

CORPORATE DISCLOSURE STATEMENT

No *amici* have parent corporations or are publicly-held companies.

TOC/TOA

STATEMENT OF *AMICI CURIAE*

National Women's Law Center (NWLC) is a non-profit legal advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities since its founding in 1972. Because equal access to education in an environment free of sexual harassment is essential to full equality, NWLC seeks to ensure that no individual is denied educational opportunities based on sex and that all individuals enjoy the full protection against sex discrimination promised by federal law.

Amici are a collection of civil rights groups and public interest organizations committed to preventing, combating, and redressing sexual harassment in schools. NWLC and other *amici* therefore have an interest in helping this Court understand the necessity of protecting student-victims of sexual harassment through enforcement of Title IX. Descriptions of the other *amici* are included in an appendix.

No party or its counsel authored this brief in whole or part, and no person or entity other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. Counsel for Appellants [did not consent/consented] to the filing of this brief.

Amici concurrently submit herewith their Motion for Leave to File an *Amicus Curiae* Brief.

INTRODUCTION

This case is about three young women—Emily Kollaritsch, Jane Roe 1, and Shayna Gross—who suffered horrific sexual assaults by male students while they were at Michigan State University (“MSU”).¹ After they reported their assaults to MSU, the University failed to conduct prompt investigations; failed to provide the young women with any services, academic accommodations, or safety plans to allow them to continue to attend classes and activities without fear of running into their assailants; and failed to provide the victims with a fair process by refusing to inform them of their rights to participate in hearings or appeals. In fact, MSU told these survivors that what happened “was not that bad.”

Because of MSU’s inadequate response, each woman feared for her safety. None of them could leave her dorm room without facing the ever-present threat of running into her assailant on campus, or worse—further victimization at a University that seemed to care nothing for her safety or bodily autonomy. Understandably, these women withdrew into themselves. They avoided social events, stopped going to class, and left their social circles. Their grades slipped. They missed work. As the district court correctly held, these facts are more than sufficient to state a claim that MSU was deliberately indifferent to known sexual

¹ The fourth plaintiff’s Title IX claim was dismissed by the district court.

harassment (which includes sexual assault) that interfered with Plaintiffs' ability to access educational opportunities, in violation of Title IX.

In this interlocutory appeal, however, MSU remarkably argues that it can only be held liable under Title IX if its deliberate indifference caused the young women to be sexually assaulted or harassed *again*. This perverse argument distorts the Supreme Court's holding in *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), and if accepted, would subject students to the very discrimination that Title IX was enacted to combat. MSU's argument also runs counter to the very text and purpose of Title IX, which was passed to ensure that no student is denied educational opportunities on the basis of sex. That is precisely why Title IX requires schools to address the hostile educational environment that results from sexual harassment and assault. Plaintiffs have sufficiently alleged that MSU failed to do so here.

Nor does MSU's argument on appeal make sense as a matter of policy. Sexual assault is prevalent in schools across the country and interferes with students' ability to access and benefit from educational opportunities. The highly traumatic nature of sexual assault and the effects it has on its victims causes a hostile educational environment where survivors fear for their safety and often stop attending classes and activities or leave school altogether. Title IX requires schools to address the hostile educational environment and injuries caused by sexual

harassment and assault, even if the victim is not further harassed or assaulted.

When a school fails to do so, as MSU did here, it exacerbates the harms that Title IX seeks to prevent. Thus, the district court correctly held that plaintiffs pled sufficient facts to state Title IX claims because MSU was deliberately indifferent to their reported sexual assaults and the resulting hostile educational environment that denied them educational opportunities.

ARGUMENT

I. MSU's Argument That It Is Not Liable Because Plaintiffs Did Not Suffer Further Assaults or Harassment Must Be Rejected.

When Plaintiffs reported their sexual assaults, MSU failed to take reasonable steps to investigate promptly, ensure their safety, and address the traumatic toll the assaults took on the victims as they sought to continue their education on the same campus as their assailants. MSU's failures caused significant distress for these young women, who experienced academic and social problems because they feared for their safety. MSU now insists that it should avoid liability because Plaintiffs were by chance—not owing to any responsive action by MSU—not sexually assaulted a second time. MSU's argument is based on an incorrect reading of the Supreme Court's decision in *Davis*, and would sanction indifference and inaction rather than incentivize the proactive measures necessary to comply with Title IX.

Specifically, MSU attempts to add an element to the framework set forth by the Supreme Court in *Davis* by arguing that Plaintiffs have to show that they

suffered further harassment after they reported their sexual assaults to MSU. While at least one Plaintiff did in fact suffer further retaliatory harassment to which MSU was again deliberately indifferent, the Supreme Court’s opinion in *Davis* does not require that students be harassed or assaulted again after an initial incident to trigger a school’s duty to address the hostile educational environment that results. The law requires a reasonable response to the *first* report of harassment or assault.

In *Davis*, the Supreme Court made clear that schools subject students to discrimination under Title IX, and open themselves up to monetary liability, when the following elements are established: (1) the sexual harassment is severe, pervasive, and objectively offensive such that it deprives the plaintiff of access to educational opportunities or benefits provided by the school; (2) the funding recipient had actual knowledge of the sexual harassment; and (3) the funding recipient was deliberately indifferent to the harassment—in other words, its response to the harassment was clearly unreasonable in light of the known circumstances. 526 U.S. at 633, 649-50.

The critical focus of the *Davis* inquiry is whether the school took reasonable steps in response to a reported incident of harassment or assault, not whether the survivor was assaulted or harassed a second time. The language in *Davis* on which MSU relies—that a school’s deliberate indifference must “cause [students] to undergo harassment or make them liable or vulnerable to it”—naturally reads as

referring to two separate categories, only one of which is necessary: (i) harassment that a student has in fact undergone, or (ii) future harassment to which the student is “liable or vulnerable.” The First Circuit agreed when it rejected a lower court decision accepting the erroneous argument MSU advances in this case. To explain its reversal, the First Circuit wrote that, in *Davis*, “the Court stated that funding recipients may run afoul of Title IX *not merely* by ‘caus[ing]’ students to undergo harassment *but also* by ‘mak[ing] them liable or vulnerable’ to it.” *Fitzgerald v. Barnstable Sch. Comm.*, 504 F.3d 165, 172 (1st Cir. 2007), *rev’d and remanded on other grounds*, 555 U.S. 246 (2009) (emphasis added). Thus, a student need not be harassed again for a school to be liable for its deliberate indifference if the school made her “vulnerable or liable” to future harm. *See also Takla v. Regents of the Univ. of California*, No. 15-CV-04418, 2015 WL 6755190, at *4 (C.D. Cal. Nov. 2, 2015) (“Given that the phrase, ‘cause [students] to undergo’ harassment already contains an element of causation and that the phrase, ‘make liable and vulnerable’ would be redundant if construed to require further harassment, the Court is not persuaded that [the university’s] interpretation is correct.”).

The clear meaning of the *Davis* line in question is further illuminated by the surrounding text discussing the range of misconduct for which a school can be liable when it has not engaged in harassment directly. *Davis* does not require Plaintiffs to prove anything apart from deliberate indifference to known peer

harassment (which includes sexual assault) that creates a hostile educational environment. As the Court stated in explaining the language on which MSU relies: “We . . . conclude that recipients of federal funding may be liable for ‘subject[ing]’ their students to discrimination where the recipient is deliberately indifferent to known acts of student-on-student sexual harassment and the harasser is under the school’s disciplinary authority.” *Davis*, 526 U.S. at 646-47.

In addition, the Court in *Davis* stated with respect to Title IX: “The statute makes clear that, whatever else it prohibits, students must not be denied access to educational benefits and opportunities on the basis of gender.” *Davis*, 526 U.S. at _____. Thus, while a school is certainly liable in money damages if its deliberate indifference to known harassment causes further harassment, that is not the only situation in which a school is liable. A school is also liable for damages under Title IX if it fails to address a hostile educational environment resulting from a single known assault, because that hostile environment denies its victim education opportunities on the basis of gender. MSU’s failure to take reasonable action in response to the reported sexual assaults is precisely the sort of “deliberate indifferen[ce] to known . . . sexual harassment” that subjects students to discrimination. Thus, Plaintiffs need allege nothing more.

MSU’s contrary position requires a tortured reading of “liable or vulnerable” in clear conflict with the surrounding text and *Davis*’s overarching approach. Not

surprisingly, numerous courts have rejected the argument MSU advances, correctly holding that a victim need not be sexually assaulted again as a result of a school's deliberate indifference to establish liability under Title IX. *See, e.g., Fitzgerald*, 504 F.3d at 172 (stating that single instance of peer-on-peer harassment can form basis for Title IX liability if incident is serious enough and institution's response, after learning of it, unreasonable enough to have effect of denying access to educational program or activity); *Williams v. Bd. of Regents of Univ. Sys. of Georgia*, 477 F.3d 1282, 1297 (11th Cir. 2007) (holding school may be liable under Title IX where university fails to timely respond to sexual assault, even if student withdraws from school as a result and so experiences no further harassment); *Wells v. Hense*, 235 F. Supp. 3d 1, 8 (D.D.C. 2017) ("Title IX does not require that a defendants' deliberate indifference lead to subsequent actionable harassment."); *Doe v. Baylor Univ.*, 240 F. Supp. 3d 646, 660 (W.D. Tex. 2017), motion to certify appeal denied, No. 6:16-CV-173-RP, 2017 U.S. Dist. LEXIS 65498 (W.D. Tex. May 1, 2017) ("[T]he discriminatory harm can include the harm faced by student-victims who are rendered vulnerable to future harassment . . ."); *Spencer v. Univ. N.M. Bd. of Regents*, No. 15-CV-00141, 2016 WL 10592223, at *16 (D.N.M. Jan. 11, 2016); *Karasek v. Regents of the Univ. of California*, No. 15-CV-03717, 2015 WL 8527338, at *12 (N.D. Cal. Dec. 11, 2015) (citing and joining cases that "recognize that it is possible for a plaintiff to bring a Title IX

claim against an educational institution even in the absence of any further affirmative acts of harassment by the alleged harasser or other students or faculty”); *Takla*, 2015 WL 6755190, at *4 (“[P]lacing undue emphasis on whether further harassment actually occurred . . . would penalize a sexual harassment victim who takes steps to avoid the offending environment . . .”).

Vulnerability to harassment, per *Davis*, is discrimination enough under Title IX. When a sexual assault victim is afraid to leave her dormitory because she risks encountering her assailant on campus, or being assaulted or harassed a second time, and a university ignores her plight, the university is deliberately indifferent to a “hostile environment that effectively deprive[s] [the survivor] of the educational opportunities or benefits provided by the school.” *Doe v. Derby Bd. of Educ.*, 451 F. Supp. 438, 444 (D. Conn. 2006) (quoting *Kelly v. Yale Univ.*, No. 01-CV-1591, 2003 WL 1563424, at *3 (D. Conn. Mar. 26, 2003)). To hold otherwise would turn Title IX on its head and add insult to injury by telling survivors of sexual assault that their school may ignore the resulting hostile educational environment with impunity unless they happen to be assaulted or harassed again. Quite simply, “In the context of Title IX, there is no ‘one free rape’ rule.” *Spencer*, 2016 WL 10592223, at *16 (internal quotations omitted).

