IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SYDNEY R. BATES	)	
	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No. N16C-12-235 FWW**
	)	
CAESAR RODNEY SCHOOL DISTRICT, CAESAR RODNEY HIGH SCHOOL, BOARD OF EDUCATION OF THE CAESAR RODNEY SCHOOL DISTRICT, RICHARD "DICKIE" HOWELL, II,	)	
	)	
Defendants.	)	

Submitted: August, 8, 2018
Decided: November 30, 2018

Upon Defendants Caesar Rodney School District, Board of Education of the Caesar Rodney School District, and Caesar Rodney High School's Motion for Summary Judgment
GRANTED.
Upon Plaintiff's Cross Motion for Summary Judgment
DENIED.

OPINION AND ORDER

Emily P. Laursen, Esquire and Lawrance Spiller Kimmel, Esquire, Kimmel, Carter, Roman, Peltz, & O'Neill, P.A., Plaza 273, 56 West Main Street, 4th Floor, Christiana, Delaware 19702, Attorneys for Plaintiffs.

David H. Williams, Esquire, James H. McMackin, III, Esquire, and Allyson Britton DiRocco, Esquire, Morris James LLP, 500 Delaware Avenue, Ste. 1500, P.O. Box 2306, Wilmington, Delaware 19899, Attorneys for Defendants.

WHARTON, J.

I. INTRODUCTION

The circumstances giving rise to this litigation are disturbing. Caesar Rodney High School teacher and head wrestling coach Richard "Dickie" Howell II ("Howell") engaged in a sexual relationship with then 17-year-old Sydney Bates ("Bates"), a student and volunteer wrestling team manager and teacher's aid for one of Howell's gym classes. At some point in the "relationship" Bates began developing romantic feelings for Howell who told her he did not want to be in a relationship. Bates became angry and threatened to send Howell to jail if he did not agree to be her boyfriend. On January 12, 2015, Bates told Howell that she was going to report him and informed the school's principal and assistant principal that she and Howell had been in a sexual relationship. Howell was arrested, pled guilty to the rape of Bates and is now incarcerated.

Bates brought suit against Caesar Rodney School District, Caesar Rodney High School, Board of Education of the Caesar Rodney School District (collectively "Caesar Rodney"), and Howell.[1] Bates alleges Caesar Rodney is vicariously liable through its agent, Howell, for Assault and Battery (Count I), Gross Negligence (Count II), Intentional Infliction of Emotional Distress (Count III), and Fraud (Count IV). Caesar Rodney moved for summary judgment, arguing that *respondeat*

[1] Bates was an adult when she brought this action, and, hence, the Court is not assigning her a pseudonym.

superior in Delaware was governed by § 228 of the Restatement (Second) of Agency. That section provides that an employee's conduct is within the scope of employment if it is of the kind he is employed to perform, it occurs within the authorized time and space limits, and it is motivated by a purpose to serve the master. Caesar Rodney argued that Howell was acting outside the scope of his employment in having sexual relations Bates so it was not liable under a *respondeat superior* liability theory. Additionally, Caesar Rodney sought summary judgment on Bates' gross negligence claim, arguing that the record is devoid of evidence to support that claim.

On June 26, 2018, while that motion was pending, the Delaware Supreme Court decided *Sherman v. State Dep't of Pub. Safety.* [2] *Sherman* shifted the *respondeat superior* landscape, holding that § 228 should operate within the context of its Restatement counterpart § 219. Section 219 provides that a master may be liable for torts of its servant acting outside the scope of employment if the conduct violated a non-delegable duty of that master, or if the servant was aided by the agency relation in accomplishing the tort. Relying on *Sherman,* Bates then moved for summary judgment herself. She argues that Caesar Rodney is liable under *respondeat superior* because Howell was aided in accomplishing the tort by the

[2] *See Sherman v. State Dep't of Pub. Safety*, 190 A.3d 148, 155 (Del. 2018).

existence of the teacher-student relationship, and because the school breached its non-delegable duty to protect students.

The two questions presented to the Court in this case are: 1) as a matter of first impression, whether § 219's exception to § 228 applies to teachers, and if so, whether it applies under the facts here; and 2) whether Caesar Rodney is entitled to summary judgment on Bates' gross negligence claim. The Court finds that § 219 does not apply, but even if it did apply to teachers generally, it does not apply under the facts of this case. Applying Super. Ct. Civ. R. 56(c) to Caesar Rodney's Motion for Summary Judgment, it is clear that no genuine dispute of material fact exists. With respect to the *respondeat superior* claims, Howell was acting outside the scope of his employment when he engaged in the sexual relationship with Bates. Therefore, Bates must rely on the § 219 exception. Because the Court finds that the § 219 exception does not apply to teachers or, if it does, to the specific facts of this case, Caesar Rodney is entitled to judgment as a matter of law on the assault and battery, and intentional infliction of emotional distress claims. Further, the Court finds that there is no evidence in the record that would support an allegation of gross negligence. Accordingly, Caesar Rodney's Motion for Summary Judgment is **GRANTED.** Bates' Cross Motion for Summary Judgment is **DENIED.**

II. FACTUAL AND PROCEDURAL CONTEXT

The Caesar Rodney School District is a political subdivision of the State of Delaware created pursuant to 14 *Del. C.* § 1001, et seq.[3] The District is comprised of 12 schools, including one high school, Caesar Rodney High School ("CRHS").[4] Howell was hired in 1991 and was employed at CRHS as a physical education teacher and head wrestling coach.[5] Bates was a student at CRHS from August 2011 until she graduated in May of 2015.[6]

Bates and Howell met when Bates was a student in Howell's physical education class in the summer of 2012.[7] There, Howell seemed to take an interest in Bates.[8] He talked to her more often than other students, told her jokes, and tried to be her friend more than her teacher.[9] After the summer gym class, Bates volunteered to be a wrestling team manager for the upcoming 2012-2013 season—a role she continued in 2013-14 and 2014-15.[10] She would also become Howell's teacher's aide in one of his physical education classes in 2014-2015.[11]

---

[3] Pl.'s Ans. Br. Mot. Summ. J., D.I. 65 at 2.
[4] Defs.' Opening Br. Mot. Summ. J., D.I. 62 at 2.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.* at App. A33-A34.
[9] Defs.' Opening Br. Mot. Summ. J., D.I. 62 at 2.
[10] *Id.* See also App. A26, A34, A35, A51.
[11] *Id.*

As a wrestling manager Bates and Howell's relationship blossomed. At wrestling events Bates was given favorable treatment by Howell; he would buy her lunch, food, or candy, talk to her personally, and allow her to pick which matches or tournaments she wanted to attend.[12] Howell and Bates also obtained one another's cell phone numbers through the wrestling team phone tree.[13] The two exchanged text messages beginning in March/April 2014 and would text frequently.[14] Bates initiated the exchange of inappropriate text messages, which came to include explicit photographs as well as requests for sexual favors.[15]

Bates communicated to Howell that she had feelings for him and believed he felt the same way about her.[16] Howell was hesitant because she was a student, but "gave in."[17] Their sexual relationship began in March or April of 2014 and continued until July of 2014.[18] They reinitiated their sexual relationship in October or November of 2014, and it lasted until approximately January 2015.[19]

---

[12] Pl.'s Ans. Br. Mot. Summ. J., D.I. 65 at 2. See also Defs.' Opening Br. Mot. Summ. J., D.I. 62 at App. A34.
[13] Pl.'s Ans. Br. Mot. Summ. J., D.I. 65 at 3.
[14] *Id.*
[15] *Id.* See also Defs.' Opening Br. Mot. Summ. J., D.I. 62 at 2.
[16] Defs.' Opening Br. Mot. Summ. J., D.I. 62 at 2.
[17] *Id.*
[18] *Id.* at 2-3.
[19] *Id.*

