PART V: TRIAL SCRIPT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW YORK

Jamie June,
Plaintiff

versus

Dry Gulch Public School District,
Defendant

No. MT-97

STATEMENT OF STIPULATED FACTS*

Jamie June is a senior at Dry Gulch Public High School in Dry Ridge, New York. Jamie is an extremely bright, capable and popular student, with an average of 93.5. Jamie has held a series of class offices since moving to Dry Gulch in sixth grade. Jamie decided to run for class treasurer as a junior because the class' financial position was so important for funding senior class activities. She was the driving force in suggesting a number of initiatives during her junior year to raise money for the class. Jamie proposed "Get Wet in Dry Gulch"—the placement of several commercial bottled water/fruit juice machines at strategic locations throughout the school. The school's portion of the receipts were divided, with 65 percent going to the senior class and 35 percent going to the Principal's Fund for a college scholarship for the "Most Deserving Senior."

The machines were popular and brought in an unprecedented flow of cash. Due to surprisingly low earnings in the late fall/early winter of her junior year, Jamie proposed that a school representative be present when the machines were opened, refilled, and the cash counted. Although the vending company, International Colas United (ICU), initially balked at this proposal, it finally agreed when Jamie confronted the manager with the suggestion that another vendor might be offered the school's new business—and perhaps even the old business from the faculty room soda machine.

Despite this tension, Jamie quickly developed a good working relationship with the vendor's route driver, Phil Anders. Once Jamie began checking the receipts in February 1995, refills were scheduled for Tuesdays and Thursdays. Jamie's schedule allowed for servicing during lunch, with the office calling her when the driver checked in.

Phil Anders was initially annoyed by the lack of trust reflected in his being "shadowed," but quickly became impressed with Jamie's efficiency, good nature, quick wit, and patience. Jamie's "get it done" personality made it impossible for her to simply stand and watch as Phil refilled the machines and emptied the cash and coin containers. Jamie volunteered to help and, although guarded at first, Phil accepted her assistance. At times Jamie would count the cash or occasionally refilled the drink supplies while Phil pulled the money. Jamie's new responsibility turned into an enjoyable interlude in an otherwise hectic day at school.

With machines serviced, which normally took about 40 minutes each day, Phil prepared a receipt which both he and Jamie signed. On occasion, Phil forgot the receipts in the truck, which was parked in the school parking lot, and Jamie would accompany him there. At those times Phil would apologize—and offer a "free" drink or one of the ICU's vending machine pastries.

During the summer of 1995 Jamie was employed as a pool lifeguard and as an aerobics instructor by the Town of Dry Ridge youth program. Hoping to attend a private college, but coming from a working class family, Jamie worked as much as she could. This strained her relationship with Buck Galord, her boyfriend from a well-to-do family that published the local newspaper, *The Dry Ridge Ragster*, with the masthead slogan "All true news, we like to think; but paper don't refuse ink."

Jamie, very interested in politics and social issues, often criticized the conservative slant of Buck's family's editorials and news coverage. Buck, in turn, often dismissed these comments as "the too liberal rantings of a fortunately great looking date." Given Jamie's relationship with Buck as half of the most popular couple in school, it was no surprise when two separate summer stories on the Town's youth program featured prominent and flattering pictures of Jamie teaching swimming and leading an aerobics class. Although Jamie enjoyed the publicity, she and Buck broke up—largely due to the growing tension stemming from her lack of time and a recurring heated debate over the wisdom of electing a woman mayor.

When the new school year began, Jamie resumed keeping tabs on beverage receipts. The first weeks of school were hectic—as always—and Jamie found it somewhat more difficult to fit her twice weekly vendor duties into her tight schedule, which included two AP courses.

On September 19 an incident occurred that shocked and upset Jamie very much. The day's refilling had started off normally—she and Phil had bumped into each other a couple of times while jockeying for positions at the drink machine with each "excusing" the contact. Casually, Phil asked Jamie if she had a twin sister. The question surprised her because they had both shared information about their families previously and Phil knew that Jamie only had three younger brothers.

When Jamie replied "of course not," Phil said that she must be keeping something from him, because he had recently seen a picture of her twin. Jamie could tell that he was teasing her, so she played along, saying, "I have a twin but she is very quiet and thin and few have ever heard or seen her." Phil had forgotten to bring the receipts, and told Jamie that he had the picture in his truck cab.

Upon returning to the truck, Phil started to secure extra supplies. Jamie, impatient as always, opened the driver's door to reach for the receipt clipboard. As she did a men's "girlie" magazine fell open on the floor, revealing a centerfold—and the two pictures of her which had appeared in the summer newspaper stories, paper clipped to the page.

Jamie was shocked—not only by the presence of the magazine and the paper-clipped pictures of her—but by the fact that the girl in the magazine looked so much like her. She was upset and thought instantly that Phil's remarks about her "twin" were no innocent joke.

As Phil approached Jamie from behind, he said, "Let me show you your twin." Holding up the centerfold, Jamie turned angrily, and shouted, "You're disgusting! How could you think of me like this?!" and threw the magazine and newspaper pictures to the ground. Phil appeared stunned by her reaction and called after Jamie "You weren't supposed to see that. Sure, you're beautiful—but you're not Miss June."

Jamie ran back into school, tried to compose herself in the girl's locker room, and went to her next class. She was visibly upset; several friends asked her if she was OK; she replied "of course" to each one.

At home that afternoon, Jamie felt bewildered and angry. She started thinking about the day's events, her interactions of the last several weeks, and the previous school year. Jamie became more disgusted as she wondered about the nature of all the bumping

since last February. She felt betrayed and disgusted, and felt stupid and naive for being so friendly with Phil.

Jamie decided to tell her best friend Sandy and went next door to Sandy's house in the evening. Sandy was aghast and advised that such harassment didn't have to be tolerated. Taking Sandy's advice, Jamie decided to tell Lee Ackerman, the class advisor, the next day. The advisor was disturbed but said, "I'm unclear about school policy in circumstances like this and don't know what should be done." Lee promised to speak to the principal, Dr. Chris Cross, who was not well-liked by students or faculty.

Principal Cross was very unhappy to be confronted with Jamie's story, and more so after interviewing her on that same Wednesday. Although the school had a policy on sexual harassment, it covered obvious cases of peer or teacher/student behavior, and had neither been used nor discussed very often. The principal proceeded to privately blame Lee Ackerman for the mess, reminding Lee that the principal had never wanted those machines in the school in the first place.

Dr. Cross took the next step, and made a call on Thursday, September 21, to the manager of ICU, I.M. Seltzer, who promised to talk to Phil Anders to find out what was going on. Seltzer called back the next day and assured Principal Cross that Phil Anders denied ever harassing Jamie. Anders' story matched most of what Cross had heard from Jamie, except his assurance that her digging the magazine out of the cab was a totally unintended and unexpected event. Seltzer was effervescent in his praise of Phil Anders—his work habits were exemplary, he was dependable and mild mannered, his 15 year record with the company spotless—and warned Dr. Cross that unsubstantiated charges of sexual harassment were not something which ICU would take lightly. Seltzer insisted on having Phil Anders come into his office so that Cross could also speak to him and offered to fax over a copy of Anders' work record to verify Seltzer's verbal description.

Dr. Cross met with Jamie and Lee Ackerman on the afternoon of Friday, September 22, assuring them that the charges had been thoroughly investigated and that the vendor's manager was adamant that the incident was an unintentional accident. Jamie countered that she knew what had happened and this was a pure and simple case of harassment. The principal assured her that the situation would never be repeated and that she should come to see Cross immediately if there were any other problems. Dr. Cross asked Jamie if she wanted to have her parents called, but Jamie coolly replied that that would not be necessary.

Jamie wasn't satisfied with the outcome and was uncomfortable at the prospect of seeing Phil—alone—twice a week. Out of habit, she reached out to Buck and on Monday asked him to accompany her on her drink rounds. Buck agreed, but asked why she needed help. Jamie was hesitant to share any details with Buck, not only because of the principal's admonishment to keep the incident confidential, but more importantly to avoid further embarrassment as Jamie did not trust Buck's discretion. Jamie just told him that "if you don't want to spend time with me, I understand"—and avoided telling the real reason for her request.

Relations between Jamie and Phil were obviously strained and Buck easily picked up the tension in the air. Buck knew Phil Anders from his years as a pre-teen football league coach, who Buck had played for and later interviewed for his weekly "Youth Beat" column in his family's newspaper. Buck knew that Jamie and Phil had gotten along very well previously and was very curious to learn why, suddenly, their relationship appeared to be highly strained.

After two weeks passed, with Buck accompanying Jamie each refill day, Phil found himself alone with Buck, on October 10. Already annoyed by what he thought

were false and frivolous accusations, Phil concluded that Buck was there as Jamie's bodyguard, and found his presence to be accusatory. Phil confronted Buck and asked him why he was coming each day with Jamie. When Buck responded that Jamie simply wanted to spend time with him, Phil laughed and shared that he was glad he wasn't the only one who had been fooled by "sweet little Jamie." Buck asked for an explanation and Phil replied that Jamie was looking for a bodyguard. At Buck's prodding, Phil recounted the story of the mix-up over the pictures, the subsequent call from Dr. Cross to Phil's boss, (and brother-in-law), I.M. Seltzer, and the personal dressing down he had received. He told Buck that it was bad enough working for a brother-in-law on a good day, but now Seltzer thought he had something embarrassing on Phil. Buck encouraged Phil and asked relevant questions, getting the full story.

Buck was furious that Jamie had misled him and obviously didn't trust him. While Buck was still fuming, two friends, both members of the student led male-only school club "Man's World," asked him if he was coming to that day's meeting. Buck said he would be there—and had an important item for the agenda—sexual harassment.

