Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

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

No. 97–843. Argued January 12, 1999– Decided May 24, 1999

Petitioner filed suit against respondents, a county school board (Board) and school officials, seeking damages for the sexual harassment of her daughter LaShonda by G. F., a fifth-grade classmate at a public elementary school. Among other things, petitioner alleged that respondents' deliberate indifference to G. F.'s persistent sexual advances toward LaShonda created an intimidating, hostile, offensive, and abusive school environment that violated Title IX of the Education Amendments of 1972, which, in relevant part, prohibits a student from being "excluded from participation in, be[ing] denied the benefits of, or be[ing] subjected to discrimination under any education program or activity receiving Federal financial assistance," 20 U. S. C. §1681(a). In granting respondents' motion to dismiss, the Federal District Court found that "student-on-student," or peer, harassment provides no ground for a Title IX private cause of action for damages. The en banc Eleventh Circuit affirmed.

Held:

1. A private Title IX damages action may lie against a school board in cases of student-on-student harassment, but only where the funding recipient is deliberately indifferent to sexual harassment, of which the recipient has actual knowledge, and that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school. Pp. 7–22.

(a) An implied private right of action for money damages exists under Title IX, *Franklin* v. *Gwinnett County Public Schools*, 503 U. S. 60, where funding recipients had adequate notice that they could be liable for the conduct at issue, *Pennhurst State School and Hospital*

v. *Halderman*, 451 U. S. 1, 17, but a recipient is liable only for its own misconduct. 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. The standard set out in *Gebser* v. *Lago Vista Independent School Dist.,* 524 U. S. 274– that a school district may be liable for damages under Title IX where it is deliberately indifferent to known acts of teacher-student sexual harassment– also applies in cases of student-on-student harassment. Initially, in *Gebser,* this Court expressly rejected the use of agency principles to impute liability to the district for the acts of its teachers. *Id.,* at 283. Additionally, Title IX's regulatory scheme has long provided funding recipients with notice that they may be liable for their failure to respond to non-agents' discriminatory acts. The common law has also put schools on notice that they may be held responsible under state law for failing to protect students from third parties' tortious acts. Of course, the harasser's identity is not irrelevant. Deliberate indifference makes sense as a direct liability theory only where the recipient has the authority to take remedial action, and Title IX's language itself narrowly circumscribes the circumstances giving rise to damages liability under the statute. If a recipient does not engage in harassment directly, it may not be liable for damages unless its deliberate indifference "subject[s]" its students to harassment, *i.e.,* at a minimum, causes students to undergo harassment or makes them liable or vulnerable to it. Moreover, because the harassment must occur "under" "the operations of" a recipient, 20 U. S. C. §§1681(a), 1687, the harassment must take place in a context subject to the school district's control. 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. Where, as here, the misconduct occurs during school hours on school grounds, misconduct is taking place "under" an "operation" of the recipient. In these circumstances, the recipient retains substantial control over the context in which the harassment occurs. More importantly, in this setting, the Board exercises significant control over the harasser, for it has disciplinary authority over its students. At the time of the events here, a publication for school attorneys and administrators indicated that student-on-student harassment could trigger Title IX liability, and subsequent Department of Education policy guidelines provide that such harassment falls within Title IX's scope. Contrary to contentions of respondents and the dissent, school administrators will continue to enjoy the flexibility they require in making disciplinary decisions so long as funding recipients are deemed "deliberately indifferent" to acts of student-on-student harassment only where the recipient's re-

sponse to the harassment or lack thereof is clearly unreasonable in light of the known circumstances. Pp. 8–18.

(b) The requirement that recipients receive adequate notice of Title IX's proscriptions also bears on the proper definition of "discrimination" in a private damages action. Title IX proscribes sexual harassment with sufficient clarity to satisfy *Pennhurst*'s notice requirement and serve as a basis for a damages action. See *Gebser, supra,* at 281. Having previously held that such harassment is "discrimination" in the school context under Title IX, this Court is constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of "discrimination" actionable under the statute. The statute's other prohibitions help to give content to "discrimination" in this context. The statute not only protects students from discrimination but also shields them from being "excluded from participation in" or "denied the benefits of" a recipient's "education program or activity" on the basis of gender. 20 U. S. C. §1681(a). It is not necessary to show an overt, physical deprivation of access to school resources to make out a damages claim for sexual harassment under Title IX, but a plaintiff must show harassment that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victims are effectively denied equal access to an institution's resources and opportunities. Cf. *Meritor Savings Bank, FSB* v. *Vinson,* 477 U. S. 57, 67. Whether gender-oriented conduct is harassment depends on a constellation of surrounding circumstances, expectations, and relationships, *Oncale* v. *Sundowner Offshore Services, Inc.,* 523 U. S. 75, 82, including, but not limited to, the harasser's and victim's ages and the number of persons involved. Courts must also bear in mind that schoolchildren may regularly interact in ways that would be unacceptable among adults. Moreover, that the discrimination must occur "under any education program or activity" suggests that the behavior must be serious enough to have the systemic effect of denying the victim equal access to an education program or activity. A single instance of severe one-on-one peer harassment could, in theory, be said to have such a systemic effect, but it is unlikely that Congress would have thought so. The fact that it was a teacher who engaged in harassment in *Franklin* and *Gebser* is relevant. Peer harassment is less likely to satisfy the requirements that the misconduct breach Title IX's guarantee of equal access to educational benefits and have a systemic effect on a program or activity. Pp. 19–22.

2. Applying this standard to the facts at issue, the Eleventh Circuit erred in dismissing petitioner's complaint. This Court cannot say beyond doubt that she can prove no set of facts that would entitle her to relief. She alleges that LaShonda was the victim of repeated

acts of harassment by G. F. over a 5-month period, and allegations support the conclusion that his misconduct was severe, pervasive, and objectively offensive. Moreover, the complaint alleges that multiple victims of G. F.'s misconduct sought an audience with the school principal and that the harassment had a concrete, negative effect on LaShonda'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 either to investigate or to put an end to the harassment. Pp. 22–23.

120 F. 3d 1390, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined.