

NLWJC - Kagan

DPC - Box 068 - Folder-008

Women's Issues-Sexual Harassment

Women's issue -
sexual harassment

To Mike, Lexie, Eddie
& Prof.

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

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. Cantú

Attachments

▶ **Julie A. Fernandes**
07/27/98 05:13:57 PM
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Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Title IX and sexual harassment

I just got an update from Eddie Corriea re: the DOJ/DoEd efforts to develop a regulatory or legislative fix for the recent Supreme Court decision that does not permit damages remedies against school districts for sexual harassment in the absence of actual notice and deliberate indifference. According to Eddie, the DoEd is operating in three phases: (1) they issued a press release right after the SCt decision that explains what the DoEd can do under current law and regs (EC is sending me a copy that I will forward to you); (2) DoEd is working on putting out a full explanation of how the existing Title IX regs (which do not address sexual harassment) could be interpreted in this area. Currently, there is a general provision that requires a school district to take steps to ensure that Title IX is not violated. The Dept. is close to completing this guidance, and we will see a draft of it soon; (3) DoEd is working on guidance that outlines the equitable remedies that the government or private parties could get under Title IX (which we will also see a draft of soon).

The Dept. of Ed. and the Dept. of Justice are trying to figure out whether there is a possible legislative fix here. The women's groups met with DOJ the other day. DOJ does not think that they could do anything legislatively this Congress, but are trying to figure out their leg. options as soon as they can.]

Eddie has asked the DOJ and Dpt. of Ed. to come over next Tuesday to brief us on where they are in both of these efforts.

julie