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United States Court of Appeals
Tenth Circuit

November 7, 2023

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

GRACIE ANN FORTH,

Plaintiff - Appellant,

v.

LARAMIE COUNTY SCHOOL DISTRICT NO. 1,

Defendant - Appellee.

No. 21-8078

**Appeal from the United States District Court
for the District of Wyoming
(D.C. No. 1:20-CV-00053-ABJ)**

Matthew J. Cron, Rathod | Mohamedbhai, LLC, Denver, Colorado (Qusair Mohamedbhai, Rathod | Mohamedbhai, LLC, Denver, Colorado; Melinda S. McCorkle, McCorkle Law, Cheyenne, Wyoming; Anna Reeves Olson, Park Street Law Office, Casper, Wyoming, with him on the briefs), for Plaintiff-Appellant.

Loyd E. Smith (John A. Coppede with him on the brief), Hickey & Evans, LLP, Cheyenne, Wyoming, for Defendant-Appellee.

Before **HOLMES**, Chief Judge, **EBEL**, and **EID**, Circuit Judges.

HOLMES, Chief Judge.

Plaintiff-Appellant Gracie Ann Forth appeals from an order granting summary judgment to Defendant-Appellee Laramie County School District Number 1

("LCSD1") on Ms. Forth's claim under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1689 ("Title IX"). Title IX provides a platform to hold liable school districts that receive federal funds and have "actual notice" of, but remain deliberately indifferent to, severe discrimination in their programs. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290–91 (1998); *Escue v. N. Okla. Coll.*, 450 F.3d 1146, 1152 (10th Cir. 2006).[1]

Ms. Forth alleges that while she was a student at Johnson Junior High School ("JJHS"), a school within LCSD1, one of her seventh-grade teachers, Joseph Meza, sexually abused her over several years beginning in 2014. Ms. Forth alleges that principals at JJHS had actual notice that Mr. Meza posed a substantial risk of abuse and were deliberately indifferent to these risks, thereby violating Title IX.

On LCSD1's motion for summary judgment, the district court concluded that LCSD1 did not have actual notice that Mr. Meza posed a substantial risk of abuse before it learned that Ms. Forth had reported him to the police. Because the district court concluded that Ms. Forth failed to establish such notice by LCSD1 during the period before LCSD1 learned of her police report, the court further concluded that LCSD1 (lacking such notice) was not deliberately indifferent during that period. Ms.

[1] *Gebser* uses the term "actual knowledge" interchangeably with the term "actual notice," *see* 524 U.S. at 290–91, and we follow suit here. *See Doe v. Fairfax Cnty. Sch. Bd.*, 1 F.4th 257, 263 n.4 (4th Cir. 2021) (noting that "'actual notice' and 'actual knowledge' are interchangeable terms for Title IX purposes"); *see also Brown v. Arizona*, 82 F.4th 863, 880 (9th Cir. 2023) (en banc) (citing *Fairfax County School Board* and noting that "[w]e agree with the Fourth Circuit that 'actual knowledge,' as used by the Court in *Gebser*, means either actual knowledge or actual notice").

Forth appeals from the district court's order—challenging in particular the district court's conclusion that LCSD1 did not have actual notice of the substantial risk of sexual abuse that Mr. Meza posed during the period before LCSD1 learned of her police report.

Exercising jurisdiction under 28 U.S.C. § 1291, we **reverse** the district court's judgment and **remand** the action for further proceedings consistent with this opinion.[2]

I

A

Ms. Forth entered the seventh grade at JJHS in the fall of 2013. At that time, the Principal of JJHS was John Balow, and the Assistant/Associate Principals were Christina Hunter and John Cunningham (collectively, the "JJHS Principals").[3]

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[2] Ms. Forth filed a motion to seal Volume V of the Joint Appendix. In its response, LCSD1 explained that both parties had since agreed that "it is practicable to file a redacted copy of Vol[ume] V," and it attached a redacted version of this volume. *See* Aplee.'s Resp. to Mot. to Seal at 2–3. By order of our court clerk's office, entered on February 28, 2022, this redacted version was filed along with the other unsealed volumes of the Joint Appendix, and Volume V was provisionally sealed pending further ruling by this merits panel. *See* Order, No. 21-8078, at *1 (10th Cir. Feb. 28, 2022). Having considered the issue under the appropriate legal standards, *see, e.g.*, *Eugene S. v. Horizon Blue Cross Blue Shield of N.J.*, 663 F.3d 1124, 1135–36 (10th Cir. 2011), we **grant** the motion to seal and, relatedly, conclude that the public's right of access to judicial records is sufficiently well served by the filing of the redacted Volume V; that volume shall remain freely accessible to the public along with the remainder of the Joint Appendix.

[3] Mr. Balow was the JJHS principal from 2008 through 2016, and Ms. Hunter and Mr. Cunningham were the assistant/associate principals from 2012 through 2016 and 2009 through 2015, respectively.

In September 2013, Mr. Cunningham observed Mr. Meza sitting with a group of seventh-grade girls at a school football game. According to Mr. Cunningham's notes from the incident, "[o]ne of the girls had her arm around Mr. Meza and continually touched his face and neck." Joint App. at 704 (Notes of John Cunningham, dated Sept. 29, 2013). Mr. Cunningham reported the incident to Mr. Balow, who directed Mr. Cunningham to "make sure [Mr. Meza] knows this was not appropriate" and "put a note in [Mr. Meza's] . . . file that he had the conversation." *Id.* at 683 (Test. of John Balow, dated Dec. 11, 2020). Mr. Cunningham spoke to Mr. Meza about the incident the following day, informing him that the incident was inappropriate and suggesting ways to maintain appropriate boundaries with students.

By November 2013, Mr. Meza—who at the time was Ms. Forth's math teacher—"began to show a special interest in [Ms. Forth]." *See id.* at 372 ¶ 1 (Aff. of Gracie Forth, dated July 8, 2021). Mr. Meza "began texting [Ms. Forth] throughout the school day and at night," and, in May 2014, he asked Ms. Forth during school hours to take their relationship to the "next level" by dating. *Id.* at 372 ¶¶ 3–5. Ms. Forth enrolled in courses with Mr. Meza during the summer of 2014, at which point their relationship became sexual.

B

In the fall of 2014, when Ms. Forth entered the eighth grade at JJHS, she was no longer Mr. Meza's student. However, she frequently spent time in Mr. Meza's classroom before and after school. She also often ate lunch with Mr. Meza, and Mr. Meza began driving her home. Other JJHS teachers observed the two spending a

substantial amount of time together, including at times when Ms. Forth was supposed to be in another class. *See id.* at 393–94 (Test. of Shannon Hall, dated Nov. 10, 2020) (testifying to observing Ms. Forth in Mr. Meza's classroom before school up to a dozen times and after school on additional occasions); *id.* at 720 (Test. of Melinda Mazzone, dated Mar. 4, 2021) (testifying to observing Ms. Forth in Mr. Meza's class when she was supposed to be in another class).

During the 2014–2015 school year, eighth-grade teachers Shannon Hall and Rebecca Robinson collectively made at least five reports to one or more of the JJHS Principals regarding Mr. Meza's behavior toward Ms. Forth. The first report concerned an incident that occurred around August 2014. Mr. Meza requested that Ms. Hall grant Ms. Forth permission to visit Mr. Meza's classroom "whenever she wanted to" on grounds that, according to Mr. Meza, he and Ms. Forth "had a special relationship." *Id.* at 381–82. When Ms. Hall declined Mr. Meza's request, Mr. Meza became "a little threatening in his manner," which caused Ms. Hall to report the incident to at least one of the JJHS Principals, although she did not recall specifically which principal she notified. *Id.* at 382–84. Ms. Hall testified that the principals expressed "concern[] and said they would look into" the issue, but she was not sure whether the principals followed through. *Id.* at 390.

In the second report, Ms. Hall notified the JJHS Principals that she observed Ms. Forth spending time with Mr. Meza at school during a professional development day on at least one occasion and possibly two. Professional development days provide time for teachers to focus on work unrelated to the classroom, and students

typically are not at school on these days. Ms. Hall recalled making this report around October 2014, although she testified that it could have occurred later in the school year.

In the third report, Ms. Hall provided notice to certain JJHS Principals that Ms. Forth had skipped her class to spend time in Mr. Meza's classroom. This report occurred sometime between Thanksgiving of 2014 and the beginning of 2015. Ms. Hall testified that she recalled making this report via a written referral, which would have gone to Mr. Cunningham or Ms. Hunter.

In the fourth report, on at least one occasion, Ms. Hall notified certain JJHS Principals that Ms. Forth was spending time in Mr. Meza's classroom before and after school. Ms. Hall recalled reporting this issue more than once, though she did not recall the precise timing during the 2014–2015 school year.

Finally, later in the 2014–2015 school year, several students separately reported to Ms. Hall and Ms. Robinson that they saw Mr. Meza and Ms. Forth drinking a soda out of the same container. *See id.* at 387; *see also id.* at 438 (Test. of Rebecca Robinson, dated Jan. 27, 2021). Ms. Hall testified that the students described the incident as "odd" and that she reported it to Ms. Hunter and Mr. Balow. *See id.* at 387. In response, both principals exhibited "frustration towards the situation," and Ms. Hunter "threw her hands up in . . . exasperat[ion]." *See id.* at 388–89. Similarly, Ms. Robinson testified that three-to-four female students reported the incident to her and, in doing so, the students described Mr. Meza as "weird." *Id.* at 438. Ms. Robinson also reported the incident to Ms. Hunter. *See id*.

The JJHS Principals denied or did not recall ever receiving these reports from Ms. Hall and Ms. Robinson. *See id.* at 202 (Test. of Christina Hunter, dated Nov. 11, 2020) (Ms. Hunter testifying she did not receive any such reports); *id.* at 685 (Mr. Balow testifying he could not recall any such reports); *id.* at 357 (Test. of John Cunningham, dated Dec. 23, 2020) (Mr. Cunningham testifying that he did not know of Ms. Hall's reports).

