

10 Steps to Combat Bullying (With appreciation to the late Attorney Reed Martin)

In *Gebser v. Lago Vista School District* (1998) the Supreme Court held that one must prove the school district actually knew about an offense and refused to take action to correct it, to receive damages under a Title IX discrimination suit. The "Gebser Letter" is how to notify one's School District

1. In writing, address the notification to a specific person and date the letter.

This author recommends that the letter be sent (via certified mail, UPS or Fed Ex, do document receipt) to the District Superintendent with courtesy copies (CC) to the student's teacher(s) and principal.

2. Write the letter to a person who has the authority to investigate and the authority to correct the wrong.

The first element that must be satisfied to win a harassment complaint is the give the School District "actual notice" of the incidents. *Vance v. Spencer County Pub. Sch. Dist.*, 231 F.3d 253, 259 (6th Cir. 2000) (holding that plaintiff and her mother satisfied the actual notice standard because, as in *Davis ex rel. LaShonda D. v. Monroe County Board of Education* (1999), 526 U.S. 629, both had "made repeated harassment complaints to the teacher and principal").

3. Note that the school district is a recipient of federal financial assistance.

Public schools depend on the continued flow of federal funds. This depends in part upon their compliance with Federal Laws. Of note are the following: Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (2000) ("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"). Title VI of the Civil Rights Act of 1964, prohibits discrimination based upon race, nationality or religion. Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973,

4. State the past or continuing discriminatory activity against your child.

If you have not been journaling the history of incidents regarding your child, now is a good time to start.

5. State that the school district has control over both the site of the discrimination and over any school personnel involved.

You may wish to give examples of changes the district has recently made to the school facilities, curriculum or schedule (all demonstrate control).

6. Explain that the discrimination was not a single act but was severe and pervasive.

See the comments in section 7 for a full explanation as to why "severe and pervasive" are magic words for lawyers in this area.

7. Tell how the discrimination excluded your child from participation in school or denied your child benefits to which other students enjoy.

One of the elements one must prove to prevail on a peer harassment claim is that the harassment was "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" *Davis ex rel. LaShonda D. v. Monroe County Board of Education* (1999), 526 U.S. 629 at 650. Lower courts have relied on *Davis*, (which was a sexual harassment suit) to hold that an implied right of action exists under other program-specific statutes, such as Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, for students to sue school districts for deliberate indifference to peer harassment. See, e.g., *Bryant v. Indep. Sch. Dist. No. I-38*, 334 F.3d 928, 934 (10th Cir. 2003) (discussing Title VI); *K.M. ex rel. D.G. v. Hyde Park Cent. Sch. Dist.*, 381 F. Supp. 2d 343, 358–59 (S.D.N.Y. 2005) (discussing Section 504 and Title II).

8. Explain, as well as you can, what you would like the school to do.

Suggest what the school may do to stop the discrimination or to remediate (that is fix) the harm the discrimination has done to your child.

9. Ask for a copy of a school district grievance procedure under Section 504 (even if your child has an IEP under IDEA).

Not having this information may result in continued discrimination.

10. State that you expect investigation and / or effective corrective action.

Should the person receiving the letter fail to investigate or does not take effective corrective action, you may claim that the district showed deliberate indifference to the discrimination. This author suggests you add a date you expect to hear back from the district in regards to your letter.

Additional Resources

Some conduct alleged to be harassment may implicate the First Amendment rights to free speech or expression. For more information on the First Amendment's application to harassment, see the discussions in OCR's Dear Colleague Letter: First Amendment (July 28, 2003), and OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Jan. 19, 2001) (Sexual Harassment Guidance).

Ohio families may of course also contact this author, Todd Kotler at 330-777-0065 or e-mail him at TBKotler@sbcglobal.net.

[Davis ex rel. LaShonda D. v. Monroe County Board of Education \(1999\), 526 U.S. 629](#)

[OCR's Dear Colleague Letter: First Amendment \(July 28, 2003\)](#)

[Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties \(Jan. 19, 2001\)](#)