changing the **RULES**

By Andrea Ivory

**Under Title IX, sexual harassment can have adverse effects on student-athletes and coaches alike.** Genuine incidents of abuse between a player and a coach can destroy an athlete's self-esteem, ruin interpersonal relationships, and damage further development in school and sports. Groundless accusations against coaches can stain reputations, plague careers, and intimidate prospective athletes. Neither coach nor athlete can hope to win when the bounds of permissible behavior are so murky.

Sexual harassment is an innocuously tidy legal definition of human behavior that defies delineation. Liability turns on perception and intent, context and response, impression and innuendo. These are factors to be weighed, not bright lines to be drawn. The ambiguities of interpersonal conduct are only compounded on the playing field. In school athletics, contact is simply part of the game. The intimate bonds between players and coaches are integral to the winning team. The clear lines on the field—from base to base, from goal to goal—do not continue into the law. It is little wonder, then, that players and coaches are often uncertain of their interaction in an era of increased sensitivity and awareness. How to win the game but not lose the suit: that
is the demand of the school and the command of the law. When these twin challenges conflict, who is responsible—the academic institutions or the courts?

IN THE COURT ...

The Supreme Court created the applicable standard of liability in Gebser v. Lago Vista Independent School District, holding that:

academic institutions are not liable for teacher-student sexual harassment under Title IX unless an employee who has been invested by the school board with supervisory power over the offending employee actually knew of the abuse, had the power to end the abuse, and failed to do so.¹

The Gebser standard brought an immediate halt to the reconstruction of sexual harassment in the academic setting. This Note contends that the Court was insensitive to the adverse effect on student-athletes in creating the road. There is an increased risk of sexual harassment on the field or in the forced companionship on moments on the field or in the forced companionship on the road. There is an increased risk of sexual harassment because the very environment is characterized by close physical and emotional relationships as well as unequal power relations. Physical acts often define sexual harassment, but it is not unusual to see a coach slap one of his or her athletes on the rear. The legal definition may or may not reach such conduct, and that uncertainty is a problem. But the academic institutions would not even reach this concern—they would never investigate in the first place. This complacency is cause for alarm, complacency that results from a law that has failed athletes and coaches alike. The standard articulated by Gebser is the real culprit behind the legal instability of sexual harassment. This must be changed to compel academic institutions to take a more active role in the prevention of sexual harassment.

In order to isolate the problem of protecting student-athletes, this Note focuses on coach-athlete sexual harassment only in the college setting. The complexity of athletes as minors raises further issues outside the scope of this Note and will not be addressed. Here, the discussion will provide an overview of Title IX history, explaining how the judiciary has played an active role in interpreting Title IX and applying it to academic institutions. Then the focus shifts to sexual harassment between a coach and an athlete, comparing the two kinds of sexual harassment and tracing the development of cases to the present standard. Next, the Note will examine the current standard of liability, inquiring whether it fulfills the purpose of Title IX and how academic institutions have abused it to sidestep responsibility. Finally, it will demonstrate how the requirement of “actual knowledge” creates institutional inertia. In sum, the Note demonstrates how the “know or should have known” standard is the best option for purposes of policy and effectiveness of law.

JUDICIAL DEVELOPMENT OF TITLE IX

In 1972, Congress enacted Title IX of the Civil Rights Act of 1964 to attack gender discrimination in educational programs and activities that received federal funding.² Title IX was passed for two primary purposes. First, Congress sought to curtail the disbursement of funds to educational institutions that tolerated sexual discrimination.³ Second, Congress sought to provide individuals with a legal recourse against such abuse.⁴

Title IX mirrors § 601 of Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in any program or activity receiving federal funds, including educational institutions.⁵ The language of Title IX is similar to Title VI, except Title IX substituted the word “sex” for the words “race, color, or national origin.” Title IX broadened the coverage of Title VI by stating 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.”⁶

Title IX limits its protection against gender discrimination to any “educational program or activity receiving federal financial assistance.”⁷ Initially, the courts were divided as to the proper interpretation of this provision. Some courts concluded that the text mandated a program-specific approach by which Title IX applied only to programs that received direct federal funding.⁸ Other courts held that Title IX required an “institution-wide
approach,” extending Title IX to every program within an academic institution if any program therein were supported by federal funds. Since most athletic departments do not receive direct federal assistance, however, universities countered that Title IX did not apply to their athletic programs.

