

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT TACOMA

4 WENDY A MAKI,

Plaintiff,

5 v.

6 BREMERTON SCHOOL DISTRICT,  
7 LINDA SULLIVAN-DUDZIC, and her  
8 marital community, SUSAN K. STONE,  
and her marital community,

Defendants.

CASE NO. C19-5901 RJB

ORDER ON MOTIONS FOR  
SUMMARY JUDGMENT

9  
10 This matter comes before the Court on Plaintiff's Motion for Partial Summary Judgment  
11 (Dkt. 52) and Defendants Motion for Partial Summary Judgment (Dkt. 55). The Court has  
12 considered the pleadings filed in support of and in opposition to the motions and the file herein.

13 **I. FACTS**

14 Plaintiff, Wendy Maki, is a special education teacher who worked at Kitsap Lake  
15 Elementary school. Dkt. 6. Plaintiff claims that Defendant Susan Stone, the school principal,  
16 locked her in a classroom for hours with a student who will be referred to as "GC" and who was  
17 known to be violent. Dkt. 6 at 38. Defendants "vigorously dispute" these allegations, primarily  
18 by arguing that Plaintiff could have escaped but did not call for help. Dkts. 55 and 63.

19 GC had a history both of violent outbursts and of trying to run away from the school. *Id.*  
20 On September 25, 2017, Defendants Sullivan-Dudzic and Stone met and discussed using a piece  
21 of firehose, which was procured as part of a lockdown procedure should there be an active  
22 shooter, to contain GC in a classroom should this behavior persist. Dkt. 52 at 2-3. In addition,  
23 the school district had a policy, Policy 3247, on "Use of Restraint and Isolation." *Id.* at 7. On  
24

1 September 26, 2017, GC had an outburst and Defendant Stone placed the firehose on the door  
2 hinge of a classroom to keep him inside. Dkt. 53-2 at 2 (Stone Declaration). Plaintiff entered  
3 the classroom through a second door, which led to a kitchen, that locked automatically on the  
4 classroom side. Dkt. 52 at 3. The door to the hall appears to have been left slightly open and, at  
5 some point in the late morning, GC got his hand stuck in that opening and needed help. *Id.* The  
6 school nurse came to examine him, left, and then Defendant Stone reapplied the firehose lock.  
7 *Id.* Plaintiff alleges, “[t]his is the moment that Plaintiff’s confinement began.” Dkt. 52.  
8 Defendant Stone appears to have watched Plaintiff and GC in the classroom through the door for  
9 some time but eventually left. Dkts. 52 and 55.

10 Policy 3247 regulates restraint and isolation of a student. It reads, in relevant part:

11 . . . District staff may use restraint or isolation to discourage undesirable behaviors  
12 by special education students only in conjunction with an aversive intervention  
13 plan, or to control unpredicted spontaneous behavior that poses a clear and present  
14 danger of serious harm to the student, to another person, to property, or of  
15 disrupting the educational process.

16 Dkt. 52 at 5. Plaintiff argues this policy is unconstitutional because it allows restraint to  
17 discourage undesirable behavior, when there is a “clear and present” danger of serious harm, as  
18 opposed to “imminent danger,” and when there is danger of disruption the educational process.  
19 Dkt. 52 at 7. Plaintiff alleges that the school district should have changed its policy in  
20 conjunction with changes the Washington State Legislature made to the RCW and WAC. *Id.* at  
21 6.

22 Defendants argue that Plaintiff had multiple means of escape, and, therefore, was never  
23 actually confined. Dkt. 55. They argue that she should have had her keys to the kitchen door,  
24 that Defendants neither knew, nor should have known that she didn’t have her keys, and that  
Plaintiff could have easily yelled or radioed for help. Dkts. 55 and 66.

1 **II. PENDING MOTIONS**

2 Plaintiff brings multiple claims in her complaint. At issue in these motions for summary  
3 judgment are negligence, multiple claims under 42 U.S.C. § 1983 against both Defendants  
4 Sullivan-Dudzic and Stone and against the Bremerton School District, and false imprisonment.  
5 Dkts. 52 and 55.

6 Plaintiff filed her motion for partial summary judgment first (Dkt. 52), to which the  
7 Defendants responded (Dkt. 66), and Plaintiff replied (Dkt. 68). Plaintiff requests summary  
8 judgment as to the existence of duty in her claim of negligence, specific elements of her 42  
9 U.S.C. § 1983 claim, and on a variety of affirmative defenses. Dkt. 52. Through the response  
10 and reply, the remaining contested issues appear to be whether: (1) Defendants Sullivan-Dudzic  
11 and Stone are entitled to qualified immunity; (2) Defendants may argue that Defendants did not  
12 proximately cause Plaintiff's alleged injury; and (3) Defendants may argue that Plaintiff  
13 contributed to her own alleged injury. Dkts. 52, 66, and 68.

14 Defendants move for summary judgment dismissal of Plaintiff's claims under 42 U.S.C.  
15 § 1983 and the state law claim of false imprisonment. Dkt. 55 at 2. Plaintiff responded (Dkt.  
16 63), and Defendants replied (Dkt. 71).

17 **III. DISCUSSION**

18 **A. SUMMARY JUDGMENT STANDARD**

19 Summary judgment is proper only if the pleadings, the discovery and disclosure materials  
20 on file, and any affidavits show that there is no genuine issue as to any material fact and that the  
21 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party is  
22 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient  
23 showing on an essential element of a claim in the case on which the nonmoving party has the  
24

1 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue  
2 of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find  
3 for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586  
4 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some  
5 metaphysical doubt.”). Conversely, a genuine dispute over a material fact exists if there is  
6 sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve  
7 the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986);  
8 *T.W. Elec. Serv. Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9<sup>th</sup> Cir. 1987).

## 9 **B. PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

### 10 **1. NEGLIGENCE**

#### 11 a. The Existence of a Duty

12 Plaintiff asserts in her complaint that “Defendants breached their duty of care toward  
13 plaintiff” (Dkt. 6) and requests summary judgment as to the existence of such a duty in her  
14 motion for partial summary judgment (Dkt. 52).

15 While Defendants concede “that the District owed Plaintiff a duty of care,” Defendants  
16 “oppose Plaintiff’s motion to the extent it asks for summary judgment on the duty element of her  
17 negligence claim against Defendant Stone and Defendant Sullivan-Dudzic.” Dkt. 66 at 3 – 4.  
18 Plaintiff replies that “Defendants concede that they owed a duty of care to Plaintiff” but does not  
19 offer an explanation either in her underlying motion or in her reply why Defendant Stone or  
20 Sullivan-Dudzic owed Plaintiff a duty of care to Plaintiff in their individual capacities. *See* Dkts.  
21 52 and 68.

22 Plaintiff’s failure to explain why a duty existed between Plaintiff and either Defendant  
23 Stone or Sullivan-Dudzic makes summary judgment inappropriate at this time. To the extent  
24

1 that Plaintiff was making such a motion, it should be denied.

2 b. Jury Instruction

3 Plaintiff requests summary judgment declaring that “a jury instruction regarding an  
4 illegal policy should be given [to the jury] . . . .” Dkt. 52 at 11. Both Parties acknowledge that  
5 the Court need not decide jury instructions at summary judgment. Dkts. 66 and 68 at 2. The  
6 Court declines to decide this issue at this time.

7 **2. 42 U.S.C. § 1983 ELEMENTS**

8 Plaintiff’s motion for summary judgment on elements of her § 1983 should be denied  
9 because there are genuine issues of material fact.

10 To state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the conduct  
11 complained of was committed by a person acting under color of state law, and that (2) the  
12 conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws  
13 of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds*,  
14 *Daniels v. Williams*, 474 U.S. 327 (1986).

15 A defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of  
16 supervisory responsibility or position. *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S.  
17 658, 694 n.58 (1978); *Padway v. Palches*, 665 F.2d 965 (9th Cir. 1982). Instead, a municipality  
18 must be directly responsible for Plaintiff’s injury. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).

19 Plaintiff moves for summary judgment on the questions of whether (1) the Defendants  
20 acted under the color of state law, (2) Defendant Sullivan-Dudzic directed Plaintiff’s alleged  
21 confinement, (3) Plaintiff’s alleged confinement was pursuant to an official policy, and (4)  
22 Defendant Sullivan-Dudzic ratified Defendant Stone’s actions. Defendants concede the first  
23 question, that they acted under the color of state law, but they dispute the remaining questions.

1 Dkt. 66 at 2. Genuine issues of material fact preclude summary judgment of the remaining  
2 questions.

3 As to the second question, although a supervisory defendant may not be held liable under  
4 a theory of *respondeat superior*, she may be held liable “if there exists either (1) his or her  
5 personal involvement in the constitutional deprivation, or (2) a sufficient causal connection  
6 between the supervisor’s wrongful conduct and the constitutional violation.” *Hansen v. Black*,  
7 885 F.2d 642, 646 (9th Cir. 1989). Under the second theory of causation, “[t]he requisite causal  
8 connection can be established by setting in motion a series of acts by others, or by knowingly  
9 refusing to terminate a series of acts by others, which the supervisor knew or reasonably should  
10 have known would cause others to inflict a constitutional injury.” *Starr v. Baca*, 652 F.3d 1202,  
11 1207–08 (9th Cir. 2011) (internal citations omitted).

12 Whether the conversations between Defendant Sullivan-Dudzic and Defendant Stone  
13 about use of the firehose to detain GC in a classroom set actions in motion that Defendant  
14 Sullivan-Dudzic should have known would cause Plaintiff’s alleged Constitutional injury is a  
15 question of fact.

16 Third, the Bremerton School District may be liable under § 1983 if its policy, practice, or  
17 custom was the moving force behind a constitutional violation. *Monell*, 436 U.S. at 694. To  
18 prevail, Plaintiff must prove that that the municipality had a policy, that this policy amounts to  
19 deliberate indifference to the plaintiff’s constitutional right, and that the policy is the moving  
20 force behind the constitutional violation. *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th  
21 Cir. 2011) (internal quotation omitted).

22 Plaintiff seeks summary judgment on all elements except whether there was an  
23 underlying constitutional deprivation. Dkt. 52. The elements of deliberate indifference and  
24

1 causation contain genuine questions of material fact. Plaintiff argues that Bremerton School  
2 District Policy 3247, which describes when restraint may be used against a student, was  
3 deliberately indifferent to Plaintiff’s constitutional right because the Washington legislature  
4 changed the circumstances under which restraint is allowed, but the school district did not  
5 change its policy accordingly. Dkt. 52 at 13–14. Resolution of whether the policy was  
6 unconstitutional and whether failing to update it amounts to deliberate difference depends on  
7 questions of fact. Similarly, it is for the trier of fact to decide whether the policy was the moving  
8 force behind a constitutional violation.

9 Finally, Plaintiff seeks summary judgment on the issue of ratification. To establish  
10 ratification, Plaintiff must show that that Defendant Sullivan-Dudzic (1) was a final policymaker  
11 and (2) she ratified an unconstitutional action and the basis for it. *See Gillette v. Delmore*, 979  
12 F.2d 1342, 1346–47 (9th Cir. 1992).

13 Defendants do not dispute that Defendant Sullivan-Dudzic was a final policy maker. *See*  
14 Dkt 66 at 12–14. Whether Defendant Sullivan-Dudzic ratified Defendant Stone’s actions,  
15 however, contains questions of material fact.

16 A policymaker’s “knowledge of an unconstitutional act does not, by itself, constitute  
17 ratification.” *Christie*, 176 F.3d at 1239. Rather, ratification requires that the policymaker make  
18 a “conscious, affirmative choice” to approve their subordinate’s action. *Gillette*, 979 F.2d at  
19 1347. Neither mere knowledge of, nor refusal to discipline a subordinate’s unconstitutional act  
20 suffices to show ratification. *Christie*, 176 F.3d at 1239. “Ordinarily, ratification is a question  
21 for the jury.” *Id.* at 1240.

22 Although Defendant Sullivan-Dudzic admits that she knew Plaintiff was in classroom  
23 with GC, it is unclear whether she knew that Plaintiff was locked inside. It is for the trier of fact  
24

1 to determine whether her knowledge rose to the level of conscious, affirmative approval of an  
2 unconstitutional deprivation of liberty.

3 Plaintiff's motion for summary judgment on the elements of her § 1983 claim should be  
4 denied.

### 5 **3. AFFIRMATIVE DEFENSES**

#### 6 **a. QUALIFIED IMMUNITY**

7 "Qualified immunity is 'an *immunity from suit* rather than a mere defense to liability.'" *Conner v. Heiman*, 672 F.3d 1126, 1130 (9th Cir. 2012) (quoting *Mitchell v. Forsyth*, 472 U.S.  
8 511, 530 (1985)). Defendants in a § 1983 action are entitled to qualified immunity unless their  
9 conduct violates clearly established statutory or constitutional rights of which a reasonable  
10 person would have known. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v.*  
11 *Fitzgerald*, 457 U.S. 800, 818 (1982)). In analyzing a qualified immunity defense, the Court  
12 must determine: (1) whether a constitutional right would have been violated on the facts alleged,  
13 taken in the light most favorable to the party asserting the injury; and (2) whether the right was  
14 clearly established when viewed in the specific context of the case. *Saucier v. Katz*, 533 U.S.  
15 194, 194 (2001). "The relevant dispositive inquiry in determining whether a right is clearly  
16 established is whether it would be clear to a reasonable officer that his conduct was unlawful in  
17 the situation he confronted." *Id.* at 194–95.