Nevertheless, Ms. Forth presented evidence suggesting that certain JJHS Principals were aware that Mr. Meza was engaging in behavior similar to what Ms. Hall and Ms. Robinson say they reported. After Ms. Forth reported Mr. Meza to the police in May 2017, Ms. Hunter stated to the Cheyenne Police Department that during the 2014–2015 school year, she discovered Ms. Forth seated at Mr. Meza's desk when Ms. Forth should have been in another class. *See id.* at 723 (Written Statement of Christina Hunter to Cheyenne Police Dep't, dated July 7, 2021). Ms. Hunter also testified that she told Mr. Meza that "he needed to be aware that his boundaries with multiple students, boys and girls, needed to be professional and needed to make sure that they were a teacher-student relationship only." *Id.* at 202. And Ms. Hunter said that she and Mr. Balow spoke with Mr. Meza "on April 14, 2015[,] to address occurrences of students not enrolled in his class being in his classroom during the school day." *Id.* at 723. Moreover, Mr. Cunningham testified that Ms. Hall had spoken to him about the fact that she thought it was inappropriate for Mr. Meza to have students in his classroom who were not enrolled in his class. *See id.* at 355–56.

Ms. Forth also presented evidence that in October 2014, Mr. Meza encouraged her to join the cross-country and track teams, which he coached, and that they "formed a running club" together. *Id.* at 373 ¶ 11. In connection with their running club, Mr. Meza took Ms. Forth on at least two overnight running trips along with a female JJHS teacher, Ella Parish. *See id.* at 421, 423 (Test. of Ella Parish, dated Nov. 10, 2020). No other student went on the trips, although Ms. Parish's husband joined for one. On both trips, Mr. Meza and Ms. Forth spent time together outside the presence of any other attendee.

At least three other teachers testified that they knew that Mr. Meza, Ms. Parish, and Ms. Forth had taken an overnight running trip together. *See id.* at 367 (Test. of Philip Vigil, dated Jan. 26, 2021) (Mr. Vigil testifying to his knowledge of a trip); *id.* at 407–08 (Ms. Hall testifying to her knowledge of the trips); *id.* at 441 (Test. of Erin McNamee, dated Jan. 27, 2021) (Ms. McNamee testifying to her knowledge of a trip). However, Ms. Forth does not present any evidence showing that any of the JJHS Principals learned of these trips. Yet she argues there is a reasonable inference that the principals approved the trips given that they were well known amongst other teachers.[4]

[4] Rumors of the relationship between Mr. Meza and Ms. Forth also circulated amongst the teachers. *See, e.g.*, Joint App. at 370 (Mr. Vigil testifying that he had previously commented that "it was a joke about how obvious it was, the relationship between [Mr.] Meza and [Ms. Forth]"). However, Ms. Forth does not present any evidence that these rumors reached the JJHS Principals, and Mr. Vigil testified that he did not report the rumors about Mr. Meza and Ms. Forth's relationship or overnight trips. *See id.* at 367.

C

In October 2015, Mr. Meza and his then-wife, Rebecca Garcia (at that time, going by "Rebecca Meza"), filed documents to adopt Ms. Forth. Before beginning the adoption process, Mr. Meza inquired into JJHS's policies regarding adoption with Mr. Balow and Dr. Marc LaHiff,[5] Assistant Superintendent of Human Resources, although testimony conflicts as to whether Mr. Meza asked Dr. LaHiff about adopting Ms. Forth specifically. *Compare id.* at 713–14 (Ms. Mazzone testifying that Mr. Meza told her he spoke with Mr. Balow and Dr. LaHiff about adopting Ms. Forth specifically), *with id.* at 754 (Test. of Marc LaHiff, Dec. 8, 2020) (testifying that Mr. Meza did not inquire about Ms. Forth "specifically" but that he asked if JJHS had "policies regarding adoption"). Ms. Forth moved into the Mezas' home on October 31, 2015, and Mr. Meza continued, on a regular basis, to sexually abuse Ms. Forth. *See id.* at 373 ¶ 12; *id.* at 434 (Cheyenne Police Dep't Investigation Rep., dated Sept. 1, 2017). Nearly two years later, on May 26, 2017, Ms. Forth reported Mr. Meza's abuse to the Cheyenne Police Department.

In early-June 2017, after Ms. Forth reported Mr. Meza to the police—but before LCSD1 learned of Ms. Forth's allegations—Ms. Garcia (Mr. Meza's then-wife) and her father, Vince Garcia, encountered Ms. Hunter and her husband at a local park. *See id.* at 473 (Test. of Vince Garcia, dated Jan. 25, 2021). Mr. Garcia

[5] The record is inconsistent as to the precise spelling of Dr. LaHiff's surname (spelled alternatively as "Lahiff"). We adopt the approach that appears most frequently in the record.

was childhood friends with Ms. Hunter's husband. Before the encounter, Ms. Hunter was not aware that Ms. Forth had recently reported Mr. Meza to the police. During their conversation, Mr. Garcia told Ms. Hunter that he had an adopted granddaughter in LCSD1, to which Ms. Hunter responded, "It's not [Ms. Forth], is it?" *Id.* at 478–79. Mr. Garcia confirmed it was.

When Ms. Hunter asked how Ms. Forth was doing, Mr. Garcia testified that he "probably turned white," and in response, Ms. Hunter "looked at [Mr. Garcia] and said, 'He didn't,'" to which Mr. Garcia responded, "He did." *Id.* at 475. According to Mr. Garcia, Ms. Hunter then responded: "I talked to him over and over again. I told him about boundaries. I talked about being professional." *Id.* at 476. Ms. Garcia testified separately that during the same encounter, Ms. Hunter said, albeit "not in so many words," that she "had a strong suspicion that this was a sexual issue." *Id.* at 460–61 (Test. of Rebecca Garcia, dated Jan. 22, 2021). Ms. Garcia could not recall the exact words that Ms. Hunter used. *See id.* at 461.

LCSD1 learned that Ms. Forth reported Mr. Meza to the Cheyenne Police Department by June 6, 2017, and the school district terminated Mr. Meza's employment on August 25, 2017.

D

Ms. Forth filed a complaint in the United States District Court for the District of Wyoming asserting three claims: first, she alleged that LCSD1 violated Title IX based on its knowledge of and failure to address Mr. Meza's misconduct; second, she asserted a claim pursuant to 42 U.S.C. § 1983 alleging that LCSD1 violated the Equal

Protection Clause of the Fourteenth Amendment to the United States Constitution; and third, she asserted a claim under § 1983 alleging that LCSD1 violated her substantive due process rights under the Fourteenth Amendment. *See id.* at 30–43 (Compl., filed Mar. 31, 2020).

LCSD1 moved for summary judgment on all three claims. As relevant here, with respect to Ms. Forth's Title IX claim, LCSD1 argued that Ms. Forth failed to establish that it had sufficient notice of the risk that Mr. Meza posed before LCSD1 learned of her report to the police. *See id.* at 71–79 (Def.'s Br. in Support of Mot. for Summ. J., filed June 22, 2021). Further, LCSD1 argued that because a school cannot be deliberately indifferent to a teacher's abusive behavior without sufficient notice of the abuse, Ms. Forth failed to establish that LCSD1 was deliberately indifferent to Mr. Meza's misconduct prior to the time it learned of her police report. *See id.* at 80. Finally, LCSD1 argued that it was not deliberately indifferent to Mr. Meza's actions *after* it learned of Ms. Forth's police report because no harassment occurred during that period. *See id.*

The district court granted LCSD1's motion for summary judgment on all three claims. *See id.* at 936 (Dist. Ct. Order, filed Sept. 9, 2021). As relevant here, with respect to Ms. Forth's Title IX claim, the court concluded that she failed to establish sufficient actual notice before LCSD1 learned of her police report and that, absent such notice, LCSD1 could not have been deliberately indifferent during that period. *See id.* at 947–51. Further, the district court concluded that LCSD1 was not deliberately indifferent after learning of Ms. Forth's report to the police, as the

school district cooperated with the ongoing police investigation and prevented Mr. Meza from returning to JJHS for the 2017–2018 school year. *See id.* at 951–53. The court denied Ms. Forth's Title IX claim on these grounds alone, without reaching any other element of Title IX liability.

On appeal, Ms. Forth challenges the district court's order only insofar as it denied her Title IX claim. She does not challenge the court's order denying her claims under § 1983. Further, she does not appeal the court's order to the extent that it concluded that she failed to establish deliberate indifference during the period *after* she reported Mr. Meza to the police. She appeals only the order's conclusion that LCSD1 did not have sufficient notice of the substantial risk of abuse that Mr. Meza posed *before* learning of her police report.

II

We review an order granting summary judgment de novo and "apply[] the same standard as the district court." *Brewer v. City of Albuquerque*, 18 F.4th 1205, 1216 (10th Cir. 2021) (quoting *iMatter Utah v. Njord*, 774 F.3d 1258, 1262 (10th Cir. 2014)). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A fact is "material" if it "might affect the outcome of the suit under the governing law," and a dispute of material fact is "'genuine[]' . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

On a motion for summary judgment, we must review "the evidence and draw reasonable inferences therefrom in the light most favorable to the nonmoving party." *Doe v. City of Albuquerque*, 667 F.3d 1111, 1122 (10th Cir. 2012) (quoting *Com. Union Ins. Co. v. Sea Harvest Seafood Co.*, 251 F.3d 1294, 1298 (10th Cir. 2001)). We cannot weigh the evidence or make credibility determinations. *See Anderson*, 477 U.S. at 249 ("[A]t the summary judgment stage the judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."); *Cruz v. Farmers Ins. Exch.*, 42 F.4th 1205, 1217 (10th Cir. 2022) (explaining that at the summary judgment stage, "it is not our role to 'assess the credibility of . . . conflicting testimony'" (omission in original) (quoting *Starr v. Pearle Vision, Inc.*, 54 F.3d 1548, 1557 (10th Cir. 1995))).

