harassment damages suits. The unanimity of *Franklin* here evolved into a 5–4 split, and produced a new set of rules for a school's liability under Title IX for teacher/employee harassment of a student.

GEBSER V. LAGO VISTA INDEPENDENT SCHOOL DISTRICT

524 U.S. 274 (1998)

JUSTICE O'CONNOR delivered the opinion of the Court.

The question in this case is when a school district may be held liable in damages in an implied right of action under Title IX of the Education Amendments of 1972, for the sexual harassment of a student by one of the district's teachers. We conclude that damages may not be recovered in those circumstances unless an official of the school district who at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct.

. . .

II

. . .In *Franklin*, a high school student alleged that a teacher had sexually abused her on repeated occasions and that teachers and school administrators knew about the harassment but took no action, even to the point of dissuading her from initiating charges. The lower courts dismissed Franklin's complaint against the school district on the ground that the implied right of action under Title IX, as a categorical matter, does not encompass recovery in damages. We reversed the lower courts' blanket rule, concluding that Title IX supports a private action for damages, at least "in a case such as this, in which intentional discrimination is alleged." See 503 U.S. at 74–75. *Franklin* thereby establishes that a school district can be held liable in damages in cases involving a teacher's sexual harassment of a student; the decision, however, does not purport to define the contours of that liability.

We face that issue squarely in this case. Petitioners, joined by the United States as *amicus curiae*, would invoke standards used by the Courts of Appeals in Title VII cases involving a supervisor's sexual harassment of an employee in the workplace. In support of that approach, they point to a passage in *Franklin* in which we stated: "Unquestionably, Title IX placed on the Gwinnett County Public Schools the duty not to discriminate on the basis of sex, and 'when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor "discriminates" on the basis of sex.' We believe the same rule

should apply when a teacher sexually harasses and abuses a student." *Franklin*, at 75.

Specifically, [petitioners and the United States] advance two possible standards under which Lago Vista would be liable for Waldrop's conduct. First, relying on a 1997 "Policy Guidance" issued by the Department of Education, they would hold a school district liable in damages under Title IX where a teacher is " 'aided in carrying out the sexual harassment of students by his or her position of authority with the institution,' " irrespective of whether school district officials had any knowledge of the harassment and irrespective of their response upon becoming aware. That rule is an expression of *respondeat superior* liability, *i.e.*, vicarious or imputed liability, under which recovery in damages against a school district would generally follow whenever a teacher's authority over a student facilitates the harassment. Second, petitioners and the United States submit that a school district should at a minimum be liable for damages based on a theory of constructive notice, *i.e.*, where the district knew or "should have known" about harassment but failed to uncover and eliminate it. Both standards would allow a damages recovery in a broader range of situations than the rule adopted by the Court of Appeals, which hinges on actual knowledge by a school official with authority to end the harassment.

Whether educational institutions can be said to violate Title IX based solely on principles of *respondeat superior* or constructive notice was not resolved by *Franklin*'s citation of *Meritor*. That reference to *Meritor* was made with regard to the general proposition that sexual harassment can constitute discrimination on the basis of sex under Title IX, an issue not in dispute here. In fact, the school district's liability in *Franklin* did not necessarily turn on principles of imputed liability or constructive notice, as there was evidence that school officials knew about the harassment but took no action to stop it. Moreover, *Meritor*'s rationale for concluding that agency principles guide the liability inquiry under Title VII rests on an aspect of that statute not found in Title IX: Title VII, in which the prohibition against employment discrimination runs against "an employer," explicitly defines "employer" to include "any agent." Title IX contains no comparable reference to an educational institution's "agents," and so does not expressly call for application of agency principles. [I.e., the principles governing relations between principals (like the district) and agents (like the teacher).—AU.]

In this case, moreover, petitioners seek not just to establish a Title IX violation but to recover *damages* based on theories of *respondeat superior* and constructive notice. It is that aspect of their action, in our view, which is most

critical to resolving the case. Unlike Title IX, Title VII contains an express cause of action, § 2000e–5(f), and specifically provides for relief in the form of monetary damages, § 1981a. Congress therefore has directly addressed the subject of damages relief under Title VII and has set out the particular situations in which damages are available as well as the maximum amounts recoverable. § 1981a(b). With respect to Title IX, however, the private right of action is judicially implied, and there is thus no legislative expression of the scope of available remedies, including when it is appropriate to award monetary damages. In addition, although the general presumption that courts can award any appropriate relief in an established cause of action, coupled with Congress' abrogation of the States' Eleventh Amendment immunity under Title IX, led us to conclude in *Franklin* that Title IX recognizes a damages remedy, we did so in response to lower court decisions holding that Title IX does not support damages relief at all. We made no effort in *Franklin* to delimit the circumstances in which a damages remedy should lie.

III

Because the private right of action under Title IX is judicially implied, we have a measure of latitude to shape a sensible remedial scheme that best comports with the statute. . . .To guide the analysis, we generally examine the relevant statute to ensure that we do not fashion the parameters of an implied right in a manner at odds with the statutory structure and purpose.

. . .[W]e conclude that it would "frustrate the purposes" of Title IX to permit a damages recovery against a school district for a teacher's sexual harassment of a student based on principles of *respondeat superior* or constructive notice, *i.e.*, without actual notice to a school district official. . . .As a general matter, it does not appear that Congress contemplated unlimited recovery in damages against a funding recipient where the recipient is unaware of discrimination in its programs. When Title IX was enacted in 1972, the principal civil rights statutes containing an express right of action did not provide for recovery of monetary damages at all, instead allowing only injunctive and equitable relief. It was not until 1991 that Congress made damages available under Title VII, and even then, Congress carefully limited the amount recoverable in any individual case, calibrating the maximum recovery to the size of the employer. Adopting petitioners' position would amount, then, to allowing unlimited recovery of damages under Title IX where Congress has not spoken on the subject of either the right or the remedy, and in the face of evidence that when Congress expressly considered both in Title VII it restricted the amount of damages available.

Congress enacted Title IX in 1972 with two principal objectives in mind: "to avoid the use of federal resources to support discriminatory practices" and "to provide individual citizens effective protection against those practices." *Cannon*, at 704. The statute was modeled after Title VI of the Civil Rights Act of 1964, which is parallel to Title IX except that it prohibits race discrimination, not sex discrimination, and applies in all programs receiving federal funds, not only in education programs. The two statutes operate in the same manner, conditioning an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds.

That contractual framework distinguishes Title IX from Title VII, which is framed in terms not of a condition but of an outright prohibition. Title VII applies to all employers without regard to federal funding and aims broadly to "eradicate discrimination throughout the economy." [Citation omitted—AU.] Title VII, moreover, seeks to "make persons whole for injuries suffered through past discrimination." Thus, whereas Title VII aims centrally to compensate victims of discrimination, Title IX focuses more on "protecting" individuals from discriminatory practices carried out by recipients of federal funds. *Cannon*, at 704.

. . .When Congress attaches conditions to the award of federal funds under its spending power, U.S. Const., Art. I, § 8, cl. 1, as it has in Title IX and Title VI, we examine closely the propriety of private actions holding the recipient liable in monetary damages for noncompliance with the condition. Our central concern in that regard is with ensuring "that the receiving entity of federal funds [has] notice that it will be liable for a monetary award." *Franklin*, at 74. . . .

Most significantly, Title IX contains important clues that Congress did not intend to allow recovery in damages where liability rests solely on principles of vicarious liability or constructive notice. Title IX's express means of enforcement—by administrative agencies—operates on an assumption of actual notice to officials of the funding recipient. The statute entitles agencies who disburse education funding to enforce their rules implementing the non-discrimination mandate through proceedings to suspend or terminate funding or through "other means authorized by law." 20 U.S.C. § 1682. Significantly, however, an agency may not initiate enforcement proceedings until it "has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means." *Ibid.* The administrative regulations implement that

obligation, requiring resolution of compliance issues "by informal means whenever possible," 34 CFR § 100.7(d) (1997), and prohibiting commencement of enforcement proceedings until the agency has determined that voluntary compliance is unobtainable and "the recipient . . . has been notified of its failure to comply and of the action to be taken to effect compliance," § 100.8(d); see § 100.8(c).

In the event of a violation, a funding recipient may be required to take "such remedial action as [is] deemed necessary to overcome the effects of [the] discrimination." § 106.3. While agencies have conditioned continued funding on providing equitable relief to the victim, the regulations do not appear to contemplate a condition ordering payment of monetary damages, and there is no indication that payment of damages has been demanded as a condition of finding a recipient to be in compliance with the statute. In *Franklin*, for instance, the Department of Education found a violation of Title IX but determined that the school district came into compliance by virtue of the offending teacher's resignation and the district's institution of a grievance procedure for sexual harassment complaints. 503 U.S. at 64, n. 3.

Presumably, a central purpose of requiring notice of the violation "to the appropriate person" and an opportunity for voluntary compliance before administrative enforcement proceedings can commence is to avoid diverting education funding from beneficial uses where a recipient was unaware of discrimination in its programs and is willing to institute prompt corrective measures. The scope of private damages relief proposed by petitioners is at odds with that basic objective. When a teacher's sexual harassment is imputed to a school district or when a school district is deemed to have "constructively" known of the teacher's harassment, by assumption the district had no actual knowledge of the teacher's conduct. Nor, of course, did the district have an opportunity to take action to end the harassment or to limit further harassment.

It would be unsound, we think, for a statute's *express* system of enforcement to require notice to the recipient and an opportunity to come into voluntary compliance while a judicially *implied* system of enforcement permits substantial liability without regard to the recipient's knowledge or its corrective actions upon receiving notice. Moreover, an award of damages in a particular case might well exceed a recipient's level of federal funding. Where a statute's express enforcement scheme hinges its most severe sanction on notice and unsuccessful efforts to obtain compliance, we cannot attribute to Congress the intention to have implied an enforcement scheme that allows imposition of greater liability without comparable conditions.

IV

Because the express remedial scheme under Title IX is predicated upon notice to an "appropriate person" and an opportunity to rectify any violation, 20 U.S.C. § 1682, we conclude, in the absence of further direction from Congress, that the implied damages remedy should be fashioned along the same lines. An "appropriate person" under § 1682 is, at a minimum, an official of the recipient entity with authority to take corrective action to end the discrimination. Consequently, in cases like this one that do not involve official policy of the recipient entity, we hold that a damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf has actual knowledge of discrimination in the recipient's programs and fails adequately to respond.

We think, moreover, that the response must amount to deliberate indifference to discrimination. The administrative enforcement scheme presupposes that an official who is advised of a Title IX violation refuses to take action to bring the recipient into compliance. The premise, in other words, is an official decision by the recipient not to remedy the violation. That framework finds a rough parallel in the standard of deliberate indifference. Under a lower standard, there would be a risk that the recipient would be liable in damages not for its own official decision but instead for its employees' independent actions. . .

Applying the framework to this case is fairly straightforward, as petitioners do not contend they can prevail under an actual notice standard. The only official alleged to have had information about Waldrop's misconduct is the high school principal. That information, however, consisted of a complaint from parents of other students charging only that Waldrop had made inappropriate comments during class, which was plainly insufficient to alert the principal to the possibility that Waldrop was involved in a sexual relationship with a student. Lago Vista, moreover, terminated Waldrop's employment upon learning of his relationship with Gebser. JUSTICE STEVENS points out in his dissenting opinion that Waldrop of course had knowledge of his own actions. Where a school district's liability rests on actual notice principles, however, the knowledge of the wrongdoer himself is not pertinent to the analysis.

Petitioners focus primarily on Lago Vista's asserted failure to promulgate and publicize an effective policy and grievance procedure for sexual harassment claims. They point to Department of Education regulations requiring each

funding recipient to "adopt and publish grievance procedures providing for prompt and equitable resolution" of discrimination complaints, 34 CFR § 106.8(b) (1997), and to notify students and others "that it does not discriminate on the basis of sex in the educational programs or activities which it operates," § 106.9(a). Lago Vista's alleged failure to comply with the regulations, however, does not establish the requisite actual notice and deliberate indifference. And in any event, the failure to promulgate a grievance procedure does not itself constitute "discrimination" under Title IX. Of course, the Department of Education could enforce the requirement administratively: Agencies generally have authority to promulgate and enforce requirements that effectuate the statute's non-discrimination mandate, 20 U.S.C. § 1682, even if those requirements do not purport to represent a definition of discrimination under the statute. We have never held, however, that the implied private right of action under Title IX allows recovery in damages for violation of those sorts of administrative requirements.