Additionally, the cases MSU relies on to argue otherwise are inapposite. First, none of the Sixth Circuit cases that MSU cites address the question before

this Court. As the district correctly found, neither *M.D. v. Bowling Green Independent School District*, 709 F. App'x 775 (6th Cir. 2017) nor *Noble v. Branch Intermediate School District*, No. 4:01-cv-58, 2002 U.S. Dist. LEXIS 19600 *67 (W.D. Mich. Oct. 9, 2002), *aff'd*, 112 F. App'x 507 (6th Cir. 2004), addresses, let alone supports, the argument MSU propounds about needing to show further harassment. Rather, this Court held that the schools in those cases were not deliberately indifferent given that they took immediate action after learning of the sexual assaults to investigate, impose sanctions against the perpetrators, and address the resulting hostile educational environment. *See also Stiles v. Grainger Cty. Bd. of Educ.*, 819 F.3d 834 (6th Cir. 2016) (finding no deliberate indifference where school district investigated promptly and thoroughly, disciplined students, and took “proactive steps to reduce opportunities for future harassment”); *Thompson v. Ohio State Univ.*, 639 F. App'x 333 (6th Cir. 2016) (finding no deliberate indifference where school investigated racial discrimination complaint and addressed errors plaintiff raised with findings); *Pahssen v. Merrill Cmty. Sch. Dist.*, 668 F.3d 356 (6th Cir. 2012) (finding no deliberate indifference where school expelled student accused of sexual assault one month after assault).

Second, MSU's reliance on other circuit court decisions also fails because they turn on the schools' deliberate indifference to the hostile educational environment, and any mention of the fact that there was no further harassment is

dicta and simply used to support the court's finding that the actions taken by the school were effective and thus not clearly unreasonable. In fact, *Williams v. Bd. of Regents of Univ. Sys. of Georgia*, 477 F.3d 1282 (11th Cir. 2007), actually supports Plaintiffs' claims here. In that case, the court allowed the plaintiff's Title IX claim to proceed, holding that the university acted with deliberate indifference in waiting almost 11 months to take corrective action in response to her reported rape and sexual assault by fellow students, and failing to take any precautions that would prevent future attacks from the plaintiff's assailants, even though the plaintiff herself withdrew from the university the day after she was raped and therefore did not experience further harassment. The court held that the university's deliberate indifference "subjected the plaintiff to *discrimination*." *Id.* at 1293 (emphasis added). *See also Bernard v. East Stroudsburg Univ.*, 700 Fed. App'x. 159, 163 n.3 (3d Cir. 2017) (affirming district court decision of no deliberate indifference where university conducted investigation promptly and suspended school official accused of sexual harassment); *Escue v. Northern OK College*, 450 F.3d 1146, 1155 (10th Cir. 2006) (finding no deliberate indifference where university removed plaintiff from harassing environment, immediately questioned two peers and harasser, and determined to prevent harasser from teaching any other classes after semester ended); *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000) (finding, without addressing *Davis*' vulnerability language, no deliberate

indifference because school year had ended by time students reported harassment, and noting only in dicta that no further harassment occurred).

II. As the District Court Properly Concluded, Plaintiffs Adequately Pleaded a Hostile Educational Environment that Denied Them the Benefits of an Education at MSU.

Under Title IX, schools must take action to address sexual assault and the hostile environment it creates, including the specific effects on the victim's access to educational opportunities. As explained in the preceding section, courts have recognized that the risk that a student may encounter her alleged rapist on campus can, by itself, constitute a hostile environment. This is not surprising—a student who fears for her safety on campus is unlikely to realize the full benefits of her education.

In the instant case, when Plaintiffs reported their sexual assaults to MSU, the University took no steps to ensure Plaintiffs' safety and provide them with necessary accommodations and services. Rather, the University did nothing for months on end, allowing the assailants to remain on campus or return to campus. (Am. Com. ¶¶ 33; 35; 51; 55; 90; 98). This lack of action by MSU constituted deliberate indifference to known harassment, and it exacerbated the harms that Plaintiffs faced and created a hostile environment that denied them the benefits of an education. In addition to the trauma from the assaults, Plaintiffs were forced to continue their educations, fearful and unprotected, on the same campus as their

rapists. Plaintiffs stopped going to class, their GPAs dropped, they withdrew from social events and clubs, and they missed work. (Am. Com. ¶¶ 68; 91; 109). These facts are more than sufficient to state a claim for deliberate indifference under Title IX. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (holding that at motion to dismiss stage the court must accept allegations in complaint as true and draw all inferences in favor of plaintiffs).

MSU's inaction stands in stark contrast to how other schools have responded in similar circumstances—including establishing response and grievance procedures, providing mental health counseling and academic support, and instituting informal measures to keep victims separate from their assailants. *See Alexandra Brodsky, Against Taking Rape “Seriously”: The Case Against Mandatory Referral Laws for Campus Gender Violence*, 53 Harv. C.R.-C.L. L. Rev. 131, 134-35 (Mar. 30, 2018). A review of the case law also reveals how schools *are* able to take action in response to reports of sexual assault. For example, in *Rost v. Steamboat Springs RE-2 School District*, 511 F. 3d 1114 (10th Cir. 2008), while the school's response was by no means exemplary, the Tenth Circuit nevertheless found that the school was not deliberately indifferent when it “promptly commenced an extensive investigation” and worked with the plaintiff's mother “to find safe educational alternatives for” the minor victim, including private tutoring. *Id.* at 1124. As the Court there wrote, “[t]his is not a situation

where the school district learned of a problem and did nothing,” *Id.* at 1121-22, as MSU did in the instant case.

These cases demonstrate the wide variety of remedial steps schools can and should, at a minimum, take in order to ensure that students are not denied equal access to educational opportunities as a result of sexual assault, as Title IX requires. But schools need not engage in a guessing game: the steps taken by the schools in the above cases are consistent with express guidance on Title IX and sexual harassment issued by the Department of Education in 1997 and 2001. This guidance highlights those “actions that schools should take to prevent sexual harassment or to address it effectively if it does occur.” *See* Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 66 Fed. Reg. 5512, at 2 (Jan. 19, 2001), <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf> (“2001 Guidance”); Office for Civil Rights, *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 62 Fed. Reg. 12034, 12042 (Mar. 13, 1997) (“1997 Guidance”). For example, a school should explain the avenues for informal and formal action, counsel or warn the harasser, and/or make any necessary arrangements separating the harasser from the victim. 2001 Guidance at 15-16. According to OCR, “[r]esponsive measures . . . should be

designed to minimize, as much as possible, the burden on the student who was harassed.” *Id.* at 16.

As recently as November 2017, OCR concluded that the State University of New York violated Title IX by failing to conduct an investigation after receiving information about an off-campus sexual assault and failing to address the effects of the assault on the victim’s education. *See* Andrew Kreighbaum, *Title IX Failures*, Inside Higher Ed. (January 19, 2018), <https://www.insidehighered.com/news/2018/01/19/feds-find-buffalo-state-failed-investigate-alleged-sexual-assault-created-hostile> (providing PDF copy of letter from Timothy Blanchard, OCR, to Katherine S. Conway-Turner, President of Buffalo State, State University of New York dated November 2, 2017, regarding Case No. 02-15-2085). Importantly, that the victim was not harassed again after her report did not absolve the school of responsibility, as MSU erroneously argues should be the case. OCR described the types of steps the university should have taken not only to prevent future harm but also to address the educational impact of the reported assault, which the school had a duty to remediate regardless of whether the victim faced additional harassment. These included “counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties,

changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.” *Id.*

MSU’s failure to take any steps to prevent future harm to Plaintiffs or to address the educational impact of the reported assaults on the Plaintiffs, despite their repeated requests for help, reflects deliberate indifference in violation of Title IX.

III. Title IX’s Requirement that Schools Address Sexual Harassment is Essential to Ensuring a Safe Learning Environment Free of Sex Discrimination.

A. Sexual Assault Is Prevalent in Schools Across the Country and Interferes with Students’ Access to Educational Opportunities.

