

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

AMANDA WATZKA, BROOKE LA COUNT,
GRACE WILLIAMS, BRIANNA KAIN,
KAYLA KASPER, D.P., a minor by her next friend,
BRIANNE CARRIVEAU, and JESSE KASAL,

Plaintiffs,

Case No. 26-cv-392

THE BOARD OF EDUCATION OF
OCONTO FALLS PUBLIC
SCHOOL DISTRICT,

Defendant.

DEFENDANT'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

The District respectfully submits this reply brief in support of its Motion to Dismiss the Third Amended Complaint. As a matter of law, the District does not bear institutional liability for discrimination under Title IX¹ or 42 U.S.C. § 1983 for the acts of discrimination as alleged by Plaintiffs.

ARGUMENT

I. PLAINTIFFS MISSTATE THE STANDARDS ON A MOTION TO DISMISS.

Plaintiffs argue that they are entitled to “the opportunity for discovery, evidentiary hearings or even a trial” before their claims can be dismissed. [ECF 36, p. 17]. But Plaintiffs’ reliance on *Board of School Directors of City of Milwaukee v. State of Wis.*, 649 F. Supp. 82, 94 (E.D. Wis. 1985) is misplaced. That decision was premised upon the “no set of facts” holding in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). The rule *Conley* established was abrogated by the Supreme Court when it clarified the Rule 12(b)(6) standard in *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). Contrary to Plaintiffs’ argument, it is not enough for a plaintiff to plead facts that are “merely consistent with” liability. *Iqbal*, 556 U.S. at 678. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 663. These “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555.

Plaintiffs also state that “Whether a plaintiff’s knowledge of abuse was sufficient to trigger the limitations period against an institutional defendant is a question of fact that cannot be resolved

¹ Title IX prohibits discrimination on the basis of one’s gender. Case law makes clear that this encompasses direct discrimination, sexual harassment, sexual misconduct and sexual assault. The District will refer to these acts as acts of discrimination without detailing which form of discrimination is alleged.

at the motion-to-dismiss stage.” [ECF 36, p. 17]. But *Greene v. Woodlawn Unit School District #209*, No. 22-cv-2727, 2023 WL 6216943, at *9 (S.D. Ill. Sept. 25, 2023) does not set forth such a holding. Rather, *Greene* only concluded that in that case whether the plaintiffs knew of the sexual abuse was a question of fact that could not be resolved at the motion-to-dismiss stage. *Id.* at *26.

Likewise, contrary to Plaintiffs’ suggestion, *Snyder-Hill v. Ohio State University*, does not hold that the statute of limitations cannot be the basis for a motion to dismiss. In fact, the court stated, “[h]owever, dismissal is warranted if ‘the allegations in the complaint affirmatively show that the claim is time-barred.’” 48 F.4th 686, 698 (6th Cir. 2022).

II. PLAINTIFFS’ TITLE IX CLAIMS FAIL BECAUSE THEY DO NOT ALLEGE ACTUAL NOTICE TO AN APPROPRIATE PERSON WITH CORRECTIVE AUTHORITY.

The Seventh Circuit has consistently held that pursuant to *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999), a school district is not liable for the misconduct of its employees pursuant to Title IX under a *respondeat superior* theory. *Doe v. St. Francis Sch. Dist.*, 694 F.3d 869 (7th Cir. 2012). This is because a school district is liable for the damages it causes where an official with authority to institute corrective measures had actual knowledge of the discrimination and responded with deliberate indifference. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998); *Davis*, 526 U.S. 629. Plaintiffs skirt the notice requirement. They claim that the District was indifferent because it had notice and ignored the discrimination, but then to avoid the statute of limitations, Plaintiffs claim they themselves weren’t aware that the District failed to act on that notice. Plaintiffs cannot have it both ways. If the District had notice of their discrimination and failed to act, Title IX was violated but the claims are time barred. If the District did not have notice and the Plaintiffs could see that the District failed to act, then their claims may be timely, but the District cannot be liable under Title IX.

The requirement of actual notice to an appropriate person is not merely a fact question to be resolved at summary judgment; it is a pleading requirement that must be satisfied at the motion to dismiss stage. A plaintiff must include factual support to articulate the basis for a claim, and mere conclusory statements are not enough to survive a motion to dismiss. *Troogstad v. City of Chi.*, No. 25-1575, 2025 U.S. App. LEXIS 32081 (7th Cir. 2025). Thus, each Plaintiff must plead facts to plausibly suggest that an official with authority to institute corrective measures had actual knowledge of the discrimination and responded with deliberate indifference.

Actual notice of a Title IX violation is not satisfied by knowledge that something “might” be happening. *Delgado v. Stegall*, 367 F.3d 668 (7th Cir. 2004). Suspicion of discrimination is also not enough to impute actual notice to a school district. *C.S. v. Madison Metro. Sch. Dist.*, 34 F.4th 536, 540 (7th Cir. 2022) (“Contrary to suggestions in some of our past cases, Title IX does not permit institutional liability based solely on knowledge of the risk of future misconduct.”)

Plaintiffs argue that actual notice can be satisfied by generalized knowledge of a teacher's history of discrimination, without requiring plaintiff-specific notice to an administrator with corrective authority. This argument conflicts with the actual notice requirement and misapplies the *Gebser/Davis* framework. In fact, “...the express remedial scheme under Title IX is predicated upon notice to an ‘appropriate person’ and an opportunity to rectify any violation...” *Gebser*, 524 U.S. at 290.

Plaintiffs cannot bootstrap vague allegations of institutional knowledge into actual notice by asserting that administrators “should have known” about a pattern. The notice requirement demands specificity: an appropriate person must have actual knowledge of discrimination sufficiently concrete to trigger a duty to respond. Rumors, suspicions, or knowledge of unrelated incidents simply do not satisfy this standard. *Stegall*, 367 F.3d at 672.

A. The “Official With Authority” Inquiry Does Not Excuse Pleading Deficiencies.

Plaintiffs argue that whether someone is an official with authority is fact-bound and cannot be resolved at the pleading stage. While it is true that officials' roles vary among school districts and deciding who exercises corrective authority can be a fact-based inquiry, this does not relieve Plaintiffs of their obligation to plead facts making it plausible that an appropriate person actually received notice.

The distinction is critical: the identity of the appropriate person may depend on the district's organizational structure, but the requirement that plaintiffs plead facts showing actual notice to someone with corrective authority remains a pleading-stage obligation. Plaintiffs cannot survive a motion to dismiss by alleging only that “someone” at the school may have known “something.” And yet that is all they offer. They are required to plead facts that plausibly suggest that a particular person with actual authority to take corrective action received actual notice of discrimination and that person was deliberately indifferent. Plaintiffs fail to do that.

B. Each Plaintiff Has Failed To Plead Facts That Plausibly Suggest Actual Notice Of The Discrimination They Complain Of.

Watzka alleges “should have known” facts. She alleges that administrators saw her with Heisel after hours and that she confided in teachers. Seeing a student with a teacher after hours does not constitute actual notice of discrimination. Confiding in a teacher does not establish notice to a corrective authority. Watzka never claims that she reported discrimination to anyone, much less an administrator with authority to take corrective action. Watzka's allegations fail to plausibly establish actual notice to an appropriate person. She fails to state a Title IX claim.

La Count alleges a report to the athletic director of “improper” conduct, not discrimination. This vague characterization does not constitute actual notice of a Title IX violation. Moreover, a 2014 police investigation in which La County denied any sexual contact with Larsen shows that

the athletic director did not have actual notice of discrimination: Both La Count and Larsen claimed there was no sexual activity. The later criminal case, occurring years after the alleged conduct, does not retroactively establish notice at the time of the discrimination. La Count's allegations do not plausibly establish that an appropriate person had actual notice of discrimination, and she fails to state a Title IX claim.

Williams alleges she told a friend about Larsen kissing her, and that her friend reported that to the school resource officer. She claims that “reports” were made to a school resource officer, principal, and counselor but provides no facts regarding what was reported. Vague allegations of “reports” without specificity as to the content of the report do not satisfy the actual notice requirement. Moreover, a school resource officer is a law enforcement employee, not a school district employee and not an administrator with corrective authority. Williams's allegations lack the factual specificity necessary to plausibly suggest that an appropriate administrator had actual notice of discrimination. She fails to state a Title IX claim.

Kain alleges a trainer pressed his pelvis against her and placed her in what she vaguely describes as “sexual positions.” Even if this constitutes discrimination, she does not claim that she reported this to anyone. While another student allegedly reported “suspicious circumstances” about the trainer and another student to a teacher, that does not constitute actual notice of Kain’s discrimination to an appropriate person with corrective authority. A report of “suspicious circumstances” does not provide actual notice of discrimination. Kain's allegations lack the factual specificity necessary to plausibly suggest that an appropriate person had actual notice of discrimination.

Kasper alleges that a teacher touched himself with his hand in his pocket in the classroom but admits she did not report the conduct. Even if this amounted to a Title IX violation, without an

allegation that anyone with corrective authority received actual notice of this conduct, Kasper cannot establish the notice requirement. Her failure to report is fatal to her Title IX claim.

Kasal admits he did not report that Gander massaged him. Kasal's failure to report means no one with corrective authority could have had actual notice of the conduct. Kasal's claim fails at the pleading stage. This holds true for D.P. who alleges a 2023 district statement discouraged reporting and that after Gander was arrested she disclosed to a police officer that Gander had massaged her shoulders. The alleged discouragement of reporting does not somehow cure the fact that no person with corrective authority received actual notice of discrimination. Likewise, disclosure to a police officer after arrest does not plausibly suggest that an appropriate District official with corrective authority had actual notice of the discrimination before it was reported.

III. TITLE IX DOES NOT ENCOMPASS AN “OFFICIAL POLICY CLAIM.”

Plaintiffs ask this court to recognize a claim that they label as “a pre-assault official policy claim.” They argue that such a claim has been recognized in *Vander Pas v. Bd. of Regents of the Univ. of Wis. Sys.*, 2022 U.S. Dist. LEXIS 90084, *14 and in *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1112 (9th Cir. 2020). Plaintiffs acknowledge, as they must, that neither the Seventh Circuit nor the United States Supreme Court have recognized such a claim. As explained below, although *Karasek* and *Vander Pas* recognized such a claim, both courts erred in their conclusions, and it is unlikely that the Seventh Circuit would recognize such a claim.

A. A “Pre-Assault Official Policy Claim” Misreads Title IX And Creates Liability Beyond What The Statute Contemplates.

Karasek created a “pre-assault official policy” claim from thin air, misguidedly relying on *dicta* in *Gebser*. The court stated, “But the calculus shifts when a plaintiff alleges that a school's “official policy” violates Title IX. *See Gebser*, 524 U.S. at 290.” *Karasek v. Regents of the Univ. of Cal.*, 956 F.3d 1093, 1112. But that citation to *Gebser* merely points to *dicta*. The issue in

Gebser did not involve a policy: it was straight-up sexual harassment. What the *Karasek* court relied upon was simply an off-hand statement in *Gebser* pointing out that the case did not involve the “official policy of the recipient entity.” *Gebser*, 524 U.S. at 290. This is not “a fully measured judicial pronouncement,” and it may be rejected by inferior courts. *United States v. Crawley*, 837 F.2d 291, 293 (1988). This *dictum* does not support the *Karasek* court’s conclusion that a “pre-assault official policy claim” is actionable under Title IX.

