

Appendix C: Other Reference Materials

- Letter from Richard W. Riley,
U.S. Secretary of Education, August 31, 1998,
regarding *Gebser v. Lago Vista*
- State Hate Crimes Statutory Provisions



THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

August 31, 1998

Dear Superintendent of Schools:

An important shared goal of educators throughout our country is to ensure that students have a safe and secure environment that is conducive to learning and that affords students equal educational opportunities regardless of their sex. School districts have a critical responsibility for preventing and eliminating sexual harassment discrimination. Sexual harassment of a student, if not appropriately addressed, can have serious, detrimental consequences for the student that impedes the student's education, and constitutes a breach of trust between the school and the student and family.

A recent Supreme Court decision took notice of the "extraordinary harm" that a student suffers when subjected to sexual harassment and abuse by a teacher. The Court emphasized that such conduct by a teacher "undermines the basic purposes of the educational system." Gebser v. Lago Vista Independent School District (June 22, 1998). The Gebser decision limited the availability of damages to a student in a private Title IX lawsuit against a school district. It did not, however, alter the fundamental obligations of schools and their employees to take prompt action to address instances of sexual harassment. This letter summarizes existing obligations and the effect of the Supreme Court decision.

Title IX Prohibits Sexual Harassment Discrimination

The Department of Education's Office for Civil Rights (OCR), which has the responsibility for enforcing Title IX, recently provided educational institutions with a detailed discussion of their responsibilities to prevent and, when it occurs, remedy sexual harassment of students. A copy of the guidance is available on the Department's web site at <http://www.ed.gov/offices/OCR/sexhar00.html>.

Title IX prohibits sex-based discrimination in education programs and activities operated by schools that receive federal financial assistance. Therefore, school districts are responsible under Title IX to provide students with a nondiscriminatory educational environment. As described in the guidance, sexual harassment of a student may violate this obligation. When a responsible school employee, such as a principal or teacher, learns of possible sexual harassment discrimination by others, Title IX requires the school to immediately investigate, to take appropriate steps to end the harassment, to eliminate the effects of the harassment, and to prevent the harassment from recurring.

The Department's Title IX regulation also requires schools to have well-publicized policies against discrimination based on sex, including sexual harassment discrimination; to have effective and well-publicized procedures for students and their families to raise and resolve these issues; and to take prompt and effective action to equitably resolve sexual harassment discrimination complaints. 34 CFR Part 106.8. In addition, each school district is required to designate at least one employee to coordinate and carry out its Title IX responsibilities. *Id.* I encourage you, at the outset of the new school year, to publicize and reaffirm these policies and procedures to returning and new members of the school community, including teachers, counselors, administrators, parents, and students.

The Gebser Decision Addresses Private Damages Claims

The Court's recent decision in Gebser was limited to private Title IX lawsuits for money damages. The Court in Gebser ruled that a private plaintiff in a court action can obtain money damages against a school district under Title IX if a school official who has the authority to take corrective action has actual notice of sexual harassment and is deliberately indifferent to it. The Gebser decision expressly distinguished the limits on private recovery of money damages from the Department of Education's enforcement of Title IX. Thus, the obligations of schools that receive federal funds to address instances of sexual harassment have not changed as a result of the Supreme Court decision. School districts must continue to take reasonable steps to prevent and eliminate sexual harassment discrimination. In addition, pursuant to its published guidance, OCR will continue to enforce Title IX in this area, including by investigating complaints alleging sexual harassment discrimination.

OCR Offers Technical Assistance

Sexual harassment discrimination can have serious, detrimental consequences for students. Thus, school districts need to take the problem of sexual harassment very seriously. In addition to having well-publicized policies and procedures in place, schools should be taking preventative steps to identify problems — such as training staff to recognize and report potential harassment — and to follow up on any information indicating potential discrimination. OCR welcomes the opportunity to provide individual schools upon request with technical assistance and practical guidance to develop preventative programs.

The Department is committed to continuing our leadership role in ensuring equal educational opportunities for all students. The Department will continue to work with schools, parents and other interested parties to ensure that schools have effective policies and procedures in place to prevent sexual harassment. I have attached a contact list for OCR's enforcement offices for your convenience.

Thank you for your interest in this critical issue.

Yours sincerely,

Richard W. Riley

[Enclosure omitted]

State Hate Crimes Statutory Provisions

(ALABAMA through MISSISSIPPI)

	AL	AK	AZ	AR	CA	CO	CT	DC	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS
Bias-Motivated Violence and Intimidation	•	•	•		•	•	•	•	•	•			•	•		•			•	•	•	•	•	•	•
Civil Action				•	•	•	•	•	•	•			•	•		•			•	•	•	•	•	•	•
Criminal Penalty	•	•	•		•	•	•	•	•	•			•	•		•			•	•	•	•	•	•	•
Race, Religion ¹ , Ethnicity	•	•	•		•	•	•	•	•	•			•	•		•			•	•	•	•	•	•	•
Sexual Orientation			•		•		•	•	•	•				•		•			•	•	•	•	•	•	•
Gender			•		•			•						•		•			•	•	•	•	•	•	•
Other ²	•	•	•		•			•						•		•			•	•	•	•	•	•	•
Institutional Vandalism	•		•	•	•	•	•	•	•	•	•			•	•		•		•	•	•	•	•	•	•
Data Collection ³			•		•		•	•		•				•		•			•	•	•	•	•	•	•
Training for Law Enforcement Personnel ⁴			•		•									•		•			•	•	•	•	•	•	•

1. The following states also have statutes criminalizing interference with religious worship: CA, DC, FL, ID, MD, MA, MI, MN, MS, MO, NV, NM, NY, NC, OK, RI, SC, SD, TN, VA, WV.

2. "Other" includes mental and physical disability or handicap (AL, AK, AZ, CA, DC, DE, IL, IA, LA, ME, MA, MN, NE, NV, NH, NJ, NY, OK, RI, VT, WA, WI), political affiliation (DC, IA, LA, WV) and age (DC, IA, LA, VT).

3. States with data collection statutes which include sexual orientation are AZ, CA, CT, DC, FL, IL, IA, MD, MN, NV, OR and WA; those which include gender are AZ, DC, IL, IA, MN, WA.

4. Some other states have regulations mandating such training.

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State Hate Crimes Statutory Provisions (continued)

(MISSOURI through WYOMING)

	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Bias-Motivated Violence and Intimidation	5	.	.	.	.	.	.	.	.	.	.	.	6	7	.	.	.	.	.	.
Civil Action
Criminal Penalty
Race, Religion ¹ , Ethnicity
Sexual Orientation
Gender
Other ²
Institutional Vandalism
Data Collection ³
Training for Law Enforcement Personnel ⁴

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5. New York State law provides penalty enhancement limited to the crime of aggravated harassment.

6. The Texas Statute refers to victims selected "because of the defendant's bias or prejudice against a person or group."

7. The Utah Statute ties penalties for hate crimes to violations of the victim's constitutional or civil rights.