V

The number of reported cases involving sexual harassment of students in schools confirms that harassment unfortunately is an all too common aspect of the educational experience. No one questions that a student suffers extraordinary harm when subjected to sexual harassment and abuse by a teacher, and that the teacher's conduct is reprehensible and undermines the basic purposes of the educational system. The issue in this case, however, is whether the independent misconduct of a teacher is attributable to the school district that employs him under a specific federal statute designed primarily to prevent recipients of federal financial assistance from using the funds in a discriminatory manner. Our decision does not affect any right of recovery that an individual may have against a school district as a matter of state law or against the teacher in his individual capacity under state law or under 42 U.S.C. § 1983. Until Congress speaks directly on the subject, however, we will not hold a school district liable in damages under Title IX for a teacher's sexual harassment of a student absent actual notice and deliberate indifference. We therefore affirm the judgment of the Court of Appeals.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

The question that the petition for certiorari asks us to address is whether the Lago Vista Independent School District (respondent) is liable in damages

for a violation of Title IX of the Education Amendments of 1972 (Title IX). The Court provides us with a negative answer to that question because respondent did not have actual notice of, and was not deliberately indifferent to, the odious misconduct of one of its teachers. As a basis for its decision, the majority relies heavily on the notion that because the private cause of action under Title IX is "judicially implied," the Court has "a measure of latitude" to use its own judgment in shaping a remedial scheme. This assertion of lawmaking authority is not faithful either to our precedents or to our duty to interpret, rather than to revise, congressional commands. Moreover, the majority's policy judgment about the appropriate remedy in this case thwarts the purposes of Title IX.

I

[*Cannon* v. *University of Chicago*]. . . represented our considered judgment about the intent of the Congress that enacted Title IX in 1972. After noting that Title IX had been patterned after Title VI of the Civil Rights Act of 1964, which had been interpreted to include a private right of action, we concluded that Congress intended to authorize the same private enforcement of Title IX. As long as the intent of Congress is clear, an implicit command has the same legal force as one that is explicit.

In *Franklin* v. *Gwinnett County Public Schools,* 503 U.S. 60 (1992), we unanimously concluded that Title IX authorized a high school student who had been sexually harassed by a sports coach/teacher to recover damages from the school district. That conclusion was supported by two considerations. In his opinion for the Court, Justice White first relied on the presumption that Congress intends to authorize "all appropriate remedies" unless it expressly indicates otherwise. He then noted that two amendments to Title IX enacted after the decision in *Cannon* had validated *Cannon*'s holding and supported the conclusion that "Congress did not intend to limit the remedies available in a suit brought under Title IX." JUSTICE SCALIA, concurring in the judgment, agreed that Congress' amendment of Title IX to eliminate the States' Eleventh Amendment immunity, see 42 U.S.C. § 2000d–7(a)(1), must be read "not only 'as a validation of *Cannon*'s holding,' but also as an implicit acknowledgment that damages are available."

Because these constructions of the statute have been accepted by Congress and are unchallenged here, they have the same legal effect as if the private cause of action seeking damages had been explicitly, rather than implicitly, authorized by Congress. We should therefore seek guidance from

the text of the statute and settled legal principles rather than from our views about sound policy.

II

. . .Explaining [in *Franklin*] why Title IX is violated when a teacher sexually abuses a student, we wrote:

> "Unquestionably, Title IX placed on the Gwinnett County Public Schools the duty not to discriminate on the basis of sex, and 'when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor "discriminates" on the basis of sex.' *Meritor*. We believe the same rule should apply when a teacher sexually harasses and abuses a student. *Congress surely did not intend for federal moneys to be expended to support the intentional actions it sought by statute to proscribe.*" 503 U.S. at 75 (emphasis added).

Franklin therefore stands for the proposition that sexual harassment of a student by her teacher violates the duty—assumed by the school district in exchange for federal funds—not to discriminate on the basis of sex, and that a student may recover damages from a school district for such a violation.

Although the opinion the Court announces today is not entirely clear, it does not purport to overrule *Franklin*. Moreover, I do not understand the Court to question the conclusion that an intentional violation of Title IX, of the type we recognized in *Franklin*, has been alleged in this case. During her freshman and sophomore years of high school, petitioner Alida Star Gebser was repeatedly subjected to sexual abuse by her teacher, Frank Waldrop, whom she had met in the eighth grade when she joined his high school book discussion group. Waldrop's conduct was surely intentional and it occurred during, and as a part of, a curriculum activity in which he wielded authority over Gebser that had been delegated to him by respondent. Moreover, it is undisputed that the activity was subsidized, in part, with federal moneys.