In 1982, the Supreme Court held in North Haven Board of Education v. Bell that Title IX applied only to specific programs receiving federal aid. The court then affirmed this interpretation in 1984 in Grove City College v. Bell. In that case, the court held that Title IX did not apply to programs within colleges, such as athletics, which did not receive direct federal funds. The Grove City decision effectively removed nearly every collegiate athletic program from Title IX’s reach because few received direct federal funding. Four years later, however, Congress vacated Grove with the passage of the Civil Rights Restoration Act of 1987 (the “1988 Amendments”). The 1988 Amendments validated the institution-wide approach, bringing all programs within a federally funded institution under the veil of Title IX.

TYPES OF SEXUAL HARASSMENT

Courts have developed two legal constructs to define sexual harassment: (1) quid pro quo and (2) hostile environment. These theories originated in employment cases but have since been extended to the educational setting.

Quid Pro Quo

The doctrinal foundation for quid pro quo harassment was established in Williams v. Saxbe. Quid pro quo sexual harassment occurs when a coach makes tangible benefits—such as a scholarship, recommendation, playing time, or position on the team—contingent on the victim providing sexual favors. Once the threat or offer is made, sexual harassment has occurred whether or not the victim complies. There is normally strict liability for quid pro quo sexual harassment.

Hostile Environment

Bundy v. Jackson was the first case to recognize hostile environment harassment. This type of harassment occurs when the victim’s surroundings are permeated with discriminatory ridicule, intimidation, and insult sufficiently severe or pervasive to create an abusive environment. Hostile environment harassment, unlike quid pro quo, does not result from direct propositioning but nonetheless can adversely affect the psychological and emotional state of the victim. In the academic and athletic setting, this can cause great harm to the future development of an athlete. As one federal court explained, “[A] nondiscriminatory environment is essential to maximum growth and is therefore an integral part of the educational benefits that a student receives. A sexually abusive environment inhibits, if not prevents, the harassed student from developing her full potential and receiving the most from the academic program.”

EVOLUTION OF COACH-ATHLETE SEXUAL HARASSMENT CASE LAW

Most cases brought under Title IX initially involved gender discrimination issues, challenging unequal athletic opportunities for women. In recent years, however, the scope of Title IX has expanded to include sexual gender discrimination as well. A survey of 1,600 students revealed that approximately 80 percent had experienced some form of sexual harassment at school. Three cases in particular have been instrumental in shaping the law that controls sexual harassment in the school context.

Alexander v. Yale University

The first case to consider a student’s claim for sexual
harassment against a teacher was Alexander v. Yale University. Here, five women sought an order requiring Yale to institute a grievance procedure for victims of sexual harassment. They alleged that the absence of such safeguards denied them an equal opportunity in education in violation of Title IX.

All five women alleged some form of sexual harassment. One of the plaintiffs, Pamela Price, claimed that she had been offered an “A” by one of her professors in exchange for sexual favors. When she declined his offer, she received a “C,” a grade that she claimed did not reflect a fair evaluation of her academic work. She reported the incident to Yale officials who did not investigate. Margery Reifler, the field hockey team manager, related a similar story. She alleged that she was sexually harassed by the coach and she suffered extreme “distress and humiliation.” Reifler testified that she did not alert school officials of the incident because Yale lacked a legitimate grievance procedure.

Another plaintiff in the case, Lisa Stone, also claimed emotional distress. Her anxiety resulted from her discussion with another young woman, who had been a victim of sexual harassment at Yale University. Stone claimed she feared being victimized and left without a viable remedy, and that this anguish interfered substantially with her education. The fourth plaintiff, Ann Olivarius, alleged that she was forced to spend her own time, effort, and money investigating the incidents of sexual harassment because Yale officials refused to do so. She also claimed her efforts made her the object of threats and intimidation from individuals involved in her investigations. The final plaintiff, Ronni Alexander, alleged that she was forced to give up her study of the flute due to repeated sexual advances by her music instructor. Once again, Yale officials were found to have made no attempt to address the situation.

A federal district court in Connecticut dismissed all but one of the plaintiffs’ claims. The court stated that the plaintiffs had failed to “advance a claim that they had been deprived of cognizable Title IX rights.” The district court also found the issue to be moot because the students had since graduated. The court allowed only Pamela Price to argue her claim because it alone presented a legitimate case of potential sexual harassment. At trial, however, the court found that the alleged sexual harassment never happened and that Price’s grade indeed reflected her work. All five of the women appealed.

The Court of Appeals for the Second Circuit affirmed. The court agreed that, with the exception of Price, the other plaintiffs had failed to establish a “distinct and palpable injury” that could be redressed. According to the court, their claims lacked justiciability. In a Title IX suit, the court ruled, only the deprivation of “educational” benefits warranted relief. Since the alleged deprivations at issue—field hockey and flute lessons—“relate to an activity removed from the ordinary educational process, a more detailed allegation of injuries suffered, as a result of the deprivation, is required.” The plaintiffs, however, failed to meet this requirement.

As an initial step in the development of doctrine, Alexander was the first case to recognize that sexual harassment of students is prohibited by Title IX. In the context of athletics, it would serve to impose liability when a coach sexually harasses athletes.

Franklin v. Gwinnett County Public Schools

Franklin was the first Title IX sex-based harassment case to reach the Supreme Court. The case began when Andrew Hill, a sports coach and high school teacher, started to confront Christine Franklin with sexual advances at the beginning of her sophomore year. Hill would often stop Franklin to inquire about her sexual experiences with her boyfriend and attempt to engage her in sexually explicit conversations. Franklin claimed that Hill had asked her whether she would consider having sexual intercourse with an older man, had forcibly kissed her, and had telephoned her at home to ask her out on a date. Allegedly, on three occasions, he arranged for her dismissal from classes for the purpose of forcible intercourse in a private office.

Franklin further alleged that she went to other teachers and school administrators for help. School officials, however, took no action to curb Hill’s behavior, which
discouraged Franklin from pressing charges. At the conclusion of the school district’s investigation, Franklin filed a complaint with the Office for Civil Rights (OCR) in the Department of Education. After an independent inquiry, the OCR ruled that the school district had violated Franklin’s right to be free from physical and verbal harassment and her right to protest conduct proscribed by Title IX. The OCR, however, decided not to act. In the interim, Hill had resigned and the school had implemented a formal grievance procedure.

Disgruntled with this result, Franklin then filed a Title IX suit, seeking damages against the Gwinnett County School District. The federal district court dismissed on the ground that Title IX did not authorize an award of monetary damages. On appeal, the Eleventh Circuit affirmed, adding that although a private right of action existed under Title IX, an action for monetary damages could not be sustained for an intentional violation of Title IX. The court noted that because Title IX had been enacted under spending clause legislation, it could not allow for the recovery of monetary damages absent express instruction from Congress or clear direction from the Supreme Court.

The United States Supreme Court reversed, giving such clear direction. The court held that, unless Congress expressly specified otherwise, monetary damages would be available to a Title IX plaintiff. The court noted that federal courts are authorized by statute to use any remedy available to protect legal rights. The court also observed that Congress had not intended to limit remedies available in a Title IX suit.

According to the court, Gwinnett County had a duty under Title IX not to discriminate on the basis of sex, and “when a supervisor sexually harasses a subordinate because of the subordinate’s sex, that supervisor discriminates on the basis of sex.” The court concluded that the same rule applied when a teacher or coach sexually abused and harassed the student.

Under Franklin, institutions that practice intentional discrimination on the basis of gender may be obligated to pay the plaintiff compensatory and punitive damages, in addition to restructuring its program in compliance with Title IX. This decision alerted all athletic directors and college administrators that they now must take prompt action to correct and prevent any sexually harassing behavior between a coach and an athlete. If a school ignores improper and abusive relationships between athletes and coaches, vicarious liability could attach. Franklin also encouraged athletes to bring their actions forward in order to claim relief. Moreover, the decision formulated the standard that best serves the policy of preventing harassment in the first place: constructive knowledge.