A decision granting summary judgment is subject to reversal where the court failed to credit evidence favorable to the nonmovant and draw all reasonable inferences in the nonmovant's favor. *See, e.g.*, *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (per curiam) (vacating a decision upholding an order granting summary judgment because "the court improperly 'weigh[ed] the evidence' and resolved disputed issues in favor of the moving party" (alteration in original) (quoting *Anderson*, 477 U.S. at 249)); *Wise v. DeJoy*, 71 F.4th 744, 749–50 (10th Cir. 2023) (reversing in part district court's order granting summary judgment because the court failed to draw reasonable inferences in the nonmovant's favor); *see also Galbreath v. City of Oklahoma City*, 568 F. App'x 534, 540–41 (10th Cir. 2014) (unpublished) (reversing district court's order granting summary judgment because the court "failed

to view the evidence at summary judgment in the light most favorable to [the nonmovant] with respect to the central facts of this case" (quoting *Tolan*, 572 U.S. at 657));[6] *Griffis v. City of Norman*, 232 F.3d 901 (tbl.), 2000 WL 1531898, at *6–7, *9 (10th Cir. 2000) (unpublished) (reversing district court's grant of summary judgment to defendant in employment discrimination suit because the court "failed to draw all reasonable inferences" in the nonmovant's favor); *Young v. Martin*, 801 F.3d 172, 177, 180 (3d Cir. 2015) (reversing district court's grant of summary judgment because the court "failed to draw all reasonable inferences from the facts" in the nonmovant's favor); *Jacobs v. N.C. Admin. Off. of the Cts.*, 780 F.3d 562, 569–70 (4th Cir. 2015) (reversing district court's grant of summary judgment because the court "fail[ed] to consider all of the evidence in the record" and improperly "state[d] the facts in the light most favorable to the [movant], not . . . the nonmovant").

III

Title IX provides, as relevant here: "No person . . . 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 discrimination on the basis of sex that Title IX prohibits includes sexual harassment, *see Escue*, 450 F.3d at 1152 (citing

[6] We recognize that the unpublished decisions cited herein are not binding authority, but we cite them for their persuasive value. *See, e.g.*, *Bear Creek Trail, LLC v. BOKF, N.A.* (*In re Bear Creek Trail, LLC*), 35 F.4th 1277, 1282 n.8 (10th Cir. 2022); FED. R. APP. P. 32.1; 10TH CIR. R. 32.1.

Franklin v. Gwinnett Cnty. Pub. Schs., 503 U.S. 60, 75 (1992)), and is enforceable through an implied private right of action, *see Gebser*, 524 U.S. at 281.

A school district that receives federal funds "is not vicariously liable to its students for all sexual harassment caused by teachers," but "a student may hold a school liable '. . . for its own misconduct.'" *Escue*, 450 F.3d at 1152 (quoting *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640 (1999)). To do so, the plaintiff must prove that (1) an "'appropriate person' . . . with authority to take corrective action to end the discrimination" (2) had "actual knowledge of discrimination in the recipient's programs" but (3) "fail[ed] adequately to respond" in a manner amounting to "deliberate indifference," *Gebser*, 524 U.S. at 290, and (4) "the harassment was 'so severe, pervasive and objectively offensive that it . . . deprived the victim of access to the educational benefits or opportunities provided by the school,'" *Escue*, 450 F.3d at 1152 (omission in original) (quoting *Murrell v. Sch. Dist. No. 1*, 186 F.3d 1238, 1246 (10th Cir. 1999)).

In this case, the parties agree that the JJHS Principals and Dr. LaHiff are "appropriate person[s]" under the first element of a Title IX claim. LCSD1 also did not move for summary judgment on the fourth element, which the district court accordingly did not address and is not at issue on appeal. And Ms. Forth does not challenge the district court's determination that LCSD1 was not deliberately indifferent *after* learning in June 2017 of her report to the police. She challenges only the district court's conclusion that LCSD1 did not have actual knowledge of discrimination in its programs *before* it learned of her police report, which is also the

sole ground upon which the court found that LCSD1 was not deliberately indifferent during that period. In this regard, Ms. Forth argues that the district court erred by failing to draw all reasonable inferences in her favor and credit evidence concerning LCSD1's actual knowledge.

We agree with Ms. Forth that the district court erred in finding no genuine dispute as to whether LCSD1 had actual knowledge of discrimination because it failed to draw all reasonable inferences in Ms. Forth's favor and failed to credit certain evidence. Furthermore, because the district court rested its decision that LCSD1 was not deliberately indifferent before it learned of Ms. Forth's police report entirely on its erroneous conclusion regarding actual knowledge, we also agree with Ms. Forth that the court erred in finding that LCSD1 was not deliberately indifferent before learning of Ms. Forth's report to the police. Accordingly, we hold that the district court erred in granting summary judgment to LCSD1 on Ms. Forth's claim under Title IX.

A

We begin with *Gebser*'s "actual knowledge" prong. 524 U.S. at 290. In *Escue*, to determine whether the plaintiff had created a genuine dispute as to "actual knowledge," we analyzed whether the school district had "actual knowledge of a substantial risk of abuse" to its students. 450 F.3d at 1154 (emphasis omitted) (quoting *Doe A. v. Green*, 298 F. Supp. 2d 1025, 1033 (D. Nev. 2004)). Similarly, here, the district court applied *Escue*'s "substantial risk" formulation in addressing

Ms. Forth's claims. And both parties adopt the "substantial risk" standard before us on appeal. We follow their lead and apply the same standard.[7]

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[7] LCSD1 states that "Ms. Forth loses under either an 'actual knowledge of discrimination' approach to the standard, or under the 'actual knowledge of a substantial risk' formulation of the standard." Aplee.'s Resp. Br. at 13. Courts are divided as to whether actual knowledge of a substantial risk of abuse can satisfy the actual notice requirement or whether knowledge of harassment that violates Title IX is necessary. *Compare Escue*, 450 F.3d at 1154 (concluding that a plaintiff can show actual notice by showing that the school district had "actual knowledge of a substantial risk of abuse to students" (emphasis omitted) (quoting *Doe A.*, 298 F. Supp. 2d at 1033)), *and Doe v. Sch. Bd. of Broward Cnty.*, 604 F.3d 1248, 1258 (11th Cir. 2010) ("[L]esser harassment may still provide actual notice of sexually violent conduct, for it is the risk of such conduct that the Title IX recipient has the duty to deter."), *with C.S. v. Madison Metro. Sch. Dist.*, 34 F.4th 536, 540, 542 (7th Cir. 2022) (en banc), *and Baynard v. Malone*, 268 F.3d 228, 237–38 (4th Cir. 2001) ("[N]o rational jury could conclude that . . . [the school district] had actual notice that [the teacher] was abusing one of his students."). *But see Fairfax Cnty. Sch. Bd.*, 1 F.4th at 265 (casting doubt on whether all of the Fourth Circuit's opinion in *Baynard* remains good law); *C.S.*, 34 F.4th at 549 (Easterbrook, J., concurring, joined by three other judges) (citing *Fairfax Cnty. Sch. Bd.*, and noting that "a later [Fourth Circuit] case tempered *Baynard*'s language").

This issue was discussed at some length in the Seventh Circuit's en banc decision in *C.S. v. Madison Metropolitan School District*, which was issued after LCSD1 filed its Response Brief. In that case, the court held that actual notice requires the school district to have "knowledge of past or ongoing misconduct" that rises to the level of sex discrimination within the meaning of Title IX, rather than merely conduct that could give notice of "a risk of *future* misconduct." *C.S.*, 34 F.4th at 540, 542 (emphasis added); *see also id.* at 540 ("[W]e hold that the relevant school official acquires actual notice upon learning that misconduct rising to the level of sex discrimination has occurred. Only then does Title IX impose an obligation to act. Contrary to suggestions in some of our past cases, Title IX does not permit institutional liability based solely on knowledge of the risk of future misconduct."). Several judges in that case disagreed with the rule announced by the majority. *See id.* at 549–50 (Easterbrook, J., concurring, joined by three other judges) (declining to follow the majority's actual-violation standard—observing, "[t]hat is not what *Gebser* says"—but noting a "divergence of opinion" amongst the circuits).

To determine whether a school district had "knowledge of a substantial risk of abuse," we examine the reports provided to relevant officials in totality, not in isolation. *See, e.g.*, *Escue*, 450 F.3d at 1154 (considering whether reports from two students that a professor had called one student "butch" and had slapped another on her buttocks, viewed together, provided notice to a university of a substantial risk); *Doe v. Sch. Bd. of Broward Cnty.*, 604 F.3d 1248, 1259 (11th Cir. 2010) (concluding that complaints from two students, "when viewed *collectively*, provided actual notice" of discrimination to a school principal (emphasis added)); *cf. C.S. v. Madison Metro. Sch. Dist.*, 34 F.4th 536, 544 (7th Cir. 2022) (en banc) ("[A] school district's duty to act is not triggered until it has actual knowledge of facts which, *in the totality of the circumstances*, indicate that sex-based discrimination has occurred or is occurring under its watch." (emphasis added)).

Although we must consider the totality of the circumstances, several specific principles guide our analysis. On one hand, "*Gebser* makes clear that 'actual notice requires more than a simple report of inappropriate conduct by a teacher.'" *Escue*, 450 F.3d at 1154 (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 63 (D.

However, aside from alluding to the possibility that a standard other than "substantial risk" applies, LCSD1 does not advocate for adopting another test, and it in fact invokes *Escue*'s "substantial risk" formulation as the governing standard in this appeal. *See* Aplee.'s Resp. Br. at 12–13, 15. Because the parties have coalesced around *Escue*'s "substantial risk" standard in this case, we need not—and do not have occasion to—question that standard's ongoing viability here.

Me. 1999)). In *Gebser*, a high school teacher made "sexually suggestive comments" to his students—including the plaintiff—during class time and book-group discussions that the teacher held outside of class. 524 U.S. at 277. Parents of children other than the plaintiff reported the comments that the teacher made during class to the school principal, who reprimanded the teacher but took no further action. *See id.* at 278. Several months later, the teacher was discovered sexually abusing the plaintiff, leading to a Title IX suit against the school district. *See id.* The Supreme Court affirmed a decision granting summary judgment to the school district on grounds that it lacked "actual notice" of discrimination in its programs. *Id.* at 291. As the Court explained, the "complaint from parents of other students charging only that [the teacher] had made inappropriate comments . . . was plainly insufficient to alert the principal to the possibility that [the teacher] was involved in a sexual relationship with a student." *Id.*

On the other hand, "the actual notice standard does not set the bar so high that a school district is not put on notice until it receives a clearly credible report of sexual abuse from the plaintiff-student." *Escue*, 450 F.3d at 1154 (quoting *Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d at 63); *see also J.M. ex rel. Morris v. Hilldale Indep. Sch. Dist. No. 1-29*, 397 F. App'x 445, 453 (10th Cir. 2010) (unpublished). In *Hilldale*, a high-school student reported to a school principal that he saw the plaintiff—another student—lying on her teacher's hotel-room bed during a school trip. *See id.* at 452. The student who reported the hotel-room incident also lodged an accusation with the principal that the teacher was a "pedophile." *Id.* Relying on the

proposition that actual notice does not require "'a clearly credible report of sexual abuse,'" a panel of this Court concluded that the school district had "actual knowledge of an inappropriate sexual relationship" based on the student's reports to the principal. *Id.* at 453 (quoting *Escue*, 450 F.3d at 1154).

Moreover, reported incidents of harassment against students other than the plaintiff may establish actual notice of Title IX discrimination. *See Escue*, 450 F.3d at 1153; *Broward Cnty.*, 604 F.3d at 1257 ("[N]o circuit has interpreted *Gebser*'s actual notice requirement so as to require notice of the prior harassment of the Title IX plaintiff *herself*."). We have interpreted *Gebser*, which "not[ed] that actual knowledge of discrimination in *the recipient's program* is sufficient," as "implicitly decid[ing] that harassment of persons other than the plaintiff may provide the school with the requisite notice to impose liability under Title IX." *Escue*, 450 F.3d at 1153 (citing *Gebser*, 524 U.S. at 290). Thus, in *Escue*, when addressing whether a state university had actual notice that a professor was sexually harassing a student, we considered reports of inappropriate conduct that other students had made about the professor to the university. *See id.* at 1154.

However, *Escue* did not resolve the related question of whether "notice sufficient to trigger liability may consist of prior complaints or must consist of notice regarding current harassment in the recipient's programs." *Id.* at 1153. *Escue* involved claims that a professor had sexually harassed the plaintiff in 2002 by, among other things, commenting on the size of her breasts and giving her "a 'sternum adjustment' while lifting up her shirt." *Id.* at 1149–50. The plaintiff argued that the

university had notice that the professor posed a "substantial risk of abuse" based on prior complaints that other students had made about the professor in the mid-1990s. *See id.* at 1153–54. We explained that courts remained divided as to whether notice may arise from "prior complaints," which we characterized as a "more permissive" standard, and we assumed *arguendo* that prior complaints may suffice—as opposed to only complaints that are contemporaneous with the discrimination in the program that forms the basis for the Title IX action. *Id.* at 1153.

Even under the "more permissive" standard, *Escue* concluded that the plaintiff had failed to establish actual notice because the prior reported incidents were either "too dissimilar" or "too distant in time" compared to the harassment underlying the plaintiff's Title IX suit. *Id.* at 1153–54. The prior complaints at issue in *Escue* fell into two categories. First, in 1993, the university received reports that the professor had called a student "butch" on multiple occasions and had slapped another student's buttocks. *See id.* at 1150–51. Second, in 1995 or 1996, the university received notice that the professor had dated two "older, non-traditional student[s]," who were close to his age, several years before. *Id.* at 1151. We held that the incidents from 1993 failed to provide actual notice because they "occurred nearly a decade before [the plaintiff's] complaints and involved significantly different behavior—a single incident of inappropriate touching and a series of inappropriate name-calling." *Id.* at 1154. And we concluded that dating "non-traditional students" nearly the same age as the professor did not provide notice that the professor "posed a substantial risk of

sexual harassment to [the university's] students" given the absence of signs that the relationships were non-consensual. *Id.*

We have had no occasion since *Escue* to resolve this issue of the proper role (if any) of prior complaints in the actual notice analysis. *See Rost ex rel. K.C. v. Steamboat Springs RE-2 Sch. Dist.*, 511 F.3d 1114, 1119 (10th Cir. 2008) (declining to decide "whether notice of prior complaints as opposed to notice of the current harassment for which redress is sought triggers liability under Title IX" because the plaintiff argued only that the school district "had actual notice of the specific harassment" against her); *see also Ross v. Univ. of Tulsa*, 859 F.3d 1280, 1284 n.1 (10th Cir. 2017) ("Courts are split on whether notice can consist of prior reports. But we need not weigh in on this split, as the university does not deny that notice can theoretically consist of prior reports of sexual harassment. For the sake of argument, we assume that prior reports can be sufficient." (citations omitted)). And we need not resolve this issue here. LCSD1 does not contend that, in theory, prior complaints—including those involving students other than the plaintiff—categorically cannot provide actual notice of a substantial risk of sexual abuse. *See* Aplee.'s Resp. Br. at 13 (contending that Ms. Forth cannot prevail under "the 'actual knowledge of a substantial risk' formulation of the standard," which focuses on prior complaints); *see also id.* at 15 (arguing, without a threshold objection to consideration of prior complaints, that "LCSD1 had no knowledge of prior incidents

of sexual harassment" (bold-face font and initial capitals omitted)). Accordingly, we leave definitive resolution of that issue for another day.

1

In concluding that Ms. Forth failed to create a genuine dispute as to notice, the district court began by collecting all the relevant reports about Mr. Meza's behavior between the time LCSD1 hired him and the time Ms. Forth reported him to the police. Those reports are:

> (1) a reference check indicating Mr. Meza was "too close to students" but the person issuing the check would have hired Mr. Meza back, (2) Mr. Meza allowing a seventh-grade student to touch his face and neck in a public setting, (3) Mr. Meza allowing groups of girls to be in his classroom outside of class time, (4) Mr. Meza allowing [Ms. Forth] to spend time in his classroom when she should have been in other classes, (5) Mr. Meza asking another teacher to allow [Ms. Forth] to go to Mr. Meza's classroom during class time, (6) Mr. Meza's irritated and aggressive response to the denial of his request, (7) [Ms. Forth] coming to school with Mr. Meza during professional development days, (8) Mr. Meza and [Ms. Forth] sharing a drink, (9) [Ms. Forth] sitting at Mr. Meza's desk while he was teaching a class and [Ms. Forth] was supposed to be in a different class, (10) Mr. Meza adopting [Ms. Forth], and (11) teachers joking around about the relationship between Mr. Meza and [Ms. Forth].

Joint App. at 948–49. The district court assumed that relevant officials received all of these reports. However, the court concluded they failed to create a genuine dispute as to actual notice because "they did not contain allegations that were substantially similar to the abuse." *Id.* at 949.

In reaching this conclusion, the district court relied in large part on a decision from our sister circuit, *J.F.K. ex rel. O.K.K. v. Troup County School District*, 678

F.3d 1254 (11th Cir. 2012), which LCSD1 invokes on appeal. *Troup County* involved a sexual relationship between a middle school teacher and her student, who brought a Title IX suit against the school district. *See* 678 F.3d at 1256–57. For purposes of establishing actual notice, the plaintiff argued that the school's principal had received reports that the teacher had frequently texted the plaintiff and other students, bought the plaintiff expensive gifts, shared a towel with the plaintiff and spent time alone with him at a pool party, and shared a blanket with the plaintiff while their legs were touching. *See id.* at 1261. The court held that while the principal evidently knew the teacher's conduct was "inappropriate," the reported conduct did not provide "actual notice" because it was not "of a sexual nature." *Id.* at 1261–62.

Citing *Troup County*, the district court rested its notice analysis on the proposition that "[c]ourts give substantially less weight to reports when the behavior is simply unprofessional and inappropriate, but not similar to the ultimate abuse." Joint App. at 949 (citing *Troup Cnty.*, 678 F.3d at 1261). The court concluded that the behavior reported to LCSD1—like the conduct at issue in *Troup County*—did not provide actual notice because although it was "potentially unprofessional and inappropriate," it was "not substantially similar" to the sexual abuse that Mr. Meza perpetrated against Ms. Forth. *Id.* As the court explained, "Mr. Meza's conduct of, among other things, allowing [Ms. Forth] to skip class, spending a lot of time with [Ms. Forth], adopting [her], or even sharing a drink with [her] was unprofessional but

it 'did not involve the type of sexual or gender[-]based harassment required in a Title IX claim.'" *Id.* (quoting *Troup Cnty.*, 678 F.3d at 1261).

Ms. Forth argues on appeal that by applying *Troup County*, the district court improperly imposed a heightened evidentiary burden that we have never adopted in this Circuit. She argues that we have never applied—as in *Troup County*—an actual notice standard requiring reports of "sexual or gender[-]based harassment." Aplt.'s Opening Br. at 38. She argues that although such evidence "is certainly probative of actual knowledge," neither Supreme Court nor Tenth Circuit precedents require reports of "conduct that itself violates Title IX." *Id.* at 38–39.

Ms. Forth is correct in saying that we have never held that only reported behavior "of a sexual nature" can provide actual notice under Title IX. *Cf. supra* note 7; *B.A.L. ex. rel. Stephenson v. Laramie Cnty. Sch. Dist. No. 1*, No. 2:16-CV-00091, 2016 WL 10570871, at *3 (D. Wyo. Nov. 30, 2016) (unpublished) (rejecting an argument that the school district did not have actual notice because the reports "did not involve instances of physical conduct or prohibited conduct under Title IX" because "the argument[] that reports must constitute prohibited activity under Title IX is the minority approach and not one currently accepted by the Tenth Circuit"). Rather, our consideration of the various complaints in *Escue*, including the report that the teacher had engaged in inappropriate name-calling, indicates that it is not only sexual harassment behavior that can give rise to notice under Title IX. *See* 450 F.3d at 1154; *see also id.* ("[T]he actual notice standard does not set the bar so high that a school district is not put on notice until it receives a clearly credible report of sexual

abuse from the plaintiff-student." (quoting *Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d at 62)); *see also Hilldale*, 397 F. App'x at 451–53 (concluding that a report that a student was lying on a teacher's bed in a hotel room, as well as the accompanying allegation that the teacher was a "pedophile," was sufficient to provide actual notice even though no actual conduct of a sexual nature was witnessed). To be sure, behavior that is "too dissimilar" and "too distant" in relation to the misconduct underlying a Title IX claim may not suffice. *Id.* at 1153–54. But we never concluded in *Escue* that only "sexual" behavior is sufficiently similar to underlying sexual harassment for purposes of establishing notice.

LCSD1 nevertheless insists that when applying *Troup County*, the district court did not "find[] that only knowledge of sexual or gender-based harassment can suffice to show actual knowledge." Aplee.'s Resp. Br. at 20; *see also id.* at 9. Rather, according to LCSD1, the court merely stated that "substantially less weight" attaches "to reports of behavior that is unprofessional and inappropriate." *Id.* at 20. In that regard, LCSD1 does not urge us to adopt a strict interpretation of *Troup County* under which only reports of "sexual or gender-based harassment" can establish notice. LCSD1 argues that the district court simply applied our guidance in *Escue*, under which reports may not establish notice when they are "too dissimilar" or "too distant in time" compared to the underlying abuse. *See id.* (quoting *Escue*, 450 F.3d at 1153).

Because the parties agree that notice does not necessarily require reports of "sexual or gender-based harassment," and we have never affirmatively adopted such

a strict standard, we address the district court's decision under the assumption that it simply sought to apply *Escue* by assessing whether the complaints were too dissimilar to the alleged Title IX discrimination (i.e., sexual abuse). Nevertheless, even under that narrower interpretation of the district court's decision, for reasons explained herein, we conclude that the court erred in finding that Ms. Forth failed to create a genuine dispute as to notice.

2

Under *Escue*, reports that are "too dissimilar" or "too distant in time" in comparison to the discrimination underlying a Title IX claim may not provide actual notice. 450 F.3d at 1153–54. However, that rule does not relieve courts of their obligation to analyze the information reported to relevant officials in their totality and, on a motion for summary judgment, draw reasonable inferences favorable to the nonmovant. *See id.* at 1152, 1154 (explaining that "[w]e must view the evidence and all inferences that might be reasonably drawn from it in the light most favorable to [the nonmovant]," and thereafter analyzing reported information collectively); *see also Broward Cnty.*, 604 F.3d at 1253–54, 1259 (applying standard under which courts must "resolve all reasonable inferences in favor of the non-moving party" and assessing notice based on reports "viewed collectively"). Furthermore, as is true on any motion for summary judgment, a court commits reversible error when it grants the motion without construing the evidence in the light most favorable to the nonmovant and drawing reasonable inferences in the nonmovant's favor. *See Tolan*,

572 U.S. at 656–57; *Wise*, 71 F.4th at 750; *Galbreath*, 568 F. App'x at 541; *Young*, 801 F.3d at 177.

In this regard, in attempting to determine whether the prior complaints at issue here could be deemed "too dissimilar," we believe that the district court was too quick to label the prior complaints as merely involving "unprofessional" or "inappropriate" conduct. It seems that, by this labeling, the court intended to communicate that the prior complaints merely involved run-of-the-mill violations of school policy—i.e., the kind of violations that a reasonable juror could not believe were capable of signaling a substantial risk of an improper teacher-student sexual relationship. However, when the evidence is construed in the light most favorable to Ms. Forth—as our analysis highlights below—this assessment is flawed. Moreover, it is important to underscore that we have not held that "a clearly credible report of sexual abuse from the plaintiff-student" is necessary to give a school district actual notice.[8] *See Escue*, 450 F.3d at 1154 (quoting *Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d at 62). The analytical focus should be on whether the evidence—viewed in its totality—could be said to have given a school district actual notice of a substantial risk of Title IX discrimination in its programs. And, with that focus in mind, we are

[8] In defending the district court's methodology, LCSD1 relies on authority from circuits that have adopted a more stringent actual notice standard. *See, e.g.*, *P.H. v. Sch. Dist. of Kan. City*, 265 F.3d 653, 661 (8th Cir. 2001) (noting that "a school district must have had actual notice of a teacher's sexual harassment of a student"). That authority cannot help LCSD1 here; we must follow our own actual notice standard.

constrained to conclude that the district court erred in its overall assessment of whether the prior complaints in this case were "too dissimilar."

The district court did not analyze the reasonable inferences available from the incidents reported to LCSD1 in the light most favorable to Ms. Forth. More specifically, viewing the information provided to the JJHS Principals in totality, we agree with Ms. Forth that the district court erred by failing to credit and draw all reasonable inferences in her favor on the actual notice question. Focusing on six specific pieces of record evidence and drawing reasonable inferences from them in Ms. Forth's favor, we conclude that she has created a genuine dispute of material fact as to LCSD1's actual knowledge of a substantial risk of abuse.

First, the district court failed to draw reasonable inferences in Ms. Forth's favor from the incident at a school football game in September 2013, when Mr. Cunningham reported to Mr. Balow that he had observed a student with her arm around Mr. Meza while "continually" touching his face and neck. *See* Joint App. at 704. LCSD1 argues that this incident was not sufficient to create a genuine dispute because "notice requires more than a simple report of inappropriate conduct by a teacher." Aplee.'s Resp. Br. at 16 (quoting *Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d at 63). But we need not decide whether this incident provided notice by itself. Even assuming that it did not, the incident is relevant to our holistic analysis. *See Broward Cnty.*, 604 F.3d at 1258–59; *C.S.*, 34 F.4th at 544. A jury could reasonably infer that it alerted officials that Mr. Meza may have a propensity for inappropriate, physically intimate contact with students.

As such, we cannot say—as in *Escue*—that the incident at the football game involved "significantly different behavior," 450 F.3d at 1154, than Mr. Meza's improper, physically intimate conduct with Ms. Forth—which we examine further below. As we see it, the difference is one of degree, not kind. Moreover, unlike the situation in *Escue*, in which the brief touching of a student's buttocks was an "isolated incident," the incident at the football game was just one of multiple reports that could have provided actual knowledge that Mr. Meza presented a substantial risk of sexual abuse to his students (and Ms. Forth in particular). *See id.* And, notably, even though—as Ms. Forth admits, *see* Aplt.'s Opening Br. at 33 n.13 —this event occurred before Mr. Meza began sexually abusing Ms. Forth, it occurred only a couple of months before Mr. Meza "began to show a special interest in [Ms. Forth]." Joint App. at 372 ¶ 2. Moreover, significantly, LCSD1 does not contend that it was too distant in time to support a claim of actual notice, as was some of the conduct in *Escue*. *See* 450 F.3d at 1154 ("Especially given that nearly ten years passed without additional allegations, [the college] simply did not have the requisite knowledge based on prior complaints to believe that [the teacher] presented a substantial risk of abuse or harassment to students.").

Though this incident involved a student other than Ms. Forth, it is relevant to the notice inquiry because *Gebser* requires assessing "actual knowledge of discrimination *in the recipient's program*," not merely knowledge of actions taken toward the plaintiff. *Escue*, 450 F.3d at 1153 (citing *Gebser*, 524 U.S. at 290); *see also Broward Cnty.*, 604 F.3d at 1257. And we attach no significance to the fact that

the student initiated the contact with Mr. Meza, rather than the other way around, *see C.S.*, 34 F.4th at 546–47 (declining to "ascribe any significance to the fact that much of the contact in this case was initiated by" the plaintiff, as "the onus is on school employees to reject the advances of minor students"), particularly given that Mr. Meza allowed the contact to proceed "continually," Joint App. at 704.

Second, the district court failed to draw reasonable inferences from Ms. Hall's report in August 2014 that Mr. Meza had requested unlimited classroom visitation rights for Ms. Forth. Ms. Hall notified at least one of the JJHS Principals that Mr. Meza requested permission for Ms. Forth to visit his classroom "whenever she wanted to" due to their "special relationship." Joint App. at 381–83. And Ms. Hall reported that when she denied Mr. Meza's request, he responded in a "threatening . . . manner." *Id.* at 382.[9] A jury could reasonably conclude that requesting unlimited visitation rights due solely to Mr. Meza's "special relationship" with Ms. Forth, combined with his "threatening" response, *id.* at 382, exhibited an interest in Ms. Forth that went well beyond a teacher's interest in a student's pedagogical or extra-curricular success.

[9] To be sure, other students spent time in Mr. Meza's classroom outside of their scheduled classes. *See, e.g.*, Joint App. at 379–80 (Ms. Hall testifying that there were "students present in Ms. Mazzone['s] and Mr. Meza's room[s] at times when they were not actually attending their classes"); *id.* at 385 (Ms. Hall testifying that "[o]ften before school there would be a group of girls up in [Mr. Meza's] room"). But LCSD1 offers no evidence that Mr. Meza sought a pass of this nature for any other student—much less responded aggressively to the denial of such a pass.

Furthermore, a jury could have reasonably inferred—from testimony of the JJHS Principals themselves—that Mr. Meza's conduct in this regard would at least have alerted LCSD1 to the possibility that Mr. Meza was attempting to spend more time alone with Ms. Forth to facilitate an improper physical relationship. Specifically, Mr. Balow testified that according to his annual training as a school principal, "paying closer attention to one particular student" could be a sign of an inappropriate teacher-student relationship. *Id.* at 656–57. Mr. Cunningham similarly testified that "issuing frequent passes to a particular student" could be "a sign of grooming." *Id.* at 351.

Although Mr. Balow and Mr. Cunningham did not testify that these behaviors definitively illustrate a sexually abusive relationship, a jury could nevertheless draw a reasonable inference from their testimony that Mr. Meza's behavior, as reported by Ms. Hall, put them on notice of the possibility of an improper physical relationship between Mr. Meza and Ms. Forth. Yet the district court erroneously failed to draw this inference from Mr. Meza's request of Ms. Hall and his aggressive conduct when his request was denied or from the telling, related testimony of the principals. *See Tolan*, 572 U.S. at 657; *Wise*, 71 F.4th at 750 (concluding that "the district court erred in granting summary judgment" by failing to draw certain reasonable "inferences from the evidence" that were favorable to the nonmovant).

Third, the district court failed to draw reasonable inferences in Ms. Forth's favor from Ms. Hall's reports—made on at least three occasions—that she saw Ms. Forth and Mr. Meza together outside class time in unusual circumstances. To begin,

in October 2014, Ms. Hall reported to at least one of the JJHS Principals that she had seen Mr. Meza and Ms. Forth together during a professional development day, when students typically do not come to school, and she testified that she recalled making another report about the same issue later that year. Later, toward the end of 2014, Ms. Hall reported to Ms. Hunter or Mr. Cunningham that Ms. Forth skipped her class to spend time in Mr. Meza's classroom. And, lastly, on at least one occasion, Ms. Hall reported seeing Mr. Meza and Ms. Forth spending a substantial amount of time together before and after class—even though Mr. Meza was not Ms. Forth's teacher at that time. *See* Joint App. at 393–94 (testifying that she saw the two together before school "up to a dozen times" over the year and after school in Mr. Meza's classroom or in the halls an unspecified number of times).[10]

Although spending an inordinate amount of time with a student outside of school hours could, in certain circumstances, reflect that the teacher had assumed a mentor-like or quasi-parental role with the student, a jury could reasonably interpret this behavior of Mr. Meza—when viewed in the context of the other evidence—as signaling to LCSD1 a substantial risk of abuse. Mr. Balow testified that "[s]pending an extraordinary amount of time with a particular student" is a "behavior" that

[10] The JJHS Principals denied ever having received these reports. *See* Joint App. at 202 (Ms. Hunter's testimony); *id.* at 685 (Mr. Balow's testimony); *id.* at 357 (Mr. Cunningham's testimony). "But their denials do not change the outcome because, at this stage, it is not our role to 'assess the credibility of . . . conflicting testimony.'" *Cruz*, 42 F.4th at 1217 (omission in original) (quoting *Starr*, 54 F.3d at 1557).

principals and teachers "keep [their] eyes open for," as indicative of an inappropriate teacher-student relationship. *Id.* at 656–57. He also testified that if a student spends time "in a teacher's classroom frequently during nonclass hours . . . before or after school, . . . that would also cause concern." *Id.* at 657. And Mr. Cunningham testified that "if a teacher brought a student to a professional development day," that "could" be a sign of "grooming." *Id.* at 354. Again, we recognize that Mr. Balow and Mr. Cunningham did not testify that any of this behavior necessarily implies an abusive relationship. Nevertheless, a jury could draw reasonable inferences in Ms. Forth's favor from this evidence—specifically, that Ms. Hall's reports related to behaviors associated with a substantial risk of abuse and would have served to put LCSD1 on notice of this possibility.

Fourth, the district court failed to draw reasonable inferences from reports that students had seen Mr. Meza and Ms. Forth sharing a soda out of the same container. Students separately reported this incident to Ms. Hall and Ms. Robinson, describing it as "odd" or "weird." *Id.* at 387, 438. Ms. Hall and Ms. Robinson then each reported the incident to at least one JJHS Principal. When Ms. Hall reported the incident to Ms. Hunter and Mr. Balow, Ms. Hunter "threw her hands up in . . . exasperat[ion]," and both principals expressed "frustration towards the situation." *Id.* at 388–89. Even if one could conjure up a plausibly benign explanation for this soda incident—when viewed in the light of the other reports discussed *supra*—a jury could reasonably interpret the act of sharing a soda out of the same container as indicative

of an inappropriate physical intimacy between Mr. Meza and Ms. Forth. But the district court did not acknowledge that reasonable inference.

Fifth, the district court failed to draw reasonable inferences from reports that Mr. Meza planned to adopt Ms. Forth.[11] Record testimony creates a genuine dispute of material fact as to whether certain JJHS Principals learned of Mr. Meza's plan. Ms. Mazzone testified that Mr. Meza told her he spoke to Mr. Balow and Dr. LaHiff about adopting Ms. Forth specifically and that the adoption had been "approved." *See id.* at 713–14.[12] Mr. Balow testified that he did "not recall" telling Mr. Meza to

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[11] At oral argument, counsel initially stated that Ms. Forth was "not focusing as much on the adoption issue in this appeal" but then clarified that adoption is "part of the cumulative puzzle" and "goes to the actual knowledge standard." Oral Arg. at 12:20–13:47.

[12] LCSD1 argues in particular that Ms. Mazzone's testimony regarding Mr. Meza's statements about his conversation with Mr. Balow is inadmissible hearsay within hearsay. *See* Aplee.'s Resp. Br. at 25. We disagree. Mr. Meza's statements to Ms. Mazzone and Mr. Balow are not hearsay because Ms. Forth "offered [them] against an opposing party" and they were "made by . . . [LCSD1's] employee [i.e., Mr. Meza] on a matter within the scope of that relationship and while it existed." *See* FED. R. EVID. 801(d)(2)(D). Mr. Meza was an LCSD1 employee at the time he spoke with Ms. Mazzone and Mr. Balow. *See* Joint App. at 713–14 (Ms. Mazzone testifying she spoke to Mr. Meza on the JJHS premises about his conversation with Mr. Balow and Dr. LaHiff and that Mr. Meza "left school" to speak with Dr. LaHiff). And his statement to Ms. Mazzone that he spoke to Mr. Balow about adopting Ms. Forth was "on a matter within the scope" of his employment because he told Ms. Mazzone that he inquired specifically into LCSD1's policies covering teacher-student adoptions, so his statement "related to the scope of his employment with [LCSD1]." *See Rainbow Travel Serv., Inc. v. Hilton Hotels Corp.*, 896 F.2d 1233, 1242 (10th Cir. 1990) (concluding that a hotel bus driver's statement to passengers "that his job was to transport guests who had been bumped from the [main hotel]" to another hotel fell within Rule 801(d)(2)(D) because the "statements were all related to the scope of his employment with the hotel"). The fact that Mr. Meza made the statement to Ms. Mazzone, another LCSD1 employee,

speak to Dr. LaHiff about the adoption. *Id.* at 685. And Dr. LaHiff simply testified that Mr. Meza inquired into LCSD1's policies regarding adoption. *See id.* at 754. Although he testified that Mr. Meza did not ask about adopting Ms. Forth specifically and that he could not recall whether they discussed adopting a student, *see id.* at 754–55, his testimony creates a conflict with that of Ms. Mazzone, and we must allow a jury to assess witnesses' credibility when their testimony conflicts, so we construe the facts in the light most favorable to Ms. Forth. *See Cruz*, 42 F.4th at 1217.

And a jury could have reasonably determined that—in light of his prior suspicious behavior—Mr. Meza's adoption of Ms. Forth significantly contributed to the JJHS Principals' actual notice of a substantial risk of abuse. After all, Mr. Meza's adoption of Ms. Forth would have significantly increased his opportunities to spend time alone with her. Although the district court assumed the JJHS Principals learned of Mr. Meza's plan to adopt Ms. Forth, it did not draw any reasonable inferences favorable to Ms. Forth from that evidence.

Sixth, and finally, the district court failed to expressly consider—let alone draw reasonable inferences favorable to Ms. Forth from—evidence that at least one of the JJHS Principals, Ms. Hunter, subjectively believed that Mr. Meza's conduct presented a substantial risk of sexual abuse of students, especially Ms. Forth. Relying

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does not change the outcome. *See United States v. Young*, 736 F.2d 565, 567 (10th Cir. 1983) (concluding that the "fact that the statement was made by a corporate employee to another corporate employee, rather than to a third party, would not preclude the admission of that statement against the corporation under Rule 801(d)(2)(D)"), *rev'd on other grounds*, 470 U.S. 1 (1985).

in part on the Fourth Circuit's decision in *Doe v. Fairfax County School Board*, 1 F.4th 257, 270 n.8 (4th Cir. 2021), Ms. Forth contends that such evidence of subjective belief can be "highly probative" of actual notice and, in particular, she highlights Ms. Hunter's "instant reaction" and "peculiar response" to Mr. Garcia's mere facial expression. Aplt.'s Opening Br. at 47–48. In her view, this evidence unmistakably indicates that Ms. Hunter had drawn the conclusion "without Mr. Garcia ever having to say so" that Mr. Meza had been engaged in some form of sexual impropriety with Ms. Forth. *Id.* at 48. Further, Ms. Forth points to Ms. Hunter's discussion almost immediately thereafter with Ms. Garcia (Mr. Meza's then-wife), in which Ms. Garcia understood Ms. Hunter to reveal that Ms. Hunter strongly suspected that there was some sort of sexual issue between Mr. Meza and Ms. Forth. According to Ms. Forth, "it is difficult to imagine stronger evidence for actual knowledge." *Id.*

Notably, LCSD1 does not question or challenge the legal premise of Ms. Forth's argument—that is, that such subjective-belief evidence can be highly probative of actual notice—or, relatedly, attempt to distinguish the authorities upon which Ms. Forth relies. Rather, LCSD1 quarrels with whether one could reasonably infer from Ms. Hunter's responses in her exchange with the Garcias that she subjectively believed that Mr. Meza had engaged in sexually improper conduct with Ms. Forth or, at the very least, posed a substantial risk of engaging in such conduct with her.

