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SUPREME COURT OF THE UNITED STATES

No. 02–1672

**RODERICK JACKSON, PETITIONER *v.* BIRMINGHAM
BOARD OF EDUCATION**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[March 29, 2005]

JUSTICE O’CONNOR delivered the opinion of the Court.

Roderick Jackson, a teacher in the Birmingham, Alabama, public schools, brought suit against the Birmingham Board of Education (Board) alleging that the Board retaliated against him because he had complained about sex discrimination in the high school’s athletic program. Jackson claimed that the Board’s retaliation violated Title IX of the Education Amendments of 1972, Pub. L. 92–318, 86 Stat. 373, as amended, 20 U. S. C. §1681 *et seq.* The District Court dismissed Jackson’s complaint on the ground that Title IX does not prohibit retaliation, and the Court of Appeals for the Eleventh Circuit affirmed. 309 F. 3d 1333 (2002). We consider here whether the private right of action implied by Title IX encompasses claims of retaliation. We hold that it does where the funding recipient retaliates against an individual because he has complained about sex discrimination.

I

Because Jackson’s Title IX claim was dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, “we must as-

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sume the truth of the material facts as alleged in the complaint.” *Summit Health, Ltd. v. Pinhas*, 500 U. S. 322, 325 (1991).

According to the complaint, Jackson has been an employee of the Birmingham school district for over 10 years. In 1993, the Board hired Jackson to serve as a physical education teacher and girls’ basketball coach. Jackson was transferred to Ensley High School in August 1999. At Ensley, he discovered that the girls’ team was not receiving equal funding and equal access to athletic equipment and facilities. The lack of adequate funding, equipment, and facilities made it difficult for Jackson to do his job as the team’s coach.

In December 2000, Jackson began complaining to his supervisors about the unequal treatment of the girls’ basketball team, but to no avail. Jackson’s complaints went unanswered, and the school failed to remedy the situation. Instead, Jackson began to receive negative work evaluations and ultimately was removed as the girls’ coach in May 2001. Jackson is still employed by the Board as a teacher, but he no longer receives supplemental pay for coaching.

After the Board terminated Jackson’s coaching duties, he filed suit in the United States District Court for the Northern District of Alabama. He alleged, among other things, that the Board violated Title IX by retaliating against him for protesting the discrimination against the girls’ basketball team. Amended Complaint 2–3, App. 10–11. The Board moved to dismiss on the ground that Title IX’s private cause of action does not include claims of retaliation. The District Court granted the motion to dismiss.

The Court of Appeals for the Eleventh Circuit affirmed. 309 F. 3d 1333 (2002). It assumed, for purposes of the appeal, that the Board retaliated against Jackson for complaining about Title IX violations. It then held that

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Jackson's suit failed to state a claim because Title IX does not provide a private right of action for retaliation, reasoning that "[n]othing in the text indicates any congressional concern with retaliation that might be visited on those who complain of Title IX violations." *Id.*, at 1344. Relying on our decision in *Alexander v. Sandoval*, 532 U. S. 275 (2001), the Court of Appeals also concluded that a Department of Education regulation expressly prohibiting retaliation does not create a private cause of action for retaliation: "Because Congress has not created a right through Title IX to redress harms resulting from retaliation, [the regulation] may not be read to create one either." 309 F. 3d, at 1346. Finally, the court held that, even if Title IX prohibits retaliation, Jackson would not be entitled to relief because he is not within the class of persons protected by the statute.

We granted certiorari, 542 U. S. __ (2004), to resolve a conflict in the Circuits over whether Title IX's private right of action encompasses claims of retaliation for complaints about sex discrimination. Compare *Lowrey v. Texas A & M Univ. System*, 117 F. 3d 242, 252 (CA5 1997) ("[T]itle IX affords an implied cause of action for retaliation"); *Preston v. Virginia ex rel. New River Community College*, 31 F. 3d 203, 206 (CA4 1994) (same); with the case below, *supra*.

II

A

Title IX prohibits sex discrimination by recipients of federal education funding. The statute provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U. S. C. §1681(a). More than 25 years ago, in *Cannon v. University of Chicago*, 441 U. S. 677, 690–693

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(1979), we held that Title IX implies a private right of action to enforce its prohibition on intentional sex discrimination. In subsequent cases, we have defined the contours of that right of action. In *Franklin v. Gwinnett County Public Schools*, 503 U. S. 60 (1992), we held that it authorizes private parties to seek monetary damages for intentional violations of Title IX. We have also held that the private right of action encompasses intentional sex discrimination in the form of a recipient’s deliberate indifference to a teacher’s sexual harassment of a student, *Gebser v. Lago Vista Independent School Dist.*, 524 U. S. 274, 290–291 (1998), or to sexual harassment of a student by another student, *Davis v. Monroe County Bd. of Ed.*, 526 U. S. 629, 642 (1999).

In all of these cases, we relied on the text of Title IX, which, subject to a list of narrow exceptions not at issue here, broadly prohibits a funding recipient from subjecting any person to “discrimination” “on the basis of sex.” 20 U. S. C. §1681. Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX’s private cause of action. Retaliation is, by definition, an intentional act. It is a form of “discrimination” because the complainant is being subjected to differential treatment. See generally *Olmstead v. L. C.*, 527 U. S. 581, 614 (1999) (KENNEDY, J., concurring in judgment) (the “normal definition of discrimination” is “differential treatment”); see also *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U. S. 669, 682, n. 22 (1983) (discrimination means “less favorable” treatment). Moreover, retaliation is discrimination “on the basis of sex” because it is an intentional response to the nature of the complaint: an allegation of sex discrimination. We conclude that when a funding recipient retaliates against a person *because* he complains of sex discrimination, this constitutes intentional “discrimination” “on the basis of sex,” in

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violation of Title IX.

The Court of Appeals' conclusion that Title IX does not prohibit retaliation because the "statute makes no mention of retaliation," 309 F. 3d, at 1344, ignores the import of our repeated holdings construing "discrimination" under Title IX broadly. Though the statute does not mention sexual harassment, we have held that sexual harassment is intentional discrimination encompassed by Title IX's private right of action. *Franklin*, 503 U. S., at 74–75; see also *id.*, at 75 (noting that, under *Meritor Savings Bank, FSB v. Vinson*, 477 U. S. 57, 64 (1986), "when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor "discriminate[s]" on the basis of sex," and holding that "the same rule should apply when a teacher sexually harasses . . . a student"). Thus, a recipient's deliberate indifference to a teacher's sexual harassment of a student also "violate[s] Title IX's plain terms." *Davis, supra*, at 643 (citing *Gebser, supra*, at 290–291). Likewise, a recipient's deliberate indifference to sexual harassment of a student by another student also squarely constitutes "discrimination" "on the basis of sex." *Davis*, 526 U. S., at 643; see also *id.*, at 650 ("Having previously determined that 'sexual harassment' is 'discrimination' . . . under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute"). "Discrimination" is a term that covers a wide range of intentional unequal treatment; by using such a broad term, Congress gave the statute a broad reach. See *North Haven Bd. of Ed. v. Bell*, 456 U. S. 512, 521 (1982) (Courts "'must accord'" Title IX "'a sweep as broad as its language'").

