A LEGAL PRIMER ON SEXUAL HARASSMENT: LESSONS FOR PRACTICE FROM THE UNITED STATES OF AMERICA

Charles J. Russo[†]
University of Dayton, USA

An ongoing controversy that has increasingly emerged in American schools and courts over the better part of the past twenty years is the sexual harassment of students by teachers and peers. In light of legal concerns in this topic, the United States Supreme Court has examined three cases dealing with sexual harassment in schools while lower courts continue to resolve a large number of disputes. The first two cases of these cases involved teachers who engaged in inappropriate sexual misconduct, litigated under the rubric of sexual harassment with students while the third dealt with peer-to-peer sexual harassment. Based on the development of legal issues surrounding sexual harassment of students, whether in Australia, New Zealand, the U. S., or elsewhere, this article highlights the increasing body of litigation involving the sexual harassment of students, whether by educators, peers, or based on sexual orientation before offering practical suggestions for educational leaders as they try to eliminate this insidious problem.

I Introduction

A long-term problem that has increasingly been recognised in American schools and courts over the better part of the past twenty years is the sexual harassment of students by teachers and peers. Even as educators and lawyers struggle to define exactly what sexual harassment of students in academic settings is, a well-publicised report from the United States Department of Education indicates that one in ten children was sexually abused in some form at school.[1] Moreover, in an attempt to categorise the misbehavior of educators in schools, this report suggests that the actions of school personnel should better be referred to as educator sexual misconduct[2] rather than the more amorphous term sexual harassment;[3] even so, the judiciary still largely refers to such interactions as sexual harassment. A subsequent report indicated that '[a]n estimated 290,000 students were victims of sexual abuse by school employees between 1991 and 2000'.[4] More recently, yet another report revealed that over the past five years, at least 2,500 educators in the United States of America (U. S.) were charged with sexual abuse of students.[5]

In light of serious legal concerns in this topic, the United States Supreme Court has examined three cases dealing with sexual harassment in schools while lower federal and state courts continue to resolve a large number of disputes. The first two cases to reach the Court involved situations where teachers engaged in inappropriate sexual misconduct, litigated under the rubric of sexual harassment with students while the third dealt with peer-to-peer sexual harassment.

Based on the development of legal issues surrounding sexual harassment of students, whether in Australia, New Zealand, the U. S., or elsewhere, the remainder of this article is divided

[†]*Address for correspondence*: Professor Charles J. Russo, Panzer Chair in Education and Adjunct Professor of Law, University of Dayton, 101 Chaminade Hall, 300 College Park Drive Dayton, Ohio 45469-0534, USA. Email: charles_j_russo@hotmail.com

into two substantive sections. The first part briefly highlights the increasing body of litigation involving the sexual harassment of students, whether by educators, peers, or based on sexual orientation. The article focuses on selected litigation in the U.S. in the hope that the results of these cases and judicial rationales can be instructive to educational leaders, governing bodies, and their attorneys, especially in Australia and New Zealand. The second section of the article offers practical suggestions for educational leaders as they try to eliminate this insidious problem. The article rounds out with a brief conclusion.

II Sexual Harassment of Students Under Title IX

Legal Disputes involving sexual harassment of students by teachers and peers in the United States are covered by Title IX of the *Education Amendments of 1972* (Title IX), a statute that was initially enacted to ensure gender equity in intercollegiate sports. According to the relevant portion on Title IX, '[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 …'.[6]

The expansion of Title IX to cover disputes involving sexual harassment traces its origins to *Cannon v University of Chicago* (*Cannon*).[7] In *Cannon*, a female who unsuccessfully applied to two private medical schools filed suit under Title IX filed suit alleging that since the institutions received federal financial assistance, they were liable for discrimination because she was denied admission due to her sex. After a federal trial court and the Seventh Circuit denied the applicant's claim on the basis that Title IX did not provide for a private cause of action, the United States Supreme Court reversed in her favor. The Court reasoned that since the applicant was a member of the class that Title IX was designed to protect the legislative history evidenced an intent to permit a private cause of action, such a remedy was consistent with the statute's approach, and discrimination on the basis of sex was a concern for the federal government. In other words, the Court ruled that the applicant could file suit in her own name and did not have to first rely on the administrative remedy of filing a complaint with the United States Department of Education. Still, more than a decade would pass before the federal courts applied Title IX to fight sexual harassment in elementary and secondary schools.