The *Karasek* court also cited to *Davis v. Monroe County Bd. of Educ.* 526 U.S. 629 (1999). But despite the citation, there is nothing found in *Davis* that supports a conclusion that “a policy” of deliberate indifference creates a basis for Title IX liability. In fact, *Davis* created the standard that schools can only be liable for their deliberate indifference to discrimination if they have actual knowledge. *Davis*, 526 U.S. at 650. To impose Title IX liability a school must have been deliberately indifferent to the claim reported. A general “policy” of deliberate indifference to others does not suffice if the school was not deliberately indifferent to the plaintiff.

Plaintiffs also cite to *Vander Pas v. Bd. of Regents of the Univ. of Wis. Sys.*, where Judge Stadtmueller relied upon *Karasek* in recognizing an “official policy” claim as a cognizable theory of liability under Title IX.” 2022 U.S. Dist. LEXIS 90084, *13-14. But a house built on a shaky foundation remains shaky. As pointed out above, nothing in *Karasek* firmly establishes a basis for a pre-assault claim and Judge Stadtmueller’s reliance on *Monell* does little to shore up the foundation.

Monell is not a vehicle to create new causes of action and did not itself create a new cause of action or create a concept that a cause of action exists where one’s “official policy” violates a statute. The Supreme Court’s decision in *Monell* addressed a singular issue: whether a municipality

was a “person” for purposes of the Civil Rights Act of 1871, now codified as 42 U. S. C. § 1983. The Court concluded that a municipality is a person and is subject to liability under § 1983.

The Court went on to explain the scope of liability under § 1983 and how the “official policy” claim can arise under § 1983. It explained that like Title IX, “a municipality cannot be held liable *solely* because it employs a tortfeasor -- or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *Monell*, 436 U.S. at 691. The Court then looked to the language of § 1983 to determine the circumstances in which a municipality can be liable:

We begin with the language of § 1983 as originally passed:

"[Any] *person who*, under color of any law, statute, ordinance, regulation, custom, or usage of any State, *shall subject, or cause to be subjected*, any person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress" 17 Stat. 13 (emphasis added).

The italicized language plainly imposes liability on a government that, under color of some official policy, "causes" an employee to violate another's constitutional rights.

Monell, 436 U.S. at 691-692 (italics in original, underline added). The Court explained that since the statute creates a cause of action against one who subjects someone to a constitutional deprivation or causes a constitutional deprivation, a municipality can violate § 1983 when its policy causes the deprivation. The recognition of liability for a policy causing a violation of the statute was specific to the language of § 1983. *Monell* did not create a theory that one can be liable under every statute for “policy” violations. Title IX does not contain language that would allow institutional liability for a policy that causes others to violate Title IX. Title IX institutional liability explicitly stems from the institution’s own actions. The holdings in *Karasek* and *Vander Pas* ignore this, and for this reason they lack persuasive value.

IV. PLAINTIFFS' CLAIMS ARE TIME-BARRED.

A. Any Title IX Claim Plaintiffs May Have Had Accrued When Plaintiffs Admittedly Knew of the Discrimination and Saw No Response From The District.

Under federal law, a cause of action accrues when the plaintiff has reason to know the facts constituting the injury and its cause. *Cielak v. Nicolet Union High Sch. Dist.*, 112 F.4th 472 (7th Cir. 2024); *Amin Ijbara Equity Corp. v. Vill. of Oak Lawn*, 860 F.3d 489 (7th Cir. 2017). The plaintiff need not know the legal theories applicable to the facts. *Wallace v. Kato*, 549 U.S. 384 (2007). *Cielak* makes it clear that a Title IX claim accrues when a student experiences discrimination, reports it, and yet sees no response from the institution. Any other conclusion eviscerates the concept of a statute of limitations.

