

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jun 22, 2023**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

P.S., a minor child, by and through  
JENNIKA HILL, her parent and guardian,  
Plaintiffs,  
v.  
GRAND COULEE DAM SCHOOL  
DISTRICT,  
Defendant.

No. 2:21-CV-00266-SAB

**ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT;  
DISMISSING STATE LAW  
CLAIMS WITHOUT  
PREJUDICE**

Before the Court is Defendant’s Motion for Summary Judgment, ECF No. 24. A hearing on the motion was held on June 15, 2023, in Spokane, Washington. Plaintiffs were represented by Ken Miller and Andrew Chase. Defendant was represented by Mary Rathbone.

Plaintiff P.S., a female minor, was assaulted by another female student at Lake Roosevelt High School, which is in the Grand Coulee Dam School District (GCDSD). She received cuts and bruises on her face and experienced concussion symptoms. She believes she was a victim of discrimination based on her race (white) and on her gender, and her injuries were caused by the discrimination and negligence of Defendant. Plaintiff and her mother are suing the GCDSD, seeking

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT;  
DISMISSING STATE LAW CLAIMS WITHOUT PREJUDICE ~ 1**

1 \$1,000,000 in damages plus attorneys' fees.

2 In response to Defendant's Motion for Summary, Plaintiffs conceded that  
3 several of their claims can be dismissed. The parties agree that the remaining  
4 claims are: (1) Title VI claim for racial discrimination; (2) Washington Equal  
5 Education Opportunity Law (EEOL) claim; and (3) negligence claim.

6 Defendant moves for summary judgment on these three claims. Because the  
7 Court finds that summary judgment is appropriate for Plaintiffs' Title VI claim, it  
8 declines to exercise supplemental jurisdiction over the remaining state law claims.  
9 Those claims will be dismissed without prejudice.

### 10 **Motion Standard**

11 Summary judgment is appropriate "if the movant shows that there is no  
12 genuine dispute as to any material fact and the movant is entitled to judgment as a  
13 matter of law." Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless  
14 there is sufficient evidence favoring the non-moving party for a jury to return a  
15 verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250  
16 (1986). The moving party has the initial burden of showing the absence of a  
17 genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).  
18 If the moving party meets its initial burden, the non-moving party must go beyond  
19 the pleadings and "set forth specific facts showing that there is a genuine issue for  
20 trial." *Anderson*, 477 U.S. at 248.

21 In addition to showing there are no questions of material fact, the moving  
22 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*  
23 *Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled  
24 to judgment as a matter of law when the non-moving party fails to make a  
25 sufficient showing on an essential element of a claim on which the non-moving  
26 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party  
27 cannot rely on conclusory allegations alone to create an issue of material fact.  
28 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993). When considering a

1 motion for summary judgment, a court may neither weigh the evidence nor assess  
2 credibility; instead, “the evidence of the non-movant is to be believed, and all  
3 justifiable inferences are to be drawn in his favor.” *Anderson*, 477 U.S. at 255.

#### 4 **Background Facts**

5 The following facts are presented in the light most favorable to Plaintiffs, the  
6 non-moving party.

7 In September 2019, Plaintiff P.S., who is white, was a freshman in science  
8 class at Lake Roosevelt High School, when Yvonne, a Native American student,  
9 came up from behind, pulled Plaintiff to the ground by her hair, and began hitting  
10 and kicking her. Rather than intervene, the teacher stood by and told the girls to  
11 stop. Other students came to the rescue of Plaintiff. As she walked out of the class  
12 to go to the school nurse, she saw her ex-boyfriend standing in the doorway. A few  
13 students videotaped the fight, and it circulated around the Internet.

14 After the incident, Plaintiff called her mom, and her stepdad took her to the  
15 hospital where Plaintiff was treated. Her mom remained at the school. The police  
16 were called, and Yvonne was arrested. Plaintiff returned to school the next day but  
17 experienced PTSD and anxiety while attending school.

18 Yvonne plead guilty to Fourth Degree Assault. She was allowed to return to  
19 school after three or four weeks. Plaintiff’s ex-boyfriend Brandon was suspended  
20 from school but only for one day.

21 A few months later, a note was left in Plaintiff’s locker, which Plaintiff  
22 interpreted to be a threat. The word “neph” had been written on the note along with  
23 a stick figure drawing that was lying down. The note caused her to be upset and  
24 cry. She reported the note to school officials. She also called her mom. Her mom  
25 wanted the school officials to call the police, but the cameras in the hallway where  
26 Plaintiff’s locker was located were not working so school officials were not able to  
27 identify who gave Plaintiff the note.

28 Plaintiff continued to attend school at Lake Roosevelt, although it was

1 difficult for her, and she missed some school because of her anxiety. There were  
2 times when she called her mom to pick her up from school. Because Plaintiff  
3 continued to run into Yvonne, especially in the bathroom after fifth period, school  
4 officials came up with a Student Support Plan. Plaintiff was able to eat lunch in a  
5 separate room or leave campus at lunch, she could use the staff bathroom, and she  
6 was allowed to leave class early (fifth period) so she could use the bathroom before  
7 classes got out. Plaintiff states that Yvonne would skip class sometime to be in the  
8 bathroom, even when she left early.

9       Once COVID hit, Plaintiff did not attend in-person school for the remainder  
10 of the year. She returned to in-person school sometime during her sophomore year.  
11 She began Running Start her junior year, so she did not attend in-person school at  
12 Lake Roosevelt for her junior and senior years.

### 13                                   **Title VI of the Civil Rights Act of 1964**

14       Title VI prohibits intentional discrimination in federally funded programs.  
15 42 U.S.C. § 2000d; *Alexander v. Sandoval*, 532 U.S. 275, 280-81 (2001).  
16 Intentional discrimination may be established through a showing of deliberate  
17 indifference. *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1034 (9th  
18 Cir. 1998). When a district is deliberately indifferent to its students' right to a  
19 learning environment free of racial hostility and discrimination, it is liable for  
20 damages under Title VI. *Id.*

21       Here, although not clear, it appears that Plaintiffs are attempting to hold  
22 Defendant accountable for student-to-student racial harassment, as well as holding  
23 Defendant accountable for discriminatory actions it took in response to the incident  
24 where Plaintiff was assaulted. Each will be addressed in turn.

25       Allegations of student-to-student racial harassment are actionable under  
26 Title IV. *Monteiro*, 158 F.3d at 1033. To establish a claim for student-to-student  
27 harassment, Plaintiffs must show: (1) there is a racially hostile environment; (2) the  
28 school district has notice of the problem; and (3) it failed to respond adequately to

1 redress the racially hostile environment.<sup>1</sup> *Id.* As the Circuit noted, “an alleged  
2 harasser need not be an agent or employee of the recipient because this theory of  
3 liability under Title VI is premised on a recipient’s general duty to provide a  
4 nondiscriminatory educational environment.” *Id.* (quotation omitted).

5 A racially hostile environment is one where racial harassment is “severe,  
6 pervasive or persistent so as to interfere with or limit the ability of an individual to  
7 participate in or benefit from the services, activities, or privileges provided by the  
8 recipient.” *Id.* Stated another way, it is one that is “so severe, pervasive, and  
9 objectively offensive, and that so detracts from the victims’ educational  
10 experience, that the victims are effectively denied equal access to an institution’s  
11 resources and opportunities.” *See Davis v. Monroe County Bd. of Educ.*, 526 U.S.  
12 629, 652 (1999) ((discussing the standard for harassment claims under the  
13 analogous Title IX framework).

14  
15 \_\_\_\_\_  
16 <sup>1</sup> Title IX allegations against a school that arise from student-on-student- sexual  
17 harassment or assault must establish five elements: (1) the school must have  
18 exercised substantial control over both the harasser and the context in which the  
19 known harassment occurred; (2) the plaintiff must have suffered harassment that is  
20 so severe, pervasive, and objectively offensive that it can be said to deprive the  
21 plaintiff of access to the educational opportunities or benefits provided by the  
22 school; (3) a school official with authority to address the alleged discrimination  
23 and to institute corrective measures on the schools behalf must have had actual  
24 knowledge of the harassment (4) the school must have acted with deliberate  
25 indifference to the harassment, such that the school’s response to the harassment or  
26 lack thereof was clearly unreasonable in light of the known circumstances; and (5)  
27 the school’s deliberate indifference must have subject the plaintiff to harassment.  
28 *Karasek v. Regents of Univ. of Calif.*, 956 F.3d 1093, 1105 (9th Cir. 2020).

1           Once on notice of a racial problem at a school, a school district has a legal  
2 duty to take reasonable steps to eliminate a racially hostile environment. *Monteiro*,  
3 158 F.3d at 1034. A school district can be liable under Title VI when it is  
4 “deliberately indifferent” to its students’ right to a learning environment free of  
5 racial hostility and discrimination. *Id.* Deliberate indifference can be shown where  
6 the need for intervention was so obvious, or if inaction was so likely to result in  
7 discrimination, that it can be said to have been deliberately indifferent to the need.  
8 *Id.* (citation omitted).

9           In *Monterro*, the Ninth Circuit held that allegations that African American  
10 students attended a school where they were called “niggers” by white children, and  
11 where that term was written on the walls of the buildings where they were  
12 supposed to learn civics and social studies were sufficient to allege a racially  
13 hostile environment. *Id.* at 1034. (“It does not take an educational psychologist to  
14 conclude that being referred to by one’s peers by the most noxious racial epithet in  
15 the contemporary American lexicon, being shamed and humiliated on the basis of  
16 one’s race, and having the school authorities ignore or reject one’s complaints  
17 would adversely affect a Black child’s ability to obtain the same benefit from  
18 schooling as her white counterparts.”). Similarly, allegations that African  
19 American children experienced a pattern of racial abuse and students and parents  
20 complained about it to administrators at the school and district were sufficient to  
21 meet the notice requirement. Finally, allegations of a pattern of egregious public  
22 racial harassment including the use of the epithet “nigger,” that Black students and  
23 their parents complained but were rebuffed, and that nothing was ever done about  
24 the problem were sufficient to show deliberate indifference on the part of the  
25 school district. *Id.* (“It goes without saying that being called a “nigger” by your  
26 white peers (or hearing that term applied to your Black classmates) exposes Black  
27 children to a “risk of discrimination” that is so substantial and obvious that a  
28 failure to act can only be the result of deliberate indifference.”).

1 The Ninth Circuit considers the deliberate indifference standard “a fairly  
2 high standard”; a “negligent, lazy, or careless” response will not be considered  
3 deliberately indifferent. *Karasek v. Regents of Univ. of Calif.*, 956 F.3d 1093, 1105  
4 (9th Cir. 2020) (considering the deliberate indifferent standard in a Title IX claim).

5 The court must consider all the evidence and look to the “totality of the  
6 relevant facts” to determine whether the defendant has engaged in intentional  
7 discrimination. *Yu v. Id. State Univ.*, 15 F.4th 1236, 1242 (9th Cir. 2021).

### 8 **Analysis**

9 Plaintiffs, who are white, are suing Defendant because they believe  
10 Defendant discriminated against Plaintiff P.S. on account of her race. Plaintiffs  
11 have not produced sufficient facts for their Title VI claim to survive summary  
12 judgment. It is well understood that occasional or isolated incidents are not enough  
13 to show a hostile environment unless the incident is extremely severe. *Faragher v.*  
14 *City of Boca Raton*, 524 U.S. 775, 788 (1998); *Brooks v. City of San Mateo*, 229  
15 F.3d 917, 925 (9th Cir. 2000).

16 In support of their argument that a racially hostile environment existed at  
17 Lake Roosevelt High School, Plaintiffs rely on the deposition of Mark Vinciguerra,  
18 the teacher who was in the classroom when the assault took place, to argue that a  
19 racially hostile environment existed at Lake Roosevelt High School prior to and at  
20 the time P.S. was assaulted. In his deposition, he stated he had heard racial terms  
21 being directed toward Black students, swastikas being written or painted on the  
22 school building, and derogatory terms being directed toward Native students. He  
23 also stated that he observed disagreements within the student body that were based  
24 on racial differences, specifically there were students that advocated white  
25 supremacy. P.S. stated that Native students referred to white students as “neps,”  
26 which according to P.S. means whites are inferior to Natives, who referred to  
27 themselves as “unc” or “uncle.”

28 These facts do not establish that P.S. experienced a racially hostile

1 environment. Disagreements within the student body that were perceived to be  
2 based on racial differences does not mean that P.S. herself experienced a racially  
3 hostile environment. To do so, Plaintiffs would have to show P.S. was subjected to  
4 severe harassment or discrimination on account of her race, that is, because she  
5 was white. There is no evidence in the record for a reasonable jury to find that P.S.  
6 was subjected to a racially hostile environment. Additionally, even if one  
7 concludes that white students, including P.S., experienced a racially hostile  
8 environment at Lake Roosevelt High School, there is nothing in the record that any  
9 of the students, including P.S., complained to the school district that they believed  
10 they were being harassed or discriminated against because of their race.  
11 Consequently, a reasonable jury could not find that the school district was  
12 deliberately indifferent to the alleged discrimination against white students where  
13 it was not put on notice that such discrimination was occurring.

14 In sum, summary judgment is appropriate on Plaintiffs' Title VI claim  
15 because no reasonable jury could find that P.S. experienced a racially hostile  
16 environment at Lake Roosevelt High School or that school officials were  
17 deliberately indifferent to any perceived racial harassment or discrimination. The  
18 Court declines to exercise supplemental jurisdiction over the remaining state  
19 claims. *See* 28 U.S.C. § 1367(c)(3); *United Mine Workers v. Gibb*, 383 U.S. 715,  
20 725-26 (1966).

21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28 //



1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion for Summary Judgment, ECF No. 24, is  
3 **GRANTED**, in part.

4 2. Defendant Vinciguerra's Motion for Summary Judgment, ECF No.  
5 21, is **STRICKEN**.

6 3. The Clerk of Court is directed to enter judgment in favor of Defendant  
7 and against Plaintiffs on Plaintiffs' Title VI claim.

8 4. Plaintiffs' EEOL claim and negligence claim are **dismissed** without  
9 prejudice.

10 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
11 forward copies to counsel, and **close** the file.

12 **DATED** this 22nd day of June 2023.



16  
17

A handwritten signature in blue ink that reads "Stanley A. Bastian".

18 Stanley A. Bastian  
19 Chief United States District Judge