

To Mike, Lexie, Eddie
& Paf.

DRAFT -- DRAFT -- DRAFT (8/5/98)

Dear Superintendent of Schools:

An important shared goal of educators throughout our country is to ensure that students have a safe and secure environment that is conducive to learning and that affords students equal educational opportunities regardless of their sex. Sexual harassment of a student -- particularly by a teacher -- impedes education and, if not appropriately addressed, constitutes a breach of trust between the school and the student and family.

School districts have a critical responsibility for preventing and eliminating sexual harassment discrimination. A recent Supreme Court decision in the area of sexual harassment has raised questions regarding the Title IX obligations of school districts that receive federal funds to respond to instances of sexual harassment of students. Gebser v. Lago Vista Independent School District (June 22, 1998). The obligations of schools that receive federal funds to respond to instances of sexual harassment have not changed as a result of the Supreme Court decision. This letter summarizes existing obligations and the effect of the Supreme Court decision.

Title IX Prohibits Sexual Harassment Discrimination

The Department of Education's Office for Civil Rights (OCR), which has the responsibility for enforcing Title IX, recently provided educational institutions with a detailed discussion of their responsibilities when students are sexually harassed. A copy of the guidance is available on the Department's website at <http://www.ed.gov/offices/OCR/sexhar00.html>.

Title IX prohibits sex-based discrimination in education programs and activities operated by schools that receive federal financial assistance. Therefore, school districts are responsible under Title IX to provide students with a nondiscriminatory educational environment. As described in the guidance, sexual harassment of a student may violate this obligation. When a responsible school employee, such as a principal or teacher, learns of sexual harassment discrimination, Title IX requires the school to act immediately to end the harassment, to eliminate the effects of the harassment, and to prevent the harassment from recurring.

The Department's Title IX regulation also requires schools to have well-publicized policies against discrimination based on sex, including sexual harassment discrimination; to have effective and well-publicized procedures for students and their families to raise and resolve these issues; and to take prompt and effective action to equitably resolve sexual harassment discrimination complaints. In addition, school

8/5

districts are required to designate at least one employee to coordinate and carry out its Title IX responsibilities. I encourage you, at the outset of the new school year, to publicize and reaffirm these policies and procedures to returning and new members of the school community, including teachers, administrators, parents, and students.

The Gebser Decision Addresses Private Damages Claims

The Supreme Court recently addressed the issue of school district liability under Title IX for the sexual harassment of a student by her teacher in its decision in Gebser v. Lago Vista Independent School District. That decision was limited to private Title IX lawsuits for money damages. The Court in Gebser ruled that a private plaintiff in a court action cannot obtain money damages against a school district under Title IX unless a school official who has the authority to take corrective action has actual notice of the harassment and is deliberately indifferent to it. The Gebser decision expressly distinguished the limits on private recovery of money damages from the Department of Education's enforcement of Title IX. Thus, OCR will continue to expect school districts to take reasonable steps to prevent and eliminate sexual harassment discrimination. In addition, pursuant to its published Guidance, OCR will continue to investigate complaints alleging sexual harassment discrimination.

In the near future, OCR also intends to issue more detailed guidance explaining the application of the recent Supreme Court decisions in the context of OCR's 1997 Sexual Harassment Guidance. These decisions have not altered the fundamental obligations of schools and their employees to take prompt action in response to instances of sexual harassment as explained in that guidance.

OCR Offers Technical Assistance

Sexual harassment discrimination can have serious, detrimental consequences for students. Thus, school districts need to take the problem of sexual harassment very seriously. Schools should be taking preventative steps to identify problems -- such as training staff to recognize and report potential harassment -- and to follow up on any information indicating potential discrimination. OCR welcomes the opportunity to provide schools with technical assistance and practical guidance.

The Department is committed to continuing our leadership role in ensuring equal educational opportunities for all students. The Department will also continue to work with schools, parents and other interested parties to ensure that schools have effective policies and procedures in place to prevent sexual harassment. I have attached a contact list for OCR's regional offices for your convenience.

Thank you for your interest in this most critical issue.

8/5

Sincerely,

Norma V. Cantu

Attachments



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

600 Independence Avenue, S.W.
FOB-10 Room 5442
Washington, D.C. 20202-2110
Tel. (202)401-8302
Fax. (202)401-9533

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FOB-10 Room 5442
Washington, D.C. 20202-2110
Tel. (202)401-8302
Fax. (202)401-9533

FACSIMILE TRANSMISSION COVER SHEET

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met w/ advocates to walk through steps

have a final version of a Dear Colleague letter (this afternoon)

resp. hasn't changed

we will come out w/ new guidance

Letter is stronger than news release & more detail

Current obligations

& flags will get more

in time for
back-to-school

More detailed guidance:

2 mo. down the road (DOJ/DOE) agree

Damages in a private action - standard

Doesn't define when a violation or when injunctive relief available.