Plaintiffs' pleadings establish that they knew of discrimination when it occurred and, as alleged, knew or reasonably should have known that the District did not respond. Plaintiffs' allegations that they reported discrimination and that the District failed to intervene demonstrate contemporaneous or near-contemporaneous knowledge of the District's alleged nonresponse, and that is when their Title IX claims accrued.

Plaintiffs have argued that they provided actual notice to the District because it had generalized knowledge of teachers' histories of discrimination. But if that is accepted as true, then Plaintiffs must admit that they knew they were harmed, they knew the District was aware, and they knew the District did not remove the offending employee or take corrective action. This constellation of facts constitutes the complete and present cause of action that accrued at the time of their alleged discrimination, not years later. *Cielak* 112 F.4th 472.

Plaintiffs claim that they did not understand this harm as a district-wide policy until 2025 does not delay accrual. Ignorance of legal characterization or the scope of institutional wrongdoing

does not postpone the accrual date. *Vill. of Oak Lawn*, 860 F.3d at 493. Each Plaintiff's Title IX claim accrued at the time of their alleged discrimination, not when they allegedly were told by Watzka that it was a custom or practice that caused their harm.

Plaintiffs' argument that accrual should be delayed until they understood the institutional nature of the alleged wrongdoing conflates knowledge of facts with knowledge of legal theory. The accrual inquiry focuses on when the plaintiff knew the facts giving rise to the claim, not when the plaintiff understood the legal framework or scope of the defendant's conduct. *Wallace v. Kato*, 549 U.S. 384, 127 S. Ct. 1091 (2007). Allowing Plaintiffs' claims to accrue when they allegedly discovered a district-wide policy (something that is not a prerequisite to a Title IX discrimination claim) would improperly elevate legal sophistication above the straightforward inquiry into when the plaintiff knew of her discrimination and the cause of that discrimination.

Plaintiffs' reliance on *Snyder-Hill v. Ohio State University*, a Sixth Circuit case, is misplaced. *Snyder-Hill* is not binding in the Seventh Circuit, whereas *Cielak* is directly on point and controlling. Moreover, *Snyder-Hill* involved a plaintiff who was abused decades earlier and only recently discovered the abuse itself, not merely the institutional causation. In contrast, Plaintiffs knew about the discrimination when it occurred; they merely allege that they did not know about the Board's institutional role until 2025.

Watzka pleads that in 2012 administrators were aware of her relationship with Heisel and that Heisel remained employed. Watzka alleges that at least a dozen colleagues and administrators observed their relationship and said nothing. This means that Watzka knew or had reason to know in 2012 that the District bore responsibility for her discrimination. Her claim accrued in 2012, more than six years before filing in March 2026. La Count alleges that her relationship with Larsen was reported to the school and the police, and that Larsen's mother, a teacher in the District, knew

of the relationship. La Count was interviewed and denied the relationship. Even so, La Count pleads that she knew that the District was aware of the relationship and that Larsen remained employed. Under *Cielak*, La Count knew or had reason to know in 2013-2014 that the District bore responsibility. Her claim accrued in 2013-2014. Williams alleges that she made “reports” to the School Resource Officer, principal, and guidance counselor, and that the District never investigated Larsen. Williams knew in 2018 that the District was aware of the discrimination and failed to investigate. Under *Cielak*, Williams knew or had reason to know in 2018 that the District bore responsibility. Her claim accrued in 2018 and was thus subject to the three-year statute of limitations that applies to claims accruing after April 5, 2018. Wis. Stat. § 893.53. However, Williams filed suit in March 2026, more than three years after her claim accrued in February 2018.

B. Application of The Continuing Violation Doctrine Cannot Rely Upon Subsequent Events Involving Other Staff or Students.