For example, LCSD1 says, regarding Ms. Hunter's exchange with Mr. Garcia, that the idea that it evinced Ms. Hunter's "subjective belief or suspicion of a sexual relationship between [Mr.] Meza and Ms. Forth" constitutes a "remarkable stretch and not a reasonable inference that can be drawn from the evidence." Aplee.'s Resp. Br. at 33. Considering Ms. Hunter's exchanges with the Garcias, all together, LCSD1 contends that the evidence did not reasonably indicate that Ms. Hunter had a subjective belief regarding the substantial risk of Mr. Meza engaging in sexually improper conduct with Ms. Forth. Thus, there was a "lack of probative value" to the evidence, and "presumably," that is why the district court did not mention it. *Id.* at 35.

Because LCSD1 does not question or challenge the legal premise of Ms. Forth's argument—*viz.*, such subjective-belief evidence by Title IX appropriate persons can be highly probative on the question of actual notice—we have no need to inquire further regarding that matter. We conclude, however, that—viewing the evidence in the light most favorable to Ms. Forth—her factual-inference argument is stronger than LCSD1's. A reasonable jury could draw the inference from the evidence of Ms. Hunter's interactions with the Garcias that Ms. Hunter subjectively believed that there was at least a substantial risk of Mr. Meza improperly engaging in sexual conduct with Ms. Forth. More to the point, we conclude that the district court erred by not taking this evidence—and the reasonable inferences from it—into account; the court should have at least assigned significant probative value to it on the actual notice issue.

In particular, recall that Mr. Garcia testified that, when Ms. Hunter asked him about his adopted granddaughter in early-June 2017, he probably "turned white." Joint App. at 475. Ms. Hunter then instantly responded, "He didn't," and she emphasized that she had spoken to "him over and over again . . . about boundaries." *Id.* at 475–76. In the context of this conversation—where it was evident that Ms. Forth was Mr. Garcia's granddaughter—it would not have been hard for a reasonable jury to infer that, in using masculine pronouns, Ms. Hunter was referring to Mr. Meza and that he was the one she had counseled about boundaries. Furthermore, based on Ms. Hunter's statement, a reasonable jury could infer that Ms. Hunter understood the substantial risk of abuse that Mr. Meza posed.[13] Yet the district court failed to address this evidence, let alone draw reasonable inferences from it in Ms. Forth's favor.

In supporting its contention that drawing such inferences from Ms. Hunter's exchange with Mr. Garcia would have been "a remarkable stretch," Aplee.'s Resp.

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[13] Ms. Hunter's statement is not hearsay because it is offered to prove her knowledge, not the truth of the implicit assertion that Mr. Meza was abusing Ms. Forth or that Ms. Hunter had in fact spoken to him about boundaries. *See, e.g.*, *United States v. Emmons*, 24 F.3d 1210, 1216–17 (10th Cir. 1994) (concluding that a map showing the location of marijuana on the defendant's property was not hearsay because it was offered to show that the defendant "had *knowledge* of the location . . . of the marijuana plants," and not to prove that the defendant was growing marijuana); *Stalbosky v. Belew*, 205 F.3d 890, 895 (6th Cir. 2000) (finding in a wrongful-death action regarding negligent hiring of a driver that affidavits reporting comments by the employer's owner about the driver's violent past were nonhearsay, as they were offered to show that the owner was aware of driver's history, not that the driver had a violent past).

Br. at 33, LCSD1 cites our decision in *Bones v. Honeywell International, Inc.*, 366 F.3d 869 (10th Cir. 2004). LCSD1 argues that "[t]estimony 'grounded on speculation does not suffice to create a genuine issue of material fact to withstand summary judgment.'" Aplee.'s Resp. Br. at 33 (quoting *Bones*, 366 F.3d at 876). *Bones*, however, is inapposite.

In *Bones*, the plaintiff alleged that her employer committed an unlawful retaliatory discharge under Kansas law by terminating her because she had incurred a workplace injury, which made her eligible to file workers' compensation claims. *See* 366 F.3d at 876. We concluded that the plaintiff failed to establish a causal link—as required under Kansas law—between her termination and any protected activity because she did not present any evidence that her employer knew of her work-related injury. *See id.* As we explained, the plaintiff's supervisors testified that they did not know that she had sustained a work-related injury when they terminated her. *See id.* And "[n]othing in the record contradict[ed] [their] testimony aside from [the plaintiff's] speculative statements about their motives for terminating her employment." *Id.*

Bones is of no use to LCSD1. LCSD1 does not explain why the inference of Ms. Hunter's knowledge of a substantial risk that Mr. Meza could commit abuse is not reasonable. Instead, LCSD1 effectively argues that other reasonable inferences are available from Ms. Hunter's statements. But on LCSD1's motion for summary judgment, our precedents required the district court to draw reasonable inferences in the light most favorable to Ms. Forth. *See City of Albuquerque*, 667 F.3d at 1122.

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To summarize, viewing the foregoing reports collectively and drawing reasonable inferences from them in Ms. Forth's favor, a reasonable jury could conclude that LCSD1 received actual notice that Mr. Meza: had a propensity for inappropriate, physically intimate contact with students, including Ms. Forth; displayed an obsessive interest in Ms. Forth; spent substantial amounts of time with Ms. Forth during periods when she was not scheduled to be in his class; took Ms. Forth to school on at least one day—and perhaps two—when students were not scheduled to be on campus; and, after all the foregoing reports came to light, planned to adopt Ms. Forth. Furthermore, a reasonable jury also could conclude that at least one JJHS Principal—a Title IX appropriate person—subjectively believed that (at the very least) Mr. Meza posed a substantial risk of sexual misconduct with students, especially Ms. Forth.

Based on these reports and pieces of evidence, we conclude that Ms. Forth created a genuine dispute of material fact as to whether LCSD1 had actual notice that Mr. Meza posed a substantial risk of abuse. The district court erred in failing to draw the reasonable inferences we have highlighted and, consequently, in finding no genuine dispute of material fact as to actual notice.[14]

[14] Having concluded that the foregoing reports are sufficient to create a genuine dispute concerning actual notice to LCSD1, we need not—and do not—decide whether Ms. Forth created a genuine dispute as to whether any of the JJHS Principals received notice of her overnight running trips with Mr. Meza or of the rumors amongst the teachers regarding an improper relationship between Mr. Meza

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The outcome we reach here is entirely consistent with *Gebser* and decisions from this Circuit addressing actual notice. In *Gebser*, the Supreme Court held that a school did not have actual notice that a teacher had been sexually abusing the plaintiff based on reports that the teacher had made "sexually suggestive comments" to the plaintiff and other students during class time. 524 U.S. at 277. Without more, reports of "inappropriate comments during class" were "plainly insufficient to alert the [school] principal to the possibility that [the teacher] was involved in a sexual relationship with a student." *Id.* at 291.

This case is readily distinguishable. Whereas *Gebser* involved reports of "inappropriate comments," *id.*, here, the school district received reports from which a reasonable jury could conclude that Mr. Meza had engaged in inappropriate, physically intimate contact with students—including Ms. Forth, when the two shared a soda—and had spent substantial amounts of time alone with Ms. Forth and displayed a keen interest in doing so.

Further, the school principal in *Gebser* only received reports of comments the teacher made during class time around other students. *See id.* at 277–78. And those reports came from parents of students other than the plaintiff. *See id.* at 278. By

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and Ms. Forth. Nor do we need to address another matter that at best—even under Ms. Forth's assessment—could constitute "only a small fraction of the [actual] notice" evidence in this case, Aplt.'s Opening Br. at 14 n.4: that is, the reference check indicating that Mr. Meza could be too close to his students.

contrast, many of the reports at issue here specifically concerned interactions between Mr. Meza and Ms. Forth—while they were observed alone and outside class times—including on one or two days when students were not scheduled to be at school. *Cf. Broward Cnty.*, 604 F.3d at 1258 (distinguishing between comments directed at a group of students during class time, which did not provide notice in *Gebser*, and conduct directed toward the individual students in *Broward County* while they were alone with the teacher who harassed them, which did provide notice). The reports at issue in this case were, therefore, of an entirely different nature and magnitude than those that did not provide notice in *Gebser*.

We also find *Escue* factually distinguishable for similar reasons. *Escue* involved two sets of reports that the plaintiff contended provided actual notice of a substantial risk of abuse. One consisted of reports that the professor who allegedly harassed the plaintiff had dated "two non-traditional students" who were "nearly his own age." *Escue*, 450 F.3d at 1154. These reports plainly did not provide notice that the professor "posed a substantial risk of sexual harassment to [the university's] students" given the absence of signs that the relationships were not consensual—that is, without evidence that the women did not consent to enter into dating relationships with the professor. *Id.* Here, Ms. Forth was a minor at all times relevant to this litigation and, accordingly, she was incapable of consenting to a relationship with Mr. Meza as a matter of law. *See* WYO. STAT. ANN. § 6-2-314 (West 2023) (providing, at all times material here, that an "actor commits the crime of sexual abuse of a minor in the first degree if[,] . . . [b]eing eighteen (18) years of age or

older, the actor inflicts sexual intrusion on a victim who is less than sixteen (16) years of age and the actor occupies a position of authority in relation to the victim"); *cf. Doe v. Oberweis Dairy*, 456 F.3d 704, 713 (7th Cir. 2006) (deferring to the age of maturity under relevant state law in determining whether a Title VII plaintiff could legally consent to a relationship with an adult). We therefore see no connection between *Escue*'s decision concerning reports that a professor engaged in consensual relationships with students his own age and the reports of Mr. Meza's behavior towards Ms. Forth.

The second set of reports at issue in *Escue* concerned verbal harassment and inappropriate physical contact between the professor and traditional students who were not around the professor's own age. 450 F.3d at 1150–51, 1154. We concluded that these reports failed to provide notice in part because they "occurred nearly a decade before [the plaintiff's complaints]" and were therefore "too distant" to notify the university of a substantial risk. *Id.* at 1153–54. In this case, LCSD1 received the relevant reports shortly before or at the same time that Mr. Meza initiated and escalated his sexually improper conduct toward Ms. Forth. The reports at issue here were not stale in the least bit.

Escue also emphasized that the reports concerning these traditional students failed to provide notice because they "involved significantly different behavior—a single incident of inappropriate touching and a series of inappropriate name-calling." *Id.* at 1154. But the same is not true of the reports at issue here. The incidents reported to LCSD1 were not isolated—there were at least five reports over the course

of a single school year. And, when viewed "collectively," *Broward Cnty.*, 604 F.3d at 1258–59, these reports were highly suggestive of an ongoing improper physical relationship between Mr. Meza and Ms. Forth.

The JJHS Principals themselves acknowledged that several types of reported behavior—including that Mr. Meza displayed an obsessive interest in Ms. Forth and spent time with her at school when students were not supposed to be present (i.e., on the professional development days)—could evince an inappropriate relationship or "grooming." *See* Joint App. at 350–54, 656–57. Thus, a reasonable jury could find that the reported behavior here was not so far afield from Mr. Meza's sexually abusive behavior toward Ms. Forth that it failed to provide notice as a matter of law. *Cf. Escue*, 450 F.3d at 1154.

Finally, though there are notable differences between this case and the panel's decision in *Hilldale*, 397 F. App'x 445, the decision we reach here is consistent with *Hilldale*. As in *Hilldale*, LCSD1 received reports of Mr. Meza's behavior approximately around the time that he was laying the groundwork for, and advancing, an improper physical relationship with Ms. Forth. *See id.* at 447. Moreover, although no single incident of reported behavior at issue here conveyed quite the same sexually explicit message as the report in *Hilldale*, *see id.* at 452–53, neither in *Hilldale* nor elsewhere have we concluded that actual notice requires reports of such a sexually explicit nature. Moreover, this case involved far more reports over a concentrated period than the situation in *Hilldale*. *See id.* at 452–53 (indicating that the principal received only one report); *cf. Escue*, 450 F.3d at 1153–54 (explaining

that the frequency of reports made to officials is relevant to our notice inquiry). For the reasons we have discussed, a jury could reasonably conclude that the cumulative import of the reports concerning Mr. Meza's behavior provided actual notice to appropriate persons of LCSD1 that he posed a substantial risk of abuse.

In sum, the outcome we reach here is entirely consistent with *Gebser* and decisions from this Circuit addressing the requirements of actual notice under Title IX.

To be sure, we admittedly do reach a different outcome here than the Eleventh Circuit did under somewhat similar facts in *Troup County*, 678 F.3d at 1261–62. In understanding these disparate outcomes, we put aside for analytical purposes, the significant question—which we alluded to *supra* in Part III.A.1—of whether *Troup County* is properly read as applying a more stringent standard than *Escue*, under which actual notice must be predicated on reports of harassment based on sex or gender. Even if *Troup County* is amenable to a narrower interpretation that does not require reports of this character, *Troup County* is distinguishable from the unique facts of this case. Reading the record in the light most favorable to Ms. Forth, many of the most salient circumstances in this case—such as Mr. Meza reacting in a threatening manner to Ms. Hall's denial of his request to have more access to Ms. Forth, the substantial amount of time that Mr. Meza continually spent in person with Ms. Forth, Mr. Meza's adoption of Ms. Forth, and Ms. Hunter's subjective awareness of the substantial risk posed by Mr. Meza—have no analogue in *Troup County*. In a similar vein, the *Troup County* court noted that the school district's lack of actual

knowledge was made "even more clear" by the fact that the teacher's daughter and the plaintiff-student were close, which may have provided a reason for contact between the teacher and student. *See id.* at 1261–62. There is no situation like that here, offering a possible legitimate explanation for Mr. Meza's extensive contact with Ms. Forth. In light of these significant factual distinctions, the different outcome in *Troup County* gives us no pause here.

B

LCSD1 argues that we must nevertheless affirm because Ms. Forth failed to make an adequate showing that the school district was deliberately indifferent before learning of her report to the police. To hold a school district liable under Title IX, a plaintiff must prove, among other elements, that the school district was "deliberately indifferent" to known discrimination. *Escue*, 450 F.3d at 1152 (quoting *Murrell*, 186 F.3d at 1246). "[D]eliberate indifference exists where the response 'to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.'" *Hilldale*, 397 F. App'x at 453 (quoting *Davis*, 526 U.S. at 648). Because deliberate indifference is an element of a Title IX claim, LCSD1 argues that Ms. Forth's appellate challenge must ultimately fail as she has "abandoned in total the issue of deliberate indifference" by appealing only from the district court's determination concerning actual notice, without otherwise appealing the court's decision on deliberate indifference. Aplee.'s Resp. Br. at 32. We disagree.

"After a defendant properly moves for summary judgment, the non-movant plaintiff must bring forward sufficient evidence to demonstrate that a genuine issue

of material fact exists on *every* element of a claim." *Fla. Dep't of Ins. v. Chase Bank of Tex. Nat'l Ass'n*, 274 F.3d 924, 928 (5th Cir. 2001) (emphasis added). Consistent with this rule, Ms. Forth mounted an argument in the district court concerning deliberate indifference.

But LCSD1 maintains that Ms. Forth abandoned the issue of deliberate indifference prior to her police report by failing to raise such an argument in her Opening Brief on appeal. *See* Aplee.'s Resp. Br. at 31–32 (arguing that Ms. Forth "abandoned in total the issue of deliberate indifference" by "'only appeal[ing] the district court's finding that [LCSD1] did not have actual knowledge of the substantial risk of abuse'" (quoting Aplt.'s Opening Br. at 11 n.3)). That argument, however, fails to account for the scope of the district court's decision concerning deliberate indifference.

LCSD1 argued in its motion for summary judgment that Ms. Forth failed to establish deliberate indifference prior to her police report based *solely* on her purported failure to establish actual notice during that period.[15] It should not be

[15] Notwithstanding the limited scope of LCSD1's challenge to deliberate indifference in its motion for summary judgment, in her opposition, Ms. Forth argued that LCSD1 was deliberately indifferent during that period on grounds not directly related to actual notice. Citing to record evidence, she argued that LCSD1 was deliberately indifferent during the pre-report period because it "fail[ed] to respond to, investigate, or even document the numerous reports made to the JJH[S] Principals for years prior to" Ms. Forth's police report. Joint App. at 287; *see also id.* at 288 (arguing the JJHS Principals "did not reprimand [Mr.] Meza" or "provid[e] [Mr.] Cunningham's report to HR"). The court did not address these arguments in finding that Ms. Forth failed to establish deliberate indifference—instead, resting its conclusion solely on the ostensible failure of Ms. Forth to establish actual notice.

surprising, then, that the district court rested its conclusion that Ms. Forth failed to establish deliberate indifference solely on its (erroneous) determination that she did not demonstrate actual notice. In a single sentence, the court disposed of Ms. Forth's argument claiming pre-report deliberate indifference by explaining that "[t]here can be no deliberate indifference where the school district did not have actual knowledge of a substantial risk of abuse." Joint App. at 950 (citing *Gebser*, 524 U.S. at 290–91). The court then went on to address whether LCSD1 was deliberately indifferent "*following* [Ms. Forth's] report to the Cheyenne Police Department." *Id.* (emphasis added).

In other words, the district court's decision concerning deliberate indifference prior to Ms. Forth's police report turned entirely on its (erroneous) conclusion that the school district lacked actual notice during that period. LCSD1 does not identify any authority requiring an appellant under circumstances such as these to challenge a district court's order on a basis that the district court did not articulate below. And we are not aware of any such authority.

To be sure, our precedents allow us to "affirm on any basis supported by the record, even if it requires ruling on arguments not reached by the district court or even presented to us on appeal." *Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1130 (10th Cir. 2011). But apart from mistakenly claiming that Ms. Forth has abandoned the issue of deliberate indifference on appeal and erroneously suggesting (as it did before the district court) that Ms. Forth's showing of actual notice is inadequate and thus necessarily dooms her showing of deliberate indifference, LCSD1 does not

advance any argument on the merits for why we should affirm based on a failure of proof by Ms. Forth concerning its alleged pre-report deliberate indifference. And we see no reason to reach that issue in this appeal.

"Where an issue has not been ruled on by the court below, we generally favor remand for the district court to examine the issue." *Tabor v. Hilti, Inc.*, 703 F.3d 1206, 1227 (10th Cir. 2013); *see also Kerr v. Hickenlooper*, 824 F.3d 1207, 1217 (10th Cir. 2016) ("Appellate courts have 'discretion to remand issues . . . to the trial court when that court has not had the opportunity to consider the issue in the first instance.'" (quoting *Salmon Spawning & Recovery All. v. U.S. Customs & Border Prot.*, 550 F.3d 1121, 1134 (Fed. Cir. 2008))). Because the district court did not address deliberate indifference before LCSD1 learned of Ms. Forth's police report beyond its conclusion that LCSD1 lacked actual notice during that period—a conclusion that we have determined here to be erroneous—we leave that issue for the district court to address in the first instance on remand.

IV

For the foregoing reasons, we **REVERSE** the district court's order granting summary judgment to LCSD1 and **REMAND** the case for further proceedings consistent with this opinion.