18 "[A] district court should decide the issue of qualified immunity as a matter of law when  
19 'the material, historical facts are not in dispute, and the only disputes involve what inferences  
20 may properly be drawn from those historical facts.'" *Conner*, 672 F.3d at 1131 (agents who  
21 could have reasonably believed they had probable cause to effectuate an arrest were entitled to  
22 qualified immunity).  
23  
24



1 Issues of fact preclude summary judgment on qualified immunity. Plaintiff argues that  
2 Defendants locked her in a room with a student who is known to be violent, which violates  
3 clearly established Fourth and/or Fourteenth Amendment precedent. Dkt. 52. Defendants  
4 dispute these facts but do not show that qualified immunity applies to them. Dkts. 55 and 66.  
5 While it is Plaintiff’s eventual burden to show that a reasonable school official would have  
6 known their conduct was unlawful, it is for a trier of fact to determine whether unconstitutional  
7 conduct occurred.

8 Both Plaintiff and Defendants’ motions for summary judgment on the issue of qualified  
9 immunity should be denied.

10 **b. OTHER DEFENSES**

11 Defendants withdrew some of the affirmative defenses. Dkt. 66 at 14–16. Defendants  
12 may, however, argue the issues of proximate cause and contributory fault at trial. Plaintiff’s  
13 motion for summary judgment on these issues should be denied.

14 **C. DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

15 **1. SECTION 1983 CLAIMS**

16 Defendants move for summary judgment dismissal of Plaintiff’s § 1983 claims.  
17 Defendants argue that Plaintiff cannot establish an underlying constitutional violation, and,  
18 therefore, her constitutional claims should be dismissed.

19 First, Defendants argue that Plaintiff failed to specifically plead a Fourth Amendment  
20 violation in her complaint and should not be allowed to make such a claim at this stage. While  
21 Plaintiff’s complaint alleges only that Defendants deprived her of her “right to liberty” (Dkt. 6 at  
22 38–39), Plaintiff specifically references the Fourth Amendment in her motion for partial  
23 summary judgment (Dkt. 52 at 13) and her response to Defendants’ motion for summary  
24

1 judgment (Dkt. 63). Furthermore, Plaintiff’s complaint includes enough facts related to a  
2 “seizure” so as to not completely deprive Defendant notice of a Fourth Amendment claim. *See*  
3 Dkt. 6. Defendants have had both notice and the opportunity to respond to this claim.

4 Similarly, Defendants’ motion summary judgment on both Plaintiff’s Fourth Amendment  
5 and Fourteenth Amendment claims should be denied. The Fourth Amendment, “by virtue of the  
6 Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers.” *New*  
7 *Jersey v. T.L.O.*, 469 U.S. 325, 334 (1985) (internal quotation omitted). “[A] person has been  
8 ‘seized’ within the meaning of the Fourth Amendment only if, in view of all of the circumstances  
9 surrounding the incident, a reasonable person would have believed that he was not free to leave.”  
10 *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). “Whether an individual is in custody is  
11 determined by an objective standard – whether the individual reasonably believed he or she was free  
12 to go.” *United States v. Melvin*, 91 F.3d 1218, 1222 (9th Cir. 1996).

13 Whether a reasonable person in Plaintiff’s position would have felt free to go depends on  
14 issues of material fact for the trier of fact to decide. Defendant argues about things Plaintiff could  
15 and should have done to leave. However, considering the evidence in the light most favorable to the  
16 Plaintiff, Plaintiff was trapped. Defendants’ motion for summary judgment on the question of an  
17 underlying Fourth Amendment violation should be denied.

18 As for Plaintiff’s Fourteenth Amendment claim, she must show “the alleged conduct  
19 must ‘shock the conscience’ and ‘offend the community’s sense of fair play and decency.’”  
20 *Marsh v. Cnty. of San Diego*, 680 F.3d 1148, 1154 (9th Cir. 2012) (quoting *Rochin v. California*,  
21 342 U.S. 165, 172–73 (1952)). In the Ninth Circuit, the question of whether conduct “shocks the  
22 conscience” may be decided by the judge, as a matter of law, or by the jury, as a question of fact.  
23 *Roberts v. Bell*, 281 F. Supp. 3d 1074, 1080 (D. Mont. 2018), *collecting cases and comparing*  
24 *Marsh*, 680 F.3d at 1155, *with A.D. v. Cal. Highway Patrol*, 712 F.3d 446 (9th Cir. 2013).

1 Although there is no “calibrated yard stick” to determine “what is conscience shocking,” *Cnty. of*  
2 *Sacramento v. Lewis*, 523 U.S. 883, 847 (1998), the test is objective and “applied to the  
3 circumstances of the particular case,” *Roberts*, 281 F. Supp. 3d at 1078 (citing *Lewis*, 523 U.S. at  
4 849 (Kennedy, J., concurring)).

5 Taken in the light most favorable to the Plaintiff, Plaintiff was locked in a room for hours  
6 without means to escape with a student who was known to be violent, which is arguably quite  
7 shocking. Resolution of this claim depends on what happened that day, to be determined by the  
8 jury. Defendants’ motion for summary judgment on the question of an underlying Fourteenth  
9 Amendment violation should be denied.

10 Finally, Defendants specifically move for summary judgment on Plaintiff’s failure-to-  
11 train claim, which should be granted.

12 To allege §1983 municipal liability based on a failure to train, Plaintiff must claim that:  
13 (1) the existing training is inadequate in relation to the tasks the officials must perform; (2) the  
14 failure to train amounts to deliberate indifference to the rights of persons with whom the officials  
15 come into contact; and (3) the inadequacy of the training actually caused the deprivation of the  
16 alleged constitutional right. *Merritt v. Cty of Los Angeles*, 875 F.2d 765, 770 (9th Cir. 1989).  
17 “Under this standard, [Plaintiff] must allege facts to show that the [Defendant] disregarded the  
18 known or obvious consequences that a particular omission in their training would cause  
19 [municipal] employees to violate citizens’ constitutional rights.” *Flores v. Cty. of Los Angeles*,  
20 758 F.3d 1154, 1159 (9th Cir. 2014).

21 To prevail on a failure-to-train claim, a Plaintiff must “establish that the ‘policy-of-  
22 inaction was the functional equivalent of a decision by the [municipality] itself to violate the  
23 Constitution.’” *Connick v. Thompson*, 563 U.S. 51, 72 (2011) (quoting *City of Canton, Ohio v.*  
24

1 *Harris*, 489 U.S. 378, 395 (1989)). To do so, a Plaintiff must generally demonstrate a pattern of  
2 similar constitutional violations that put the municipality on notice of the need for training. *Id.*

3 Plaintiff asserts that her failure-to-train claim should survive because “Plaintiff has  
4 sufficiently shown that Plaintiff was unreasonable seized in violation of her Fourth Amendment  
5 rights, so Defendants [sic] argument fails again.” Dkt. 66 at 16. Plaintiff, however, neither  
6 shows a pattern of similar constitutional violations, nor facts that demonstrate the need for  
7 additional training related to these particular circumstances was so obvious that the school  
8 district was deliberately indifferent to its need. Defendants’ motion for summary judgment on  
9 the claim of failure-to-train should be granted.

## 10 **2. FALSE IMPRISONMENT**

11 Defendants’ motion for summary judgment dismissal of Plaintiff’s false imprisonment  
12 should be denied because genuine issues of material fact remain.

13 “The gist of an action for false arrest or false imprisonment is the unlawful violation of a  
14 person’s right of personal liberty or the restraint of that person without legal authority: A person  
15 who is restrained or imprisoned when he is deprived of either liberty of movement or freedom to  
16 remain in the place of his lawful choice; and such restraint or imprisonment may be  
17 accomplished by physical force alone, or by threat of force, or by conduct reasonably implying  
18 that force will be used.” *Bender v. Seattle*, 99 Wash.2d 582, 591 (1983) (quoting *Kilcup v.*  
19 *McManus*, 64 Wash. 2d 771 (1964)).

20 Defendants argue that “there are insufficient facts to support [Plaintiff’s] false  
21 imprisonment claim.” Dkt. 55 at 15. Defendants cite an excerpt from a law enforcement  
22 investigation, which investigated but declined to bring criminal charges against the school and  
23 found “evidence indicates [Plaintiff] clearly knows she wasn’t locked in room 112 against her  
24

1 will and her allegation may qualify as a false report of a crime.” *Id.* This assessment, however,  
2 is not determinative. The Parties agree that Plaintiff was in the locked room for hours. Whether  
3 Plaintiff could have left is a question of fact. Because causation remains undetermined,  
4 Defendants’ motion for summary judgment on the issue of false imprisonment (Dkt. 55) should  
5 be denied.

6 **IV. ORDER**

7 Therefore, it is hereby **ORDERED** that:

- 8 • Plaintiff’s Motion for Partial Summary Judgment (Dkt. 52) is **DENIED**; and  
9 • Defendant’s Motion for Partial Summary Judgment (Dkt. 55) is **DENIED**.

10 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
11 to any party appearing *pro se* at said party’s last known address.

12 Dated this 1<sup>st</sup> day of December, 2020.

13 

14 ROBERT J. BRYAN  
15 United States District Judge