Howell and Bates had sexual intercourse on multiple occasions and in various locations.[20] They engaged in sexual intercourse in Howell's home.[21] They engaged in sexual intercourse at the house of another Caesar Rodney teacher.[22] They also engaged in sexual intercourse at CRHS.[23] As a coach and physical education teacher, Howell had access to the wrestling and equipment rooms—which managers and other personnel did not.[24] There Bates and Howell would meet before classes began at 8 a.m., after Howell was finished teaching summer gym class, and before/after his wrestling club team practices.[25]

In November 2014, Bates began developing romantic feelings for Howell.[26] Howell, however, did not want to be in a relationship with her because she was a student and underage.[27] Bates became upset that Howell declined to progress their relationship and failed to give her the public attention she believed she deserved.[28] Around December 27, 2014 Bates exchanged text messages with Howell threatening to send him to jail if he did not agree to be her boyfriend.[29] The morning of January

---

[20] Pl.'s Ans. Br. Mot. Summ. J., D.I. 65 at 3.
[21] Defs.' Opening Br. Mot. Summ. J., D.I. 62 at 3.
[22] Pl.'s Ans. Br. Mot. Summ. J., D.I. 65 at 3.
[23] Defs.' Opening Br. Mot. Summ. J., D.I. 62 at 3.
[24] Pl.'s Ans. Br. Mot. Summ. J., D.I. 65 at 4.
[25] *Id.* See also Defs.' Opening Br. Mot. Summ. J., D.I. 62 at 3.
[26] *Id.*
[27] *Id.*
[28] Pl.'s Ans. Br. Mot. Summ. J., D.I. 65 at App. A41, A49, A54.
[29] Defs.' Opening Br. Mot. Summ. J., D.I. 62 at 3.

12, 2015 Bates visited Howell at his office and told him that she was going to report him.[30] Later that morning, Bates went to the administrative offices of CRHS and reported to Principal Kijowski and Assistant Principal Daniel Lopez that she and Howell had been in a sexual relationship.[31] Howell was sent home immediately, instructed not to return to CRHS, and placed on administrative leave pending the outcome of the investigation.[32] He subsequently resigned from his employment in lieu of termination.[33] Howell was arrested, pled guilty to the rape of Bates, and is now serving a prison sentence.[34]

Bates brought suit on December 17, 2017.[35] In her Complaint, Bates alleged that Caesar Rodney was liable for Assault and Battery (Count I), Gross Negligence (Count II), Intentional Infliction of Emotional Distress (Count III), and Fraud (IV).[36] Caesar Rodney successfully moved to dismiss the fraud claim on May 30, 2017.[37] After taking discovery, Caesar Rodney moved for summary judgment on March 29, 2018.[38] Bates filed her answering brief in opposition on April 30th.[39] Caesar Rodney

---

[30] *Id.*
[31] *Id.* at 3-4.
[32] *Id.* at 4.
[33] *Id.*
[34] *Id.*
[35] D.I. 1.
[36] *Id.*
[37] D.I. 32.
[38] D.I. 61, 62.
[39] D.I. 65.

replied on May 18th.[40] The Court then scheduled argument for August 9th.[41] After *Sherman* was decided in June, the parties requested supplemental briefing in light of *Sherman,* with the parties agreeing, and the Court permitting, the supplemental briefing to encompass Bates' cross-motion for summary judgment.

III. STANDARD OF REVIEW

Super. Ct. Civ. R. 56(c) provides that summary judgment is appropriate where there is "no genuine issue as to any material fact…and the moving party is entitled to a judgment as a matter of law."[42] The moving party initially bears the burden of establishing both of these elements; if there is such a showing, the burden shifts to the non-moving party to show that there are material issues of fact for resolution by the ultimate fact-finder.[43] The Court considers the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" in determining whether to grant summary judgment.[44] Summary judgment will be appropriate only when, upon viewing all of the evidence in the light most favorable to the non-moving party, the Court finds that there is no genuine issue of material fact.[45] When material facts are in dispute, or "it seems desirable to inquire more