Following *Cannon*, the U. S. Supreme Court resolved three cases dealing with sexual harassment in school settings even as lower federal and state courts continue to review a large number of disputes. As noted, the first two Supreme Court cases involved situations where teachers engaged in inappropriate sexual misconduct with students while the third dealt with peer-to-peer sexual harassment. It is important to keep in mind that while it almost goes without saying that those who engaged in sexual harassment, whether school personnel or peers, face the likelihood of civil and criminal sanctions, the Supreme Court cases help to establish the parameters under which school officials and governing boards may share in that fault to the point of possibly having to pay legal damages. Subject to closer scrutiny below, addressing the slightly different principles that apply depending on whether harassment is by staff or students, school boards can be liable only when officials with the authority to take steps to remedy situations, in school systems that receive federal financial assistance, a term that is broadly construed such that it covers all public schools, act with deliberate indifference, a term of art, to known acts of which they are aware. Even with these rules in place, a great deal of the litigation revolves around issues of fact as to whether school officials were aware of inappropriate conduct and how they responded to student complaints.

III Sexual Harassment Involving Teachers and Students

The facts in *Franklin v Gwinnett County Public Schools* (*Franklin*)[8] revealed that school officials demonstrated egregious disregard for a student's well-being. A female high school sophomore in Georgia alleged that she and one of her male teachers developed a 'special' friendship. The teacher conducted private meetings with the student, authorised her late entry to classes, and engaged her in sexually oriented conversations. On one occasion, after the two argued in the school parking lot, the teacher forcibly kissed the student on the mouth. During this time, the student's boyfriend personally notified the school's band director about the teacher's conduct, and at least one other student who told an assistant principal about it was admonished for doing so. Other female students informed a teacher and a guidance counselor that the teacher made sexual remarks to them. Even as officials were apparently unwilling to investigate the teacher's behavior, his conduct worsened to the point that he raped the student even though the courts preferred to describe his actions as three instances of coercive sexual intercourse at school.

When the principal was informed of the sexual activity in *Franklin*, administrators discouraged the student from pursuing her complaint due to the negative publicity that it might have generated. In addition, the band director spoke with the student's boyfriend in an attempt to dissuade her from acting on her complaint. Shortly after officials began an inquiry into the student's complaints, they closed their investigation when the teacher agreed to resign at the end of the academic year; the band director voluntarily retired.

After unsuccessfully filing an administrative complaint with the Federal Office of Civil Rights of the type that had been at issue in *Cannon*, a federal trial court, in an unreported, opinion rejected the student's damages claim under Title IX of the *Educational Amendments of 1972*, a federal statute that was first enacted to ensure gender equity for women in intercollegiate sports. The Eleventh Circuit affirmed the dismissal.[9]

In *Franklin*, a unanimous Supreme Court expanded the scope of Title IX by applying it, for the first time, to sexual harassment in a school setting. In reversing in favor of the student, the Court interpreted Title IX as implying a private right of action. According to the Court, since nothing in congressional intent in enacting Title IX prevented individuals, students or otherwise, from bringing suits for monetary damages for sexual harassment, the student was free to pursue such a remedy. The Court was of the opinion that if it had not allowed the student to file a claim against the board and teacher, then there would have been the anomalous situation of having a federal statute that essentially left her without any other legal recourse.

The second case involving teacher-student sexual harassment, *Gebser v Lago Vista Independent School District* (*Gebser*),[10] emerged in Texas after an eighth-grade student joined a book-discussion club at the high school she ultimately attended. The controversy arose when the teacher in charge made sexually suggestive comments, eventually directing his more inappropriate remarks at the student. The teacher later initiated sexual contact with the student when he visited her home on the pretext of giving her a book, culminating in their regularly engaging in sexual relations. None of the sexual encounters between the teacher and student took place on school property. The student did not complain at that time both because she was uncertain about how she should have behaved and since she wished to continue having the same teacher.

