
FOR YOUR INFORMATION

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News For School and Municipal Clients

Supreme Court Expands Rights In Gender Discrimination Cases

The U.S. Supreme Court issued a decision last week expanding the rights of employees and students to sue for sexual harassment and gender discrimination at school. In *Fitzgerald v. Barnstable School Committee*, the issue that worked its way to the U.S. Supreme Court for review was whether the parents of a kindergarten student could sue the school committee (i.e., the school system's governing body) under Title IX of the Education Amendments of 1972 (Title IX) and sue the school committee and the superintendent under 42 U.S.C. § 1983 (§ 1983) for violations of the Equal Protection Clause of the Fourteenth Amendment. The Court concluded that the parents could bring suit under both laws, which has the effect of overturning a conflicting decision of the Seventh Circuit Court of Appeals, the federal appeals court for cases arising in Wisconsin.

In *Fitzgerald v. Barnstable School Committee*, a kindergarten student complained to her parents, the Fitzgeralds, that whenever she wore a dress to school, a third-grade boy on the school bus would bully her into lifting her skirt. Mrs. Fitzgerald immediately called the school principal, who met with the parents later that day. School officials then questioned the alleged bully, who denied the allegations. The bus driver and several students who rode the bus were also interviewed, but the officials

could not corroborate the girl's version of the events.

The girl then provided new details of the alleged abuse to her parents, that is, that in addition to bullying her into raising her skirt, the boy coerced her into pulling down her underpants and spreading her legs. The parents met again with the principal, and the boy and other students were again interviewed. The principal concluded that he had insufficient evidence to warrant discipline. The principal did offer remedial measures, which consisted of transferring the girl to a different bus or leaving rows of empty seats between the kindergarteners and older students on the original bus. The Fitzgeralds felt that these proposals punished their daughter instead of the boy and suggested transferring the boy to a different bus or placing a monitor on the original bus. The school superintendent did not act on these proposals.

The Fitzgeralds began driving their daughter to school to avoid further bullying on the bus, but the girl continued to report unsettling incidents at school. The girl ended up with an unusual number of absences from school for the remainder of the school year. The Fitzgeralds eventually filed suit in federal district court, alleging that the school system's response to their allegations of sexual harassment had been inadequate, resulting in further harassment of their daughter.

Title IX prohibits the exclusion of any person from participating in, being denied the benefits of, or being subjected to discrimination in any education program or activity (e.g., city athletic leagues) receiving federal financial assistance. Plaintiffs may file directly in court and seek the full range of remedies for intentional discrimination, including injunctive relief, monetary damages, and attorney fees. However, the Court here reasoned that Congress did not intend Title IX to be the sole remedy in sexual harassment suits and declined to preclude the parents' reliance on § 1983 as a remedy for an equal protection claim.

It explained that the substantive rights and protections guaranteed under Title IX and under the Equal Protection Clause are somewhat different. Although Title IX reaches institutions and programs that receive federal funds, it has consistently been interpreted as not authorizing suit against school officials, teachers, and others in their individual capacities.

The Equal Protection Clause provides that: "Every person who, under color of any statute . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." The right to be free from intentional discrimination may be vindicated through § 1983, which, importantly, permits claims to be brought against individuals, as well as municipalities and school districts, with all available remedies,

including damages. However, punitive damages may be sought only as to individual defendants.

The standards for establishing liability under Title IX and the Equal Protection Clause are also different. For example, a Title IX plaintiff can establish school district liability only by showing that a school administrator with authority to take corrective action responded to harassment with deliberate indifference (i.e., with the intent to discriminate). A plaintiff stating a § 1983 claim against a municipality or school district for violation of the Equal Protection Clause must show that the harassment was the result of a custom, policy, or practice. Claims against individuals must show an intent to deprive the plaintiff of its constitutional rights. Based in part on these differences, the Court concluded that Congress did not intend that Title IX be an exclusive mechanism for addressing gender discrimination in municipalities and schools.

The *Fitzgerald* decision offers an opportunity to remind municipalities, school boards, and administrators of the importance of sound policies that prohibit discrimination on the basis of sex, effective staff training to ensure that the policies are enforced, and timely investigations of allegations of gender discrimination, including harassment. It is advisable to enlist the assistance of staff to continually monitor student-on-student conduct to prevent prohibited discriminatory actions at school. Administrators should take allegations of sexual harassment seriously by initiating an investigation, taking disciplinary measures as necessary, and acting to protect the victim.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

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