

June 21, 1999

To: Commissioners

From: John Carnes, Commission Counsel

Subject: U.S. Supreme Court Decision Re Student-on-Student Sexual Harassment.
Davis v. Monroe County Board of Education

In May, 1999, the U.S. Supreme Court decided in the Davis case that a student may sue a school board under Title IX for student-on-student sexual harassment where: 1. The harassment is severe enough to deprive the victim of access to educational opportunity; 2. The board had actual knowledge of the harassment; and 3. The board was "deliberately indifferent" to the harassment.

As in last year's Gebser v. Lago Vista Independent School District decision (teacher-student harassment), the Court pointed out that Title IX was enacted pursuant to Congress' authority under the Spending Clause of the Constitution. Accordingly, a private action for damages is available only if the recipient of federal funds had actual notice of the harassment and unreasonably failed to eliminate it. The government and the school are in a contractual relationship. The Court held that the school cannot be liable for money damages for violating the contract if it did not know about the harassment and have an opportunity to correct the situation.

It is arguable that, because the education provisions of the MHRA were not enacted pursuant to the Spending Clause of the U.S. Constitution, the high hurdles for school liability set forth in Gebser and Davis do not apply. It is arguable that proper standards are to be found by analogy to MHRA employment case law, i.e., agency principles in cases of teacher harassment, and the "knew or should have known" standard for student-on-student harassment.

If you have questions, we can discuss them at the next Commission Meeting.

cc. Patricia E. Ryan