The Court nevertheless holds that the law does not provide a damages remedy for the Title IX violation alleged in this case because no official of the school district with "authority to institute corrective measures on the district's behalf" had actual notice of Waldrop's misconduct. That holding is at odds with settled principles of agency law, under which the district is responsible for Waldrop's misconduct because "he was aided in accomplishing the tort by the existence of the agency relation." This case presents a paradigmatic example of a tort that was made possible, that was effected, and that was repeated over a prolonged period because of the powerful influence that Waldrop had over

Gebser by reason of the authority that his employer, the school district, had delegated to him. As a secondary school teacher, Waldrop exercised even greater authority and control over his students than employers and supervisors exercise over their employees. His gross misuse of that authority allowed him to abuse his young student's trust.

. . .The United States Department of Education . . . recently issued a policy "Guidance" stating that a school district is liable under Title IX if one of its teachers "was aided in carrying out the sexual harassment of students by his or her position of authority with the institution." As the agency charged with administering and enforcing Title IX, the Department of Education has a special interest in ensuring that federal funds are not used in contravention of Title IX's mandate. It is therefore significant that the Department's interpretation of the statute wholly supports the conclusion that respondent is liable in damages for Waldrop's sexual abuse of his student, which was made possible only by Waldrop's affirmative misuse of his authority as her teacher.

The reason why the common law imposes liability on the principal in such circumstances is the same as the reason why Congress included the prohibition against discrimination on the basis of sex in Title IX: to induce school boards to adopt and enforce practices that will minimize the danger that vulnerable students will be exposed to such odious behavior. The rule that the Court has crafted creates the opposite incentive. As long as school boards can insulate themselves from knowledge about this sort of conduct, they can claim immunity from damages liability. Indeed, the rule that the Court adopts would preclude a damages remedy even if every teacher at the school knew about the harassment but did not have "authority to institute corrective measures on the district's behalf." It is not my function to determine whether this newly fashioned rule is wiser than the established common-law rule. It is proper, however, to suggest that the Court bears the burden of justifying its rather dramatic departure from settled law, and to explain why its opinion fails to shoulder that burden.

III

The Court advances several reasons why it would "frustrate the purposes" of Title IX to allow recovery against a school district that does not have actual notice of a teacher's sexual harassment of a student. As the Court acknowledges, however, the two principal purposes that motivated the enactment of Title IX were: (1) " 'to avoid the use of federal resources to support discriminatory practices' "; and (2) " 'to provide individual citizens effective protection against those practices.' " It seems quite obvious that both

of those purposes would be served—not frustrated—by providing a damages remedy in a case of this kind. . . .

First, the Court observes that at the time Title IX was enacted, "the principal civil rights statutes containing an express right of action did not provide for recovery of monetary damages at all." *Franklin*, however, forecloses this reevaluation of legislative intent. . .

Second, the Court suggests that the school district did not have fair notice when it accepted federal funding that it might be held liable " 'for a monetary award' " under Title IX. The Court cannot mean, however, that respondent was not on notice that sexual harassment of a student by a teacher constitutes an "intentional" violation of Title IX for which damages are available, because we so held shortly before Waldrop began abusing Gebser. Given the fact that our holding in *Franklin* was unanimous, it is not unreasonable to assume that it could have been foreseen by counsel for the recipients of Title IX funds. Moreover, the nondiscrimination requirement set out in Title IX is clear, and this Court held that sexual harassment constitutes intentional sex discrimination long before the sexual abuse in this case began. Normally, of course, we presume that the citizen has knowledge of the law.

The majority nevertheless takes the position that a school district that accepts federal funds under Title IX should not be held liable in damages for an intentional violation of that statute if the district itself "was unaware of the discrimination." The Court reasons that because administrative proceedings to terminate funding cannot be commenced until after the grant recipient has received notice of its noncompliance and the agency determines that voluntary compliance is not possible, see 20 U.S.C. § 1682, there should be no damages liability unless the grant recipient has actual notice of the violation (and thus an opportunity to end the harassment).

