**Instruction No. \_\_ [Title IX Instruction on Severe & Pervasive and Lost Educational Opportunities Element]**

To determine whether [Name of Perpetrator]’s alleged harassment of [Name of Plaintiff/Survivor] was severe, pervasive, and offensive, you must examine the totality of the circumstances, including the frequency, the severity, the impact on [Name of Plaintiff/Survivor], and the degree of interference with [Name of Plaintiff/Survivor]’s educational pursuits.[[1]](#footnote-1)

This requires you to consider the evidence from the perspective of a reasonable person of the same sex as [Name of Plaintiff/Survivor]. This is an objective standard and requires you to look at the evidence from the perspective of a reasonable woman’s reaction to similar harassment under similar circumstances. You cannot view the evidence from the perspective of an overly sensitive person. Instead, you must consider the total circumstances and determine whether the alleged harassing behavior could be objectively classified as the kind of behavior that would seriously affect the psychological well-being of a reasonable person.[[2]](#footnote-2)

The effect of the alleged harassment on [Name of Plaintiff/Survivor]’s mental and emotional well-being is also relevant to determining whether [Name of Plaintiff/Survivor] found the environment to be hostile or abusive; but while psychological harm, like any other relevant factor, may be taken into account, no single factor is required to show deprivation of access to educational opportunities or benefits.[[3]](#footnote-3)

Sex-based harassment can deprive a student of access to educational opportunities or benefits in several circumstances, including when the harassment so undermines and detracts from the student’s educational experience as to effectively deny her equal access to a school’s resources and opportunities, or has a concrete, negative effect on the student’s education or access to school-related resources.[[4]](#footnote-4)

1. *See* 3C O’Malley, Grenig & Lee, *Federal Jury Practice and Instructions*, § 177.33 (6th ed. 2006) [hereinafter “O’Malley”]; *Davis*, 526 U.S. at 651; *Faragher v. City of Boca Raton,* 524 U.S. 775, 787 (1998). [↑](#footnote-ref-1)
2. O’Malley, supra note 1, at §§ 177.21, 177.34; see also *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). [↑](#footnote-ref-2)
3. O’Malley, supra note 1, at §177.33; *see also* *Doe ex rel Doe v. Coventry Bd. of Educ.*, 630 F. Supp. 2d 226, 233 (D. Conn. 2009); *Bruning v. Carroll Cmty. Sch. Dist.*, 486 F. Supp. 2d 892, 917-18 (N.D. Iowa 2007). [↑](#footnote-ref-3)
4. Adapted from jury charge in *Doe v. Fairfax Cnty. Sch. Bd.*, 1:18-cv-00614-LO-MSN (E.D.Va. Aug. 8, 2019), ECF No. 315-14 at 14. *See also* Roohbakhsh, No. 8:17CV31, 2019 WL 3975377, at \*10 (citing *Davis*, 526 U.S. at 650-51). [↑](#footnote-ref-4)