SERIES: 1998-99
CIRCULAR LETTER: C-28

TO: Superintendents of Schools

FROM: Theodore S. Sergi, Commissioner of Education

DATE: June 4, 1999

SUBJECT: Davis v. Monroe County Board of Education

On May 24, 1999, the United States Supreme Court issued its 5-4 decision in Davis v. Monroe County Board of Education. A majority of the Court held that a school board could be sued under Title IX for student-on-student sexual harassment. However, in order to prevail in the private Title IX action, a **plaintiff would have to establish that the school board had actual knowledge of the sexual harassment and was deliberately indifferent to the sexual harassment**. Additionally, the sexual **harassment has to be so severe, pervasive and objectively offensive that it deprived the plaintiff of access to educational opportunities or benefits.**

As I noted in attached Circular Letter C-23 (January 30, 1998): "Each local school district must also prohibit harassment based on race, color, sex, religion, national origin or sexual orientation through the development and enforcement of appropriate student and staff behavior and disciplinary policies. No student or group of students should suffer the indignities of harassment which jeopardizes their right to a free public education." This statement is underscored by the Supreme Court's decision in Davis.

The facts alleged in the lawsuit involve a fifth-grade girl who was repeatedly harassed for many months by a male classmate. The harassment included inappropriate attempted sexual touching, vulgar conduct and vulgar statements. Each of the incidents occurred in school and each was reported immediately to various teachers. Allegedly, her grades fell and she experienced emotional problems as a result of the harassment. The plaintiff was not the only girl harassed.

Notwithstanding the numerous reports to the teachers, it was alleged that no disciplinary action was taken against the boy. The harassment stopped when the boy "was charged with, and pleaded guilty to, sexual battery for his misconduct."

The Court ruling addressed only whether a cause of action existed under Title IX, not whether the alleged facts in the case met the standard for the cause of action. However, the Court did provide an example that provides guidance to districts. It is worth repeating here:

> The most obvious example of student-on-student sexual harassment capable of triggering a damages claim would thus involve the overt, physical deprivation of access to school resources. Consider, for example, a case in which male students physically threaten their female peers every day, successfully preventing the female students from using a particular school resource—an athletic field or a computer lab, for instance. District administrators are well aware of the daily ritual, yet they deliberately ignore requests for aid from the female students wishing to use the resource. The district's knowing refusal to take any action in response to such behavior would fly in the face of Title IX's core

> principles, and such deliberate indifference may appropriately be subject to claims for monetary damages. It is not necessary, however, to show physical exclusion to demonstrate that students have been deprived by the actions of another student or students of an educational opportunity on the basis of sex. Rather, a plaintiff must establish sexual harassment of students that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities.

Addressing a concern expressed by the minority, and noting its often repeated standard, the majority found that: "Damages are not available for simple acts of teasing and name-calling among school children, however, even where these comments target differences in gender. Rather, in the context of student-on-student harassment, damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect."

The Davis decision may be refined by subsequent court decisions. However, if we work toward eliminating all types of harassment and biases in our schools, neither Davis nor its successor cases should present serious problems for Connecticut public schools.

I recommend that you contact your board's legal counsel should you have specific questions on how the Supreme Court's decision might affect your district. Additionally, you may wish to read more than is contained in our abstract. The case, in its entirety, is available, through a website link, on our website at www.state.ct.us/sde. Go to Legal and Governmental Affairs and scroll down to Davis v. Monroe County Board of Education.

Recently, the U.S. Department of Education issued the document entitled, *Protecting Students from Harassment and Hate Crime.* We have enclosed a copy for your use.

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