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Gebser v. Lago Vista Independent School District

In the recent Gebser case, Alida Star Gebser, an eighth-grade student, met Frank Waldrop at a book discussion group. As leader of the group and teacher at Lago Vista High School, Waldrop often made sexually suggestive comments to the students during the book discussion sessions. Later in the year, Waldrop began to direct his sexual comments to Gebser in particular, especially when they were alone together. He visited her at home to give her a book, and while there he kissed and fondled her. The two then began a year-long relationship that included frequent sexual intercourse. During that time, Gebser never attempted to report Waldrop’s conduct to any school officials. Nor did the Lago Vista school district have an official grievance procedure with which she could lodge a complaint.

In October 1992, after the parents of two other students complained, the principal admonished Waldrop for his sexual innuendoes in the classroom. At the start of the spring semester a few months later, a police officer caught Waldrop and Gebser engaged in sex and arrested the teacher. The school district immediately terminated him. Gebser and her mother then commenced an action against the school district claiming, inter alia, violations of Title IX and state negligence law.

The federal district court granted summary judgment in favor of the school district on all claims. Gebser appealed solely on the Title IX claim. On appeal, it was affirmed that strict liability would not be imposed on a school district for a teacher’s sexual harassment of a student. The United States Supreme Court agreed, concluding that Lago Vista could not be liable on the basis of constructive notice alone. The court added that there was no evidence to suggest a school official knew about Waldrop’s relationship with Gebser.

In Gebser, the court noted that Franklin had merely supported the proposition that sexual harassment was a form of sex discrimination but did not adopt its guide for liability standards. The court then explained how it was clarifying the holding in Franklin. In reality, the court was providing an entirely new rule:

School districts are not liable in tort for teacher-student sexual harassment under Title IX unless an employee who has been invested by the school board with supervisory power over the offending employee actually knew of the abuse, had the power to end the abuse, and failed to do so.

Gebser narrowed the protection placed around athletes by Franklin, providing that schools were liable only if a supervising employee with actual knowledge had
intentionally disregarded incidents of harassment.

RELIEF UNDER TITLE IX

Title IX requires educational institutions that receive federal assistance to provide education free of sex discrimination. Initially, the only remedy available for any violation was the denial of federal funding to that institution. Without other remedy, student-athletes who were sexually harassed rarely pursued redress under Title IX. Thus, many student-athlete sexual harassment suits were brought under § 1983 or as violations of the Equal Protection and Due Process Clauses of the Constitution. In fact, Title IX did not expressly empower any private action until Cannon v. University of Chicago, in which the Supreme Court found an implied right for individuals to pursue injunctions against violations of Title IX.

At that time, a Title IX plaintiff received declaratory or injunctive relief only if she won the case. The only monetary relief available was the shifting of attorney’s fees as provided under the Civil Rights Attorney’s Fees Awards Act of 1976. Otherwise, Congress offered no guidance as to the scope or propriety of available remedies. As a result, the Supreme Court judicially created recovery of damages for private actions in 1992 in Franklin v. Gwinnett County Public Schools. However, just because a remedy exists, does not mean rights are easily vindicated. The path to proof is arduous. As the Supreme Court cautioned, “a damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient’s behalf has actual knowledge of discrimination in the recipient’s programs and fails adequately to respond.”

IS “ACTUAL KNOWLEDGE” ACTUALLY RIGHT?

Although Title IX is patterned after Title VII, there are obvious differences between the sports environment and an employment setting. These differences suggest that Title IX should provide greater, or at least equal, protection against sexual harassment as extended by Title VII. A more protective standard for Title IX is warranted due to the athletes’ inherent trust in and dependence upon their coach, as well as the differences in age and level of maturity. In contrast, such vulnerability is not implicated in the employer-employee relationship.

