

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 24-CV-81355-RLR

JANIE DOE, a minor child, by and through
M.B. and S.B., her Parents and Natural Guardians,
and individually,

Plaintiff,

v.

PALM BEACH COUNTY SCHOOL BOARD
a/k/a SCHOOL DISTRICT OF PALM BEACH
COUNTY and DAX RANKINE, individually,

Defendants.

**ORDER DENYING IN PART AND GRANTING IN PART
DEFENDANT PALM BEACH COUNTY SCHOOL BOARD'S MOTION TO DISMISS**

THIS CAUSE arises out of the alleged sexual abuse of Plaintiff Janie Doe by her elementary school teacher, Defendant Dax Rankine (“Rankine”), an employee of Defendant Palm Beach County School Board (“Defendant”). Defendant’s Motion to Dismiss [DE 23] raises two issues before the Court: whether Plaintiff has sufficiently alleged a Title IX claim against the school board, and whether Plaintiff has timely brought her state law claims against the school board. The Court has reviewed the Motion, Plaintiff’s Response [DE 28], Defendant’s Reply [DE 29], and the record and is otherwise fully advised in the premises. For the reasons set forth below, the Motion to Dismiss is **DENIED IN PART and GRANTED IN PART** as more fully set forth in this Order.

I. BACKGROUND

The background factual allegations are as follows. From 2017 to 2020, Plaintiff was in the second through fourth grades at Sunset Palms Elementary School, a school operated by Defendant.

DE 22 ¶¶ 1–2. During this time, Rankine was Plaintiff’s physical education teacher. *Id.* Plaintiff had been familiar with Rankine since she was in kindergarten and always found him “touchy” and that he stood too close to her. *Id.* ¶ 14. From 2017 to 2019, Rankine would make Plaintiff uncomfortable when he would touch her on the upper inner thigh or on her chest, purporting to help her stretch. *Id.* ¶¶ 15–18.

In 2019, Plaintiff arrived early to school and entered one of the girls’ bathrooms; the school did not provide any supervision in the hallway near the bathroom. *Id.* ¶¶ 19–21. When she exited the stall, she was surprised to see Rankine, who pushed her back into the stall, told her she would “get in trouble” if she did not do as he directed or if she told anyone what had occurred, and raped Plaintiff. *Id.* ¶¶ 22–30. In early 2020, on or about March 13, 2023, Rankine raped Plaintiff again, in a different school bathroom. *Id.* ¶¶ 32–38.

On or about November 1, 2023, Plaintiff told her therapist what Rankine had done to her while she was a student at Sunset Palms Elementary School. *Id.* ¶ 57. Plaintiff’s therapist reported what she was told to the Department of Children and Families (“DCF”). *Id.* ¶ 58. DCF then involved the Palm Beach County Sheriff’s Office in the ensuing investigation. *Id.* ¶ 59. After the investigation, Defendant continued to employ Rankine. *Id.* ¶¶ 60–63.

On April 1, 2024, Plaintiff provided statutory notice of this action to Defendant. *Id.* ¶ 64; Fla. Stat. § 728.28. Plaintiff filed her initial Complaint on October 30, 2024, DE 1, and her Amended Complaint on December 26, 2024, DE 22. Plaintiff asserts the following against Defendant Palm Beach County School Board: a federal claim for a Title IX violation (Count I); and four state law claims for negligent infliction of emotional distress (Count V), negligence (Count VI), negligent supervision (Count VII), and negligent retention (Count VIII).

II. STANDARD OF REVIEW

A court may grant a motion to dismiss a complaint if the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion to dismiss should be granted only when the pleading fails to contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678 (explaining that the plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully”).

A court ruling on a motion to dismiss a complaint accepts the well-pled factual allegations as true and views the facts in the light most favorable to the plaintiff. *Jones v. Fransen*, 857 F.3d 843, 850 (11th Cir. 2017). The court need not accept legal conclusions couched as factual allegations. *Diverse Power, Inc. v. City of LaGrange*, 934 F.3d 1270, 1273 (11th Cir. 2019). Additionally, “a Rule 12(b)(6) dismissal on statute of limitations grounds is appropriate only if it is apparent from the face of the complaint that the claim is time-barred.” *Lindley v. City of Birmingham, Ala.*, 515 F. App’x 813, 815 (11th Cir. 2013) (alterations omitted).