Congress certainly could have mentioned retaliation in Title IX expressly, as it did in §704 of Title VII of the Civil Rights Act of 1964, 78 Stat. 257, as amended, 86 Stat. 109, 42 U. S. C. §2000e–3(a) (providing that it is an "unlawful

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employment practice” for an employer to retaliate against an employee because he has “opposed any practice made an unlawful employment practice by [Title VII], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII]”). Title VII, however, is a vastly different statute from Title IX, see *Gebser*, 524 U. S., at 283–284, 286–287, and the comparison the Board urges us to draw is therefore of limited use. Title IX’s cause of action is implied, while Title VII’s is express. See *id.*, at 283–284. Title IX is a broadly written general prohibition on discrimination, followed by specific, narrow exceptions to that broad prohibition. See 20 U. S. C. §1681. By contrast, Title VII spells out in greater detail the conduct that constitutes discrimination in violation of that statute. See 42 U. S. C. §§2000e–2 (giving examples of unlawful employment practices), 2000e–3 (prohibiting “[o]ther unlawful employment practices,” including (a) “discrimination” in the form of retaliation; and (b) the discriminatory practice of “[p]rinting or publication of notices or advertisements indicating prohibited preference . . .”). Because Congress did not list *any* specific discriminatory practices when it wrote Title IX, its failure to mention one such practice does not tell us anything about whether it intended that practice to be covered.

Title IX was enacted in 1972, three years after our decision in *Sullivan v. Little Hunting Park, Inc.*, 396 U. S. 229 (1969). In *Sullivan*, we held that Rev. Stat. §1978, 42 U. S. C. §1982, which provides that “[a]ll citizens of the United States shall have the same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property,” protected a white man who spoke out against discrimination toward one of his tenants and who suffered retaliation as a result. Sullivan had rented a house to a black man and assigned him a membership share and use rights in a private park.

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The corporation that owned the park would not approve the assignment to the black lessee. Sullivan protested, and the corporation retaliated against him by expelling him and taking his shares. Sullivan sued the corporation, and we upheld Sullivan’s cause of action under 42 U. S. C. §1982 for “[retaliation] for the advocacy of [the black person’s] cause.” 396 U. S., at 237. Thus, in *Sullivan* we interpreted a general prohibition on racial discrimination to cover retaliation against those who advocate the rights of groups protected by that prohibition.¹

Congress enacted Title IX just three years after *Sullivan* was decided, and accordingly that decision provides a valuable context for understanding the statute. As we recognized in *Cannon*, “it is not only appropriate but also realistic to presume that Congress was thoroughly familiar with [*Sullivan*] and that it expected its enactment [of Title IX] to be interpreted in conformity with [it].” 441 U. S., at 699; see also *id.*, at 698, n. 22. Retaliation for Jackson’s advocacy of the rights of the girls’ basketball team in this case is “discrimination” “on the basis of sex,” just as retaliation for advocacy on behalf of a black lessee in *Sullivan* was discrimination on the basis of race.

B

The Board contends that our decision in *Alexander v. Sandoval*, 532 U. S. 275 (2001), compels a holding that Title IX’s private right of action does not encompass retaliation. *Sandoval* involved an interpretation of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, as amended, 42 U. S. C. §2000d *et seq.*, which provides in §601 that no

¹JUSTICE THOMAS contends that *Sullivan* merely decided that the white owner had standing to assert the rights of the black lessee. *Post*, at 11 (dissenting opinion). But *Sullivan*’s holding was not so limited. It plainly held that the white owner could maintain his *own* private cause of action under §1982 if he could show that he was “punished for trying to vindicate the rights of minorities.” 396 U. S., at 237.

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person shall, “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity” covered by Title VI. 42 U. S. C. §2000d. Section 602 of Title VI authorizes federal agencies to effectuate the provisions in §601 by enacting regulations. Pursuant to that authority, the Department of Justice promulgated regulations forbidding funding recipients from adopting policies that had “the effect of subjecting individuals to discrimination because of their race, color, or national origin.” 28 CFR §42.104(b)(2) (1999). The *Sandoval* petitioners brought suit to enjoin an English-only policy of the Alabama Department of Public Safety on grounds that it disparately impacted non-English speakers in violation of the regulations. Though we assumed that the regulations themselves were valid, see 532 U. S., at 281, we rejected the contention that the private right of action to enforce intentional violations of Title VI encompassed suits to enforce the disparate-impact regulations. We did so because “[i]t is clear . . . that the disparate-impact regulations do not simply apply §601—since they indeed forbid conduct that §601 permits—and therefore clear that the private right of action to enforce §601 does not include a private right to enforce these regulations.” *Id.*, at 285. See also *Central Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 173 (1994) (A “private plaintiff may not bring a [suit based on a regulation] against a defendant for acts not prohibited by the text of [the statute]”). Thus, *Sandoval* held that private parties may not invoke Title VI regulations to obtain redress for disparate-impact discrimination because Title VI itself prohibits only intentional discrimination.

