**Davis v. Monroe County Board of Education**

526 U.S. 629 (1999)

**Justice O’Connor delivered the opinion of the Court.**

Petitioner brought suit against the Monroe County Board of Education and other defendants, alleging that her fifth-grade daughter had been the victim of sexual harassment by another student in her class. Among petitioner’s claims was a claim for monetary and injunctive relief under Title IX of the Education Amendments of 1972 (Title IX), 86 Stat. 373, as amended, 20 U.S.C. § 1681 et seq. The District Court dismissed petitioner’s Title IX claim on the ground that “student-on-student,” or peer, harassment provides no ground for a private cause of action under the statute. The Court of Appeals for the Eleventh Circuit, sitting en banc, affirmed. We consider here whether a private damages action may lie against the school board in cases of student-on-student harassment. We conclude that it may, but only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities. Moreover, we conclude that such an action will lie only for harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.

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Petitioner’s minor daughter, LaShonda, was allegedly the victim of a prolonged pattern of sexual harassment by one of her fifth-grade classmates at Hubbard Elementary School, a public school in Monroe County, Georgia. According to petitioner’s complaint, the harassment began in December 1992, when the classmate, G. F., attempted to touch LaShonda’s breasts and genital area and made vulgar statements such as “ ‘I want to get in bed with you’ ” and “ ‘I want to feel your boobs.’ ” Complaint ¶7. Similar conduct allegedly occurred on or about January 4 and January 20, 1993. Ibid. LaShonda reported each of these incidents to her mother and to her classroom teacher, Diane Fort. Ibid. Petitioner, in turn, also contacted Fort, who allegedly assured petitioner that the school principal, Bill Querry, had been informed of the incidents. Ibid. Petitioner contends that, notwithstanding these reports, no disciplinary action was taken against G. F. Id., ¶16.

G. F.’s conduct allegedly continued for many months. In early February, G. F. purportedly placed a door stop in his pants and proceeded to act in a sexually suggestive manner toward LaShonda during physical education class. Id., ¶8. LaShonda reported G. F.’s behavior to her physical education teacher, Whit Maples. Ibid. Approximately one week later, G. F. again allegedly engaged in harassing behavior, this time while under the supervision of another classroom teacher, Joyce Pippin. Id., ¶9. Again, LaShonda allegedly reported the incident to the teacher, and again petitioner contacted the teacher to follow up. Ibid.

Petitioner alleges that G. F. once more directed sexually harassing conduct toward LaShonda in physical education class in early March, and that LaShonda reported the incident to both Maples and Pippen. Id., ¶10. In mid-April 1993, G. F. allegedly rubbed his body against LaShonda in the school hallway in what LaShonda considered a sexually suggestive manner, and LaShonda again reported the matter to Fort. Id., ¶11.

The string of incidents finally ended in mid-May, when G. F. was charged with, and pleaded guilty to, sexual battery for his misconduct. Id., ¶14. The complaint alleges that LaShonda had suffered during the months of harassment, however; specifically, her previously high grades allegedly dropped as she became unable to concentrate on her studies, id., ¶15, and, in April 1993, her father discovered that she had written a suicide note, ibid. The complaint further alleges that, at one point, LaShonda told petitioner that she “ ‘didn’t know how much longer she could keep [G. F.] off her.’ ” Id., ¶12.

Nor was LaShonda G. F.’s only victim; it is alleged that other girls in the class fell prey to G. F.’s conduct. Id., ¶16. At one point, in fact, a group composed of LaShonda and other female students tried to speak with Principal Querry about G. F.’s behavior. Id., ¶10. According to the complaint, however, a teacher denied the students’ request with the statement, “ ‘If [Querry] wants you, he’ll call you.’ ” Ibid.

Petitioner alleges that no disciplinary action was taken in response to G. F.’s behavior toward LaShonda. Id., ¶16. In addition to her conversations with Fort and Pippen, petitioner alleges that she spoke with Principal Querry in mid-May 1993. When petitioner inquired as to what action the school intended to take against G. F., Querry simply stated, “ ‘I guess I’ll have to threaten him a little bit harder.’ ” Id., ¶12. Yet, petitioner alleges, at no point during the many months of his reported misconduct was G. F. disciplined for harassment. Id., ¶16. Indeed, Querry allegedly asked petitioner why LaShonda “ ‘was the only one complaining.’ ” Id., ¶12.

Nor, according to the complaint, was any effort made to separate G. F. and LaShonda. Id., ¶16. On the contrary, notwithstanding LaShonda’s frequent complaints, only after more than three months of reported harassment was she even permitted to change her classroom seat so that she was no longer seated next to G. F. Id., ¶13. Moreover, petitioner alleges that, at the time of the events in question, the Monroe County Board of Education (Board) had not instructed its personnel on how to respond to peer sexual harassment and had not established a policy on the issue. Id., ¶17.

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Title IX provides, with certain exceptions not at issue here, that

“[n]o 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.” 20 U.S.C. § 1681(a).

Congress authorized an administrative enforcement scheme for Title IX. Federal departments or agencies with the authority to provide financial assistance are entrusted to promulgate rules, regulations, and orders to enforce the objectives of §1681, see §1682, and these departments or agencies may rely on “any . . . means authorized by law,” including the termination of funding, ibid., to give effect to the statute’s restrictions.

There is no dispute here that the Board is a recipient of federal education funding for Title IX purposes. 74 F.3d, at 1189. Nor do respondents support an argument that student-on-student harassment cannot rise to the level of “discrimination” for purposes of Title IX. Rather, at issue here is the question whether a recipient of federal education funding may be liable for damages under Title IX under any circumstances for discrimination in the form of student-on-student sexual harassment.

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Here, however, we are asked to do more than define the scope of the behavior that Title IX proscribes. We must determine whether a district’s failure to respond to student-on-student harassment in its schools can support a private suit for money damages. See Gebser v. Lago Vista Independent School Dist., 524 U.S. 274, 283 (1998) (“In this case, . . . petitioners seek not just to establish a Title IX violation but to recover damages . . .”). This Court has indeed recognized an implied private right of action under Title IX, and we have held that money damages are available in such suits, Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992). Because we have repeatedly treated Title IX as legislation enacted pursuant to Congress’ authority under the Spending Clause, however, private damages actions are available only where recipients of federal funding had adequate notice that they could be liable for the conduct at issue. When Congress acts pursuant to its spending power, it generates legislation “much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions.” Pennhurst State School and Hospital v. Halderman, 451 U.S. 1, 17 (1981). In interpreting language in spending legislation, we thus “insis[t] that Congress speak with a clear voice,” recognizing that “[t]here can, of course, be no knowing acceptance [of the terms of the putative contract] if a State is unaware of the conditions [imposed by the legislation] or is unable to ascertain what is expected of it.”

Invoking Pennhurst, respondents urge that Title IX provides no notice that recipients of federal educational funds could be liable in damages for harm arising from student-on-student harassment. Respondents contend, specifically, that the statute only proscribes misconduct by grant recipients, not third parties. Respondents argue, moreover, that it would be contrary to the very purpose of Spending Clause legislation to impose liability on a funding recipient for the misconduct of third parties, over whom recipients exercise little control.

We agree with respondents that a recipient of federal funds may be liable in damages under Title IX only for its own misconduct. The recipient itself must “exclud[e] [persons] from participation in, . . . den[y] [persons] the benefits of, or . . . subjec[t] [persons] to discrimination under” its “program[s] or activit[ies]” in order to be liable under Title IX. The Government’s enforcement power may only be exercised against the funding recipient, see §1682, and we have not extended damages liability under Title IX to parties outside the scope of this power…

We disagree with respondents’ assertion, however, that petitioner seeks to hold the Board liable for G. F.’s actions instead of its own. Here, petitioner attempts to hold the Board liable for its own decision to remain idle in the face of known student-on-student harassment in its schools. In Gebser, we concluded 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. In that case, a teacher had entered into a sexual relationship with an eighth grade student, and the student sought damages under Title IX for the teacher’s misconduct. We recognized that the scope of liability in private damages actions under Title IX is circumscribed by Pennhurst’s requirement that funding recipients have notice of their potential liability…

Accordingly, we rejected the use of agency principles to impute liability to the district for the misconduct of its teachers. 524 U.S., at 283. Likewise, we declined the invitation to impose liability under what amounted to a negligence standard–holding the district liable for its failure to react to teacher-student harassment of which it knew or should have known. Ibid. Rather, we concluded that the district could be liable for damages only where the district itself intentionally acted in clear violation of Title IX by remaining deliberately indifferent to acts of teacher-student harassment of which it had actual knowledge.

We consider here whether 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. We conclude that, in certain limited circumstances, it does…

This is not to say that the identity of the harasser is irrelevant. On the contrary, both the “deliberate indifference” standard and the language of Title IX narrowly circumscribe the set of parties whose known acts of sexual harassment can trigger some duty to respond on the part of funding recipients. Deliberate indifference makes sense as a theory of direct liability under Title IX only where the funding recipient has some control over the alleged harassment. A recipient cannot be directly liable for its indifference where it lacks the authority to take remedial action.

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The requirement that recipients receive adequate notice of Title IX’s proscriptions also bears on the proper definition of “discrimination” in the context of a private damages action. We have elsewhere concluded that sexual harassment is a form of discrimination for Title IX purposes and that Title IX proscribes harassment with sufficient clarity to satisfy Pennhurst’s notice requirement and serve as a basis for a damages action. Having previously determined that “sexual harassment” is “discrimination” in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute…The statute’s other prohibitions, moreover, help give content to the term “discrimination” in this context. Students are not only protected from discrimination, but also specifically shielded from being “excluded from participation in” or “denied the benefits of” any “education program or activity receiving Federal financial assistance.” §1681(a). The statute makes clear that, whatever else it prohibits, students must not be denied access to educational benefits and opportunities on the basis of gender. We thus conclude that funding recipients are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, 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.

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It is not enough to show, as the dissent would read this opinion to provide, that a student has been “teased,” post, at 25, or “called . . . offensive names,” post, at 27—28. Comparisons to an “overweight child who skips gym class because the other children tease her about her size,” the student “who refuses to wear glasses to avoid the taunts of ‘four-eyes,’” and “the child who refuses to go to school because the school bully calls him a ‘scardy-cat’ at recess,” post, at 25, are inapposite and misleading. Nor do we contemplate, much less hold, that a mere “decline in grades is enough to survive” a motion to dismiss. Ibid. The drop-off in LaShonda’s grades provides necessary evidence of a potential link between her education and G.F.’s misconduct, but petitioner’s ability to state a cognizable claim here depends equally on the alleged persistence and severity of G.F.’s actions, not to mention the Board’s alleged knowledge and deliberate indifference. We trust that the dissent’s characterization of our opinion will not mislead courts to impose more sweeping liability than we read Title IX to require.

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Applying this standard to the facts at issue here, we conclude that the Eleventh Circuit erred in dismissing petitioner’s complaint. Petitioner alleges that her daughter was the victim of repeated acts of sexual harassment by G. F. over a 5-month period, and there are allegations in support of the conclusion that G. F.’s misconduct was severe, pervasive, and objectively offensive. The harassment was not only verbal; it included numerous acts of objectively offensive touching, and, indeed, G. F. ultimately pleaded guilty to criminal sexual misconduct. Moreover, the complaint alleges that there were multiple victims who were sufficiently disturbed by G. F.’s misconduct to seek an audience with the school principal. Further, petitioner contends that the harassment had a concrete, negative effect on her daughter’s ability to receive an education. The complaint also suggests that petitioner may be able to show both actual knowledge and deliberate indifference on the part of the Board, which made no effort whatsoever either to investigate or to put an end to the harassment.

…Accordingly, the judgment of the United States Court of Appeals for the Eleventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

**Justice Kennedy, with whom The Chief Justice, Justice Scalia, and Justice Thomas join, dissenting.**

The Court has held that Congress’ power “ ‘to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.’ ” South Dakota v. Dole, 483 U.S. 203, 207 (1987). As a consequence, Congress can use its Spending Clause power to pursue objectives outside of “Article I’s ‘enumerated legislative fields’ ” by attaching conditions to the grant of federal funds. 483 U.S., at 207. So understood, the Spending Clause power, if wielded without concern for the federal balance, has the potential to obliterate distinctions between national and local spheres of interest and power by permitting the federal government to set policy in the most sensitive areas of traditional state concern, areas which otherwise would lie outside its reach.

A vital safeguard for the federal balance is the requirement that, when Congress imposes a condition on the States’ receipt of federal funds, it “must do so unambiguously.” Pennhurst State School and Hospital v. Halderman, 451 U.S. 1, 17 (1981). As the majority acknowledges, “legislation enacted … pursuant to the spending power is much in the nature of a contract,” and the legitimacy of Congress’ exercise of its power to condition funding on state compliance with congressional conditions “rests on whether the State voluntarily and knowingly accepts the terms of the ‘contract.’ ” Ibid.; see ante, at 9. “ ‘There can, of course, be no knowing acceptance [of the terms of the putative contract] if a State is unaware of the conditions [imposed by the legislation] or is unable to ascertain what is expected of it.’ ” Ibid., (quoting Pennhurst, 451 U.S., at 17).

Our insistence that “Congress speak with a clear voice” to “enable the States to exercise their choice knowingly, cognizant of the consequences of their participation,” Pennhurst, supra, at 17, is not based upon some abstract notion of contractual fairness. Rather, it is a concrete safeguard in the federal system. Only if States receive clear notice of the conditions attached to federal funds can they guard against excessive federal intrusion into state affairs and be vigilant in policing the boundaries of federal power…While the majority purports to give effect to these principles, it eviscerates the clear-notice safeguard of our Spending Clause jurisprudence.

