

**Handout 8: Answer Key**  
*Davis v. Monroe County Board of Education*  
526 U.S. 629 (1999) [edited]

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.... 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...

...

**II.**

Title IX provides...that "no 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." ....

There is no dispute here that the Board is a recipient of federal education funding for Title IX purposes. ...

**B.**

We [in a case in 1998] concluded that sexual harassment is a form of discrimination for Title IX purposes. 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." 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.

*The Court considers: can the mother sue the school board because of student-on-student harassment?*

*Yes, if:*

- (1) the school board knows about the harassment*
- (2) the school board acts with deliberate indifference*
- (3) the harassment is so severe, pervasive, and objectively offensive that it bars the victim's access to educational opportunity or benefit*

*Since the school board receives federal funding, it must comply with Title IX.*

*Under Title IX, one type of "discrimination" is when a student is excluded from participation in, or denied the benefits of, any education program or activity that receives federal funding.*

*Title IX says that students must not be denied access to educational benefits and opportunities because of their gender.*

*Here, the Court restates the three factors outlined in the introduction.*

The most obvious example of student-on-student sexual harassment capable of triggering a damages claim would thus involve the overt, physical deprivation of access to school resources. Consider, for example, a case in which male students physically threaten their female peers every day, successfully preventing the female students from using a particular school resource -- an athletic field or a computer lab, for instance. District administrators are well aware of the daily ritual, yet they deliberately ignore requests for aid from the female students wishing to use the resource. The district's knowing refusal to take any action in response to such behavior would fly in the face of Title IX's core principles, and such deliberate indifference may appropriately be subject to claims for monetary damages. It is not necessary, however, to show physical exclusion to demonstrate that students have been deprived by the actions of another student or students of an educational opportunity on the basis of sex. Rather, a plaintiff must establish sexual harassment of students that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities.

Whether gender-oriented conduct rises to the level of actionable "harassment" thus "depends on a constellation of surrounding circumstances, expectations, and relationships," including, but not limited to, the ages of the harasser and the victim and the number of individuals involved. It is thus understandable that, in the school setting, students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it. Damages are not available for simple acts of teasing and name-calling among school children, however, even where these comments target differences in gender. Rather, in the context of student-on-student harassment, damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect.

... The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX's guarantee of equal access to educational benefits and to have a systemic effect on a program or activity.

### C.

Applying this standard to the facts at issue here, we conclude that the [lower court] 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

*One type of sexual harassment that would violate Title IX: physically depriving a student of access to school resources (e.g. with physical threats)*  
*- Threats happen every day*  
*- Administrators know about it, but deliberately ignore requests for help*

*Victims don't have to be literally blocked from the educational opportunity; they must be "effectively denied equal access." This could mean the female students are intimidated and threatened enough that they are too fearful to access or enjoy the educational opportunity in the same way that their male peers do.*

*Is it Title IX harassment?*  
*Consider:*  
*- ages of harasser and victim*  
*- number of individuals involved*

*Some typical bullying or teasing isn't enough*

*It must be so serious that the victims are denied equal access to education.*

*Although this case is about student-on-student harassment, the Court notes that teacher-on-student harassment is more likely to deny a student equal access to educational benefits.*

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 case is remanded for further proceedings consistent with this opinion.

IT IS SO ORDERED.

*Harassment in this case was both verbal and physical.*

*Concrete negative effect on victim's education: the victim's grades dropped severely because she could not concentrate on her studies; she also became suicidal.*