation" claim consistent with this Memorandum.

### **III. CONCLUSION**

For the foregoing reasons, the Court will grant defendants' Motion to Dismiss. The

Court's granting of defendants' Motion will be with prejudice in all respects except with respect to plaintiff's right to file a third amended complaint stating a "retaliation" claim.

An appropriate order follows.

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

|                                    |   |              |
|------------------------------------|---|--------------|
| <hr/>                              | : |              |
| STEPHEN MOILES,                    | : |              |
|                                    | : |              |
| Plaintiff,                         | : | CIVIL ACTION |
|                                    | : |              |
| v.                                 | : |              |
|                                    | : |              |
| MARPLE NEWTOWN SCHOOL              | : | NO. 01-4526  |
| DISTRICT, JORGE A. LEON,           | : |              |
| CAROLYN J. BAXTER, WALTER W.       | : |              |
| BORGINIS, III, JOSEPH BULLEN, III, | : |              |
| RITA DESANTO, DEBORAH              | : |              |
| DEVEDJIAN, ARNOLD H. GRAF,         | : |              |
| ROBERT IPPOLDO, TRUDY RIDDELL,     | : |              |
| TODD EACHUS, RODMAN S.             | : |              |
| ROTHERMEL, MICHAEL A. YOUNG        | : |              |
| and RAJ CHOPRA, SUPERINTENDENT     | : |              |
| OF MARPLE NEWTOWN SCHOOL           | : |              |
| DISTRICT,                          | : |              |
|                                    | : |              |
| Defendants.                        | : |              |
| <hr/>                              | : |              |

**ORDER**

AND NOW this 23rd day of August, 2002, upon consideration of Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint (Document No. 16, filed February 25, 2002); Plaintiff's Response to Defendants' Motion to Dismiss Second Amended Complaint (Document No. 17, filed March 8, 2002); and a telephone conference with the parties, through counsel, **IT IS ORDERED**, as follows:

1. The Court noting that plaintiff has voluntarily agreed to the dismissal of the substantive due process claims in Counts II and III of his Second Amended Complaint, said claims are **DISMISSED WITH PREJUDICE**;
2. As to the remaining claims in plaintiff's Second Amended Complaint, for the reasons

set forth in the foregoing Memorandum, Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint (Document No. 16, filed February 25, 2002) is **GRANTED** and plaintiff's Second Amended Complaint is **DISMISSED WITH PREJUDICE** except that said dismissal is **WITHOUT PREJUDICE**<sup>1</sup> to plaintiff's right to file a third amended complaint pleading a "retaliation" claim consistent with the foregoing Memorandum and this Order.

**IT IS FURTHER ORDERED** that plaintiff shall file his third amended complaint within twenty days of the entry of this Order.

**BY THE COURT**

---

**JAN E. DUBOIS, J.**

---

<sup>1</sup> As noted in the foregoing Memorandum, in the event plaintiff concludes the facts establish a valid claim for loss of his liberty interest in his reputation, he should file a motion seeking reconsideration of the Court's ruling on this issue before filing the third amended complaint. The filing of such a motion will serve to toll the time for filing such complaint.