---

[40] D.I. 66.
[41] D.I. 68.
[42] Del. Super. Ct. Civ. R. 56(c).
[43] *See, More v. Sizemore*, 405 A.2d 679, 680 (Del. 1979) (citations omitted).
[44] Del. Super. Ct. Civ. R. 56(c).
[45] *Singletarry v. Amer. Dept, Ins. Co.*, 2011 WL 607017 at *2 (Del. Super.) (citing *Gill v. Nationwide Mut. Inc. Co.*, 1994 WL 150902 at *2 (Del. Super)).

thoroughly into facts to clarify the application of the law to the circumstances, summary judgment will not be appropriate."[46] However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.[47]

Additionally, Super. Ct. Civ. R. 56(h) provides

> Where the parties have filed cross motions for summary judgment and have not presented argument to the Court that there is an issue of fact material to the disposition of either motion, the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.

If the Court finds that there are no genuine issues of material fact, summary judgment will be granted in favor of one of the parties.[48]

IV. DISCUSSION

At argument on the motions for summary judgment, the parties agreed that the matter was appropriate for summary judgment disposition on the *respondeat superior* claims. In other words, the parties agree that there is no genuine issue of material fact. The parties also agree that the sole issue before the Court on those claims is the applicability of §§ 228 and 219 in light of *Sherman*. Applying *Sherman*,

---

[46] *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69, (Del. 1962) (citing *Knapp v. Kinsey*, 249 F.2d 797 (6th Cir. 1957)).
[47] *Wooten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).
[48] *See Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 744-45 (Del. 1997).

three general points of contention emerge: 1) whether Howell was acting within the scope of employment; 2) whether teachers fall under the umbrella of the § 219 exception to § 228; and 3) if the § 219 exception applies to teachers generally, whether it applies on the facts of this case. In addition to the issues related to *Sherman,* Caesar Rodney seeks summary judgment on Bates gross negligence claim, alleging that the record is devoid of any evidence that it knew or should have known of Howell's conduct with Bates. Bates, on the other hand, contends that the record supports her allegation that Caesar Rodney knew or should have known of Howell's abuse and, therefore, was grossly negligent in its supervision of him. The Court address each of these issues in turn.

A. Howell Was Not Operating Within His § 228 Scope of Employment.

Respondeat superior liability claims in Delaware are governed by the Restatement (Second) of Agency. Bates fails to satisfy the scope of employment test articulated in § 228 of the Restatement, which assesses whether *respondeat superior* liability applies to an employer. "Conduct of a servant is within the scope of employment if, but only if:

(a) it is of the kind he is employed to perform;

(b) it occurs substantially within the authorized time and space limits;

(c) it is actuated, at least in part, by a purpose to serve the master, and

(d) if force is intentionally used by the servant against another, the use of force is not unexpectable by the master."[49]

Howell's tortious conduct was not within the scope of employment - clearly he was not employed to have sex with underage students, nor was this conduct motivated by a purpose to serve his employer. Because Bates is unable to satisfy the scope of employment test to prevail in her claim, *Sherman* dictates that the analysis proceed to § 219.

B. The § 219 Scope of Employment Exception Does Not Apply to Teachers.

In *Sherman*, the Supreme Court adopted § 219 of the Restatement, which provides that an employer can be held responsible under *respondeat superior* even if § 228 is not satisfied.[50] In that case, a Delaware State Police Officer coerced a shoplifting suspect into performing oral sex upon him in his police car by threatening her with the prospect of a weekend in jail. The officer was arrested on charges of sexual misconduct, bribery, and official misconduct. The victim brought suit against the State, seeking damages under *respondeat superior*. In reversing its own decision in an earlier appeal in that same case, the Court held that § 228 "should operate

---

[49] Restatement (Second) of Agency § 228. "Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master." *Id.*

[50] *See Sherman*, 190 A.3d 148, at 155.