More than a year later, when parents of other students complained about the teacher's behavior, the principal warned him to be careful about what he said and informed the school guidance counselor about the incident but failed to notify the superintendent who also served as the district's Title IX coordinator. When a police officer happened to discover the teacher and

student having sex, he was arrested. Unlike in *Franklin*, the school board promptly terminated the teacher's employment and the Texas Education Agency revoked his teaching license. The student and her mother filed suit in a federal trial court seeking monetary damages under Title IX for the teacher's sexual harassment. After the trial court granted the board's motion for summary judgment, the Fifth Circuit affirmed that the board was not vicariously liable under Title IX for the teacher's sexual misconduct under common law agency theory.[11] In other words, the court decided that school officials were not liable for the teacher's misconduct because they were unaware of his actions. Moreover, as is clear from the facts and as noted above, school officials took all of the appropriate steps to sanction the teacher for his misbehavior.

The Supreme Court, in *Gebser*, affirmed that a board could not be liable under Title IX for the teacher's misconduct unless an official who, at a minimum, had the authority to institute corrective measures, had actual notice of, and was deliberately indifferent to, his sexual misconduct. The Court found that since the board responded appropriately under the circumstances insofar as school officials acted promptly and decisively in punishing the teacher, the student and her mother could not proceed with their Title IX claim.

The Eighth Circuit, in one of many later illustrative cases, rejected the claim of a student in Nebraska that her school board was liable under Title IX when she had a homosexual relationship with a teacher.[12] The court contended that the board was not at fault since the student failed to make the necessary showing that school officials acted with deliberate indifference after being informed about the teacher's behavior.

In a case with a twist, the Eleventh Circuit affirmed that a school board in Georgia was not liable under Title IX where a male student failed to prove that school officials acted with deliberate indifference to reports that he engaged in a sexual relationship with a female teacher.[13] The panel ascertained that the trial court incorrectly applied the stricter Title IX standard that governs cases of student-on-student harassment. Focusing instead on the teacher-on-student standard enunciated in *Gebser*, the court added that since board officials unsuccessfully warned the teacher to end the relationship, they had not acted with deliberate indifference because they responded appropriately to allegations about the relationship even though they were unable to prevent additional abuse.

IV Peer-to-Peer Sexual Harassment

Davis v Monroe County Board of Education (Davis)[14] began when a female fifth-grade student in Georgia was subjected to an on-going pattern of harassment by a male classmate. Over five months, the male engaged in inappropriate behavior, including trying to touch the female's breasts and genital area along with verbal requests for sexual relations. Even though the student and her parents reported the male's behavior and repeatedly requested intervention, officials failed to intervene. Due to the male's behavior, the female's grades suffered since she was unable to concentrate on school work; her father also discovered that she had written a suicide note. Moreover, there was evidence that the female was not the only target of the male's behavior. The harassment did not stop until the male pled guilty to charges of sexual battery.

The student and her parents filed suit against the board of education under Title IX seeking monetary damages and injunctive relief for peer-to-peer sexual harassment. A federal trial court granted the board's motion to dismiss for failure to state a claim upon which relief can be granted and the Eleventh Circuit affirmed.[15]

On further review in *Davis,* the Supreme Court reversed in favor of the female student and her parents.[16] The Court decided that school boards, as recipients of federal financial assistance, '... are properly held liable in damages only when 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'.[17] The Court also observed that damages are limited '... to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs'.[18] The Court stressed that while boards may be accountable if officials are deliberately indifferent, this does not mean that they can avoid liability only by eliminating actionable peer-harassment claims or by taking specified disciplinary steps.

