IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JANE DOE,

Plaintiff,

v.

GWINNETT COUNTY PUBLIC SCHOOLS,

Defendant.

CIVIL ACTION FILE
No. 1:18-cv-05278-SCJ

ORDER

Plaintiff Jane Doe[1] ("Plaintiff") filed a Complaint against Defendant Gwinnett County Public Schools[2] ("Defendant") on November 16, 2018, alleging that Defendant violated her rights under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688 ("Title IX"), and her rights to

[1] To protect the identity of Plaintiff, a minor at all relevant times and an alleged sexual assault victim, the Court granted Plaintiff's Motion for Leave to Proceed Under Pseudonym. Doc. No. [16].

[2] Defendant states that it is incorrectly identified in the Complaint and that its actual name is "Gwinnett County School District." Doc. No. [22], p. 2. All requests for court action, however, must be made by motion. See Fed. R. Civ. P. 7(b)(1). The parties shall proceed in accordance with Rule 7 to obtain a change of the named parties.

equal protection of the laws under the Fourteenth Amendment to the United States Constitution and federal rights under Title IX pursuant to 42 U.S.C. § 1983 ("§ 1983"). Doc. No. [1].[3] Currently before the Court is Defendant's Motion to Dismiss the Complaint. Doc. No. [22]. For the reasons discussed below, Defendant's Motion to Dismiss is **DENIED**.

I. BACKGROUND

The factual background is drawn from the Complaint (Doc. No. [1]), accepting all of the well-pleaded facts as true and viewing them in the light most favorable to Plaintiff, as this Court must do. See Am. United Life Ins. Co. v. Martinez, 480 F.3d 1043, 1057 (11th Cir. 2007).

A. The Sexual Assault

On February 4, 2015, shortly after the end of the school day, Plaintiff—a 16-year-old sophomore at Peachtree Ridge High School ("PRHS") in the Gwinnett County School District—was waiting for her mother to pick her up from school. Doc. No. [1], ¶¶15, 17. "MP,"[4] another student at PRHS at that

[3] All citations are to the electronic docket unless otherwise noted, and all page numbers are those imprinted by the Court's docketing software.

[4] Throughout the Complaint, Plaintiff refers to this then-minor "male perpetrator" as "MP", which does not reveal his true initials. Doc. No. [1], p. 2 n.1; Fed. R. Civ. P. 5.2(a)(3).

time, asked Plaintiff if she wanted to see the Ridge Vision News ("RVN") room located in PRHS. Id. ¶¶16–17. Curious because she had never seen the RVN room, Plaintiff agreed. Id. ¶17. By school policy and rules, the RVN room should have been locked and those in the room subject to direct supervision. Id.

Upon entering the RVN room, Plaintiff alleges that MP grabbed her hips, pulled her to him, fondled her buttocks, and started pulling down her pants. Id. ¶18. Plaintiff affirmatively demonstrated her lack of consent by pushing his hands away and saying, "No, stop!" and "What are you doing?" Id. MP then restrained her in a chair, positioned himself above her, and forcibly kissed her. Id. ¶19. Plaintiff alleges that she was then subject to forced oral sodomy by MP. Id. After MP released Plaintiff, she left the room and went to meet her mother, who had arrived at school to pick her up. Id. ¶20. Thereafter, MP purportedly text messaged a friend about the assault, stating that he felt "guilty" about "doing something he shouldn't have done." Id. ¶21.

B. The Initial Reports

The following morning, on February 5, 2015, Plaintiff reported the sexual assault to her first-period teacher, Kristen Powell. Id. ¶22. Plaintiff was visibly distraught and crying when telling Ms. Powell about the assault. Id. Ms. Powell then directed Plaintiff to Linda Brimmer—another teacher that Plaintiff knew

well and trusted. Id. After Plaintiff told Ms. Brimmer about the assault, Ms. Brimmer took Plaintiff to meet with School Resource Officer Tony Lockard. Id. ¶23.

Over the course of that and the following day, Officer Lockard and PRHS Assistant Principals Lee Augmon, LaShawnia Stinson, and Jon Weyher interviewed and questioned Plaintiff and asked that she repeatedly recount the details of the sexual assault. Id. ¶24. Officer Lockard purportedly asked Plaintiff the following questions: "Why didn't you bite his penis?"; "Why didn't you grab his balls?"; "What were you wearing?"; "Did you scream?"; and "Are you sure you didn't want to have oral sex with him?" Id. ¶25. School officials also took Plaintiff back to the RVN room and insisted that she reenact the assault for them. Id. ¶26.

On February 6, 2015, Plaintiff did not attend school. Id. ¶27. School officials, however, asked that she come back to school for additional questioning. Id. Plaintiff and her family complied, and she again was forced to recount the details of the alleged sexual assault to school officials. Id. Assistant Principal Stinson, who was in charge of the school's attendance office, questioned Plaintiff with her stepfather present. Id. ¶28. Defendant had designated Assistant Principal Stinson as the Title IX Coordinator—a fact that she allegedly failed to

relay to Plaintiff or her stepfather. Id. Defendant also did not provide any information about the Title IX Coordinator on the PRHS website to properly notify parents and students. Id. ¶29.

On February 9, 2015, Plaintiff stayed home from school. Id. ¶30. School officials, however, asked Plaintiff and her family to come in for a meeting the following day. Id. The next day, on February 10, 2015, school officials charged Plaintiff with violating Rule 9Gof the school's sexual misconduct policy for participating in oral sex on school property and suspended her from school for a week.[5] Id. ¶31. They also informed Plaintiff that they were not pursuing her sexual assault complaint against MP and that a disciplinary hearing against Plaintiff would take place in the presence of MP and his family. Id.

C. The Disciplinary Hearing

On February 18, 2015, Defendant conducted a joint disciplinary hearing against Plaintiff and MP. Id. ¶32. During the hearing, Plaintiff once again recounted the details of the alleged sexual assault. Id. ¶33. Plaintiff contends that she was also forced to reenact the sexual assault with school officials. Id.

[5] Rule 9G purportedly states, in relevant part, that: "[a] student shall not allow another student/person to commit a lewd or indecent act to the body of oneself." Doc. No. [1], ¶39.

Assistant Principal Augmon, who had a lead role in the investigation of Plaintiff's report, purportedly admitted on the record, "I don't know that I'm trained to qualify what is sexual assault" because she had never investigated a sexual assault before. Id. ¶34. MP then testified and admitted that he had unzipped and pulled down his pants without asking Plaintiff if she wanted to engage in oral sex. Id. ¶35. MP purportedly claimed that he knew Plaintiff "wanted it" because of a "look" on her face. Id. When asked to describe that look, MP described it as a "blank face that didn't really have an expression." Id. MP also admitted to previous cyber sexual misconduct against Plaintiff and that he had violated Defendant's Rule 9G. Id.

During the hearing, MP's attorney cross-examined Plaintiff and attacked her credibility, allegedly stating in his closing statement, "I make no apologies for my conduct in cross-examining [Plaintiff]." Id. ¶36. According to Plaintiff, the cross-examination was so extensive that the hearing officer had to ask MP's attorney to "tone it down" in his closing statement. Id. Defendant's attorney and agent, Creighton Lancaster, also conducted a cross-examination of Plaintiff. Id. ¶37. Lancaster purportedly asked Plaintiff, "Can you demonstrate for us how you had screamed when [MP] was attacking you?" Id. After Plaintiff responded that she yelled at MP, "No, stop," Lancaster asked Plaintiff if she

tried to yell any louder and how many times she yelled. Id. Lancaster also asked Plaintiff about her physical resistance to MP with a series of questions: "Did you try to push him with both arms, [or] just one arm?" and "Now, when he went to put his penis in your mouth, what did you do to prevent him from doing that? In other words, did you try to keep your mouth closed or avoid that or did you do anything to stop him?" Id. ¶38. During his closing statement, Lancaster allegedly stated: "I would ask that you find that [MP] was more credible that the sexual encounter was consensual, and that you find [Plaintiff] in violation of Rule 9G." Id. ¶40. He also allegedly stated:

> Based on the fact that [Plaintiff] chose not [to] scream louder and louder as this was going on, leads me to believe [MP]. Based on the fact that she had no physical injuries leads me to believe [MP]. Based on the fact that she didn't report this immediately after it happened despite the fact that she walked straight to her mother's car leads me to believe [MP].

Id.

Defendant deliberated for ten minutes before determining that Plaintiff violated Rule 9G of the school's sexual misconduct policy. Id. ¶41. After Defendant announced its decision at the hearing, Plaintiff allegedly stated on the record:

> I just feel betrayed by the school . . . What about other girls that go to [PRHS]? This is a bad example. I don't want any girls to have to go through this, ever.
>
> When people find out about this and girls do get sexually assaulted, they're not going to want to come forward and tell someone, because they're going to be scared they're going to get suspended and they have to go through all of this. Do you know how hard it is? How much I have to repeat my story over and over and over, and that's just so hard. And then at the end, I get suspended for this. It just—like, it doesn't make sense. And then I have to come in and you guys say y'all don't believe me. Then [MP]'s attorney is yelling at me. I didn't ask for this. I didn't ask to get sexually assaulted. I didn't ask to get suspended. It's just not fair . . . . You don't know how emotional it is at home. I have nightmares every night. I have nightmares of my own boyfriend date raping me. I feel like nobody can protect me, no one believes me.

Id. ¶42. Following Plaintiff's remarks, Defendant sanctioned her with a second suspension from school. Id. ¶43. Based on Defendant's additional sanction, the Georgia Department of Driver Services suspended Plaintiff's driver's permit until February 2016. Id. ¶44.

D. The Subsequent Harassment

After returning to PRHS from her out-of-school suspension, Plaintiff continued attending classes alongside MP. Id. ¶45. Other students allegedly called Plaintiff names such as "whore", "slut", "liar", and "psycho." Id. ¶46.