within the context of its Restatement counterpart, § 219."[51] Section 219 articulates exceptions, which if applicable, exempt a plaintiff from having to prove that the tort occurred within the scope of employment.[52] The Court in *Sherman* emphasized two relevant subsections of § 219: § 219(2)(c), which provides for liability in cases in which an employee's conduct violated a non-delegable duty; and § 219(2)(d), which does the same for cases where an employee was aided in accomplishing the tort by the existence of the agency relation. Because the officer's position aided him in obtaining sexual favors, and the State owes a non-delegable duty to safeguard arrestees from harm while under arrest, the Court found the State liable for the officer's tortious conduct. Here, Bates contends that Caesar Rodney is liable for Howell's conduct under § 219 because teachers possess the requisite coercive authority necessary to trigger the exception, that Howell was aided in accomplishing the tort by the existence of the teacher-student relationship, and that the school breached a non-delegable duty to protect students from sexual abuse.

The Court disagrees, and holds that the § 219 exception does not apply to teacher-student relationships. In *Sherman*, The Supreme Court was careful to limit the exception, providing examples of its restrictions.

> "In finding that [§ 219] applies to this case, we take into account the critical difference between police officers who act to arrest people and

---

[51] *Id.*, 190 A.3d 148, at 154.
[52] *See id.*, 190 A.3d 148, at 158.

> employees of most businesses. However important plumbers, electricians, accountants, and myriad other providers of services are to their customers, none of them wield the potent coercive power entrusted to our police under our laws."[53]

Obviously, the Supreme Court was concerned with the coercive power vested in the tortfeasor by the agency relationship that aided him in accomplishing the tort. That coercive power is not possessed by most other employees in most other businesses as a result of their employment, and therefore does not aid those employees as tortfeasors. The Court believes that the coercive power of teachers falls much closer to that of plumbers, electricians, and accountants than to police officers. Like the latter occupations, a teacher does not "wield the potent coercive power" entrusted to police by Delaware law. Teachers are not issued handcuffs, deadly weapons or other less than lethal weapons, and may not arrest students and take them into custody by force.

Further, the fact that Howell came into contact with Bates because he was a teacher and she was a student does not mean that the agency relationship facilitated the commission of the tort. If the § 219(2)(d) exception were triggered by the mere fact that that the agency relationship placed the tortfeasor and the victim of the tort in contact with each other, then the exception would apply in nearly every case, eviscerating the general rule of § 228. Clearly, the Supreme Court did not intend

---

[53] *Sherman*, 190 A.3d 148, at 181.

this result because it took into account the difference between police officers and the employees of most businesses.

Bates also argues that §219(2)(c) supports *respondeat superior* liability for Caesar Rodney. That section provides for employer liability where an employee violates a non-delegable duty of the employer. Bates does not point the Court to any authority other than *Sherman* for her argument that school districts have a non-delegable duty to students so as to bring their employees within the scope of § 219(2)(c). The Court in *Sherman* found § 219(2)(c) applicable for reasons similar to why it found § 219(2)(d) applicable.[54] In other words, the Court in *Sherman* emphasized the authority of police officers to deprive arrestees of their liberty, and the fact that an arrestee is "wholly dependent on [her arresting officer] for her safety and survival, and ha[s] no ability to control her environment or protect herself from harm."[55] The coercive authority, and the duty derived from that authority of school districts are not comparable. So, the Court finds that § 219(2)(c) does not apply generally to school districts and their teacher employees.

To hold that school districts are responsible under § 219 generally for torts committed by teachers, either because the agency relationship aided in the accomplishment of the tort, or because the school districts owe a non-delegable duty

---

[54] *Id.* at 182.
[55] *Id.* at 182,183.

to their students, would have significant collateral ramifications. Such a shift in the law would "generate vicarious liability in virtually every case of student-teacher harassment."[56] The financial and policy implications of an expansion of liability are beyond this Court's ability to ascertain. Indeed, the Court believes expansion of § 219 liability to teachers generally, if it is to occur, is best accomplished by those better "situated to effectively examine the empirical data, hold public hearings, debate the social and economic issues implicated, and then decide…"[57] Similarly, this Court declines the invitation to impose a drastic change in law grounded solely on its unilateral view of what the suitable public policy should be and who should bear the risks of a teacher's unlawful conduct.

C. The § 219 Scope of Employment Exception Does Not Apply On the Facts of This Case.

Although the Court holds that the § 219 exception does not apply to teachers generally, even if it did, neither § 219(2)(d), nor 219(2)(c) would not apply on the facts of this case. As a coach and teacher, Howell possessed no coercive authority over Bates, a student and teacher's aide. He was not her teacher, nor did he control her grades. He could not have her suspended or expelled. Further, it is apparent that

---

[56] *See Doe v. Lago Vista Independent School District,* 106 F.3d 1223, 1226 (5th Cir. 1997), *aff'd sub nom. Gebser v. Lago Vista Independent School District,* 524 U.S. 274 (1998).

[57] *Shea v. Matassa*, 918 A.2d 1090, 1097 (Del. 2007); s*ee also Wright v. Moffitt*, 437 A.2d 554 (Del. 1981).

Bates did not feel coerced by Howell at all. Whereas a police officer can incarcerate a suspect, Howell's hypothetical tool of coercion was limited to the mere threat of a detention. Howell did not wield the legal authority emphasized by the *Sherman* Court to deprive Bates of her liberty or punish her refusal to comply, nor did his position as a coach aid him in accomplishing the sexual misconduct. Any authority Howell wielded over Bates pales in comparison to the characteristic coercive power of a police officer. If § 219 did apply on these facts, nearly any tort committed by an employee would invoke *respondeat superior* liability, and the exception would completely swallow the rule. The critical coercive element distinguished in *Sherman* would be rendered moot. Accordingly, even § 219 were applicable to include liability for teachers, Caesar Rodney still would not be liable for Howell's tort.

D. There is No Evidence That Caesar Rodney Was Grossly Negligent.

Bates has alleged that Caesar Rodney acted with gross negligence in its supervision of Howell by: 1) failing to implement policies and procedures regarding sexual abuse and to properly train its teachers and staff as to detecting signs of suspected abuse; and 2) failing to properly supervise or monitor Howell's conduct with female students.[58] Bates understands that she must allege that Caesar Rodney

[58] Pl's Ans. Br. Mot. Summ. J., D.I. 65 at 23-27.

acted with gross negligence in order to avoid the immunity conferred to political subdivisions by the Delaware State Tort Claims Act for mere negligence.[59]

As articulated in *Doe v. Indian River Sch. Dist.*:

> An employer is liable for negligent hiring or supervision where the employer is negligent in giving improper or ambiguous orders or in failing to make proper regulations, or in the employment of improper persons involving risk of harm to others, or in the supervision of the employee's activity. The deciding factor is whether the employer had or should have knowledge of the necessity to exercise control over its employee. Thus, … the basis for liability rests upon whether it was foreseeable that the employee would engage in the type of conduct that caused the injury.[60]

Obviously, establishing gross negligence presents a more difficult task for Bates than proving mere negligence. "Under Delaware law, gross negligence is a higher level of negligence representing an extreme departure from the ordinary care standard of care."[61] "A person acts wantonly when 'with no intent to cause harm,' she 'performs an act so unreasonable and dangerous' that the person knows or should have known that 'there is an eminent likelihood of harm which can result.'[62]

---

[59] *See* 10 *Del. C.* §§ 4001-4005.
[60] 2012 WL 1980562, at *4-5 (Del. Super. Ct. Apr. 11, 2012)
[61] *Thomas v. Bd. of Educ. of Brandywine Sch. Dist.,* 759 F. Supp. 2d 477, 501-02 (D.Del. 2010); *See also Hecksher v. Fairwinds Baptist Church, Inc.,* 115 A.2d 1187, 1199 (Del. 2015).
[62] *Id. (citing Hughes ex rel. Hughes v. Christiana Sch. Dist.,* 2008 WL 73710, at *4 (Del. Super. Ct. Jan. 7, 2008), *aff'd sub nom. Hughes ex rel. Hughes v. Christiana Sch. Dist.,* 950 A.2d 659 (Del. 2008)).