& that OCR can go further in regs
to, for ex, require anti-harassment policies.

Unclear: cases when OCR investigates (find violations)

Can OCR provide injunctive relief?

May think yes, as long as relief does not
look like damage (\$)
relief.

[Ct. ~~has not~~ said:

OCR does not get damages under Title IX

Is that position of OCR?

Do we think that OCR can seek damages relief?

OCR has gotten damages-type relief in other actions.

~~Mr~~ Gepsen

Does not say private π can't get injunctive relief.

In all but 11th and 5th, ^{private π} can get injunctive relief.

Teacher as agent for school district (?)

OCR - "make whole relief" (v.) damages.
(like back pay)
or no kind of \$ relief.

Clear: OCR can find a violation of reggs & injunctive relief.
Regs have no remedial scheme.

OCR's remedies (?)

Statute: cut off funds or other ^{means authorized by law} ~~kinds of relief~~.
(like Title VI)

(OR) refer to DOJ

(direct injunctive relief)

W

Roll-out (?) (of Dear Colleague)

Dear Colleague to Superintendents

Riley/Reno → Event to roll out reminder to school districts

Riley to join Reno @ her Thursday

Legislation

Marcia & others want a leg. response
to make it easier for private IT to enforce
Title IX

(Nowhere does a statute define sexual harassment)

Students same access to Cts. as workers under
Title VII

(Title VII has damages capped; this draft does not have caps)

✱ Marcia totally opposed to caps.

We (Admin) supported position that school districts
would be liable (in Gebser)

Chester Private party to enforce effects test under Title VI (?)
(injunctive relief)
We Won in 3d Cir. SCt granted cert.
possible attack on effects reg itself.

OCR to get damages (?) (under Title IX) or Title VII)

@ all / under what legal standard

damages available only
~~only~~ for private parties (?) unresolved

Leg. does not contemplate damage awards

DOJ has never litigated a Title IX case referred by ~~DO~~ Ed.
Do a lot of Title VI cases — (school deseg).

Open Q:

can fed agencies generally set damages ^{\$} (?)

Coming up a lot in the ADA context

This leg. creates a private right
of action for violations of Title IX.

(in compliance
context)

damages subject to Burlington Δ.

DOJ: ~~not and memo~~

→ may take a position in support of leg. relief

Women's groups want to attach this to something
this summer. (not as an amendment to Title IX)
would lose it ?)

Norton wants to offer their own bill —
Amend to Title IX (yikes)

DRAFT -- NOT FOR DISTRIBUTION

July 30, 1998

STUDENT PROTECTION ACT OF 1998**SECTION 1-- SHORT TITLE.**

This Act may be cited as the "Student Protection Act of 1998"

SECTION 2 -- CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE.**(a) FINDINGS.** Congress finds that --

(1) As the Supreme Court acknowledged in *Gebser v. Lago Vista School District*, "The number of reported cases involving sexual harassment of students in schools confirms that harassment unfortunately is an all too common aspect of the educational experience", 118 S.Ct 1989, ____ (1998);

[insert a series of findings on the harms caused by such harassment, the *Gebser* decision's elimination of damages as a remedy in private title IX actions, the fact that this decision provides students with less protection from sexual harassment in school than adults receive in the workplace, the need for legislative action to reverse this decision, the Constitutional authority for Congress to act, etc.],

(b) PURPOSE. It is the purpose of this Act --

[insert statement of purposes]

SECTION 3 -- GENERAL PROVISIONS.

(a) The standards for demonstrating a violation of title IX of the Education Amendments of 1972, by recipients of Federal financial assistance for sexual harassment of students, shall provide no less protection for the students than the standards for demonstrating a violation of title VII of the Civil Rights Act of 1964, by employers for sexual harassment of employees, provide for such employees;

(b) The standards for demonstrating a violation of title IX by recipients of Federal financial assistance for the conduct, including sexual harassment, by their agents, shall provide no less protection for those subjected to such conduct than the protection provided by the standards applied under Title VII.

complainant 8

(c) In any action or proceeding to enforce title IX of the Education Amendments of 1972, full legal remedies [or damages] shall be available to the complaining party for intentional discrimination, including sexual harassment, in addition to equitable remedies available for all violations of title IX.