One male student stated to Plaintiff, "I wish I was MP." Id. Another student purportedly told Plaintiff that she was a liar because the school allowed MP to return. Id. On her first day back from suspension, Plaintiff alleges that she only made it through her first-period class before she went to the school counselor and reported that she felt suicidal. Id. ¶47. On multiple occasions, Plaintiff reported that fellow students continued to engage in sexual harassment, derision, and humiliation, but school officials took no meaningful actions to curb hostility and harassment or to ensure that Plaintiff could attend school safely. Id. ¶48. Because of the intolerable environment at PRHS and the lack of response to the hostility Plaintiff endured at school, Plaintiff's family withdrew her from PRHS before the end of her sophomore year. Id. ¶49.

Thereafter, Plaintiff enrolled in Defendant's Gwinnett Online Campus, as it was the only practical and affordable option for Plaintiff and her family. Id. ¶50. As an online student, Plaintiff alleges that she was deprived of an in-school educational setting and two of the four courses she had been taking at PRHS. Id. ¶51. She also alleges that she was denied the benefits of in-person interaction and activities with instructors and peers. Id. Plaintiff and her family eventually moved away from Gwinnett County to escape the hostility and retaliation in the community. Id. ¶52. According to Plaintiff, she continues to

suffer from depression, anxiety, post-traumatic stress disorder, and significant weight loss. Id. ¶53. She also suffers regular headaches, dizzy spells, difficulty sleeping, grinding her teeth, and social isolation. Id.

E. The Complaint

Plaintiff filed her Complaint on November 16, 2018, asserting three counts against Defendant. See Doc. No. [1]. In Count I, Plaintiff asserts a claim for Post-Report Deliberate Indifference in violation of Title IX. Id. ¶¶69–83. In Count II, Plaintiff contends that Defendant retaliated against her for reporting the alleged sexual assault and subsequent harassment in violation of Title IX. Id. ¶¶84–88. In Count III, Plaintiff asserts a § 1983 failure-to-train claim. Id. ¶¶89–105.

On January 17, 2019, Defendant filed its Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Doc. No. [22]. Plaintiff filed a Response on March 4, 2019, to which Defendant filed a Reply on April 12, 2019. Doc. Nos. [34]; [41]. The motion is now ripe for review, and the Court rules as follows.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a) requires a complaint to contain a "short and plain statement of the claim showing that the pleader is entitled to

relief." Fed. R. Civ. P. 8(a)(2). Pleadings do not require any particular technical form and must be construed "so as to do justice." Fed. R. Civ. P. 8(d)(1), (e). Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss a complaint for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the Court accepts the factual allegations made in the complaint as true and construes them in the light most favorable to the plaintiff. Speaker v. U.S. Dep't. of Health & Human Servs. Ctrs. for Disease Control & Prevention, 623 F.3d 1371, 1379 (11th Cir. 2010).

As the purpose of Rule 8(a) is simply to provide notice to the defendant of the nature of the claims and the grounds on which those claims rest, pleadings are generally given a liberal reading when addressing a motion to dismiss. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555–56 (2007). A complaint will be dismissed for failure to state a claim only if the facts as pled do not state a claim that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Twombly, 550 U.S. at 555–56. In order to state a plausible claim, a plaintiff need only plead "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 678.

"[W]hile notice pleading may not require that the pleader allege a specific fact to cover every element or allege with precision each element of a claim, it is still necessary that a complaint contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory." Fin. Sec. Assur., Inc. v. Stephens, Inc., 500 F.3d 1276, 1282–83 (11th Cir. 2007) (quotations omitted). As long as the facts alleged create a reasonable expectation that discovery will reveal evidence of the necessary elements, a plaintiff's suit should be allowed to continue. Twombly, 550 U.S. at 556; Watts v. Fla. Int'l Univ., 495 F.3d 1289, 1295–96 (11th Cir. 2007).

III. DISCUSSION

A. Preliminary Matters

The Court must address two preliminary matters raised by the parties before considering the sufficiency of Plaintiff's claims. The Court must first determine whether it can properly consider the extrinsic evidence—specifically, the February 18, 2015, joint disciplinary hearing transcript—that Defendant submits in support of its Motion to Dismiss. See Doc. No. [23-1]. The Court must also determine whether Plaintiff is collaterally estopped from asserting a Title IX deliberate indifference claim against Defendant based on the findings

made at the joint disciplinary hearing. The Court will discuss each matter in turn.

1. Extrinsic Evidence

Defendant submits several exhibits and documents in support of its Motion to Dismiss, including the February 18, 2015, joint disciplinary hearing transcript. See Doc. Nos. [23-1]; [23-2]; [23-3]; [23-4]; [23-5]; [23-6]; [23-7]; [23-8]; [23-9]; [24]. In response, Plaintiff argues that the Court should exclude the extrinsic evidence that Defendant proffers and decide its Motion to Dismiss solely on the facts alleged in the Complaint. Doc. No. [34], pp. 11–14.

Generally, at the motion-to-dismiss stage, a court may not consider anything beyond the face of the complaint and any of its attached documents.[6] Fin. Sec. Assur., Inc., 500 F.3d at 1284. There is an exception, however, in cases where (1) the plaintiff refers to a document in the complaint, (2) the contents of the document are not in dispute (*i.e.* its authenticity is not in question), (3) the defendant attaches the document to its motion to dismiss, and (4) the document

[6] If matters outside the complaint are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Federal Rule of Civil Procedure Rule 56. See Fed. R. Civ. P. 12(d). Defendant has not requested that its motion be converted into one for summary judgment, and the Court declines to do so here.

is central to the plaintiff's claim. Id. (citations omitted). With respect to the joint disciplinary hearing transcript, the Court finds that the first three requirements are met, as Plaintiff cites to the transcript in the Complaint, the authenticity of the transcript is not in question, and Defendant attached the transcript to its Motion to Dismiss.

Nevertheless, the Court finds that the joint disciplinary hearing transcript is not central to Plaintiff's claims such that the Court may consider at this time. The Eleventh Circuit has previously evaluated centrality by considering whether the plaintiff would have to offer the document to prove her case. Fin. Sec. Assur., Inc., 500 F.3d at 1284–85 (citing Fudge v. Penthouse Int'l, Ltd., 840 F.2d 1012, 1015 (1st Cir. 1988)). In Financial Sec. Assur. Inc., the plaintiff claimed that it acquired a contingent interest in bonds because the insurance policy constituted a contract to acquire them upon default. 500 F.3d at 1284. To prevail under any conceivable theory of its case, the plaintiff would ultimately have to offer a copy of the policy. Id. at 1285. Thus, in finding that the policy was central to the plaintiff's case, the Eleventh Circuit considered the policy attached to the motion to dismiss as part of the pleadings. Id.; see also Patel v. Spec. Loan, Servicing, LLC, 904 F.3d 1314 n.3

(11th Cir. 2018) (finding that an insurance policy attached to a motion to dismiss was central to the plaintiffs' claims).

Here, however, Plaintiff does not need to offer the joint disciplinary hearing transcript in order to prove her case. Where the plaintiff in Fin. Sec. Assur., Inc. had to offer the insurance policy to prove its case, Plaintiff may present witnesses whose testimony can establish what transpired at the disciplinary hearing without relying on the transcript. See Glass v. City of Glencoe, No. 4:17-CV-0026-JEO, 2017 WL 1407477, at *3 (N.D. Ala. Apr. 20, 2017) (noting that a document is central if it is "intrinsic to the claim", such as insurance policies or contracts; however, "[c]entrality does not encompass witness affidavits that merely recount circumstances or information relevant to a claim.") (citations omitted). Further, the merits of Plaintiff's claims depend on evidence far beyond the record of the disciplinary hearing. While the disciplinary hearing transcript may be relevant to Plaintiff's case, the Court cannot say that it is "intrinsic" or "central" to her claims. Finally, to the extent that Defendant submits the disciplinary hearing transcript as a way of disputing Plaintiff's factual allegations in the Complaint, it is unable to do so at the motion-to-dismiss stage. See Adamson v. Poorter, No. 06-15941, 2007

WL 2900576, at *3 (11th Cir. Oct. 4, 2007) ("A document is not 'central' merely because it is directly responsive to a factual allegation.").

Because the joint disciplinary hearing transcript is not central to Plaintiff's claims, the Court will therefore not consider it at this time.

2. Collateral Estoppel

Defendant argues that Plaintiff is collaterally estopped from bringing her Title IX deliberate indifference claim based on the findings made at the joint disciplinary hearing. Doc. No. [22], pp. 14–17. Specifically, Defendant contends that "the hearing officers' conclusion that Plaintiff violated Rule 9G necessarily means that [they] found that the oral sex between Plaintiff and MP was consensual." Id. at pp. 16–17. Thus, according to Defendant, Plaintiff may not re-litigate whether the oral sex between her and MP was consensual, and her Title IX claim that Defendant was deliberately indifferent in failing to punish MP for sexual assaulting her should be dismissed. Id. at p. 17.

Under Georgia law, a party asserting collateral estoppel is required to establish that:

> (1) an identical issue was presented in the prior proceeding; (2) the issue was a critical and necessary part of the prior proceeding; (3) the issue was fully and fairly litigated in the previous proceeding; (4) the parties in the two proceedings were identical; and (5)

> a final decision was rendered by a court of competent jurisdiction.

Bryant v. Jones, 575 F.3d 1281, 1303 (11th Cir. 2009). Establishing these factors, however, would require the Court to consider facts outside of those alleged in Plaintiff's Complaint. See Fin. Sec. Assur., Inc., 500 F.3d at 1284 ("Ordinarily, we do not consider anything beyond the fact of the complaint and documents attached thereto when analyzing a motion to dismiss.") (citation omitted). Without considering the joint disciplinary hearing transcript, which the Court declined to do above, the Court cannot determine that the issues raised in Plaintiff's Complaint were critical and necessary to the joint disciplinary hearing or that the issues were fully and fairly litigated in that hearing. In the Complaint, Plaintiff only alleges that the disciplinary hearing officers found her in violation of Rule 9G of the school's sexual misconduct policy. Contrary to Defendant's assertion, the plain language of Rule 9G does not necessarily require a finding by the hearing officers that the sexual act was "consensual." See supra note 5. Beyond that alleged fact, the Court is unable to ascertain the specific findings made at the disciplinary hearing.[7] The Court will therefore

[7] Of course, should this case proceed any further—whether to summary judgment or beyond—the Court would likely be able to consider the joint disciplinary

not decide whether Plaintiff is collaterally estopped from asserting her Title IX deliberate indifference claim against Defendant at this time.

B. Count I – Title IX Deliberate Indifference

The Court now considers the sufficiency of Plaintiff's claims. In Count I of the Complaint, Plaintiff alleges that Defendant acted with deliberate indifference to the sexual assault, violence, and subsequent harassment that Plaintiff suffered at PRHS in violation of Title IX. Id. ¶¶69–83.

The relevant part of Title IX states that "[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Although Title IX does not expressly permit private enforcement suits, the Supreme Court has found an implied right of action for individuals to enforce the mandates of Title IX. Cannon v. Univ. of Chicago, 441 U.S. 677, 717 (1979). The Supreme Court has also held that private individuals can obtain monetary damages for Title IX violations. Franklin v. Gwinnett Cty. Pub. Sch., 503 U.S. 60, 76 (1992).

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hearing transcript and, thus, determine the exact issues raised and made at the hearing.

Further, in 1999, the Supreme Court first held that Title IX creates a private cause of action for student-on-student sexual harassment. Davis v. Monroe Cty. Bd. of Educ., 526 U.S. 629, 650 (1999). A Title IX funding recipient is liable for student-on-student harassment if it is "deliberately indifferent to sexual harassment, of which [it] has actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school." Id. at 650.

Accordingly, a plaintiff seeking recovery for a Title IX violation predicated on student-on-student harassment must prove five things. See Williams v. Bd. of Regents of Univ. Sys. of Ga., 477 F.3d 1282, 1293 (11th Cir. 2007).[8] First, the defendant must be a recipient of federal funds under Title IX. Id. Second, an "appropriate person" must have actual knowledge of the discrimination or harassment. Id. "[A]n 'appropriate person' . . . is, at a minimum, an official of the recipient entity with authority to take corrective

[8] In Williams, the Eleventh Circuit described this test as consisting of four elements, with the fourth element containing two parts: 4a and 4b. Williams, 477 F.3d at 1293, 1297–98. The Eleventh Circuit later applied Williams as a five-element test, designating 4a and 4b as separate elements. See Hill v. Cundiff, 797 F.3d 948, 970 n.11 (11th Cir. 2015). For purposes of this motion, the Court follows the approach set forth in Hill and applies Williams as a five-element test.

action to end the discrimination." Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290 (1998). Third, a funding recipient is liable for student-on-student harassment only if "the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities." Williams, 477 F.3d at 1282 (citing Davis, 526 U.S. at 633). In considering this element, the Court analyzes the conduct of the funding recipient—not the alleged harasser—to ensure that it is liable only if its deliberate indifference subjected the plaintiff to discrimination. Williams, 477 F.3d at 1282 (citing Davis, 526 U.S. at 640–41). Fourth, the discrimination or harassment—of which the funding recipient had actual knowledge under element two—must be "severe, pervasive, and objectively offensive . . . ." Williams, 477 F.3d at 1282 (citing Davis, 526 U.S. at 633). And fifth, the plaintiff must demonstrate the discrimination or harassment "effectively barred the victim's access to an educational opportunity or benefit." Williams, 477 F.3d at 1298 (quotation and internal alterations omitted). The Court will address each element in turn.

1. Funding Recipient

As to the first element, Plaintiff states in the Complaint that Defendant, Gwinnett County School District, is a Title IX funding recipient.

Doc. No. [1], ¶14. Defendant does not contest this point in its Motion to Dismiss. Accordingly, the Court finds that Plaintiff has sufficiently alleged this element.

2. Appropriate Persons with Actual Knowledge

The Court also finds that Plaintiff has sufficiently alleged—and Defendant does not appear to dispute in its Motion to Dismiss—that an "appropriate person" had actual knowledge of the sexual assault and subsequent harassment Plaintiff suffered at PRHS. According to Plaintiff, Officer Lockard and PRHS Assistant Principals Lee Augmon, LaShawnia Stinson (Defendant's Title IX Coordinator), and Jon Weyher all had actual knowledge of the sexual assault; and other school officials had actual knowledge of the subsequent harassment Plaintiff suffered at PRHS. See id. ¶¶23–24, 28, 48–49, 70, 72–73. Plaintiff further alleges that Defendant's administrators, employees, and agents with actual knowledge of the sexual assault and subsequent harassment had the authority and ability to investigate and take meaningful corrective action for Defendant to end the sexual harassment and hostile educational environment. Id. ¶73. The Court therefore finds that Plaintiff has sufficiently alleged this element.

3. Deliberate Indifference

As to the third element, the Supreme Court has held that a funding recipient is deliberately indifferent "only where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances." Davis, 526 U.S. at 648. Put another way, it must amount to "an official decision by the recipient not to remedy the violation." Gebser, 524 U.S. at 290. The deliberate indifference asserted must also subject the plaintiff to further harassment; that is, it must cause the complaining student to undergo harassment or make the student liable or vulnerable to it. Davis, 526 U.S. at 644; Williams, 477 F.3d at 1296 ("Based on the Davis Court's language, we hold that a Title IX plaintiff at the motion to dismiss stage must allege that the Title IX recipient's deliberate indifference to the initial discrimination subjected the plaintiff to further discrimination.").

