Doe v. Loudon Cnty. Bd. of Educ.

United States District Court for the Eastern District of Tennessee

April 4, 2024, Decided; April 4, 2024, Filed

Case No. 3:22-cv-421

Reporter
2024 U.S. Dist. LEXIS 68645 *

JOHN DOE, et al., Plaintiffs, v. LOUDON COUNTY BOARD OF EDUCATION, Defendant.

Core Terms

harassment, sexual, sexual harassment, deliberate indifference, summary judgment, touching, severe, offensive, pervasive, inappropriate, gender-based, indifference, experienced, sexual misconduct, deprived, custom, talking, reasonable jury, state-created-danger, slapping, hit, safety plan, coordinator, nonmoving, buttocks, cleaned, succeed, verbal, gym, student-on-student

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Judges: TRAVIS R. MCDONOUGH, UNITED STATES DISTRICT JUDGE. Debra C. Poplin, Magistrate Judge.

Opinion by: TRAVIS R. MCDONOUGH

Opinion

MEMORANDUM OPINION

Before the Court is Defendant Loudon County Board of Education's ("LCBOE") motion for summary judgment. (Doc. 34.) For the following reasons, the Court will **GRANT IN PART** and **DENY IN PART** Defendant's motion for summary judgment (*id.*).

I. BACKGROUND

In 2021, Plaintiff John Doe was a middle schooler at Fort Loudon Middle School ("FLMS"). (Doc. 39-1, at 10.) From August 2021 until he transferred schools a few months later, Doe did not feel safe on campus. (*Id.* at 11, 18, 27.) This was because a group of boys, many of whom shared class and lunch periods with Doe, subjected him to near-daily torment on school grounds. (*Id.* at 12, 17.) The torment primarily consisted of inappropriate touching of Doe's person and sexually explicit verbal statements, **[*2]** some of which were directed at Doe. (*Id.* at 12-13.) In Doe's words, the boys "were saying very inappropriate things and slapping me on the butt and they would say stuff when they did it." (*Id.* at 12.) Conversation topics among the boys featured, per Doe, "sexual things and they were directing it towards me." (*Id.* at 16.) The "sexual things" included comments about "their body parts going inside of me." (*Id.*) The boys would frequently "slap [] and sometimes . . . squeeze [his buttocks]," "kind of touch[ing his] leg when they did it." (*Id.* at 17.) Doe told the boys to stop touching him every time they did so, but they never did. (*Id.* at 18.) Doe felt he could not escape this behavior, because it "would be at my locker or in the bathroom, or something in the lunchroom[,] and also the gym." (*Id.* at 12-13; *see id.* at 17 (Doe recalling that the boys would "hit me on the butt and say inappropriate things" "almost anytime I was at my locker" and also "at lunch or in the evening and in the bathrooms").) For months, Doe kept quiet about these interactions, never disclosing to his parents or school administrators what he had experienced. (*Id.* at 102, 156-57.)

That changed on December 2, 2021. **[*3]** (*Id.* at 161.) In the evening, Doe and his parents attended a school basketball game at FLMS together to watch his younger brother play. (*Id.*) Doe saw two of the boys who had been touching and saying sexual things to him at the game, which caused him to feel like "everything . . . was closing in." (*Id.* at 26.) This overwhelming feeling prompted Doe to finally tell his parents what had been going on at school. (*Id.* at 162.) According to Doe's mom, Doe said "he was being sexually harassed at school and these kids were hitting him on the butt and saying stuff to him, sexual things to him . . . [that] he didn't want to repeat because he says [it was] nasty" and that "it was sexual things that they were saying to him when they slapped him on the butt." (*Id.*)

That same night, Doe's mom contacted FLMS's School

Resource Officer ("SRO") Marshall Lynn to talk about what her son disclosed. (*Id.* at 162-63.) This led to a meeting between SRO Lynn, FLMS's Assistant Principal Stephanie Klippert, Doe, and both of Doe's parents, wherein Doe repeated what he told his mom. (*Id.* at 164.) Klippert assured all parties that they would collaborate on a safety plan for Doe and that "nothing was off the table" **[*4]** in terms of what she could do to make him feel safe at school. (*Id.* at 109-10.) When Doe and his parents returned home from the meeting, they brainstormed on what to include in Doe's safety plan. (*Id.* at 108, 241.)

The next morning, Doe, his parents, Klippert, and SRO Lynn reconvened for a safety-plan meeting. (*Id.* at 109.) Principal Patrick Bethel and counselor Melanie Shepherd joined. (*Id.*) Doe told the adults that he would feel safer with someone in the hallway or in the area where the harassing incidents typically occurred and if someone walked him to class. (*Id.* at 109-10.) He also confided that he "really d[idn't] want to go to gym." (*Id.* at 326.) Shepherd assured Doe he could "come hang out with me" at that time instead. (*Id.*) Klippert also told him to "ask the teacher for a [] break and come down and see one of us" if he felt overwhelmed during the day. (*Id.* at 329-30.) The meeting ended, and Klippert walked Doe to his first class of the day. (*Id.* at 42, 332.)

In that class, which was also attended by his harassers, Doe "had a breakdown." (*Id.* at 42.) Seeking refuge, Doe "asked [his teacher] to go to the office," and, once there, told Klippert, Shepherd, and SRO Lynn that he **[*5]** "can't focus on my studies." (*Id.* at 42-43, 342.) The three discussed how Doe could manage his emotions and sent him back to class. (*Id.* at 42, 346-56.) Doe felt like the adults brushed off concerns and "shooed me away." (*Id.* at 43.)

After his first class, Doe went to gym class. (*Id.* at 45.) There, some of the same boys who had been harassing him called Doe a "stripper" and "hit [him] on the butt." (*Id.*) Doe "tried to go to the [vice] principal again and tell them that I wanted to go home." (*Id.*) From his recollection, Klippert and SRO Lynn looked through the video of the class, could not corroborate Doe's story, and sent him back to class. (*Id.* at 45-46.)

That same day, in the hallway after lunch, one of the boys "hit [Doe] on the butt." (*Id.* at 52.) He "went to the vice principal and . . . the SRO" to tell them what happened. (*Id.* at 53.) They "told [him] they'd handle it." (*Id.* at 52.) SRO Lynn wrote in his report that the video footage "does appear to show [one of the boys] touching the buttocks of [Doe.]" (*Id.* at 475.) Doe says there was a teacher posted in the hallway, as per the safety plan, "[o]nly once" and that he was only walked to class "that one time" by Klippert. (*Id.* at **[*6]** 48, 72.)

Around this time, SRO Lynn and Principal Bethel called in the boys to talk about the inappropriateness of their behavior. (*Id.* at 475.) Specifically, Bethel "advised [the boys] of the seriousness and volatile nature of their actions" and that continuance of the actions would lead to "arrest and prosecution to the full extent allowed by the law." (*Id.*) The boys "appeared to acknowledge their wrongdoing." (*Id.*) The meeting ended, and Bethel phoned each of the boy's parents to alert them of "what was going on and let them know that the boys would face further discipline and potential prosecution if additional reports were made about their actions." (*Id.* at 432.)

Meanwhile, Doe was in computer class, which some of the same boys also attended. (*Id.* at 50.) According to Doe, they started "talking really nasty and made [him] feel uncomfortable," so he sought out Klippert again. (*Id.*) He told her that he "didn't want to go to school," but "[she] shooed [him] away again." (*Id.*) Doe did as he was told and returned to class. (*Id.*)

In the last class of the day, Doe started writing a letter. (*Id.* at 66.) The letter, addressed to his mom, read: "Mom I did this because I was under a lot of **[*7]** stress. I love all of you all. I will be by the gas tank." (*Id.* at 469.) When later asked what kind of "stress" Doe was referencing, he said it was "[f]rom the constant bullying and sexual harassment." (*Id.* at 69.)

As soon as Doe got home and his family left for church, Doe retrieved his parents' gun from its safe. (*Id.* at 65-66.) Doe "put the gun to [his] head and was going to pull the trigger," but "[he] couldn't figure out the safety." (*Id.* at 68-69.) He called his parents, who immediately drove him to the Emergency Room at East Tennessee Children's Hospital. (*Id.* at 128.) Doe was institutionalized at Parkridge Valley Hospital from December 5 to December 10, 2021. (*Id.*) He never returned to FLMS. (*Id.* at 11-12 (Doe noting that he transferred to Lenoir City Christian Academy to finish out the remainder of his eighth-grade year).)

Doe's mother told Klippert on Monday, December 6, 2021, that Doe attempted to take his own life. (*Id.* at 262.) Klippert contacted Bethel, who alerted Title IX Coordinator Matthew Tinker and asked him to come discuss the situation. (*Id.* at 263.) But, according to a note from Klippert that same day, "Tinker did not show." (*Id.* at 265.) Three days later, Bethel **[*8]** finally got in touch with Tinker. (*Id.* at 266.) After Bethel explained the situation, Tinker assured him that they had "handled everything appropriately." (*Id.* at 268-69.) He did not mention a grievance process or any other Title IX-related information. (*Id.* at 269.)

Tinker has served as LCBOE's Title IX coordinator for the past five years. (*Id.* at 385.) During that time, LCBOE received approximately one hundred sexual-harassment complaints. (*Id.* at 386.) Tinker has never opened an investigation or explained the Title IX grievance process to a student. (*Id.* at 385-87.) According to Tinker, most of the complaints "involve[ed] some sort of sexual language or sexual touching," and about half involved "male on male" harassment. (*Id.* at 398-99.) In a Title IX "corrective action training" held in December 2023, the lawyer leading the meeting told attendees the training was necessary "because [LCBOE] has failed to report and investigate Title IX instances in the past." (Doc. 41-1, at 2.)

Doe and his parents filed this action on November 23, 2022, against LCBOE. (Doc. 1.) On January 19, 2023, they filed an amended complaint, asserting claims for violations of *Title IX* and the *Fourteenth Amendment* arising out of LCBOE's **[*9]** alleged mishandling of Doe's situation and that of other students who reported instances of sexual harassment on campus. (Doc. 13, at 7-9.) On February 16, 2024, LCBOE moved for summary judgment on all of Plaintiffs' claims. (Doc. 34.) The motion is now ripe for review.

II. STANDARD OF REVIEW

Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*. The Court views the evidence in the light most favorable to the nonmoving party and makes all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)*; *Nat'l Satellite Sports, Inc. v. Eliadis Inc., 253 F.3d 900, 907 (6th Cir. 2001)*. The moving party bears the burden of demonstrating that there is no genuine dispute as to any material fact. *Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*; *Leary v. Daeschner, 349 F.3d 888, 897 (6th Cir. 2003)*. The moving party may meet this burden either by affirmatively producing evidence establishing that there is no genuine issue of material fact or by pointing out the absence of support in the record for the nonmoving party's case. *Celotex, 477 U.S. at 325*. Once the movant has discharged this burden, the nonmoving party can no longer rest upon the allegations in the pleadings; rather, it must point to specific facts supported by evidence in the record demonstrating that there is a genuine issue **[*10]** for trial. *Chao v. Hall Holding Co., Inc., 285 F.3d 415, 424 (6th Cir. 2002)*.

At summary judgment, the Court may not weigh the evidence; its role is limited to determining whether the record contains sufficient evidence from which a jury could reasonably find for the non-movant. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*. A mere scintilla of evidence is not enough; the Court must determine whether a fair-minded jury could return a verdict in favor of the non-movant based on the record. *Id. at 251-52*; *Lansing Dairy, Inc. v. Espy, 39 F.3d 1339, 1347 (6th Cir. 1994)*. If not, the Court must grant summary judgment. *Celotex, 477 U.S. at 323*.

III. ANALYSIS

A. Title IX

Title IX bars sex-based discrimination in any education program that receives federal funding. *20 U.S.C. § 1681(a)*. Under Title IX, "schools can face liability for deliberate indifference to known acts of student-on-student sexual harassment." *S.C. v. Metro. Gov't of Nashville, 86 F.4th 707, 714 (6th Cir. 2023)* (cleaned up). There are two kinds of deliberate-indifference-based Title IX claims: "before" claims and "after" claims. *Id. at 714-15*. As the names imply, "before" claims center on the school's conduct before the student experienced sexual harassment, and "after" claims focus on the school's conduct after the student experienced sexual harassment. *Id.*

An essential element of both "before" and "after" claims is that the harassment at issue was objectively offensive, gender-based and both "severe and pervasive." *See Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 633, 119 S. Ct. 1661, 143 L. Ed. 2d 839 (1999)*. Because **[*11]** this is a threshold issue for both types of claims, the Court will first determine whether Plaintiffs have pointed to information from which a reasonable juror can find the harassment Doe experienced to be severe, pervasive, gender-based, and objectively offensive. It will then separately evaluate Plaintiffs' "before" and "after" claims.

i. Did Doe Experience Objectively Offensive Gender-Based Harassment That Was Severe & Pervasive?