The fact that Congress has specified a particular administrative procedure to be followed when a subsidy is to be terminated, however, does not illuminate the question of what the victim of discrimination on the basis of sex must prove in order to recover damages in an implied private right of action. Indeed, in *Franklin*, we noted that the Department of Education's Office of Civil Rights had declined to terminate federal funding of the school district at issue—despite its finding that a Title IX violation had occurred—because "the district had come into compliance with Title IX" after the harassment at issue. That fact did not affect the Court's analysis, much less persuade the Court that a damages remedy was unavailable.

The majority's inappropriate reliance on Title IX's administrative enforcement scheme to limit the availability of a damages remedy leads the Court to require not only actual knowledge on the part of "an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf," but also that official's "refusal to take action," or "deliberate indifference" toward the harassment. Presumably, few Title IX plaintiffs who have been victims of intentional discrimination will be able to recover damages under this exceedingly high standard. The Court fails to recognize that its holding will virtually "render inutile causes of action authorized by Congress through a decision that *no* remedy is available." *Franklin*, 503 U.S. at 74.

IV

. . .It is not clear to me why the well-settled rules of law that impose responsibility on the principal for the misconduct of its agents should not apply in this case. As a matter of policy, the Court ranks protection of the school district's purse above the protection of immature high school students that those rules would provide. Because those students are members of the class for whose special benefit Congress enacted Title IX, that policy choice is not faithful to the intent of the policymaking branch of our Government.

I respectfully dissent.

JUSTICE GINSBURG, with whom JUSTICE SOUTER and JUSTICE BREYER join, dissenting.

JUSTICE STEVENS' opinion focuses on the standard of school district liability for teacher-on-student harassment in secondary schools. I join that opinion, which reserves the question whether a district should be relieved from damages liability if it has in place, and effectively publicizes and enforces, a policy to curtail and redress injuries caused by sexual harassment. I think it appropriate to answer that question for these reasons: (1) the dimensions of a claim are determined not only by the plaintiff's allegations, but by the allowable defenses; (2) this Court's pathmarkers are needed to afford guidance to lower courts and school officials responsible for the implementation of Title IX.

In line with the tort law doctrine of avoidable consequences, I would recognize as an affirmative defense to a Title IX charge of sexual harassment, an effective policy for reporting and redressing such misconduct. School districts subject to Title IX's governance have been instructed by the Secretary of Education to install procedures for "prompt and equitable resolution" of complaints, 34 CFR § 106.8(b) (1997), and the Department of Education's

Office of Civil Rights has detailed elements of an effective grievance process, with specific reference to sexual harassment, 62 Fed. Reg. 12034, 12044–12045 (1997).

The burden would be the school district's to show that its internal remedies were adequately publicized and likely would have provided redress without exposing the complainant to undue risk, effort, or expense. Under such a regime, to the extent that a plaintiff unreasonably failed to avail herself of the school district's preventive and remedial measures, and consequently suffered avoidable harm, she would not qualify for Title IX relief.

Case Questions

1. Justice Stevens writes, "To the extent that the Court's reasons for its policy choice have any merit, they suggest that no damages should ever be awarded in a Title IX case." Is his interpretation correct? If you were Justice O'Connor, how might you refute it?

2. If the school district were held responsible for conduct of which it had no knowledge, would that be expecting the impossible? If employers can exercise this responsibility, why can't school officials?

3. *Gebser* and *Franklin* indicate that antidiscrimination laws have two purposes: to end discrimination, and to facilitate redress for victims of discrimination. Yet the *Gebser* majority implies that, while Title VII has both goals, in Title IX the first has priority over the second. Is this reasoning persuasive?

4. The first year that Judith Baer's women and the law class at Texas A&M University discussed Title IX sexual harassment cases, a few students told of faculty-student sexual relationships in their junior and senior high schools. Baer responded, "A teacher who has sex with a student under the age of consent has committed a felony: unlawful sexual intercourse, if not forcible rape. Yet three of you. . ." At least half the class shook their heads and raised their hands to indicate that they, too, had heard of similar cases. Suppose this apparently frequent occurrence were commonly treated as a crime rather than as a tort. Discuss the probable ramifications.

FROM STEPHEN SCHULHOFER, *UNWANTED SEX* (1998)[44]

Whether students are in high school, college, or a graduate program, they have—or should have—the right to be educated by their teachers without having to give sexual favors in exchange. Yet existing legal rules and school