SUPREME COURT OF THE UNITED STATES

No. 97–843

AURELIA DAVIS, AS NEXT FRIEND OF LASHONDA D., PETITIONER *v.* MONROE COUNTY BOARD OF EDUCATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[May 24, 1999]

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. Among petitioner's claims was a claim for monetary and injunctive relief under Title IX of the Education Amendments of 1972 (Title IX), 86 Stat. 373, as amended, 20 U. S. C. §1681 *et seq*. The District Court dismissed petitioner's Title IX claim on the ground that "student-on-student," or peer, harassment provides no ground for a private cause of action under the statute. The Court of Appeals for the Eleventh Circuit, sitting en banc, affirmed. 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.

I

Petitioner's Title IX claim was dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief could be granted. Accordingly, in reviewing the legal sufficiency of petitioner's cause of action, "we must assume the truth of the material facts as alleged in the complaint." *Summit Health, Ltd.* v. *Pinhas*, 500 U. S. 322, 325 (1991).

A

Petitioner's minor daughter, LaShonda, was allegedly the victim of a prolonged pattern of sexual harassment by one of her fifth-grade classmates at Hubbard Elementary School, a public school in Monroe County, Georgia. According to petitioner's complaint, the harassment began in December 1992, when the classmate, G. F., attempted to touch LaShonda's breasts and genital area and made vulgar statements such as "'I want to get in bed with you'" and "'I want to feel your boobs.'" Complaint ¶7. Similar conduct allegedly occurred on or about January 4 and January 20, 1993. *Ibid.* LaShonda reported each of these incidents to her mother and to her classroom teacher, Diane Fort. *Ibid.* Petitioner, in turn, also contacted Fort, who allegedly assured petitioner that the school principal, Bill Querry, had been informed of the incidents. *Ibid.* Petitioner contends that, notwithstanding these reports, no disciplinary action was taken against G. F. *Id.*, ¶16.

G. F.'s conduct allegedly continued for many months. In early February, G. F. purportedly placed a door stop in his pants and proceeded to act in a sexually suggestive manner toward LaShonda during physical education class. *Id.*, ¶8. LaShonda reported G. F.'s behavior to her physical education teacher, Whit Maples. *Ibid.* Approximately one week later, G. F. again allegedly engaged in harassing behavior, this time while under the supervision of another classroom teacher, Joyce Pippin. *Id.*, ¶9. Again,

LaShonda allegedly reported the incident to the teacher, and again petitioner contacted the teacher to follow up. *Ibid*.

Petitioner alleges that G. F. once more directed sexually harassing conduct toward LaShonda in physical education class in early March, and that LaShonda reported the incident to both Maples and Pippen. *Id*., ¶10. In mid-April 1993, G. F. allegedly rubbed his body against LaShonda in the school hallway in what LaShonda considered a sexually suggestive manner, and LaShonda again reported the matter to Fort. *Id*., ¶11.

The string of incidents finally ended in mid-May, when G. F. was charged with, and pleaded guilty to, sexual battery for his misconduct. *Id*., ¶14. The complaint alleges that LaShonda had suffered during the months of harassment, however; specifically, her previously high grades allegedly dropped as she became unable to concentrate on her studies, *id*., ¶15, and, in April 1993, her father discovered that she had written a suicide note, *ibid*. The complaint further alleges that, at one point, LaShonda told petitioner that she "'didn't know how much longer she could keep [G. F.] off her.'" *Id*., ¶12.

Nor was LaShonda G. F.'s only victim; it is alleged that other girls in the class fell prey to G. F.'s conduct. *Id*., ¶16. At one point, in fact, a group composed of LaShonda and other female students tried to speak with Principal Querry about G. F.'s behavior. *Id*., ¶10. According to the complaint, however, a teacher denied the students' request with the statement, "'If [Querry] wants you, he'll call you.'" *Ibid*.

