[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-10815

D.C. Docket No. 2:15-cv-00924-WKW-SRW

ARVILLA STINSON,
as next friend of K.R., a minor,

Plaintiff-Appellant,

versus

TRAMENE MAYE, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Alabama

(August 25, 2020)

Before ROSENBAUM, ED CARNES, and BOGGS,* Circuit Judges.

PER CURIAM:

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* The Honorable Danny J. Boggs, United States Circuit Judge for the Sixth Circuit, sitting by designation.

This case concerns the tragic gang raping of K.R.,[1] who at the time was a student at Southlawn Middle School in Montgomery. The gang rape, perpetrated by three boys who were also Southlawn students, occurred on the edge of school property, shortly after school ended, while school employees remained on duty. According to the complaint, Defendant Tramene Maye, the assistant principal at Southlawn, saw the three boys grab K.R. and drag her into an abandoned building, where they raped her. Although Maye saw this occur and K.R.'s stepsister further alerted him to the ongoing violence, Maye did nothing. Nor did Southlawn have a policy specifically addressing student-on-student sexual harassment.

When Rafiq Vaughn, the principal of Southlawn at the time these events occurred, learned of them from K.R.'s mother, he called law enforcement. Allegedly in connection with that phone call, law enforcement deemed the rape "consensual sex" and took no further action. While K.R. and her mother were in Vaughn's office after the rape, Vaughn allegedly made some entirely inappropriate comments to K.R. and later encouraged her to transfer out of Southlawn. In contrast, not one thing was done with respect to the boys involved. They stayed at Southlawn and were not

[1] This case requires us to review an order granting a motion to dismiss for failure to state a claim under Rule 12(b)(6), Fed. R. Civ. P. So for purposes of reviewing the order dismissing the case, we set forth and discuss the allegations in the complaint as though they are true, viewing them in the light most favorable to Stinson. *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1288 (11th Cir. 2010). They may or may not prove to be the actual facts.

disciplined or investigated by the school in any way—even when Vaughn learned that all the students were saying that the boys had "run a train"[2] on K.R.

K.R.'s mother, Arvilla Stinson, sued the Montgomery County Board of Education (the "Board"), alleging violations of Title IX, 20 U.S.C. § 1681. She also sued Maye and Vaughn, asserting Alabama common-law claims. The Board moved to dismiss Stinson's Title IX claim, and the district court granted the motion. Since only Stinson's state-law claims remained, the district court dismissed the case to allow Stinson to pursue them in state court.

On appeal, Stinson challenges the district court's dismissal of her Title IX claim against the Board. Her complaint focuses solely on the events following the gang rape—that is, on Vaughn's response to K.R.'s report of having been raped. After careful review, we conclude that, as alleged in Stinson's complaint, Vaughn's response (on behalf of the Board) to K.R.'s gang rape violated Title IX. We therefore reverse the ruling of the district court dismissing Stinson's Title IX claim and remand for further proceedings.

I.

A. The Board's Policies

[2] To "run a train" means to gang rape. *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1288 n.3 (11th Cir. 2007).

The Board had a Handbook that contained grievance procedures for Title IX claims. That Handbook, though, did not specifically address Title IX grievances relating to student-on-student harassment.

It did, however, have a section concerning bullying and harassment among students. Under the Handbook, "harassment" included, among other things, subjecting another student to physical contact. According to the Handbook, any Board employee who was aware of bullying or harassment was required to promptly notify the school principal or other designated person by delivering to the principal or other designated person a completed Bullying/Harassment Complaint Form.

The Handbook then required the principal or his designee to accept and investigate all reports of harassment or bullying. Under the Handbook, except for good cause, any investigation was required to be completed within five business days after the administrator or designated investigator received notice of the complaint. Upon completion of the investigation, the Handbook mandated that the principal or designated investigator provide a written report to the Chief Academic Officer. In particular, the written investigation report was to include a determination of whether the allegations were factual, whether a policy violation occurred, and any proposed discipline.

The Handbook provided that verified acts of bullying or harassment would result in disciplinary action, corrective action, or both, reasonably calculated to end

the identified conduct, deter future misconduct, and protect the complainant and other similarly situated individuals. In accordance with the Handbook, forcible rape was "Sexual Battery," which was a Class D offense punishable by Proposal for Due Process/Expulsion.