Sadly, despite criminal prohibitions as well as civil rights protections, sexual assault remains prevalent in schools, causing lasting harm to students and interfering with their ability to benefit from educational opportunities. Numerous studies report that at least one in five women suffers sexual assault or attempted sexual assault in college. *See, e.g.,* Christopher Krebs et al., *Campus Climate Survey Validation Study Final Technical Report* 73, 74 (Jan. 2016), available at <https://www.bjs.gov/content/pub/pdf/ccsvsftr.pdf>; *Poll: One in 5 women say they have been sexually assaulted in college*, THE WASHINGTON POST (June 12, 2015), available at <https://www.washingtonpost.com/graphics/local/sexual-assault-poll>; David Cantor et al., *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct* 13 (Sept. 2015), available at <https://www.aau.edu/key->

issues/aaucclimate-survey-sexual-assault-and-sexual-misconduct-2015;; *see also* Dana Bolger, *Gender Violence Costs: Schools' Financial Obligations Under Title IX*, 125 Yale L.J. 2106, 2109 (May 2016); Carol E. Jordan, et al., *An Exploration of Sexual Victimization and Academic Performance Among College Women*, 38 Univ. of Ky. Office for Policy Studies on Violence Against Women Pub'ns 1, 3 (2014) (citing additional studies).

While more data is needed on sexual assault in elementary and secondary schools, a National Women's Law Center (NWLC) 2017 national survey² found that more than 1 in 5 girls ages 14-18 were sexually assaulted. In addition, the most recent Civil Rights Data Collection by the Department of Education's Office for Civil Rights revealed public schools and school districts reported 11,200 incidents of sexual assault, including rape, during the 2015-2016 school year. Office for Civil Rights, *2015–16 Civil Rights Data Collection: School Climate and Safety 2* (Apr. 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>. And that number does not fully capture the extent of the problem due to the known vast underreporting of sexual assault, as well as lack of data for K-12 private schools.

² See Kayla Patrick and Neena Chaudhry, National Women's Law Center, *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Harassment and Sexual Violence* 1 (2017), <https://nwlc.org/resources/stopping-school-pushout-for-girls-who-have-suffered-harassment-and-sexual-violence/>.

Social science research also confirms the obvious: sexual assault is highly traumatic and negatively affects a student's ability to access the benefits of education. Bolger, *supra*, at 2111. Studies show student-victims often fear encountering their perpetrators and thus employ a number of strategies to avoid them, including skipping classes, avoiding shared spaces, hiding in dorm rooms, and transferring or dropping out of college. Bolger, *supra*, at 2109-10; Jordan, *supra*, at 5-6; see Office for Civil Rights, *Dear Colleague Letter* (Apr. 4, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>. One study about the effects of sexual assault, including rape, on the academic performance of college women revealed that rape survivors saw a significant drop in their GPAs following the attack: 14.3% of women raped during their first semester of college ended that semester with a GPA below 2.5, compared to 6% of women who were not raped. Jordan, *supra*, at 18-19.³

Equally significant are the emotional and mental distress and monetary harms that student-victims suffer following a sexual assault. Many suffer from depression, post-traumatic stress disorder, eating disorders, anxiety attacks, flashbacks, nightmares, and attempts at suicide or self-harm. Bolger, *supra*, at

³ The research also showed that although experiencing sexual assault in the first semester predicted lower GPA at the end of the semester but not at the end of the following semester. The researchers provide two possible explanations – that the women's lives stabilized or women dropped out due to decline in grades.

2109-10; Jordan, *supra*, at 5-6.⁴ These traumatic emotional tolls exacerbate the monetary harms: Student-victims are forced to bear not only medical costs, but the long-term, career-affecting costs associated with decreased academic performance—including withdrawal of scholarship or financial aid packages, additional tuition necessary to retake a course, academic probation, and expulsion. For example, one undergraduate described how after her school “grossly mishandled” her case, she took three years off from school; lost \$30,000 in tuition when she transferred schools; spent an extra \$2,000 to live off-campus; and spent over \$7,000 over three years on counseling.⁵ Bolger, *supra*, at 2115-18.

B. Title IX Protects Students from Being Denied Access to Educational Opportunities as a Result of Sexual Harassment and Assault.

The well-documented deleterious educational impact of sexual assault underscores why Title IX requires schools to take action to address it—not merely to prevent reoccurrence but to remediate the discriminatory effects of past violence, as MSU failed to do. Title IX protects students from being denied access to the benefits of education on the basis of their sex, benefits that are stripped from

⁴ A survey conducted by the NWLC further revealed problems with concentration, behavior, and physical altercations among school-age girls as a result of experiencing sexual harassment, including sexual violence. *See* Patrick and Chaudhry, *supra*, at 8.

⁵ Another survivor reported incurring an additional \$100,000 in expenses after her assault. *Id.* at 2116-17.

student-victims of peer sexual assault when a school fails to take appropriate corrective action in response to the hostile environment that results. *See Davis*, 526 U.S. at 653; *Cohen v. Brown Univ.*, 991 F.2d 888, 894 (1st Cir. 1993); *C.R.K.*, 176 F. Supp. 2d at 1163; *Doe v. Oyster River*, 992 F. Supp. 467, 475 (D.N.H. 1997); *S.S. v. Alexander*, 177 P.3d 724, 744 (Wash. Ct. App. 2011).

By its very language, Title IX seeks to address the consequences of sex-based discrimination in educational settings—whether it be exclusion from participation, denial of benefits, or any other form of discrimination in a federally funded educational program or activity. 20 U.S.C. § 1681(a). The Supreme Court has expansively interpreted Title IX consistent with this basic premise, noting that courts “must accord Title IX a sweep as broad as its language.” *See North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 520-21 (1982); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005) (“In all of these cases, we relied on the text of Title IX, which . . . broadly prohibits a funding recipient from subjecting any person to ‘discrimination’ ‘on the basis of sex.’”).

The Department of Education’s Title IX regulations also require a funding recipient, upon a finding of discrimination, to take remedial action to overcome the effects of discrimination. *See* 34 C.F.R. § 106.3. In addition, the regulations require schools to maintain grievance procedures that (1) include the “investigation of any complaint” that alleges sex discrimination; and (2) provide for a “prompt and

equitable resolution of . . . complaints.” 34 C.F.R. § 106.8. The regulations specifically impose affirmative steps on schools to address the educational impact of sex discrimination. *See* 34 C.F.R. § 106.3; *id.* § 106.1 (“The purpose of this part is to effectuate title IX . . . which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.”).

Consistent with the statute, regulations, and the Supreme Court’s decision in *Davis*, courts have held that sexual assault inherently creates a hostile environment and inflicts educational harms that schools are required to address. *M.D. v. Bowling Green Indep. Sch. Dist.*, 2017 WL 390280, at *4 (“[S]exual assault constitutes one of the most severe forms of sexual harassment imaginable and has the potential to be so traumatic that the victim is effectively denied equal access to the education opportunities or benefits provided by the school”); *Thomas v. Bd. of Trustees of the Nebraska State Colls.*, No. 12-CV-412, 2014 WL 12577381, at *4 (D. Neb. Mar. 31, 2014) (“Sexual assault is, by its very nature, the sort of thing that can be expected to interfere with a student’s ability to function at school.”); *see also Tubbs v. Stony Brook Univ.*, No. 15-CV-0517, 2016 WL 8650463, at *6 (S.D.N.Y. Mar. 4, 2016) (citing cases).

The highly traumatic nature of sexual assault and the well-documented effects it has on victims are precisely what denies victims equal access to the

benefits of their education. Even if the victim is not further harassed, the university has a responsibility to address the discriminatory injuries already caused. When a school fails to do so, as MSU did here, it exacerbates the precise harms Title IX seeks to prevent and frustrates the statute's very purpose: to eliminate sex-based discrimination and remediate its effects. *See* 34 C.F.R. § 106.1; 2001 Guidance at i; *see also* Office for Civil Rights, *Dear Colleague Letter* (Jan. 25, 2006), <https://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html> (increasing the awareness of sexual harassment and reiterating that “[p]reventing and remedying sexual harassment in schools is essential to ensuring a safe environment in which students can learn”).

CONCLUSION

For the foregoing reasons, the district court's decision should be affirmed.