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The remedial scheme the majority creates today is neither sensible nor faithful to Spending Clause principles. In order to make its case for school liability for peer sexual harassment, the majority must establish that Congress gave grant recipients clear and unambiguous notice that they would be liable in money damages for failure to remedy discriminatory acts of their students. The majority must also demonstrate that the statute gives schools clear notice that one child’s harassment of another constitutes “discrimination” on the basis of sex within the meaning of Title IX, and that–as applied to individual cases–the standard for liability will enable the grant recipient to distinguish inappropriate childish behavior from actionable gender discrimination. The majority does not carry these burdens.

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The only certainty flowing from the majority’s decision is that scarce resources will be diverted from educating our children and that many school districts, desperate to avoid Title IX peer harassment suits, will adopt whatever federal code of student conduct and discipline the Department of Education sees fit to impose upon them. The Nation’s schoolchildren will learn their first lessons about federalism in classrooms where the federal government is the ever-present regulator. The federal government will have insinuated itself not only into one of the most traditional areas of state concern but also into one of the most sensitive areas of human affairs. This federal control of the discipline of our Nation’s schoolchildren is contrary to our traditions and inconsistent with the sensible administration of our schools. Because Title IX did not give States unambiguous notice that accepting federal funds meant ceding to the federal government power over the day-to-day disciplinary decisions of schools, I dissent.

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Given the state of gender discrimination law at the time Title IX was passed, however, there is no basis to think that Congress contemplated liability for a school’s failure to remedy discriminatory acts by students or that the States would believe the statute imposed on them a clear obligation to do so. When Title IX was enacted in 1972, the concept of “sexual harassment” as gender discrimination had not been recognized or considered by the courts. See generally C. MacKinnon, Sexual Harassment of Working Women: A Case of Sex Discrimination 59—72 (1979). The types of discrimination that were recognized–discriminatory admissions standards, denial of access to programs or resources, hiring, etc.–could not be engaged in by students.

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The law recognizes that children–particularly young children–are not fully accountable for their actions because they lack the capacity to exercise mature judgment. See, e.g., 1 E. Farnsworth, Farnsworth on Contracts §4.4 (2d ed. 1998) (discussing minor’s ability to disaffirm a contract into which he has entered). It should surprise no one, then, that the schools that are the primary locus of most children’s social development are rife with inappropriate behavior by children who are just learning to interact with their peers. The amici on the front lines of our schools describe the situation best:

“Unlike adults in the workplace, juveniles have limited life experiences or familial influences upon which to establish an understanding of appropriate behavior. The real world of school discipline is a rough-and-tumble place where students practice newly learned vulgarities, erupt with anger, tease and embarrass each other, share offensive notes, flirt, push and shove in the halls, grab and offend.” Brief for National School Boards Association et al. as Amici Curiae 10—11 (hereinafter school amici).

No one contests that much of this “dizzying array of immature or uncontrollable behaviors by students,” ibid., is inappropriate, even “objectively offensive” at times, and that parents and schools have a moral and ethical responsibility to help students learn to interact with their peers in an appropriate manner. It is doubtless the case, moreover, that much of this inappropriate behavior is directed toward members of the opposite sex, as children in the throes of adolescence struggle to express their emerging sexual identities.

It is a far different question, however, whether it is either proper or useful to label this immature, childish behavior gender discrimination. Nothing in Title IX suggests that Congress even contemplated this question, much less answered it in the affirmative in unambiguous terms.

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The only real clue the majority gives schools about the dividing line between actionable harassment that denies a victim equal access to education and mere inappropriate teasing is a profoundly unsettling one: On the facts of this case, petitioner has stated a claim because she alleged, in the majority’s words, “that the harassment had a concrete, negative effect on her daughter’s ability to receive an education.” In petitioner’s words, the effects that might have been visible to the school were that her daughter’s grades “dropped” and her “ability to concentrate on her school work [was] affected.” Almost all adolescents experience these problems at one time or another as they mature.

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Perhaps the most grave, and surely the most lasting, disservice of today’s decision is that it ensures the Court’s own disregard for the federal balance soon will be imparted to our youngest citizens. The Court clears the way for the federal government to claim center stage in America’s classrooms. Today’s decision mandates to teachers instructing and supervising their students the dubious assistance of federal court plaintiffs and their lawyers and makes the federal courts the final arbiters of school policy and of almost every disagreement between students. Enforcement of the federal right recognized by the majority means that federal influence will permeate everything from curriculum decisions to day-to-day classroom logistics and interactions. After today, Johnny will find that the routine problems of adolescence are to be resolved by invoking a federal right to demand assignment to a desk two rows away.