

# Davis v. Monroe County Board of Education

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Practice Area: School Law

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Since its enactment in 1972, Title IX of the Education Amendments had gone mostly undefined by the United States Supreme Court. Last year, however, in *Gebser v. Lago Vista Independent School District*, the Supreme Court determined the boundaries of a school district's liability for teacher-on-student sexual harassment under Title IX. This left open the question of whether a district could be liable for student-on-student sexual harassment. Last week the Supreme Court addressed this question, stating that a district could be held liable for student-on-student sexual harassment, but only under very limited circumstances. This article will briefly discuss the law before *Davis*, the case itself, and how the case will affect school districts.

## The Law Before *Davis*

For many years, it was unclear to what extent a district might be held liable for sexual harassment by its students or employees. The Department of Education Office Of Civil Rights (the federal agency that enforces Title IX) maintained that, as long as an agent or employee of the district knew of the harassment, that knowledge would be automatically charged to the district if the district was the recipient of federal education aid.

Federal courts in different states created different standards of liability for districts under Title IX. Most courts allowed sexual harassment lawsuits brought against districts for harassment by teachers, though different courts applied different standards under Title IX. Only two appellate courts considered cases involving student-on-student sexual harassment. Both ruled that Title IX did not allow for such a claim by students. Conversely, a number of district courts (the lowest courts in the federal system) allowed districts to be held liable for student-on-student harassment under Title IX.

In 1998, the Supreme Court in *Gebser* addressed the issue of teacher-on-student sexual harassment. It held that a district can only be liable for sexual harassment of a student by one of its employees if:

- A school official has actual knowledge of the harassment;
- That official has the authority to address the harassment and institute corrective measures on the school district's behalf;*and*
- The official fails to adequately respond under circumstances that amount to "deliberate indifference."

The *Gebser* opinion did not address the question of student-on-student sexual harassment. While there had been some debate over the issue, it was generally presumed that a district cannot be held liable for sexual harassment by one of its students. The rationale was that the district does not exercise the same control over a student as it does over one of its employees. The Supreme Court proved this presumption to be wrong.

## The Supreme Court's Decision

*Davis* holds that a district can be held liable for student-on-student sexual harassment. In *Davis*, LaShonda, a fifth grade student, alleged that she was the victim of repeated sexual harassment by another student in her class. The student attempted to touch LaShonda's breasts and genital area. He made vulgar statements regarding his desire to fondle her and have sex with her. This activity happened over a number of months from 1992 to 1993. LaShonda reported each of these incidents to her mother and her classroom teacher. The mother had been assured that the school principal had been informed of the incidents. According to LaShonda's complaint, no disciplinary action was taken against the student.

Later in 1993, the same student allegedly placed a doorstop in his pants and proceeded to act in a "sexual suggestive manner" toward LaShonda during gym class. Again, LaShonda reported the student's behavior to her gym teacher. One week following the incident in gym class, the same student again allegedly engaged in harassing behavior, this time while under the supervision of another classroom teacher. LaShonda reported the incident to the teacher, and again LaShonda's family followed up with the school about the incident.

It appears that LaShonda was not the student's only victim, as other girls in the class attempted to talk to the principal about this particular student's behavior. The girls were told that the principal didn't need to see them, and if the principal "wants to, he'll call you." For whatever reason, the student was never disciplined for the harassment. Instead, the sexually harassing conduct toward LaShonda continued (including one incident where he rubbed his body against LaShonda in the school hallway) until LaShonda filed criminal charges against the student, and the student pled guilty to sexual battery for his conduct.

LaShonda was apparently devastated by the student's continued harassment of her. Her father found a suicide note that she had written. In addition, her generally high grades allegedly dropped as she became unable to concentrate on her studies. LaShonda's family subsequently sued the district for not doing anything about the harassment.

The district court refused to have a jury hear the case. It dismissed LaShonda's claim on the ground that student-on-student or "peer" harassment does not provide grounds for a claim against a school district under Title IX. LaShonda appealed her case to the Eleventh Circuit Court of Appeals. The Court of Appeals agreed with the lower court, dismissing the claim. She then appealed her claim to the Supreme Court, which agreed to hear her case.

The Supreme Court in a close 5-4 decision held that a student can sue for student-on-student sexual harassment. It assumed for the purposes of the appeal that all of the facts in LaShonda's complaint were true. Citing its decision in *Gebser*, where the Court held that a district could be liable when it showed "deliberate indifference" to known acts of harassment, the Court held that in "certain limited circumstances," a district can be liable for damages under Title IX for peer harassment.

The Court specifically noted that the misconduct took place on school premises. The Court also noted that because the school has a "custodial" power over students that could not be exercised over "free adults," the school has or should have significant control over the harasser. The Court also found that the school in question (and most schools) had received an article from the National School Board Association's Council of School Attorneys that specifically stated that if a "school district has constructive notice of severe and repeated acts of sexual harassment by fellow students, that may form the basis of a Title IX claim."

The Court rejected the idea that allowing suits for student-on-student harassment would require the district to expel every student accused of misconduct involving sexual "overtones" to protect itself from liability for damages. It held that school administrators will "continue to enjoy the flexibility they require" so long as they respond to known peer harassment in a manner that is not "clearly unreasonable." The Court also distinguished between different educational settings, noting that a university would not be expected to exercise the same degree of control over its students that a grade school would exercise.

## The Standard

The Court created a fairly high standard that students will have to overcome in order for the district to be liable for monetary damages for peer harassment. The Court appears to have created a four-factor test:

- The harassment must be severe, pervasive, and objectively offensive.
- The harassment must result in depriving the victims of the harassment of equal access to educational opportunities or benefits provided by the district.
- The district through one of its agents or employees must have actual knowledge of the harassment.
- The district must act with "deliberate indifference" to the sexual harassment.

The Court emphasized that damages would not be available for students who were subject to being "teased" or called "all kinds of names." Damages are only available 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 Court gave the example of a group of male students physically threatening their female peers every day, successfully preventing the female students from using a particular school resource such as an athletic field or computer lab.

## Implications for School Districts

While *Davis* does open the door for claims of student-on-student sexual harassment, it creates some high hurdles to overcome for anyone who claims peer harassment. Many legal scholars believed that the Court's ruling in *Gebser* implied that there would be no such cause of action under Title IX for peer harassment. However, now that the Supreme Court has surprised many of us with its decision, the question is, what measures should a district take to help protect itself from liability.

For the most part, school operations will not be drastically altered because of the Court's decision in *Davis*. Most schools providing quality education to students have procedures to react to such behavior by students. Districts should always take the following precautions, however, when addressing sexual harassment:

- Have a written anti-harassment policy covering student-on-student, employee-on-employee, and employee-on-student harassment;
- Make sure that the policy covers all types of harassment, including sexual, racial, and religious harassment and harassment based on an individual's national origin, disability, sexual orientation or creed;
- Have a detailed grievance procedure for both students and employees that includes a provision on reporting harassment;
- Distribute the policy to all teachers, school officials, personnel, students and their parents;
- Consider all complaints seriously and conduct an investigation of those complaints. In doing so, districts should not rush to judgment or immediate discipline. However, it is clear that students can be and, in most cases, should be disciplined for proven acts of sexual or other harassment.

While no measures can completely insulate a district or any employer from lawsuits, such steps will decrease the possibility that a district will be held liable for harassment.

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