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INTRODUCTION

I am a current first-year college student at a U.S. university offering a comment to the U.S. Department of Education’s Office of Civil Rights regarding the current Title IX regulations as they relate to K-12 schools receiving federal funding. Leveraging personal experience from my time at a U.S. high school, I will demonstrate the failures of the current Title IX regulations in their ability to uphold the Biden administration’s policies surrounding sexual violence and equal access to education as outlined in President Biden’s Executive Order 14021, with a particular emphasis on enforcement in K-12 schools. My comment will address 3 separate instances of sexual violence that occurred close to me during my time in high school and explain the impact of each instance on the victim’s access to education and the culture of the school in question. I will then propose specific legislative changes to Title IX that could mitigate the negative effects of instances of sexual assault as it occurs in U.S. K-12 schools.

PART 1: MARGARET

The Story: My sophomore year of high school I gathered in the gym with the rest of my school for the senior awards assembly. I climbed the bleachers with my friends, an eager excitement in the air as we made our guesses as to which seniors would receive the coveted plaques, signifying excellence across departments and extracurriculars. As we threw about names, we all knew one thing for sure: Margaret and John were going to sweep. Both at the top of their class, I had come to know both Margaret and John in my high school mock trial program. Margaret, a jack of all trades, excelled far beyond my high school’s curriculum in math and
science. She was a concert pianist who started her own business and had the highest GPA my high school ever had on record. John and I worked closely together as well. He was our clean-cut, charismatic student body president.

It came as no surprise when Margaret’s name was called out time and time again during the assembly. We offered a smattering of applause as she made her way to and from the podium, exchanging our guesses for the next winner. When it came time for the final award, the big kahuna, John’s name had yet to be called. In my mind, that could mean only one thing. Sure enough, the dean called out his name, barely finishing before the packed gym erupted into applause. However, it quickly petered out. Hundreds of eyes swiveled from the class president to follow Margaret, visibly shaking as she crept out of the side exit of the gym. It wasn’t until weeks later that word started to get out: John had sexually assaulted Margaret at a party several months before. Not only had Margaret disclosed this to the school counselor, but the very dean that handed John the award knew of the allegation against him.

Margaret and I were close enough friends that she told me what John had done to her. But even if she hadn’t, the high school gossip mill soon picked up the story. In the weeks that followed, I overheard the story twist and turn in my high school hallways. “She’s just jealous he won the award,” they’d say. “Convenient timing,” followed by a scoff. “I’d believe it if it was someone else, but c’mon. It’s John.” One of the worst moments of Margaret’s life was retold and repackaged until it fit into the structure of these stories with which people seem to be most comfortable: He is an upstanding guy, incapable of such an atrocity. She is a liar with a vendetta.

The administration attempted to solve the problem by asking Margaret to transfer out of the classes she took with John. If she wanted to avoid seeing her assaulter, she could change
classes. The mock trial coaches offered her a similar exit strategy: it would be understandable if she wanted to quit the team. Here was the best student my high school had seen in years being asked to restructure her delicately laid academic plans. It was her choice: withdraw from school activities or suck it up and finish out the year.

*The Impact.* The only options that the school offered to Margaret to reduce contact with her assaulter came at her own expense. They came at the expense of her education and engagement with school activities. Rather than make those sacrifices, Margaret stayed in her classes and clubs. She took it upon herself to protect her education at the price of her comfort and mental health, the latter of which she struggled with from her assault to the time I lost contact with her after graduation.

Not only did the school’s inaction fail her, but it exacerbated student hostility toward her. If the administration didn’t seem to be taking her claims seriously, why should anyone else? By putting the onus on Margaret to jump through hoops to avoid John, my high school sent a clear message: either the allegations aren’t true, or they don’t matter. Maybe he did it, maybe he didn’t - that was left up to students to debate for themselves in the hallways and locker rooms - but in the school’s eyes, he still deserved to walk up on stage, accept an award for outstanding student leadership, and bask in our applause. You can expect the school to turn a blind eye. You can do this and be revered.

*Proposed Legislation Changes.* Under the current Title IX regulations, schools receiving federal funding are only obligated to respond to allegations of assault if it took place on school grounds or in a space used for extracurricular activities. This narrow scope excludes a large portion of the places that students spend time together, particularly at events like parties where alcohol is
involved. According to Executive Order 14021, this administration seeks to protect students from educational discrimination based on instances of sexual harassment and violence. If this is the goal, then the location of the assault should not matter. For a school to only investigate instances of assault that happened on school grounds is to fail to protect its students’ equal rights to an education. Margaret was assaulted off campus, yet her daily routine at school was still uprooted. She still faced harassment from her peers. She had to see her assaulter every day and know that the school, the authorities she answered to, were apathetically neutral. Whether or not a student is assaulted at school or somewhere else, these effects remain consistent. Therefore, Title IX should not limit a school’s responsibility to respond to assault allegations based on location. Any assault that occurs between two students at the same school impacts the victim’s education and should require a school response under federal law.

Another problematic aspect of the standing Title IX regulations is the requirement that school officials have “actual knowledge” of an assault to respond. What qualifies as “actual knowledge?” There is no provided definition, leaving a loophole for institutions to remain unresponsive to allegations of assault. A school counselor told the dean of students about Margaret’s allegations. While this seems to me like it would qualify as “actual knowledge,” there remains far too much room to hem and haw. Title IX should be revised to include a definition of “actual knowledge” that includes all direct student disclosures to faculty and staff.

PART 2: DANIELLE

The Story. A nearby high school was notorious for its sports teams, but the football program had a statewide celebrity few teenagers could dream of. D-1 bound with hopes of a future in the
NFL, there were four sophomore football players in particular that parents and students clamored to know, betting on their future fame and eager for a chance to say, “they knew them when.” As someone who doesn’t follow football, their names flew above my head in conversations. It wasn’t until a video started to make its way around the local high schools that I took notice: the four of them sexually assaulted an unconscious girl, Danielle, in the back of a truck while their teammate drove around the city.

Shared over Snapchat, the video of the assault travelled around high schools without a trace. At least, that’s what the school officials reported to the press. Despite the fact that everyone had seen the video, or knew someone who had, the school threw up their hands. Hundreds of high school students had seen the assault with their own eyes, easily recognizing the notorious four football players. In this case, talk of the assault went beyond hushed hallway conversations as the local media picked up the story. This wasn’t high school gossip the administration could ignore and maintain plausible deniability. These were their star athletes, after all. Letting the story grow unchecked wasn’t in their best interest.

The school launched their investigation, but that’s where they stopped. All minors at the time, Danielle and the perpetrators all had their identities protected in the media. This anonymity, however, turned out to be just a formality; too many people had seen the footage and heard the story to shroud those involved. Danielle’s social media was flooded with hate: calling her names, mocking her, telling her to take her own life. Though I have never met her, I had a close friend who knew her. She told me Danielle dropped out of school and was institutionalized for her mental health for months following the assault. All this happened during the school’s investigation. All this happened while the four football players remained on the roster. They never missed a game.
Over the years, I came to hear that this wasn’t the first time these athletes had assaulted a girl while she was incapacitated. A girl at my school was best friends with someone who was assaulted by one of the football players. She commented on one of his Instagram posts, “I know what you did to (friend’s name). You’re a fucking rapist.” Within hours, her comment was deleted. She was contacted by the football player’s family’s lawyers, threatening to sue her for defamation if she ever made similar online comments. This could impact his future, they said. She was scared into silence, only telling me this happened after I swore to secrecy. I don’t know if the other victims, two of whom I am personally aware of, ever came forward. All I know is one way or another, their stories were never told publicly.

Two years later, the police investigation into this assault was closed and no charges were filed. All four football players went on to play D-1 football in college.

The Impact. The assault and its aftermath derailed Danielle’s education. I don’t know the full extent of the harassment she received, but the online comments from classmates and complete strangers were brutal. She was 16 at the time of the assault, an age when a snide comment is enough to be upsetting. She was on the receiving end of a whole other level of harassment. I can only assume this was a contributing factor to her leaving school and seeking extensive psychological care. The accused on the other hand, suffered next to no consequences. One of them lost a D-1 offer after the university discovered the allegations, but he was able to walk on to another D-1 team. The victim bore the consequences for something out of her control.

This happened at a private Catholic school that does not receive federal funding and is therefore not subject to Title IX regulations. However, the assault and its aftermath are not unique to this school. The aftermath of the assault speaks to a larger truth: schools protect
student athletes at the expense of other students. It is clear to me that this high school had a vested interest in the success of these students. Their athletic success reflects well on their football program, something the school made clear they valued when they kept all students on the roster during the entirety of their own investigation and that of the police. In their unwillingness to take any action to deter their success, the school sent a message to all of its students that this group was above punishment. The football players knew it too. They knew they were protected, and they could get away with sexual assault, not just once, but over and over. This behavior was never checked in adolescence. They enter into the realm of college football, where the fame is greater and the college’s monied interest is astronomical, without ever having to face consequences for their actions. Meanwhile, they leave a trail of victims in their wake. These people, these children, attempt to piece their lives back together after the institutions that promised to protect them turned their backs.

Proposed Legislation Changes.

Under Title IX, schools are not currently able to gather evidence during investigations from student’s phones, including social media, texts, photos and videos. While these things can be submitted as evidence, there is nothing in the rule that allows for schools to do this part of the investigation themselves. In practice, this means that a part of the investigation falls on the involved students, a responsibility complicated by the conflicting interests of the accused and the victim. In the instance explained above, the football players would never have provided the video to the school themselves and most likely took care so that the victim did not have access to it either. They were essentially able to play a game of keep away, knowing the school had limited power, not to mention limited desire, to investigate the allegations. Until the responsibility to gather evidence falls on schools, and they are given access to the texts, photos and videos that
comprise so much of students’ interactions, Title IX investigations will remain insufficient. As this instance of assault demonstrates, schools’ limited access to evidence exacerbated the harm. The assault was shared with hundreds of people. The victim had to attend school knowing that her peers had not only watched but shared around her horrific and traumatic experience. Title IX should not put victims in the position of having to track down evidence, which would clearly be retriggering, on their own.