B. The Gang Rape of K.R. and the Board's Response

On about October 23, 2014, K.R. was leaving Southlawn's campus at the end of the school day. Suddenly, a group of three boys grabbed her and dragged her into an abandoned building on the perimeter of the school's property.

As this was happening, K.R.'s stepsister, who had been walking with K.R., pointed out to Assistant Principal Maye what was going on. Though Maye saw the three boys grabbing and dragging K.R., he did nothing to stop the boys. Instead, he told K.R.'s stepsister to just "go on about her business." Maye took no further action; he did not even report the events to Principal Vaughn. Meanwhile, two of the boys gang raped K.R. while the third kept a lookout.

Stinson, who was on campus at the time participating in a parent-teacher meeting, soon learned of the gang-raping. She immediately went to Vaughn's office to report the episode. During Stinson's meeting with Vaughn, Vaughn "exhibited little concern for K.R." and instead focused his attention on trying to convince Stinson to refrain from calling the media. Then he told K.R. that she needed to "love her body" and that K.R. had more of an adult's body, similar to Vaughn's girlfriend.

Nevertheless, Vaughn did call the local police about the incident. For their part, the local police deemed the rape "consensual sex" and took no further action.

Following the meeting with Vaughn, Stinson took K.R. to the hospital for treatment. Hospital personnel concluded that K.R. had "clearly been raped" so they called the police and notified Child Protective Services and the Alabama Department of Human Resources.

K.R. fell into a deep depression. Because of the gang rape, K.R. received psychological treatment. She also missed seven to eight days of school. During this period, K.R. did not want to leave her home. No one from Southlawn or the Board contacted K.R. during her absence from school. Nor did the Board offer counseling to K.R. or take any other steps to assist her in dealing with her grief after the gang rape.

Vaughn did not complete any reports about the gang rape, did not conduct any investigation into the gang rape, and did not undertake any further actions relating to the gang rape, including disciplining the boys involved. And K.R. did not receive notice of Title IX or her right to make a grievance regarding the gang rape. The Board did not change any of its policies or provide any additional training to employees after these events.

About a week into K.R.'s absence from school, Stinson went to Southlawn to give K.R.'s doctor's note to the school and to pick up K.R.'s schoolwork. While

there, Stinson spoke with Vaughn about K.R.'s distress. Vaughn responded by suggesting that Stinson not permit K.R. to return to Southlawn because all the students were saying that the three boys had "run a train" on K.R.

So though the boys involved remained at Southlawn, K.R. transferred to a different school within the Board's school system. There, she had to deal with the stress of starting at a new school in the middle of the school year. Adding to that stress, other students at K.R.'s new school became aware of the gang rape through social media. They teased her about it. K.R. continues to take medication and receive treatment for mental-health trauma. Her grades have dropped, and her social life has declined. She also has become reluctant to leave her house and has had violent outbursts towards her younger siblings.

Meanwhile, at least as of the date Stinson filed her complaint, the Board had not changed any of its policies. Nor had it provided any additional training to staff following K.R.'s gang rape.

Based on these events, Stinson sued the Board, Vaughn, and Maye, alleging three counts. She set forth one federal claim under Title IX against only the Board (Count I). In Count II, she asserted a claim for "negligence/wantonness" against Maye in his individual and official capacities. And in Count III, she charged Vaughn in his individual and official capacities with the tort of "outrage (intentional/reckless infliction of emotional distress)." The Board moved to dismiss Count I, and the

district court granted the motion, dismissing the two state claims as well (though without prejudice, unlike with respect to Count I), to allow them to proceed in state court. On appeal, therefore, our sole focus is on Count I, the Title IX claim against the Board.

In her Title IX claim, Stinson alleged that "Vaughn, as principal of Southlawn Middle, is high enough on the chain of command to impute liability to [the Board] for purposes of Title [IX] liability." She made no allegations at all in her Title IX claim about Maye or about his failure to help K.R. Nor did she incorporate any allegations about Maye from any other parts of her complaint into the Title IX claim. Rather, Stinson alleged only that "Vaughn had the authority to initiate corrective action in response to K.R. being gang raped."

In particular, Stinson's Title IX claim asserted that the Board is liable for failing to do the following things: (1) "have a specific policy for addressing student-on-student grievances under Title IX framework"; (2) "make grievance procedures . . . known and available to the Plaintiff"; (3) "process the complaints of sexual assault and rape alleged by K.R. as mandated by Title IX"; (4) "notify K.R. that her complaints of sexual assault and rape were covered under Title IX and that she was afforded protection thereunder"; (5) "properly investigate K.R.'s allegations of sexual assault and gang rape"; (6) impose disciplinary measures or take remedial action against the individuals who raped K.R."; and (7) "reach a timely outcome of

the investigation (because there was *no* investigation) and their subsequent failure to make Plaintiff aware of [the] outcome." In addition, the claim alleged that the Board, "through Vaughn, violated Title IX by making statements regarding K.R.'s body and how she should 'love her body' after she was gang raped."

As relief, Stinson sought declaratory and injunctive relief, as well as damages.

The Board moved to dismiss Count I for failure to state a claim. In opposing the Board's motion, Stinson once again confirmed that her "Title IX allegations center not on the rape itself, but on the [Board's] deliberately indifferent response to K.R.'s rape." Stinson did not seek leave to amend her complaint if the district court found her complaint failed to state a claim under Count I.

As we have noted, the district court granted the Board's motion and dismissed Count I with prejudice. In concluding that Stinson's Title IX count failed to state a claim, the district court, consistent with Stinson's complaint and her opposition to the Board's motion to dismiss, considered only the Board's post-gang-rape conduct. Stinson now appeals.

II.

We review *de novo* a district court's order granting a motion to dismiss a complaint for failure to state a claim. *Echols v. Lawton*, 913 F.3d 1313, 1319 (11th Cir.), *cert. denied*, 139 S. Ct. 2678 (2019); *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003) (per curiam). In reviewing a ruling on a Rule 12(b)(6) motion, we "accept

the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff." *Echols*, 913 F.3d at 1319 (citation omitted). To defeat a motion to dismiss, a complaint must contain enough factual allegations that, accepted as true, "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

III.

Rule 8(a)(2), Fed. R. Civ. P., requires a complaint to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." The purpose of the "statement" is to "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (cleaned up). We have recognized that this rule aims to enable the responding party to identify the pleader's claim, frame a responsive pleading, and to permit the court to determine which facts are intended to support which claims. *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). Though Stinson is represented here, even when a plaintiff proceeds *pro se* and we therefore leniently review her pleadings, we cannot act "as *de facto* counsel for a party or . . . rewrite an otherwise deficient pleading in order to sustain an action." *GJR Invs., Inc. v. Cty. of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998), *overruled on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Here, Stinson's complaint and her opposition to the Board's motion to dismiss in the district court both rested her Title IX claim exclusively on the Board's action after K.R.'s gang rape. For that reason, the district court likewise evaluated Stinson's Title IX claim on the basis of only the Board's post-rape actions. Because Stinson's complaint did not provide notice to the Board or to the district court that she sought to include within her Title IX claim Maye's pre-rape actions (in addition to basing it on the Board's post-rape conduct), we likewise confine our assessment of Stinson's Title IX claim taking into account only the Board's response to the rape.

On appeal, Stinson asserts for the first time that her Title IX claim is also premised on the Board's (through Maye's) pre-rape conduct. But a complaint cannot be amended by the briefs on appeal. *Agnew v. NCAA*, 683 F.3d 328, 348 (7th Cir. 2012); *Gallagher v. City of Clayton*, 699 F.3d 1013, 1022 (8th Cir. 2012). And there is simply no way to read Stinson's Title IX claim as alleged to rest in part on Maye's actions.

IV.

Title IX guarantees, with exceptions not relevant here, that "[n]o 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." 20 U.S.C. § 1681(a). The Supreme Court has held that Title IX provides for an implied private right of action for which

money damages are available. *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 639 (1999).

Among others, student-on-student sexual harassment and sexual violence can constitute forms of discrimination for which a recipient of federal-education funding can be held liable under certain circumstances. *Davis*, 526 U.S. at 646-47. In particular, the Supreme Court has concluded that liability under Title IX may lie for a funding recipient that "subject[s] [its] students to discrimination where the recipient is deliberately indifferent to known acts of student-on-student sexual harassment and the harasser is under the school's disciplinary authority." *Id.* (internal quotation marks omitted).

