
Subsequent Harassment Must Occur in Title IX Private Causes of Action

By Amy L. Wesaw / Dec 20, 2019

The 6th Circuit Court of Appeals recently clarified how individuals must allege, and ultimately prove, a private cause of action for Title IX sexual harassment claims regarding student on student sexual harassment. The original framework of *Davis v. Monroe County Board of Education* established the right to a private cause of action if the plaintiff could demonstrate that a school is “deliberately indifferent to sexual harassment, of which [it] has 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.” 526 U.S. 629, 650.

Kollaritsch v Michigan State University Board of Trustees concentrated on the deliberate indifference and severity prongs of the Davis requirements. No. 17-2445, 2019 WL 6766998, at *1 (CA 6, December 12, 2019). Four female plaintiffs brought a private cause of action against the Defendant after reporting sexual assaults to the school, which triggered investigations and outcomes unfavorable to plaintiffs.

According to plaintiffs, the school either instituted remedies which did not stop the alleged perpetrators from coming in contact with them or had the effect of “violat[ing] [the] clearly established right to equal protection” when the Vice President for Student affairs set aside a finding of sexual assault in favor of a new investigation. The plaintiffs asserted that the actions were deliberately indifferent and made them vulnerable to continued sexual harassment.

First, the court clarified the Davis two-prong causation element, which required the deliberate indifference of a school, after it actually knew about the alleged sexual harassment, to minimally “cause students to undergo harassment or make them liable or vulnerable to it.” The Court ruled that a subsequent action of harassment must occur after a school is informed and acts on the allegation before the causation element can be satisfied. Under the two-prong causation element, the school either “place[s] the student in a position to experience that harassment, or leave[s] the student vulnerable” to the harassment that subsequently occurs. Seeing the alleged assailants, or having the potential to see the alleged assailants, after the school’s response did not rise to the level of severe, pervasive, and objectively offensive sexual harassment.

Importantly, the school’s response was not so clearly unreasonable to be considered “deliberately indifferent.” The Court reiterated that plaintiffs have “no ‘right’ to [a] preferred remedy” and institutions and their administrators enjoy great discretion in deciding an appropriate response to sexual harassment complaints. Provided the efforts address the allegation and aim to prevent “the foreseeable possibility of further actionable harassment of the victim”, the school and its administrators are insulated from private causes of action.