Sexual Harassment: Supreme Court Adopts New Standard on Student to Student Sexual Harassment...

SUPREME COURT ADOPTS NEW STANDARD FOR STUDENT TO STUDENT SEXUAL HARASSMENT LIABILITY UNDER TITLE IX

Sexual harassment in the educational setting is a growing concern. Four out of five high school students report that they have been the victims of sexual harassment.1 The United States Supreme Court has recently addressed a number of issues in sexual harassment law, including sexual harassment in schools. This article focuses on a recent case interpreting Title IX of the Education Amendments of 1972 ("Title IX"), and attempts to provide educators with an understanding of how it affects school liability.

Title IX prohibits sex discrimination in federally funded educational programs, and applies to all schools receiving any federal funds (for example, a private school receiving student lunch program funds). Congress enacted Title IX in an effort to eradicate sex discrimination in federally funded educational programs and activities by preventing the use of federal resources to support discriminatory practices. Historically, suits were brought under Title IX in an effort to gain equal funding or opportunities for women. In 1992, the Supreme Court held that under Title IX, students could recover monetary damages from a school or school officials for sexual harassment.2 There is no limit to the amount of recovery a student may receive.3

1998 SUPREME COURT DECISION ON TEACHER TO STUDENT SEXUAL HARASSMENT PROVIDES FRAMEWORK FOR DECISION ON STUDENT TO STUDENT SEXUAL HARASSMENT

In 1998, the Supreme Court set the standard for establishing a school’s liability in cases of teacher to student sexual harassment. The case arose from the actions of Frank Waldrop, a 52 year old social studies teacher at a high school in Lago Vista, Texas. In 1992, Parents of at least two other girls had complained to the school board about inappropriate comments Waldrop had made to their daughters. Waldrop was warned by the school principal about the comments, and Waldrop met with the parents of the girls and explained he had meant no offense. The school board considered the matter resolved. In 1993, police found Waldrop naked in a wooded area with one of his 15 year old 9th grade students, Alida Gebser. Waldrop and Gebser had a relationship for approximately 6 months before being caught by police. Gebser had never told school officials about the relationship with Waldrop. Waldrop pleaded no contest to the criminal charge of attempted sexual assault. The school board subsequently fired Waldrop and revoked his teaching certificate. Gebser and her mother filed suit against Lago Vista Independent School District ("Lago Vista") under Title IX. The District Court granted Lago Vista summary judgment, ruling that the school district could not be liable. In order to impose liability, the court stated that a supervisory employee would have to have known about the abuse by Waldrop and have had the power to end the harassment.
The Supreme Court agreed in a 5-4 decision that a school district will not be liable for independent misconduct of a teacher unless the school district has actual notice of such misconduct and acts with deliberate indifference to such misconduct. The Court reasoned that by adopting this stringent standard, a school receiving federal funds would be liable in damages for its own official decisions and not for its employees’ independent actions. Deliberate indifference has been construed by one court to mean that the school (1) actually knew of (2) hostile or offensive conduct likely to interfere with the victim’s education, and (3) deliberately did nothing, or took steps that it knew would be ineffectual, to protect the victim, (4) without excuse.5

STUDENT TO STUDENT SEXUAL HARASSMENT

Up until recently, it has been unclear if a student could sue her school for sexual harassment by another student. The United States Supreme Court answered the question affirmatively. Student to student sexual harassment is actionable under Title IX.6 The Supreme Court adopted the deliberate indifference standard it used in Gebser, and added that a case will only be allowed when the harassment is so severe, pervasive and objectively offensive that it bars the victim’s access to an educational opportunity or benefit. In Davis v. Monroe County Bd. Of Ed., a parent brought suit against the Monroe County Georgia Board of Education alleging that her daughter, LaShonda, was the victim of a prolonged pattern of sexual harassment by one of her fifth grade classmates. The complaint alleged that the classmate, G.F., attempted to touch LaShonda in a sexual manner and made vulgar statements to her. There was a string of these types of incidents which lasted more than three months. On each occasion, LaShonda complained to her teacher who reported the incident to the principal, Bill Querry. The complaint alleged that LaShonda’s grades had dropped because she was unable to concentrate on her studies. Her father discovered a suicide note. LaShonda stated that she didn’t know how much longer she could keep G.F. off her. LaShonda and other female students tried to speak with Principal Querry about G.F.’s behavior. A teacher told the students, “If Querry wants you, he’ll call you.” Querry allegedly asked LaShonda why she "was the only one complaining." Querry took no disciplinary action against G.F. for his actions. The alleged harassment ended after G.F. was charged with, and pleaded guilty to, sexual battery.

LaShonda, through her parents, brought suit against the School Board, Charles Dumas, the school district’s superintendent, and Principal Querry. The complaint alleged that "the persistent sexual advances and harassment by the student G.F. upon LaShonda interfered with her ability to attend school and perform her studies and activities," and that "the deliberate indifference by Defendants to the unwelcome sexual advances of a student upon LaShonda created an intimidating, hostile, offensive and abusive school environment in violation of Title IX." The complaint sought compensatory and punitive damages, attorney’s fees, and injunctive relief. The case had been dismissed by the trial court, which held that no private cause of action existed for student to student sexual harassment under Title IX.
The Supreme Court held that, like Gebser, student-to-student sexual harassment, if sufficiently severe, could rise to the level of discrimination actionable under Title IX. The statute’s plain language confines the scope of prohibited conduct based on the degree of control over the harasser and the environment in which the harassment occurs. The Court held that schools receiving funds under Title IX are "properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school."7 The Supreme Court acknowledged that students often engage in insults, banter, teasing, shoving, pushing and gender-specific conduct that is upsetting to the students subjected to it. However, damages will only be available in those situations where the behavior is so severe, pervasive and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect. The Supreme Court reversed and ordered the trial court to hold a trial on LaShonda’s suit using this new standard.

HOW CAN SCHOOLS LIMIT THEIR LIABILITY?

Establish an anti-sexual harassment policy and grievance procedure. Title IX regulations require that federally funded institutions establish and publish a policy against discrimination, a procedure for resolving student grievances under Title IX, and appoint a coordinator to monitor compliance efforts. A supervisory employee should be designated as the proper person for students to report sexual harassment to. All teachers should report any incidents of sexual harassment to the designated employee. The policy should address the issue of both teacher to student and student to student harassment. A policy and grievance procedure could insulate a school district from liability if a student fails to make improper conduct by a teacher or student known. The existence of a grievance procedure and reporting mechanism that is effective will help a school show that it did not have actual knowledge of unreported harassment.

Perform a thorough investigation and take prompt remedial action. When faced with a complaint of sexual harassment, school officials must respond appropriately. As long as the strategy chosen is one plausibly directed toward putting an end to the known harassment, courts should not second-guess the professional judgments of school officials.8 It should be enough to avoid Title IX liability if school officials aggressively investigate complaints of sexual harassment and respond consistently and meaningfully when those complaints are found to have merit.9 An appropriate response in the case of a student harasser could include verbal or written warnings, suspension or expulsion. The Davis court reaffirmed that school administrators will continue to enjoy flexibility in their disciplinary measures so long as their response to student-to-student harassment is not clearly unreasonable in light of the known circumstances. Parents of a harassing student should be made aware of their child’s actions. When the harasser is a faculty member, warnings, suspension or termination may be appropriate. It may be necessary to remove the harasser from the environment.
Be aware of potentially harassing behavior. Schools should train employees to recognize potentially harassing behavior, and to respond to complaints of harassment in accordance with the anti-sexual harassment policy and grievance procedure. The investigation process should include the right to progress up a chain of command if the victim is not satisfied with the proposed resolution to the harassing behavior. When school officials become aware of, or learn of facts that give reason to suspect that a child has suffered harassing behavior, they should report such conduct as soon as possible, as required by law.  

Instruct personnel on how to respond to peer sexual harassment. Conduct training for teachers, administrators and students on how to recognize and respond to harassment. Schools should respond quickly and appropriately to claims of harassment, and keep records of all complaints of sexual harassment. School Officials should discipline teachers and administrators who are aware of harassment but fail to respond or follow established reporting procedures.

NOTES:


There are federal reporting requirements under the Public Health and Welfare Act where a professional person learns of improper conduct towards a child. 42 U.S.C.S. 13031. This specifically applies to teachers, teacher’s aides or assistants, school counselors and guidance personnel, school officials, and school administrators. There may also be reporting requirements under local state laws.

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