DISTRICTS MAY BE LIABLE FOR STUDENT-ON-STUDENT HARASSMENT

On May 24, 1999 the United States Supreme Court reversed the decision of the Eleventh Circuit in *Davis v. Monroe County Board of Education,* 1999 WL 320808(U.S.) finding that school districts may be liable for monetary damages arising from student-on-student, or peer, sexual harassment. In arriving at its decision, the Court provided an in-depth analysis of Title IX of the Education Amendments of 1972 and the many responsibilities associated with the receipt of federal funding thereunder. Specifically, the Court held that:

A private Title IX damage action may lie against a school board in cases of student-on-student harassment, but only where the funding recipient is *deliberately indifferent* to sexual harassment, of which the recipient has actual knowledge, and 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.

Thus, "deliberate indifference" is the test that Courts will apply in determining whether a School District may be liable for student-on-student harassment. In Davis, the Court found that the student, Lashonda D., had repeatedly communicated to her teachers and principal that a fellow student, G.F., had been verbally and physically harassing her in a sexual manner during a 5 month period. Despite being fully aware of the specific events surrounding the harassment complained of, neither the teachers, principal, or District took any disciplinary action. The Court determined that the District's failure to act under those circumstances amounted to "deliberate indifference."

In light of this decision, and in order to protect your district from successful claims for student-on-student sexual harassment, you should review your Board policies to assure that they prohibit such harassment. Assure that your policy requires the district to act in an immediate and responsive manner to any and all reports of student-on-student harassment as they would respond to accusations of employee-on-employee harassment. The district should notify the accusing student that it is investigating the allegations of complaints of harassment.

Districts also must recognize that in pursuing an investigation of harassment, it is essential to remember the due process rights of the accused harasser. In other words, the accused harasser should be confronted with the accusations, given a chance to respond, and told that such conduct, whether admitted to or not, is not acceptable. The meeting and any investigation should be documented. The procedures implementing such a policy should provide for the training and support of your staff in appropriate, immediate, and responsive action. When founded incidents of student-on-student harassment result from the investigation, your district must take timely and appropriate action to address the complaint.

As a final note, we advise our clients to be aware that for the purposes of administrative enforcement (as opposed to private lawsuits), the "actual knowledge" requirment of Davis is reduced to "constructive knowledge." In other words, the Office for Civil Rights can penalize a school district for failing to respond promptly to severe, persistent, or pervasive harassment o which it actually knew or *should have known.*

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.