In spite of these compelling differences, the Supreme Court has actually come to the entirely opposite result. It has lowered the standard in Title VII cases by holding that employers are now vicariously liable for the sexual misconduct of their employees, even if management was unaware of the situation. Yet, at the same time, the Court increased the standard in the educational setting by ruling that universities are vicariously liable only if a high-level official knew about the sexual harassment and deliberately did nothing to stop it.

The “actual knowledge” standard discourages schools from effectively addressing sexual harassment concerns because doing so would indicate some level of knowledge. It further furnishes schools with valid defenses against liability, offering little incentive to affirmatively protect athletes.

First, vicarious liability is imposed only if a high-level official was aware of the incident. But who exactly is considered a “high level official” in the sports arena? An athletic director? An assistant coach? Ironically, it is only clear that teachers—the persons most likely to be aware of harassment due to daily interactions with students—are apparently not considered high-level officials. Therefore, even though a coach or teacher may be aware and capable of stopping the sexual harassment, an academic institution is shielded from liability because the athletic director or the dean of the school was not properly informed.

DEFUSING LIABILITY: COACHES should...

• address sexual harassment with athletes and their parents at team meetings and other appropriate settings

• remain professional around athletes and watch their language and the manner in which they touch the players

• leave their office door open whenever meeting alone with an athlete, especially when dealing with players of the opposite sex

• avoid preferential treatment of an athlete to control potential rumors about sexual favors

• hire other coaches of the opposite sex to assist with talking to the athletes about sensitive topics
The plaintiff must show a degree of control over the agent (coach) by the principal (university), which can be marked by the ability to fire the agent. The relationship between a coach and a university is a clear example of this arrangement. The school grants the coach authority to act for the school in training the athletes. When a coach uses this authority to sexually harass one of his athletes, the school is vicariously liable and may be required to respond in damages. Liability attaches to an academic institution only if the coach is acting within the scope of employment. If the harassment occurred on school grounds or while the coach was acting in his role as an employee of the school, the argument for vicarious liability is strong. Yet at least one court has argued that "no teacher who sexually abuses a student acts in the scope of his authority." Thus, an athlete's access to relief may be hindered if the act of harassment is wholly unrelated to the employment relationship, thus removing the case from agency doctrine.

Advocates of this standard argue that student-athletes should receive at least the same protection as employees under Title VII. However, inherent differences exist in the degree of control that universities and other employers exercise. Coaching entails discretion due to its specialized nature and the departmentalized athletic structure of most universities; the deference it accords is not present in most other employer-employee relationships. Thus, agency principles are not easily applicable. Moreover, if Congress had desired the standard to be conditioned upon that doctrine, it would have indicated this in legislative history.

**Strict Liability**

The strict liability standard holds that academic institutions are liable for sexual harassment, knowledge notwithstanding. Thus, a standard of strict liability will easily serve one of the two purposes of Title IX—to provide relief to a harassed student. Strict liability is applied in some Title IX cases involving quid pro quo harassment. The standard has two important advantages. First, this standard places the "risk of harm on the party who is in a better position to deal with the overall problem," i.e., the academic institution. This would force universities to carefully monitor and strictly control relations between athletes and coaches. Thus the preventive effect of strict liability standard arguably outweighs the unfairness of exposing academic institutions to liability even when it has adopted policy procedures. Second, this standard "heightens the vigilance" of all actors and ensures that coaches take the problem seriously.

While a strict liability standard might spur some universities to action, there is an equal possibility that it
will cause others to shrink, sit back, and do nothing. Some administrations may reason that if a coach wants to sexually harass one of his athletes, he will do so despite the best seminars, warnings, or other preventive procedures. Thus, no preventive measure could defeat liability. Also, there is a danger that athletes may abuse the process. Athletes may seduce coaches to generate a sexual harassment claim, hoping to create an easy path to monetary relief under Title IX or pressure the school for a quick settlement. Thus, the unavoidable liability and financial risk to a university is too high under a strict liability regime.

Constructive Knowledge

Before Gebser, the majority of courts applied Title VII's constructive knowledge liability standard in Title IX cases. Vicarious liability was imposed whenever an educational institution knew or should have known of sex discrimination but failed to take appropriate action reasonably calculated to end it.

The constructive, "know or should have known" standard, best achieves the purpose of the law. It motivates academic institutions to take a more active role in seeking out instances of sexual harassment. It encourages schools to educate athletes about what constitutes sexual harassment and prompts them to deal with actual incidents more quickly and effectively.

Admittedly, there are many arguments against a constructive knowledge standard. First, the Supreme Court has ruled that it would conflict with Title IX's goals as well as contravene the Spending Clause, the constitutional authority for Title IX. Legislation authorized by the Spending Clause offers a "contractual framework" to potential recipients of federal funding. Recipients must have actual notice of the conditions they are assuming when they accept such funding. Thus, the argument goes, Title VII's "knew or should have known" constructive notice standard is essentially a negligence standard which should not be imputed to cases arising under Title IX. To remedy this, however, the constructive knowledge standard should be included as an express condition of the federal funding, providing recipients with notice of their potential liability if funded under Title IX.

Other critics argue that the "knew or should have known" standard is simply ineffective in coach-athlete sexual harassment. According to one court, sexual misconduct by a coach "will almost always occur in secrecy." This secrecy will limit investigation procedures because an academic institution will not want to be in a position where it "should have known" of the abuse. However, the increased liability encompasses more than its critics would admit. And that is its strength. Schools will, in fact, wonder when a court might rule that it "should have known" about the sexual harassment. This insecurity will motivate schools to balance the cost of litigation against the cost of investigating and implementing programs. Because the financial liability and publicity are too disruptive, the scales will tip in favor of prevention and investigation. Thus the constructive knowledge mandates heightened vigilance. Yet it is not as over-reaching or unfair as strict liability—it will not hold schools liable for secret, unspoken abuse.

The constructive knowledge standard is similar to the "actual knowledge" standard, and thus has some of the same potential problems. The constructive knowledge standard is ultimately stronger, though. First, it eliminates the "high-level official" limitation by allowing notice, either actual or constructive, to be provided to the school by anyone—including a teacher. Second, the "should have known" eliminates the requirement of intentional disregard, which is unworkable and frustrates the very purpose of Title IX. The constructive knowledge standard stands as a median between two extremes—the actual knowledge and strict liability standard—and would lead to more responsive schools and more effective investigations.

THE LAW MUST PREVENT TO PROTECT

As a social problem, sexual harassment is tragic and destructive whenever and however it occurs. And now the footprints of sexual harassment lead to the athletic field. Athletes need greater protection due to their increased vulnerability and dependence. Numerous athletes are coming forth with shocking stories about what really goes on behind the scenes in the locker room. Some charges are valid, some are not. However, enough settlements have been paid, and enough coaches have quietly resigned, to suggest that there still is a problem.

As a legal problem, Title IX litigation is not disappearing. It is expanding into other areas—peer sexual harassment and same-sex sexual harassment. The law has been said to have "zero tolerance" for sexual abuse of students, so Title IX must "reach this conduct with the full weight of its purpose." Therefore, Title IX will not provide adequate protection to student-athletes until the stronger standard of constructive knowledge is adopted. The force of this more meaningful standard lies in its ability to affect the behavior of universities and coaches—before sexual harassment occurs.

2 20 U.S.C. §1681-88 (1994). Title IX was enacted as a result of hearings conducted by the House of Rep. Special Committee on Education.


4 118 CONG. REC. 5806-07 (1972).


8 Id.


10 Id.


15 See, e.g., Sparks v. Pilot Freight Carriers, Inc., 830 F.2d 1554, 1564 (11th Cir. 1987) (holding that the manager’s act of making the employee’s employment status contingent on her compliance with the manager’s sexual advances constituted quid pro quo sexual harassment); see also Stilley v. University of Pittsburgh, 968 F. Supp 252, 283 (W.D. Pa. 1996) (recognizing a quid pro quo claim in employee-student sexual harassment).


21 Id.


23 631 F.2d 178, 181 (2d Cir. 1980).

24 Id.

25 Id.

26 Id. at 182.

27 Id.

28 Id.

29 Id. at 181.

30 Id.

31 Id. at 182.

32 Id.

33 Id. at 183.

34 Id.

35 Id. at 181.

36 Id. at 182.

37 Id. The court dismissed the complaints of Stone and Olivarius on the ground that they had not asserted claims “of personal exclusion from a federally funded education program or activity, or of the personal denial of full participation in the benefits of such a program or activity in any measurable sense.” The court also dismissed Reifler’s claim due to her failure to notify Yale officials about the harassment.

38 Id. Alexander’s claim was dismissed on the ground that graduation had mooted her claim for equitable relief, absent any desire to continue her flute studies.

39 Id.

40 Id. at 183.

41 Id.

42 Id.

43 Id.

44 Id.

45 Id. at 184.

46 Id. at 182.


48 Id. at 1031.

49 Id.

50 Id.

51 Id.

52 Id.

53 Id.

54 Id. at n.3.

55 Id.

56 Id.

57 Id. at 1032.

58 Id.

59 Id.

60 Id.

61 Id.
62 Id. at 1034.
63 Id. at 1036.
64 112 S. Ct. at 1037; See also Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986).
65 Id.
66 112 S. Ct. at 1028; See also Meritor Savings Bank, 477 U.S. 57.
67 Id.
69 Id.
70 Id.
71 Id.
72 Id.
73 Id.
74 Id.
75 Id.
76 Id.
77 Id.
78 Id. at 1993-94. (The Court held that Title IX was "enacted to counter policies of discrimination ... in federally funded education programs" and that "only if school administrators have some type of notice of the gender discrimination and fail to respond in good faith can the discrimination be interpreted as a policy of the school district").
79 Id.
80 Id. at 1994. The Court held in Leiia v. Canutillo Indep. Sch. Dist. that strict liability is inconsistent with "the Title IX contract" 520 U.S. 1265 (1997).
81 Id.
82 Id. at 1995.
83 Id. (quoting Rosa H., 106 F.3d at 648).
85 Cannon, 441 U.S. at 709.
87 Cannon, 441 U.S. at 686.
89 112 S.Ct. at 1032. The Court's holding entailed a degree of judicial activism as well as a degree of speculation since it addressed an issue upon which Congress has been silent.
90 Gebser, 118 S.Ct. at 1999.
93 See Rosa H., 106 F.3d at 659 (noting that a high-level official is a person with a specific duty to supervise the harassing employee who has the power to take actions that will end the abuse).
95 See Kadiki v. Virginia Commonwealth Univ., 892 F. Supp. 746, 754 (E.D. Va. 1995) (applying agency principles because "knowledge of any quid pro quo harassment of a student by a professor should be imputed to his employer").
97 See Kraunas v. Iona College, 119 F.3d 80, 88 (2d Cir. 1997) (holding that "if a professor has a supervisory relationship over a student, and the professor capitalizes upon that supervisory relationship to further the harassment of the student, the college is liable for the professor's conduct"; see also Bolon v. Rolls Pub. Sch., 917 F. Supp. 1423, 1428-29 (E.D. Mo. 1996) (noting that agency principles should apply because teachers use the "authority vested in them by the school to further their illegal conduct").
100 Floyd v. Waiters, 831 F. Supp. 867, 876 (M.D. Ga. 1993) (stating that although agency principles are germane to a Title VII analysis, they are not applicable to Title IX due to the language of the statute); see also Howard v. Board of Educ., 875 F. Supp. 959, 974 (N.D. Ill. 1995) (asserting that Congress could have included agency language in Title IX but did not).
102 Id.
103 See Davis v. Monroe County Bd. of Educ., 120 F.3d 1390, 1397 (11th Cir. 1997) (holding that Title IX, like Title VI, was enacted under Congress' power to spend for the general welfare of the United States).
104 Gebser, 118 S.Ct. at 1997.
105 Id.
106 Leiia, 887 F. Supp. at 953.
107 Leiia, 887 F. Supp. at 953.; See also Bolon, 917 F. Supp. at 1429.
111 See Leiia, 887 F. Supp. at 952.