Student-on-student harassment is only actionable under Title IX when it is "so severe, pervasive, and objectively offensive that it could be said to deprive the plaintiff of access to the educational opportunities or benefits provided by the school." *Vance v. Spencer Cnty. Pub. Sch. Dist., 231 F.3d 253, 258 (6th Cir. 2000)* (citations omitted). LCBOE argues that the

alleged harassment Doe experienced meets none of these requirements because "Plaintiffs can point to nothing in the record that shows that the boys accused of bothering John Doe were targeting him 'because of' his sex" and because the harassing behavior Doe describes is "juvenile behavior by middle schoolers [that] does not amount to a Title IX violation." (Doc. 36, at 17, 19.)

a. Severity

To be adequately severe, the harassment must be more than "simple acts of teasing and name-calling" **[*12]** or mere juvenile behavior among students. *Davis, 526 U.S. at 652*. It is the rare case that a plaintiff successfully premises a Title IX action solely on verbal harassment; claims based at least in part on physical contact are more often found to be sufficiently severe in the Title IX context. *See Doe v. Plymouth-Canton Cmty. Schs, No. 19-10166, 2022 U.S. Dist. LEXIS 99942, 2022 WL 1913074, at *8 (E.D. Mich. June 3, 2022), appeal dismissed sub nom. Doe ex rel. E.L. v. Plymouth-Canton Cmty. Sch., No. 22-1555, 2022 U.S. App. LEXIS 35619, 2022 WL 17858955 (6th Cir. Aug. 25, 2022)* ("Although it is possible to assert a Title IX claim based exclusively on verbal harassment, it is uncommon, because courts tend to consider verbal harassment to be less severe than physical harassment."); *see also Doe v. Rutherford Cnty. Bd. of Educ., No. 3:13-cv-00328, 2014 U.S. Dist. LEXIS 114477, 2014 WL 4080163, at *10* (finding that a female student's attempts to place her finger over another female student's clothed rectum "reasonably could be construed as a 'sexual' act that is a severe violation of an individual's body and personal privacy").

Here, a jury could find that the harassment Doe experienced was sufficiently severe. According to Doe, the boys who harassed him "were saying very inappropriate things and slapping me on the butt and they would say stuff when they did it." (Doc. 39-1, at 12.) When asked to specify what kinds of inappropriate things the boys were saying, Doe clarified that "[t]hey were talking about sexual things and they were directing it towards me." (*Id.* at 16.) This **[*13]** included comments about "their body parts going inside of me." (*Id.*) The boys would frequently "slap [] and sometimes . . . squeeze [his buttocks]," "kind of touch[ing his] leg when they did it." (*Id.* at 17.) Doe told the boys to stop whenever they touched him, but to no avail. (*Id.* at 18.) The nature of the behavior Doe experienced—consisting of both physical and verbal harassment—could be considered sufficiently severe by a reasonable juror.

b. Pervasiveness

Harassment is pervasive when it is "systemic or widespread." *Kollaritsch v. Mich. State Univ. Bd. of Trs., 944 F.3d 613, 620 (6th Cir. 2019)* (internal quotation marks and citations omitted). This typically requires more than a single incident of peer-on-peer sexual harassment. *Id.*

A reasonable jury could find the harassment Doe experienced to be sufficiently pervasive. In his deposition, Doe stated that the physical and verbal harassment he underwent "would be at my locker or in the bathroom, or something in the lunchroom[,] and also the gym." (Doc. 39-1, at 12-13; *id.* at 17 (Doe recalling that the boys would "hit me on the butt and say inappropriate things" "almost anytime I was at my locker" and also "at lunch or in the evening and in the bathrooms").) According to Doe, the harassing behavior "started at **[*14]** the beginning of the [school] year" in August. (*Id.* at 18.) Doe alerted LCBOE to the behavior in December, meaning he had endured recurring harassment for months on end. (*Id.* at 27.) The frequency and persistence of the alleged harassment is sufficient to meet the pervasiveness standard.

c. Objective Offensiveness

Behavior is objectively offensive when it is "offensive to a reasonable person under the circumstances, not merely offensive to the victim, personally or subjectively." *Kollaritsch, 944 F.3d at 621* (citing *Davis, 526 U.S. at 651*). For this reason, a determination of whether conduct "rises to the level of actionable harassment [] depends on a constellation of surrounding circumstances, expectations, and relationships." *Id.* (citing *Davis, 526 U.S. at 651*). This includes the students' ages and the number of individuals involved. *Id.* (citing *Davis, 526 U.S. at 651*). Though relevant, "the victim's perceptions [of the behavior's offensiveness] are not determinative." *Id.*

In this case, a jury could find that the harassing behavior—touching and grabbing sensitive areas while directing sexual language towards another student—would be offensive to a reasonable middle-school student. This behavior was more than run-of-the-mill roughhousing, which, amongst middle-schoolers, might **[*15]** involve occasional inappropriate touching and vulgarity; Doe says the boys constantly grabbed his leg and buttocks and talked about their body parts entering him, oftentimes simultaneously. (Doc. 39-1, at 16.) Indeed, LCBOE's own description of the behavior supports such a finding. (*See, e.g., id.* at 475 (recalling in the SRO incident report that SRO Lynn and Principal Patrick Bethel "advised [the boys] of the seriousness and volatile nature of their

actions" and that continuance of the actions would lead to "arrest and prosecution to the full extent allowed by the law").) And, though Doe's subjective reaction to the harassment is not determinative of its objective offensiveness, the Court would be remiss not to underscore the extreme nature of his reaction—attempted suicide. (*Id.* at 469); *see* *Doe v. Hamilton Cnty. Bd. of Educ., 329 F. Supp. 3d 543, 562-63 (E.D. Tenn. 2018)* ("[I]t can be legally presumed when a plaintiff is hospitalized resulting from harassment arising out of a school operation, the student's harassers undermined and detracted from his or her educational experience.") (cleaned up). A reasonable jury could find the harassment Doe endured is objectively offensive.

d. Gender-Based Nature

To be actionable under Title IX, harassment must be gender-based. *Tumminello v. Father Ryan , 678 F. App'x 281, 285 (6th Cir. 2017)*. It follows that **[*16]** "generalized bullying—motivated by personal animus, opportunism, or social status—is not the sort of conduct proscribed by Title IX." *Hamilton Cnty. Bd. of Educ., 329 F. Supp. 3d at 557-58*. Instead, a student must have experienced harassment "on the basis of his or her sex." *Id. at 558*. Harassment need not be motivated by sexual desire or attraction to support an inference of gender-based discrimination; sex-based discrimination can occur when classmates tease a student because he fails to conform to traditional gender stereotypes, because the offender "is motivated by an animus toward the presence of others that are the same gender," or for other reasons divorced from any romantic or sexual interest. *Id. at 558-59* (citations omitted). While an "offensive or gendered term" may not rise to the level of gender-based discrimination, touching another student's clothed private area can suffice. *See* *Gritter v. Comstock Park Pub. Sch., No. 1:18-cv-1209, 2020 U.S. Dist. LEXIS 269537, 2020 WL 13682745, at *6 (W.D. Mich. March 11, 2020)* (finding that "the mere use of an offensive or gendered term does not in itself rise to the level of discrimination on the basis of sex"); *Doe, 2014 U.S. Dist. LEXIS 114477, 2014 WL 4080163, at *10* (finding that a female student's attempts to place her finger over another female student's clothed rectum "reasonably could be construed as a 'sexual' act that is a severe violation of an individual's body and personal privacy"); **[*17]** *see also* *Preston v. Hilton Cent. Sch. Dist., 876 F. Supp. 2d 235, 243 (W.D.N.Y. 2012)* (categorizing "unwelcome physical advances" as "overt sexually harassing conduct").

Here, a reasonable jury could find that the harassment Doe experienced was gender-based. The boy's comments did not just contain a rogue "offensive or gendered term"; they described to Doe "their body parts going inside of [him]." (Doc. 39-1, at 16.) These explicitly sexual remarks were directed at Doe and were often paired with the act of slapping and squeezing his buttocks and leg—overtly sexual acts. *See* *Preston, 876 F. Supp. 2d at 243* (categorizing "unwelcome physical advances" as "overt sexually harassing conduct"). Regardless of whether the boys acted out of sexual desire, their behavior supports a finding of gender-based harassment.

Because factual disputes remain as to whether Doe suffered gender-based harassment that was severe, pervasive, and objectively offensive, the Court must now assess whether Plaintiffs have provided evidence to support a finding that LCBOE's deliberate indifference to similar behavior caused him to suffer such harassment ("before" claim) and whether LCBOE's deliberate indifference following Doe's report of the harassment allowed for later harassment to occur ("after" claim).

ii. Title IX "Before" [*18] Claim

A Title IX "before" claim[1] centers on administrative failures preceding the plaintiff's report of student-on-student harassment. To succeed on a Title IX "before" claim, a student must show that: (1) the school "maintained a policy of deliberate indifference to reports of sexual misconduct"; (2) the school's policy of deliberate indifference "created a heightened risk of sexual harassment that was known or obvious"; (3) the heightened risk was "in a context subject to the school's control"; and (4) due to the heightened risk, the student "suffered harassment that was so severe, pervasive, and objectively offensive that it can be said to have deprived the plaintiff of access to the educational opportunities or benefits provided by the school." *Doe v. Metro. Gov't of Nashville, 35 F.4th 459, 465 (6th Cir. 2022)* (cleaned up). Put another way, a school is liable under Title IX when "a student shows that a school's deliberate indifference to a pattern of student-on-student sexual misconduct leads to sexual misconduct against the student." *Id.* In this way, a "before" claim focuses on a school's "omission (creating vulnerability that leads to further misconduct)," rather than, as with an "after" claim, its "commission (directly causing further misconduct)." **[*19]** *Id. at 466* (quoting *Davis, 526 U.S. at 633*) (cleaned up).

[1] Courts also commonly refer to this type of claim as a "Title IX pre-assault claim." *See, e.g.,* *Stevens v. Brigham Young Univ. - Idaho, 588 F. Supp. 3d 1117, 1129 (D. Idaho 2022)*); *Karasek v. Regents of Univ. of Cal., 534 F. Supp. 3d 1136, 1151 (N.D. Cal. 2021)*.

A school maintains a policy of deliberate indifference when it "remains indifferent to severe, gender-based mistreatment played out on a widespread level among students." *S.C. 86 F.4th at 713* (citing *Doe, 35 F.4th at 464-68*) (cleaned up). This level of indifference is evident when reports of sexual misconduct are met with a response that is "clearly unreasonable and leads to further misconduct." *Doe, 35 F.4th at 465-66* (cleaned up) (citation omitted). In *S.C.*, the Sixth Circuit illuminated what such a response might look like when it vacated the district court's grant of summary judgment on a plaintiff-student's "before" claim due to Defendant Metro Nashville Public School's ("MNPS") wanting response to reports of sexual misconduct. *86 F.4th at 715*. The alleged harassment in that case was the circulation of a video depicting a nonconsensual sexual encounter between the plaintiff and another student, but, according to the plaintiff, this behavior was a symptom of a greater problem: MNPS received over one thousand reports of sexual misconduct—some of which involved the circulation of media depicting unwelcome sexual contacts—within just one school year. *Id.* Because MNPS failed to adequately respond to the high volume of reports, **[*20]** the *S.C.* Court noted that "[t]he record reflects that a reasonable jury could find that [the plaintiff's] unwelcome sexual contact was a result of MNPS's indifference to the problem of pervasive sexual misconduct in the schools," and remanded the "before" claim back to the district court. *Id.* (quotations and citation omitted)

As a preliminary matter, here, LCBOE only addressed Plaintiffs' "before" claim in its reply brief,[2] not in its summary-judgment motion. This means that LCBOE waived the argument.[3] *See Sims v. Piper, No. 07-14380, 2008 U.S. Dist. LEXIS 60797, 2008 WL 3318746, at *5 (E.D. Mich. Aug. 8, 2008)* (quoting *United States v. Lopez-Medina*, 461 F.3d 724, 743 (6th Cir. 2006) ("[T]he Sixth Circuit repeatedly has recognized that arguments raised for the first time in a party's reply brief are waived."); *Legge v. Wagner, 7 F.3d 234 (6th Cir. 1993)* (holding that it is "inappropriate for the district court to grant summary judgment on grounds not raised by the parties").

But even if LCBOE had properly addressed Plaintiffs' "before" claim, a reasonable juror could find that the sexual harassment Doe experienced was due to LCBOE's indifference to pervasive sexual misconduct on campus. Doe has pointed to evidence demonstrating LCBOE was well aware of sexual-harassment issues within the school system yet did nothing: despite receiving **[*21]** approximately one hundred complaints of sexual harassment,[4] LCBOE's Title IX coordinator never opened a single investigation. (Doc. 39-1, at 385-87, 396-98). While not every complaint will have involved the specific kinds of harassment that Doe faced, Tinkler agreed in deposition that most of the complaints "involve[ed] some sort of sexual language or sexual touching," and about half involved "male on male" harassment. (*Id.* at 398.) This situation is analogous to the facts underlying *S.C.* In both cases, the schools were on notice of rampant sexual harassment on their campuses. In spite of this, neither school intervened. As the Sixth Circuit observed in *S.C.*, the record here reflects "that a reasonable jury could find that [Doe's] unwelcome sexual [harassment] was a result of [LCBOE's] indifference to the problem of pervasive sexual misconduct in the schools." *S.C., 86 F.4th at 715*.

LCBOE argues that *S.C.* is distinguishable because the plaintiff's in that case pointed to reports of similar conduct to the relevant alleged harassment, while "Plaintiffs [here] point to no other instances of [LCBOE] having notice of boys hitting other boys on the butt and saying vulgar things to them." (Doc. 43, at 6.) But LCBOE **[*22]** neglects to mention that at least half of the sexual-harassment reports received were "male-on-male" and that most involved sexual language or touching. (Doc. 39-1, at 385-87, 396-98.) Though the Sixth Circuit has not described just how similar previous reports of harassment must be to the at-issue conduct in a "before"-

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[2] The Court takes this opportunity to address the parties' various motions for leave to file excess pages (Docs. 35, 40, 45) and motion to enforce local rules relating to reply-brief length (Doc. 44). Though Plaintiffs are correct that the local rules limit reply briefs to ten pages, the Court would have granted LCBOE's motion to file excess pages had it filed one in light of its preference to resolve disputes on the merits. *See E.D. Tenn. L.R. 7.1(c)*. Therefore, the Court will **DENY** Plaintiffs' motion to enforce local rules (Doc. 44) and will **GRANT** all motions to file excess pages (Docs. 35, 40, 45).

[3] LCBOE insists Plaintiffs did not give proper notice of a "before" claim in their amended complaint. (Doc. 43, at 1-2.) This argument is unavailing. Doe alleged a Title IX claim in his amended complaint and detailed LCBOE's failings both before and after Doe's report of harassment. (*See* Doc. 13, at 3, 5, 7, 8.) In fact, Doe even injects in these allegations language specific to the "before" claim standard. (*Id.* at 7 ("[LCBOE's] actions and inactions maintained a policy of deliberate indifference to sexual harassment, and to reports of sexual harassment, *creating a heightened risk in the school*, with John Doe's harassment being so severe that he nearly lost his life.").) The Court sees no reason why the omission of the particular phrase "before claim" dooms this theory of Title IX liability. *See Inner City Contracting, LLC v. Charter Twp. of Northville, 87 F.4th 743, 756 (6th Cir. 2023)* ("We do not require civil rights plaintiffs to use magic words in their complaints to obtain relief. Rather, we require plaintiffs to state a claim for relief.") (citation omitted).

[4] LCBOE only has about 4,600 students.

claim context, it would be unreasonable to assume the behavior must be nearly identical to put the school on notice of "pervasive sexual misconduct" on its campuses.

Though "Title IX does not require [a funding recipient] to purge its campus of sexual misconduct to avoid liability," it does require the recipient to mobilize a response to it. *Karasek v. Reg. of Univ. of Cal., 956 F.3d 1093, 1114 (9th Cir. 2020)*. Here, a reasonable jury could find LCBOE's response to a high volume of sexual-harassment complaints—that is, no response at all—constitutes the kind of "clearly unreasonable" conduct that created a breeding ground for the harassment Doe was subjected to. *See* *Owens v. La. State Univ., No. CV 21-242, 2023 U.S. Dist. LEXIS 231153, 2023 WL 9051299, at *10 (M.D. La. Dec. 31, 2023)* (applying the Sixth Circuit's test for deliberate indifference in a "before"-claim context and finding that Louisiana State University had a policy of deliberate indifference to sexual harassment based in part on the university's failure to report incidents of athletics-related **[*23]** misconduct to its Title IX coordinator); *see also* *Swearingen v. Pleasanton Unified Sch. Dist. 344, 641 F. Supp. 3d 1141, 1177 (D. Kan. 2022)* (noting that deliberate indifference in a Title IX context can be demonstrated through evidence of "a widespread school district custom of not investigating sexual harassment allegations").[5] Therefore, the Court will deny LCBOE's motion for summary judgment on Plaintiffs' Title IX "before" claim.

iii. Title IX "After" Claim

Another type of claim under Title IX—the "after" claim—applies when a school is deliberately indifferent to sexual harassment occurring after it receives a report of said harassment. To succeed on an "after" claim, a plaintiff must show that the school's deliberate indifference caused the student to undergo further harassment. *See* *S.C., 86 F.4th at 715* (citation omitted). A school is deliberately indifferent to student-on-student sexual harassment when "its response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances." *Id. at 715-16* (internal quotation marks omitted) (quoting *Davis, 526 U.S. at, 630*). When assessing whether a school was deliberately indifferent to a report of harassment, a court should ask "not whether the school's efforts were ineffective but whether they amounted to 'an official decision . . . not to **[*24]** remedy the violation.'" *Id. at 716* (quoting *Foster v. Bd. of Regents of the Univ. of Mich., 982 F.3d 960, 968 (6th Cir. 2020)*). A school's deliberate indifference causes further harassment when said harassment "would not have happened but for the clear unreasonableness of the school's response." *Kollaritsch, 944 F.3d at 622* (citation omitted). In other words, "the [school's] deliberate indifference must, at a minimum, cause students to undergo harassment or make them liable or vulnerable to it." *Id.* (internal quotation marks omitted) (quoting *Davis, 526 U.S. at 645*).