III. ANALYSIS

Defendant has moved to dismiss for failure to state a claim. Fed. R. Civ. P. 12(b)(6). Defendant argues that Plaintiff has failed to plausibly plead her federal law claim and that Plaintiff’s state law claims are time-barred. DE 23. The Court addresses each argument in turn.

A. Federal Law Claim – Title IX Violation (Count I)

Defendant argues that Plaintiff has failed to plausibly plead any element of her Title IX claim. DE 23 at 3. A teacher’s sexual harassment of a student can constitute actionable discrimination under Title IX for which money damages are available. *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 74–75 (1992). “Title IX liability arises only where ‘an official of the school district who at a minimum has authority to institute corrective measures on the district’s behalf has actual notice of, and is deliberately indifferent to, the teacher’s misconduct.’” *Doe v. Sch. Bd. of Broward County, Fla.*, 604 F.3d 1248, 1254 (11th Cir. 2010) (quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 277 (1998)).

To plead her Title IX claim, Plaintiff thus must plausibly set forth (1) the identity of an “appropriate person” who received actual notice; (2) that the substance of that actual notice was sufficient to alert the school official of the possibility of the Title IX plaintiff’s harassment; and (3) that the school official with such notice exhibited deliberate indifference to the harassment. *Weis v. Bd. of Trustees of Fla. Gulf Coast Univ.*, No. 19-CV-503-FTM-29NPM, 2020 WL 2219192, at *5 (M.D. Fla. May 7, 2020) (discussing *Broward*, 604 F.3d at 1254). The Court reviews the sufficiency of Plaintiff’s allegations as to each element.

1. “Appropriate Person”

An “appropriate person” is, “at a minimum, an official of the recipient entity with authority to take corrective action to end the discrimination.” *Gebser*, 524 U.S. at 290. The official must be “high enough up the chain-of-command that his acts constitute an official decision by the school district itself not to remedy the misconduct.” *Broward*, 604 F.3d at 1255 (citation omitted).

Here, Plaintiff has alleged that Defendant “through its representative including then-Superintendent Donald Fennoy and senior administrators at Sunset Palms Elementary School, including then-Principal Karen Riddle had actual notice of Defendant Rankine’s violence and violation of rights because of prior complaints about his actions involving female students.” DE 22 ¶ 71.

Because it is reasonable to infer that Defendant’s then-superintendent and the elementary school’s then-principal would have the authority to take corrective action against Rankine—such as by supervising, suspending, or firing him—the Court is satisfied that Plaintiff has alleged notice to appropriate persons. *See Doe v. Campbell Drive K-8 Ctr.*, No. 24-23741-CIV, 2024 WL 5165882, at *4 (S.D. Fla. Dec. 19, 2024) (“[P]rincipals are generally considered proper actors to receive notice in Title IX suits, since they likely hold authority to issue corrective measures.”).

2. Actual Notice

Because “Title IX is predicated upon notice to an ‘appropriate person’ and an opportunity to rectify any violation,” *Gebser*, 524 U.S. at 290, “[a]ctual notice of sexual harassment is required; liability may not be based constructive notice or *respondeat superior* theories.” *Kocsis v. Fla. State Univ. Bd. of Trustees*, 788 F. App’x 680, 683 (11th Cir. 2019). “[T]he actual notice must be sufficient to alert the decision-maker to the possibility of sexual harassment by the teacher.” *J.F.K. v. Troup Cnty. Sch. Dist.*, 678 F.3d 1254, 1256 (11th Cir. 2012). One way to satisfy this actual notice harassment would be to show that a defendant had actual knowledge that the teacher had sexually harassed other students. *Broward*, 604 F.3d at 1257–58. The actual notice requirement does not “require notice of the prior harassment of the Title IX plaintiff herself.” *Broward Cnty*, 604 F.3d at 1257.

Here, Plaintiff has alleged the following in support of her assertion that Defendants were on actual notice:

- Upon information and belief, Defendant was aware that Rankine had a history of improperly touching young girls who were his students while he carried out his duties. DE 22 ¶ 4.
- Defendant received prior reports that Rankine was “touchy” and had inappropriately touched students other than Plaintiff. *Id.* ¶ 70.
- Defendant had received prior complaints about Rankine’s actions involving female students. *Id.* ¶ 71.
- In 2006, the Florida Board of Education denied Rankine’s application for an educator’s license based on three incidents. DE 22 ¶¶ 41–43. Rankine had pled guilty to a charge of Hit and Run Leaving Scene of Accident with Property Damage, *id.* ¶ 43(a); Rankine had been charged with Simple Battery after he threw a bottle and punched a store’s security staff member, *id.* ¶ 43(b); and Rankine was charged after an incident with several DUI- and drug-possession-related violations, *id.* ¶ 43(c). In 2007, Rankine appealed the Board of Education’s decision and reached a settlement, through which Rankine received an educator’s certificate with numerous conditions, received a letter of reprimand, and paid fines. *Id.* ¶ 45. Despite this history and despite receiving the notice of reprimand, Defendant decided to employ Rankine. *Id.* ¶ 46.
- In 2019, Rankine was arrested for driving erratically. *Id.* ¶ 47. Rankine exhibited signs of intoxication, *id.* ¶¶ 50–53, and Rankine told the officers that there were “kids” in his vehicle whom Rankine was taking somewhere to drink, *id.* ¶ 49. Per the Jessica Lunsford Act, under which the Florida Department of Law Enforcement agreed to notify school districts when a school employee was arrested, Defendant was notified of Rankine’s arrest but continued to employ Rankine. *Id.* ¶¶ 55–56.

Defendant argues that Plaintiff has insufficiently alleged actual notice because her allegations about the pre-2006 and 2019 incidents were not sexual in nature, and because her allegations about the “prior reports” of Rankine’s inappropriate behavior with other students were too vague and conclusory. DE 23 at 6–7. Given the nature of the pre-2006 and 2019 incidents, it is true that they alone might not afford Defendant actual notice of the possibility that Rankine would perpetrate sexual harassment against students. *See, e.g., Gebser*, 524 U.S. at 277–78, 291

(finding that, at summary judgment, it was not actual notice that a high school principal received a complaint that the teacher made “inappropriate” and “sexually suggestive” comments during class). But Plaintiff’s allegations go further, alleging that Defendant “received prior reports that Rankine . . . had inappropriately touched” other students, and that Defendant received “prior complaints about [Rankine’s] actions involving female students.” *Id.* ¶¶ 70–71. Viewing the allegations in the light most favorable to the Plaintiff, these reports and complaints would sufficiently put Defendant on notice of the possibility of sexual harassment by Rankine. *See J.F.K.*, 678 F.3d at 1261–62 (finding no actual notice when school official had notice only of conduct that “contain[ed] no sexual harassment or gender discrimination component”).

Defendant further argues that Plaintiff’s allegations about the “prior reports” of inappropriate touching were not sufficiently specific because Plaintiff has not pled “who made these reports, who they were made to,” and “what information was in these reports.” DE 23 at 7. But detailed factual allegations are not required to state a plausible claim under Rule 12(b)(6). *Twombly*, 550 U.S. at 555. Although Plaintiff has not specifically alleged who made these reports, Plaintiff has alleged that the reports were made to Defendant’s representatives, including its then-superintendent and then-principal. *Id.* ¶ 71. And Plaintiff has alleged the information contained in these reports: that Rankine was “touchy” and “had inappropriately touched students.” *Id.* ¶ 70.

Furthermore, at the motion-to-dismiss stage, allegations made “upon information and belief” are permissible when the facts alleged are “peculiarly within the possession and control of the defendant or where the belief is based on factual information that makes the inference of culpability feasible.” *Joe Hand Promotions, Inc. v. Goldshtein*, No. 18-60522-CIV, 2018 WL 7080029, at *3 (S.D. Fla. June 18, 2018). Here, Plaintiff’s allegations concern reports or

complaints received by the school district's superintendent and the elementary school's principal. The details contained within those reports would be "peculiarly within [Defendant's] possession and control." Thus, taking Plaintiff's allegations as true and construing the Amended Complaint in the light most favorable to Plaintiff, the Court is satisfied that Plaintiff has adequately alleged actual notice at this early stage.

