

## **SB0427 Public Schools - Provision of Menstrual Hygiene Products – Requirement**

Presented to Members of the Education, Health, and Environmental Affairs Committee

February 11, 2021 11:00 a.m.

My name is Shea Roodberg, and I am a law student at the University of Baltimore School of Law. I am also the Program Coordinator for UB's chapter of If/When/How: Lawyering for Reproductive Justice<sup>1</sup>. I am writing on behalf of my chapter to urge the Education, Health, and Environmental Affairs Committee a favorable report on SB0427 Public Schools - Provision of Menstrual Hygiene Products – Requirement, sponsored by Senator Sarah K. Elfreth and Senator Chris West.

If/When/How at UB Law urges a favorable report because the lack of provision of free and accessible menstrual hygiene products in public schools is a violation of Title IX. The underlying goal of Title IX as stated by the United States Department of Justice is to ensure equal access to education, to ensure that no educational opportunity is denied to women on the basis of sex, and to ensure that women are granted the equal opportunity to aspire, achieve, participate in and contribute to society.<sup>2</sup> It is important to keep in mind that since the DOJ issued this statement in 1996, the Office of Civil Rights extended Title IX to encompass discrimination based on a student's failure to conform to sex-based stereotypes, and the SCOTUS holding last summer made it clear that sex-based discrimination encompasses discrimination on account of sexuality or transgender status.<sup>3</sup> Menstruation is a biological process exclusively experienced by people with female anatomy. When a school fails to alleviate barriers to education related to menstruation, it should be interpreted as a violation of Title IX's goal.

Period poverty is a pervasive issue which presents a barrier to education for menstruating students in Maryland. In 2019, 43.2% of Maryland public school students enrolled for free and reduced-price meals, indicating that their families struggled to afford basic necessities. Due to the costly nature of menstrual hygiene products, many families will make the difficult decision to deprioritize menstrual hygiene products over other basic necessities. If students' families cannot afford menstrual hygiene products, many will opt to stay home or miss class if they do not have a reliable and dignified source of menstrual hygiene products at school.<sup>4</sup> Even students whose families can afford menstrual hygiene products will frequently find themselves in need at school due to the high rate of irregularity that typically occurs during puberty. With the knowledge that students are missing classes and sometimes whole school days due to lack of access to menstrual hygiene products at school, the schools are violating the underlying goal of Title IX by failing to remedy this barrier to education which is unique to female students. The proposed bill offers a

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<sup>1</sup> <https://www.ifwhenhow.org/>

<sup>2</sup> See United States Department of Justice, Equal Access to Education: Forty Years of Title IX (June 23, 2012), 1, <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf> [https://perma.cc/5A6L-B9VN] (quoting *US v. Virginia*, 518 U.S. 515, 532 (1996))

<sup>3</sup> See Office of Civil Rights, Resources for LGBTQ Students (Sept. 24, 2020), <https://www2.ed.gov/about/offices/list/ocr/lgbt.html>.

<sup>4</sup> Christopher A. Cotropia, Menstruation Management in United States Schools and Implications for Attendance, Academic Performance, and Health, 6 *WOMEN'S REPROD. HEALTH* 289, 292 (2019).

sufficient remedy to this issue by providing free and accessible menstrual hygiene products in school restrooms.

Though Title IX does not explicitly mandate accommodations for menstruating students, it does suggest that accommodations should be provided to menstruating students via its provisions for pregnant students. Title IX's treatment of pregnancy as a sex-based occurrence, and mandate of reasonable accommodations to students based on their pregnancy status, can logically be carried over to menstruating students. The Office of Civil Rights issued guidance in 2013 stating in effect, "to ensure a pregnant student's access to educational programs, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's pregnancy status. For example, a school might be required to provide a larger desk, or permit temporary access to elevators."<sup>5</sup> Menstruation can be reasonably and logically linked to pregnancy because both involve the same uniquely female biological processes. If a school might be required to provide reasonable accommodations to a pregnant student when it deems to be necessary, why shouldn't a school be required to provide basic hygiene products to menstruating students in order to prevent them from bleeding through their clothes? Schools should, and in fact must, make these necessary and reasonable provisions in order to honor the underlying goal of Title IX.

Menstruation-based harassment is an experience shared by many females which arises from the perception that one is menstruating, which continues to be treated as a highly stigmatized biological process.<sup>6</sup> Triggers of harassment include students carrying menstrual hygiene products in school hallways, students bleeding through their clothes, students being overheard asking their peers for menstrual hygiene products, and so on. The failure to provide accessible menstrual hygiene products in the privacy of restrooms creates a barrier to education that is unique to menstruating students. There is no doubt that a young menstruating student faced with harassment, fear of harassment, and uncertainty of where or how to access a menstrual hygiene product at school would not have the same access to education as their male counterpart whose mind would not be fraught with these issues. The proposed bill largely alleviates this issue and honors the Title IX commitment to equal access to education by mandating the provision of menstrual hygiene products in school restrooms.

Many states and school districts have already taken the necessary step to provide free and accessible menstrual hygiene products in schools in order to honor and comply with Title IX. Maryland students deserve the same deference. For these reasons, UB's chapter of

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<sup>5</sup> SETH GALANTER, OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OFF., DEAR COLLEAGUE LETTER: SUPPORTING THE ACADEMIC SUCCESS OF PREGNANT AND PARENTING STUDENTS, 1–2 (2013), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.pdf> [<https://perma.cc/N5UH-QMWL>], with attached pamphlet U.S. DEP'T OF EDUCATION, OFFICE FOR CIVIL RIGHTS, SUPPORTING THE ACADEMIC SUCCESS OF PREGNANT AND PARENTING STUDENTS UNDER TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 (2013) [hereinafter "OCR Pregnancy Pamphlet"].

<sup>6</sup> 8 One in Five Girls and Young Women Bullied about Periods—Study, THE GUARDIAN (May 28, 2019, 2:59 EDT), <https://www.theguardian.com/society/2019/may/28/one-in-five-girls-and-young-women-bullied-about-their-periods-study> [<https://perma.cc/2LXE828K>].

If/When/How: Lawyering for Reproductive Justice urges the Committee to issue a favorable report on SB0427.