Our case law establishes that a plaintiff seeking to make out a claim for student-on-student Title IX liability must show seven things[3]: (1) the defendant must be a recipient of federal education funding, *Hill v. Cundiff*, 797 F.3d 948, 970 (11th Cir. 2015); (2) an "appropriate person," meaning an official of the funding recipient who, "at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf," *Hill*, 797 at 970-71

[3] We have previously variously described a Title IX claim for student-on-student sexual harassment to have four elements, *see Hill v. Cundiff*, 797 F.3d 948, 970 n.11 (11th Cir. 2015) (describing *Hawkins v. Sarasota Cty. Sch. Bd.*, 322 F.3d 1279, 1285 (11th Cir. 2003), as identifying four elements of a Title IX student-on-student sexual-harassment claim), and five elements, *see Hill*, 797 F.3d at 970 & 970 n.11. Our discussions of the application of these elements, though, shows that however we may have counted them in the past, in fact, there are effectively seven elements of Title IX claim for student-on-student sexual harassment.

(quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998)), must have had (3) actual knowledge of the sexual harassment and discrimination the plaintiff suffered, *id.*; (4) the sexual harassment must have been "sufficiently 'severe, pervasive, and objectively offensive'" by Title IX standards, *id.* at 972 (quoting *Davis*, 526 U.S. at 651); (5) the funding recipient must have been deliberately indifferent to the sexual harassment and discrimination the plaintiff endured, *id.* at 973; (6) the funding recipient's actions must have caused the plaintiff to undergo sexual harassment or made the plaintiff more vulnerable to it or its effects, *see id.*; and (7) the funding recipient's deliberate indifference to the harassment and discrimination must have effectively barred the plaintiff's access to an educational opportunity or benefit, *id.* at 975.

Here, the allegations in the complaint satisfy all these elements.

First, the defendant must receive federal education funding for Title IX purposes. *Davis*, 526 U.S. at 639. Here, the complaint alleges that the Board is a public-school district. Therefore, it is a Title IX funding recipient. *See* https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/sex.html (last visited August 25, 2020) ("All public school districts are covered by Title IX because they receive some federal financial assistance and operate education programs.").

Second and third, an "appropriate person," meaning an official of the funding recipient who "at a minimum has authority to address the alleged discrimination and

to institute corrective measures on the recipient's behalf," must have had actual knowledge of the sexual harassment the plaintiff endured. *Hill*, 797 F.3d at 971 (quoting *Gebser*, 524 U.S. at 290). We have explained that an "appropriate person" is a school official who is "high enough up the chain-of-command that his acts constitute an official decision by the school district itself not to remedy the misconduct." *Id.* (citation omitted). Therefore, who qualifies as an "appropriate person" is a fact-specific inquiry that differs from school district to school district based on officials' varying roles. *Doe v. Sch. Bd. of Broward Cty.*, 604 F.3d 1248, 1256 (11th Cir. 2010). Nevertheless, we have previously noted that principals likely generally satisfy the standard. *Id*. After all, principals usually have the authority to "take corrective measures" to respond to allegations of student-on-student harassment. *Id.*; *see also*, *e.g.*, *Hill*, 797 F.3d at 971 (holding that the principal and two assistant principals were "appropriate persons").

Here, the parties do not dispute that Vaughn is an "appropriate person" for Title IX purposes. For good reason. The complaint alleges that Vaughn, as the principal of Southlawn, "was and is the highest-ranking school official at Southlawn . . . and is the first line of responsibility for ensuring that the students in his school are safe." In addition, it asserts that the Board's Handbook assigns school principals the responsibility to ensure that all reports of harassment or bullying are investigated.

The Board likewise concedes that Stinson supplied Vaughn with actual knowledge of the alleged gang rape of K.R. on the day it occurred. Again, the complaint requires this conclusion at the motion-to-dismiss stage. *See*, *e.g.*, ECF No. 33 at ¶ 40 (averring that Stinson went to Vaughn's office and reported the gang rape immediately after it occurred).

That brings us to the fourth element: whether the sexual harassment was "sufficiently 'severe, pervasive, and objectively offensive'" by Title IX standards. *Hill*, 797 F.3d at 972 (quoting *Davis*, 526 U.S. at 651). Sexual harassment satisfies this element when it is "so severe, pervasive, and objectively offensive, and . . . so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities." *Davis*, 526 U.S. at 651.

