

Sexual Harassment

Ongoing Verbal, Physical Abuse Justify Trial on Student's Title IX Claim

School Law Bulletin, February 1, 2005

Sexual Harassment on Study Abroad

The Minnesota Daily, March 5, 2007

Sexual Harassment on the School Bus

Carolina News Channel, February 19, 2007

Rape Only Hurts If You Fight It

The Recorder (Central Connecticut State University), February 7, 2007

Sexual harassment—unwanted and unwelcome conduct of a sexual nature—has affected students' well-being and their ability to succeed academically for a long time. Although Supreme Court rulings have established that sexual harassment of students by both employees—such as teachers and coaches—and other students is sex discrimination that violates Title IX, sexual harassment remains a problem for students in our schools.

Awareness of the issue, proactive efforts by educational institutions and Title IX advocates, and legal remedies have resulted in more efforts to address the problem of sexual harassment in recent years. However, the recent headlines quoted above illustrate the reality that sexual harassment continues to plague our nation's schools and students. Moreover, while sexual harassment in the schoolroom and on college campuses disproportionately affects girls and women, these stories show—as do the statistics—that boys and men also experience harassment. When any students experience sexual harassment on campus or in the classroom, the hostile environment created can undermine educational opportunities for both those students and their peers. While improvements must be noted and praised, and best practices should be shared to create a better educational climate for all, more must be done to address this pervasive problem.

Legal History of Title IX and Sexual Harassment

In 1992, the Supreme Court, in *Franklin v. Gwinnett County Public Schools*,¹⁵⁸ recognized that sexual harassment violates Title IX, and held that students could seek monetary damages for sexual harassment by a teacher. But in 1998, in *Gebser v. Lago Vista Independent School District*,¹⁵⁹ the Court established a more difficult standard for students who seek such relief than exists for employees who suffer sexual harassment. In order to recover damages for harassment, a student must show that a school official with authority to take corrective measures had “actual knowledge” of the harassment and responded to it with “deliberate indifference.”

A year later, in *Davis v. Monroe County Board of Education*,¹⁶⁰ the Supreme Court held that schools may also be liable under Title IX if one student sexually harasses another student. To prevail, the student must show the school's actual knowledge and deliberate indifference, and that the harassment was so severe, pervasive and offensive that it deprived the harassed student of the educational opportunities or benefits provided by the school.

Title IX Enforcement

In addition to filing a suit for damages, a student who has been sexually harassed can seek a remedy from OCR. OCR issued a Sexual Harassment Guidance in 1997, which was revised in 2001, that requires all schools subject to Title IX to maintain an environment that is free of sexual harassment. The Guidance states that if a school knows, or should know, that a hostile environment exists, it is “responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.” A school also has a responsibility “to remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.”¹⁶¹

Title IX's protection extends to unlawful sexual harassment in all of a school's programs or activities, whether the harassment occurs on school property, on a school bus, at a class or training program sponsored by the school at another location, or in any other location where the school's control of the situation can be shown. Title IX protects both male and female students from sexual harassment.¹⁶²

Covered institutions must have a procedure in place that provides for equitable resolution of sexual harassment complaints, which may be the same procedure set up for general Title IX complaints.¹⁶³ While many schools and universities have taken the first step in creating policies to address this problem, more can be done to help alleviate the culture of harassment that impacts the lives and educational experiences of so many students.

Scope of Harassment at the K-12 Level

The American Association of University Women's *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School* (2001), found that four of five students—boys and girls—reported that they had experienced some type of sexual harassment in school, despite a greater awareness of school policies dealing with the issue. Of those students, 27% reported experiencing harassment often.¹⁶⁴ According to students surveyed for the AAUW report, sexual harassment in school not only happens often, it occurs under teachers' noses, can begin in elementary school, and is very upsetting to both girls and boys.

