DAVIS v. MONROE COUNTY BOARD OF EDUCATION

Sexual Harassment and Children

SUMMARY

By a 2-1 vote, the United States Court of Appeals for the Eleventh Circuit has reinstated part of a lawsuit claiming that a Georgia school violated federal law when it failed to take action to stop a student from sexually harassing other students. The decision was issued on February 14, 1996, in *Davis v. Monroe County Board of Education*.

BACKGROUND

G.F. was a fifth-grader in a Monroe County public elementary school. Over a six-month period, he engaged in a variety of blatant verbal and physical acts of a sexual nature against girls in his class. Several girls complained to their teacher, but no action was taken by the school against G.F. Finally, after six months, the problem became so severe that G. F. was charged with and pled guilty to sexual battery.

LaShonda D. was one of the girls that G.F. repeatedly sexually harassed. After every incident, LaShonda complained to her mother, Aurelia Davis, who in turn contacted the teacher and/or school principal and asked for protection for her daughter. But still no action was taken to stop the harassment. For three months, the school even refused to move LaShonda from the seat next to G.F. in class. As a result, LaShonda's grades fell, and she suffered emotionally even to the extent of writing a suicide note.

Eventually, LaShonda's mother brought this suit against the school. While she made several claims, the only one that this appeal concerns is her claim that the school's failure to act discriminated against LaShonda and denied her the benefits of a public education in violation of federal law. Title IX of the Education Amendments of 1972 states in part 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. . . ."

The district court dismissed Davis' complaint against the school board, but the court of appeals reversed that decision.

ANALYSIS

The Monroe County school system does receive federal financial assistance. The issue in this case is whether the failure to stop G.F. from harassing LaShonda "excluded [her] from participation," "denied [her] the benefits of," or "subjected [her] to discrimination."

The trial court dismissed the claim under Title IX. It construed Title IX to require a claimant to show that the education provider was sexually harassing the student. For example, if a teacher or other employee of the school were harassing a student, the school would be liable. However, no such claim was made.

Davis' allegation was that the school *knew* the harassment was going on and that it could have controlled it but chose not to do so. As result, LaShonda's right to an education in a hostility-free environment was violated.

Davis urged the court to apply the principles of sexual harassment from Title VII, which applies to the workplace. Title VII requires employers to take whatever action is necessary to ensure that their employees work in an environment free from sexual harassment by a supervisor or co-worker. She argued that if an employer is responsible for the work environment of its employees and for protecting its employees from sexual harassment, then a school should be responsible for the learning environment of its students.

The Court of Appeals agreed with Davis' argument. As a result, the court found that Davis' allegations wee sufficient to establish a **prima facie** claim under Title IX for sexual harassment. The court reversed the district court's dismissal and remanded the case for trial. This case is the first to clearly state that student-to-student sexual harassment may be the basis of a Title IX lawsuit.

The dissenting judges believed that Title IX covers only two possible situations: where a school employee is doing the harassing or where the school intentionally promotes sexual harassment (instead of, as here, negligently allowing it to continue).

EXCERPTS FROM THE MAJORITY OPINION (by Judge Barkett)

"The ability to control and influence behavior exists to an even greater extent in the classroom than in the workplace, as students look to their teachers for guidance as well as for protection. The damage caused by sexual harassment also is arguably greater in the classroom than in the workplace, because the harassment has a greater and longer lasting impact on its young victims, and institutionalizes sexual harassment as accepted behavior. Moreover, as economically difficult as it may be for adults to leave a hostile workplace, it is virtually impossible for children to leave their assigned school. Finally, '[a] nondiscriminatory environment is essential to maximum intellectual growth and is therefore an integral part of the educational benefits that a student receives. A sexual abusive environment inhibits, if not prevents, the harassed student from developing her full intellectual potential and receiving the most from the academic program. . . ."

"Thus, we conclude that as Title VII encompasses a claim for damages due to a sexually hostile working environment created by co-workers and tolerated by the employer, Title IX encompasses a claim for damages due to a sexually hostile educational environment created by a fellow student or students when the supervising authorities knowingly fail to act to eliminate the harassment. . . ."

"In this case, by requiring that a school employee commit the harassing action in order for Davis to state a claim, the district court failed to recognize the nature of a claim for hostile environment sexual harassment. The court dismissed the complaint because, in its view, 'any harm to LaShonda was not proximately caused by a federally-funded educational provider' and neither the Board nor an employee of the Board 'had any role in the harassment.' . . . "

"The court's rationale thus implicitly limited sexual harassment actions to **quid pro quo** harassment, which conditions benefits or maintenance of the status quo upon sexual favors. This was not Davis' claim. The evil Davis sought to redress through her hostile environment claim was not the direct act of a school official demanding sexual favors, but rather the official's failure to take action to stop the offensive acts of those over whom the officials exercised control. Title VII recognizes this distinction and requires employers to take steps to assure that their employees' working environment is free from sexual harassment regardless of whether that harassment is caused by the sexual demands of a supervisor or by the sexually hostile environment created by supervisors or coworkers. . . . Under this concept, when an employer knowingly fails to take action to remedy a hostile environment caused by one co-worker's sexual harassment of another, the employer 'discriminate[s] against . . . an[] individual' in violation of Title VI. . . ."

"Likewise, when an educational institution knowingly fails to take action to remedy a hostile environment caused by a student's sexual harassment of another, the harassed student has 'be[en] denied the benefits of, or be[en] subjected to discrimination under' that educational program in violation of Title IX. . . . Just as a working woman should not be required to 'run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living,' . . . a female student should not be required to run a gauntlet of sexual abuse in return for the privilege of being allowed to obtain an education."

EXCERPTS FROM THE DISSENTING OPINION (by Judge Birch)

"The student-on-student sexual harassment alleged in this case is analytically quite distinct from that in [an earlier case], and the majority makes an unprecedented extension in holding that Title IX encompasses a claim of hostile environment sexual harassment based on the conduct of a student. There is no indication in the language of Title IX that such a cause of action was intended to be covered by its scope; rather, the statute states that '[n]o person in the United States shall, on the basis of sex, . . . be subjected to discrimination under any educational program or activity receiving Federal financial assistance.' . . . In this case, the school board, which is clearly an educational 'program or activity' . . . is not alleged to have committed any act

of harassment against LaShonda, nor is any employee of the school board. Rather, the plaintiff seeks to hold the school board liable for negligently failing to prevent another student, not its employee, from sexually harassing LaShonda. In my opinion, this student-on-student sexual harassment case clearly falls outside the purview of Title IX."

"Even if I were to accept the majority's conclusion that Title IX encompasses student-on-student sexual harassment, I would limit that holding to intentional conduct on the part of the school board."