In the Complaint, Plaintiff sets forth numerous different ways in which Defendant acted with deliberate indifference to her initial report of the sexual assault and the subsequent harassment she endured at PRHS. Doc. No. [1], ¶82. After first reporting the sexual assault, Plaintiff alleges that Defendant interrogated her, forced her to reenact the sexual assault, and demanded that she repeat the details of the sexual assault to at least six school employees.

Moreover, during the joint disciplinary hearing, Plaintiff alleges that Defendant engaged in overt and concerted attempts to discredit her and debunk her report of sexual assault. Specifically, Defendant brought in its own attorney who actively advocated against Plaintiff's report of sexual assault in favor of MP. Plaintiff also alleges that Defendant's deliberate indifference subjected her to further harassment upon her return from her out-of-school suspension, as they refused to remediate the hostile environment she reported, which included other students' derogatory comments and intimidation of sexual violence.

In its Motion to Dismiss, Defendant challenges each individual component of its alleged, overall deliberate indifference. Such an approach, however, flies in the face of the notion that all events and circumstances must be considered "cumulatively." See Hill, 797 F.3d at 975 ("We do not say that any one action or inaction suffices. The deliberate indifference standard is rigorous and hard to meet. But the cumulative events and circumstances here, viewed in the light most favorable to Doe, are enough to establish deliberate indifference under Title IX."); Doe v. Bibb Cty. Sch. Dist., 126 F. Supp. 3d 1366, 1379 (M.D. Ga. 2015) ("[T]his fact cannot be considered in isolation because, again, a funding recipient's conduct must be evaluated in light of all known circumstances.").

Altogether, Plaintiff's allegations that Defendant responded to the sexual assault and subsequent harassment with deliberate indifference are sufficient to meet her burden on a motion to dismiss. The Court therefore finds that Plaintiff has sufficiently alleged this element.

4. Severe, Pervasive, and Objectively Offensive

For the fourth element, the Court concludes that Plaintiff has alleged sufficient facts to show that the sexual assault and subsequent harassment were severe, pervasive, and objectively offensive. In the Complaint, Plaintiff alleges that, upon her return from her out-of-school suspension, she was forced to attend classes alongside MP. Doc. No. [1], ¶45. She also states that she was in continuous and constant fear of encountering MP at PRHS. Id. In similar circumstances, other courts have found that "constant potential for interactions" between the alleged harasser and victim could support the conclusion that the harassment was severe, pervasive, and objectively offensive. Doe ex rel. Doe v. Derby Bd. of Educ., 451 F. Supp. 2d 438, 444 (D. Conn. 2006); see also Kinsman v. Fla. St. Univ. Bd. of Trs., No. 4:15cv235-MW/CAS, 2015 WL 11110848, at *4 (N.D. Fla. Aug. 12, 2015) ("This Court agrees that the possibility of further encounters 'between a rape victim and her attacker could create an environment sufficiently hostile to deprive the victim of access to educational

opportunities provided by a university.'") (citing Kelly v. Yale Univ., No. CIV.A. 3:01-CV-1591, 2003 WL 1563424, at *4 (D. Conn. Mar. 26, 2003)). Accordingly, the Court finds that Plaintiff has sufficiently alleged this element.

5. Bar Access to an Educational Opportunity or Benefit

Turning to the fifth and final element, Plaintiff alleges that the sexual assault and subsequent harassment Plaintiff endured at PRHS effectively barred her access to educational opportunities and benefits. In the Complaint, Plaintiff alleges that she was forced to leave PRHS before the end of her sophomore year and transfer to Defendant's Gwinnett Online Campus, which offered far fewer educational opportunities and benefits. Doc. No. [1], ¶80. As an online student, Plaintiff claims that she was deprived of an in-school educational setting and two of the four courses that she had been taking at PRHS. Id. ¶51. She also claims that she was denied the benefits of in-person interaction and activities with instructors and peers. Id.

Considering these circumstances, the Court concludes that Plaintiff has alleged sufficient facts to show that the sexual assault and subsequent harassment effectively barred her access to an educational opportunity or benefit, namely pursuing an education at PRHS. See Williams, 477 F.3d at 1298 ("Although UGA and UGAA neither formally forced Williams to leave nor

banned her from returning, the discrimination in which they engaged or they allowed to occur on campus caused Williams to withdraw and not return."); Hill, 797 F.3d at 975–76 ("Although Doe unenrolled and moved . . . Doe's withdrawal does not bar a finding that the Board denied her an opportunity to continue attending Sparkman [Middle School]."); Kinsman, 2015 WL 11110848, at *4–5 (finding that "the presence of the plaintiff's alleged attacker on campus and its impact on her educational opportunities forced her to leave school and prevented her from returning to continue her education.").

As Plaintiff has sufficiently alleged all five elements necessary to state a Title IX claim for deliberate indifference, the Court denies Defendant's Motion to Dismiss on this count.

C. Count II – Title IX Retaliation

In Count II of the Complaint, Plaintiff alleges that, because she reported the sexual assault and subsequent harassment, Defendant—through its administrators, employees, and agents—retaliated against her in violation of Title IX by twice suspending her from school, openly gossiping about her to other teachers, giving her failing grades and marring her educational record, and refusing to provide her with meaningful accommodations. Doc. No. [1], ¶¶84–88.

The Supreme Court has recognized an implied private right of action for retaliation under Title IX for "[r]etaliation against a person because that person has complained of [or reported] sex discrimination." Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 178 (2005); see also id. at 178 ("[W]e hold that Title IX's private right of action encompasses suits for retaliation, because retaliation falls within the statute's prohibition of intentional discrimination on the basis of sex."). The Eleventh Circuit has never definitively set forth the elements of a Title IX retaliation claim. In unpublished decisions, however, it has assumed that Title VII's retaliation framework applied. See Saphir ex rel. Saphir v. Broward Cty. Pub. Sch., 744 F. App'x 634 (11th Cir. 2018); McCullough v. Bd. Of Regents of the Univ. Sys. of Ga., 623 F. App'x 980, 982 (11th Cir. 2015); Bowers v. Bd. of Regents of Univ. Sys. of Ga., 509 F. App'x 906, 911 n.7 (11th Cir. 2013). Assuming the same, that means Plaintiff, in order to establish a *prima facie* retaliation case, must show that (1) she reported the sexual assault and subsequent harassment; (2) she suffered an adverse action; and (3) there is a causal connection between the two. Saphir, 744 F. App'x at 639. "A retaliation claim does not depend on the success of the underlying harassment claim." Terry v. Young Harris Coll., 106 F. Supp. 3d 1280, 1297 (N.D. Ga. 2015). Rather, Title IX's anti-retaliation provision protects a student "so long as she

can show a good faith, reasonable belief" that the practices violated Title IX.[9] Id. (citation omitted).

1. Reporting

The Court first finds that Plaintiff has sufficiently alleged facts to satisfy the reporting requirement. As set forth in the Complaint, Plaintiff reported the sexual assault to multiple faculty members at PRHS, including Ms. Powell and Ms. Brimmer, Officer Lockard, and PRHS Assistant Principals Augmon, Stinson, and Weyher. Doc. No. [1], ¶¶22–24. Plaintiff also alleges that she reported the subsequent harassment from her peers to school officials. Id. ¶48. Thus, because Plaintiff properly alleged reporting the sexual assault and subsequent harassment to school officials, the Court deems this requirement satisfied.

[9] Defendant argues in its Motion to Dismiss that because it concluded that Plaintiff engaged in consensual oral sex, she could not have a good faith, reasonable belief that she was opposing a practice prohibited by Title IX. Doc. No. [22], p. 30. As this Court has already stated, however, the facts alleged in the Complaint—that the hearing officers found that Plaintiff violated Rule 9G of the school's sexual misconduct policy—do not necessarily require a finding that the sexual act was consensual.

2. *Adverse Action*

Plaintiff has also satisfied the adverse action requirement. An adverse action is one that "would 'dissuade[ ] a reasonable [person] from making or supporting a charge of discrimination.'" Bowers, 509 F. App'x at 911–12 (alterations in original) (citing Burlington N. & Santa Fe Ry., 548 U.S. 53, 68 (2006)). In the Complaint, Plaintiff alleges that she suffered adverse actions, including being suspended twice and then allowing a hostile environment that effectively denied her educational opportunities and benefits of the school. Doc. No. [1], ¶¶31, 43, 49. Accordingly, the Court concludes that Plaintiff properly alleged that she suffered an adverse action.

3. *Causal Connection*

Finally, the Court finds that Plaintiff has adequately plead causation. "To demonstrate causation, 'a plaintiff must show that the decision-makers were aware of the protected conduct, and that the protected activity and the adverse actions were not wholly unrelated.'" Bowers, 509 F. App'x at 911 (citing Shannon v. BellSouth Telecomm., Inc., 292 F.3d 712, 716 (11th Cir. 2002)).

As addressed in the preceding paragraphs, Plaintiff has alleged that Defendant was aware of the protected conduct because she reported the sexual assault to seven members of faculty in total, not including the hearing officers.

Doc. No. [1], ¶¶22-24. She recounted the assault in several interviews as well as in the joint disciplinary hearing to Defendant's employees, who then suspended her twice and failed to respond to her reports of subsequent harassment at PRHS. Id. ¶¶31, 43, 49, 52. These facts together satisfy the requirement that the decision-makers were aware of the protected conduct.

Plaintiff has also sufficiently alleged that the protected activity and the adverse actions were not wholly unrelated. In the Complaint, Plaintiff specifically states that:

> because Ms. Doe reported MP's sexual harassment and assault to Defendant, Defendant . . . retaliated against her by twice suspending her from school, openly gossiping about her to other teachers, including in front of Ms. Doe, giving her failing grades and marring her educational record, and refusing to provide her with meaningful accommodations.

Doc. No. [1], ¶86. The temporal proximity between Plaintiff's report and the adverse actions also infers a causal link. See Bowers, 509 F. App'x at 911 ("Causation may be inferred by a close temporal proximity between the protected activity and the adverse action.") (citation omitted). As alleged in the Complaint, Plaintiff first reported the sexual assault to school officials on February 5, 2015. Doc. No. [1], ¶22. She was then suspended from PRHS only

five days later on February 10, 2015. Id. ¶31. Further, she was suspended a second time at the disciplinary hearing, immediately after she gave a statement objecting to the outcome. Id. ¶¶42–43. This close temporal proximity creates a reasonable inference that the adverse actions were not wholly unrelated to Plaintiff's report of the sexual assault. Therefore, Plaintiff has sufficiently alleged a causal link between the protected activity and the adverse action.

As Plaintiff plausibly states a Title IX claim for retaliation, the Court denies Defendant's Motion to Dismiss on this count.

D. Count III – Failure to Train Under 42 U.S.C. § 1983

In Count III of the Complaint, Plaintiff asserts a failure-to-train claim against Defendant under § 1983. Id. ¶¶89–105.

Section 1983 provides that:

> Every person who, under the color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. Although the Supreme Court has held that counties (and other local government entities) are "persons" within the scope of § 1983, and subject

to liability, Plaintiff cannot rely upon the theory of *respondeat superior* to hold Defendant liable. See Monell v. Dept. of Soc. Servs., 436 U.S. 658, 692 (1978) (finding that § 1983 "cannot be easily read to impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor.") "It is only when the execution of the government's policy or custom . . . inflicts the injury that the municipality may be held liable." City of Canton v. Harris, 489 U.S. 378, 385 (1989) (citations omitted). Thus, to state a § 1983 claim against Defendant, Plaintiff must allege that: (1) her constitutional rights were violated; (2) Defendant had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation. See McDowell v. Brown, 392 F.3d 1283, 1289 (11th Cir. 2004) (citing Canton, 489 U.S. at 388).

First, Plaintiff has sufficiently alleged that Defendant violated her equal protection rights by failing to appropriately address her reports of sexual assault, subjecting her to further harassment, and retaliating against her for reporting sexual assault.[10] Doc. No. [1], ¶90.

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[10] The Equal Protection Clause under the Fourteenth Amendment guarantees a federal constitutional right to be free from sex discrimination. See Hill, 797 F.3d at 976.

Second, Plaintiff has sufficiently alleged that Defendant maintained a custom or policy of inadequate training on Title IX, harassment, and sexual assault. To succeed on a failure-to-train claim absent a pattern of violations, a plaintiff must show that "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers . . . can reasonably be said to have been deliberately indifferent to the need." Canton, 489 U.S. at 390. "In that event, the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury." Id. In the Complaint, Plaintiff alleges that Defendant failed to train its administrators, staff, students, and parents despite the obvious need for training on, among other things, student-on-student sexual misconduct and identifying, investigating, reporting, and remediating the effects of sexual harassment. Doc. No. [1], ¶98. Plaintiff further alleges that Defendant's lack of training is evidenced by subjecting Plaintiff to "victim-blaming" questions, interrogation, and cross-examination; forcing Plaintiff to reenact the sexual assault in the room where it occurred; compelling her to repeatedly describe the sexual assault; and failing to inform Plaintiff or her family about her Title IX rights. Id. ¶66. Plaintiff also alleges that Defendant failed to train its

administrators, staff, students, and parents despite the obvious need for training on, among other things, the prohibition, illegality, and impropriety of retaliating against students who reports violations of Title IX and student-on-student sexual misconduct. Id. ¶99. In the Complaint, Plaintiff even alleges that Assistant Principal Augmon—who had a lead role in the investigation of her report—stated at the joint disciplinary hearing: "I don't know that I'm trained to qualify what is sexual assault." Id. ¶34. In light of these allegations, the Court concludes that Plaintiff has sufficiently alleged that Defendant acted with deliberate indifference to an obvious need for relevant Title IX and student-on-student harassment training.

Finally, Plaintiff has sufficiently alleged that Defendant's failure to train caused her constitutional injury. To establish causation, a plaintiff must show that "the identified deficiency in a [ ] training program [and supervision] must be closely related to the ultimate injury." Daniel v. Hancock Cty. Sch. Dist., 626 F. App'x 825, 835 (11th Cir. 2015) (alterations in original) (quoting Canton, 489 U.S. at 391). This requires a plaintiff to demonstrate a connection between the failure to train and the risk, as well as the risk and the plaintiff's harm. Id. (citing Hale v. Tallapoosa County., 50 F.3d 1579, 1584 (11th Cir. 1995)). In the Complaint, Plaintiff states that Defendant's failure to train its administrators

and staff created a serious risk of unlawful sex discrimination, and that risk directly caused Plaintiff's harm. Doc. No. [1], ¶¶64–68; 96–104. Specifically, Plaintiff alleges that Defendant's failure to provide adequate training to school officials caused those officials to ignore the relevant standards applicable to addressing student reports of sexual assault.

Accordingly, Plaintiff states a plausible failure-to-train claim against Defendant under § 1983, and the Court denies Defendant's Motion to Dismiss on this count.

IV. CONCLUSION

For the reasons discussed above, Defendant's Motion to Dismiss is **DENIED** in its entirety. Doc. No. [22].

IT IS SO ORDERED this 22nd day of August, 2019.

s/Steve C. Jones
HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE