

## Student-On-Student Harassment Is Your Problem

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Last Tuesday, the U. S. Court of Appeals for the Sixth Circuit determined that student-on-student harassment must not only be investigated, but it must also be eradicated.

In *Patterson et al. v. Hudson Area Schools et al.*, parents of a student (referred to as "DP") enrolled in the Hudson Area Schools ("Hudson") filed suit in the U.S. District Court for the Eastern District of Michigan alleging, in part, violation of Title IX of the Education Amendments of 1972. The trial court dismissed all claims against Hudson, finding that the school did not violate Title IX because it was not "deliberately indifferent" to the student-on-student sexual harassment DP endured.

On appeal, the Sixth Circuit determined that DP's parents demonstrated a genuine issue of material fact as to whether Hudson's actions were deliberately indifferent with respect to the harassment endured by their son from middle school to high school. In its ruling the Court cited evidence that beginning his sixth grade year, various Hudson students began taunting him and called him names such as "queer, faggot, and pig" on a daily basis. This and other similar harassment continued through DP's ninth grade year, including a sexual assault. Although Hudson conducted an investigation and eventually expelled the student who committed the assault, the Sixth Circuit ruled that: 1) the evidence showed that DP's sexual harassment was so severe and pervasive that it deprived him of the educational benefits provided by the school; 2) Hudson, as a federal funding recipient, had actual knowledge of the sexual harassment; and 3) Hudson was deliberately indifferent to the harassment. The Court noted that actionable peer harassment is unavoidable in schools and districts are not expected to engage in particular disciplinary action to avoid Title IX liability. However, the Sixth Circuit has now established that "where a school district has knowledge that its remedial action is inadequate and ineffective, it is required to take reasonable action in light of those circumstances to eliminate the behavior." Thus, school districts take heed: student-on-student harassment is a problem that you must effectively solve in order to avoid Title IX liability

As a result District should:

1. Take all complaints of peer-on-peer harassment seriously
2. Immediately investigate and document all complaints
3. Take prompt and effective steps to address harassment
4. Implement a procedure to verify that the actions taken are working