



ATIXA Case Law Summary Newsletter October 22, 2020

[M.M. v. San Juan Unified Sch. Dist., No. 219CV00398TLNEFB, 2020 WL 5702265 \(E.D. Cal. Sept. 24, 2020\)](#)

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Summary of Procedural History:

M.M., a nine-year-old female student in the San Juan Unified School District (SJUSD), filed suit alleging SJUSD subjected M.M. to intentional discrimination based upon her sex in violation of Title IX and California state law. SJUSD moved to dismiss the complaint, and the motion to dismiss was denied.

Summary of Facts:

M.M. experienced escalating verbal and physical abuse from E.H., a male student in her class. This included pushing, shoving, kicking, punching, and spitting, as well as crude sexual comments about M.M.'s body. E.H. physically assaulted M.M. and groped her breasts under her shirt on four separate occasions. M.M.'s teacher, Zamora, and M.M.'s parents made multiple reports to Smith, the school principal, but no action was taken.

Summary of Significance:

The court dispensed with Defendant's attempts to rebut the "sexual" nature of the underlying misconduct by pointing to *Fitzgerald*¹, *Davis*², and other cases finding elementary-school-aged students could commit sexual offenses.³ The court also found that M.M.'s deliberate indifference claims were viable when there was no response from the school to reported misconduct, but also when the response was minimal or "shown to be ineffective."⁴ The court indicated that the mere fact that the school allowed M.M. and E.H. to remain in class together and assigned M.M. to ride in the same car as E.H. on a field trip "could reasonably be found to constitute pervasive, severe, and objectively offensive harassment so as to deny [M.M.] equal access to school resources and opportunities."⁵

Key Take-Aways:

- Zamora notified M.M.'s parents and Smith, but did not take any action to stop, prevent, or remedy the behavior, which included verbal and physical sexual misconduct. While pre-2020 cases focus on the systemic failure of response by schools and districts, that may change as a result of the new Title IX Regulations that went into effect August 14, 2022. Going forward, courts may adopt these regulatory standards, which have the force and effect of law. As a result, responses like Zamora's might be viewed as deliberate indifference because the Department of Education considers all school employees, including teachers, to be officials with authority to address and implement corrective measures for sexual harassment, including separating students in classrooms, implementing enhanced supervision on field trips, contacting parents, etc. This would be a significant shift from the way courts currently look to senior administrative failures of response as the litmus test for liability.
- The court repeatedly characterized SJUSD's response as "minimal" and ineffective. Regardless of new regulations which do not govern this case, the court had evidence here to support its finding that Principal Smith

¹ *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, (2009).

² *Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, (1999).

³ Indeed, the high court clearly established that even a young student's behavior may rise to the level of the 'severe, pervasive, and objectively offensive behavior' contemplated under Title IX, *M.M. v. San Juan Unified Sch. Dist.*, at *5.

⁴ "Thus, continuing to utilize the same response after it has been shown to be ineffective, not responding at all, or utilizing a 'minimalist response' may demonstrate deliberate indifference," *Id.*, at *7.

⁵ *Id.*

failed to take action to stop and prevent the behavior that was known to SJUSD and had a responsibility to do so.

- The fact that in 2020 we still have building-level supervisors failing to take action on complaints of serious sexual assaults of students speaks to a pervasive level of undertraining that impedes the ability of many school districts to comply with Title IX. As with most such cases, this one will now likely result in a settlement between the family of M.M. and the district, but for so many families, that kind of settlement is too little, too late to heal the wounds that young children should never have to experience in school environments.
- As a result of the 2020 Title IX regulations, all K-12 schools are now explicitly required to provide training to school employees to ensure that appropriate responses are implemented in the face of actual notice of acts of sexual harassment or discrimination in schools.
- In this case, as in many others, supportive measures may have functioned as an effective stopgap. Supportive measures are non-disciplinary, specifically tailored actions that stop the alleged behavior and prevent its recurrence. In many cases they limit the school's liability to due process and discrimination claims. Short of concluding that SJUSD should have investigated or otherwise "done something about" E.H., the court found the lack of effective action – even if it wasn't disciplinary action – sufficient to deny the school's motion to dismiss.

Keywords: Title IX, negligence, harassment, student-on-student, deliberate indifference, minimal response, ineffective response, K-12

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