The Court rejected the dissent's argument that the majority placed too much of a burden on educational officials and that school boards would face unnecessary liability. The Court responded that the standard it created was flexible enough to account for the level of authority that educational officials had to apply while protecting them from potential liability in disciplining students who sexually harass peers. The Court conceded that while it remains to be seen whether the female could have proved that board officials acted with deliberate indifference, she may have been able to demonstrate that administrators subjected her to discrimination by failing to respond to her complaints for five months.

V Later Developments

Litigation involving sexual harassment in the schools, whether involving educators or peers, continues at a brisk pace. As such, courts continue to award damages to students for sexual harassment and/or misconduct under Title IX for harassment by peers[19] and school employees,[20] or where school officials failed to supervise students to prevent such behavior in school settings when they agree that educators could have prevented the misconduct.[21] In light of the wide array of issues that arise in suits involving the sexual harassment of students, the remainder of this section briefly highlights cases that presented novel questions.

In a dispute from Michigan, a federal trial denied school administrators' requests for qualified immunity where they continually removed reprimands from the file of a male teacher who was accused of sexually molesting three female students.[22] The court determined that this part of the suit could proceed because a genuine issue of material fact remained as to whether the school board had a custom of failing to prevent sexual abuse from occurring even after officials received repeated notices about the teacher's improper conduct. Conversely, where they believed that educators behaved responsibly, courts refused to impose liability on boards for harassment and/or sexual misconduct by peers[23] and school employees,[24] especially where there was no evidence that officials acted with deliberate indifference to staff misconduct.[25]

A key concern in sexual harassment cases deals with the element of notice. In once such case, the Third Circuit considered who is an appropriate person to have actual notice of harassment for the purpose of alleging that educators acted with deliberate indifference.[26] In a dispute where a fifteen-year-old student had a sexual relationship with one of her male teachers, the court affirmed that the school's principal and assistant principal could not be deemed 'appropriate persons' solely by virtue of their positions because they lacked actual knowledge of the relationship. The court refused to impose liability on the two administrators because in addition to having to have had actual notice of a teacher's misconduct, they would have had to have acted with deliberate

indifference, meaning that they would have had to have made an official decision not to remedy the violation.

In Indiana, a case with a twist arose in light of the interplay of technology in sexual harassment. A federal trial court refused to dismiss the Title IX, equal protection, and intentional infliction of emotional distress claims against a teacher-tennis coach who allegedly harassed a female student by continually sending her instant messages from his personal computer.[28] The student did not block the teacher's instant messages insofar as she feared that she might have suffered negative consequences with regard to her status on the team. Even though the student did not read all of the messages or suffer any adverse consequences, the court denied the teacher's motion for summary judgment since questions of fact remained about whether his behavior was egregious enough to create a hostile environment, whether he was harassing her due to her sex or because of a personal attraction, and whether he acted under color of state law in sending the messages.

Where a student in Kansas claimed that school officials were deliberately indifferent to his being sexually harassed by peers, the federal trial court rejected the school board's motion to dismiss in acknowledging that same-sex, student-on-student sexual harassment was actionable under Title IX.[29] After a jury entered a verdict in favor of the student, the board unsuccessfully filed a motion for a judgment as a matter of law. The court wrote that when viewing the evidence in a light most favorable to the plaintiff, it was sufficient for the jury to have returned a verdict in his favor where school officials acted with deliberate indifference to his plight.[30]

A case involving the role of technology in sexual harassment arose in Indiana. A federal trial court refused to dismiss Title IX, equal protection, and intentional infliction of emotional distress claims against a teacher-tennis coach who allegedly harassed a female student by continually sending her instant messages from his personal computer.[31] The student did not block the teacher's instant messages insofar as she feared that she might have suffered negative consequences. Even though the student did not even read all of the messages or suffer any adverse consequences, the court denied the teacher's motion for summary judgment since questions of fact remained about whether his actions were sufficiently egregious enough to create a hostile environment, whether he was harassing her due to her sex or because of a personal attraction, and whether he acted under color of state law in sending the messages.