SEXUAL HARASSMENT AND GEBSER DECISION

I. Status report: What has OCR done?

II. Effect of decision

- on private plaintiffs, on government
- individual as defendant, school district as defendant
- damages, injunctive relief, other remedies

III. Regulatory, administration options

- guidance to districts
- revision of regulation
- other?
- current plans

IV. Possible legislation

- what issues should we address
- strategy -- timing, sponsors, etc.

**UNITED STATES
DEPARTMENT OF EDUCATION****NEWS**

FOR RELEASE: June 29, 1998
DRAFT: K/shared/nddrafts/lago

Contact: Julie Green (202) 401-3026

**STATEMENT BY U.S. SECRETARY OF EDUCATION RICHARD W. RILEY
On the Impact on Title IX of the U.S. Supreme Court's Gebser v. Lago Vista Decision**

The Supreme Court's decision in the Lago Vista case emphasizes that school districts continue to have a responsibility under Title IX to provide students with a nondiscriminatory educational environment, and the Department of Education continues to have a critical role in enforcing that obligation. While the decision limits the situations where litigants can obtain damages from a school district in a private Title IX lawsuit, it does not undermine the fact that sexual harassment discrimination violates Title IX.

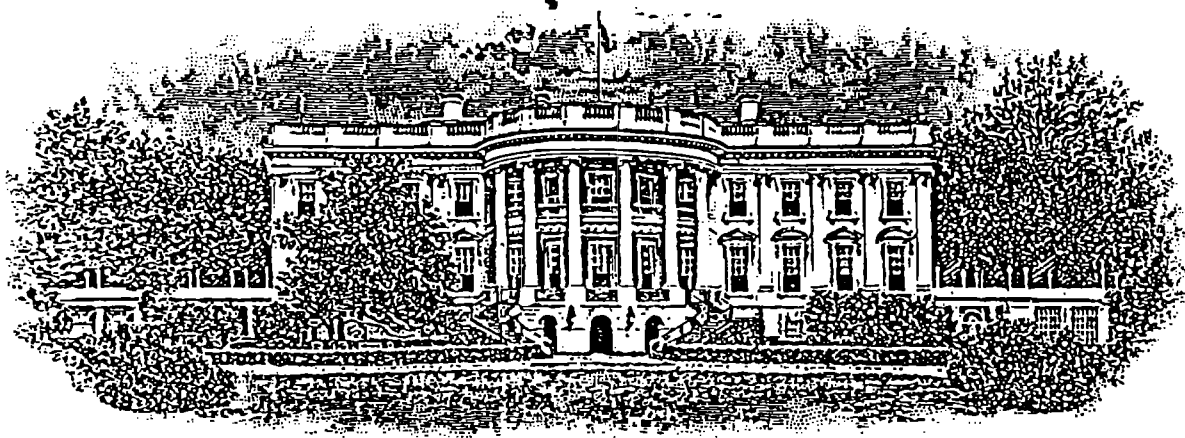
It is discrimination when an elementary or secondary school teacher abuses the authority given to him or her by the school district and engages in sexual conduct with his or her students. Although a plaintiff cannot obtain money damages where there was no notice to appropriate school officials, it is a violation of Title IX. A school district is therefore still responsible for taking reasonable steps to prevent and eliminate that type of misconduct. That means that every school system needs to take the problem of sexual harassment very seriously. When a school district learns of sexual harassment discrimination it must act immediately to end the harassment, eliminate the effects of the harassment on the victim and other students, and prevent the harassment from recurring. Schools also should be taking proactive steps to identify problems -- such as training staff to recognize and report potential harassment -- and to follow-up on any information indicating potential discrimination.

Title IX mandates crucial mechanisms to help schools provide students with a safe educational environment. The Supreme Court's decision explicitly recognized that the Department can enforce administratively its Title IX regulation that requires schools and school systems to have well publicized policies against discrimination based on sex, including sexual harassment discrimination; to have effective and well-publicized procedures for students and their families to raise and resolve these issues; and to take prompt and effective action to equitably resolve sexual harassment complaints.

Any sexual harassment of a student -- particularly sexual abuse by a teacher -- is a basic breach of trust between the school and the student and family. Schools owe students a safe environment that is conducive to learning and that affords children equal educational opportunity regardless of sex. It is difficult to imagine another action by the school that could be more subversive of its educational responsibility to the student.

I encourage every school system to view the Supreme Court's recent decision as a challenge to work with parents and communities to ensure that they have effective policies and procedures in place to prevent sexual harassment, consistent with their continuing Title IX legal obligations.

The White House



COUNSEL'S OFFICE

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TO: Julie Fernandes

FACSIMILE NUMBER: 67028

TELEPHONE NUMBER: _____

FROM: Eduardo Correa

TELEPHONE NUMBER: 62024

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