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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AVIANNA MORENO and ANDREA
CANTU,

Plaintiffs,

v.

YAKIMA SCHOOL DISTRICT NO.
7, JOHN R. IRION, in his individual
capacity, CECILIA MAHRE, in her
individual capacity, ROBERT
STANLEY, in his individual capacity,

Defendants.

NO. 1:20-CV-3002-TOR

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT is Defendants' Motion for Summary Judgment.

ECF No. 60. Plaintiffs did not file a response. Plaintiffs were granted extensions of time to respond to the motion. ECF Nos. 69, 72, 75, and 80. On December 8, 2022, the Court ordered

Before the Court is Plaintiffs' Fifth Motion for Continuance to respond to the motion for summary judgment that has been pending since 9/6/2022. The Court previously vacated the scheduling order in this case because of Plaintiffs' delay. ECF

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT ~ 1

1 No. 69. Defendants oppose any more continuances. Because
2 Defendants deserve a timely disposition of this case and the
3 Court must maintain and control its docket, this is the last
4 continuance the Court will grant. Plaintiffs' response to the
Motion for Summary Judgment [ECF No. 60] is due on or
before December 20, 2022. The optional Reply is due by
January 6, 2023.

5 ECF No. 80. Subsequently, Plaintiffs filed two additional motions for continuance
6 seeking an extension until December 22, 2022 and then seeking an extension until
7 December 27, 2022. ECF Nos. 81 and 82. However, those dates passed and
8 Plaintiffs never filed any response.

9 DISCUSSION

10 The Court may grant summary judgment in favor of a moving party who
11 demonstrates “that there is no genuine dispute as to any material fact and that the
12 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In ruling
13 on a motion for summary judgment, the court must only consider admissible
14 evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002). The
15 party moving for summary judgment bears the initial burden of showing the
16 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
17 317, 323 (1986). The burden then shifts to the non-moving party to identify
18 specific facts showing there is a genuine issue of material fact. See *Anderson v.*
19 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla
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1 of evidence in support of the plaintiff’s position will be insufficient; there must be
2 evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

3 For purposes of summary judgment, a fact is “material” if it might affect the
4 outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is
5 “genuine” only where the evidence is such that a reasonable jury could find in
6 favor of the non-moving party. *Id.* The Court views the facts, and all rational
7 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*
8 *Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted
9 “against a party who fails to make a showing sufficient to establish the existence of
10 an element essential to that party’s case, and on which that party will bear the
11 burden of proof at trial.” *Celotex*, 477 U.S. at 322.

12 As Plaintiffs failed to present evidence disputing Defendants’ statement of
13 material facts, ECF No. 61, the Court considers these facts undisputed. Fed. R.
14 Civ. P. 56(e)(2).

15 **A. Title IX Claim**

16 For the Yakima School District to be held liable under Title IX for peer-on-
17 peer harassment, a plaintiff must demonstrate (1) the school was deliberately
18 indifferent to sexual harassment; (2) of which it had actual knowledge; and (3) the
19 sexual harassment was so severe, pervasive, and objectively offensive that it can be
20 said to have deprived the plaintiff of access to the educational opportunities or

1 benefits provided by the school. *See Davis ex rel. LaShonda D. v. Monroe County*
2 *Bd. of Educ.*, 526 U.S. 629, 650 (1999).

3 Plaintiffs failed to come forward with evidence to support the elements of
4 this cause of action. Based on the undisputed evidence, Defendants were not
5 deliberately indifferent to any alleged sexual harassment nor did Defendants act or
6 fail to act in a way that caused Plaintiff Moreno's alleged injuries where the
7 District investigated and responded to every complaint made by Plaintiffs, which
8 involved third-party investigators and disciplinary action against the aggressors.
9 Therefore, this claim is dismissed.

10 **B. Title VI, Section 504, and ADA Claims**

11 Plaintiffs failed to provide evidence supporting their racial and disability
12 discrimination claims. Based on the undisputed evidence, Defendants did not
13 intentionally discriminate or demonstrate deliberate indifference to Plaintiffs'
14 claims based on race and disability. Therefore, these claims are dismissed.

15 **C. Washington Law Against Discrimination Claim**

16 Plaintiffs failed to provide evidence supporting their allegations based on
17 race, gender, and disability claims under Washington law. Based on the
18 undisputed evidence, Plaintiffs' state discrimination claims fail for the same reason
19 as the federal claims. Therefore, these claims are dismissed.

