Davis v. Monroe County Board of Education et al.

Charles L. Scott, MD, and Marigold Nabong, MD

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In 1994, Aurelia Davis filed suit against a county school board and school officials seeking damages for the sexual harassment of her daughter, LaShonda, by G.F., a fifth-grade classmate at a public elementary school. Davis alleged that G.F.'s sexual advances violated Title IX of the Education Amendments Act of 1972. On May 24, 1999, the U.S. Supreme Court held that a private Title IX damages action may lie against a school board in cases of student-on-student harassment, but only where the funding recipient is deliberately indifferent to sexual harassment of which the recipient has actual knowledge, and that harassment 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. The Supreme Court reversed the judgment of the Eleventh Circuit Court of Appeals and remanded the case for further proceedings.[1]

Background of Sexual Harassment in a School Setting

Over the last 10 years, the spotlight previously focused on sexual harassment in the workplace has expanded to include sexual harassment in a school setting. In general, two forms of sexual harassment have been recognized in the work environment. *Quid pro quo* sexual harassment represents an offer of a job-related benefit in return for a sexual favor. In this setting, there is often a power differential between the person harassing and the person being harassed. Hostile environment sexual harassment involves situations where an intimidating, abusive, or offensive work environment is created, although it is not required that the person's job actually be affected.[2]

Although sexual harassment has been described primarily in the setting of the adult workplace, sexual harassment of students at school is not uncommon. An American Association of University Women (AAUW) survey of students in grades 8 through 11 found that 85% of girls and 76% of boys experienced sexual harassment during their school years.[3] Two critical pieces of legislation set the stage for allowing sexual harassment claims in educational institutions: Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

Title VII prohibits discrimination on the basis of race, color, religion, national origin, and gender and served as the original legal basis for sexual harassment claims.[4] In 1972, Congress passed Title IX of the Education Amendments Act to bridge a gap left by the application of Title VII to the school setting. In particular, Title VII proscribed sex-based discrimination in the employment relationship but not in the school-student relationship. Title IX fills this void by prohibiting distribution of federal funds to schools that engage in gender discrimination and by protecting individuals from discriminatory practices.[5] Title IX specifically provides that "no person in the United States 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."[6] Both Title VII and Title IX have been instrumental in establishing the framework for

Dr. Scott is a Clinical Assistant Professor of Psychiatry in the Division of Forensic Psychiatry, Department of Psychiatry, University of California, Davis. He serves as the Division's Director of Forensic Psychiatry Training. Dr. Nabong is a child psychiatrist and forensic psychiatry resident at the University of California, Davis. Address correspondence to: Dr. Charles Scott, Dept. of Psychiatry, University of California, Davis, 2230 Stockton Blvd., Sacramento, CA 95817.

courts to interpret sexual harassment claims by students in an educational setting.

The U.S. Supreme Court addressed student's claims of sexual harassment by teachers in two important cases. In 1992, the United States reviewed the case of *Franklin v. Gwinnett County Public Schools*. In this case, a high school student alleged that a teacher sexually abused her on repeated occasions. The student asserted that teachers and school administrators knew about the harassment and failed to take action. The United States Supreme Court held that under Title IX, educational institutions could be liable to students for monetary damages for intentional teacher-on-student sexual harassment.[7] Although this case involved *quid pro quo* sexual harassment, the Court implied that Title IX also applied to hostile environment sexual harassment claims in a school.

In the case of *Gebser v. Lago Vista Independent School District*, the U.S. Supreme Court provided clarification regarding the conditions required to establish liability in school sexual harassment claims. The Supreme Court held that damages may not be recovered for teacher-on-student sexual harassment under Title IX unless a school district official who "at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct."[8] Although both of these cases were important in addressing teacher-on-student sexual harassment claims, neither involved a claim of student-on-student sexual harassment. In the case of *Davis v. Monroe County Board of Education et al.*, the United States Supreme Court was directly faced with the issue of whether school districts could be liable for damages when one student was found to sexually harass another student.

Case Background

LaShonda Davis was a fifth-grade female student at Hubbard Elementary School in Monroe County, Georgia. According to petitioner Aurelia Davis (mother of LaShonda), her daughter was sexually harassed beginning in December 1992 and continuing until mid-May 1993, when a male classmate (G.F.) was charged with and pled guilty to sexual battery. G.F.'s reported actions included attempts at touching LaShonda's breasts and genital area and making vulgar statements such as "I want to get in bed with you" and "I want to feel your boobs." Other alleged incidents included G.F.'s placing a doorstop in his pants while acting sexually toward Lashonda and rubbing his body against LaShonda in a sexual manner.

According to LaShonda, she reported each incident to her mother and various school personnel including two classroom teachers and a physical education teacher. One classroom teacher allegedly assured LaShonda that she had informed the school principal of these incidents. LaShonda contended that despite these reports, no disciplinary action was taken against G.F. In addition, the complaint asserted that the school board had no established policy on sexual harassment, that other school girls were sexually harassed by G.F., that a teacher denied a group of female students the opportunity to speak with the school principal regarding G.F.'s behavior, and that when LaShonda did speak with the principal, he asked her why she was "the only one complaining."

On May 4, 1994, LaShonda's mother filed suit against the Monroe County Board of Education, the board superintendent, and the elementary school principal, alleging that the defendants knew of the harassment yet failed to take any meaningful action to stop it. The complaint alleged that G.F.'s harassment curtailed her ability to benefit from her education and lessened her capacity to concentrate on her schoolwork. Her alleged injuries included declining grades and feelings of suicidality.

The complaint also alleged that respondents' deliberate indifference to G.F.'s persistent sexual advances toward LaShonda created an intimidating, hostile, offensive, and abusive school environment in violation of Title IX of the Education Amendments. The Georgia District Court dismissed the claim against the individual defendants on the ground that only federally funded educational institutions are subject to liability in private causes of action under Title IX. The court also dismissed the claims against the school board concluding that Title IX provided no basis for liability absent an allegation "that the Board or an employee of the Board had any role in the harassment."

In 1996, the Eleventh Circuit Court of Appeals ruled that the District Court erred by requiring that a school employee must commit the harassment to state a valid sexual harassment claim. Applying Title VII principles, the appellate court drew an analogy between coworker harassment and peer sexual ha-

rassment and concluded that the alleged facts of this case were sufficient to support a claim for hostile environment sexual harassment.

In 1998, the Eleventh Circuit Court of Appeals, *en banc*, reversed its previous 1996 decision and held that Title IX could not be used to hold school districts liable for students who sexually harass other students. The United States Supreme Court granted *certiorari* to resolve conflicts between Circuits regarding the circumstances under which a recipient of federal educational funds can be liable in a private damages actions arising from student-on-student sexual harassment.

United States Supreme Court Holds that Title IX Damages May Be Awarded in Student-on-Student Sexual Harassment

In the U.S. Supreme Court's five-to-four decision, Justice O'Connor wrote the majority opinion outlining the parameters under which Title IX damages may be awarded in cases of student-on-student sexual harassment. The Supreme Court rejected the school district's argument that private damages were not available under Title IX because they had not received required notice that they could be liable for student-on-student sexual harassment. The Court noted that the Monroe County school officials and attorneys had been told by the National School Boards Association that districts could be liable under Title IX for their failure to respond to student-on-student harassment. In addition, the Court cited the Department of Education's Office for Civil Right's guideline describing student-on-student sexual harassment as falling within the scope of Title IX prohibitions.

The Supreme Court also rejected the respondent's argument that liability could not be imposed for the misconduct of third parties, over which the school district exercised little control. The Supreme Court agreed that a recipient of federal funds might be liable in damages under title IX only for its own misconduct. However, the Court found that petitioners suit was based on the school board's own decision to remain idle in the face of known student-on-student harassment in its schools. Citing *Gebser*, the Court emphasized that a "recipient of federal education funds may be liable in damages under title IX where it is deliberately indifferent to known acts of sexual harassment by a teacher." The Court extended this liability specifically to student harassers when stating "the misconduct identified in *Gebser*—deliberate indifference to known acts of harassment—amounts to an intentional violation of Title IX, capable of supporting a private damages action, when the harasser is a student rather than a teacher."