In a case with a novel defense in the face of a teacher sexual misconduct, which was premised on negligent supervision rather than Title IX, the Supreme Court of Washington rejected the notion that since a middle school student voluntarily participated in a sexual relationship with one of her teachers, she was partially at fault.[32] In a case of first impression, the court ruled that the thirteen-year-old minor lacked the capacity to consent to sexual relations, she was under no duty to protect herself from the abuse at the hands of her teacher.

VI Sexual Orientation

Another area of growing concern deals with harassment of students based on their sexual orientations. The first reported case in this area arose in Wisconsin where the Seventh Circuit ruled that a student who was gay could proceed with his equal protection claims against school officials who failed to protect him from harassment by peers based on his sexual preference.[33]

More recently, former students in California, who were, or were perceived by others as being, lesbian, gay, and/or bisexual, sued school officials alleging that their failure to respond to complaints of student-on-student anti-homosexual harassment denied them their rights to equal protection under the Fourteenth Amendment rather than under Title IX. In affirming the denial

of the officials' motion for summary judgment, the Ninth Circuit explained that at the time of the alleged incidents, the students' right to be free from intentional discrimination on the basis of sexual orientation was clearly established.[34]

The first of two cases that arose in New Jersey saw parents file suit on behalf of their son under the *Individuals with Disabilities Education Act*, claiming that he was bullied by other students, in part because of his lack of athleticism, physique, and perceived femininity. The Third Circuit indicated that school officials failed to provide the student with a free appropriate public education.[35] The court believed that insofar as school officials failed to offer substantial reasons for not crediting witnesses who testified on behalf of the student at a due process hearing, they had to reimburse his parents for the cost associated with their unilaterally placing him in a public school in a neighboring district.

Where a mother filed a complaint with New Jersey's Division of Civil Rights (DCR), alleging that school officials violated the *Law Against Discrimination* due to her son's having been repeatedly subject to harassment by peers at school on account of his perceived sexual orientation, the DCR agreed that since the response of school officials was inadequate, he was entitled to damages for emotional distress. On further review, an appellate court affirmed that in light of evidence establishing that school officials did not effectively respond to two assaults on the student based on his perceived sexual orientation, the award of $50,000 in damages was not excessive.[36] Conversely, the Third Circuit affirmed the rejection of claims by parents from Pennsylvania who alleged that school officials were deliberately indifferent to harassment that their son experiences in light of his effeminate characteristics.[37] The court was satisfied that officials did not act with deliberate indifference where they responded to each complaint by taking steps that they hoped would address, and eliminate, the harassment.

A student in Michigan who was openly gay filed suit against his school board under Title IX and section 1983 alleging that officials violated his right to equal protection when they failed to do enough to combat the peer-to-peer sexual harassment that he encountered at school. The court denied the board's motion for summary judgment since issues of fact remained over whether the student's allegations were sufficient to demonstrate that the behavior he was subjected to was severe, pervasive, and objectively offensive enough to constitute a Title IX violation.[38] At the same time, the court granted the board's motion as to the section 1983 claim since it did not think that the actions of school officials deprived the student of a constitutionally protected federal right.

VII Recommendations for Practice

Keeping in mind that dealing with sexual harassment, like many other areas of the law is a practical matter, the final substantive section of this paper offer the following guidelines as food for thought for school officials in Australia, New Zealand, and elsewhere as they seek to devise policies addressing this timely topic.[39]

First, each school governing board must develop clearly written policies prohibiting sexual harassment. In developing, and reviewing, policies, educational leaders should include representatives of all stakeholders in a school such as students, parents, staff, and community members.

Second, sexual harassment policies must be aligned with other board policies such as codes of conduct, personnel guidelines, and student handbooks. Both complainants and those charged

with harassment are entitled to protection under due process procedures that have been set forth for other forms of alleged policy violations.

Third, policies should prohibit all forms of sexual harassment. More specifically, policies should be sufficiently explicit so that students, parents, and educators know what is expected of everyone. Policies should:

a) clearly and unambiguously prohibit any form of inappropriate sexual conduct, whether verbal, physical, or any other method (such as inappropriate photographs, t-shirts with offensive messages, sexually offensive notes or letters, and sexual graffiti on school property) between and among students, faculty and staff;
b) specify that all categories of persons associated with the school are protected by the policy, whether full-time, part-time or volunteers;
c) declare that protection from sexual harassment extends to both same-sex and opposite-sex conduct; and
d) outline sanctions for offenders up to and including expulsion, with provision for progressive sanctions depending on the nature of the harassment.

Fourth, policies should have effective and well-publicised procedures by which students, faculty, and staff can resolve sexual harassment complaints. The procedures should:

a) include clear, and specific, language on how, and with whom, an aggrieved party can file complaints;
b) ensure that accused is not the party with whom a complaint must be filed. In other words, the policy should identify an alternative party who should be notified in the event that a student or employee wishes to file a complaint; and
c) guarantee that all parties to the proceeding are provided the due process applied to all disciplinary complaints, with the presumption of innocence for the accused.

Fifth, policies must ensure that educational leaders, acting in conjunction with their lawyers, take prompt administrative action to address and resolve complaints n a timely manner while both respecting the seriousness of the complaint under consideration and the due process rights of all the parties. In furthering these purposes, educational officials must develop administrative procedures which serve as guideposts for district administrators often immersed in daily crises and personal conflicts. These procedures should:

a) establish time limits for such events as filing a complaint and holding a hearing that are compatible with other time lines in student and personnel handbooks;
b) provide details about the investigatory process, such as rights of access to documents and witnesses, that are compatible with handbook provisions for other kinds of alleged misconduct;
c) establish procedures for the hearing, such as who will chair and serve on the hearing tribunal, right to call and cross-examine witnesses, and right to present evidence;
d) explain avenues of appeal from adverse hearing decisions that are compatible with appeals from misconduct hearings generally provided for in student and personnel handbooks; and
e) include assurances to safeguard the privacy rights of both the accused and accuser.

Sixth, governing bodies should appoint compliance officers to ensure that educators meet the dictates of their sexual harassment policies.

Seventh, policies should be included in faculty, staff, and student handbooks so that all members of a school community will be aware of their responsibilities.

Eighth, sexual harassment policies, as with other policies, should be reviewed annually to ensure that it is up-to-date with latest developments in the law.

VIII Conclusion

In reviewing the principles enunciated in *Franklin*, *Gebser*, and *Davis* the fact that educational leaders will have complied with them does not guarantee either perfectly safe schools or complete immunity from litigation. However, the more carefully educational leaders follow these rules, the more likely that they will have safe schools that are not subject to litigation dealing with sexual harassment that could have been avoided. To this end, educational leaders, in consultation with their lawyers should develop, implement, and regularly update sexual harassment policies that inform all educational personnel including students, staff, and volunteers of the standard of behavior that they are expected to display. More specifically, sexual harassment policies should not only identify the kinds of behaviors that are unacceptable but should also address such issues as identifying parties with whom complaints should be filed, what complaints should include, timelines and procedures for initiating and completing investigations, appeals processes, and protections to safeguard the privacy of both the accused and the accuser.

Keywords: sexual harassment; harassment; student rights; sexual misconduct; teacher misconduct.

Endnotes

1. Charol Shakeshaft, *Educator Sexual Misconduct: A Synthesis of Existing Literature* (2004) U.S. Department of Education <http://www.ed.gov/rschstat/research/pubs/misconductreview/index.html> at 29 January 2008.
   According to the definitions section of this report:
   The phenomena examined in this synthesis include behavior by an educator that is directed at a student and intended to sexually arouse or titillate the educator or the child. In this review, 'educator' includes any person older than 18 who works with or for a school or other educational or learning organisation. This service may be paid or unpaid, professional, classified or volunteer. Adults covered by this review might be teachers, counselors, school administrators, secretaries, bus drivers, coaches, parent volunteers for student activities, lunchroom attendants, tutors, music teachers, special education aides, or any other adult in contact in a school-related relationship with a student: at 1.
   The behaviors included in the review are physical, verbal, or visual. Examples include touching breasts or genitals of students; oral, anal, and vaginal penetration; showing students pictures of a sexual nature; and sexually-related conversations, jokes, or questions directed at students.
2. Molestation,' 'rape,' 'sexual exploitation,' 'sexual abuse,' 'sexual harassment'— these words and phrases are often used to describe adult-to-student sexual abuse in schools. … There is considerable discussion concerning the appropriate label for these actions. While '*educator sexual abuse*' is a common reference, '*educator sexual misconduct*' is a more appropriate term for the purposes of this review: Ibid 2.
3. Insofar as American courts continue to refer to sexual harassment when teachers and peers engage in inappropriate conduct, this paper continues this convention.
4. Domingo Ramirez Jr., 'Teacher Sex-Abuse Cases Soar', *Forth Worth Star Telegram* (Tex), 29 October 2004, A1, available at 2004 WLNR 4392766.
5. Martha Irvine and Robert Tanner, 'Sexual Misconduct Plagues U.S. Schools: Associated Press Documents More than 2,500 cases Against Educators in Five Years', *Dayton Daily News* (Ohio), 21 October 2007, A 19. See also Andrew Welsh-Huggins, 'Teacher Sex Abuse Often Begins Online,

Review Says: Boundaries are Stretched with E-mails, Instant Messages to Students, a Professor Says', *Dayton Daily News* (Ohio) 21 October 2007, A 19; Robert Tanner, 'Gender Affects Response to Teacher-Student Sex: Girls Often Ostracized for Bringing Down Educators while Boys are seen as "Lucky"', *Education Week*, 24 October 2007 17; Juliet Williams, 'Laws Help Hide Details in Cases Of Sex Related Misconduct: Past Misdeeds May be Off-Limits to Other Districts', *Education Week*, 24 October 2007, 19.

