

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RACHEL AMATO and
ALANNA MORTENSEN,

Plaintiffs,

v.

FALL RIVER SCHOOL DISTRICT
and JEFFREY A. MROZ, in his
individual capacity,

Defendants.

ORDER

03-C-0728-C

Defendant Jeffrey A. Mroz has moved for reconsideration of the order denying his motion for summary judgment on plaintiffs Rachel Amato's and Alanna Mortensen's claim that defendant had violated their right to equal protection by allegedly touching them sexually while he was their band instructor. Defendant concedes that Rachel Amato has alleged many incidents and kinds of improper touching but contends that Alanna Mortensen has alleged nothing more than that defendant slid his hand up near her vaginal area and grazed her breasts on occasion when he was teaching her how to play the drum. Defendant bases his contention on what he says is plaintiffs' allegation that defendant sexually molested

a male student, C.B., in the same way as he is alleged to have molested Alanna Mortensen. From this, defendant argues that the court erred in denying his motion for summary judgment as to the equal protection claim raised by Alanna.

In plaintiffs' proposed finding of fact #73, plaintiffs proposed as fact that "Miss. Doe [Rachel Amato] testified at her deposition that a male student named [C.B.] told her that [defendant] put his hand on [C.B.'s] knee, slid it up his leg, but that [C.B.] walked away before [defendant's] hand got to [C.B.'s] private area." I was not persuaded when I decided defendant's motion for summary judgment and I am not persuaded now that it is undisputed that defendant slid his hand up C.B.'s thigh toward his groin in a way that could have been perceived as sexual. C.B. did not say anything in his affidavit about the touching being sexually motivated. Even if he did tell Rachel that defendant slid his hand up his thigh, she did not report enough about the incident as he told it to her to know how close defendant was to C.B.'s genitals or what the circumstances were. In contrast, Alanna has explained precisely what she alleges defendant did to her and her explanation leaves no doubt that she perceived contact to be sexually motivated. It may be that upon fuller development of the factual record, it will become evident that C.B. was treated the same way as Alanna was. At this stage of the proceedings, however, I am not prepared to find that defendant treated male band students in the same way that plaintiffs have alleged he treated Alanna.

ORDER

IT IS ORDERED that defendant Jeffrey A. Mroz's motion for reconsideration of the denial of his motion for summary judgment as it relates to plaintiff Alanna Mortensen is DENIED.

Entered this 10th day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge