

APPENDIX A

**PETITION FOR REHEARING AND REHEARING
EN BANC DENIAL FROM THE FOURTH CIRCUIT
COURT OF APPEALS**

FILED: September 2, 2025

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 25-1325
(2:23-cv-00224-RAJ-LRL)

WILLIAM EDWARD WILLIAMSON
Plaintiff - Appellant

v.

SCHOOL BOARD OF THE CITY OF
CHESAPEAKE; ANGELA B. SWYGERT, individual
capacity; THOMAS LEE MERCER, SR., individual
capacity; SAMUEL L. BOONE, JR., individual
capacity; AMANDA GRACE DEAN, individual
capacity; MICHAEL K. LAMONEA, individual
capacity; JOHN M. MCCORMICK, individual
capacity; NORMAN POOL, individual capacity;
KIMBERLY A. SCOTT, individual capacity;
BRITTANY NICOLE WALKER, individual capacity;
MICHAEL ROSS BAILEY, individual capacity;
BRIAN T. AUSTIN, individual capacity; SUZAN L.
MCDERMOTT, individual capacity; LAURIE
EDGAR, individual capacity; RAYMOND COLLINS,
individual capacity
Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Wynn, and Judge Berner.

For the Court
/s/ Nwamaka Anowi, Clerk

APPENDIX B

UNPUBLISHED PER CURIAM OPINION OF THE
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT, WHICH AFFIRMED THE
DISTRICT COURT'S JUDGMENT WITHOUT A
WRITTEN OPINION OR REASON

FILED: July 31, 2025

UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

No. 25-1325

WILLIAM EDWARD WILLIAMSON,
Plaintiff - Appellant,

v.

SCHOOL BOARD OF THE CITY OF
CHESAPEAKE; ANGELA B. SWYGERT, individual
capacity; THOMAS LEE MERCER, SR., individual
capacity; SAMUEL L. BOONE, JR., individual
capacity; AMANDA GRACE DEAN, individual
capacity; MICHAEL K. LAMONEA, individual
capacity; JOHN M. MCCORMICK, individual
capacity; NORMAN POOL, individual capacity;
KIMBERLY A. SCOTT, individual capacity;
BRITTANY NICOLE WALKER, individual capacity;
MICHAEL ROSS BAILEY, individual capacity;
BRIAN T. AUSTIN, individual capacity; SUZAN L.
MCDERMOTT, individual capacity; LAURIE
EDGAR, individual capacity; RAYMOND COLLINS,
individual capacity,
Defendants - Appellees.

Appeal from the United States District Court for the
Eastern District of Virginia, at Norfolk.

Raymond A. Jackson, Senior District Judge.

(2:23-cv-00224-RAJ-LRL)

Submitted: July 29, 2025

Decided: July 31, 2025

Before KING, WYNN, and BERNER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

William Edward Williamson, Appellant Pro Se.
Andrew Crawford Harding, KIERNAN TREBACH
LLP, Virginia Beach, Virginia; Anne Catherine
Lahren, Richard Hoyt Matthews, PENDER &
COWARD, PC, Virginia Beach, Virginia, for
Appellees.

Unpublished opinions are not binding precedent in
this circuit.

PER CURIAM:

William Edward Williamson appeals the district court's order granting summary judgment to Defendants in Williamson's complaint alleging racial discrimination under 42 U.S.C. §§ 1981, 1983 and the Equal Protection Clause of the Fourteenth Amendment. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. Williamson v. Sch. Bd. Of the City of Chesapeake, No. 2:23-cv-00224-RAJLRL (E.D. Va. Mar. 17, 2025). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX C

THE OPINION AND ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF VIRGINIA (NORFOLK), WHICH
GRANTED SUMMARY JUDGMENT FOR THE
RESPONDENTS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

FILED: March 17, 2025

WILLIAM EDWARD WILLIAMSON,
Plaintiff,

v.

ACTION NO.2:23cv224

SCHOOL BOARD OF THE CITY OF
CHESAPEAKE, et al.,
Defendants.

DISMISSAL ORDER

Plaintiff William Edward Williamson ("Plaintiff"), appearing pro se, filed this action against Defendants School Board of the City of Chesapeake ("School Board"), Angela B. Swygert, Thomas Lee Mercer, Sr., Samuel L. Boone, Jr., Amanda Grace Dean, Michael K. Lamonea, John M. McCormick, Norman Pool, Kimberly A. Scott, Brittany Nicole Walker, Michael Ross Bailey, Brian T. Austin, Suzan L. McDermott, Laurie Edgar, and Raymond Collins (collectively, "Defendants"). See Compl., ECF No. 1. This matter is

before the Court on Defendants' Renewed Motion for Summary Judgment, ECF No. 39, and Plaintiff's Motion for Summary Judgment, ECF No. 36.

The Court has considered the arguments in the briefing and concludes there is no need to hold a hearing on the motions. See Fed. R. Civ. P. 78; E.D. Va. Loc. Civ. R. 7(J). For the reasons set forth below, Defendants' Renewed Motion for Summary Judgment, ECF No. 39, is GRANTED; Plaintiff's Motion for Summary Judgment, ECF No. 36, is DENIED; and this civil action is DISMISSED.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, who describes himself as "Korean . . . [with] immutable Asian physical characteristics," is a teacher at Oscar Smith High School ("OSH") in Chesapeake, Virginia. Compl. at 43, ECF No. 1. In 2022, Plaintiff applied to be the head coach of the boys varsity soccer team at OSH, but he was not selected for the position. Id. at 43-49. Plaintiff claims that his non-selection was the result of unlawful discrimination and that a subsequent investigation into his claims of discrimination was inadequate. See id. at 1-96.

Plaintiff filed a Complaint against the School Board, all individual members of the School Board, one of the two individuals who interviewed Plaintiff for the coaching position, and four individuals who work in the Chesapeake Public Schools Human Resources Department. Id. Defendants filed a Motion for Summary Judgment ("First Motion for Summary Judgment") as their initial responsive pleading to Plaintiff's Complaint. Defs.' First Mot. Summ. J., ECF No. 15. Plaintiff suggested that he could not properly respond to Defendants' motion without

certain discovery. Opp'n at 58, ECF No. 20. Upon review, the Court determined that Defendants' First Motion for Summary Judgment was premature and, consistent with Rule 56(d) of the Federal Rules of Civil Procedure, the Court denied Defendants' First Motion for Summary Judgment without prejudice to Defendants' right to re-file another summary judgment motion upon the completion of the discovery period. Order at 5, ECF No. 27; see Fed. R. Civ. P. 56(d) (explaining that when a party adequately establishes that "it cannot present facts essential to justify its opposition" to a summary judgment motion, the Court may defer consideration of the motion, deny the motion, allow the parties time to take discovery, or "issue any other appropriate order").