Doe argues LCBOE was deliberately indifferent to his reported sexual harassment due to the boys' lack of discipline, LCBOE's "indifference to policy, failure to follow policy, and a failure to even contact the Title IX coordinator until John Doe tried to kill himself." (Doc. 41, at 27.) LCBOE responds that it took appropriate steps to protect Doe based on the information he provided. (Doc. 36, at 20-24.)

a. Whether LCBOE's Response Was Clearly Unreasonable

Doe has pointed to evidence sufficient to create a factual dispute as to whether LCBOE's response to Doe's harassment was clearly unreasonable. To LCBOE's credit, school administrators—including Assistant Principal Klippert—promptly conducted a "safety plan meeting" with Doe and his family once Doe reported the harassment. **[*25]** (*Id.* at 29, 106-07.) During the meeting, Klippert told Doe that "nothing was off the table" in terms of measures LCBOE would take to make him feel safe on campus and that he should "ask the teacher for a [] break and come down and see one of us" if he feels overwhelmed during the day. (*Id.* at 107, 329.) But Plaintiffs have offered evidence suggesting this may just have been lip service. On December 3, 2021, the day after Doe reported the harassment, Doe "had a breakdown" in a class he shared with his harassers. (*Id.* at 42.) Seeking refuge, Doe "asked [his teacher] to go to the office" and told Klippert and Shepherd that he "can't focus on my studies." (*Id.* at 42-43, 342.) They sent him back to class. (*Id.*) Later that same day, in gym class, the boys called Doe a "stripper" and "hit [him] on the butt," resulting in another visit to Klippert and

[5] LCBOE even seems to acknowledge the toothlessness of its Title IX process in a December 2023 "corrective action training" when the instructor started the training by declaring it was necessary given "the [School's] fail[ure] to report and investigate Title IX instances." (Doc. 41-1, at 2); *see* *S.C. v. Metro. Gov't of Nashville & Davidson Cnty., Tenn., 579 F. Supp. 3d 999, 1032 (M.D. Tenn. 2022)*, *aff'd sub nom.* *S.C. v. Metro. Gov't of Nashville, 86 F.4th 707 (6th Cir. 2023)* ("Indeed, even MNPS seems to have come to accept that it could have done better or at least can do better in the future; it has substantially revamped its handling of Title IX issues and peer-on-peer harassment in ways that would make little sense if its prior policies had been adequate.") (citation omitted).

Shepherd.[6] (*Id.* at 45.) Doe said SRO Lynn and Klippert looked through the video of gym class to corroborate his story, told him they could not find anything, and sent Doe back to class. (*Id.* at 45-46.) Doe had to leave his next class, too, because one of the same boys was "talking really nasty and made [him] feel uncomfortable." (*Id.* at 50.) He **[*26]** tried to tell Klippert that he "didn't want to go to school" but was "shooed away again."[7] (*Id.*) So, on at least three separate occasions that day, Doe asked for help and was told to go back to class without "a chance to talk to them" about what was happening to him.[8] [9] (*Id.* at 70); *cf.* *Stiles ex rel. D.S. v. Grainger Cnty., Tenn., 819 F.3d 834, 849* (affirming a finding of no deliberate indifference when the school "took proactive steps to reduce opportunities for further harassment" and addressed each complaint of harassment from the student or his mother by promptly investigating and meting out discipline, as appropriate). LCBOE did not shore up its nominal safety plan with a robust Title IX response, either.[10] LCBOE waited to contact Title IX Coordinator Tinker until four days after Doe's report and three days after his hospitalization. (*Id.* at 265.) And even then, per a note from Klippert, "Tinker did not show." (*Id.*) Days later, when Tinker was finally reached, he summarily assured LCBOE that it "handled everything appropriately." (*Id.* at 269.) No one ever explained how to file a complaint under Title IX or advised Doe of his right to do so. (*Id.* at 409-11.) In light of these facts, a reasonable jury could find LCBOE's failure to enforce Doe's safety plan or to comply with **[*27]** Title IX obligations amounts to "an official decision . . . not to remedy the violation." *See* *S.C., 86 F.4th at 717* (citation omitted).

b. Whether Harassment Happened Again After LCBOE's Failed Response and Because of its Failed Response

Plaintiffs have provided evidence from which a reasonable juror could find Doe suffered additional harassment due to LCBOE's deliberate indifference to his initial report. The day

[6] LCBOE challenges the credibility of Doe's statement, arguing that "Doe was mixed up regarding the date on which the alleged gym class incident occurred." (Doc. 43, at 18 n.3.) In support of this contention, LCBOE notes that "Doe was given specific permission to go to the Brave's Lounge instead of gym class on December 3," and that "Doe told Ms. Klippert and Ms. Shepherd that the most recent incident involving the boys had occurred the day before in gym class, or on December 2, 2021." (*Id.*) While the transcript from Doe's morning meeting with Klippert and Ms. Shepherd confirm that Ms. Shepherd invited Doe to "come hang out with me" during gym, LCBOE has not cited evidence from the record showing Doe actually did so. (Doc. 39-1, at 326.) On December 3, 2021, Doe told Klippert and Shepherd that he was touched the previous day in gym class, but this does not preclude the possibility that this touching recurred. Though it is possible, as LCBOE argues, that Doe mixed up the dates on which the gym-class touching occurred, that is a determination for the jury, not this Court. *See* *Calibrated Success, Inc. v. Charters, 72 F. Supp. 3d 763, 776 (E.D. Mich. 2014)* (quoting *Arnstein v. Porter, 154 F.2d 464, 471 (2d Cir. 1946)*) ("As the Second Circuit noted, 'where, as here, credibility, including that of the defendant, is crucial, summary judgment becomes improper and a trial indispensable.'").