3. *Deliberate Indifference*

The last element of Plaintiff's Title IX claim requires that the school official who had actual notice be "deliberately indifferent" to the discrimination. *Doe v. Sch. Bd. of Palm Beach Cnty.*, 15-cv-80175, 2015 WL 4698462, at *3 (S.D. Fla. June 2, 2015). "[W]here a school district has knowledge that its remedial action is inadequate and ineffective, it is required to take reasonable action in light of those circumstances to eliminate the behavior." *Broward*, 604 F.3d at 1261 (citation omitted).

Here, Defendant argues that because it did not have actual notice of sexual harassment, it could not have acted with deliberate indifference to that harassment. DE 23 at 10. But for the reasons discussed above, Plaintiff has sufficiently alleged that Defendant had actual notice by way of prior reports of Rankine's behavior with students. Plaintiff then further alleges that Defendant decided not to investigate the prior complaints against Rankine, retained Rankine despite the prior complaints, and refused to institute any corrective measures. DE 22 ¶¶ 73–74. At the motion-to-dismiss stage, Plaintiff's allegations plausibly amount to deliberate indifference.

Because Plaintiff has sufficiently alleged each element of her Title IX claim, Defendant's Motion is denied as to Count I.

B. State Law Claims (Counts V–VIII)

Defendant next argues that Plaintiff’s state law claims—negligent infliction of emotional distress, negligence, negligent supervision, and negligent retention—are time-barred. DE 23 at 11. Under Florida law, a plaintiff suing a state agency in tort must provide notice of those claims, in writing, to the agency and the Florida Department of Financial Services *within three years after the claim accrued*. Fla. Stat. § 768.28(6)(a) (setting forth Florida’s waiver of sovereign immunity and notice requirement for tort actions). Here, Plaintiff provided her statutory notice to Defendant on April 1, 2024. DE 22 ¶ 64. The latest date on which Plaintiff suffered Rankine’s sexual abuse was March 13, 2020, which falls outside of the three-year limit for statutory notice. *Id.* ¶¶ 32–40. The earliest date on which Plaintiff’s parents learned of the sexual abuse was November 1, 2023, which falls within the three-year limit for statutory notice. *Id.* ¶ 57.

At issue, then, is *when* Plaintiff’s claims accrued—that is, whether state or federal law determines the accrual of common-law negligence claims brought in federal court. Under federal law, the general rule for accrual is the “discovery rule,” meaning that a cause of action accrues when the plaintiff knew or should have known of her injury and its cause. *Doe No. 6 v. Sch. Bd. of Highlands Cnty. Florida*, No. 2:19-CV-14487, 2020 WL 5112698, at *3 (S.D. Fla. Aug. 30, 2020) (citation omitted). Because a minor claimant cannot sue on her own behalf, however, “when the claimant is a minor, the cause of action accrues when the parent knows or should know of the minor’s injury and the cause thereof.” *Id.* Therefore, under federal accrual rules, Plaintiff’s negligence claims would have accrued on November 1, 2023, and her statutory notice would be timely.

In contrast, the Supreme Court of Florida rejected this “delayed-discovery” approach and declined to carve out any exception to the accrual rule for claims brought on behalf of minors. *R.R. v. New Life Community Church of CMA, Inc.*, 303 So. 3d 916, 924 (Fla. 2020). Instead, the Florida Supreme Court cited with approval a district court of appeal decision holding that even for claims brought on behalf of minors, “[a] cause of action accrues when the last element constituting the cause of action occurs.” Fla. Stat. § 95.031(1); *New Life*, 303 So. 3d at 922–23 (citing *D.H. v. Adept Cmty. Svcs., Inc.*, 217 So. 3d 1072 (Fla. Dist. Ct. App. 2017)). Therefore, under Florida accrual rules, Plaintiff’s negligence claims would have accrued on March 13, 2020, and would be time-barred due to untimely notice.

Plaintiff does not dispute that Defendant has correctly identified the applicable state-law statute of limitations¹ and notice requirements. DE 28 at 14. Nor does Plaintiff dispute that the appropriate statute of limitations period for her claim derives from Florida statute. *See id.* at 15 (citing *Rubin v. O’Koren*, 621 F.2d 114, 116 (5th Cir. 1980), *on reh’g*, 644 F.2d 1023 (5th Cir. 1981) (“Although the appropriate statute of limitations period is derived from state statute, the question when a federal cause of action accrues is a matter of federal, not state law.”)).

Instead, Plaintiff asserts that her state law claims are not time-barred because federal, not state, accrual rules apply. *Id.* at 14. In support, Plaintiff cites to *Doe No. 6* for the proposition that this Court rejected the Florida Supreme Court’s decision not to adopt the delayed-discovery rule

¹ Florida law provided for a four-year limitations period on actions founded on negligence. Fla. Stat. § 95.11(3)(a) (2022). This statute was amended in 2023 to shorten the limitations period for any cause of action that accrued after the amendment’s effective date of March 24, 2023. Fla. Stat. § 95.11(4)(a) (2023). Therefore, if Plaintiff’s claims accrued according to Florida law, when the last element constituting her cause of action occurred—March 13, 2020—Plaintiff’s claims would be time-barred. And if Plaintiff’s claims accrued according to federal law, when her parents discovered the injury—November 1, 2023—Plaintiff’s claims would be timely.

by concluding that, for claims properly brought in federal court, “federal law governs when Plaintiff’s cause of action accrued.” *Id.* at 15 (discussing *Doe No. 6*, 2020 WL 5112698, at *3).

Doe No. 6 does not stand for such a broad proposition, however. Unlike Plaintiff’s case, *Doe No. 6* concerned only a single, federal claim. *See* 2020 WL 5112698, at *3. The Court’s analysis in *Doe No. 6* was based on the established premise that “[w]hen a court applies the most closely analogous state statute of limitations to a federal claim, federal law controls the date on which the cause of action accrued and the limitations period began to run.” *Id.* (citing *White V. Mercury Marine, Div. of Brunswick, Inc.*, 129 F.3d 1428, 1435 (11th Cir. 1997)) (emphasis added).

In contrast, when a plaintiff’s cause of action sounds in Florida tort law, federal courts determine whether the plaintiff has complied with her pre-suit notice requirements based on when the plaintiff’s claims accrued under Florida law. *See, e.g., Doe No. 60 v. G-Star School of the Arts*, No. 16-CV-80446, 2017 WL 2212429, at *3 (S.D. Fla. May 19, 2017) (determining when the plaintiff’s negligence claims had accrued under state law by reviewing decisions from Florida courts). “In rendering a decision based on state substantive law, a federal court must decide the case the way it appears the state’s highest court would.” *Ernie Haire Ford, Inc. v. Ford Motor Co.*, 260 F.3d 1285, 1290 (11th Cir. 2001) (quotation omitted).

Because the Florida Supreme Court has declined to carve out any exceptions to Florida’s statutory accrual rule—even for claims brought on behalf of minors—the Court is bound by the Florida Supreme Court’s determination that a Florida-law “cause of action accrues when the last element constituting the cause of action occurs.” *New Life*, 303 So. 3d at 921–24; Fla. Stat § 95.031; *see also Albizu-Ayala v. Pitney Bowes, Inc.*, 2003 WL 25629693, at *2 (S.D. Fla. July

22, 2003) (“Where, however, there is a conflict within the district courts of appeal, this Court must attempt to divine how the Supreme Court of Florida would resolve that conflict.”).

Here, the last element constituting Plaintiff’s cause of action occurred on March 13, 2020. Because Plaintiff’s state law claims therefore accrued more than three years before Plaintiff provided her statutory notice of this action to Defendant, Plaintiff’s state law claims are time-barred, and Defendant’s Motion is granted as to Counts V, VI, VII, and VIII.

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED**:

1. Defendant Palm Beach County School Board’s Motion to Dismiss is **DENIED IN PART** as to Plaintiff’s Title IX claim (Count I).

2. Defendant’s Motion is **GRANTED IN PART** as to Plaintiff’s claims for negligent infliction of emotional distress (Count V), negligence (Count VI), negligent supervision (Count VII), and negligent retention (Count VIII). The Court’s dismissal of these claims is without leave to amend because amendment would be futile.

3. Defendant shall file its answer and any affirmative defenses to Plaintiff’s Amended Complaint no later than February 18, 2025.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 4th day of February, 2025.


ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Copies furnished to Counsel of Record