The Court held a scheduling conference on April 12, 2024, and issued a Rule 16(b) Scheduling Order four days later. Rule 16(b) Scheduling Order, ECF No. 35. According to the Rule 16(b) Scheduling Order, Plaintiff's fact discovery period was scheduled to close on July 2, 2024, and Defendants' fact discovery period was scheduled to close on July 30, 2024. *Id.* at 2.

On May 6, 2024, nearly two months before the close of Plaintiff's fact discovery period, Plaintiff filed a Motion for Summary Judgment. *Pl.'s Mot. Summ. J.*, ECF No. 36. Due to the timing of Plaintiff's motion, Defendants assumed that Plaintiff had "conducted all the discovery he need[ed] for his case" and that this "matter [was] ripe for summary judgment." *Mem. Supp. Defs.' Renewed Mot. Summ. J.* at 2-3, ECF No. 40. Therefore, Defendants filed a Renewed Motion for Summary Judgment. *Defs.' Renewed Mot. Summ. J.*, ECF No. 39.

Out of an abundance of caution, the Court ordered Plaintiff to notify the Court, in writing, whether any discovery issues remained in this case. Order at 6, ECF No. 64. The Court agreed to resolve any outstanding discovery issues prior to resolving the summary judgment motions. *Id.* Plaintiff filed a response to the Court's Order, in which he stated: "I assert that there are no remaining discovery disputes that need to be addressed in this action and that the Court can move forward and rule on the Plaintiff's Motion for Summary Judgment, ECF No. 36, and Defendants' Renewed Motion for Summary Judgment, ECF No. 39." Resp. at 1, ECF No. 65. Accordingly, Defendants' Renewed Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment, which have been fully briefed by the parties, are ripe for adjudication.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only when the Court, viewing the record as a whole and in the light most favorable to the nonmoving party, determines that there exists no genuine dispute "as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); see *Seabulk Offshore, Ltd. v. Am. Home Assur. Co.*, 377 F.3d 408, 418 (4th Cir. 2004); *see also* Fed. R. Civ. P. 56(a). "A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party . . . [and] [a] fact is material if it might affect the outcome of the suit under the governing law." *Jacobs v. N. C. Admin. Off. of the Cts.*, 780 F.3d 562, 568 (4th Cir. 2015) (citations omitted). The moving party has the initial burden to show the absence of an essential element

of the nonmoving party's case and to demonstrate that the moving party is entitled to judgment as a matter of law. *Honor v. Booz-Allen & Hamilton, Inc.*, 383 F.3d 180, 185 (4th Cir. 2004); *McLean v. Patten Cmtys., Inc.*, 332 F.3d 714, 718 (4th Cir. 2003); *see Celotex*, 477 U.S. at 322-25.

When the moving party has met its burden to show that the evidence is insufficient to support the nonmoving party's case, the burden then shifts to the nonmoving party to present specific facts demonstrating that there is a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Honor*, 383 F.3d at 185; *McLean*, 332 F.3d at 718-19. To successfully defeat a motion for summary judgment, the nonmoving party must rely on more than conclusory allegations, "mere speculation," the "building of one inference upon another," the "mere existence of a scintilla of evidence," or the appearance of "some metaphysical doubt" concerning a material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002); *Tao of Sys. Integration, Inc. v. Analytical Servs. & Materials, Inc.*, 330 F. Supp. 2d 668, 671 (E.D. Va. 2004). Rather, there must be sufficient evidence that would enable a reasonable fact-finder to return a verdict for the nonmoving party. *See Anderson*, 477 U.S. at 252.

Although the Court is not "to weigh the evidence and determine the truth of the matter" at the summary judgment phase, the Court is required to "determine whether there is a genuine issue for trial." *Tolan v. Cotton*, 572 U.S. 650, 656 (2014) (quoting *Anderson*, 477 U.S. at 249); *see Jacobs*, 780 F.3d at 568-69. In determining whether there is a genuine issue for trial, "[t]he relevant inquiry is

'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.' *Stewart v. MTR Gaming Grp., Inc.*, 581 F. App'x 245, 247 (4th Cir. 2014) (quoting *Anderson*, 477 U.S. at 251-52).

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

For purposes of Defendants' Renewed Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment, the following are the undisputed material facts, which are relevant to Plaintiff's claims and are adequately supported by materials in the record: Plaintiff is "an Asian American of Korean descent," who has worked as a teacher at OSH since 2008. P1. Aff. 4, ECF No. 37-1; P1. Resume at 1, ECF No. 37-7. In 2022, OSH was looking to hire a new head coach for the boys varsity soccer team.¹ P1. Aff. 6; Collins Aff. ¶¶ 3, 9, ECF No. 40-1; Smith Aff. ¶¶ 4-5, ECF No. 40-2. Plaintiff and Grant Collier applied for the position. P1. Aff. I 6; Collins Aff. ¶~j 3-4; Smith Aff. ¶¶ 3-4.

During the application process, Plaintiff and Collier submitted resumes for consideration. P1. Aff. ¶11; Collins Aff. 11; Smith Aff. 5; P1. Resume at 1-2; Collier Resume, ECF No. 40-1 at 7-8. In Plaintiff's resume, Plaintiff summarized his background and objectives as follows:

Dedicated and reliable AP European History and IB World Religions teacher at Oscar

¹ The head coach of the boys varsity soccer team at OSH "receives an annual pay supplement of \$3,792.00." Collins Aff. ¶5, ECF No. 40-1.

Smith who played NCAA Division I soccer for Youngstown State University and Division III baseball at Thiel College. Four Years experience in coaching high school baseball and track at Oscar Smith High School and five years experience coaching soccer for boys and girls 5-16 years of age. Seeking boy's soccer varsity head coach position at Oscar Smith High School.

P1. Resume at 1. In the "Highlights" section of his resume, Plaintiff provided the following Information:

Played Division I soccer at Youngstown State University (YSU).

Won the Chesapeake City Recreational Championship for the past six seasons.

Over the course of the past three years, my soccer team has amassed a 29-2 record.

While Baseball coach at OSHS, beat WB, GB, Grassfield, and Hickory several times and helped turn around a failing program.

Coached several athletes who placed in the VA state championship for track.

Played Division III Baseball at Thiel College and Division III powerhouse NC Wesleyan.

Served in the US Army for six years.

Golden Gloves Boxer.

Id.

Unlike Plaintiff, Collier had prior experience coaching the boys varsity soccer team at OSH.² Collier Resume, ECF No. 40-1 at 7-8. Collier's resume indicated that from January 2022 to June 2022, Collier served as an Assistant Coach for the OSH boys varsity soccer team.² *Id.* As an Assistant

² Collier served in this position on a volunteer basis. Collins Aff. ¶6, ECF No. 40-1.

Coach, Collier:

- Worked with the varsity team as the head varsity assistant.
- Coached the majority of the teams[] practices, worked with the head coach to determine starting line-ups and tactical adjustments.
- Was able to push the team to their best ever district season finish, going undefeated and ended the season in 3rd place.
- Earned a regional game and lost in 2OT to Landstown.

Id. During the season that Collier served as an Assistant Coach for the OSH boys varsity soccer team, four players "earned regional honors" and one player "earned state honors." *Id.*

In addition to coaching varsity soccer at OSH, Collier's resume reflected that Collier also coached soccer at another high school, i.e., Amherst County High School ("ACHS"). *Id.* For two seasons during 2017 and 2018, Collier served as the Junior Varsity Coach at ACHS. *Id.* Collier then moved up to the varsity level and served as the Varsity Head Coach at ACHS from October 2019 to June 2021. *Id.* Outside of the school setting, Collier served as a "U18 Travel Coach" for a soccer team in 2017, and ran "Collier's Soccer Camp" "for 24 high school players" in 2019. *Id.*

Collier also had experience coaching soccer at the college level. *Id.* From January 2018 to June 2021, Collier served as the Assistant Coach for the soccer team at Randolph College. *Id.* As the Assistant Coach, Collier:

- Coached full sessions, warm ups, fitness, game day preparations, whatever was needed during both spring and fall seasons.

- Scouted opposition teams, gave presentations on tactical adaptations.
- Recruited upcoming talent, including players who achieved all conference honors.
- Was responsible for working especially close with the team's attacking players, including players who would earn 2x First team all-american honors.
- Received the Coach's Award in 2021, an award given to a person who demonstrated a high level of excellence and dedication to the program.

Id. Collier noted on his resume that he was "the only person in program history to win [the Coach's Award] twice." *Id.*

In addition to Collier's experience coaching soccer at the high school and college level, Collier's resume also highlighted Collier's playing experience. *Id.* In 2012, Collier served as the captain of the Hickory High School Varsity Soccer team,³ where he led the team in goals scored and was selected "1st team all district and 2nd team all region." *Id.* Collier received offers to play soccer at several colleges, and he chose to play soccer at Randolph College. *Id.* Collier summarized his playing experience at Randolph College as follows:

- 4 year player with over 20 starts and 8 goals, the team was nationally ranked 3 of the 4 years I played, as high as 17th.
- In 2013[.] we achieved a record of 17-1-2 and won the conference league.

³ Hickory High School, like OSH, is located in Chesapeake, Virginia. Collins Aff. ¶11, ECF No. 40-1; Smith Aff. ¶5, ECF No. 40-2.

Lost in the tournament championship in 2OT.

- In 2015[,] we achieved a record of 15-6 and lost in the tournament championship.
- Received the Coach's Award in 2015, an award given to a person who demonstrated a high level of excellence and dedication to the team.

Id.

Plaintiff and Collier were selected to interview for the head soccer coach position on November 21, 2022, and November 22, 2022, respectively. Collins Aff. ¶¶ 9-10; Smith Aff. ¶¶ 3-4; P1. Aff. ¶6. The interviews were conducted by Raymond Collins, who serves as the Athletic Director at OSH, and Anthony Smith, who serves as the Assistant Principal at OSH. Collins Aff. ¶¶ 2, 9-10; Smith Aff. ¶¶ 2, 3-4; P1. Aff. ¶6. Following the interviews, Collins and Smith both concluded that Collier was the best candidate for the job. Collins Aff. ¶13; Smith Aff. ¶7. Collins and Smith based their decision on the candidates' resumes and interview responses. Collins Aff. ¶13; Smith Aff. ¶7. Collins and Smith also noted that "Collier had highlighted his high school varsity soccer experience, including at OSH." Collins Aff. ¶13; Smith Aff. ¶7. Collins also indicated that in his role as the OSH Athletic Director, he personally "observed Collier's coaching of the OSH boys varsity soccer team during the 2021-2022 season," and was aware that "the team had successfully reached the regional championships and that Collier had stepped into head coaching duties when needed." Collins Aff. ¶8.

Collins and Smith recommended to Paul Joseph, the principal at OSH, that he select Collier

for the head soccer coach position.⁴ Collins Aff. ¶13; Smith Aff. ¶7; Joseph Aff. ¶¶ 2, 4, ECF No. 40-17; Applicant Summ. Selection, ECF No. 37-3. At the time that Joseph received the hiring recommendation, Joseph "was personally aware that Collier. . . was already serving as the team's assistant soccer coach," that Collier "already had established experience working with the team's players under then-head coach Brandon Spontak, and that the team was successful under their leadership." Joseph Aff. ¶¶ 4-5. In his affidavit, Joseph states that he approved the selection of Collier "as the new OSH boys varsity head soccer

⁴ "The School Board . . . has delegated the hiring and/or selection of school personnel below the level of assistant principal to the superintendent of the school system, who in turn, has delegated this authority to the school principals." Swygert Aff. ¶7, ECF No. 40-7; Chesapeake Pub. Sch. Policy Manual § 8-32 (explaining that when teachers are assigned to "extracurricular activities" that include "pay supplements," such assignments "shall be made by the principal"). In his Complaint, Plaintiff asserts failure-to-hire-related claims against current and former members of the School Board, including Angela B. Swygert, Thomas Lee Mercer, Sr., Samuel L. Boone, Jr., Amanda Grace Dean, Michael K. Lamonea, John M. McCormick, Norman Pool, Kimberly A. Scott, Brittany Nicole Walker (collectively, the "School Board Members"). Compl. at 1-96, ECF No. 1. However, all of the School Board Members filed affidavits, in which they state that they "do not review and . . . do not vote on school employees for positions below that in seniority to assistant principal, which includes any vacancy in the [OSH] varsity boys soccer head coach position." Swygert Aff. ¶5; Mercer Aff. ¶5, ECF No. 40-8; Boone Aff. ¶5, ECF No. 40-9; Dean Aff. ¶6, ECF No. 40-10; Lamonea Aff. ¶6, ECF No. 40-11; McCormick Aff. ¶6, ECF No. 40-12; Pool Aff. ¶6, ECF No. 40-13; Scott Aff. ¶6, ECF No. 40-14; Walker Aff. ¶6, ECF No. 40-15.

coach . . . upon consideration of objective facts of continuity and [Collier's] hands-on experience with the team." *Id.* ¶6.

Joseph announced the selection of Collier as the head coach for the boys varsity soccer team on November 29, 2022. Collins Aff. ¶14; Smith Aff. ¶8. The next day, Plaintiff, "who was upset by the fact that he was not selected," met with Collins and Smith "for a follow-up conversation." Collins Aff. 16; Smith Aff. ¶10. During the meeting, Plaintiff claimed that "he should have been selected for the OSH varsity boys soccer head coach position as he was more mature than Collier" and "Collier had only been a volunteer coach for the OSH varsity boys soccer team." Collins Aff. ¶18 (emphasis in original); Smith Aff. 12. Collins acknowledged that Plaintiff and Collier were both "qualified" for the position, but explained that he could only "recommend one applicant for selection," and he believed that Collier was the better choice. Collins Aff. ¶17; Smith Aff. ¶11.

On December 5, 2022, Plaintiff sent an email to Joseph, alleging that Plaintiff had been discriminated against "during the selection process for the OSH boys varsity soccer head coach." McDermott Aff. ¶6, ECF No. 40-12; Bailey Aff. ¶6, ECF No. 40-4. On the same day, Joseph forwarded Plaintiff's email to Michael Ross Bailey, who serves as the Director of Human Resources for Chesapeake Public Schools. Bailey Aff. ¶¶ 3, 6. Bailey reviewed the email and, on the same day, forwarded the email to Suzan L. McDermott, who serves as the Assistant Director of Human Resources for Chesapeake Public Schools. *Id.* ¶7; McDermott Aff. ¶11. Bailey asked McDermott "to open an investigation into Plaintiff's allegations of racial discrimination." Bailey Aff. ¶7;

McDermott Aff. ¶11. The next day, on December 6, 2022, McDermott and Laurie Edgar, who serves as the Human Resources Employee Relations Administrator for Chesapeake Public Schools, "opened an HR investigation into Plaintiff's discrimination claims." McDermott Aff. ¶12; Edgar Aff. ¶¶ 4, 7, ECF No. 40-6.

On December 6, 2022, McDermott sent Plaintiff an email, in which she stated: "I would like to reach out to you via phone. Please provide a good contact number where I can contact you." Dec. 6, 2022 Email Chain, ECF No. 37-31; McDermott Aff. ¶13. Plaintiff replied to McDermott's email and stated: "I would prefer to correspond via email." Dec. 6, 2022 Email Chain at 1; McDermott Aff. ¶14. McDermott followed up with a subsequent email to Plaintiff that stated:

I have received the information you provided to Mr. Joseph. Is there any other evidence indicating discrimination based on ethnicity or national origin that you would like to provide? I will be conducting an investigation and want to ensure I have any information you feel is relevant and important to have considered.

Dec. 6, 2022 Email Chain at 1-2; McDermott Aff. ¶15. Plaintiff replied to McDermott's email and stated:

During the interview, Ray Collins continued to cut me off whenever I began to talk about my college and high school varsity soccer coaching experiences which forced me to answer some random question that was not related to the position I was seeking. This was right after I said that I would be a diverse hire, as I am Asian American and army veteran which would be great because the soccer team is very

diverse.

Dec. 6, 2022 Email Chain at 2. Plaintiff also provided McDermott "a chart listing [Plaintiff's] self-perceived qualifications next to what he believed were Collier's qualifications." McDermott Aff. ¶16. Plaintiff claimed that based on a comparison of their respective qualifications, Plaintiff should have been "heavily favored" for the job, and the decision to select Collier for the position "could only be explained by unlawful discrimination." *Id.*

On December 6, 2022, McDermott and Edgar interviewed Smith and Collins "regarding Plaintiff's allegations of racial discrimination." McDermott Aff. ¶18; Edgar Aff. ¶8; see Investigation Notes, ECF No. 37-10. After reviewing the "relevant documents, emails, and interviews," McDermott and Edgar concluded "that there was no evidence of discrimination in the selection process of the OSH varsity boys soccer head coach and that no Chesapeake School Board policy was violated." McDermott Aff. ¶19; Edgar Aff. ¶9. In summarizing the basis for their conclusions, McDermott and Edgar noted, among other things, that (i) Collier had prior experience serving as the head coach of a separate high school soccer team "before coming to Chesapeake"; (ii) Collier had prior coaching experience with the OSH boys varsity soccer team, during which time Collier "did an excellent job," formed relationships with the players, and had a "highly successful season"; (iii) Plaintiff's resume did not demonstrate the same level of relevant experience as Collier's resume; and (iv) race was not discussed during the interviews or meetings with the

hiring team.⁵ Investigation Summ. Report at 1, ECF No. 37-14.

On January 2, 2023, Plaintiff sent an email to all of the School Board Members, in which Plaintiff summarized his "racial discrimination complaint" and asked them to "overturn . . . the selection decision." Swygert Aff. ¶8, ECF No. 40-7; Mercer Aff. ¶8, ECF No. 40-8; Boone Aff. ¶8, ECF No. 40-9; Dean Aff. ¶9, ECF No. 40-10; Lamonea Aff. ¶9, ECF No. 40-11; McCormick Aff. ¶9, ECF No. 40-12; Pool Aff. 9, ECF No. 40-13; Scott Aff. ¶9, ECF No. 40-14; Walker Aff. ¶9, ECF No. 40-15.

On January 13, 2023, McDermott emailed the results of the investigation to Bailey and Brian T. Austin, who serves as the Chief Human Resources Officer for Chesapeake Public Schools. McDermott Aff. ¶22; Bailey Aff. ¶8; Austin Aff. ¶¶ 3, 9, ECF No. 40-3. Bailey and Austin "both reviewed and approved" the findings. Bailey Aff. ¶9; Austin Aff. ¶10. On January 18, 2023, McDermott notified Plaintiff of the outcome of the investigation. McDermott Aff. ¶23. Approximately four months later, Plaintiff filed the instant action. *See* Compl. at 1-96.

In his Complaint, Plaintiff asserts fifteen counts against Collins, McDermott, Edgar, Bailey, Austin, the School Board, and/or the School Board Members. *Id.* at 13-42. Counts I, II, III, V, VI, IX, X, XIII, and XIV relate to the decision to select Collier, instead of Plaintiff, for the head soccer coach

⁵ Plaintiff disagrees with certain statements made by McDermott and Edgar in their investigation summary. The Court will discuss these disagreements in more detail in Parts IV.A.1 and IV.B.1 of this Dismissal Order. See *infra* Parts IV.A.1 and IV.B.1.

position. In Count XIII, Plaintiff claims that Collins discriminated against Plaintiff on the basis of his race, in violation of 42 U.S.C. § 1981, when Collins failed to hire Plaintiff for the job. *Id.* at 39. In Count XIV, Plaintiff claims that Collins' selection of Collier violated Plaintiff's equal protection rights under the Fourteenth Amendment. *Id.* at 40. In Counts I, II, V, VI, IX, and X, Plaintiff claims that the School Board, the School Board Members, and/or Bailey ratified the hiring decision, and in so doing, also violated Plaintiff's § 1981 rights and/or equal protection rights.⁶ *Id.* at 13-17, 21-26, 31-35. In Count III, Plaintiff asserts a gross negligence claim against the School Board based on the hiring decision. *Id.* at 17-18.

Counts IV, VII, VIII, XI, XII, and XV relate to the investigation into Plaintiff's allegations of discrimination following his non-selection. *Id.* at 19-20, 27-31, 35-39, 41-42. In Count XII, Plaintiff claims that McDermott conducted an inadequate investigation, and in so doing, discriminated against Plaintiff on the basis of his race, in violation of § 1981. *Id.* at 37-39. In Count XI, Plaintiff claims that

⁶ The Court notes that all of Plaintiff's claims that seek to redress alleged violations of § 1981 and/or the Equal Protection Clause of the Fourteenth Amendment are brought pursuant to 42 U.S.C. § 1983. Compl. at 13-42, ECF No. 1; see *Whittman v. Virginia*, No. 1:02cv1362, 2002 U.S. Dist. LEXIS 29161, at *5 (E.D. Va. Nov. 4, 2002) (explaining that § 1983 "provides a statutory vehicle for an individual to assert a claim for violation of his constitutional rights by a state actor"); see also *Lewis v. Robeson Cnty.*, 63 F. App'x 134, 138 (4th Cir. 2003) (explaining that "[i]n a suit brought against a state actor, Section 1983 is the exclusive federal remedy for a violation of the rights guaranteed in § 1981").

McDermott's inadequate investigation violated Plaintiff's equal protection rights under the Fourteenth Amendment. *Id.* at 35-37. In Counts VII and VIII, Plaintiff claims that Austin ratified McDermott's inadequate investigation, and in so doing, also violated Plaintiff's § 1981 rights and/or equal protection rights. *Id.* at 27-31. In Counts IV and XV, Plaintiff asserts willful and wanton negligence claims against the School Board, McDermott, and/or Edgar based on the alleged inadequate investigation into Plaintiff's allegations of discrimination. *Id.* at 19-20, 41-42.

IV. ANALYSIS

A. Failure to Hire Claims

As noted above, Counts I, II, III, V, VI, IX, X, XIII, and XIV of Plaintiff's Complaint are based on the decision to select Collier, instead of Plaintiff, for the head soccer coach position. Plaintiff claims that the selection of Collier violated Plaintiff's rights under § 1981, deprived Plaintiff of his equal protection rights under the Fourteenth Amendment, and/or constituted gross negligence.

1. Statutory and Constitutional Claims

Section 1981 provides, in relevant part, that "[a]ll persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts . . . 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. . ." 42 U.S.C. § 1981(a). Generally speaking, a plaintiff asserting a § 1981 claim must show that he was

intentionally discriminated against "on the basis of race, and that the discrimination interfered with a contractual interest." *Nanendla v. WakeMed*, 24 F.4th 299, 305 (4th Cir. 2022) (citation omitted); *see Spellman v. Sch. Bd. of Chesapeake*, No. 2:17cv635, 2018 U.S. Dist. LEXIS 73709, at *40 (E.D. Va. Apr. 5, 2018). The Equal Protection Clause of the Fourteenth Amendment provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

When a plaintiff asserts an employment discrimination claim based on § 1981 or the Equal Protection Clause of the Fourteenth Amendment, courts utilize the same standards as applied to claims brought pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII").⁷ *Maynard v. Old Dominion Univ.*, No. 2:20cv597, 2023 U.S. Dist. LEXIS 33584, at *17 (E.D. Va. Feb. 28, 2023) ("[t]he standard for establishing claims of employment discrimination . . . under either Title VII or Section 1981 is the same"); *see Spratley v. Hampton City Fire Dept.*, 933 F. Supp. 535, 539 (E.D. Va. 1996) ("[i]n order to establish a claim of employment discrimination under 42 U.S.C. § 1981 or an equal protection claim under 42 U.S.C. § 1983 on the basis of race, [a] [p]laintiff must meet the same proof scheme as required under Title VII"). Thus, in the instant action, absent direct evidence of discrimination, which has not been adequately

⁷ Title VII prohibits employers from discriminating against employees and applicants for employment based on race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a).

presented here.⁸ Plaintiff must first establish a *prima facie* case of discriminatory failure to hire by showing that (i) "he is a member of a protected group"; (ii) "he applied for a specific position"; (iii) "he was qualified for that position"; and (iv) he was rejected for that position "under circumstances that give rise to an inference of discrimination." *Terefe v. Stanley Black & Decker, Inc.*, 804 F. App'x 207, 208 (4th Cir. 2020); *Haywood v. Locke*, 387 F. App'x 355, 358 (4th Cir. 2010); *Williams v. Giant Food Inc.*, 370 F.3d 423, 430 (4th Cir. 2004).

If Plaintiff is able to establish a *prima facie* case of discrimination, the burden of production shifts to Defendants to articulate a legitimate, non-discriminatory justification for the hiring decision. *Terefe*, 804 F. App'x at 208 (citing *Haynes v. Waste Connections, Inc.*, 922 F.3d 219, 223 (4th Cir. 2019)). If Defendants meet this burden, Plaintiff "must prove by a preponderance of the evidence that [Defendants'] purportedly neutral reasons were a pretext for discrimination." *Id.*

Defendants argue, among other things, that "the evidence starkly contradicts Plaintiff's

⁸ Plaintiff claims to have "direct evidence" of discrimination in this case, which consists of "[d]iscriminatory speech and conduct, an inadequate investigation, shifting criteria, inconsistent prior statements, and multiple emails to the School Board who failed to act." Opp'n at 2, ECF No. 52. Upon review, the Court finds that the information upon which Plaintiff seeks to rely to support his claims does not constitute "direct evidence of discrimination." See *Rayyan v. Va. Dep't of Transp.*, 719 F. App'x 198, 203 (4th Cir. 2018) (explaining that "direct evidence of discrimination" requires "evidence of a stated purpose to discriminate and a nexus between that evidence" and the alleged discriminatory act).

allegations of racial discrimination." Mem. Supp. Defs.' Renewed Mot. Summ. J. at 21, ECF No. 40. Specifically, Defendants argue that "[t]here were legitimate, non[-]discriminatory explanations" for the selection of Collier over Plaintiff, which included, most notably, "Collier's relevant high school varsity soccer coaching experience." *Id.* at 21-22 (emphasis in original). Defendants explain:

Prior to being selected as the new soccer coach, Collier had served as the team's assistant coach during the 2021 to 2022 soccer season. As assistant coach, Collier not only led the team's practices but also coached some of the games. Collier had already developed a rapport with the team's players through his role as assistant soccer coach. Additionally, the resumes submitted by both applicants and their respective interviews further highlighted Collier's superior qualifications relevant to coaching high school varsity soccer, including having already coached boys varsity soccer at another Virginia high school and having himself played high school varsity soccer in Chesapeake, Virginia. Collier's resume focused on his high school soccer qualifications, but Plaintiff focused on qualifications that were comparatively less relevant to Collier's, many of which had nothing to do with soccer. *Id.* at 22 (citations omitted); Pl. Resume at 1, ECF No. 37-7; Collier Resume, ECF No. 40-1 at 7-8; Collins Aff. ¶¶ 6-8, 11, 13; Smith Aff. ¶¶ 5, 7.

Plaintiff maintains that he was not selected as the varsity head soccer coach because of his race.

Mem. Opp'n at 1-10, ECF No. 53.⁹ To support his position, Plaintiff claims that race was discussed during his interview. Pl. Aff. ¶¶ 12-21. Specifically, Plaintiff claims that he told Collins and Smith during his interview that "he would be a diverse hire as an Asian American and an Army veteran." *Id.* Plaintiff further claims that this comment triggered additional discussion about Plaintiff's Korean background, the diversity of the OSH soccer team, and the "culture of playing soccer" in Asian and Spanish countries.¹⁰ *Id.* ¶¶ 12-21.

Plaintiff also claims that the notes taken by Collins and Smith during Plaintiff's interview are incomplete. Mem. Opp'n at 4. Specifically, Plaintiff claims that Collins and Smith "failed to record" certain aspects of Plaintiff's qualifications, including his coaching experience, in their interview notes."

⁹ In response to Defendants' summary judgment motion, Plaintiff filed a document titled, "Opposition to Defendants' Renewed Motion for Summary Judgment" and a separate document titled, "Memorandum of Law in Opposition of Defendants' Renewed Motion for Summary Judgment." Opp'n, ECF No. 52; Mem. Opp'n, ECF No. 53. The Court has reviewed and considered both filings.

¹⁰ Collins denies Plaintiff's summary of the raced-related comments made during Plaintiff's interview. Collins' Resp. RFA ¶¶ 51-56, 59-64, ECF No. 37-6. Collins acknowledges that race was discussed during both Plaintiff's interview and Collier's interview; however, Collins states that "the discussion was limited to how to improve[] the academic eligibility of Hispanic students." *Id.* ¶¶ 61-64. The Court will assume Plaintiff's summary to be true for purposes of the Court's analysis of the pending summary judgment motions.

¹¹ *Id.*; see P1. Aff. ¶¶ 22-24; Smith Interview Notes, ECF No. 37-8; Collins Interview Notes, ECF No. 37-9.

Additionally, Plaintiff claims that the Applicant Summary Form, i.e., the document recommending Collier for the head soccer coach position, was only signed by Collins. Mem. Opp'n at. Smith, the other interviewer, did not sign the form. *Id.*; see Applicant Summ. Form, ECF No. 37-3. Plaintiff claims that the missing signature evidences a "departure from internal hiring procedures" that may be "probative" of discrimination. Mem. Opp'n at 6 (quoting *Johnson v. Lehman*, 679 F.2d 918, 922 (D.C. Cir. 1982)). Plaintiff also states that the Applicant Summary Form mistakenly listed both Plaintiff and Collier as Caucasian. *Id* at 5; see Applicant Summ. Form at 1.

Although Plaintiff clearly disagrees with the decision to select Collier for the head soccer coach position, the Court finds that Plaintiff has not provided evidence sufficient for a reasonable fact-finder to conclude that Plaintiff was not selected for the position "under circumstances that give rise to an inference of discrimination." *See Terefe*, 804 F. App'x at 208; *Haywood*, 387 F. App'x at 358; *Williams*, 370 F.3d at 430; see also Collier Resume, ECF No. 40-1 at 7-8 (highlighting Collier's specific experience coaching the boys varsity soccer team at OSH, as well as Collier's experience coaching soccer

¹¹ In response to certain discovery requests regarding information that was allegedly missing from the interview notes, Collins stated that "[n]ot everything discussed in an interview is written down" and that interview notes are simply "personal reminders to the interviewer." Collins' Resp. RFA ¶¶ 36, 107-08, ECF No. 37-6.

at ACHS and Randolph College); P1. Resume at 1, ECF No. 37-7 (focusing on Plaintiff's experience coaching high school baseball and track at OSH, and generally referencing Plaintiff's experience as a soccer coach "for boys and girls 5-16 years of age," without tying such coaching experience to a specific high school program); Collins Aff. ¶¶ 6-8 (summarizing Collins' personal observations of Collier's prior experience coaching the boys varsity soccer team at OSH); Smith Aff. ¶¶ 5, 7 (comparing the "differing qualifications" of Collier and Plaintiff). Accordingly, the Court further finds that Plaintiff has not established a *prima facie* case of discriminatory failure to hire under § 1981 or the Equal Protection Clause of the Fourteenth Amendment.

Even if Plaintiff could establish a *prima facie* case of discriminatory failure to hire, the Court finds that Defendants have provided affidavits, resumes, and other record evidence that clearly show legitimate, non-discriminatory reasons for selecting Collier, instead of Plaintiff, for the head soccer coach position. Thus, the burden shifts to Plaintiff to "prove by a preponderance of the evidence" that Defendants' stated reasons for the selection decision "were a pretext for discrimination." *Terefe*, 804 F. App'x at 208. The Court finds that Plaintiff has not made such a showing.

Plaintiff firmly believes that his non-selection was rooted in racial discrimination and that he was the better candidate for the job; however, Plaintiff's suspicions of ill intent and perceived superiority are insufficient to create a genuine issue of material fact regarding pretext. *See Fry v. Rand Constr. Corp.*, 964 F.3d 239, 248 (4th Cir. 2020) (explaining that it is the "perception of the decision maker which is relevant,

not the self-assessment of the plaintiff); *Vannoy v. FRB of Richmond*, 827 F.3d 296, 305 (4th Cir. 2016) (explaining that a "plaintiff's own assertions of discrimination in and of themselves are insufficient to counter substantial evidence of legitimate non-discriminatory reasons" for an employment decision); *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 218 (4th Cir. 2007) (explaining that, with respect to pretext, the plaintiff's self-assessment is irrelevant); *Radeline v. Gruenberg*, No. 1:15cv957, 2016 U.S. Dist. LEXIS 41745, at *10 (E.D. Va. Mar. 28, 2016) (noting that "[s]peculation is not enough to show pretext"); *McNaught v. Va. Cnty. College Sys.*, 933 F. Supp. 2d 804, 824 (E.D. Va. 2013) (finding that a plaintiff's disagreement with a defendant's decision was insufficient to establish pretext and escape summary judgment).

As noted above, Plaintiff claims that he told Collins and Smith during his interview that "he would be a diverse hire as an Asian American and an Army veteran," and this comment triggered additional discussion regarding Plaintiff's Korean background, the diversity of the OSH soccer team, and the "culture of playing soccer" in Asian and Spanish countries. P1. Aff. ¶¶ 12-21. Even assuming that such race-related comments were made during Plaintiff's interview, the Court finds that such comments are not enough to show that the well-documented reasons for selecting Collier for the head soccer coach position were simply a pretext for discrimination. *Terefe*, 804 F. App'x at 208.

Finally, Plaintiff claims that Collins and Smith's interview notes were incomplete, the Applicant Summary Form was unsigned, the Applicant Summary Form misidentified Plaintiff's race, and the subsequent investigation into Plaintiff's

allegations of discrimination was inadequate. Mem. Opp'n at 1-14; Pl. Aff. ¶¶ 22-24, 33-34, 39-41, 50-51; Applicant Summ. Form at 1. The Court finds that these claims, like Plaintiff's other claims, do not create a genuine issue of material fact regarding pretext. *Terefe*, 804 F. App'x at 208; *see Reid v. Temple Univ. Hosp. Inc.*, No. 17-2197, 2019 U.S. Dist. LEXIS 138546, at *19 (E.D. Pa. Aug. 15, 2019) (stating that "[e]vidence that an employer's investigation was inadequate is insufficient to establish pretext in discrimination cases"); *Carrier-Tal v. McHugh*, No. 2:14cv626, 2016 U.S. Dist. LEXIS 192157, at *47 (E.D. Va. Apr. 14, 2016) (noting that statutes "designed to remedy discrimination" are "not meant to remedy every procedural flaw that exists in an employer's selection process" (citation omitted)); *see also Shipton v. Bait. Gas & Electric Co.*, 109 F.4th 701, 709 (4th Cir. 2024) ("We have been clear that courts do not 'sit as a kind of super-personnel department weighing the prudence of employment decisions'" (citation omitted)).

Based on the undisputed material facts of this case, the Court is left with the firm conviction that no reasonable jury could return a verdict for Plaintiff as to his discriminatory failure to hire claims.¹² Accordingly, Defendants' Renewed Motion for Summary Judgment, ECF No. 39, is GRANTED as to Plaintiff's failure to hire claims based on § 1981 and/or the Equal Protection Clause of the Fourteenth Amendment, i.e., Counts I, II, V, VI, IX, X, XIII, and XIV. Plaintiff's Motion for Summary Judgment, ECF No. 36, is DENIED as to the same counts.

2. Gross Negligence Claim

In Count III of the Complaint, Plaintiff asserts a gross negligence claim against the School Board. Compl. at 17-18. Plaintiff claims that the School Board owed him "a duty of care to not take [his] race as a motivating factor in its hiring decision" and to "not treat him differently from the similarly situated candidate who was hired." *Id.* at 17. Plaintiff claims that the School Board "breached that duty of care," and as a result, Plaintiff suffered injuries. *Id.* at 17-18. To succeed on a negligence claim in Virginia, a

¹² As noted above, Counts I, II, III, V, VI, IX, X, XIII, and XIV of Plaintiff's Complaint are based on the selection of Collier, instead of Plaintiff, for the head soccer coach position. In Counts XIII and XIV, Plaintiff claims that Collins violated Plaintiff's § 1981 rights and/or equal protection rights when Collins failed to hire Plaintiff for the job. Counts I, II, V, VI, IX, and X are based on the alleged ratification of Collins' selection by other Defendants. Because the Court finds that no reasonable jury could conclude that the decision to select Collier over Plaintiff constituted unlawful discrimination, it necessarily follows that all of Plaintiff's ratification-based claims likewise fail.

plaintiff must demonstrate "the existence of a legal duty, a breach of the duty, and proximate causation resulting in damage." *Riddick v. Watson*, 503 F. Supp. 3d 399, 424-25 (E.D. Va. 2020) (quoting *Atrium Unit Owners Ass 'n v. King*, 585 S.E.2d 545, 548 (Va. 2003)). Virginia recognizes "three levels of negligence," i.e., simple negligence, gross negligence, and willful and wanton negligence. *Id.* at 425. Simple negligence "involves the failure to use the degree of care that an ordinarily prudent person would exercise under similar circumstances to avoid injury to another." *Id.* Gross negligence "is a degree of negligence showing indifference to another and an utter disregard of prudence that amounts to a complete neglect of the safety of such other person." *Id.* Gross negligence "requires a degree of negligence that would shock fair-minded persons, although demonstrating something less than willful recklessness." *Id.* Willful and wanton negligence "is defined as acting consciously in disregard of another person's rights or acting with reckless indifference to the consequences, with the defendant aware, from his knowledge of existing circumstances and conditions, that his conduct probably would cause injury to another." *Id.*

In their Renewed Motion for Summary Judgment, Defendants argue, among other things, that the record evidence does not establish that any party disregarded Plaintiffs rights. Mem. Supp. Defs.' Renewed Mot. Summ. J. at 23 Defendants also argue that the School Board "was not involved in any way" with the selection process for the varsity head soccer coach. *Id.* at 26. Defendants state:

The Chesapeake School Board does not vote on school employees for positions below the level of school assistant principal. It has delegated

hiring authority for school personnel below the rank of assistant principal to the superintendent of the school system, who in turn, has delegated this authority to the individual school principals. Thus, the Chesapeake School Board was never involved in the selection process. *Id.* (citations omitted).

Upon review, the Court finds that the record evidence does not support Plaintiff's gross negligence claim. See Collier Resume, ECF No. 40-1 at 7-8; P1. Resume at 1, ECF No. 37-7; Collins Aff. ¶¶ 6-8; Smith Aff. ¶¶ 5, 7. Plaintiff has not produced evidence sufficient for a reasonable fact-finder to conclude that the School Board—or any other Defendant—breached a legal duty owed to Plaintiff or acted with "an utter disregard" to Plaintiff's rights in a manner "that would shock fair-minded persons." Riddick, 503 F. Supp. 3d at 424-25. Accordingly, Defendants' Renewed Motion for Summary Judgment, ECF No. 39, is GRANTED as to Plaintiffs claim in Count III of the Complaint that the selection Of Collier for the head soccer coach position constituted gross negligence. Plaintiffs Motion for Summary Judgment, ECF No. 36, is DENIED as to the same count.

B. Inadequate Investigation Claims

As noted above, Counts IV, VII, VIII, XI, XII, and XV are based on the investigation into Plaintiffs allegations of discrimination following his non-selection. Plaintiff claims that the investigation was so inadequate that it violated Plaintiffs rights under § 1981, deprived Plaintiff of his equal protection rights under the Fourteenth Amendment, and/or constituted willful and wanton negligence.

1. Statutory and Constitutional Claims

Section 1981 prohibits intentional, race-based discrimination that interferes with an individual's contractual interests. See 42 U.S.C. § 1981(a); Nanendla, 24 F.4th at 305. The Equal Protection Clause prohibits a state from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1; *see Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001) (explaining that a plaintiff who asserts an equal protection claim must "demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination").

Defendants argue, among other things, that "[t]here is no legal basis" for Plaintiffs assertion that Defendants "acted in a manner contrary to Plaintiffs legal rights." Mem. Supp. Defs.' Renewed Mot. Summ. J. at 23. Specifically, Defendants argue that Plaintiff's allegations of discrimination "were taken seriously" and an "appropriate investigation" was "promptly opened" the day after Plaintiff submitted his complaint to Joseph. *Id.* at 23-24. McDermott and Edgar, who led the investigation, requested and obtained information from Plaintiff regarding the complete basis for his discrimination claim, interviewed Collins and Smith regarding the selection process, and reviewed all relevant documents and emails. *Id.* at 24. McDermott and Edgar ultimately concluded "that there was no evidence of discrimination in the selection process for the varsity boys soccer head coach position and that no School Board policy had been violated." *Id.* Defendants' arguments are supported by the record

evidence. See McDermott Aff. ¶¶ 6-24; Bailey Aff. ¶¶ 6-9; Edgar Aff. 7-12; Dec. 6, 2022 Email Chain at 1-2; Investigation Notes at 1-3; Investigation Summ. Report at 1.

Plaintiff claims that McDermott and Edgar's investigation into his complaint of discrimination was inadequate. Mem. Opp'n at 11-13. Specifically, Plaintiff claims that McDermott and Edgar exaggerated Collier's coaching experience with the OSH varsity soccer team, mischaracterized the content of Plaintiff's resume, and falsely stated that race was not discussed during Plaintiff's interview. Id.; see P1. Aff. ¶¶ 12-21, 50; McDermott's Resp. RFA ¶99, ECF No. 37-13. Plaintiff argues:

A reasonable jury could find that McDermott and Edgar acted consciously in disregard of Plaintiff's rights or acted with reckless indifference to the consequences, with McDermott and Edgar aware from their own knowledge of existing circumstances and conditions, that their malicious conduct probably would cause injury to Plaintiff with their obviously inadequate investigation.

Mem. Opp'n at 13.

Upon review, the Court finds that the record evidence does not support Plaintiff's claims that the investigation into his discrimination claim violated Plaintiff's rights under § 1981 or his rights to equal protection under the Fourteenth Amendment. Specifically, the Court finds that the record evidence falls far short of showing that McDermott or Edgar intentionally discriminated against Plaintiff on the basis of his race during the course of their investigation or that such discrimination interfered with Plaintiff's contractual interests. See McDermott Aff. ¶¶ 6-24; Bailey Aff. ¶¶ 6-9; Edgar Aff. ¶¶ 7-12;

Dec. 6, 2022 Email Chain at 1-2; Investigation Notes at 1-3; Investigation Summ. Report at 1. Without such a showing, no reasonable fact-finder could return a verdict for Plaintiff on his § 1981 claim. See 42 U.S.C. § 1981(a); *Nanendla*, 24 F.4th at 305.

Similarly, the Court finds that the record evidence does not suggest that McDermott or Edgar treated Plaintiff differently from any other "similarly situated" individual or that any such "unequal treatment was the result of intentional or purposeful discrimination." *Morrison*, 239 F.3d at 654. Therefore, no reasonable fact-finder could return a verdict for Plaintiff on his Fourteenth Amendment equal protection claim.¹³ See id. Accordingly, Defendants' Renewed Motion for Summary Judgment, ECF No. 39, is GRANTED as to Plaintiff's inadequate investigation claims based on § 1981 and/or the Equal Protection Clause of the Fourteenth Amendment, i.e., Counts VII, VIII, XI, and XII. Plaintiff's Motion for Summary Judgment, ECF No. 36, is DENIED as to the same counts.

2. Willful and Wanton Negligence Claims

In Counts IV and XV of the Complaint, Plaintiff asserts willful and wanton negligence

¹³ As noted above, Counts IV, VII, VIII, XI, XII, and XV relate to the investigation into Plaintiff's allegations of discrimination following his non-selection. In Counts XI and XII, Plaintiff claims that McDermott conducted an inadequate investigation that violated Plaintiff's § 1981 rights and/or equal protection rights. Counts VII and VIII are based on Austin's alleged ratification of the investigation. Because the Court finds that no reasonable could conclude that the investigation violated Plaintiff's § 1981 rights or equal protection rights, it necessarily follows that Plaintiff's ratification-based claims likewise fail.

claims against the School Board, McDermott, and/or Edgar based on the alleged inadequate investigation into Plaintiff's allegations of discrimination. Compl. at 19-20, 41-42. Plaintiff claims that the School Board, McDermott, and/or Edgar owed him "a duty of care to conduct a fair and adequate investigation into his claim of racial discrimination." *Id.* Plaintiff claims that these Defendants "breached that duty of care," and as a result, Plaintiff suffered injuries. *Id.*

As summarized above, in order to succeed on a willful and wanton negligence claim in Virginia, a plaintiff must show that a defendant "act[ed] consciously in disregard of [the plaintiff's] rights or act[ed] with reckless indifference to the consequences, with the defendant aware, from his knowledge of existing circumstances and conditions, that his conduct probably would cause injury" to the plaintiff. Riddick, 503 F. Supp. 3d at 425. Here, the Court finds that the record evidence does not support Plaintiffs willful and wanton negligence claim. See McDermott Aff. ¶¶ 6-24; Bailey Aff. ¶¶ 6-9; Edgar Aff. ¶¶ 7-12; Dec. 6, 2022 Email Chain at 1-2; Investigation Notes at 1-3; Investigation Summ. Report at 1. Plaintiff has not produced evidence sufficient for a reasonable fact-finder to conclude that the School Board, McDermott, or Edgar consciously disregarded Plaintiff's rights or acted with reckless indifference during the course of the investigation into Plaintiff's discrimination claim. See *id.* Accordingly, Defendants' Renewed Motion for Summary Judgment, ECF No. 39, is GRANTED as to Plaintiffs willful and wanton negligence claims asserted in Counts IV and XV of the Complaint.¹⁴

¹⁴ The Court notes that Defendants raised additional arguments in support of their Renewed Motion for Summary Judgment.

Plaintiffs Motion for Summary Judgment, ECF No. 36, is DENIED as to the same counts.

V. CONCLUSION

For the reasons set forth above, Defendants' Renewed Motion for Summary Judgment, ECF No. 39, is GRANTED; Plaintiffs Motion for Summary Judgment, ECF No. 36, is DENIED; and this civil action is DISMISSED. Plaintiff may appeal from this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510.

The written notice must be received by the Clerk within thirty days of the date of entry of this Dismissal Order. If Plaintiff wishes to proceed forma pauperis on appeal, the application to proceed forma pauperis shall be submitted to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is DIRECTED to docket this Order in the Court's electronic filing system.¹⁵

IT IS SO ORDERED.

Raymond A. Jackson
UNITED STATES DISTRICT JUDGE

However, because the Court grants Defendants' motion for the reasons stated herein, the Court does not address Defendants' other arguments.

¹⁵ The Court previously granted Plaintiff's request to receive notice of Court filings via the Court's electronic filing system. Order at 2-3, ECF No. 11.