At the meeting Buck raised the issue of sexual harassment and the fact that males were accused of it much more often than females. He then raised the prospect of the damage that can result when false accusations are made. Other club members added comments and remarks about how unfair such accusations were, becoming riled up as the discussion progressed. Buck then retold the story of Jamie and Phil—giving Phil's slant to the interaction between the two. The dozen attendees, quite agitated by the time Buck had finished, felt that Phil—who they all knew—had been treated unfairly and should get an apology. The group decided that if their club mission to promote and protect the rights of men meant anything, that they should take some action to address this outrage. They decided to call a special meeting and to generate publicity to attract non-members.

Jamie was unaware of the conversation between Phil and Buck, and Buck's subsequent disclosure of the story to "Man's World." She was absolutely shocked, therefore, when, two days later on Thursday morning (October 12, 1995), a friend asked if she had seen her picture up on the school's club bulletin board. Jamie rushed to the bulletin board and found the newspaper pictures of her, attached to a poster which read:

"Sexual Harassment is Wrong;
But so are false accusations.
Is this an innocent victim or a False Accuser?
Come to next Thursday's "Man's World" Meeting to
discuss the dangers males now face."

Jamie stood in utter disbelief, having no idea how anyone could have known about what happened, nor why anyone would want to embarrass her like this. As she turned to speak to Sandy, Buck tapped her on the shoulder and said, "Sorry, but I won't be serving as your bodyguard any more. I might tag along, though, just to protect Phil." In a flash, Jamie realized what had happened and how Buck had then shared the story with "Man's World." Screaming at him, she cried, "how could you do this to me!?" as tears filled her eyes.

Word quickly spread through school of the "confrontation" between Jamie and Buck—with a wide variety of versions of the "incident" of alleged harassment spreading like wildfire throughout the building. Led by Jamie's friend, Sandy Hill, a group of girls and boys demanded a meeting with Dr. Cross, and insisted that the upcoming meeting of "Man's World" be canceled immediately. Principal Cross seemed sympathetic, but explained that the school's hands were tied. On both "equal access" and First

Amendment grounds, the "Man's World" club had a right to meet and discuss almost any topic as long as it did not create a substantial and material disruption. Dr. Cross noted that the school board had tabled the principal's own recommendation that the school eliminate all clubs, rather than have to allow some with potentially repugnant agendas.

Jamie was comforted by the support of many friends, both males and females, but was terribly embarrassed that her "confidential" problem had now been broadcast to the entire student body. Now she seemed the center of conversations wherever she went—and her arrival upon a group of kids involved in lively discussion often resulted in awkward silences.

The days leading up to the "Man's World" club meeting of October 19 were particularly difficult for Jamie, with additional posters appearing, each featuring Jamie's pictures with variously worded text, including:

"Unwanted?
Unwelcome?
Take A Look!
Unbelievable!"

and

False Accusations?
You Could Be Next!
Come to "Man's World"
and Protect Yourself!

Many boys took to wearing lapel buttons which featured the words *Sexual Harassment* or *False Accusations*, each with a slash through them.

Jamie had all she could do to continue coming to school, but was determined not to give her detractors the satisfaction of driving her to stay home. After the "Man's World" club met, with no females allowed in attendance, Jamie found that a bad atmosphere had worsened. Despite public address announcements urging everyone to "express your opinions decently" and "avoid discussing individual people" in reference to sexual harassment, Jamie's life had become increasingly miserable. In the almost three weeks following the "Man's World" meeting, Jamie repeatedly heard her name used as the object of jokes and ridicule, and was repeatedly referred to as "Miss June"—which she thought was a reference to the month of Phil's magazine.

Jamie had avoided telling her parents about what had happened at school as they had never, in her view, been particularly comfortable in discussing issues relating to sex. When she finally told them, any discomfort was immediately overshadowed by their own anger and desire to protect Jamie. Jamie was shocked to hear her parents on the phone with Dr. Cross, demanding a meeting for the next morning.

As the Junes recounted the events of the past several weeks, which had culminated the previous day when Jamie found her locker full of pages torn from a men's "girlie" magazine, Dr. Cross went to great lengths to explain the school's position. While condemning sexual harassment, Cross could not disband the "Man's World" club nor order them not to discuss any specific topic. Dr. Cross assured the Junes that, if the truth be known, Cross had probably overstepped any principal's authority in meeting with the club's leaders, the previous week, to urge them to back off the sexual harassment issue. Cross had been told that the club had not instigated, in any way, a campaign against Jamie, but rather suspected that a few trouble makers were just taking the opportunity to "dis" Jamie. All in all, the principal argued, time would defuse the attention and hurt Jamie was suffering. Cross reminded Jamie that she needed to keep this in proper perspective and remember that teen-agers—not unlike younger students and adults—can often be mean and unfeeling toward others. It was the bad side of human nature, perhaps, but that didn't mean it rose to the level of sexual harassment.

Although Jamie returned to school the following day, November 9, the atmosphere remained charged against her. While the "Miss June" comments decreased, they did not cease, and she was tormented by staring and jokes and by comments making reference to various men's "girlie" magazines.

Uncharacteristically, Jamie began to complain she did not feel well, and started missing school on a regular basis. The first marking period ended on November 9 and Jamie's grades had fallen almost two letter-levels to a "mid-C," with two of her teachers commenting that while she had started out well, her work had been poor since at least early October and had gotten worse in the last three weeks. When her parents questioned her, Jamie said that she just had too much on her mind and couldn't concentrate on school work. Her friends and parents noticed that she had altered her clothing choices, retreating into jeans and baggy sweat shirts from her normally "sharp" blouses, skirts, and slacks.

Jamie soon decided to resign as class treasurer, and refused the advisor's offer to rejoin the cheer leading squad, of which Jamie had been elected captain at the end of her junior year. Jamie thereafter approached her guidance counselor about what she would have to do in order to take an early graduation in January, and was adamant that she would not reconsider and return for the spring semester. Jamie's parents were distraught with these events and knew that something had to be done to give Jamie her old sense of self confidence back and to rekindle her desire to excel. Dissatisfied with Dr. Cross' views and lack of effective intervention, the Junes sought legal advice. Upon the recommendation of their family attorney, the Junes met with an attorney experienced in sexual harassment cases. The attorney, upon hearing the story of the past two months, assured Jamie and the Junes that they did not have to put up with the pervasive hostile environment permitted by the school.

Jamie June is bringing suit against Dry Gulch Public School District alleging violations of her rights under Title IX of the Education Amendments of 1972. The plaintiff specifically alleges that the district failed to provide adequate training for its staff and students; failed to take appropriate and adequate actions to protect Jamie from sexual harassment once they were notified of Phil Ander's harassment of Jamie; created directly or indirectly a pervasively hostile environment by failing to prevent Jamie's confidential complaint from becoming the subject of discussion of a school sanctioned club, "Man's World;" failed to remove demeaning pictures of Jamie; failed to take adequate steps to address and eliminate the pervasively hostile environment which existed at Dry Gulch High School; failed to take corrective actions in the face of patently offensive remarks and physical intimidation of Jamie by male students; and failed to disband the "Man's World" Club when it became obvious that its activities contributed substantially to creating and maintaining a pervasively hostile environment.

Dry Gulch School District denies any and all responsibility for the alleged incidents and claims that it enforced and followed its sexual harassment policy. The district further claims that it lacked the legal right to take any further steps against the "Man's World" Club in view of the Equal Access Amendment and the First Amendment rights of student members of the "Man's World" Club.

Jamie June's parents seek damages in the amount of one million dollars; additional money to pay for counseling for Jamie; a court order to institute extensive staff and student training in regards to sexual harassment; attorney's fees; and a public apology to be printed in the local newspaper.

STIPULATIONS

1) For the purposes of this mock trial, the gender of three of the witnesses are determined and stipulated as follows: Jamie June is female; Phil Anders and Buck Galord are male. Notwithstanding this, it is understood that a school may, for example, use a female to portray Phil Anders or Buck Galord, if no males are available for these roles. In such a case, however, the witness will be understood to be of the stipulated gender for that individual, as listed above.

2) It is understood that the three remaining witnesses, Sandy Hill, Dana June, and Chris Cross can be portrayed by either sex, the names being gender neutral.

3) Witness statements are sworn and notarized.

4) The lapel buttons (p. 45), referred to in this fact pattern, are accurately represented by the photocopy of the buttons which follow the affidavits. The photocopy of the buttons is eligible for introduction as evidence at trial, following proper procedure for identification and submission.

5) Although not provided, the three posters referred to in the fact pattern, created by the "Man's World" Club, did exist, were posted in the school, and are accurately portrayed by the wording provided in the fact pattern. Teams may **not** create display posters using these words.

6) The attached "Dry Gulch Public School District Sexual Harassment Policy" is an accurate reflection of the school policy in effect during the Fall of 1995 and can be used as evidence at trial, following proper procedure for identification and submission.

7) The attached "Confidential Memorandum for File" is an accurate reflection of Dr. Chris Cross' written record of the sexual harassment complaint by Ms. Jamie June and the subsequent investigation. It is eligible for introduction as evidence at trial, following proper procedure for identification and submission.

8) The plaintiff has met all procedural requirements in bringing this action against the defendant and the law suit is properly before the U.S. District Court.

WITNESSES

FOR THE PLAINTIFF	FOR THE DEFENDANT
Jamie June Plaintiff	**Phil Anders** ICU Route Driver
Sandy Hill Friend Of Jamie June	**Buck Galord** Former Boyfriend of Jamie June, "Man's World" Club Member
Dana June Parent Of Jamie June	**Chris Cross** Principal, Dry Gulch Public High School

*This case is hypothetical. Any resemblance between the fictitious persons, facts, and circumstances described in this mock trial and real persons, facts, and circumstances is coincidental.

Affidavit of Jamie June
Witness for the Plaintiff

My name is Jamie June. I'm now 19 years old and reside with my parents at 212 Pakwood Drive in Dry Ridge, New York. I officially graduated from Dry Gulch Public High School in June 1996, though I stopped attending in January.

I can hardly believe what has happened to me since I was first sexually harassed in September 1995. Back then I was at the start of what I had expected to be a great senior year and focused on getting scholarships to make my college dreams come true. Too many people treat sexual harassment as no big deal—but I sit here as living proof of the terrible havoc it can wreak in one's life.

My duties as class treasurer came to include being present when drink machines were refilled and the cash counted. I was very proud of the reception which my "Get Wet in Dry Gulch" project received, and I couldn't stand to think that we might be getting cheated on our share of the profits.

What made Phil Anders' harassment of me in September so terrible was that it put our whole relationship, over the course of over half a year, in a new perspective. I have always been friendly, enthusiastic, and energetic in my relationships with people, whether classmates, younger kids who I taught during the summer or at church in Sunday School, or adults who I've known. I treated Phil in a friendly manner and I thought he was reciprocating—until I saw what he really thought of me when I saw pictures of me attached to his centerfold. After that I realized that all the kidding, bumping around the drink machines, the occasional soda or pastry he gave me—they were all things that Phil was doing while thinking of me as some kind of sex object. I was devastated and felt so used; every time I would start to settle down I would remember some other thing that had happened, and feel terrible all over again. I still wake up nights having nightmares about my interactions with Phil.

What happened with Phil was bad enough, but the fact that Dr. Cross chose to accept the explanation of Phil's boss and not take any action was wrong. The principal said that the incident had been thoroughly looked into—which I didn't believe because Cross either didn't know that Seltzer was Phil's brother-in-law or still chose to take his word over mine. Either way I was left to deal with the harassment on my own. And what choice did I have? I could either protect myself or resign my elected office—me, the victim, being forced out of a position I loved!

My effort to protect myself from Phil led me to seek Buck's help. I couldn't bring myself to tell him the real reason, and Dr. Cross warned me not to tell anyone else about what had happened.

The fact that Phil Anders told Buck was, in itself, wrong and something which Dr. Cross should have made sure wouldn't happen through Phil's boss. What Buck did, sharing private, confidential information with the boys of "Man's World" almost defies belief. I thought that we had been very close, having dated for two years, and I know that I could never have convinced myself to do to him what he did to me.

I'm sure Buck will pretend that his motives were noble, that it was an issue of the rights of the innocent or free speech that drove him to disparage me. But I know that Buck always gets his way and thinks that all men should—and he couldn't stand the fact that I broke up with him. News ink runs in his blood—to him I was a story to exploit and an easy target for his own frustrations.

All the things that happened after Buck found out are directly the result of the actions of the members of "Man's World" and the inactions of the school. Boys whom I

barely knew and others whom I knew well, glared at me and started calling me "Miss June," which seemed strange, almost inexplicable. From conversations with friends, I soon realized that "June" was a reference to the issue month of Phil Ander's magazine, not my own last name. I found myself being watched and stared at by boys wherever I went and couldn't help but think they were mentally undressing me while comparing me to the magazine's "Miss June." Once while standing at my locker I was surrounded by a group of boys, who refused to move and let me through. Though no one laid a hand on me, I felt extremely vulnerable and threatened by their aggressive behavior. On the following day, November 7, my locker was covered with the words "Miss June" taped everywhere. When I opened it I found that it had been stuffed with pages from the June issue of the "girlie" magazine. That's when I broke down in tears and called my parents to come get me. The school or the club can talk all they want about free speech and equal access, but the posters with my pictures, jokes at my expense, accusations that I was lying in reporting Phil Anders' sexual harassment, calling me "Miss June," getting boys to stare at me, creating those offensive buttons and being surrounded by boys—all of these sexually harassing words and acts were fueled by and led by the boys club.

Dr. Cross should have defended me from that hostile environment, but instead continued to down play my complaints and give more credence to the supposed rights of others, rather than the real rights of me—Ms. Jamie June. When I discovered all that filth in my locker, I knew that somebody was orchestrating a hateful, hurtful campaign against me, and I also knew that the school would continue to stand by and do nothing.

I don't think I could have talked about all of this, even six months ago. My having been sexually harassed has hurt me terribly and changed my life for the worse. My confident, bubbly personality was trampled, my grades dropped, and my trust level of other people evaporated. I couldn't imagine applying to colleges in the condition I was left in and only wanted to leave school as fast as possible. My taking early graduation and foregoing the spring semester of my senior year along with not finishing my two AP courses, were desperate acts caused by my having been sexually harassed. I'm not a rich kid and I needed those AP courses and a great academic and extracurricular year to increase my chances of getting college scholarships. When you think of the irony of how hard I worked for my class so that its senior activities could be funded—and how badly I was treated by some classmates and the school administration—and the fact that I couldn't bring myself to even attend any of those activities, well, it's so sad that I can hardly bear it.

Jamie June

Jamie June, November 21, 1996

Affidavit of Sandy Hill
Witness for the Plaintiff

My name is Sandy Hill and I'm 19 years old. I live at 210 Pakwood Drive in the summer and reside at Princeton University during the school year.

I have known Jamie June since her family moved to Dry Ridge in 1989. Her parents and mine had grown up together, and were life-long friends. So Jamie and I became incredibly close friends, sometimes even taking family vacations together.

Jamie was a remarkable person before she was harassed, friendly, funny, always willing to help anyone, and always giving her all. She was a great student and often helped me in science and history classes. When Jamie, on the evening of September 19, 1995, came to my house and told me that Phil Anders had attached her photos to one of a look-a-like centerfold, I was shocked and strongly urged her not to put up with it.

I was disgusted, but not really surprised, when Principal Cross weaseled out of taking any real action against Anders or his company that would protect Jamie. I didn't say it to Jamie before hand, but Cross obviously doesn't like conflict or anything that rocks the boat or anyone with a new idea. Cross treated Jamie's story as a problem to be defused, rather than a wrong to be redressed. Once Buck found out on October 10 and intentionally incited a mob attitude against Jamie among a self-professed group of ultra-conservative boys, who used their "club" standing as a shield, Cross should have put an end to it. When the first poster appeared I was outraged and organized a group to meet with the principal. Cross was very smooth and listened to our demands, but didn't even take the time to think about a reply or contact the school's attorney. Instead, Cross immediately claimed that the club couldn't be forced to cancel its proposed "sexual harassment discussion" unless its actions were disruptive or promoting illegal activity. I was amazed at the fact that our demand for a meeting and having the whole school abuzz talking about Jamie, Buck, and sexual harassment could still be viewed by Cross as non-disruptive. It just didn't fit in with the way Cross insisted on enforcing strict discipline and controlling student behavior in every way possible.

While the week full of posters and lapel buttons was bad, in the days following the October 19 meeting of "Man's World" the atmosphere and attitude of many boys in the school shifted and took on an aggressive, hostile tone that I have never before witnessed. Mind you, I've seen sexually harassing behavior in school before, but it was usually by some immature jerk who didn't know how to approach someone of the opposite sex. Most kids handled that sort of thing on their own, embarrassing the harasser in public or threatening them with an older sibling or friend. But this was different, in tone and in degree, and in the fact that one person was being targeted. You'll never convince me that anyone who could see or hear could miss the change that took place after that meeting. I had never heard the term "pervasively hostile environment" until after that week, but once I did I knew exactly what it was describing. Maybe Principal Cross hid in the office after the boys club met and missed what happened. I think it's more that Cross thinks that rights enjoyed by boys are more important than those of girls like Jamie that were being abused.

I wasn't hiding in an office—I was there day after day and heard the jokes, saw the demeaning posters, felt the red hot stares directed at Jamie, heard the "Miss June" comments, saw what they did to her locker. I made it a point to be in the classroom next door to where the boys club was meeting and I heard them whooping it up, laughing, and heard several of them, at different times, say "let me see it" which was answered by chants of "Miss June, Miss June" which I took as evidence that they were passing around

a copy of Phil Anders' magazine. When the meeting ended, I followed a group of boys down the hall—they were talking about getting their hands on "Jamie buttons," which made no sense to me at the time. A few days later though, when those offensive lapel buttons appeared that highlighted "JJ" on the calendar, I knew that the "Man's World" Club had planned the "Jamie buttons" as a way of attacking her.

Jamie June was the strongest person that I've ever known, but the campaign of sexual harassment made her crumble. It's deplorable that the school district felt that Jamie's humiliation and suffering was a result it had to accept in order to protect the constitutional rights of a bunch of wrong-headed male students. I think the law is meant to protect everyone equally, not to favor a select group of males from prominent local families at the expense of a working class kid like Jamie.

Sandy Hill

Sandy Hill, November 25, 1996

Affidavit of Dana June
Witness for the Plaintiff

My name is Dana June, parent of Jamie June. I live at 212 Pakwood Drive in Dry Ridge, New York. Except for a ten year period, I have lived here all my life.

My spouse and I both work long hours and rotating shifts at two local mills. We've felt very fortunate with Jamie and our three boys, all of whom are helpful, happy kids, with good grades and lots of friends.

I was shocked and angry when Jamie called us from school on November 7, 1995, crying. She hadn't told us about the incident at school with that guy Anders, who I call "the soda jerk," or the problems she was having with Buck and the boys club. As parents we felt terrible that Jamie didn't confide in us and realized that we had started to take her maturity, steadiness, and dependability for granted—and weren't questioning her about school on a daily basis. Once Jamie told us the story, and let her guard down, we both saw a child who had been terribly hurt by the sexual harassment which the school allowed to take place.

Our meeting on November 8 with Principal Cross went very poorly. While it gave Jamie the chance to make the principal listen to the widespread sexual harassment she was facing, it was clear that Cross was looking to sell another version of events. Cross had an alternate explanation or defense for most of what was happening to Jamie. The things that even Cross couldn't claim were harmless or constitutionally protected—like the boys in the hall surrounding Jamie or the attack on her through her locker—with those Cross argued that the school was investigating but needed specific names in order to do anything. Jamie told Cross the names of some of the boys in the hallway, and the principal said they would be called into the office. Still, it was clear to us that Cross and the school would not take any significant action to protect Jamie.

You often hear people describe living though an accident as if everything was moving in slow motion. As Jamie's parents, that's how we felt as this tragedy unfolded. You spend a lifetime doing your best for your kids, and when you get one who's turning out terrific—like Jamie—well you're so proud and thankful it almost defies words. Jamie was a straight-A student, a hard worker, a fun, well-liked, ambitious go-getter. No one in our family had ever graduated from college, and it was obvious that she had the talent and desire to do that and much more. The sexual harassment she suffered undermined her confidence, sapped her strength, and distracted her from her studies and goals. I have no doubt that these events at school destroyed her opportunity to receive the good education she was entitled to and worked so hard for, and, to date, have derailed her dreams of going to college.

I never gave sexual harassment much thought before this and hate having to take the school we graduated from to court. Having seen the destructive power of sexual harassment in Jamie's life, we couldn't sit back and let the school's double-talk permit other kids to suffer. Jamie deserved better and Principal Cross was wrong in letting her continue to be sexually harassed.

Dana June

Dana June, November 25, 1996

Affidavit of Brandon Buckley ("Buck") Galord
Witness for the Defense

My name is Brandon Buckley Galord, called "Buck" by family and friends. I'm now 19 years old and reside, when in Dry Ridge, with my parents at 120 Hillcrest Estates. I attend the highly respected School of Journalism at the University of Missouri.

I've known Jamie June since 1989 and dated her for over two years, from 1993 to late summer, 1995. We made a great couple but unfortunately broke up due to her fixation over money and constant criticism of my family's paper. I am very sorry that Jamie has come to hold me responsible for much of what she thinks happened to her in the fall of 1995. I truly believe that her self-imposed pressure-packed schedule, her stubborn inability to see alternate viewpoints, and her left-leaning "women's libber" views combined to bring many of her problems on herself.

Jamie's accusation of Phil Anders was based on her own insecurity and unwillingness to consider Phil's very reasonable explanation. Obviously, Phil would have been smarter to never have had his "girlie" magazine in his truck, but it's also true that he had some expectation of privacy and shouldn't be held responsible for Jamie's search of his delivery cab. I had seen firsthand how utterly pigheaded Jamie could be on some topics which we debated or argued over—but I couldn't stand by and let Phil Anders' life be ruined by a false and insubstantial allegation. I'm a newsman at heart, from a long line of journalists. I'm enough of a reporter to know what is fair and what isn't. I know Phil Anders' story held together and rang true. I was just sorry that Jamie was the source of the false accusation.

I'll probably be made out to be some sort of heartless monster who attacked my former girlfriend. The truth is that I felt deeply that if a generally well-meaning kid like Jamie could recklessly claim "sexual harassment" then men as a group really needed to think, discuss, and act together to educate everyone about the twin dangers of sexual harassment and false accusations. I know the law better than most of my peers and believed that our men's club, "Man's World," was completely within its rights to meet, discuss, and lobby for fairness and reasonableness in matters involving allegations of sexual harassment. I was at those meetings and know that while many members felt very strongly over the dangers that the June-Anders incident demonstrated for males, no one planned a campaign to harm Jamie. The "Miss June" remarks were a spontaneous attempt by some males at formality, so as not to appear too "familiar" and "personal" in interactions with Jamie. It may have been a bit sophomoric, but it wasn't sinister or planned. Likewise the buttons—we had some made that advertised our opposition to sexual harassment and to false accusations. The calendar was meant to show that these were year long issues and the two "J"s that appeared in the "June" space was just a simple printer's error. Believe me, if you know anything about printing—or if you read *The Ragster*—you know that typos happen all the time. My Dad let me print them on our press, and when I showed him the mistake he laughed and said "We don't throw out papers with typos, do we?"

I know, I think better than most, how important personal perspective is in how we interpret what we see and hear. It's been drilled into me at my family's paper for years. I'm sure Jamie was mortified and embarrassed by the unwanted attention her accusation created, and was therefore overly-, perhaps, hyper-sensitive to what went on in school during those weeks. But surrounded by boys?! When was the last time you were in a high school hallway? Crowds everywhere, kids jockeying to move, groups of friends—male, female, and mixed, roaming and milling about. I can remember, in the fall of 1994, being

in a group of about ten football players that moved around looking for cheerleaders to invite to a party. We even stopped at Jamie's locker that time and she was all smiles and came to the party with me. All I'm saying is that otherwise innocent occurrences can take on a sinister tone if the perspective of the observer is fearful or paranoid.

Principal Cross should have done more—I asked him to hold an assembly to discuss sexual harassment and false accusations. Cross thought the latter would be seen as directed towards Jamie and therefore refused. But as for his stopping our meetings or stifling our appropriate free speech, Cross was exactly right. I warned the principal in early November that we would bring legal action if our rights to meet and discuss controversial issues were threatened and maybe that helped keep Cross' head clear on the real legal issues involved here.

I wouldn't doubt that some hotheads may have said and—obviously with the locker—did things which were wrong. I'm sure the school would have punished those individuals, if they had known who they were. But demanding that the school deny free speech and equal access rights to a responsible group because of the separate acts of others shows ignorance of basic tenets of fairness and our system of justice.

Buck Galord

Buck Galord, November 26, 1996

Affidavit of Chris Cross
Witness for the Defense

My name is Chris Cross and I'm the principal of Dry Gulch Public High School in Dry Ridge, NY. I live at 310 Hillcrest Estates.

I have been principal for twelve years, having come here after five successful years as principal of a prestigious boarding school in New England. The school board recruited me to try to put some starch back into the disciplinary process and to enhance academic achievement.

I was naturally very concerned when Lee Ackerman came to me to report what Jamie June had told Lee about Phil Anders. I immediately set up a meeting with Jamie and included Lee because Jamie demonstrated some degree of comfort in confiding in Ackerman in the first place. Miss June was clearly upset and described her surprise and disgust with seeing the centerfold, particularly in view of her otherwise positive relationship with Mr. Anders. Of course, I aggressively pursued the complaint, calling the vending company on September 21 and speaking at length with its manager, Mr. Seltzer. When Seltzer called back the next day, he assured me in absolute terms that the incident between his driver and my student was an unfortunate accident. Seltzer then called Anders in to his office and put me on his speaker phone, to give me a chance to ask questions. I was satisfied that Anders had intended no harassment and that both he and his boss understood that the school would not tolerate any further incidents.

Not surprisingly, Jamie was dissatisfied with my report of my investigation. When Jamie asked me what she was supposed to do, I told her that we could find a temporary or permanent replacement to cover her duties with the machines, although I hoped she would give it another chance. I tried to encourage her, assuring her that I appreciated the wonderful job she was doing for the class and the school and recognized the important contribution she was making. I was pleased to note that she continued in her job, without any further complaints about Phil Anders.

At this stage, and with later developments surrounding Jamie June, I am certain that I properly followed our school's written policy on sexual harassment. In addition to my Ed.D., I have an M.A. in Education, with a concentration in school law. That is why, when what I call "Stage II" of these events started to transpire, and the group of Jamie's friends came to see me about "Man's World," their poster, and proposed meeting—I was so confident about what the law allowed me to do. Naturally, I looked at the poster that had Jamie's pictures on it—and also noticed one announcing tryouts for the cheer leading squad, with a photo attached of last year's squad. Jamie was also in that photo, and I didn't see any significant difference between the two efforts. Clearly, the "Man's World" poster was meant as a publicity stunt, but it seemed a clever use of photos that I recalled from the local paper—not known as a hotbed of pornographic images. I must say that I was put in a fairly remarkable position, having to protect the rights of "Man's World" to meet, even though I had been in favor of doing away with all clubs in light of the Equal Access Amendment. I see student clubs as a positive experience, but have had other difficult problems over the years with a religious club, "The Christian Crusaders" and with a Second Amendment club, "The Militia Men." Overall, while I'm experienced at dealing with the legal issues involved with these clubs, I am uncomfortable in having so little control and influence over them and their messages.

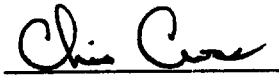
Throughout the rest of these events, I continued to monitor the behavior of students and asked various teachers how students were interacting on the topic of sexual harassment. While we have had very few complaints of sexual harassment over the years,

and thus no need for extensive student training, I saw these ensuing discussions about harassment and false accusations as a generally healthy thing, as long as "Man's World" was not being disruptive or advocating any illegal activity—which would have been true if they were sexually harassing Jamie June or anyone else. I personally monitored the club bulletin board for new meeting notices and personally removed the second poster that appeared—the one that said "Unwanted? Unwelcome? Take a Look! Unbelievable!" I thought that item crossed the line and, depending on one's reading of it, could be taken as making unacceptable references to Miss June's character.

Miss June's claims of a "pervasively hostile environment" were clearly nonsense, as I received no other complaints by other females. I had possibly put myself in jeopardy by meeting with the members of the boys club and forcefully telling them to be sure that they stayed within acceptable bounds and even urging them to find another topic to pursue. I was concerned with Jamie's claim of having been surrounded in the hall and spoke individually to each boy that she named. All denied individually any attempt to threaten Jamie—and as she had not been touched—I warned each of them to avoid any group contact with her. My hands were tied when it came to what happened to her locker—I needed some evidence of a "who" to punish anyone, and despite extensive inquiries no one had seen anyone near the locker.

I have no doubt that Miss June was very embarrassed by the fact that her confidential complaint became general knowledge. But she created the circumstance for that to occur by inviting Buck, her former boyfriend, into direct contact with Phil Anders. I did not suggest that course of action, and certainly would never advise bringing a known reporter into such a situation.

I pride myself on knowing the law and being prepared to handle student-centered legal questions, as they arise on a constant basis. I am thorough in my investigations and make firm, but fair decisions. I hope Miss June can move beyond this episode and put all her great potential into action.



Chris Cross, November 26, 1996

Affidavit of Phil Anders
Witness for the Defense

My name is Philip Anders and I reside at RR1, Box 47 Sawmill Road in the Town of Dry Ridge, N.Y. I have lived there for 18 years and have worked at International Colas United since 1980.

I feel terrible that I played any role in the course of events which has led to this lawsuit. My relationship with Jamie June was unique and positive. Of all my customers, Jamie was the only one who ever offered to lift a finger to help me, and was so nice and considerate that she made me forget that she was really there to check up on the cash receipts. Jamie and I became very friendly, talking about our families, school and community events, and sharing many laughs. Dry Gulch High School became my favorite stop, because I could always look forward to pleasant conversation with a real upbeat kid, Jamie.

You have to understand that, with two people working at one drink machine, there is a lot of unintentional but unavoidable contact. I was a bit nervous at first about that contact, but it quickly became clear that a single "excuse me" sufficed as an apology. I was certain that Jamie June was not the type to misinterpret such contact as threatening and neither was I, as half of it came from her.

I had told my wife, Melanie, about Jamie and what a terrific kid she was. When my wife saw the first story about Jamie in *The Dry Ridge Ragster*, she cut it out with the picture for me to give to Jamie. A few weeks later, when another photo of Jamie appeared, I cut that out to save until school started again. My "twin" gag with Jamie might have been a lame attempt at humor, but her "twin" was the second picture of herself. I had just stuck them in my magazine so they wouldn't get bent up in the truck cab. I had thrown them in there for safekeeping only.

I never expected Jamie to dig those pictures out on her own or to see my magazine. I was dumbfounded by what happened and probably made matters worse by what I said to her as she ran away. I had no idea what I should do to fix things.

I was unhappy, but not too surprised when my boss, and brother-in-law, I. M. Seltzer, came up and asked me the next afternoon, "What happened with you and that girl at school yesterday?" I told him the story and, while he believed me, I could tell that he was in part pleased that I had messed up. He assured me that he would smooth over everything with the principal but that "I was on my own with Melanie," which I took to be a threat from him that he would tell her the story.

I was called in the next morning and got cross-examined by Dr. Cross, who ended up satisfied with my answers. I asked him what I could do to make things better, to which Cross said, "I think you better concentrate on not making things any worse."

The next week, when Jamie showed up with Buck Galord—who kept coming for the next two weeks—I knew that Jamie really didn't trust me any more. The school stop, instead of being my most enjoyable, became my most tense. When I got myself alone with Buck, I suddenly found myself asking him why he was coming with Jamie. Buck's answer about how Jamie just wanted some time with him hit a sore spot with me, because I thought both of us deserved better treatment, and more trust, from Jamie.

I should have kept my mouth shut, but Buck Galord does have a good reporter's gift of getting a story out. I never could have dreamt of how he made use of my information, and think he was wrong to broadcast it all over school. I don't know if Jamie was sexually harassed or not by other kids at school, but I am deeply sorry for any part I played in a train of events that seemingly disrupted her senior year. Jamie June was

wrong to think I sexually harassed her, but she doesn't deserve to have her accidental discovery of her pictures in my magazine ruin her life. No matter what happens with the case, I hope Jamie finds her old self again, and soon.

Phil Anders

Phil Anders, November 27, 1996

CONFIDENTIAL MEMORANDUM FOR FILE

SUBJECT: Sexual Harassment Complaint
DATE: 9/22/95
SOURCE OF INFORMATION: Lee Ackerman/Jamie June
COMPLAINT BY: Jamie June
ALLEGED HARASSER: Phil Anders (ICU)

CIRCUMSTANCES: On 9/20/95 Miss June informed Lee Ackerman that Phil Anders, the ICU drink delivery man, had attached published pictures of Miss June to a centerfold from a men's magazine. Miss June reported that Anders had made remarks concerning her "twin," claiming to have a picture of same. Miss June was outraged and believes herself to have been harassed.

INVESTIGATION: On 9/21/95, I called I.M. Seltzer, manager of ICU, to discuss Miss June's assertions. Mr. Seltzer called back on Friday morning, 9/22/95. Seltzer was certain that the incident was totally accidental and explained that Miss June had herself found the men's magazine in the truck cab. Seltzer vouched for the character and record of Phil Anders, insisted that Anders talk to me via a speaker phone, and offered to send over a copy of Anders' work record. My questioning of Anders resulted in support for the claim that Miss June, not Anders, had precipitated this incident through her search of his delivery truck cab. I admonished Anders and Seltzer to make sure that no further "incidents" occurred.

PRESENTATION OF FINDINGS: I met with Miss June and Lee Ackerman on Friday afternoon, 9/22/95 to inform them of my findings. Miss June was visibly agitated and became very upset when I characterized her reported incident as "an unfortunate accident." Miss June again claimed that the incident was sexual harassment; I assured her that I was confident that she would not have any further problems with Mr. Anders. I offered to assign a temporary substitute for her "drink duties" but encouraged her to continue with her responsibilities. I assured her that I recognized her efforts as outstanding and a wonderful help to the senior class and to the school.

ADDITIONAL COMMENTS: Miss June appears to be overreacting and unable to assume any responsibility for the incident in question. Clearly her actions, in searching the cab, were crucial to her getting her hands on the material which offended her. I am concerned that her denial of this obvious fact is an indication of a lack of reasonable perspective. I hope that I am mistaken, but am concerned with how she will perceive and interact with others in the future. She is an obviously driven young lady and I am, for the first time, concerned that the demands which she places on herself may be taking a toll.

ADDENDUM: 11/13/95

At their request, I met with Jamie June and her parents, Dana and Lynn, on 11/8/95. They claimed that Miss June has been constantly harassed since 10/12/95. I walked them through events of the past several weeks, pointing out that many of the specific things which Jamie found offensive, such as being called "Miss June," the lapel pins, and the posters advertising the meeting of the "Man's World" Club, were not instances of sexual harassment. I did note that being surrounded in a hallway by boys was unacceptable, as was the attack on her locker. For the former I took the names of boys

Jamie could identify; re the latter I explained that I was investigating but needed specific information to take any action.

My report of my meeting with the leaders of "Man's World" to urge them to moderate their focus on sexual harassment was met with disbelief, and the fact that I had removed one of the "Man's World" posters appeared to be taken as totally inadequate.

ADDITIONAL COMMENTS: It is clear that the parents share Jamie's inability to see alternate viewpoints. Though I could not baldly say it, I think that Miss June has convinced herself that "everyone" is out to get her, which puts the school in a very difficult position. I will continue to energetically investigate any incident which may rise to the level of sexual harassment, but I am now dealing with a family that sees the use of its own last name—June—as a harassment in itself. In good conscience, I'm not sure that I can possibly reassure Miss June, even if I was willing and able to trample everyone else's free speech and meeting rights.

Dry Gulch Public School District
Sexual Harassment Policy

I. POLICY

A. It is the policy of the Dry Gulch Public School District to maintain a learning and working environment that is free from sexual harassment.

B. It shall be a violation of this policy for any member of the staff to harass another staff member or student through conduct or communications of a sexual nature as defined in Section II. It shall also be a violation of this policy for students to harass other students through conduct or communications of a sexual nature as defined in Section II.

II. DEFINITION

A. Sexual harassment is defined as unwelcomed sexual advances, requests for sexual favors and other inappropriate verbal or physical conduct of a sexual nature when made by any member of the school staff to a student, when made by any member of the school staff to another staff member or student or when made by any student to another student when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education;
2. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual;
or
3. Such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating, hostile or offensive employment or education environment.

B. Sexual harassment, as set forth in Section II-A, may include but is not limited to the following:

- verbal harassment or abuse
- pressure for sexual activity
- repeated remarks to a person, with sexual or demeaning implications
- unwelcome touching
- suggesting or demanding sexual involvement accompanied by implied or explicit threats concerning one's grades, job, etc.

III. PROCEDURES

A. Any person who alleges sexual harassment by any staff member or student in the school district may complain directly to his or her immediate supervisor, building principal or district affirmative action officer. Filing of a grievance or otherwise reporting sexual harassment will not reflect upon the individual's status and will not affect future employment, grades or work assignments. There will be no retaliation for filing a complaint.

Prompt reporting of complaints is strongly encouraged, as it allows for rapid response and resolution of objectionable behavior or conditions for the complaining individual and any other affected persons. This school has chosen not to impose a limited time frame for the reporting of sexual harassment complaints. However, the reporting

individual should be aware that applicable statutes of limitations do constrain the time for instituting outside legal action.

B. The right to confidentiality, both of the complainant and of the accused, will be respected to the extent possible consistent with the school district's legal obligations, and with the necessity to investigate allegations of misconduct and to take corrective action when this conduct has occurred.

C. **Investigation Process:** An accurate record of objectionable behavior is necessary to resolve a formal complaint of sexual harassment. All oral reports of sexual harassment must be reduced to writing by either the complainant or the individual(s) designated to receive complaints.

In pursuing the investigation, the designated investigator will try to take the wishes of the complainant into consideration, but should thoroughly investigate the matter as he/she sees fit, keeping the complainant informed as to the status of the investigation.

Once an individual comes forward with a complaint of sexual harassment, certain actions and procedures are recommended for an investigation of the incident or behavior. An investigation of the complaint should include the following questions: "What happened and when did it happen?" "Did it affect your work?" "How?" "What were your feelings and what did you do about it?" "What is the background of the incident?" "What documentation do you have?" "Did anyone else see or hear the incident?" "Did you talk to anyone else about it?"

Those charged with conducting an investigation must remember to listen attentively to what the victim says and be sensitive to the feelings involved. However, do not promise anything until you listen to the other side of the incident.

When interviewing the alleged harasser, present the person with the charge and ask for a response. Investigate by asking questions such as: "Describe your interaction with the alleged victim." "Do you think you have ever done anything that might have caused the alleged victim to feel offended?" "To what degree do you think you use sexual language, innuendoes, jokes or mannerisms in the work/school setting?" "What are the business/school reasons for your interactions with the alleged victim?" Listen attentively to what the alleged harasser says and be equally sensitive to the feelings involved as with the alleged victim. Consider the degree to which the behavior was mutually reciprocal or repetitive. When first interviewing the alleged harasser, remind him/her of the school's policy against retaliation for making a complaint of sexual harassment. Document your interactions with the alleged victim and the harasser; do not rely on your memory.

It may be necessary to interview observers or third parties to the alleged harassment. Present your concerns and the basis of the complaint to the observer and request that this matter be kept confidential. Investigate by asking questions such as: "What type of interactions have you observed between the alleged victim and the alleged harasser?" "From your point of view, was the alleged harasser bothering the alleged victim?" "Are there others who might be able to comment on their interaction?" "Did the alleged victim ever complain to you about the alleged harasser's behavior?" Again, listen attentively to what the observers say and document your interactions with the observers or third parties.

If your investigation shows that sexual harassment does not exist, take appropriate corrective action with the person who made the charge. For the accused person, take

appropriate action to maintain or restore his or her credibility. Be supportive of this person with others in the school.

If sexual harassment exists, it will be necessary to document your findings and take appropriate disciplinary action according to school policy, providing for appropriate appeals. It will also be important to monitor future interactions between the individuals involved. Be aware of the possibility of reprisals by the harasser or victim once appropriate corrective action has been taken.

Investigating complaints of harassment is a difficult but important task. Employees and students must be assured that their complaints will be viewed as a serious matter and will receive proper attention.

IV. SANCTIONS

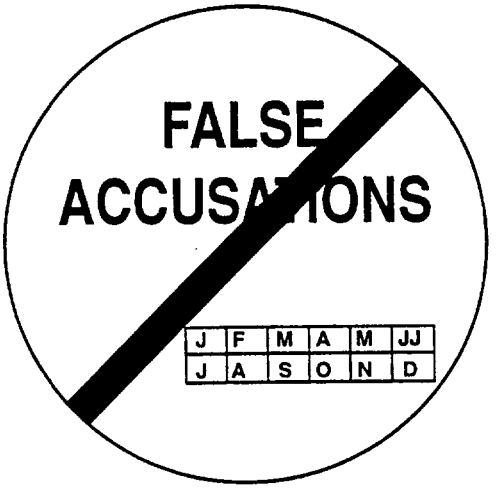
A. A substantiated charge against a staff member in the school district shall subject such staff member to appropriate disciplinary action, which may include discharge.

B. A substantiated charge against a student in the school district shall subject that student to student disciplinary action, which may include suspension or expulsion, consistent with the student discipline code.

V. NOTIFICATIONS

Notice of this policy will be circulated to all schools and departments of the Dry Gulch Public School District on an annual basis and incorporated in teacher and student handbooks. It will also be distributed to all organizations in the community having cooperative agreements with public schools. Failure of such organizations to comply with this policy prohibiting sexual harassment may result in termination of the cooperative agreement.

LAPEL BUTTONS



PART VI

PERTINENT LAW AND INFORMATION

First Amendment Free Speech Law To Consider:

U.S. Const. Amend. I (1791)

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969)

Tinker, famous for its pronouncement that public school students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," stands for the proposition that if the in-school speech in question is not vulgar and is not school-sponsored, then the speech can only be restricted if it causes a substantial and material disruption to the operation of the school or impinges upon the rights of other students. Students' symbolic speech, in this case, the wearing of black armbands to protest America's involvement in Vietnam, was protected by the First Amendment because there was no evidence that the wearing of such armbands interfered with the work and discipline of the school or with the rights of other students. The court noted that an "apprehension of disturbance is not enough to overcome the right to freedom of expression."

Bethel School District v. Fraser, 478 U.S. 675, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986)

The First Amendment does not protect a vulgar, lewd and sexually explicit monologue delivered by a student to an unsuspecting audience of teenage students in a high school classroom or assembly. Consequently, a school district may disassociate itself from such speech, discipline the student who delivered the speech and advise students that such speech undermines the school's educational mission.

Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988)

The First Amendment rights of students in school settings are not necessarily as extensive as the First Amendment rights of adults in other settings and must be considered in light of the special nature of the school environment. A school district may, as in this case, censor or curtail school sponsored student publications when the speech is inconsistent with the school's "basic educational mission" even though the government could not sensor similar speech outside the school setting. In this case, it was permissible for the school to withhold an article on teenage pregnancy and an article on the effects of divorce on students from the school's newspaper, which was written and edited by the school's journalism class as part of the curriculum.

Clark v. Dallas Independent School District, 806 F.Supp. 116 (N.D. Texas 1992)

The school district deprived students of their right to free speech when it prohibited their distribution of religious literature on school premises given that the speech was voluntary, student initiated, free from school sponsorship or involvement and there was no evidence to suggest that the conduct materially and substantially interfered with the school's ability to maintain order and discipline. The fact that several students objected to the distribution of the material did not provide a sufficient basis to prohibit the distribution.

Pyle v. South Hadley School Committee, 861 F.Supp. 157 (D. Mass. 1994)

School officials can restrict vulgar speech and speech containing sexual innuendo (in this case, the speech was found on T-shirts worn to school by high school students) and discipline the speaker. Schools may also enforce such restrictions when the clothing in question creates a substantial risk of a material and substantial disruption to the daily operation of the school or impinges upon the rights of other students. However, the court noted that the First Amendment does not permit the repression of ideas even though when expressed, the ideas may cause hurt feelings or a sense of being harassed.

Equal Access Law To Consider:

The Equal Access Act, 20 U.S.C. §4071. **Denial of equal access prohibited**

> **(a) Restriction of limited open forum on basis of religious, political, philosophical, or other speech context prohibited.** It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.
>
> **(b) "Limited open forum" defined.** A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.
>
> **(c) Fair opportunity criteria.** Schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that—
>
> (1) the meeting is voluntary and student-initiated;
>
> (2) there is no sponsorship of the meeting by the school, the government, or its agents or employees;
>
> (3) employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;
>
> (4) the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
>
> (5) nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.

(d) Construction of title [20 U.S.C. §§ 4071 et seq.] with respect to certain rights. Nothing in this title[20 U.S.C. §§ 4071 et seq.] shall be construed to authorize the United States or any State or political subdivision thereof—

(1) to influence the form or content of any prayer or other religious activity;

(2) to require any person to participate in prayer or other religious activity;

(3) to expend public funds beyond the incidental cost of providing the space for student-initiated meetings;

(4) to compel any school agent or employee to attend a school meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee;

(5) to sanction meetings that are otherwise unlawful;

(6) to limit the rights of groups of students which are not of a specified numerical size; or

(7) to abridge the constitutional rights of any person.

(e) Federal financial assistance to schools unaffected. Notwithstanding the availability of any other remedy under the Constitution or the laws of the United States, nothing in this title [20 U.S.C. §§ 4071 et seq.] shall be construed to authorize the United States to deny or withhold Federal financial assistance to any school.

(f) Authority of schools with respect to order, discipline, well-being, and attendance concerns. Nothing in this title [20 U.S.C. §§ 4071 et seq.] shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure the attendance of students at meetings is voluntary.

Board of Education of the Westside Community Schools (Dist. 66) v. Mergens, 496 U.S. 226 (1990)

The Supreme Court determined that The Equal Access Act is constitutional.

Sexual Harassment Law To Consider:

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2. **Unlawful employment practices**

(a) Employer Practices. It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Title IX of the Education Amendments of 1972, 20 U.S.C §1681. **Sex**

> **(a) Prohibition against discrimination....** 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....

Meritor Savings Bank v. Vinson, 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986)

Meritor established that sexual harassment violates Title VII as it is a form of sex discrimination and went on to identify guidelines for analyzing the hostile environment type of sexual harassment cases. Sexual harassment includes conduct that "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." If the alleged sexual misconduct is *unwelcomed,* then it is illegal. The court also indicated that the trier of fact is obligated to consider "the totality of the circumstances" (i.e., "the record as a whole") in determining whether the alleged conduct is illegal sexual harassment.

Ellison v. Brady, 924 F.2d 872 (9th Cir. 1991)

The court's holding in this case included guidance on evaluating workplace sexual harassment claims indicating that the case should be viewed from the point of view of the victim, in this case a woman, and whether the "reasonable *woman*" as opposed to the "reasonable *person*" would find the alleged conduct to constitute harassment.

Franklin v. Gwinnett County Public School, 503 U.S. 60, 112 S.Ct. 1028, 117 L.Ed.2d 208 (1992)

In this "quid pro quo" sexual harassment case of a student by a teacher, the court applied Title VII standards (workplace standards) to the case, which was brought under Title IX (school cases), and determined that injunctive relief and monetary damages are appropriate when a school knows of the harassment, intentionally ignores or discounts the student's complaint and fails to adequately supervise its employee. Consequently, the school is liable for the acts of the teacher as its agent.

Harris v. Forklift Systems, Inc., 510 U.S. 17, 114 S.Ct. 367 (1993)

In its analysis of this Title VII workplace sexual harassment case, the court held that in determining whether an environment is hostile or abusive, a broad range of circumstances should be considered including frequency, severity, and whether the complained of conduct interferes with the job performance of the complainant, noting that the employee does not have to have a nervous breakdown to prevail.

Rowinski v. Bryan Independent School District, 80 F.3d 1006 (5th Cir. 1996)

School districts cannot be held liable for student-to-student sexual harassment under Title IX unless plaintiff shows that the district responded differently, on the basis of sex, to student-to-student harassment claims (i.e., unless the district treated the alleged sexual harassment of boys more seriously than the alleged sexual harassment of girls).

Bruneau v. South Kortright Central School District, 935 F.Supp. 162 (N.D.N.Y. 1996)

A school district may be liable under Title IX for alleged sexual harassment, including harassment by peers, if the school had *actual* notice of the alleged harassment and failed to act upon the knowledge. The court indicated that Title VII (workplace) standards apply in Title IX (school) cases and that whether the specific conduct in a given case created a hostile learning environment is a question of fact.

Doe v. Petaluma City School District, 830 F.Supp. 1560 (N.D.Cal. 1993), *reversed on other grounds*, 54 F.3d 1447 (9th Cir.1995), _____(1996)

In 1993, the Federal District Court for the Northern District of California determined that a school district would be liable for damages in a student-to-student hostile environment sexual harassment case brought under Title IX, provided that the plaintiff can prove intentional discrimination on the basis of sex by school officials in the handling of the complaint (i.e., "knew or should have known" is not enough). However, the court recently reconsidered its 1993 decision and concluded that it is not necessary to prove intentional discrimination on the part of the school to establish liability under Title IX; knowledge of the harassment and a failure to remedy the harassment is sufficient. [*See*, Thompson Publishing Group, Inc., *Educator's Guide to Controlling Sexual Harassment*, Appendix IV at 81 (October 1996)]

Davis v. Monroe County Board of Education, 74 F.3d 1186 (11th Cir. 1996), *vacated*, 91 F.3d 1418 (11th Cir. 1996)

A panel of the U.S. Court of Appeals for the 11th Circuit determined that a school district can be held liable for student-to-student sexual harassment under Title IX if plaintiff shows that the harassment was unwelcomed and based on sex, that the harassment was so severe or pervasive as to alter the plaintiff's education and create an abusive educational environment, that the district knew or should have known of the harassment, and that the district failed to remedy the sexually hostile environment. However, in August 1996, the opinion was vacated and a rehearing en banc was ordered. The case was reheard in October 1996, and a decision is pending.

The following is an excerpt from *Confronting Sexual Harassment: A Guide for Attorneys and Educators for Use with Students* (publication of the New York State Bar Association).

"Overview of Federal and State Laws Governing Sexual Harassment in Educational Institutions," by Kim E. Greene, Esq.

Title VII of the Civil Rights Act of 1964

The first cases to present the issue of sexual harassment were brought under Title VII of the Civil Rights Act of 1964.[1] Title VII prohibits sex discrimination in all aspects of employment. In 1985, after years of litigation in the lower federal courts, the United States Supreme Court in the case of *Meritor Savings Bank v. Vinson* recognized that sexual harassment is a form of sex discrimination and therefore violative of Title VII.[2] In *Meritor*, Michelle Vinson alleged that her supervisor had subjected her to a pattern of unwanted touching and coerced sexual activity over a period of years. Ms. Vinson testified that she engaged in the sexual activity only because she was afraid that she would lose her job if she refused.

In assessing Ms. Vinson's claim, the district court utilized the Equal Employment Opportunity Commission's (EEOC) Guidelines on Discrimination Because of Sex, which define the conduct that constitutes sexual harassment in violation of Title VII. The guidelines provide:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
>
> (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
>
> (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
>
> (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.[3]

Sections (1) and (2) of the definition describe quid pro quo sexual harassment, the well known "sleep with me or you're fired" type of conduct, where someone in a position of authority in the workplace explicitly premises a worker's employment, or the terms, benefits or conditions of the job, on sexual conduct. Section (3) describes hostile environment sexual harassment, which the Supreme Court characterized in *Meritor* as existing when a workplace is permeated with discriminatory intimidation, ridicule, and insult that is "sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'"[4]

The district court in *Meritor* ruled that the sexual activity between Ms. Vinson and her supervisor was voluntary and therefore not actionable under Title VII.[5] The Supreme

Court reversed, holding that the conduct was "unwelcome" and thus violated Title VII. The Court also found that requiring people to work in a discriminatorily hostile or abusive environment violates Title VII even when there is no economic or other tangible harm as a result of the harassment.[6]

In 1993, the Supreme Court issued its second decision on the meaning of Title VII's prohibition against sexual harassment in the case of *Harris v. Forklift Systems, Inc.*[7] Teresa Harris, an employee of Forklift Systems, was subjected to repeated sexual and gender-based comments, ridicule and insults by her boss, Charles Hardy. Hardy often made these comments in the presence of Harris' co-workers.

After Harris complained to Hardy about his comments, he claimed he was "just joking" and promised to stop. However, a few days later, Hardy made another lewd and demeaning sexual comment to Harris. She resigned from her job shortly thereafter and filed suit, alleging that Hardy's conduct had created a sexually harassing hostile environment in violation of Title VII.

The district court and the court of appeals held that Hardy's conduct, while offensive and annoying, did not cause psychological injury to Harris and therefore did not constitute prohibited abusive and hostile environment sexual harassment.[8] The Supreme Court reversed the lower courts and held:

> Title VII comes into play before the harassing conduct leads to a nervous breakdown. A discriminatorily abusive work environment, even one that does not seriously affect employees' psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers. Moreover, even without regard to these tangible effects, the very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their ... gender ... offends Title VII's broad rule of workplace equality.[9]

The Court also held that whether an environment is hostile or abusive in violation of Title VII should be judged by all the circumstances, including the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance.[10]

The EEOC recently has promulgated proposed guidelines on harassment based on race, color, sex, religion, age, national origin and disability that will have an impact on hostile environment sexual harassment cases brought under Title VII and Title IX of the Education Amendments of 1972, which is discussed in the next section. The guidelines define harassment as:

> verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, or disability, or that of his/her relatives, friends, or associates, and that: (i) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment; (ii) Has the purpose or effect of unreasonably interfering with an individual's work performance; or (iii) Otherwise adversely affects an individual's employment opportunities.[11]

Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972 prohibits sex discrimination in any education program or activity that receives federal funding. The statute provides:

> 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....[12]

Title IX applies to all employees and students at these educational institutions. In 1981, the United States Department of Education, Office of Civil Rights, which enforces Title IX, defined sexual harassment that violates Title IX as:

> verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a school that denies, limits, provides different, or conditions the provision of aid, benefits, services or treatment protected by Title IX.[13]

The text of Title IX is silent with respect to sexual harassment and the federal courts have looked to the case law developed under Title VII for guidance in Title IX-based sexual harassment claims. In 1980, a federal appeals court held that a student at Yale University could utilize Title IX to bring suit against the school for sexual harassment.[14] In this case, *Alexander v. Yale Univ.*, the student alleged that a professor had given her a low grade in a course because she had refused to cooperate sexually with him. Because Title IX and the accompanying regulations do not make specific reference to sexual harassment, the court applied Title VII principles to the academic setting.

In 1979, the Supreme Court in *Cannon v. University of Chicago*[15] held that although Title IX is silent as to how it is to be enforced, there is an implied private right of action that individuals may utilize to enforce Title IX's prohibition against sex discrimination. Since *Cannon*, the courts have continued to utilize Title VII case law and the EEOC's guidelines on sexual harassment to decide sexual harassment claims brought under Title IX.[16]

In 1992, the Supreme Court was presented with the issue of whether the implied right of action under Title IX, recognized by the Court in *Cannon*, supported a claim for

monetary damages brought by a student who had been sexually harassed by a teacher.[17] In this case, *Franklin v. Gwinnett County Public Schools*, Christine Franklin alleged that she had been subjected to repeated instances of sexual harassment over a two-year period by a sports coach and teacher, Andrew Hill. Franklin claimed that Hill had engaged her in sexually oriented conversations, forcibly kissed her on the mouth in the school parking lot, telephoned her at home and asked if she would meet him socially and, on three separate occasions, subjected her to coercive sexual intercourse on school premises. When Franklin complained to teachers and administrators about Hill's conduct towards her and other female students, the school personnel not only took no action, but also tried to discourage her from pressing charges against Hill. In 1988, Hill resigned on the condition that all matters pending against him be dropped and the school took no further action on Franklin's complaint.

Franklin filed suit under Title IX against the school district and asked for an award of monetary damages. The district court dismissed her action on the ground that Title IX did not authorize such an award of damages and the appellate court affirmed the decision.[18]

The Supreme Court reversed the lower courts. The Court noted that the law presumes that all appropriate remedies are available under a statute, "unless Congress has expressly indicated otherwise."[19] The Court found no indication that Congress intended to limit the remedies available under Title IX and that "the denial of a remedy [is] the exception rather than the rule."[20] The Court pointed out that when Congress had amended Title IX in recent years, it had not placed any restrictions on the available remedies, even though it had the clear opportunity to do so. Therefore, the Court held that monetary damages are available to individuals who bring private actions under Title IX.[21] In its decision, the Supreme Court stated:

> Unquestionably, Title IX placed on the Gwinnett County Schools the duty not to discriminate on the basis of sex, and "when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor discriminate[s] on the basis of sex." *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986). We believe the same rule should apply when a teacher sexually harasses ... a student.[22]

Thus, it is now clear that the sexual harassment of students is prohibited by Title IX, that students can sue school districts for monetary damages for acts of harassment by school personnel, and that the courts will apply many of the standards developed in Title VII sexual harassment litigation to Title IX cases. The issues left open by the Supreme Court's decision in *Franklin* include under what circumstances schools will be held liable for damages for harassment and the extent of school liability for student-to-student harassment.

In *Doe v. Petaluma City School District*, a student brought a Title IX suit against a California school district for its failure to take effective action to stop a pattern of sexual

harassment against her by other students.[23] The students continually taunted the plaintiff with sexual names and picked fights with her. When she and her parents asked the school administration to end the harassment, the school took only limited and ineffectual actions. The plaintiff finally had to transfer to another school district.

The federal court for the Northern District of California ruled that in order to obtain monetary damages for this type of hostile environment sexual harassment the plaintiff would have to prove that the school employees intentionally discriminated against the student on the basis of sex, not just that an employee of the institution knew or should have known of the hostile environment and failed to take appropriate action to end it. The intentional discrimination standard is higher than the "knew or should have known" standard that the courts employ under Title VII to hold employers liable for hostile environment sexual harassment by co-workers. Thus, this decision represents a significant deviation from the trend in the courts to adopt Title VII standards in Title IX cases. It remains to be seen whether other courts will follow *Petaluma* or instead utilize Title VII standards to determine school district liability.

A second decision which addressed the issue of school liability for student-to-student harassment under Title IX was rendered by a federal judge in the Northern District of New York in 1994. In *Bruneau v. South Kortright Central School District,* the plaintiff, a twelve-year-old girl, alleges that the school failed to remedy the sexually-harassing hostile environment that existed in her sixth grade classroom.[24] She alleges that she and other female classmates were verbally abused and touched (including having their bra straps pulled and, in one instance, breasts touched), kicked and spit on by some of the boys in the class. Her teacher and school administrators failed to stop the behavior, despite repeated requests by the plaintiff and the parents that they do so.

The defendants moved to dismiss the case, or in the alternative for summary judgment, and the judge denied the motion. He followed the *Petaluma* holding that to prove a violation of Title IX, the plaintiff must prove intentional discrimination on the basis of sex by an employee of the educational institution. However, the judge ruled that the plaintiff had sufficiently pled intentional discrimination because the "complaint is replete with allegations of various school district employees failing to take action to stop the alleged harassment."[25] The court also ruled that the individual defendants, although not the school district, could be held liable for punitive damages under Title IX.[26]

Section 1983 of the Civil Rights Act of 1871

A number of students and their families have used Section 1983 of the Civil Rights Act of 1871 as a basis for suits against school districts that have been brought to redress sexual harassment by employees and by other students. Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or

immunities secured by the Constitution and laws, shall be liable to the party injured....[27]

In *Stoneking v. Bradford Area School District*, Kathleen Stoneking, a member of the school band, alleged that the band director forced her, by initimidation and harassment, to engage in various sexual acts with him.[28] Other female students previously had complained to the school administration that the band director had tried to commit rape and. other acts of sexual misconduct against them. The federal court of appeals in New York held that the claim could be brought because the plaintiff "has also alleged that defendants, with deliberate indifference to the consequences, established and maintained a policy, practice or custom which directly caused her constitutional harm."[29]

In *Pagano v. Massapequa Public Schools*, a federal district court in New York held that an elementary school student stated a claim against his school district under Section 1983 when he alleged that on 17 separate occasions he was the target of verbal and physical abuse by other students.[30] The student alleged that the school knew of the attacks and did nothing to prevent them from occurring in the future. The court held that the relationship between the school and student is analogous to a custody relationship and that the school's failure to take preventative steps rose to the level of "deliberate indifference."[31]

By contrast, in a case outside New York, *D.R. v. Middle Bucks Area Vocational Technical School*, the court reached the opposite conclusion.[32] In this case, the plaintiff, a disabled female student, alleged that she was repeatedly physically and verbally assaulted and sodomized by male students in a bathroom and a photography darkroom in the school. The court held that there was no "special relationship" between the student and the school that gave rise to a substantive constitutional right to be protected. The court reasoned that the parents could choose to educate their child wherever they please and that the student-school relationship therefore is not a custodial one.[33]

The dissenting judges disagreed strongly with this analysis. They found that the immaturity of students combined with the "pervasive control" exercised by school created a duty to protect students from harm.[34]

In *Bruneau v. South Kortright Central School District*, discussed above, the plaintiff also asserted claims that the sexually-harassing hostile environment in her class, and the defendants' failure to remedy it, violated §1983.[35] The judge upheld these claims in his decision denying the defendants' motion to dismiss. The court held that the alleged violation of Title IX constituted a basis for defendant liability under §1983 because "the Supreme Court in *Franklin* determined that Congress did not intend to limit the remedies available in suits under Title IX."[36] The plaintiff also claimed, and the court concurred, that the defendants' denial of her right to equal protection under the laws guaranteed by the Fourteenth Amendment also provided an additional basis for defendant liability under §1983.[37]

New York State Law

New York State law also provides protection against sexual harassment for school employees, but not for students. The Human Rights Law prohibits sex discrimination in employment, and therefore sexual harassment, in a manner similar to Title VII.[38] Section 313 of the New York Education Law prohibits sex discrimination against students in elementary and secondary schools. However, because the law has no enforcement mechanism, it therefore is not useful to students attempting to get redress for sexual harassment.

There are a number of bills currently pending before the New York Legislature that would amend the Education Law specifically to prohibit sexual harassment in elementary and secondary schools and require them to adopt policies against sexual harassment and to implement procedures to handle complaints of sexual harassment.[39] A number of states, including California, Minnesota, and Washington already have enacted similar laws.[40]

Conclusion

It is clear that the courts are now more likely to address sexual harassment in the schools, even at the elementary and secondary levels, and to award monetary damages against school districts in appropriate cases. This trend will not be reversed in the foreseeable future. For this reason, it is critically important that schools take active steps to prevent all forms of sexual harassment and to act swiftly to stop harassment and redress its victims when it does occur.

Endnotes

1. 42 U.S.C. §2000e.
2. *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).
3. EEOC Guidelines on Discrimination Because of Sex, 29 C.F.R. §1604.11(a), 1985.
4. *Meritor, supra*, 477 at 67.
5. *Vinson v. Taylor*, 23 Fair Empl. Prac. Cas. (BNA) 37 (D.D.C. 1980).
6. *Meritor, supra*, 477 U.S. at 67.
7. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 114 S. Ct. 367, (1993).
8. *Harris v. Forklift Sys., Inc.*, 60 Empl. Prac. Dec.(CCH) Para. 42,070 (M.D. Tenn. 1990): 976 F.2d 733 (6th Cir. 1992).
9. 114 S. Ct. at 370-71.
10. *Id.* at 371. The lower federal courts are continuing to debate other aspects of the hostile environment issue. For example, a number of the circuit courts of appeal have taken opposing positions as to whether the allegedly harassing conduct should be judged from the perspective of the "reasonable person," a supposedly neutral standard that is utilized in other areas of the law, or from the perspective of a "reasonable woman." The courts that have advocated the use of the reasonable woman standard have done so because of the differences in men's and women's life experiences, particularly women's unique vulnerability to rape and other sexual assaults. In *Ellison v. Brady*, 924 F.2d 872 (9th Cir.

1991), for example, the Ninth Circuit found that because of this vulnerability, sexually-based words or behavior that would not be threatening or problematic for men can have very different and negative impacts on women.

Another case currently on appeal, *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486 (M.D. Fla. 1991) criticized 852 FS 1252 (3d Cir.), presents the conflict between workers' First Amendment rights to read and display sexually-explicit materials in the workplace, and Title VII's requirement that employers provide a workplace that is free from sexual harassment. After the plaintiffs in *Robinson* proved the existence of a sexually harassing hostile work environment at the shipyard, the district court ordered that all sexually-explicit materials be banned from the workplace. On appeal, the Florida Civil Liberties Union entered the case on the side of the employer and argued that the court's order violated the First Amendment rights of the workers.

11. 58 Fed. Reg. 51,269 (1993) (proposed 29 C.F.R. §§ 1609.1, 1609.2 (proposed Oct. 1, 1993)); *see also* 29 C.F.R. §1604.11 (1993).
12. 20 U.S.C. § 1681.
13. 34 C.F.R. §§ 106.8, 106.9.
14. *Alexander v. Yale Univ.*, 631 F.2d 178 (2d Cir. 1980).
15. *Cannon v. University of Chicago*, 441 U.S. 677 (1979).
16. *Moire v. Temple Univ. Sch. of Medicine*, 613 F. Supp. 1360 (E.D. Pa. 1985).
17. *Franklin v. Gwinnett County Pub. Schs.* 503 U.S. 60 (1992).
18. *Franklin*, No. 1:88-CV-2922-ODE (N.D. Ga.) (1988).
19. *Franklin*, 503 U.S. at 66.
20. *Franklin*, 503 U.S. at 71.
21. *Franklin, supra*, 112 S. Ct. at 1038.
22. *Franklin, supra*, 112 S. Ct. at 1037.
23. *Doe v. Petaluma City Sch. Dist.*, No. C-93-0123 EFL (N.D. Calif. 1993).
24. *Bruneau v. South Kortright Cent. Sch. Dist.*, 94-CV-864 (N.D.N.Y. 1994)
25. *Bruneau.* (decision of Judge Thomas McAvoy (Nov. 15, 1994). (Transcript of decision rendered from bench).
26. *Id.*
27. 42 U.S.C. §1983.
28. *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720 (3d Cir. 1989), *cert. denied* 493 U.S. 1044 (1990).
29. *Stoneking*, 882 F.2d at 725.
30. *Pagano v. Massapequa Publ. Schs.*, 714 F. Supp. 641 (E.D.N.Y. 1989) (criticized 833 FS 570 (4th Cir.), 794 FS 1413 (8th Cir.)).
31. *Pagano*, 714 F.Supp. at 643.
32. *D.R. v. Middle Bucks Area Vocational Technical Sch.*, 972 F.2d 1364 (3d Cir. 1992), *cert. denied*, ____U.S.____, 113 S. Ct. 1045, (1993).
33. *D.R.*, 972 F.2d at 1368-72.
34. See also, *Doe v. Taylor Indep. Sch. Dist.*, 975 F.2d 137 questioned 864 FS 627 (5th Cir.)(5th Cir. 1992), *cert denied*; 113 S.Ct. 1066 (1993), in which the court denied the school district's motion to dismiss a Section 1983 lawsuit by a student who alleged she had been sexually molested by a teacher. The court held that the student had a constitutional right to be free from sexual molestation by the employee and that the school

administrators had an affirmative duty to protect the student. The case was remanded for trial on the issue of whether the superintendent and principal acted with deliberate indifference to the student's constitutionally protected rights.

35. *Bruneau v. South Kortright Cent. Sch. Dist.*, 94-CV-864 (decision of Judge McAvoy, Nov. 15, 1994).

36. *Id.*

37. *Id.*

38. New York Exec. Law §§ 296 *et seq.*

39. *See, e.g.*, Governor's Program Bill No. 158-RR (1994 Legislative Sess.).

40. *See, e.g.*, Cal. Educ. Code §§ 212.5; 212.6; Minn. Stat. § 127.455 (Minnesota); Wash. Rev. Code Ann. § 28B.110.