PART 3: KATELYN

_The Story._ One Thursday night after school, I picked up my friend Katelyn to go grab dinner. My closest friend since middle school, Katelyn and I had stayed close even after attending different high schools. She is someone who knows all my stories and secrets almost better than I know my own. She is the kind of friend that feels like family.

Katelyn lived in a different part of the city than I do, so I decided we would eat at one of my favorite burger restaurants I didn’t often get to go to. We chatted as I drove, catching up on the latest happenings. We arrived at the restaurant, ordered our burgers and fries and returned to the car to eat. As I dug in, Katelyn played with the wrapping on her burger, her eyes glazing over as if lost in thought. I asked her what was on her mind. “I never told you about the last time I was here.” No, she hadn’t. Odd. I had thought we told each other everything.

She shared with me that a mutual friend, Eric, had taken her to the same restaurant after offering to drive her home from a party. Drunk and in an attempt to sober up, she ordered food and then proceeded to pass out. She didn’t feel the car start moving as Eric pulled out of the restaurant, drove a short distance and pulled into an empty parking lot near her house. The only
thing she remembered, she told me, was waking up to the feeling of her pants unbuttoning. In a confused fog, she looked up to see Eric, the friend she trusted enough to take care of her and take her home.

I listened in horror. Eric was one of the “good guys,” I thought. He was someone I would have trusted to take me home without a second thought. Listening to her speak, I started to feel like I was going to throw up. She was barely able to get the words out as it was; she spoke in halting sentences, bursts of rambling run-ons and trailing-off trains of thought. I could see she was holding back wells of tears, still staring at the burger wrapper in her hands. I wanted to chime in and comfort her, but I was worried once I started talking that she would stop. As I listened to her talk, then cry, then experience one of what would become a pattern of panic attacks, there was a little voice in the back of my head I tried to ignore: if she couldn’t find the words with me, her best friend who she knows loves her and believes her, how could she ever manage a cross examination?

The Impact. To this day, Katelyn never called what happened to her that night assault; she knows it wasn’t consensual, she knows it was wrong, but putting that label on it would change things. She would have to acknowledge that she was a victim and Eric was an assaulter. She told me that she didn’t want anyone else to know, because “some girls lie about that kind of thing, and I’m not one of those girls.” She knew she wasn’t making up any part of what had happened to her, yet she repeated the same lines that the high school boys would use whenever the topic turned to sexual assault. At the burger restaurant, I saw her in a moment of total vulnerability and pain, but over time I watched as she put the walls up that she felt she needed to in order to cope. Even though I never questioned if what she was saying was true or expressed any doubt or judgement
toward her for what happened, I saw her direct those sentiments inward. She didn’t need a judge or a lawyer to pepper her with skeptical questions. She did that on her own.

*Proposed Legislation Changes.* Katelyn’s response to what happened to her is not representative of all sexual assault victims, as I hope the other stories included demonstrate. However, it is important to understand that to her, it seemed easier to reject her own experience than to come up against a culture that tends not to believe victims. Under the current Title IX regulations, not only would Katelyn have to be steadfast and sure enough of herself to come forward, but she would also have to undergo cross-examination. She would be subjected to someone questioning her memory, her trustworthiness, and ultimately her character. Victims do enough of that on their own. They should not be forced to relive their trauma with retriggering questions from a critical party. The Title IX regulations should guide an investigation process in which the ultimate goal is to find the truth, not to replicate a court of law. I would argue that when victims come forward, they have already had to overcome their own litany of questions and doubts. It can only cause more harm to bake this into the investigation process. Victims, should they choose to share their experiences, should not then be punished by being subject to live questioning about their trauma.

**CONCLUSION**

For Margaret, Danielle, Katelyn and most K-12 students, school is an unavoidable part of childhood; in fact, school structures young people’s entire worlds. Parents entrust their kids to teachers and staff, expecting them to provide a positive learning environment. Sexual assault is an immeasurable burden which victims are forced to carry with them everywhere they go, including to the schools they attend every day. All students, particularly those under the age of
18, deserve to feel that they are being watched out for. They deserve to trust that, if they experience something traumatic and out of their control that has an impact on their education, they will be protected from further harm. The only protection for me and my high school friends came from what we heard in the hallway - whispers of who to avoid at a party or who not to accept a ride from. As little protection as these stories offered, I listened. I armed myself with the knowledge I could find, knowing full well that if something happened to me, my world would change. Not only would I have to contend with the aftermath of such a traumatic experience, but I also would not be able to rely on my school community to protect me. I would have to get up each day and go to school, hearing my name tossed around in stories while the administrators turned a blind eye. I understand this is not always the case. But when I have more friends who have experienced some form of sexual harassment from a classmate than friends who have not, I see a problem. Title IX has the potential to push schools to step up and offer the protection that so many students so desperately need.
Works Cited