6. 20 U.S.C.A. § 1681.
7. 441 U.S. 677 (1979).
8. 503 U.S. 60, (1992), *on remand*, 969 F 2d 1022 (11th Cir, 1992). For a commentary on this case, *see* Charles J. Russo, Virginia D. Nordin and Terrence Leas, 'Sexual Harassment and Student Rights: The Supreme Court Expands Title IX Remedies' (1992) 75(2) *Education Law Reporter* 733.
9. *Franklin v Gwinnett County Pub. Schs.*, 911 F 2d 617 (11th Cir, 1990).
10. 524 U.S. 274 (1998).
11. *Doe v Lago Vista Indep. Sch. Dist.*, 106 F 3d 1223 (5th Cir, 1997).
12. *Kinman v Omaha Pub. Sch. Dist.*, 171 F 3d 607 (8th Cir, 1999).
13. *Sauls v Pierce County Sch. Dist.*, 399 F 3d 1279 (11th Cir, 2005).
14. 526 U.S. 629 (1999), *on remand*, 206 F 3d 1377 (11th Cir, 2000).
15. *Davis v Monroe County Bd. of Educ.*, 74 F 3d 1186 (11th Cir, 1996), reh'g en banc granted, opinion vacated, 91 F 3d 1418 (11th Cir, 1996), on reh'g, 120 F 3d 1390 (11th Cir, 1997).
16. For an earlier case holding a board liable for peer-to-peer harassment, *see Oona R.-S.- by Kate S. v McCaffrey*, 143 F 3d 473 (9th Cir, 1998). But see *Rowinsky v Bryan Indep. Sch. Dist.*, 80 F 3d 1006 (5th Cir, 1996), cert. denied, 519 U.S. 861 (1996) (denying relief in a case of peer-to-peer sexual harassment).
17. *Davis v Monroe County Bd. of Educ*., 526 U.S. 629 (1999), on remand, 206 F 3d 1377 (11th Cir, 2000).
18. Ibid 646.
19. See, eg, *Vance v Spencer County Pub. Sch. Dist.*, 231 F 3d 253 (6th Cir, 2000); *Ray v Antioch Unified Sch. Dist.*, 107 F Supp 2d 1165 (N D Cal, 2000).
20. See, eg, *Baynard v Malone*, 268 F 3d 228 (4th Cir, 2001).
21. *Vaughn v Orleans Parish Sch. Bd.*, 802 So 2d 967 (La Ct App, 2001).
22. *Doe ex rel. Doe v Warren Consol. Schs.*, 307 F Supp 2d 860 (E D Mich, 2003), aff'd in relevant part, 93 Fed Appx 812 (6th Cir, 2004).
23. See, eg, *Hawkins v Sarasota County Sch. Bd.*, 322 F 3d 1279 (11th Cir, 2003); *Bruneau ex rel. Schofield v South Kortright Cent. Sch. Dist.*, 163 F 3d 749 (2d Cir, 1998); *Nordo v School Dist. of Philadelphia*, 172 F Supp 2d 600 (E D Pa, 2001); *C.R.K. v U.S.D. 260*, 176 F Supp 2d 1145 (D Kan, 2001); *Burwell v Pekin Community High Sch. Dist. 303*, 213 F Supp 2d 917 (C D Ill, 2002); *Doe v Lennox Sch. Dist. No. 41–4*, 329 F Supp 2d 1063 (D S D, 2003).
24. See, eg, *Hartley v Parnell*, 193 F 3d 1263 (11th Cir,1999); *Doe v Gooden*, 214 F 3d 952 (8th Cir, 2000); *P.H. v School Dist. of Kansas City, Mo.*, 265 F 3d 653 (8th Cir, 2001); *Johnson v Elk Lake Sch. Dist.*, 283 F 3d 138 (3d Cir, 2002); *Craig v Lima City Schs. Bd. of Educ.*, 384 F Supp 2d 1136 (N D Ohio, 2005).
25. See, eg, *Doe ex rel. Doe v Dallas Indep. Sch. Dist.*, 220 F 3d 380 (5th Cir, 2000); *Davis ex rel. Doe v DeKalb County Sch. Dist.*, 233 F 3d 1367 (11th Cir, 2000), *cert. denied*, 532 U.S. 1066 (2001); *Sauls v Pierce County Sch. Dist.*, 399 F 3d 1279 (11th Cir, 2005); *Williams ex rel. Hart v Paint Valley Local Sch. Dist.*, 400 F 3d 360 (6th Cir, 2005); *Doe v D'Agostino*, 367 F Supp 2d 157 (D Mass, 2005).
26. *Bostic v Smyrna Sch. Dist.*, 418 F 3d 355 (3d Cir, 2005).
28. *Chivers v Central Noble Community Schs.*, 423 F Supp. 2d 835 (N D Ind, 2006).
29. *Theno v Tonganoxie Unified Sch. Dist. No. 464*, 377 F Supp 2d 952 (D Kan, 2005).
30. *Theno v Tonganoxie Unified Sch. Dist. No. 464*, 394 F Supp 2d 1299 (D Kan, 2005).
31. *Chivers v Central Noble Community Schs.*, 423 F Supp 2d 835 (N D Ind, 2006).
32. *Christensen v Royal Sch. Dist. No. 106*, 124 P 3d 283 (Wash, 2006).
33. *Nabozny v Podlesny*, 92 F 3d 446 (7th Cir, 1996).

34. *Flores v Morgan Hill Unified Sch. Dist.*, 324 F 3d 1130 (9th Cir, 2003).
35. *Shore Reg'l High Sch. Bd. of Educ. v. P.S. ex rel. P.S.*, 381 F 3d 194 (3d Cir, 2004).
36. *L.W. v Toms River Reg'l Schs. Bd. of Educ.*, 886 A 2d 1090 (N J Super Ct App Div, 2005).
37. *Doe v Bellefonte Area Sch. Dist.*, 106 Fed Appx 798 (3d Cir, 2004).
38. *Martin v Swartz Creek Community Schs.*, 419 F Supp 2d 967 (E D Mich, 2006).
39. These recommendations are adapted from Charles J. Russo, Ralph D. Mawdsley and Timothy J. Ilg, 'Guidelines for Addressing Sexual Harassment in Educational Institutions' (2003) 182(1) *Education Law Reporter* 15.