The Supreme Court provided guidelines regarding the limits of liability for student-on-student sexual harassment in a school setting. The Court noted that the school must have some control over the alleged harassment. The Court stated: "A recipient cannot be directly liable for its indifference where it lacks the authority to take remedial action." The Court also recognized that to establish liability, the school must exercise substantial control over the context in which the known harassment occurs. In this case, G.F.'s alleged misconduct toward LaShonda occurred during school hours and on school grounds, thereby taking place "under" an "operation" of the funding recipient. The Court concluded that in this context, the school board exercised "significant control over the harasser."

The Supreme Court also applied the deliberate indifference standard articulated in *Gebser* to situations involving student-on-student sexual harassment. The Court attempted to provide parameters defining the deliberate indifference standard. First, deliberate indifference must, at a minimum, "cause [students] to undergo" harassment or "make them liable or vulnerable" to it. Second, deliberate indifference to sexual harassment by a student requires an actual knowledge of conduct 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.

Although the Court did not define "objectively offensive" behaviors, it stated that actionable harassment depended on a "constellation of surrounding circumstances, expectations, and relationships" which was not limited to the ages of the harasser and the victim or the number of individuals involved. The Court commented that schools differed from a workplace environment because students are still learning how to interact appropriately with their peers. According to the Court, students may be subjected to behaviors that are upsetting but not necessarily grounds for damages. The Court emphasized that damages are not available for simple acts of teasing and name-calling among school children even

when these comments target differences in gender. The requirement that the discrimination occurs "under any education program or activity" indicates that the offending behavior must be serious enough to have the systemic effect of denying the victim equal access to an educational program or activity.

Finally, the majority on the Court stated that school administrators will be deemed "deliberately indifferent" only where their "response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances." An educational institution cannot be directly liable for its indifference where it lacks the authority to take remedial action. In addition, the Court noted that it would be entirely reasonable for a school to refrain from disciplinary action that would expose it to constitutional or statutory claims.

The dissenting Justices expressed several concerns regarding the majority ruling. First, they argued that Title IX did not authorize liability against school districts in cases involving student-on-student sexual harassment cases. Second, they disagreed that Congress had provided the school district with clear and unambiguous notice that they would be liable for damages for failure to remedy discrimination caused by their students. Third, the dissent contended that the "under any education program or activity" requirement established by Title IX must be "pursuant to, in accordance with, or authorized or provided by" school policy or actions. Therefore, the discrimination must actually be controlled by the school not by a student. Fourth, the dissent warned that the majority holding would create "potentially crushing" financial liability for school districts for student conduct that the majority did not identify or define with any precision. Finally, the dissent commented that holding schools liable for damages in student-on-student sexual harassment would "breed a climate of fear that encourages school administrators to label even the most innocuous childish conduct as sexual harassment."

Commentary

This Supreme Court holding is significant in several aspects. First, the Court extended their *Franklin* and *Gebser* rulings allowing a private right of action for monetary damages under Title IX to include student-on-student sexual harassment. Second, the Supreme Court articulated that for liability to be established, the school official's deliberate indifference must involve actual knowledge of the harassment. Under this standard, the importance of reporting alleged harassment to a school official cannot be understated if liability is to be established. Third, the Court affirmed the concept that hostile environment sexual harassment claims described in the workplace are also applicable to the school setting. Finally, the Court provided a seemingly higher standard to establish liability from student-on-student sexual harassment when compared with teacher-on-student sexual harassment.

Exact behaviors that qualify as student-on-student sexual harassment are yet to be determined by the legal system. Future lawsuits will struggle to define which behaviors of students in school are so "severe, pervasive, and objectively offensive" that monetary damages should be awarded. In his dissent, Justice Kennedy predicted an onslaught of such lawsuits when he wrote, "The fence the Court has built is made of little sticks, and it cannot contain the avalanche of liability now set in motion."

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