The Board cites a Department of Education regulation prohibiting retaliation “against any individual for the purpose of interfering with any right or privilege secured

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by [Title IX],” 34 CFR §100.7(e) (2004) (incorporated by reference by §106.71), and contends that Jackson, like the petitioners in *Sandoval*, seeks an “impermissible extension of the statute” when he argues that Title IX’s private right of action encompasses retaliation. Brief for Respondent 45. This argument, however, entirely misses the point. We do not rely on regulations extending Title IX’s protection beyond its statutory limits; indeed, we do not rely on the Department of Education’s regulation at all, because the statute *itself* contains the necessary prohibition. As we explain above, see *supra*, at 4–5, the text of Title IX prohibits a funding recipient from retaliating against a person who speaks out against sex discrimination, because such retaliation is intentional “discrimination” “on the basis of sex.” We reach this result based on the statute’s text. In step with *Sandoval*, we hold that Title IX’s private right of action encompasses suits for retaliation, because retaliation falls within the statute’s prohibition of intentional discrimination on the basis of sex.²

C

Nor are we convinced by the Board’s argument that, even if Title IX’s private right of action encompasses discrimination, Jackson is not entitled to invoke it because he is an “indirect victi[m]” of sex discrimination. Brief for Respondent 33. The statute is broadly worded; it does not require that the victim of the retaliation must also be the victim of the discrimination that is the subject of the

²We agree with JUSTICE THOMAS that plaintiffs may not assert claims under Title IX for conduct not prohibited by that statute. *Post*, at 10–11 (dissenting opinion). See also *Central Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 173 (1994) (“[T]he private plaintiff may not bring a 10b–5 suit against a defendant for acts not prohibited by the text of §10(b)”). But we part ways with regard to our reading of the statute. We interpret Title IX’s text to clearly prohibit retaliation for complaints about sex discrimination.

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original complaint. If the statute provided instead that “no person shall be subjected to discrimination on the basis of *such individual’s* sex,” then we would agree with the Board. Cf. 42 U. S. C. §2000e–2(a)(1) (“It shall be an unlawful employment practice for an employer . . . to discriminate against any individual . . . because of *such individual’s* race, color, religion, sex, or national origin” (emphasis added)). However, Title IX contains no such limitation. Where the retaliation occurs because the complainant speaks out about sex discrimination, the “on the basis of sex” requirement is satisfied. The complainant is himself a victim of discriminatory retaliation, regardless of whether he was the subject of the original complaint.³ As we explain above, see *supra*, at 6–7, this is consistent with *Sullivan*, which formed an important part of the backdrop against which Congress enacted Title IX. *Sullivan* made clear that retaliation claims extend to those who oppose discrimination against others. See 396 U. S., at 237 (holding that a person may bring suit under 42 U. S. C. §1982 if he can show that he was “punished for trying to vindicate the rights of minorities”).

Congress enacted Title IX not only to prevent the use of

³JUSTICE THOMAS contends that “extending the implied cause of action under Title IX to claims of retaliation expands the class of people the statute protects beyond the specific beneficiaries.” *Post*, at 11 (dissenting opinion). But Title IX’s beneficiaries plainly include all those who are subjected to “discrimination” “on the basis of sex.” 20 U. S. C. §1681(a). Because, as we explain above, see *supra*, at 4–5, retaliation in response to a complaint about sex discrimination is “discrimination” “on the basis of sex,” the statute clearly protects those who suffer such retaliation. The following hypothetical, offered by petitioner at oral argument, illustrates this point: If the male captain of the boys’ basketball team and the female captain of the girls’ basketball team together approach the school principal to complain about discrimination against the girls’ team, and the principal retaliates by expelling them both from the honor society, then both the female and the male captains have been “discriminated” against “on the basis of sex.” Tr. of Oral Arg. at 53–54.

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federal dollars to support discriminatory practices, but also “to provide individual citizens effective protection against those practices.” *Cannon*, 441 U. S., at 704. We agree with the United States that this objective “would be difficult, if not impossible, to achieve if persons who complain about sex discrimination did not have effective protection against retaliation.” Brief for United States as *Amicus Curiae* 13. If recipients were permitted to retaliate freely, individuals who witness discrimination would be loathe to report it, and all manner of Title IX violations might go unremedied as a result. See *Sullivan*, *supra*, at 237 (noting that without protection against retaliation, the underlying discrimination is perpetuated).

Reporting incidents of discrimination is integral to Title IX enforcement and would be discouraged if retaliation against those who report went unpunished. Indeed, if retaliation were not prohibited, Title IX’s enforcement scheme would unravel. Recall that Congress intended Title IX’s private right of action to encompass claims of a recipient’s deliberate indifference to sexual harassment. See generally *Davis*, 526 U. S. 629. Accordingly, if a principal sexually harasses a student, and a teacher complains to the school board but the school board is indifferent, the board would likely be liable for a Title IX violation. See generally *Gebser*, 524 U. S. 274. But if Title IX’s private right of action does not encompass retaliation claims, the teacher would have no recourse if he were subsequently fired for speaking out. Without protection from retaliation, individuals who witness discrimination would likely not report it, indifference claims would be short-circuited, and the underlying discrimination would go unremedied.

Title IX’s enforcement scheme also depends on individual reporting because individuals and agencies may not bring suit under the statute unless the recipient has received “actual notice” of the discrimination. *Id.*, at 288, 289–290 (holding that an appropriate official of the recipi-

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ent must have actual knowledge of discrimination and respond with deliberate indifference before a private party may bring suit); 20 U. S. C. §1682 (providing that a federal agency may terminate funding only after 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”). If recipients were able to avoid such notice by retaliating against all those who dare complain, the statute’s enforcement scheme would be subverted. We should not assume that Congress left such a gap in its scheme.

Moreover, teachers and coaches such as Jackson are often in the best position to vindicate the rights of their students because they are better able to identify discrimination and bring it to the attention of administrators. Indeed, sometimes adult employees are “the only effective adversar[ies]” of discrimination in schools. See *Sullivan, supra*, at 237 (“[A] white owner is at times ‘the only effective adversary’ of the unlawful restrictive covenant” (citing *Barrows v. Jackson*, 346 U. S. 249, 259 (1953))).

D

The Board is correct in pointing out that, because Title IX was enacted as an exercise of Congress’ powers under the Spending Clause, see, e.g., *Davis, supra*, at 640; *Gebser, supra*, at 287; *Franklin*, 503 U. S., at 74–75, and n. 8., “private damages actions are available only where recipients of federal funding had adequate notice that they could be liable for the conduct at issue,” *Davis, supra*, at 640. When Congress enacts legislation under its spending power, that legislation is “in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions.” *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1, 17 (1981). As we have recognized, “[t]here can . . . be no knowing acceptance [of the terms of the contract] if a State is unaware of

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the conditions [imposed by the legislation on its receipt of funds].” *Ibid.*

The Board insists that we should not interpret Title IX to prohibit retaliation because it was not on notice that it could be held liable for retaliating against those who complain of Title IX violations. We disagree. Funding recipients have been on notice that they could be subjected to private suits for intentional sex discrimination under Title IX since 1979, when we decided *Cannon. Pennhurst* does not preclude private suits for intentional acts that clearly violate Title IX. *Davis, supra*, at 642.

Indeed, in *Davis*, we held that *Pennhurst* did not pose an obstacle to private suits for damages in cases of a recipient’s deliberate indifference to one student’s sexual harassment of another, because the deliberate indifference constituted intentional discrimination on the basis of sex. *Davis, supra*, at 650. See also *Franklin, supra*, at 75 (“Congress surely did not intend for federal monies to be expended to support the intentional actions it sought by statute to proscribe”). Similarly, we held in *Gebser* that a recipient of federal funding could be held liable for damages under Title IX for deliberate indifference to a teacher’s harassment of a student. 524 U. S., at 287–288. In *Gebser*, as in *Davis*, we acknowledged that federal funding recipients must have notice that they will be held liable for damages. See *Davis, supra*, at 642; *Gebser, supra*, at 287. But we emphasized that “this limitation on private damages actions is not a bar to liability where a funding recipient intentionally violates the statute.” *Davis, supra*, at 642 (citing *Franklin*, 503 U. S., at 74–75). See also *ibid.* (“[T]he [*Pennhurst*] notice problem does not arise in a case such as this, in which intentional discrimination is alleged”); *Bennett v. Kentucky Dept. of Ed.*, 470 U. S. 656, 665–666 (1985) (holding that there was sufficient notice under *Pennhurst* where a statute made clear that some conditions were placed on the receipt of federal

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funds, and stating that Congress need not “specifically identif[y] and proscrib[e]” each condition in the legislation). Simply put, “*Pennhurst* does not bar a private damages action under Title IX where the funding recipient engages in intentional conduct that violates the clear terms of the statute.” *Davis*, 526 U. S., at 642.

Thus, the Board should have been put on notice by the fact that our cases since *Cannon*, such as *Gebser* and *Davis*, have consistently interpreted Title IX’s private cause of action broadly to encompass diverse forms of intentional sex discrimination. Indeed, retaliation presents an even easier case than deliberate indifference. It is easily attributable to the funding recipient, and it is always—by definition—intentional. We therefore conclude that retaliation against individuals because they complain of sex discrimination is “intentional conduct that violates the clear terms of the statute,” *Davis*, 526 U. S., at 642, and that Title IX itself therefore supplied sufficient notice to the Board that it could not retaliate against Jackson after he complained of discrimination against the girls’ basketball team.

The regulations implementing Title IX clearly prohibit retaliation and have been on the books for nearly 30 years. Cf., e.g., *id.*, at 643 (holding that Title IX’s regulatory scheme “has long provided funding recipients with notice that they may be liable for their failure to respond to the discriminatory acts of certain nonagents”). More importantly, the Courts of Appeals that had considered the question at the time of the conduct at issue in this case all had already interpreted Title IX to cover retaliation. See, e.g., *Lowrey*, 117 F. 3d, at 252; *Preston*, 31 F. 3d, at 206. The Board could not have realistically supposed that, given this context, it remained free to retaliate against those who reported sex discrimination. Cf. *Davis*, *supra*, at 644 (stating that the common law of torts “has put schools on notice that they may be held responsible under

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state law for their failure to protect students from the tortious acts of third parties”). A reasonable school board would realize that institutions covered by Title IX cannot cover up violations of that law by means of discriminatory retaliation.

To prevail on the merits, Jackson will have to prove that the Board retaliated against him *because* he complained of sex discrimination. The amended complaint alleges that the Board retaliated against Jackson for complaining to his supervisor, Ms. Evelyn Baugh, about sex discrimination at Ensley High School. At this stage of the proceedings, “[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” *Scheuer v. Rhodes*, 416 U. S. 232, 236 (1974). Accordingly, the judgment of the Court of Appeals for the Eleventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.