

**TO:** The Department of Education’s Office for Civil Rights (OCR)  
**FROM:** Marci A. Hamilton, Esq.  
**RE:** Written Comment: Title IX Public Hearing  
**DATE:** June 11, 2021

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Thank you for allowing me, Professor Marci Hamilton of CHILD USA, to offer commentary on the Title IX regulations for the purpose of ensuring that educational institutions respond appropriately to reports of sexual assault and that survivors of sexual violence have access to justice.

By way of introduction, my name is Marci Hamilton, and I am the Founder & CEO of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where I am a Professor in the Fels Institute of Government and a Senior Resident Fellow in the Program for Research on Religion. I am also the author of *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena, and am the leading expert on the history and constitutionality of SOL reform. CHILD USA is the leading, national nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of statute of limitations reform, as well as other cutting-edge issues related to child protection.

**I. Title IX Regulations Must Set A Federal Statute of Limitations Standard That Guarantees Survivors Access to Justice**

There is a tragic epidemic of child sexual abuse and sexual assault at our schools and on our college and university campuses. Studies suggest that nearly 1 in 10 children will be the target sexual misconduct by a school employee by the time they finish high school.<sup>i</sup> Approximately 1 in 5 female students and 1 in 16 male students are sexually assaulted while attending college.<sup>ii</sup> For victims at institutions subject to federal Title IX requirements, their claims against the educational institution are governed by states’ statutes of limitations. This creates vastly different access to justice based solely on where victims live when they suffer abuse.

**There are three compelling public purposes served by SOL reform in Title IX:**

- 1) SOL reform **identifies hidden predators and the institutions** that endanger children and students to the public, shielding others from future abuse;
- 2) It **shifts the cost of abuse** from the victims and taxpayers to those who caused it; and
- 3) It **educates the public** about the prevalence, signs, and impact of child sex abuse so that it can be prevented in the future.



## HOW STATUTE OF LIMITATIONS REFORM HELPS EVERYONE



### **Identifies hidden child predators and the institutions that endanger children**

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### **Educates the public**

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[www.childusa.org](http://www.childusa.org)

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THE NATIONAL THINK TANK FOR CHILD PROTECTION

  
The Sean P. McIlmail Statute  
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Institute of CHILD USA

A uniform, extended SOL for Title IX claims would help to identify hidden child predators and the institutions that protect them by allowing victims to share their stories in a way that garners public attention. Exposing predators and those who protect them is essential to encourage institutions to enact better child protection policies, as well as to empower the public with the information necessary to prevent future abuse. Enacting an extended SOL applicable to all Title IX claims will empower victims to shed light on abuse.

SOL reform that allows exposure of predators and institutions also educates the public generally about abuse – how it occurs, what its impact is, and how to prevent it. When mass amounts of data and information are made available to the public rather than blocked by antiquated and arbitrary procedural rules, the public and researchers alike are free to review and use this information to help victims and their families to heal from abuse and create the best practices to prevent future abuse.

The average lifetime cost of child maltreatment (inclusive of physical, sexual, and emotional abuse and neglect) is \$830,928.00 per victim.<sup>iii</sup> The trauma associated with child sex abuse creates costs that are even higher. Too often, society and the victims themselves shoulder these costs, but extension or elimination of SOLs helps shift the cost of abuse from the individual and the state to the ones who caused it. SOL reform saves taxpayers from paying for the crimes of predators and



the institutions that protect and enable them. This is because more victims would be able to bring civil claims and seek compensation rather than being relegated solely to the state for support when the impacts of sexual violence affect their lives in the form of depression, PTSD, substance abuse, and other problems. SOL reform for child sex abuse and sexual violence validates victims and shifts the immense cost of abuse from victims and the public to the perpetrators and enabling institutions, placing them on notice that the state no longer stands with them—but with their victims.

Federal lawmakers, with the support of the Biden administration, can increase access to justice for children and other survivors by amending the Title IX regulations to set a federal standard that would apply uniformly to all abuse survivors, regardless of geographic boundaries, preempting states with too-short SOLs. These changes should apply retroactively to revive any previously time-barred claims. The Biden administration can ensure that the promises of Title IX are fulfilled by supporting these legislative efforts.