The continuing violation doctrine permits a plaintiff to treat a series of related acts as a single, continuing violation, thereby resetting the limitations clock. However, this doctrine does not apply when later events involve different victims or different wrongdoers. *See, Poehling v. Trust Point, Inc. (In re Gerhard G. Poehling Family Trust)*, 2013 Wisc. App. LEXIS 420, *26-27 (Wi. App. Ct. 2013). Each Plaintiff's Title IX claim arises from a discrete act by a different employee. Later discrimination by other staff members or involving other students does not constitute a continuation of the violation against the individual plaintiff; it is a separate, discrete event. *Id.*; *See generally Moore v. Burge*, 771 F.3d 444, 447 (7th Cir. 2014).

III. PLAINTIFFS LACK STANDING UNDER TITLE IX IF, AS THEY CLAIM, THEIR CLAIMS ACCRUED IN 2025.

Plaintiffs face a fundamental tension in their position. They invoke their status as students to establish Title IX standing, yet simultaneously argue that the operative injury, and thus accrual,

did not occur until 2025, when they were no longer enrolled. This temporal mismatch undermines their theory.

Title IX standing requires that a plaintiff be subjected to discrimination in a program or activity receiving federal funding. 20 USCS § 1681. The predicate for standing is the plaintiff's participation in or exclusion from the educational program. However, Plaintiffs cannot simultaneously claim that their enrollment-era status confers standing while maintaining that the actionable injury occurred post-enrollment. The standing inquiry and the accrual inquiry must be coherent: if the injury is dated to 2025, the question becomes what program or activity Plaintiffs were participating in at that time, and the answer is none.

Plaintiffs rely on *Franklin v. Gwinnett County Public Schools* and *Parker v. Franklin County Community School Corp.* for the proposition that damages under Title IX may be recovered after graduation. *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 112 S. Ct. 1028 (1992), *Parker v. Franklin Cty. Cmty. Sch. Corp.*, 667 F.3d 910 (7th Cir. 2012). These cases establish that a former student may pursue damages for discrimination that occurred during enrollment. However, Plaintiffs misapply these precedents by seeking to extend them to cover institutional conduct occurring long after the plaintiff has left the program.

Franklin and *Parker* address the availability of damages for discrimination that deprived the plaintiff of educational benefits during their enrollment. They do not hold that a former student can premise Title IX liability on post-enrollment institutional conduct that causes no exclusion or denial of benefits because the plaintiff is no longer in the program. Plaintiffs ignore that the District is not liable for the discriminatory acts themselves. The District can only be liable for its alleged deliberate indifference while they were students. And this once again presents the catch-22 for Plaintiffs. To show that the District was deliberately indifferent, they must show that the District

knew of their discrimination and failed to address it. If that is the case, Plaintiffs have standing under Title IX, but their claims are time barred. If the District did not have knowledge of Plaintiffs' discrimination and Plaintiffs' claims are that the District violated their Title IX rights at some point after their graduation, they lack standing under Title IX.

IV. PLAINTIFFS' *MONELL* CLAIMS FAIL TO STATE A CLAIM FOR RELIEF.

Plaintiffs rely on *Hess v. Garcia* for the proposition that all intentional sexual contact by a state actor shocks the conscience regardless of severity. *Hess* held that physical sexual assault by a state official offends the Constitution. 72 F.4th 753, 767 (7th Cir. 2023). But the holding that an intentional sexual assault shocks the conscience does not extend to all unwanted physical contact or to conduct that is not clearly sexual in nature. Some of Plaintiffs' allegations, such as shoulder massages, touching an arm or a shoulder, or a teacher's hand in his own pocket do not constitute conscious shocking behavior under *Hess*.

Even if Plaintiffs have identified a constitutional right, a custom or practice *Monell* claim requires that the constitutional deprivations were similar to and caused by the same custom as plaintiffs claim. Plaintiffs argue that every incident involves a teacher or coach exploiting institutional authority to commit sexual misconduct against a student and that every incident produced the same institutional response: inaction, concealment, or promotion. However, this definition of the custom is far too broad. Plaintiffs' definition encompasses all sexual misconduct by school employees, which strays into impermissible *respondeat superior* liability. The custom must be defined more specifically and here Plaintiffs' definition of the custom as inaction in response to discrimination is simply too broad.

Even if the custom is defined broadly as inaction in response to sexual misconduct, each Plaintiff still fails to allege that there were more than three prior instances similar to theirs. *See*,

Thomas v. Cook Cty. Sheriff's Dep't, 604 F.3d 293 (7th Cir. 2009). Plaintiffs also fail to look at “similar instances” in chronological order. This is critical because what happened after a Plaintiffs’ alleged injury could not possibly have caused their injury.

Watzka does not allege any prior instance of a teacher grooming a student and then sexually assaulting her. The allegations regarding Peterson and Fuller involve different conduct (ongoing sexual relationships outside of school, not grooming followed by assault while at a school function) and do not establish a pattern similar to Watzka's allegations. La Count does not allege any prior instance of a teacher engaging a student in sexual activity in the teacher's home or in her car. The allegations regarding Heisel and Watzka involve conduct that is far too different (grooming followed by assault on a field trip, not ongoing sexual activity while socializing outside school). Williams alleges that La Count and Larsen engaged in ongoing sexual activity at the Larsen’s home, activity that they both hid from the police and school. Williams’ only allegation is of a single attempted kiss, not an ongoing sexual relationship. Kasal and D.P. do not allege any prior known instances of a teacher massaging a student's bare torso or shoulders. The allegations regarding Gander involve only Gander and these two plaintiffs. Kain does not allege any prior instance of an athletic trainer pressing his pelvis against a student or placing a student in sexual positions. Kasper does not allege any prior instance of a teacher repeatedly caressing a student's arm, shoulder, and neck while whispering that the student is sexy.

C. Plaintiffs Fail to Plead Facts To Plausibly Suggest The Existence of Moving Force Causation.

To state an actionable *Monell* claim, a plaintiff must allege facts sufficient to plausibly suggest that the District's policy or custom was the moving force behind the plaintiff's injury. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). A history of suppressing complaints cannot

be the moving force behind sexual assault because the link between the cause alleged and the harm that occurred is far too attenuated.

The Board's alleged failure to investigate other teachers' discrimination cannot be the moving force behind anyone's discrimination. The offending employee's salacious interests were the moving force. Plaintiffs do not plead that the offending employees knew of any institutional "failure to act" and they specifically allege that it was not until 2025 that they were able to discover the Board's alleged failure to act. If they did not know of the failure to act until 2025, there is no reason to believe that anyone else knew of the failure. No reasonable jury could conclude that any alleged inaction caused – i.e., was the moving force behind any employee's discrimination.

Plaintiffs cite *J.K.J. v. Polk County* arguing that Polk County was liable not on the basis of the perpetrator's acts but rather its own deliberate choice to stand idly by while inmates were exposed to an unmistakable risk of sexual assault. *J.K.J. v. Polk Cty.*, 960 F.3d 367 (7th Cir. 2020). However, *Polk Cty.* is distinguishable because it involved a custodial setting (jail) where the government had a duty to protect inmates from harm by other inmates. In the school context, the government does not have a similar affirmative duty to protect students from harm by teachers. *J.O. v. Alton Community Sch. Dist. 11*, 909 F.2d 267, 272 (7th Cir. 1990).

Moreover, *Polk Cty* involved a situation where the government's inaction directly enabled the harm (by failing to separate inmates or provide security), whereas in the school context, the Board's alleged inaction did not directly enable the harm. The Board's alleged inaction did not place any employee in a position where they had unsupervised access to students; rather, their positions as district employees naturally gave them access to students.

CONCLUSION

For the foregoing reasons, the Board of Education of Oconto Falls Public School District respectfully requests that this Court grant its Motion to Dismiss the Third Amended Complaint and dismiss all claims against the District with prejudice.

Dated the 11th Day of June, 2026.

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