Petitioner alleges that no disciplinary action was taken in response to G. F.'s behavior toward LaShonda. *Id*., ¶16. In addition to her conversations with Fort and Pippen, petitioner alleges that she spoke with Principal Querry in mid-May 1993. When petitioner inquired as to what action the school intended to take against G. F., Querry

simply stated, "'I guess I'll have to threaten him a little bit harder.'" *Id.*, ¶12. Yet, petitioner alleges, at no point during the many months of his reported misconduct was G. F. disciplined for harassment. *Id.*, ¶16. Indeed, Querry allegedly asked petitioner why LaShonda "'was the only one complaining.'" *Id.*, ¶12.

Nor, according to the complaint, was any effort made to separate G. F. and LaShonda. *Id.*, ¶16. On the contrary, notwithstanding LaShonda's frequent complaints, only after more than three months of reported harassment was she even permitted to change her classroom seat so that she was no longer seated next to G. F. *Id.*, ¶13. Moreover, petitioner alleges that, at the time of the events in question, the Monroe County Board of Education (Board) had not instructed its personnel on how to respond to peer sexual harassment and had not established a policy on the issue. *Id.*, ¶17.

B

On May 4, 1994, petitioner filed suit in the United States District Court for the Middle District of Georgia against the Board, Charles Dumas, the school district's superintendent, and Principal Querry. The complaint alleged that the Board is a recipient of federal funding for purposes of Title IX, that "[t]he persistent sexual advances and harassment by the student G. F. upon [LaShonda] interfered with her ability to attend school and perform her studies and activities," and that "[t]he deliberate indifference by Defendants to the unwelcome sexual advances of a student upon LaShonda created an intimidating, hostile, offensive and abus[ive] school environment in violation of Title IX." *Id.*, ¶¶27, 28. The complaint sought compensatory and punitive damages, attorney's fees, and injunctive relief. *Id.*, ¶32.

The defendants (all respondents here) moved to dismiss petitioner's complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief

could be granted, and the District Court granted respondents' motion. See 862 F. Supp. 363, 368 (MD Ga. 1994). With regard to petitioner's claims under Title IX, the court dismissed the claims against individual defendants on the ground that only federally funded educational institutions are subject to liability in private causes of action under Title IX. *Id*., at 367. As for the Board, the court concluded that Title IX provided no basis for liability absent an allegation "that the Board or an employee of the Board had any role in the harassment." *Ibid*.

Petitioner appealed the District Court's decision dismissing her Title IX claim against the Board, and a panel of the Court of Appeals for the Eleventh Circuit reversed. 74 F.3d 1186, 1195 (1996). Borrowing from Title VII law, a majority of the panel determined that student-on-student harassment stated a cause of action against the Board under Title IX: "[W]e 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." *Id*., at 1193. The Eleventh Circuit panel recognized that petitioner sought to state a claim based on school "officials' failure to take action to stop the offensive acts of those over whom the officials exercised control," *ibid*., and the court concluded that petitioner had alleged facts sufficient to support a claim for hostile environment sexual harassment on this theory, *id*., at 1195.

The Eleventh Circuit granted the Board's motion for rehearing en banc, 91 F. 3d 1418 (1996), and affirmed the District Court's decision to dismiss petitioner's Title IX claim against the Board, 120 F. 3d 1390 (1998). The en banc court relied, primarily, on the theory that Title IX was passed pursuant to Congress' legislative authority

under the Constitution's Spending Clause, U. S. Const., Art I, §8, cl. 1, and that the statute therefore must provide potential recipients of federal education funding with "unambiguous notice of the conditions they are assuming when they accept" it. 120 F. 3d, at 1399. Title IX, the court reasoned, provides recipients with notice that they must stop their employees from engaging in discriminatory conduct, but the statute fails to provide a recipient with sufficient notice of a duty to prevent student-on-student harassment. *Id*., at 1401.

Writing in dissent, four judges urged that the statute, by declining to identify the perpetrator of discrimination, encompasses misconduct by third parties: "The identity of the perpetrator is simply irrelevant under the language" of the statute. *Id*., at 1412 (Barkett, J., dissenting). The plain language, the dissenters reasoned, also provides recipients with sufficient notice that a failure to respond to student-on-student harassment could trigger liability for the district. *Id*., at 1414.

We granted certiorari, 524 U. S. ____ (1998), in order to resolve a conflict in the Circuits over whether, and under what circumstances, a recipient of federal educational funds can be liable in a private damages action arising from student-on-student sexual harassment, compare 120 F. 3d 1390 (CA11 1998) (case below), and *Rowinsky* v. *Bryan Independent School Dist*., 80 F. 3d 1006, 1008 (CA5) (holding that private damages action for student-on-student harassment is available under Title IX only where funding recipient responds to these claims differently based on gender of victim), cert. denied, 519 U. S. 861 (1996), with *Doe* v. *University of Illinois*, 138 F. 3d 653, 668 (CA7 1998) (upholding private damages action under Title IX for funding recipient's inadequate response to known student-on-student harassment), cert. pending, No. 98–126, *Brzonkala* v. *Virginia Polytechnic Institute and State University*, 132 F. 3d 949, 960–961 (CA4 1997)

(same), vacated and District Court decision affirmed en banc, 169 F. 3d 820 (CA4 1999) (not addressing merits of Title IX hostile environment sexual harassment claim and directing District Court to hold this claim in abeyance pending this Court's decision in the instant case), and *Oona, R. S.* v. *McCaffrey*, 143 F. 3d 473, 478 (CA9 1998) (rejecting qualified immunity claim and concluding that Title IX duty to respond to student-on-student harassment was clearly established by 1992–1993), cert. pending, No. 98–101. We now reverse.

II

Title IX provides, with certain exceptions not at issue here, that

> "[n]o 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." 20 U. S. C. §1681(a).

Congress authorized an administrative enforcement scheme for Title IX. Federal departments or agencies with the authority to provide financial assistance are entrusted to promulgate rules, regulations, and orders to enforce the objectives of §1681, see §1682, and these departments or agencies may rely on "any . . . means authorized by law," including the termination of funding, *ibid.*, to give effect to the statute's restrictions.

There is no dispute here that the Board is a recipient of federal education funding for Title IX purposes. 74 F. 3d, at 1189. Nor do respondents support an argument that student-on-student harassment cannot rise to the level of "discrimination" for purposes of Title IX. Rather, at issue here is the question whether a recipient of federal education funding may be liable for damages under Title IX under any circumstances for discrimination in the form of student-on-student sexual harassment.

A

Petitioner urges that Title IX's plain language compels the conclusion that the statute is intended to bar recipients of federal funding from permitting this form of discrimination in their programs or activities. She emphasizes that the statute prohibits a student from being *"subjected to discrimination* under any education program or activity receiving Federal financial assistance." 20 U. S. C. §1681 (emphasis supplied). It is Title IX's "unmistakable focus on the benefited class," *Cannon* v. *University of Chicago*, 441 U. S. 677, 691 (1979), rather than the perpetrator, that, in petitioner's view, compels the conclusion that the statute works to protect students from the discriminatory misconduct of their peers.

Here, however, we are asked to do more than define the scope of the behavior that Title IX proscribes. We must determine whether a district's failure to respond to student-on-student harassment in its schools can support a private suit for money damages. See *Gebser* v. *Lago Vista Independent School Dist.*, 524 U. S. 274, 283 (1998) ("In this case, . . . petitioners seek not just to establish a Title IX violation but to recover *damages* . . ."). This Court has indeed recognized an implied private right of action under Title IX, see *Cannon* v. *University of Chicago*, *supra*, and we have held that money damages are available in such suits, *Franklin* v. *Gwinnett County Public Schools*, 503 U. S. 60 (1992). Because we have repeatedly treated Title IX as legislation enacted pursuant to Congress' authority under the Spending Clause, however, see, *e.g.*, *Gebser* v. *Lago Vista Independent School Dist.*, *supra*, at 287 (Title IX); *Franklin* v. *Gwinnett County Public Schools*, *supra*, at 74–75, and n. 8 (Title IX); see also *Guardians Assn.* v. *Civil Serv. Comm'n of New York City*, 463 U. S. 582, 598–599 (1983) (opinion of White, J.) (Title VI), private damages actions are available only where recipients of federal funding had adequate notice that they could be

liable for the conduct at issue. When Congress acts pursuant to its spending power, it generates legislation "much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Pennhurst State School and Hospital* v. *Halderman*, 451 U. S. 1, 17 (1981). In interpreting language in spending legislation, we thus "insis[t] that Congress speak with a clear voice," recognizing that "[t]here can, of course, be no knowing acceptance [of the terms of the putative contract] if a State is unaware of the conditions [imposed by the legislation] or is unable to ascertain what is expected of it." *Ibid*.; see also *id*., at 24–25.