[7] LCBOE argues that "[a] fair reading of [the] video transcript shows that no reasonable jury could believe that Ms. Klippert or Ms. Shepherd 'shooed' John Doe away when he came to talk to them." (Doc. 43, at 14.) However, the discussion LCBOE cites occurred at approximately 8:30 am on December 3, 2024, before Doe began his school day, and included Doe's father. (*See December 3, 2024 Morning Meeting* at 8:25:58 (a school administrator says to Doe, in discussing Doe's safety plan with Doe and his father, "so you have Mr. Crittenden in first [period for English Class]").) When Doe later spoke with Shepherd and Klippert at around 10:00 am, after the "breakdown" he had in his first class, the three had a discussion about how Doe can ignore the boys and manage his emotions. (Doc. 39-1, at 346-56.) It is unclear from the transcript how the interaction ended, but Doe states that "they sent me back to class." (*Id.* at 42.) Thus, although there was some discussion about how Doe could deal with the harassment he experienced, the footage does not flatly contradict Doe's recollection of events—that FLMS staff dismissed his concerns and sent him back to class.

[8] According to Doe's testimony, the safety plan was apparently not followed in other respects, too. (*See, e.g.*, Doc. 39-1, at 48, (Doe noting that "only once" was a teacher standing in the hallway during class changes as per the safety plan), 72 (when asked in deposition whether a teacher walked Doe to class as provided by the safety plan, he said it happened "just that one time").)

[9] Bethel did eventually call the boys in to discuss their behavior after lunch when one of the boys touched Doe's buttocks in the hall, but this conversation occurred after Doe had already twice reported that the boys were touching him inappropriately and making crude comments. (Doc. 39-1, at 475.)

[10] LCBOE's wholesale failure to timely initiate a Title IX investigate is not dispositive of the deliberate-indifferent question, but it matters. *See* *Doe v. Forest Hills Sch. Dist., No. 1:13-cv-428, 2015 U.S. Dist. LEXIS 175321, 2015 WL 9906260, at *10 (W.D. Mich. Mar. 31, 2015)* (citing *Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 292, 118 S. Ct. 1989, 141 L. Ed. 2d 277 (1998)*) ("Although failure to comply with Title IX guidance does not, *on its own*, constitute deliberate indifference, it is one consideration."); *see also* *S.C., 86 F.4th at 716* ("But as this court explained in *Doe*, 'MNPS has Title IX obligations that are separate and apart from any criminal matter.'") (citation omitted).

after Doe reported the harassment to LCBOE, the boys inappropriately touched him "on [his] butt" again and called him a "stripper." (Doc. 39-1, at 45.) Without a response from LCBOE, the behavior recurred no more than a few hours later in the hallway when one of the boys touched Doe on the buttocks. (*Id.* at 251-53 (Klippert recalling that Doe told her "that he was touched after lunch" in the hallway).) It was only after this third incident that Principal Bethel actually sat down with the boys and discussed the inappropriateness of their actions. (*Id.* at 253-55 (Klippert stated that she reviewed the security footage, which she said showed "some contact," and told an SRO and Principal Bethel about the incident), 258 **[*28]** (Principal Bethel spoke to the boys "about expectations of not talking vulgar and slapping each other on the butt," and contacted their parents).) Doe's deposition testimony suggests these incidents were fomented by LCBOE's dismissal of his concerns: "[T]hey didn't help me, or else I wouldn't have gone through what I went through and almost took my life if they would have handled it." (*Id.* at 85); (*see id.* at 72-73 (Doe stating that if LCBOE "dealt with the kids that were doing this . . . and engaged with me, instead of just ignoring all the signs that I was showing to them that I was in distress," he would have been less stressed).) This is enough to allow Plaintiffs' "after" claim to survive summary judgment. *See* *S.C., 86 F.4th at 716* (affirming the district court's finding that MNPS's "fail[ure] to act in accordance with its obligations" to respond to a student's report of harassment resulted in continued harassment for purposes of supporting a Title IX "after" claim); *see also* *Kollaritsch, 944 F.3d at 622* (citation omitted) (noting that a school's deliberate indifference caused further harassment when the indifference was the but-for cause of the harassment); *Doe. v. Univ. of Ky., 959 F.3d 246, 251 (6th Cir. 2020)* (defining a "clearly unreasonable response" as "an insufficient action **[*29]** (or no action at all) that makes the victim vulnerable to, meaning unprotected from, further harassment") (quoting *Kollaritsch, 944 F.3d at 622*) (internal quotation marks omitted).

B. *Section 1983* Claims

Plaintiffs also bring claims for violations of their constitutional rights pursuant to *42 U.S.C § 1983*, which provides in relevant part:

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

To succeed on a claim under *§ 1983*, a plaintiff must show: "(1) that he or she was deprived of a right secured by the Constitution or laws of the United States; and (2) that the deprivation was caused by a person acting under color of law." *Robertson v. Lucas, 753 F.3d 606, 614 (6th Cir. 2014)* (citations omitted).

The Supreme Court has held that municipalities and other local governments "can be sued directly under *§ 1983* for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, **[*30]** or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)*. *Monell* clarified that local governments can also be liable under *§ 1983* for "constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision[]making channels." *Id. at 690-91*.

A local governmental entity, however, "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." *Id. at 691* (emphasis in original); *see also* *id. at 694* ("Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under *§ 1983*."). A plaintiff seeking to subject a municipality to *§ 1983* liability for the actions of its officers "must show that the alleged federal right violation occurred because of a municipal policy or custom." *Thomas, 398 F.3d at 429* (citing *Monell, 436 U.S. at 694*).

A plaintiff may pursue any of four possible avenues to prove the presence of a municipality's illegal policy or custom: (1) by pointing to the existence of an illegal official **[*31]** policy or legislative enactment; (2) by demonstrating that an official with final decision-making authority ratified illegal actions; (3) by proving the existence of a policy of inadequate training or supervision; or (4) by showing there is a custom of tolerance or acquiescence of federal rights violations. *Jackson v. City of Cleveland, 925 F.3d 793, 828 (6th Cir. 2019)* (citing *Burgess v. Fischer, 735 F.3d 462, 478 (6th Cir. 2013)*). A custom or policy—whether implicit or explicit—must be "so widespread as to have the force of law[,]" as characterized by the "persistent practices of state officials." *Gregory v. Shelby Cnty., 220 F.3d 433, 442 (6th Cir. 2000)*; *Adickes v. S.H. Kress & Co., 398 U.S. 144, 167, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970)*.

i. State-Created Danger (Substantive Due Process Claim)

LCBOE moves for summary judgment on Plaintiffs' state-created-danger claim, wherein Does argues that LCBOE placed Doe in danger by forcing him to return to class with his harassers. (Doc. 36, 24-30; Doc. 41, at 27.)