As factual support for her contention that Caesar Rodney was grossly negligent, Bates cites deposition testimony that teachers were aware that they had a duty to report abuse, but were not trained in detecting signs of abuse.[63] With respect to Howell in particular, she also cites two prior incidents of Howell's inappropriate conduct with female students as evidence Caesar Rodney failed to properly supervise or monitor Howell.[64] The first incident involved Howell messaging a female student on an online dating website and the second involved Howell touching a female student's forehead and tugging on her hair.

Caesar Rodney responds with testimony from the principal that she observed Howell's interactions with students to be appropriate, the gym to be appropriately monitored, and Howell to be an effective teacher.[65] She monitored and observed the physical education classes on a weekly basis, and assistant principals also monitored hallways and classrooms.[66] A female physical education teacher who taught classes with Howell six periods per day for approximately six hours per day since 2010 characterized Howell's interactions with students as professional, and never saw Howell and Bates interacting.[67] Other teachers and coaches who worked closely with Howell on a daily basis, including coach/manager interactions Howell had with

---

[63] Pl.'s Ans. Br. Mot. Summ. J., D.I. 65 at 24.
[64] *Id.* at 24.
[65] Defs.' Op. Br. Mot. Summ. J. at 20.
[66] *Id.*
[67] *Id.*

Bates never saw anything untoward.[68] Regarding the two incidents of inappropriate conduct with female students, Caesar Rodney points out that the first involved Howell admonishing the student that she was too young to be on the Christian Mingle dating website, and the second involved Howell pulling a different student's ponytail when she and another student did not move when he told them to move, and touching that student's forehead during gym class to see if she was sweating.[69] Howell was reprimanded for his conduct.[70]

Preliminarily, the Court does not find that the parties divergent views as to what the above facts establish with respect to gross negligence represent a genuine issue of material fact. Indeed, it is the import of the same facts, rather than the existence of conflicting facts, that is at issue. Viewing the evidence in the light most favorable to Bates, the Court finds that summary judgment is appropriate in favor of Caesar Rodney because the facts alleged by Bates cannot establish gross negligence. Specifically, the training teachers were afforded and the monitoring and supervision of Howell did not create a situation that was so unreasonable and dangerous that Caesar Rodney knew or should have known that there was a likelihood that Howell would engage in a sexual relationship with Bates. Clearly, Howell knew it was illegal to have a sexual relationship with a student. No one who observed him

---

[68] *Id.* at 20-22.
[69] *Id.* at 24.
[70] *Id.*

virtually continuously reported any inkling of the relationship, perhaps in part because of the pains Howell and Bates took to conceal their relationship, and perhaps because many of their assignations occurred off campus. In the Court's view, the assumption that signs of the relationship would have been identified if only training in detection of those signs had been provided, assumes, without evidentiary support, that there was signs to detect.

Finally, the incidents cited by Bates of Howell engaging in inappropriate conduct with female students are insufficient to put Caesar Rodney of notice that Howell was likely to engage in a sexual relationship with a student. First, they are not sexual in nature. Second, they are orders of magnitude less concerning than the conduct in either *Doe* (staff member told the Superintendent and two Board members that she felt the principal could engage in relationship with a student, school officials were aware the principal was text messaging with students, assistant principals were aware that female students were adjusting their clothing to request favors from the principal, and a number of staff members witnessed girls spending inappropriate amounts of time in the principal's office)[71] or *Thomas* (supervisors had knowledge teacher was sitting on students' laps, hugging and kissing students on the cheek, driving students home in a personal vehicle, even after being told not to so, instant

[71] *Doe* at *6.

messaging students late at night, socializing with students on weekends, and calling students "boo" or "baby.")[72]

V. CONCLUSION

Therefore, for the reasons set forth above, and because there are no issues of material fact and Caesar Rodney is entitled to judgment as a matter of law, Defendant Caesar Rodney's Motion for Summary Judgment is **GRANTED.** Plaintiff Sidney Bates' Cross Motion for Summary Judgment is **DENIED.**

IT IS SO ORDERED.

Ferris W. Wharton, Judge

[72] *Thomas* at 502.