Invoking *Pennhurst*, respondents urge that Title IX provides no notice that recipients of federal educational funds could be liable in damages for harm arising from student-on-student harassment. Respondents contend, specifically, that the statute only proscribes misconduct by grant recipients, not third parties. Respondents argue, moreover, that it would be contrary to the very purpose of Spending Clause legislation to impose liability on a funding recipient for the misconduct of third parties, over whom recipients exercise little control. See also *Rowinsky* v. *Bryan Independent School Dist*., 80 F. 3d, at 1013.

We agree with respondents that a recipient of federal funds may be liable in damages under Title IX only for its own misconduct. The recipient itself must "exclud[e] [persons] from participation in, . . . den[y] [persons] the benefits of, or . . . subjec[t] [persons] to discrimination under" its "program[s] or activit[ies]" in order to be liable under Title IX. The Government's enforcement power may only be exercised against the funding recipient, see §1682, and we have not extended damages liability under Title IX to parties outside the scope of this power. See *National Collegiate Athletic Assn*. v. *Smith*, 525 U. S. ___, ___, n. 5 (1999) (slip op., at 7, n. 5) (rejecting suggestion "that the private right of action available under . . .

§1681(a) is potentially broader than the Government's enforcement authority"); cf. *Gebser* v. *Lago Vista Independent School Dist.*, *supra*, at 289 ("It would be unsound, we think, for a statute's *express* system of enforcement to require notice to the recipient and an opportunity to come into voluntary compliance while a judicially *implied* system of enforcement permits substantial liability without regard to the recipient's knowledge or its corrective actions upon receiving notice").

We disagree with respondents' assertion, however, that petitioner seeks to hold the Board liable for *G. F.*'s actions instead of its own. Here, petitioner attempts to hold the Board liable for its *own* decision to remain idle in the face of known student-on-student harassment in its schools. In *Gebser*, we concluded that a recipient of federal education funds may be liable in damages under Title IX where it is deliberately indifferent to known acts of sexual harassment by a teacher. In that case, a teacher had entered into a sexual relationship with an eighth grade student, and the student sought damages under Title IX for the teacher's misconduct. We recognized that the scope of liability in private damages actions under Title IX is circumscribed by *Pennhurst*'s requirement that funding recipients have notice of their potential liability. 524 U. S., at 287–288. Invoking *Pennhurst*, *Guardians Assn.*, and *Franklin*, in *Gebser* we once again required "that the receiving entity of federal funds [have] notice that it will be liable for a monetary award'" before subjecting it to damages liability. *Id.*, at 287 (quoting *Franklin v. Gwinnett County Public Schools*, 503 U. S., at 74). We also recognized, however, that this limitation on private damages actions is not a bar to liability where a funding recipient intentionally violates the statute. *Id.*, at 74–75; see also *Guardians Assn.* v. *Civil Serv. Comm'n of New York City*, *supra*, at 597–598 (opinion of White, J.) (same with respect to Title VI). In particular, we concluded that

Pennhurst does not bar a private damages action under Title IX where the funding recipient engages in intentional conduct that violates the clear terms of the statute.

Accordingly, we rejected the use of agency principles to impute liability to the district for the misconduct of its teachers. 524 U. S., at 283. Likewise, we declined the invitation to impose liability under what amounted to a negligence standard– holding the district liable for its failure to react to teacher-student harassment of which it knew or *should have* known. *Ibid*. Rather, we concluded that the district could be liable for damages only where the district itself intentionally acted in clear violation of Title IX by remaining deliberately indifferent to acts of teacher-student harassment of which it had actual knowledge. *Id*., at 290. Contrary to the dissent's suggestion, the misconduct of the teacher in *Gebser* was not "treated as the grant recipient's actions." *Post*, at 8. Liability arose, rather, from "an official decision by the recipient not to remedy the violation." *Gebser* v. *Lago Vista Independent School Dist.*, *supra*, at 290. By employing the "deliberate indifference" theory already used to establish municipal liability under Rev. Stat. §1979, 42 U. S. C. §1983, see *Gebser* v. *Lago Vista Independent School Dist.*, *supra*, at 290–291 (citing *Board of Comm'rs of Bryan Cty.* v. *Brown*, 520 U. S. 397 (1997), and *Canton* v. *Harris*, 489 U. S. 378 (1989)), we concluded in *Gebser* that recipients could be liable in damages only where their own deliberate indifference effectively "cause[d]" the discrimination, 524 U. S., at 291; see also *Canton* v. *Harris*, *supra*, at 385 (recognizing that a municipality will be liable under §1983 only if "the municipality *itself* causes the constitutional violation at issue" (emphasis in original)). The high standard imposed in *Gebser* sought to eliminate any "risk that the recipient would be liable in damages not for its own official decision but instead for its employees' independent actions." 524 U. S., at 290–291.

Gebser thus established that a recipient intentionally violates Title IX, and is subject to a private damages action, where the recipient is deliberately indifferent to known acts of teacher-student discrimination. Indeed, whether viewed as "discrimination" or "subject[ing]" students to discrimination, Title IX "[u]nquestionably . . . placed on [the Board] the duty not" to permit teacher-student harassment in its schools, *Franklin* v. *Gwinnett County Public Schools*, *supra*, at 75, and recipients violate Title IX's plain terms when they remain deliberately indifferent to this form of misconduct.

We consider here whether the misconduct identified in *Gebser*— deliberate indifference to known acts of harassment— amounts to an intentional violation of Title IX, capable of supporting a private damages action, when the harasser is a student rather than a teacher. We conclude that, in certain limited circumstances, it does. As an initial matter, in *Gebser* we expressly rejected the use of agency principles in the Title IX context, noting the textual differences between Title IX and Title VII. 524 U. S., at 283; cf. *Faragher* v. *Boca Raton*, 524 U. S. 775, 791–792 (1998) (invoking agency principles on ground that definition of "employer" in Title VII includes agents of employer); *Meritor Savings Bank, FSB* v. *Vinson*, 477 U. S. 57, 72 (1986) (same). Additionally, the regulatory scheme surrounding Title IX has long provided funding recipients with notice that they may be liable for their failure to respond to the discriminatory acts of certain non-agents. The Department of Education requires recipients to monitor third parties for discrimination in specified circumstances and to refrain from particular forms of interaction with outside entities that are known to discriminate. See, *e.g.*, 34 CFR §§106.31(b)(6), 106.31(d), 106.37(a)(2), 106.38(a), 106.51(a)(3) (1998).

The common law, too, has put schools on notice that they may be held responsible under state law for their

failure to protect students from the tortious acts of third parties. See Restatement (Second) of Torts §320, and Comment *a* (1965). In fact, state courts routinely uphold claims alleging that schools have been negligent in failing to protect their students from the torts of their peers. See, *e.g.*, *Rupp* v. *Bryant*, 417 So. 2d 658, 666–667 (Fla. 1982); *Brahatcek* v. *Millard School Dist.*, 202 Neb. 86, 99–100, 273 N. W. 2d 680, 688 (1979); *McLeod* v. *Grant County School Dist. No. 128*, 42 Wash. 2d 316, 320, 255 P. 2d 360, 362–363 (1953).

This is not to say that the identity of the harasser is irrelevant. On the contrary, both the "deliberate indifference" standard and the language of Title IX narrowly circumscribe the set of parties whose known acts of sexual harassment can trigger some duty to respond on the part of funding recipients. Deliberate indifference makes sense as a theory of direct liability under Title IX only where the funding recipient has some control over the alleged harassment. A recipient cannot be directly liable for its indifference where it lacks the authority to take remedial action.

The language of Title IX itself– particularly when viewed in conjunction with the requirement that the recipient have notice of Title IX's prohibitions to be liable for damages– also cabins the range of misconduct that the statute proscribes. The statute's plain language confines the scope of prohibited conduct based on the recipient's degree of control over the harasser and the environment in which the harassment occurs. If a funding recipient does not engage in harassment directly, it may not be liable for damages unless its deliberate indifference "subject[s]" its students to harassment. That is, the deliberate indifference must, at a minimum, "cause [students] to undergo" harassment or "make them liable or vulnerable" to it. Random House Dictionary of the English Language 1415 (1966) (defining "subject" as "to cause to undergo the

action of something specified; expose" or "to make liable or vulnerable; lay open; expose"); Webster's Third New International Dictionary of the English Language 2275 (1961) (defining "subject" as "to cause to undergo or submit to: make submit to a particular action or effect: EXPOSE"). Moreover, because the harassment must occur "under" "the operations of" a funding recipient, see 20 U. S. C. §1681(a); §1687 (defining "program or activity"), the harassment must take place in a context subject to the school district's control, Webster's Third New International Dictionary of the English Language, *supra*, at 2487 (defining "under" as "in or into a condition of subjection, regulation, or subordination"; "subject to the guidance and instruction of"); Random House Dictionary of the English Language, *supra*, at 1543 (defining "under" as "subject to the authority, direction, or supervision of").

These factors combine to limit a recipient's damages liability to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs. Only then can the recipient be said to "expose" its students to harassment or "cause" them to undergo it "under" the recipient's programs. We agree with the dissent that these conditions are satisfied most easily and most obviously when the offender is an agent of the recipient. *Post*, at 8. We rejected the use of agency analysis in *Gebser*, however, and we disagree that the term "under" somehow imports an agency requirement into Title IX. See *ibid*. As noted above, the theory in *Gebser* was that the recipient was *directly* liable for its deliberate indifference to discrimination. See *supra*, at 11. Liability in that case did not arise because the "teacher's actions [were] treated" as those of the funding recipient, *post*, at 8; the district was directly liable for its *own* failure to act. The terms "subjec[t]" and "under" impose limits, but nothing about these terms requires the use of agency principles.

Where, as here, the misconduct occurs during school hours and on school grounds– the bulk of G. F.'s misconduct, in fact, took place in the classroom– the misconduct is taking place "under" an "operation" of the funding recipient. See *Doe* v. *University of Illinois*, 138 F. 3d, at 661 (finding liability where school fails to respond properly to "student-on-student sexual harassment that takes place while the students are involved in school activities or otherwise under the supervision of school employees"). In these circumstances, the recipient retains substantial control over the context in which the harassment occurs. More importantly, however, in this setting the Board exercises significant control over the harasser. We have observed, for example, "that the nature of [the State's] power [over public schoolchildren] is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults." *Vernonia School Dist. 47J* v. *Acton*, 515 U. S. 646, 655 (1995). On more than one occasion, this Court has recognized the importance of school officials' "comprehensive authority . . . , consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 507 (1969); see also *New Jersey* v. *T. L. O.*, 469 U. S. 325, 342, n. 9 (1985) ("The maintenance of discipline in the schools requires not only that students be restrained from assaulting one another, abusing drugs and alcohol, and committing other crimes, but also that students conform themselves to the standards of conduct prescribed by school authorities"); 74 F. 3d, at 1193 ("The ability to control and influence behavior exists to an even greater extent in the classroom than in the workplace . . ."). The common law, too, recognizes the school's disciplinary authority. See Restatement (Second) of Torts §152 (1965). We thus conclude that recipients of federal funding may be liable for "subject[ing]" their students to dis-

crimination where the recipient is deliberately indifferent to known acts of student-on-student sexual harassment and the harasser is under the school's disciplinary authority.