## **II. Current Title IX Regulations Neglect Student Safety, Permit Sexual Violence to Go Unaddressed, and Deny Children and Other Survivors Access to Education**

The changes made to the Title IX regulations by the previous administration weakened protections against sexual violence in schools and were based on the myth that false allegations of sexual assault are common. Yet the best research shows that the rate of false reports of sexual assault is between 2-10%, inclusive of survivors who choose to recant—a rate that does not exceed the false reporting rates of other crimes.<sup>iv</sup>

Particularly concerning, the changes to the Title IX regulations require schools to ignore many reports of sexual violence by limiting the definition of sexual harassment to only instances of severe misconduct.<sup>v</sup> This unreasonably high threshold functionally prevents survivors from accessing justice for the harms done to them and invalidates their experiences by sending the message that students are expected to tolerate a certain level of sexual misconduct. Likewise, the narrow definition permits educational institutions to ignore unwelcomed sexual conduct that they deem isolated or insufficiently egregious, rather than motivating institutions to take steps to prevent such conduct from escalating.

One of the most troubling parts of the current regulations is that they prevent schools from initiating Title IX investigations into allegations of assault that occur off school grounds or online, even if the victim is forced to have regular contact with their alleged abuser at school and in their classrooms. This rule is especially problematic at the college and university level where 84.4% of students live in off-campus housing and hundreds of thousands more are enrolled in study abroad programs wherein rates of sexual assault are estimated to be five times higher.<sup>vi</sup> Any rule which limits an educational institution's obligation to acknowledge or investigate instances of sexual



assault creates an environment that protects perpetrators while, at the same time, silencing victims of sexual violence.

Additionally, the current Title IX regulations impose uniquely burdensome procedures for allegations of sexual assault that are not required for any other type of student or staff misconduct. For example, schools can drag survivors through lengthy investigations and, at the college level, must allow live cross-examination by their abusers and his or her enablers. The long, burdensome process greatly increases the risk of re-traumatization and often leads to the survivor dropping out of an investigation.<sup>vii</sup>

Finally, the current Title IX regulations do not reflect the realities of how sexual violence and trauma affects students' educational experiences. The trauma attendant to sexual assault, which is often exacerbated by a school's inadequate or harmful response to reports of the same, gravely impacts survivors' ability to participate and succeed in school. Approximately 40% of survivors who report sexual violence to their schools experience a substantial disruption in their educations.<sup>viii</sup> Nearly 10% drop out of school entirely.<sup>ix</sup> For those survivors who remain enrolled, the vast majority experience adverse academic effects which, in turn, negatively impact their financial wellbeing.<sup>x</sup>

Many survivors also report serious physical, emotional, and mental health effects including post-traumatic stress disorder, due to sexual violence.<sup>xi</sup> The traumatic affects are most pronounced for survivors of childhood sexual assault as they experience disrupted neurodevelopment, and impaired social, emotional, and cognitive development in addition to the psychiatric, physical, and financial effects that adult survivors suffer.<sup>xii</sup> Especially concerning, this population is also at greatest risk of future revictimization.<sup>xiii</sup> The physical health implications of experiencing sexual violence are often underappreciated, yet they often exacerbate the significant and pervasive emotional and financial costs associated with victimization, especially for those with chronic health conditions.<sup>xiv</sup> When educational institutions fail to address reports of sexual violence or refuse to support students who report the same, survivors are effectively denied a safe learning environment and cannot fully access the educational opportunities afforded to their non-survivor peers.

### **III. This Administration Must Restore and Strengthen Title IX Protections For Children and Other Survivors of Sexual Assault**

The Department of Education should restore the earlier Title IX guidance that required schools to respond to *all* reports of sexual violence that interfere with a person's ability to participate in or benefit from their education, regardless of where the alleged conduct takes place. Specifically, the administration must reaffirm that Title IX covers a broad-range of sexual misconduct including, but not limited to, dating violence, and gender-based stalking whether it occurs on or off school-grounds. Likewise, the administration should mandate all faculty, staff, coaches, teachers, and



others to report incidents of sexual misconduct as this will ultimately reduce reporting barriers for students and empower educators and other staff to continue the culture change to end sexual violence.

The administration should also rescind the changes to the Title IX regulations that require burdensome disciplinary procedures that favor the rights of the accused and subject survivors to an increased risk of re-traumatization. Further, the Title IX regulations must ensure survivors do not face retaliation for filing reports or for their participation in any stage of the investigative process. The consequences for institutions that retaliate or permit alleged perpetrators to engage in retaliatory behaviors without penalty should be explicitly set forth in the guidelines.

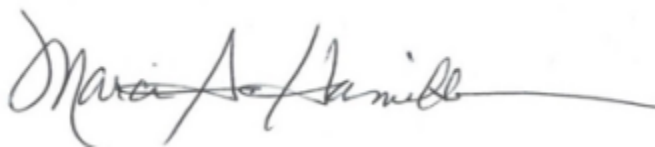
Beyond the restoration of the Obama-era regulations, the Biden administration should expand the requirements for comprehensive sexual assault and violence prevention education at schools and on college campuses, including mandated training regarding the impact of trauma attendant to sexual assault on survivors' education and well-being, and trauma-informed interviewing for any party who regularly participates in the Title IX investigative process. The administration should also increase funding for resources that serve to ease the physical, mental, financial, and educational toll students face in the aftermath of a sexual assault.

#### **IV. Conclusion**

The current Title IX regulations permit our educational institutions to sweep sexual assault under the rug. The Biden administration must restore and enhance the Title IX regulations to ensure that survivors of sexual violence get the support, healing, and access to justice that they need and deserve.

Please do not hesitate to contact me if you have questions regarding these proposed changes or if I can be of assistance in any other way.

Sincerely,



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<sup>i</sup> Shakeshaft, C., *Educator sexual misconduct: A synthesis of existing literature*. US Department of Education, Policy and Programs Studies Service (2004), available at <https://www2.ed.gov/rschstat/research/pubs/misconductreview/report.pdf>

<sup>ii</sup> Krebs, C. P., et. al., *The campus sexual assault (CSA) study: Final report* (2007) available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>

<sup>iii</sup> M. Merricka, et. al, *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017).

<sup>iv</sup> Lonsway, K. A., Archambault, J., & Lisak, D, *False reports: Moving beyond the issue to successfully investigate and prosecute non-stranger sexual assault*, THE VOICE (2009), available at [http://www.ndaa.org/pdf/the\\_voice\\_vol\\_3\\_no\\_1\\_2009.pdf](http://www.ndaa.org/pdf/the_voice_vol_3_no_1_2009.pdf); Heenan, M., & Murray, S., *Study of reported rapes in Victoria 2000-2003: Summary research report* (2006), available at [http://www.police.vic.gov.au/retrievemedias.asp?Media\\_ID=19462](http://www.police.vic.gov.au/retrievemedias.asp?Media_ID=19462); Lisak, D., et. al., *False allegations of sexual assault: An analysis of ten years of reported cases*, 16 VIOLENCE AGAINST WOMEN 1318 (2010).

<sup>v</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026, 30030 (May 19, 2020).

<sup>vi</sup> Know Your IX, *The State of Title IX*, available at <https://www.knowyourix.org/college-resources/hands-off-ix>; Kimble, M., et. al., *Study abroad increases risk for sexual assault in female undergraduates: A preliminary report*, 5(5) PSYCH. TRAUMA: THEORY, RESEARCH, PRACTICE, & POLICY 426 (2013).

<sup>vii</sup> See generally, Know Your IX, *The Cost of Reporting: Perpetrator Retaliation, Institutional Betrayal, and Student Survivor Pushout* 17-22 (Mar. 2021), available at <https://www.knowyourix.org/wp-content/uploads/2021/03/Know-Your-IX-2021-Report-Final-Copy.pdf>

<sup>viii</sup> *Id.*

<sup>ix</sup> *Id.*

<sup>x</sup> *Id.*

<sup>xi</sup> Dana Bolger, *Gender Violence Costs: Schools' Financial Obligations Under Title IX*, 125 YALE L. J. 2106, 2110 (2016).

<sup>xii</sup> See, e.g., Felitti, et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14(4) AM. J. PREV. MED. 245 (1998) (hereinafter Felitti); S.R. Dube et al., *Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study*, 286 JAMA 24, 3089 (Dec. 2001) (explaining that childhood trauma can lead to negative health outcomes).

<sup>xiii</sup> U.S. Dep't Health & Human Services, *The Adverse Childhood Experiences (ACEs) Study*, CENTERS FOR DISEASE CONTROL & PREVENTION (1997) available at <https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/>

<sup>xiv</sup> *Supra* n.iii.