The alleged events here certainly satisfy this threshold. K.R., a Southlawn student, was grabbed and dragged by three other Southlawn students and then gang raped. Then, after that occurred, her own principal, to whom she reported the violence, exacerbated the situation, telling K.R. she had a woman's body like his girlfriend and that she should love her body. His sole remedial response was to call the police. But, according to the allegations of the complaint, Vaughn took no other action at all. He did not even speak with the boys involved—even after Southlawn students openly gossiped that the boys had "run a train" on K.R. Instead of doing

anything at all to address the boys' violence, he told K.R. to transfer to another school, thus engineering her denial of equal access to Southlawn's resources and opportunities. Indeed, what gang-rape victim would not have a problem with continuing to sit in class with three boys who gang raped her with impunity?

The facts here "differ markedly from the rarely actionable, theoretical single incident mentioned in *Davis*." *Hill*, 797 F.3d at 973 (quoting *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1298 (11th Cir. 2007) (internal quotation marks omitted)). Even setting aside Maye's failure to stop the gang rape (since Stinson does not seek in her Title IX claim to hold the Board liable for that), the series of events that followed were several, lasted over an extended period, and only aggravated the effects of the gang rape. As we have noted, those alleged actions (and inactions) included Vaughn's inappropriate remarks to K.R., his failure to follow up at all with K.R., his failure to advise K.R. of her Title IX rights, his failure to investigate the incident or even speak with the boys involved (even when he knew the rest of the Southlawn students were saying that the boys had "run a train" on K.R.), his failure to discipline the boys involved, and his suggestion that K.R. leave Southlawn.

As for the fifth element of a Title IX claim—whether the funding recipient was deliberately indifferent to the sexual harassment and discrimination the plaintiff endured—the complaint alleges that certain events happened in a certain sequence

that is significant for this element of the claim. First, Vaughn showed little concern for K.R. and "pleaded with Stinson to refrain from calling the media." Then Vaughn told K.R. that she needed to "'love her body'" and that she "had more of an adult body similar to [his] girlfriend's body." Then Vaughn "called the local police, who deemed the rape 'consensual sex' and took no further action." After that, Stinson took K.R. to the hospital where medical personnel determined that K.R. had been raped and notified the authorities.

The complaint does not indicate how long the police took to arrive at the conclusion of "consensual sex" or what investigation, if any, led them to that conclusion. We do know that the hospital concluded that K.R. had been raped and reported that conclusion to the police. Given the circumstances, and given that there is no allegation as to any investigation or any period of time before Vaughn was informed of law enforcement's conclusion of consensual sex, we can, at this stage, draw an inference favorable to Stinson that little or no investigation was done by police and Vaughn knew that.

A further reasonable inference from the allegations about the sequence of events is that Vaughn's phone call to police led to the determination the police made that the rape was "consensual sex" and therefore no further action was needed. Vaughn certainly made no investigation himself and apparently he did not inquire as to what investigation was done by police.

Despite K.R.'s very serious allegations against the boys and the lack of information as to any police investigation following Vaughn's phone call, the Board did nothing further. Of course, Stinson herself could have reported the attack to the police, and the hospital actually did. In fact, the hospital did more than the Board. After concluding itself that K.R. "had clearly been raped," the hospital called not only the police but also Child Protective Services and Alabama's Department of Human Resources.

But Vaughn didn't. Under different circumstances, a school official may be entitled to rely on law enforcement's investigation. *See I.F. v. Lewisville Indep. Sch. Dist.*, 915 F.3d 360, 378 (5th Cir. 2019) (concluding that where the school district "promptly reported" to the police that a student was being cyberbullied, and the police department "began an investigation" that resulted in a student's being charged with criminal harassment and thus, the school's three-day suspension of him and its assignment of him to the Disciplinary Alternative Education Program for thirty days, there was no evidence of deliberate indifference). But those are not the allegations in Stinson's complaint. Instead, it alleges that Vaughn only made a phone call to police that allegedly led to their conclusion that something happened to K.R. that should be deemed "consensual sex." Vaughn then undertook no further action or inquiry.

Based on those allegations, Vaughn's reliance on that "consensual sex" conclusion is clearly unreasonable. Title IX "does not require school districts to simply do *something* in response to sexual harassment; rather, they must respond in a manner that is not 'clearly unreasonable in light of the *known* circumstances.'" *Doe*, 604 F.3d at 1263 (quoting *Davis*, 526 U.S. at 648 (emphasis added by *Doe*)). Vaughn's response here—making a single phone call to law enforcement—could have been less only if he did absolutely nothing.

Vaughn did not speak at all with the boys involved, even though Maye had seen the three boys grab and drag K.R. into the abandoned building before the alleged gang rape—actions that in and of themselves (and even without consideration of the gang rape) are violent and sexually harassing. Nor did the Board itself undertake or even begin any kind of investigation at all.

Worse yet, Vaughn exacerbated the situation. He told his middle-school student K.R., who had just complained to him of having been gang raped, that she had a woman's body like his girlfriend and that she should love her body. The first remark seems to excuse the boys' behavior, and both comments were entirely inappropriate to make to a middle-school-aged girl who had just reported having been gang raped. Besides these offensive statements, Vaughn did nothing to follow up with K.R. when she missed school for seven or eight days. Nor did he even advise

her of her Title IX rights, including her right to make a grievance about the alleged gang rape.

And when Stinson met with Vaughn and discussed K.R.'s distress, Vaughn did not seek to find ways to allow K.R. to return to Southlawn and feel safe. He did just the opposite: he effectively acknowledged that it was common knowledge around school that K.R. had been gang raped (he advised Stinson that all the students were saying that the boys had "run a train" on K.R.) and then told Stinson that K.R. should transfer mid-schoolyear to another school. Even though Vaughn knew that the students believed K.R. had been gang raped, he still did nothing with respect to the boys involved. He did not discipline them in any way or even speak with them about the tragic incident. So because of Vaughn's decisions, they remained at Southlawn with impunity while their alleged victim suffered the further consequences of having to transfer to a different school.

In short, the Board's response to Stinson's report of K.R.'s alleged gang rape was effectively "an official decision . . . not to remedy the violation" of Title IX. *Doe*, 604 F.3d at 1259 (quoting *Gebser*, 524 U.S. at 290). As a result, the Board's deliberate indifference subjected K.R. to additional discrimination. Specifically, K.R. had to endure Vaughn's inappropriate remarks, the Board's failure to advise K.R. of her Title IX rights, and the Board's refusal to undertake any action at all (other than Vaughn's initial call to the police, which was followed by the

"consensual sex" conclusion). The Board did nothing to make it safe for K.R. to return to Southlawn. Based on those allegations, Stinson has stated a claim that the Board's response violated Title IX. *Hill*, 797 F.3d at 973 ("A clearly unreasonable response causes students to undergo harassment or makes them more vulnerable to it"); *Williams*, 477 F.3d at 1293 (holding that a funding recipient is liable under Title IX if the recipient's deliberate indifference "subjected" the plaintiff to discrimination).

Indeed, in *Doe*, where the principal actually investigated (albeit very sloppily) two prior complaints of teacher-on-student sexual harassment, we concluded that there was a material issue of fact over whether the school had been deliberately indifferent. 604 F.3d at 1260. We said that, despite our acknowledgment that the funding recipient there "took *some* action in response to [the] sexual harassment allegations" and that it was "not a situation in which a school district 'made no effort whatsoever either to investigate or to put an end to the harassment.'" *Id.* (quoting *Davis*, 526 U.S. at 654). By comparison, construing the allegations of Stinson's complaint in the light most favorable to her, Vaughn's phone call to police and his statements in the course of that call were followed by the conclusion, without any investigation, that the rape was "consensual sex" and no further action was needed. If the funding recipient's actions in *Doe* were not enough to defeat summary

judgment, the Board's response here, through Vaughn, certainly could not have sufficed to justify dismissal of the case altogether.

Turning to the sixth element—causation—we have already explained how the Board's deliberate indifference through its actions and inactions caused K.R. to undergo sexual harassment, not to mention how they caused K.R. to be more vulnerable to the effects of the sexual harassment she suffered.

Finally, we have also described how the Board's deliberate indifference to the harassment K.R. endured effectively barred K.R.'s access to Southlawn. We have previously concluded that a funding recipient's clearly unreasonable response to a rape, which resulted in the victim's decision to unenroll and move to another school district in another state, satisfied this element. *Hill*, 797 F.3d at 975. Here, the factual allegations are even more compelling—the principal actually advised Stinson to transfer K.R. out of Southlawn.

In sum, Stinson's complaint alleges sufficient facts to set forth a viable Title IX claim. For these reasons, we reverse the district court's order dismissing the case and remand for further proceedings.

REVERSED and REMANDED.