At the time of the events in question here, in fact, school attorneys and administrators were being told that student-on-student harassment could trigger liability under Title IX. In March 1993, even as the events alleged in petitioner's complaint were unfolding, the National School Boards Association issued a publication, for use by "school attorneys and administrators in understanding the law regarding sexual harassment of employees and students," which observed that districts could be liable under Title IX for their failure to respond to student-on-student harassment. See National School Boards Association Council of School Attorneys, Sexual Harassment in the Schools: Preventing and Defending Against Claims v, 45 (rev. ed.). Drawing on Equal Employment Opportunity Commission guidelines interpreting Title VII, the publication informed districts that, "if [a] school district has constructive notice of severe and repeated acts of sexual harassment by fellow students, that may form the basis of a [T]itle IX claim." *Id*., at 45. The publication even correctly anticipated a form of *Gebser*'s actual notice requirement: "It is unlikely that courts will hold a school district liable for sexual harassment by students against students in the absence of actual knowledge or notice to district employees." Sexual Harassment in the Schools, *supra*, at 45. Although we do not rely on this publication as an "indicium of congressional notice," see *post*, at 19, we do find support for our reading of Title IX in the fact that school attorneys have rendered an analogous interpretation.

Likewise, although they were promulgated too late to contribute to the Board's notice of proscribed misconduct, the Department of Education's Office for Civil Rights (OCR) has recently adopted policy guidelines providing

that student-on-student harassment falls within the scope of Title IX's proscriptions. See Department of Education, Office of Civil Rights, Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12034, 12039–12040 (1997) (OCR Title IX Guidelines); see also Department of Education, Racial Incidents and Harassment Against Students at Educational Institutions, 59 Fed. Reg. 11448, 11449 (1994).

We stress that our conclusion here– that recipients may be liable for their deliberate indifference to known acts of peer sexual harassment– does not mean that recipients can avoid liability only by purging their schools of actionable peer harassment or that administrators must engage in particular disciplinary action. We thus disagree with respondents' contention that, if Title IX provides a cause of action for student-on-student harassment, "nothing short of expulsion of every student accused of misconduct involving sexual overtones would protect school systems from liability or damages." See Brief for Respondents 16; see also 120 F. 3d, at 1402 (Tjoflat, J.) ("[A] school must immediately suspend or expel a student accused of sexual harassment"). Likewise, the dissent erroneously imagines that victims of peer harassment now have a Title IX right to make particular remedial demands. See *post*, at 34 (contemplating that victim could demand new desk assignment). In fact, as we have previously noted, courts should refrain from second guessing the disciplinary decisions made by school administrators. *New Jersey* v. *T. L. O.*, *supra*, at 342–343, n. 9.

School administrators will continue to enjoy the flexibility they require so long as funding recipients are deemed "deliberately indifferent" to acts of student-on-student harassment only where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances. The dissent consis-

tently mischaracterizes this standard to require funding recipients to "remedy" peer harassment, *post* at 5, 10, 16, 30, and to "ensur[e] that . . . students conform their conduct to" certain rules, *post* at 13. Title IX imposes no such requirements. On the contrary, the recipient must merely respond to known peer harassment in a manner that is not clearly unreasonable. This is not a mere "reasonableness" standard, as the dissent assumes. See *post*, at 26. In an appropriate case, there is no reason why courts, on a motion to dismiss, for summary judgment, or for a directed verdict, could not identify a response as not "clearly unreasonable" as a matter of law.

Like the dissent, see *post*, at 11–15, we acknowledge that school administrators shoulder substantial burdens as a result of legal constraints on their disciplinary authority. To the extent that these restrictions arise from federal statutes, Congress can review these burdens with attention to the difficult position in which such legislation may place our Nation's schools. We believe, however, that the standard set out here is sufficiently flexible to account both for the level of disciplinary authority available to the school and for the potential liability arising from certain forms of disciplinary action. A university might not, for example, be expected to exercise the same degree of control over its students that a grade school would enjoy, see *post*, at 14, and it would be entirely reasonable for a school to refrain from a form of disciplinary action that would expose it to constitutional or statutory claims.

While it remains to be seen whether petitioner can show that the Board's response to reports of G. F.'s misconduct was clearly unreasonable in light of the known circumstances, petitioner may be able to show that the Board "subject[ed]" LaShonda to discrimination by failing to respond in any way over a period of five months to complaints of G. F.'s in-school misconduct from LaShonda and other female students.

B

The requirement that recipients receive adequate notice of Title IX's proscriptions also bears on the proper definition of "discrimination" in the context of a private damages action. We have elsewhere concluded that sexual harassment is a form of discrimination for Title IX purposes and that Title IX proscribes harassment with sufficient clarity to satisfy *Pennhurst*'s notice requirement and serve as a basis for a damages action. See *Gebser* v. *Lago Vista Independent School Dist.*, 524 U. S., at 281; *Franklin* v. *Gwinnett County Public Schools*, *supra*, at 74–75. 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. See *Bennett* v. *Kentucky Dept. of Ed.*, 470 U. S. 656, 665–666 (1985) (rejecting claim of insufficient notice under *Pennhurst* where statute made clear that there were some conditions placed on receipt of federal funds, and noting that Congress need not "specifically identif[y] and proscrib[e]" each condition in the legislation). 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." §1681(a). 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 educa-

tional opportunities or benefits provided by the school.

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. Cf. *Meritor Savings Bank, FSB* v. *Vinson*, 477 U. S., at 67.

Whether gender-oriented conduct rises to the level of actionable "harassment" thus "depends on a constellation of surrounding circumstances, expectations, and relationships," *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U. S. 75, 82 (1998), including, but not limited to, the ages of the harasser and the victim and the number of individuals involved, see OCR Title IX Guidelines 12041–12042. Courts, moreover, must bear in mind that schools are unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable

among adults. See, *e.g.*, Brief for National School Boards Association et al. as *Amici Curiae* 11 (describing "dizzying array of immature . . . behaviors by students"). Indeed, at least early on, students are still learning how to interact appropriately with their peers. 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 dissent fails to appreciate these very real limitations on a funding recipient's liability under Title IX. It is not enough to show, as the dissent would read this opinion to provide, that a student has been "teased," *post*, at 25, or "called . . . offensive names," *post*, at 27–28. Comparisons to an "overweight child who skips gym class because the other children tease her about her size," the student "who refuses to wear glasses to avoid the taunts of 'four-eyes,'" and "the child who refuses to go to school because the school bully calls him a 'scardy-cat' at recess," *post*, at 25, are inapposite and misleading. Nor do we contemplate, much less hold, that a mere "decline in grades is enough to survive" a motion to dismiss. *Ibid*. The drop-off in LaShonda's grades provides necessary evidence of a potential link between her education and G.F.'s misconduct, but petitioner's ability to state a cognizable claim here depends equally on the alleged persistence and severity of G.F.'s actions, not to mention the Board's alleged knowledge and deliberate indifference. We trust that the dissent's characterization of our opinion will not mislead

courts to impose more sweeping liability than we read Title IX to require.

Moreover, the provision that the discrimination occur "under any education program or activity" suggests that the behavior be serious enough to have the systemic effect of denying the victim equal access to an educational program or activity. Although, in theory, a single instance of sufficiently severe one-on-one peer harassment could be said to have such an effect, we think it unlikely that Congress would have thought such behavior sufficient to rise to this level in light of the inevitability of student misconduct and the amount of litigation that would be invited by entertaining claims of official indifference to a single instance of one-on-one peer harassment. By limiting private damages actions to cases having a systemic effect on educational programs or activities, we reconcile the general principle that Title IX prohibits official indifference to known peer sexual harassment with the practical realities of responding to student behavior, realities that Congress could not have meant to be ignored. Even the dissent suggests that Title IX liability may arise when a funding recipient remains indifferent to severe, gender-based mistreatment played out on a "widespread level" among students. *Post*, at 31.

The fact that it was a teacher who engaged in harassment in *Franklin* and *Gebser* is relevant. 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. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher-student harassment.

C

Applying this standard to the facts at issue here, we conclude that the Eleventh Circuit erred in dismissing petitioner's complaint. Petitioner alleges that her daugh-

ter 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 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.

On this complaint, we cannot say "beyond doubt that [petitioner] can prove no set of facts in support of [her] claim which would entitle [her] to relief." *Conley* v. *Gibson*, 355 U. S. 41, 45–46 (1957). See also *Scheuer* v. *Rhodes*, 416 U. S. 232, 236 (1974) ("The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims"). Accordingly, the judgment of the United States Court of Appeals for the Eleventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.