"[T]he *Due Process Clauses* generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual." *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 196, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989)* (citation omitted) ("Although the liberty protected by the *Due Process Clause* affords protection against unwarranted government interference, it does not confer an entitlement to such governmental aid as may be necessary to realize all the **[*32]** advantages of that freedom."). In limited circumstances, an individual may nevertheless be entitled to affirmative government intervention under the *Due Process Clause*. *See Sexton v. Cernuto, 18 F.4th 177, 186* (citing *DeShaney, 489 U.S. at 200*). The first exception to the general rule—the "special-relationship" exception—applies when the state deprives an individual of his liberty, such as by holding him in custody against his will. *Id.* (citing *DeShaney, 489 U.S. at 200*). When this occurs, "the state may be liable for third-party harm" to the individual. *Barefield v. Hillman, No. 20-6002, 2021 U.S. App. LEXIS 21602, 2021 WL 3079693, at *2 (6th Cir. July 21, 2021)*.

In the absence of a special relationship, the state may nonetheless be liable for third-party acts that violate constitutionally protected rights. *Kallstrom v. City of Columbus, 136 F.3d 1055, 1066 (6th Cir. 1998)* ("[W]hile the state generally does not shoulder an affirmative duty to protect its citizens from private acts of violence, it may not cause or greatly increase the risk of harm to its citizens without due process of law through its own affirmative acts."). This second exception—the "state-created-danger" exception—applies "when 'the state takes an affirmative act that increases the victim's risk of harm' from private acts of violence." *Sexton, 18 F.4th at 186* (quoting *Lipman v. Budish, 974 F.3d 726, 733 (6th Cir. 2020)*). The elements of a state created-danger claim are: (1) "an affirmative act by the state which either created or increased the risk that the plaintiff **[*33]** would be exposed to an act of violence by a third party"; (2) "a special danger to the plaintiff wherein the state's actions placed the plaintiff specifically at risk, as distinguished from a risk that affects the public at large"; and (3) "the state knew or should have known that its actions specifically endangered the plaintiff." *Jones v. Reynolds, 438 F.3d 685, 690 (6th Cir. 2006)* (citations omitted).

Doe has not pointed to evidence sufficient to support a state-created-danger claim based on either a special-relationship or state-created-danger theory. For one, "the Sixth Circuit has consistently rejected the existence of a special relationship between school officials and students based on compulsory attendance laws or the school's knowledge of a student's vulnerability." *Stiles, 819 F.3d at 854* (taking stock of Sixth Circuit cases holding the same) (citations omitted). That means Doe's status as a student at LCBOE cannot be the basis for a special relationship between the two wherein LCBOE owes him a duty of care. Doe cannot succeed on a state-created-danger theory, either. The Sixth Circuit has held that "failing to punish or insufficiently punishing assailants is generally not an affirmative act, and, even where it is, it typically does not create or **[*34]** increase the plaintiff's risk of harm." *Stiles, 819 F.3d at 854-55* (citations omitted). The same goes for the act of "ignoring a dangerous situation" or even "affirmatively returning a victim to a preexisting situation of danger." *Id.* (citations omitted). Because the only action Plaintiffs point to in support of their state-created-danger theory is LCBOE's "rejecti[on of Doe's] safe space and sending him back to the unsafe space," the claim must fail. (Doc. 41, at 28.) The Court will grant summary judgment in favor of LCBOE as to Plaintiffs' substantive-due-process claim.

ii. Failure to Train (* Monell *Liability)

LCBOE also moves for summary judgment on Plaintiffs' *Monell* claim, which is premised on LCBOE's alleged failure to train on Title IX procedures. (Doc. 36, at 31.) As described above, *see supra* Section III.B., a plaintiff cannot succeed on a *Monell* claim unless he can show that he was deprived of a constitutional right. *See also Doe v. Claiborne Cnty., 103 F.3d 495, 505-06 (6th Cir. 1996)*.

Plaintiffs have not anchored their failure-to-train claim in any viable constitutional violation. In fact, the only violation Plaintiffs appear to assert is their now-dismissed substantive-due-process claim.[11] *See supra* Section III.B.i. Because

[11] Plaintiffs generally allege in their amended complaint that LCBOE violated Doe's *Fourteenth Amendment* rights "and *Section 1983*." (Doc. 13, at 8.) While they reference in that section of the amended complaint LCBOE's alleged "violation[] of [Doe's] right to bodily integrity and the Equal Protection of the Laws," Plaintiffs make no mention of an Equal Protection claim at any point in litigation thereafter, including in their response to LCBOE's summary-

Plaintiffs have presented no genuine dispute of **[*35]** material fact supporting a violation of Doe's constitutional rights by any school official, they cannot succeed on their *Monell* claim. Therefore, the Court will grant summary judgment as to Plaintiffs' failure-to-train claim. *See* *Stiles, 819 F.3d at 856* (affirming a district court's grant of summary judgment on a plaintiff's *Monell* claim for failure to evidentiarily support that a school official violated her constitutional rights).

IV. CONCLUSION

For the aforementioned reasons, the Court will **DENY IN PART** and **GRANT IN PART** LCBOE's motion for summary judgment. (Doc. 35.) Plaintiffs' state-created-danger claim and *Monell* failure-to-train claim are hereby **DISMISSED**. Plaintiffs' "before" and "after" Title IX claims will proceed to trial.

SO ORDERED.

/s/ *Travis R. McDonough*

TRAVIS R. MCDONOUGH

UNITED STATES DISTRICT [*36] JUDGE

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judgment motion. (*Id.*); (*see generally* Doc. 41.) Because Plaintiffs point to no evidence to support an Equal Protection claim against LCBOE, the Court will grant summary judgment to the extent Plaintiffs brought such a claim. *See* *Brown v. VHS of Mich., Inc., 545 F. App'x 368, 372 (6th Cir. 2013)* ("This Court's jurisprudence on abandonment of claims is clear: a plaintiff is deemed to have abandoned a claim when a plaintiff fails to address it in response to a motion for summary judgment.") (citations omitted).