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1 **D. Claims 4, 5, and 6**

2 Plaintiffs previously agreed to the dismissal of these claims and they were
3 dismissed by the Court. ECF No. 56.

4 **E. Negligent Infliction of Emotional Distress Claim**

5 To establish a negligent infliction of emotional distress claim, a plaintiff
6 must show (1) the emotional distress is within the scope of foreseeable harm of the
7 negligent conduct, (2) the plaintiff reasonably reacted given the circumstances, and
8 (3) the distress is confirmed by objective symptomatology. *Bylsma v. Burger King*
9 *Corp.*, 176 Wash. 2d 555, 560 (2013).

10 Plaintiffs failed to provide evidence supporting their allegations of negligent
11 infliction of emotional distress. Based on the undisputed evidence, Defendants did
12 not act negligently in causing the alleged emotional distress nor is any distress
13 shown by objective symptomatology. Therefore, this claim is dismissed.

14 **F. Tort of Outrage**

15 To establish a tort of outrage claim, a plaintiff must show (1) extreme and
16 outrageous conduct, (2) intentional or reckless infliction of emotional distress, and
17 (3) severe emotional distress on the part of the plaintiff. *Reid v. Pierce Cnty.*, 136
18 Wash. 2d 195, 202 (1998) (citations omitted).

19 Plaintiffs failed to provide evidence supporting their allegation of outrage.
20 Based on the undisputed evidence, Defendants did not intentionally or recklessly

1 engage in extreme or outrageous conduct that caused Plaintiffs severe emotional
2 distress. Therefore, this claim is dismissed.

3 **G. *Respondeat Superior* Claim**

4 Plaintiffs claim that the School District is liable for all torts committed by its
5 employees. However, Plaintiffs failed to provide evidence supporting this broad
6 allegation. The School District cannot be held liable where there are no genuine
7 issues of material fact that any torts were committed. Therefore, this claim is
8 dismissed.

9 **H. Injury to Parent-Child Relationship Claim**

10 The elements of a claim for tortious interference with a parent-child
11 relationship are (1) the existence of a family relationship, (2) a wrongful
12 interference with the relationship by a third person, (3) an intention on the part of
13 the third person that such wrongful interference results in a loss of affection or
14 family association, (4) a causal connection between the third person's conduct and
15 the loss of affection, and (5) that such conduct resulted in damages. *Grange Ins.*
16 *Ass'n v. Roberts*, 179 Wash. App. 739, 765 92 (2013) (citations omitted). To prove
17 intent, the plaintiff must prove "malice—that is, an intent that the plaintiff lose the
18 affection of his or her family. *See id.*

1 Plaintiffs failed to provide evidence supporting this claim. Based on the
2 undisputed evidence, Defendants did not intentionally and wrongfully interfere in
3 any familial relationship. Therefore, this claim is dismissed.

4 **I. Defamation Claim**

5 To establish defamation, a plaintiff must show: (1) a false statement; (2) that
6 was unprivileged; (3) the defendant was at fault, and (4) the statement proximately
7 caused damages. *Alpine Indus. Computers, Inc. v. Cowles Pub. Co.*, 114 Wash.
8 App. 371, 378 (2002).

9 Plaintiffs' allegations of defamation are based on alleged false statements of
10 former Defendant McKenna at School Board Meetings on September 18, 2018 and
11 October 16, 2018. Defendant McKenna was dismissed from this suit with
12 prejudice. ECF No. 30. Plaintiffs failed to provide evidence supporting this claim.
13 Based on the undisputed evidence, Defendants did not publish false statements that
14 caused injury. Additionally, the board meeting minutes are privileged as a public
15 official proceeding record. *Alpine*, 114 Wash. App. at 385. Therefore, this claim
16 is dismissed.

17 **J. Civil Conspiracy Claim**

18 Because there are no actionable causes of action, the claim of a civil
19 conspiracy also fails. *W.G. Platts, Inc. v. Platts*, 73 Wash. 2d 434, 439 (1968).
20 Therefore, this claim is dismissed.

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

2 1. Defendants' Motion for Summary Judgment, ECF No. 60, is

3 **GRANTED.** Plaintiffs' claims are **DISMISSED with prejudice.**

4 2. Plaintiffs' Motions to Continue, ECF Nos. 81 and 82, are **DENIED as**
5 **moot.**

6 The District Court Executive is directed to enter this Order and Judgment
7 accordingly, furnish copies to counsel, and **CLOSE** the file.

8 DATED December 28, 2022.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge