

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SUE JONES, et al.,¹)	
)	
Plaintiffs)	
)	
v.)	Civil No. 95-403-P-DMC
)	
MAINE SCHOOL ADMINISTRATIVE)	
DISTRICT No. 6, et al.,)	
)	
Defendants)	

**MEMORANDUM DECISION ON DEFENDANT MSAD No. 6's MOTION
FOR SUMMARY JUDGMENT AND PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT²**

This action arises out of alleged sexual harassment of a secondary school student by a teacher. Plaintiff Sue Jones asserts claims against Maine School Administrative District Number 6 ("MSAD No. 6") and Jack Dick, a former employee of MSAD No. 6, for sexual harassment in violation of 20 U.S.C. § 1681 (part of Title IX of the Education Amendments of 1972) and the Maine Human Rights Act ("MHRA"), 5 M.R.S.A. § 4551 *et seq.*; for violation of rights secured by the constitutions of the United States and the state of Maine, under 42 U.S.C. § 1983 and 5 M.R.S.A. § 4682; and for intentional and negligent infliction of emotional distress. Plaintiff Carol Jones also asserts claims against MSAD No. 6 for intentional and negligent infliction of emotional distress.

¹The plaintiffs have been authorized to proceed under the fictitious names used here.

² Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

The claims against defendant Dick are not at issue at this time. Plaintiff Sue Jones seeks summary judgment on Counts VI and VII of the complaint against defendant MSAD No. 6 only. MSAD No. 6 seeks summary judgment on Counts I, II, III, IV, VI and VII.³ For the reasons set forth below, I grant MSAD No. 6's motion in part and deny it in part, and deny Sue Jones's motion altogether.

I. SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “In this regard, ‘material’ means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. By like token, ‘genuine’ means that ‘the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party’” *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and “give that party the benefit of all reasonable inferences to be drawn in its favor.” *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, “the nonmovant must contradict the showing by pointing to

³MSAD No. 6 has requested oral argument on the summary judgment motions. Satisfied that I am able to address the substantive issues presented on the basis of the parties' written submissions and my own research, I deny the request. *See* Local Rule 19(f).

specific facts demonstrating that there is, indeed, a trialworthy issue.” *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir.) (citing *Celotex*, 477 U.S. at 324), *cert. denied*, 132 L. Ed. 2d 255 (1995); Fed. R. Civ. P. 56(e); Local R. 19(b)(2).

The mere fact that both parties seek summary judgment does not render summary judgment appropriate. 10A *C. Wright, A. Miller & M. Kane, Federal Practice and Procedure* (“Wright, Miller & Kane”) § 2720 at 19. For those issues subject to cross-motions for summary judgment, the court must draw all reasonable inferences against granting summary judgment to determine whether there are genuine issues of material fact to be tried. *Continental Grain Co. v. Puerto Rico Maritime Shipping Auth.*, 972 F.2d 426, 429 (1st Cir. 1992). If there is any genuine issue of material fact, both motions must be denied; if not, one party is entitled to judgment as a matter of law. 10A Wright, Miller & Kane § 2720 at 24-25.

II. FACTUAL CONTEXT

The summary judgment record reveals the following material facts: Bonny Eagle High School, a secondary school serving students in grades 9 through 12, is an administrative unit of MSAD No. 6. Defendant MSAD No. 6's Answer (Docket No. 3) ¶ 3. Defendant Jack C. Dick was a teacher at Bonny Eagle High School from August 1975 to January 1995, when he resigned his position. MSAD No. 6's Answers to Plaintiffs' Interrogatories, No. 4 at 3. From September 26, 1994 until his resignation, Dick was on administrative leave from his position. Deposition of Brian J. Flanagan (“Flanagan Dep.”) at 121; MSAD No. 6's Answers to Plaintiffs' Interrogatories, No. 4 at 3.

Plaintiff Sue Jones was born on May 14, 1978. Sue Jones Deposition (“S. Jones Dep.”) Exh.

5 at [4]. She was a grade 9 (freshman) student at Bonny Eagle High School in the spring of 1994, and a grade 10 (sophomore) student there during the fall of 1994. S. Jones Dep. at 27 and Exh. 5 at [1]. Plaintiff Carol Jones is the mother of Sue Jones. Carol Jones Deposition, March 19, 1996 (“C. Jones Dep. I”), at 7. Sue Jones was a student in defendant Dick’s health education class in the fall of 1993 and in his drivers’ education course in the spring of 1994. S. Jones Dep. Exh. 5 at [1]-[2]. At the beginning of her freshman year, she received a copy of the student handbook, which contains a section on sexual harassment. S. Jones Dep. at 22.

Sue Jones and Dick first had sexual intercourse on May 13, 1994. S. Jones Dep. Exh. 3 at [1]. The sexual relationship continued until September 25, 1994. S. Jones Dep. at 124-25. Some sexual contact took place on the grounds of Bonny Eagle High School. S. Jones Dep. Exh. 5 at [6].

On September 12 or 13, 1994 the assistant principal of Bonny Eagle learned that Sue Jones and Dick had been seen together in Dick’s car on school grounds. Flanagan Dep. at 11-12. The principal of Bonny Eagle also received this information on September 12 or 13, 1994. Deposition of Alton Hadley (“Hadley Dep.”) at 7-8. Carol Jones told the assistant principal on or about September 20, 1994 that she had told Dick to stay away from her daughter. Carol Jones Deposition, April 1, 1996 (“C. Jones Dep. III”), at 51, 55, 58. Sue Jones was in Dick’s classroom during the spring and fall of 1994 every day during her lunch hour and whenever she had free time. S. Jones Dep. at 103-04.

Carol Jones discovered on September 23, 1994 that a sexual relationship existed between her daughter and Dick. C. Jones Dep. III at 75, 83. She reported the relationship to MSAD No. 6 on Monday, September 26, 1994. *Id.* at 151. In November 1995 Dick pleaded guilty to five counts of gross sexual assault arising from his relationship with Sue Jones. Deposition of Jack Dick (“Dick

Dep.”) at 27; Judgments and Commitments, Superior Court, Somerset County, Docket No. 94-687; Penobscot County, Docket No. 95-009; Washington County, Docket No. CR-95-050; York County, Docket No. CR-94-1632; Cumberland County, Docket No. CR-94-2195 (Attachment 5 to Plaintiff’s Statement of Material Facts (Docket No. 38)). There is no evidence in the summary judgment record that any administrator at MSAD No. 6 had actual knowledge of the relationship until September 26, 1994. *See* Deposition of Ronald T. Barker (“Barker Dep.”) at 6-7, 28; Flanagan Dep. at 122.

Having already been placed on administrative leave, Dick went to his classroom at Bonny Eagle High School on Monday, October 3, 1994, approximately 10 or 15 minutes before school started to retrieve his things. Dick Dep. at 30-33. While he was there, Sue Jones entered the room to retrieve some of her personal items. *Id.* at 33. Dick hugged and kissed Sue Jones and asked her to meet him later in the week. *Id.*; S. Jones Dep. at 18-19.

III. LEGAL ANALYSIS

A. Title IX Claim

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*) creates an implied right of action for plaintiffs subject to discrimination in educational institutions that receive federal funds. *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 65 (1992); *Cohen v. Brown University*, 991 F.2d 888, 892-93 (1st Cir. 1993). The statute protects against sex discrimination under or in connection with any federally-assisted education program or activity. 20 U.S.C. § 1681(a).⁴ Sexual

⁴The statute provides, in pertinent part: “(a) **Prohibition against discrimination; exceptions.** No person in the United States 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.”

harassment of a student by a teacher constitutes discrimination on the basis of sex under Title IX. *Gwinnett County*, 503 U.S. at 65; *Patricia H. v. Berkeley Unified Sch. Dist.*, 830 F. Supp. 1288, 1292 (N.D. Cal. 1993).

The parties agree that section 1681 applies to MSAD No. 6 because it operates an “education program or activity receiving Federal financial assistance.” For purposes of this motion, Sue Jones has limited her discussion of her claim under Title IX to one of hostile environment sexual harassment.⁵

In the First Circuit, a plaintiff asserting a claim of hostile environment sexual harassment under Title IX must prove that: (1) she is a member of a protected group; (2) she was subject to unwelcome sexual harassment; (3) the harassment was based upon sex; (4) the harassment was sufficiently severe or pervasive so as to alter the conditions of her education and create an abusive educational environment; and (5) some basis for institutional liability has been established. *Brown v. Hot, Sexy & Safer Prod., Inc.*, 68 F.3d 525, 540 (1st Cir. 1995), *cert. denied*, 116 S.Ct. 1044 (1996). For purposes of the summary judgment motions, the first four elements are not in dispute. The parties address only the final factor.

Sue Jones argues that a standard of strict liability applies to MSAD No. 6 on this claim, relying on *Leija v. Canutillo Indep. Sch. Dist.*, 887 F. Supp. 947 (W.D. Tex. 1995), *Bolon v. Rolla Pub. Sch.*, 917 F. Supp. 1423 (E.D. Mo. 1996), and *Doe v. Petaluma City Sch. Dist.*, 830 F. Supp.

⁵Sexual harassment claims are characterized as either hostile environment or quid pro quo claims. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 65-66 (1986). Quid pro quo sexual harassment arises where a defendant’s unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature are directly connected with the plaintiff’s receipt of education-related benefits. *Kadiki v. Virginia Commonwealth Univ.*, 892 F. Supp. 746, 750 (E.D. Va. 1995). The legal standards applicable to such claims are not at issue here.

1560 (N.D. Cal. 1993) (“*Doe I*”). MSAD No. 6 contends that the appropriate standard is whether it knew or should have known that the sexual harassment was taking place, citing *Rosa H. v. San Elizario Indep. Sch. Dist.*, 887 F. Supp. 140 (W.D. Tex. 1995).

Case law developed under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.*, provides standards to which courts faced with Title IX claims may look. *Lipsett v. University of Puerto Rico*, 864 F.2d 881, 896-97 (1st Cir. 1988). In *Lipsett* the plaintiff was both a student and an employee of the defendant educational institution. The court held

that in a Title IX case, an educational institution is liable upon a finding of hostile environment sexual harassment perpetrated by its supervisors upon employees *if* an official representing the institution knew, or in the exercise of reasonable care should have known, of the harassment’s occurrence, *unless* that official can show that he or she took appropriate steps to halt it.

864 F.2d at 901 (emphasis in original). Although the First Circuit has not specifically addressed a situation in which the plaintiff is solely a student and the actor a teacher, there is no reason to assume that a different standard would apply in such a situation.

Since the parties filed their respective motions in this case, the Eighth Circuit has adopted the “known or should have known” standard for institutional liability in Title IX cases in which a student is sexually harassed by a teacher and bases her claim on a theory of hostile environment. *Kinman v. Omaha Pub. Sch. Dist.*, 94 F.3d 463, 469 (8th Cir. 1996). In addition, the Northern District of California, on a motion for reconsideration, has also adopted this standard in *Doe v. Petaluma City Sch. Dist.*, 1996 WL 432298 (N.D. Cal. July 22, 1996) (“*Doe II*”), reversing its holding in *Doe I* on which the plaintiff in this case had relied. Aside from the fact that I find the reasoning of the district courts in *Leija* and *Bolon* unpersuasive, I conclude that *Lipsett* in any event requires the application of the “known or should have known” standard in the circumstances of this

case. In the absence of a strict liability standard, Sue Jones's motion for partial summary judgment cannot succeed.

Applying the "traditional Title VII hostile environment standard," *Doe II*, 1996 WL 432298 at *13, to the facts in the summary judgment record in this case, it is undisputed that MSAD No. 6 did not have actual knowledge of the sexual relationship between Sue Jones and Dick until September 26, 1994. However, viewing the record in the light most favorable to Sue Jones, there remain disputed issues of material fact concerning whether MSAD No. 6, in the exercise of reasonable care, should have known about the relationship and whether MSAD No. 6 can show that it took appropriate steps to halt the sexual harassment once it was discovered. *Lipsett*, 864 F.2d at 901; *see also Kadiki*, 892 F. Supp. at 753. The evidence of events occurring before September 26, 1994 and the incident involving Dick and Sue Jones in his classroom after he was suspended by MSAD No. 6 precludes the entry of summary judgment for MSAD No. 6 on this claim.

B. Constitutional Claims

MSAD No. 6 also moves for summary judgment on Count I of the complaint, which alleges, pursuant to 42 U.S.C. § 1983, an unspecified deprivation of rights secured by the United States Constitution. In opposing the motion, Sue Jones argues that there is evidence that (1) MSAD No. 6 established a custom, practice or policy that violates the federal constitution and that such custom, practice or policy is the cause of and the moving force behind the deprivation of her constitutional rights, citing *Monell v. Department of Social Servs.*, 436 U.S. 658 (1978), and (2) the deprivation of her constitutional rights resulted from the failure of MSAD No. 6 to train its employees concerning those rights, citing *City of Canton v. Harris*, 489 U.S. 378 (1989).

1. Custom or Practice

In an action under section 1983 for deprivation of a constitutionally protected right, the plaintiff alleging the existence of an unconstitutional custom must meet two evidentiary requirements. First, the custom or practice must be so well-settled and widespread that the policymaking officials of the defendant can be said to have either actual or constructive notice of it yet did nothing to end it. Second, the plaintiff must have been injured by acts pursuant to the defendant's custom, i.e., the custom was the "moving force" behind the constitutional violation. *Bordanaro v. McLeod*, 871 F.2d 1151, 1156 (1st Cir.), *cert. denied*, 493 U.S. 820 (1989); *see Jane Doe "A" v. Special Sch. Dist.*, 901 F.2d 642, 646 (8th Cir. 1990) (making these elements of proof specific to school districts where there is an allegation of failure to receive, investigate and act upon complaints of constitutional violations). The notice requirement may be met with evidence of constructive rather than actual notice if "the practices have been so widespread or flagrant that in the proper exercise of [their] official responsibilities the [school district policymakers] should have known of them." *Bordanaro*, 871 F.2d at 1157 (citation omitted).

In this case, Sue Jones has presented evidence of only one complaint against Dick received by MSAD No. 6 before the events giving rise to this action, concerning an inappropriate remark with a sexual connotation which he made at the beginning of a school year in the period between 1986 and 1988. Hadley Dep. at 21-22. A single prior complaint against the employee actor is insufficient, standing alone, to support a claim of policy or practice. *Bordanaro*, 871 F.2d at 1156-57. The additional admissible evidence offered by Jones on this claim is as follows: (1) that a student had a sexual relationship with a Bonny Eagle High School teacher other than Dick in the early 1980s and that a complaint was made to the principal of the school about this relationship at the time, but the

teacher continued to teach at Bonny Eagle thereafter, Affidavit of _____ ¶ 2;⁶ (2) that Dick was allowed to resign rather than be fired, Barker Dep. at 16-19; (3) that rumors existed in the Bonny Eagle community at various times, including the spring of 1991, about the romantic involvement of as many as four teachers with students, Carol Jones Deposition, March 20, 1996 (“C. Jones Dep. II”), at 48-49; Flanagan Dep. at 85; Deposition of Brian Cates at 18-20; (4) that Carol Jones told the attorney for MSAD No. 6 about these rumors concerning one teacher after Dick had been suspended on September 26, 1994, C. Jones Dep. II at 26-27; (5) that MSAD No. 6 made no request to students and teachers to come forward with relevant information when it announced the suspension of Dick, Hadley Dep. Exhs. 2 & 3; (6) that Dick was allowed to return to his classroom after his suspension, where he encountered Sue Jones on one occasion; (7) that Dick reported possible physical abuse of Sue Jones to a Bonny Eagle guidance counselor in March 1994 and that there is no evidence that this possibility was reported to the Maine Department of Human Services (“DHS”) by MSAD No. 6, Dick Dep. at 14-15, 20-22; (8) that various other Bonny Eagle teachers to whom Dick suggested physical abuse of Sue Jones “at home” did not relay this information to MSAD No. 6 or to DHS, Dick Dep. at 15-20, 29; (9) that between September 15 and 23, 1994, Vice Principal Flanagan twice told Dick to stay away from Sue Jones but took no other action in response to his receipt of information that Dick and Sue Jones had been seen together on school property in Dick’s car, that Dick had asked another teacher to excuse Sue Jones from her study hall so that she could work for him, and that Carol Jones had told Dick to stay away from her daughter, Flanagan Dep. at 39-42; and (10) that MSAD No. 6 has not disciplined any teacher, administrator or guidance counselor for

⁶I choose not to identify this affiant by name in order to preserve her anonymity at this stage of the proceedings inasmuch as her affidavit has been filed under seal.

failing to follow established school policy and report suspected abuse of a student by an adult, Hadley Dep. at 25; Barker Dep. at 33.

It is significant that there is no evidence that the facts recited in items 3 and 8 above ever reached the administrators of MSAD No. 6. There is no admissible evidence in the record concerning what was done or not done by MSAD No. 6 in relation to items 4 and 7. In any event, the events described in item 4 took place after the suspension of Dick and therefore cannot serve as evidence of a policy or practice existing before the events that gave rise to this action. Items 2 and 5 are not evidence of deliberate indifference to claims of sexual harassment, nor are they sufficiently similar to the other cited facts to constitute elements of a persistent and widespread pattern. Given the existence of MSAD No. 6's policies requiring report of suspected abuse, Hadley Dep. at 23, and against sexual harassment, S. Jones Dep. at 22, the remaining items cannot satisfy the stringent standard for a *prima facie* case of deprivation of constitutional rights by policy or custom under section 1983. See *Plumeau v. Yamhill County Sch. Dist. No. 40*, 907 F. Supp. 1423, 1437 (D. Or. 1995).

In *Thelma D. v. Board of Educ.*, 934 F.2d 929 (8th Cir. 1991), the receipt of five complaints of inappropriate sexual behavior over a period of thirteen years against the teacher who was alleged to have sexually harassed the plaintiff student was held to be insufficient as a matter of law to establish a persistent and widespread pattern or practice of failure to receive, investigate, and act on complaints. 934 F.2d at 933. In *Jane Doe "A"* the court found no evidence of a deliberate choice to follow a course of action of ignoring complaints regarding physical or sexual abuse of students when eight complaints regarding the school bus driver alleged to have abused the plaintiff students, some with sexual elements and some without, had been received by the defendant school district.

901 F.2d at 644, 646. The court in *Gates v. Unified Sch. Dist. No. 449*, 996 F.2d 1035 (10th Cir. 1993), found that no pattern or practice could be established for the purpose of a section 1983 claim when the teacher involved in the plaintiff's allegations of sexual abuse had been counseled four years previously "concerning attending school functions with students;" had been romantically involved with a student three years previously, a fact which had been reported to the defendant at the time; had been reported to the defendant as "pursuing" the plaintiff; had been the subject, along with other teachers, of rumors heard by administrators concerning inappropriate conduct; and, along with other teachers, had been involved in incidents with students known to other teachers but not reported to the defendant. *Id.* at 1036-39.

These cases are closer to the facts in the summary judgment record here than is *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720 (3d Cir. 1989), *cert. denied*, 493 U.S. 1044 (1990), upon which Jones relies. In that case, the court found sufficient evidence to preclude the entry of summary judgment for the individual defendants because, *inter alia*, there was evidence suggesting that they had actively concealed at least five complaints about sexual assaults on female students by teachers in a five-year period and that the complaining students were discouraged or intimidated by the defendants from pursuing their complaints, including forcing one student publicly to recant her allegation. 882 F.2d at 728-29. In addition, the defendant school district had received a complaint of attempted rape of a student by the teacher alleged to have abused the plaintiff one year before the events involving the plaintiff, and the school had a file of reports of sexual misconduct by that teacher against female students. *Id.* These facts far exceed in number and severity the facts set forth in the summary judgment record here. Jones has not presented sufficient facts to distinguish this case from the likes of *Thelma D.*, *Jane Doe "A"* or *Gates*.

Even if there were sufficient disputed material facts to allow Jones to avoid summary judgment on the existence of a policy or custom in this case, MSAD No. 6 would only be liable under section 1983 if the execution of its policy or custom inflicted the injury on Jones. *Harris*, 489 U.S. at 385. There is no evidence in the record that Dick sexually harassed Jones in execution of any policy of MSAD No. 6 or that he was authorized or encouraged in any way by MSAD No. 6 so to act.

2. Failure to Train

Failure to train serves as the basis for section 1983 liability only when it amounts to deliberate indifference to the rights of persons with whom the defendant's employees come into contact and serves as the "moving force" behind the constitutional violation. *Id.* at 389. The deficiency in training must actually cause the indifference. *Id.* at 391. When the defendant is a school district, a plaintiff basing a section 1983 claim on failure to train must show deliberate indifference to the rights of students -- that is, that the district had actual notice that its procedures were inadequate and likely to result in a violation of students' constitutional rights. *Thelma D.*, 934 F.2d at 934; *see also Gonzalez v. Ysleta Indep. Sch. Dist.*, 996 F.2d 745, 762 (5th Cir. 1993). It is not necessary for the plaintiff to establish a pattern of indifference if the failure to train is so likely to result in a constitutional violation that the need for training is patently obvious. *Thelma D.*, 934 F.2d at 934.

Section 1983 requires more than simply a showing that the constitutional violation "could have been avoided if an [actor] had had better or more training, sufficient to equip [the actor] to avoid the particular injury-causing conduct." *City of Canton v. Harris*, 489 U.S. 378, 391 (1989). "Such a claim could be made about almost any encounter resulting in injury." *Id.* Indeed, a complete lack of training is not *per se* unconstitutional. *See Rodriques v. Furtado*, 950 F.2d 805, 813 (1st Cir.

1991).

Barber v. Guay, 910 F. Supp. 790, 801 (D. Me. 1995). The deliberate indifference standard requires a showing that the school district was recklessly indifferent, grossly negligent, or deliberately or intentionally indifferent. *Doe v. Taylor Indep. Sch. Dist.*, 975 F.2d 137, 148 (5th Cir. 1992); *Shaw v. Strackhouse*, 920 F.2d 1135, 1145 (3d Cir. 1990). Action which is ineffective does not necessarily manifest deliberate indifference. *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 458 (5th Cir. 1994).

When a school district has established policies and procedures adequate to address complaints about abuse of students, a finding of inadequate training is precluded. *Thelma D.*, 934 F.2d at 934. In addition, the existence of other teacher-student sexual relationships, without notice to school authorities, does not constitute adequate notice of a pattern of constitutional violations leading to a need to train. *Bolon*, 917 F.Supp. at 1430. Here, Jones offers admissible evidence of only one such sexual relationship, which cannot serve to establish the existence of a pattern. Further, the undisputed evidence is that MSAD No. 6 had a policy requiring teachers to report suspected abuse. Hadley Dep. at 23. On the summary judgment record, Jones cannot establish notice or the existence of a pattern which is the necessary predicate to a claim of failure to train.

C. State Law Claims

The complaint raises claims against MSAD No. 6 under Maine law in four counts. Count II alleges unspecified violations of the Maine Constitution “in contravention of 5 M.R.S.A. § 4682.” Count III alleges intentional infliction of emotional distress. Count IV alleges negligent infliction of emotional distress. Count VI alleges sexual harassment in violation of the Maine Human Rights Act, specifically 5 M.R.S.A. § 4601.

1. The Maine Human Rights Act

The parties agree that claims brought under 5 M.R.S.A. § 4601 are subject to the same legal standards applicable to federal Title IX claims. Because I am denying the cross-motions for summary judgment on the Title IX claim, summary judgment on this count is inappropriate as well.

2. State Constitutional Claim

The Maine Civil Rights Act “was patterned after 42 U.S.C. § 1983.” *Grenier v. Kennebec County*, 733 F. Supp. 455, 458 n.6 (D. Me. 1990). The parties agree that a claim brought under 5 M.R.S.A. § 4682 is subject to the same legal standards as are applicable to claims brought under 42 U.S.C. § 1983. *See Fowles v. Stearns*, 886 F. Supp. 894, 901 (D. Me. 1995); *Hegarty v. Somerset County*, 848 F. Supp. 257, 269 (D. Me. 1994). Because I am granting MSAD No. 6's motion for summary judgment on Count I, the section 1983 claim, summary judgment must also be entered for MSAD No. 6 on this claim as well.

3. Intentional Infliction of Emotional Distress

Under Maine law, in order to withstand summary judgment on a claim for intentional infliction of emotional distress, a plaintiff must

present facts tending to show that (1) the defendants “intentionally or recklessly inflicted severe emotional distress or [were] certain or substantially certain that such distress would result from [their] conduct”; (2) the “conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, utterly intolerable in a civilized community”; (3) the actions of the defendants caused [the plaintiff's] emotional distress; and (4) [the plaintiff] suffered emotional distress “so severe that no reasonable [person] could be expected to endure it.”

Loe v. Town of Thomaston, 600 A.2d 1090, 1093 (Me. 1991) (citations omitted). Viewed in the

light most favorable to the plaintiffs, there is no evidence in the summary judgment record tending to show conduct by MSAD No. 6 reaching the “extreme and outrageous” standard.

Nor may MSAD No. 6 be held liable for emotional distress that may have been intentionally inflicted by its employee, Dick, unless it intended that he so act or ordered or induced his conduct. *Robinson v. Washington County*, 529 A.2d 1357, 1362 & nn. 6 & 7 (Me. 1987). There is no evidence in the record that MSAD No. 6 intended, ordered or induced Dick’s conduct toward Sue Jones. Therefore, summary judgment is appropriate for MSAD No. 6 on Count III of the complaint.

4. Negligent Infliction of Emotional Distress

In order to prove a claim for negligent infliction of emotional distress under Maine law, a plaintiff must show (1) that the defendant was negligent, (2) that the plaintiff suffered emotional distress that was a reasonably foreseeable result of the defendant’s negligent conduct, and (3) that the plaintiff suffered severe emotional distress as a result of the defendant’s negligence. *Braverman v. Penobscot Shoe Co.*, 859 F. Supp. 596, 607 (D. Me. 1994). Evidence of a defendant’s negligence is presented by facts showing that the defendant acted or failed to act in a manner in which a reasonably prudent person or corporation would act in the management of his or its affairs. *Id.*

For purposes of the motion for summary judgment, the evidence in the record, when viewed most favorably to the plaintiffs, precludes the entry of summary judgment on this claim. There remain disputed issues of material fact concerning whether MSAD No. 6 failed to act in a manner in which a reasonably prudent school district would act in the circumstances presented by the record in this case, given the available information.

IV. CONCLUSION

For the foregoing reasons, Sue Jones's motion for partial summary judgment is **DENIED** and defendant MSAD No. 6's motion for summary judgment is **GRANTED** as to Counts I, II and III of the complaint and otherwise **DENIED**.

Dated at Portland, Maine this 19th day of November, 1996.

David M. Cohen
United States Magistrate Judge