- Students most often experienced sexual harassment for the first time during sixth to ninth grade but some instances occurred before third grade.¹⁶⁵

- Nearly nine in 10 students (85%) reported that students harass other students at their schools.¹⁶⁶

- Almost 40% of students reported that teachers and other school employees sexually harass students in their schools.¹⁶⁷

In a 2003 survey, 91.5% of LGBT students reported hearing homophobic remarks frequently or often at school—and 82.9% reported that faculty never or only sometimes intervened when they overheard such remarks being made.¹⁶⁸

Sexual Harassment on College Campuses

A college education is increasingly becoming a prerequisite for many career paths and for lifelong economic security. Anecdotal evidence and court cases have long shown the impact of sexual harassment at the university level, but new re-

Drawing the Line

In AAUW's 2006 report, *Drawing the Line: Sexual Harassment on Campus*, students defined sexual harassment as behavior that is "inappropriate" or "offensive" or that makes others feel "uncomfortable." The statistics below are taken from that report.

Prevalence of Harassment

- o 62% of female college students and 61% of male college students report having been sexually harassed at their university.
- o 10% or less of student sexual harassment victims attempt to report their experiences to a university employee.
- o 35% or more of college students who experience sexual harassment do not tell anyone about their experiences.
- o 51% of male college students admit to sexually harassing someone in college.
- o 31% of female college students admit to harassing someone in college.

Physical and Emotional Impact on Victims

- o 68% of female students felt very or somewhat upset by sexual harassment they experienced; only 6% were not at all upset.
- o 57% of female students who have been sexually harassed reported feeling self-conscious or embarrassed
- o 55% of female students who have been sexually harassed reported feeling angry.
- o 32% of female students who have been sexually harassed reported feeling afraid or scared.

Academics and Achievement

- o 16% of female students who have been sexually harassed found it hard to study or pay attention in class.
- o 9% of female students dropped a course or skipped a class in response to sexual harassment.
- o 27% of female students stay away from particular buildings or places on campus as a result of sexual harassment.

search confirms that the problem is widespread and disruptive to the college experience in large and small ways.

According to AAUW's *Drawing the Line: Sexual Harassment on Campus* (2006), sexual harassment pervades campus life and prevents college students, both male and female, from receiving the social and academic benefits that colleges and universities aim to provide. With a college student population that has topped 10 million and continues to grow, creating a climate that is free from bias and harassment is a necessary concern for the entire higher education community. Young

adults on campus are shaping behaviors and attitudes that they will take with them into the workforce and broader society. A campus environment that tolerates inappropriate verbal and physical contact and that discourages reporting these behaviors undermines the emotional, intellectual and professional growth of millions of young adults. AAUW's research shows that sexual harassment on campus takes an especially heavy toll on young women, making it harder for them to get the education they need to take care of themselves and their families in today's economy.

The AAUW Legal Advocacy Fund has developed tips, which appeared in Ann Landers' April 28-29, 2000, column, to assist students in asserting their rights on campus:

WHAT TO DO IF YOU EXPERIENCE SEXUAL HARASSMENT AT COLLEGE

1. SEEK HELP.

Talk to your guidance counselor, women's center, or college dean and ask about the grievance procedures at your university.

2. PUT IT IN WRITING.

Always put everything in writing so you have a record and a timeline.

3. DO YOUR HOMEWORK.

For more information on your rights, call the U.S. Department of Education's Office for Civil Rights (OCR) at 800/421-3481.

4. GET LEGAL ADVICE.

Talk to an attorney who has specific experience with sex discrimination in the academic environment. For an attorney referral in your state, call the AAUW Legal Advocacy Fund at 800/326-AAUW.

5. ACT QUICKLY.

OCR has time limits for filing complaints and there are also time constraints on filing lawsuits.

6. WATCH YOUR NICKELS AND DIMES.

Talk to an attorney or accountant about the financial burdens of a lawsuit.

7. VISIT YOUR DOCTOR — YES, YOUR DOCTOR.

You may experience a physical/emotional toll that should be addressed and documented.

8. PREPARE FOR THE LONG HAUL.

Filing a discrimination lawsuit is a long process, but others have succeeded in fighting discrimination, and you can too.

9. FIND A SUPPORT NETWORK.

The American Association of University Women Legal Advocacy Fund can connect you with women who have gone through similar experiences.

Conclusion

The federal government has a role to play in preventing sexual harassment in educational situations, as well as a role in responding when it does happen. Policies are not enough—follow up action is critical in addressing this problem at all levels of education. All entities including government, schools and communities must do more to ensure that harassment is

prevented and addressed promptly and effectively if it occurs. Better implementation and enforcement of Title IX at all levels of education will help address sexual harassment that limits educational opportunities for girls and women, as well as boys and men.

NCWGE RECOMMENDATIONS

CONGRESS

- Congress should enact legislation to ensure that students receive the same level of protection from harassment in their schools and on their campuses as employees receive in the workforce.

ADMINISTRATIVE AGENCIES

- OCR should undertake proactive compliance reviews to identify and address problems of sexual harassment and sex discrimination.

EDUCATION PROGRAMS AND ACTIVITIES

- Educational institutions at all levels should create clear and accessible sexual harassment policies to proactively protect and educate students, and post them in accessible places and on web sites. These policies should be part of school discipline policies and student codes of conduct, include formal and informal ways of resolving complaints and include provisions for effectively protecting students after harassment has occurred.¹⁶⁹
 - Title IX coordinators and their respective schools/universities should proactively disseminate information in the school and campus community to ensure that students and employees are aware of sexual harassment policies, as well as the school's process for filing complaints.
 - Schools should provide close follow-up for the targets of harassment until the danger of continued harassment has passed. Teachers and school administrators have a special responsibility to safeguard the victim at school. In order to provide the student with sufficient security, close cooperation and frequent exchange of information is usually needed between the school and the student's family.¹⁷⁰
 - Students, faculty and staff, and parents/guardians should talk openly about attitudes and behaviors that promote or impede progress toward a harassment-free climate in which all students can reach their full potential.¹⁷¹
 - Administrators, teachers, Title IX coordinators, students and parents should utilize practical guides to stop sexual harassment, such as AAUW's *Harassment-Free Hallways* (2004).¹⁷²
- Other resources include the 1999 publication from the U.S. Department of Education and the National Association of Attorney's General, *Protecting Students from Harassment and Hate Crime: A Guide for Schools*, the 1998 National Women's Law Center publication *Do the Right Thing: Understanding, Addressing, and Preventing Sexual Harassment in Schools* and Bernice R. Sandler and Harriett M. Stonehill's 2005 book, *Student-to-Student Sexual Harassment K-12*.

Key recommendations from *Harassment-Free Hallways* include:

- ◇ Teachers, administrators, parents and/or community/campus groups can do a survey and checklist about sexual harassment, and use the information to not only better understand the problem but identify it and consider solutions.¹⁷³
- ◇ Schools should offer periodic in-service training for staff.¹⁷⁴ Educational programs through entities that can reach students, parents and staff are critical; for example, the PTA, freshman orientation, student government, student/residence life, etc.
- ◇ Parents/guardians should stay informed about incidents that occur at school, and encourage students to discuss school life.¹⁷⁵
- ◇ Parents/guardians/teachers should encourage students to speak up for themselves¹⁷⁶ and talk about ways of responding to harassers. Role-playing the different scenarios that students might encounter can also be helpful.¹⁷⁷
- ◇ Parents and college students should request a copy of their school or university's sexual harassment policy. If any part of it is unclear, parents can call or make an appointment with the school's Title IX coordinator. Parents should discuss the policy with school age children.¹⁷⁸
- ◇ Parents and educational institutions should take harassment allegations seriously, investigate the facts, and work together for a solution.¹⁷⁹