

Attention Educators!

Did You Know?

- Your school has a legal duty to protect students from injuries resulting from peer harassment, including sexual harassment.
- Your school district and officials can be sued for monetary damages if one student sexually abuses another.

In March of 2003 Ortralla Mosley (age 15) was stabbed to death by her former boyfriend, Marcus McTear (age 16) at the high school they both attended in Austin, Texas. The victim's mother brought wrongful death suits against both McTear's family and the Austin Independent School District. The second lawsuit is scheduled to be heard in early 2006.

Additional Cases and Outcomes

1. Parent Successfully Sues School District Under Title IX For "Failure To Protect"

In a case that went all the way to the United States Supreme Court, a Georgia parent sued for monetary damages from the county school board and school officials for the sexual harassment of her daughter, by a fifth-grade classmate at a public elementary school. Among other things, the parent alleged that the school's deliberate indifference to the boy's persistent sexual advances towards her daughter created an intimidating, hostile, offensive, and abusive school environment that violated Title IX of the Education Amendments of 1972." (Title IX is the federal education code that prohibits sex discrimination in public schools.)

In 1999 the Supreme Court ruled that schools receiving Title IX governmental funding are in fact held liable for damages if one student sexually harasses another "in a context subject to the school district's control." A student victim has a viable lawsuit, or "cause of action," if the funding recipient "is deliberately indifferent to sexual harassment, of which the recipient has actual knowledge" and if "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." [See *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 (1999)].

2. School District Liable For Failure To Respond To Student-On-Student Sexual Harassment

In a 1999 case, a Colorado student's mother, on her own behalf and as guardian ad litem for her daughter, successfully sued the school district, high school principal, and teachers based on their alleged failure to remedy sexual harassment and assault of one student by another. The United States Court of Appeals, Tenth Circuit, held that "to state claim of school district liability under Title IX for peer sexual harassment, plaintiff must allege that district (1) had actual knowledge of, and (2) was deliberately indifferent to (3) harassment that was so severe, pervasive, and objectively offensive that it (4) deprived victim of access to educational benefits or opportunities provided by school." [See *Murrell v. School Dist. No. 1, Denver, Colo.*, 186 F.3d 1238 (10th Cir. 1999)].

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3. Board Of Education Finds Indifference To Student Harassment

In 2000, an appellate court held that a Kentucky school board was “deliberately indifferent” to severe and pervasive sexual harassment, and therefore liable for damages under Title IX. [See *Vance v. Spencer County Public School Dist.*, 231 F.3d 253 (6th Cir. 2000).]

4. Court Finds Student-On-Student Hostile Environment, Sexual Harassment In Elementary School

In 1998, a federally funded school was held liable for damages under Title IX, due to its failure to respond appropriately to student sexual harassment.

[See *Haines v. Metropolitan Govt of Davidson County, Tenn.*, 32 F. Supp. 2d 991 (1998).]

What Does This Mean For You and Your School District?

The United States Congress enacted Title IX in 1972 to prohibit sex discrimination in education. Most commonly cited in equal access cases involving female athletes, the law also pertains to incidents of sexual harassment between students. In fact, the U.S. Supreme Court has mandated that school districts must address student-to-student harassment, and will face liability if school officials are made aware of such incidents and yet fail to take proper steps to stop it.

In the lawsuit against the Austin School District, Mrs. Moseley claims her daughter was continually harassed by her boyfriend; that the boyfriend’s history of campus violence against other female students was known by the school officials; and that no school official took any measure to protect Ortralla, even

though she talked to school personnel about her fears.

This case not only alleges the school’s clear legal liability, but also serves as a warning sign to schools everywhere that tremendous financial claims against them for “failure to protect” violations are becoming increasingly common.

In sum, a school’s obligation to protect the welfare and safety of its students is an established legal duty. Moreover, failure to respond quickly and effectively to stop known incidents of student-on-student harassment and violence can result in destroyed educational careers, judgments totaling millions of dollars...and loss of life.

Please ensure your school fully participates in the American Bar Association’s “National Teen Dating Violence Awareness and Prevention Week” which is supported by members of the United States Congress.

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