

Student Note

Recognizing Menstrual Equity as a Dimension of Equal Educational Opportunity

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“apparently it is ungraceful of me
to mention my period in public
cause the actual biology
of my body is *too real*.”¹

INTRODUCTION

Over half of the world bleeds for a large portion of their lives.² It is undeniable that people who menstruate navigate the world differently in

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1. Rupri Kaur, *MILK AND HONEY 177* (Andrews McMeel ed., 2015).

2. The average woman will menstruate once a month for roughly 35 to 40 years of her life. That is approximately 3,000 days—more than eight years—of periods during her lifetime. At any given time, 800 million women and youth worldwide are menstruating. *Having Your Period Shouldn’t Hold You Back*, WATERAID, <https://perma.cc/P4GS-9JR2> (last visited Apr. 13, 2022, 10:42 AM). I will use “women,” “girls,” and “people who menstruate” interchangeably throughout this piece. I considered using the term “menstruator” to describe people who menstruate because not all people who menstruate identify as women, but the term seemed detached linguistically from the humanity of the experience of menstruation. It is also important to note that not all women/girls menstruate. Children with internal sex and reproductive organs

order to manage their period. Sex and pregnancy are not the only concerns when it comes to menstruation. People with internal sex and reproductive organs³ menstruate regardless of class, wealth, gender identity, disability, or sexual activity. Menarche, a menstruator's first period, occurs as early as age eight.⁴ The average menstruator releases two to three tablespoons of blood each menstrual cycle, usually over several days.⁵ They also bleed regardless of whether they have been taught what menarche is. They bleed at home, at school, on the bus, while playing sports, at the movies—and they bleed regardless of whether they can afford the products that society tells them they must use to hide their blood.

Your period does not take a break during important events or because you do not have the supplies to manage it properly and

begin to menstruate around the time they reach puberty and stop menstruating when they reach menopause. *Your Menstrual Cycle*, OFF. ON WOMEN'S HEALTH, U.S. DEP'T HEALTH & HUM. SERVS., <https://www.womenshealth.gov/menstrual-cycle/your-menstrual-cycle> (last visited Apr. 2, 2023) [hereinafter *Your Menstrual Cycle*, OWH]; Further, when a person is pregnant, they do not menstruate. *Id.* Additionally, when a person is taking prescription hormonal birth control that disrupts the egg release stage of the menstrual cycle as a method of preventing pregnancy, and skipping the inactive pills suppresses menstruation. *Birth Control: The Pill*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/drugs/3977-birth-control-the-pill#:~:text=Hormones%20in%20birth%20control%20pills,is%20less%20likely%20to%20attach> (last visited Apr. 2, 2023). Additionally, people who identify as transgender women often do not menstruate, and people who identify as transgender men may menstruate. See CHRIS BOBEL, *NEW BLOOD: THIRD-WAVE FEMINISM AND THE POLITICS OF MENSTRUATION* 11–12 (2010).

3. The Planned Parenthood Glossary on gender affirming medical terminology related to sexual health uses “internal sex and reproductive organs” instead of “female sex organs.” *Glossary*, PLANNED PARENTHOOD, https://www.plannedparenthood.org/learn/glossary#id_I (last visited Apr. 2, 2023). Internal sex and reproductive organs that are typically called female include the vagina (birth canal), ovaries, cervix, uterus, and fallopian tubes. *Id.*; *Female Reproductive System*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/articles/9118-female-reproductive-system> (last visited Apr. 2, 2023).

4. *Your Menstrual Cycle*, OWH *supra* note 2; *Menopause*, U.S. DEP'T HEALTH & HUM. SERVS., <https://www.womenshealth.gov/menopause> (last visited Apr. 2, 2023). The average age of menarche in the United States is twelve, but this figure has steadily decreased in recent decades. *Id.* Further, the average age of menarche for Black girls is younger, with many starting their period as early as age eight. Ashley Reese, *Black Blood*, in *PERIOD: TWELVE VOICES TELL THE BLOODY TRUTH* 109–11 (2018) (explaining that [B]lack American girls start their periods earlier than other girls). One report suggests that the COVID-19 pandemic has increased the prevalence of early menarche globally, with doctors reporting treating up to three times the usual number of patients for precocious (or early) puberty. Puja Changoiwala, *Early Puberty Cases In Girls Have Surged During Covid*, *Doctors Say* (Mar. 28, 2022), <https://www.washingtonpost.com/lifestyle/2022/03/28/early-puberty-pandemic-girls/>.

5. *Your Menstrual Cycle*, OWH *supra* note 2.

hygienically. In fact, over one in four people who menstruate in the United States cannot afford menstrual products.⁶ People who menstruate report choosing each month between period products and food.⁷ This disparity has been defined by activists as “period poverty”⁸—the inability to access menstrual hygiene products—and lower income and students of color have been particularly affected.⁹ Because menarche, generally occurs between eight and fifteen years old¹⁰, period poverty affects people who menstruate starting at an age where you are already in a vulnerable circumstance: in school.¹¹

Compounding factors make menstruation more difficult to manage. In a study of menarche, low-income girls in the U.S. reported having “felt unprepared and ill equipped for [the] transition [to having a period].”¹² On average, people with autism take around four to five years to get used to managing their period.¹³ Additionally, period pain is commonly reported by menstruators,¹⁴ yet there is an unspoken expectation to “put up with it,” which leads girls with more serious pain

6. THINK & PERIOD, *State of the Period 2021 The widespread impact of period poverty on US students* 1 (May 2021), <https://period.org/uploads/State-of-the-Period-2021.pdf> [hereinafter STATE OF THE PERIOD 2021].

7. *Id.* at 2; *Women Forced to Choose Between Food and Menstrual Products*, DEPAUL’S CTR. JOURNALISM INTEGRITY & EXCELLENCE (Nov. 20, 2019), <https://news.wtw.com/2019/11/20/women-forced-choose-between-food-and-menstrual-products> (last visited Apr. 2, 2023).

8. STATE OF THE PERIOD 2021, *supra* note 6, at 1; Shelby Davies et al., *Period Poverty: The Public Health Crisis We Don’t Talk About*, ADOLESCENT HEALTH & WELL-BEING (Apr. 6, 2021), <https://policylab.chop.edu/blog/period-poverty-public-health-crisis-we-dont-talk-about> (last visited Apr. 2, 2023).

9. STATE OF THE PERIOD 2021, *supra* note 6, at 1.

10. *Your Menstrual Cycle*, OHW, *supra* note 2. The cumulative probability of menarche at ages 8 through 12 years was higher in 2013–2017 compared with 1995. Gladys M. Martinez, *Trends and Patterns in Menarche in the United States: 1995 through 2013–2017*, in 146 NAT’L HEALTH STAT. REP. 1, 3 (2020).

11. “70% [of surveyed students] say the school environment makes them especially self-conscious of their periods. 83% hide their period products when they walk out of class to go to the bathroom. 65% do not want to be at school when they have their periods.” STATE OF THE PERIOD 2021, *supra* note 6, at 2.

12. Ann C. Herbert et al., *Puberty Experiences of Low-Income Girls In The United States: A Systematic Review of Qualitative Literature from 2000 to 2014*, 60 J. ADOLESCENT HEALTH 363, 366 (2017).

13. STEPH JONES & SHREE DATTA, HOW PEOPLE ON THE AUTISM SPECTRUM EXPERIENCE AND MANAGE THEIR PERIOD 8, <https://www.intimina.com/blog/wp-content/uploads/2022/03/Intimina-Autism-Report-V1f.pdf>.

14. See Mark E. Schoep et al., *Productivity Loss Due to Menstruation-Related Symptoms: A Nationwide Cross-Sectional Survey Among 32,748 Women*, BMJ OPEN (June 27, 2019) <https://bmjopen.bmj.com/content/bmjopen/9/6/e026186.full.pdf>.

to go undiagnosed for pelvic conditions that need medical intervention and treatment.¹⁵ According to one study, “[m]enstrual symptoms including pain, heavy bleeding and low mood may be linked to nearly nine days of lost productivity per woman every year.”¹⁶ Dysmenorrhea, the clinical term for painful menstruation, interferes with the daily life of around one in five women,¹⁷ and doctors now liken the symptoms to be as “painful as a heart attack.”¹⁸ In one survey, “two in five students . . . said pain affected their concentration or performance in class.”¹⁹ There was also report of missing social/school activities and sporting activities because of their menstrual symptoms.²⁰ The Period Movement defines period poverty as “the limited or inadequate access to menstrual products or menstrual health education as a result of financial constraints or negative socio-cultural stigmas associated with menstruation.”²¹ Nearly one in four school-aged menstruators in the United States cannot afford period products,²² and because of the lack of menstrual awareness at the legislature, these products that are essential to participation in society are not covered by traditional

15. “On average, women in the United States will suffer from endometriosis for 10 years before receiving a proper diagnosis,” even though it affects one in ten women. *Endometriosis*, YALE MED., <https://www.yalemedicine.org/conditions/endometriosis#:~:text=Overview,there%20may%20be%20no%20symptoms> (last visited Mar. 14, 2022). This is because the pain can be confused with menstrual cramps or not be detectable. *Id.*

16. Mike Armour et al., *Study Finally Shows How Disruptive Period Pain Really Is, and We Need to Talk About It*, SCI. ALERT: HEALTH (June 28, 2019), <https://www.sciencealert.com/period-pain-is-probably-causing-days-of-lost-productivity-each-year>.

17. Pallavi M. Latthe et al., *Dysmenorrhoea*, CLINICAL EVIDENCE (Feb. 21, 2011), <https://pubmed.ncbi.nlm.nih.gov/21718556/>.

18. See David Brand, *Doctors Acknowledge Period Pain as Painful as a Heart Attack: It's What Women Have Been Saying All Along*, GLOBAL CITIZEN (Feb. 28, 2018), <https://www.globalcitizen.org/en/content/menstruation-pain-periods-heart-attack-women-know/>.

19. Armour et al., *supra* note 16.

20. *Id.*

21. *Period Poverty*, PERIOD. LAUNCH PAD, <https://period-action.org/periodpoverty> (last visited Apr. 2, 2023).

22. “[P]eriod poverty—the inability to access menstrual hygiene products—has jumped to nearly a quarter of all students (up from 1 in 5 in 2019), and lower income and students of color have been particularly affected.” STATE OF THE PERIOD 2021, *supra* note 6, at 1.

government assistance programs.²³ Poverty disproportionately affects Black, Indigenous and people of color (BIPOC),²⁴ and period poverty, therefore, has a similar skew. The impact of period poverty has a disproportionate effect on Black, Indigenous, and Latinx communities. “Almost half of Black and Latinx students feel they are not able to do their best schoolwork because of lack of access to period products, compared to 28% among white students.”²⁵

In addition, the COVID-19 pandemic has significantly affected the number of people and ways period poverty is experienced.²⁶ Students relate that it is difficult to attend school if they do not have access to the products they need to menstruate in class comfortably.²⁷ Students experiencing homelessness or housing insecurity may not have appropriate access to facilities to wash the blood stains from their clothes or regular bathroom access to follow the recommended guidelines for the appropriate amount of time disposable products should be worn.²⁸ This can lead to poor physical health outcomes such as infections, irritation, abnormal discharge, and potentially toxic shock syndrome (TSS).²⁹

23. Supplemental Nutrition Assistance programs (SNAP) and SNAP for Women, Infants, and Children (WIC) do not allow the purchase feminine hygiene products. JENNIFER WEISS-WOLFE, PERIODS GONE PUBLIC: TAKING A STAND FOR MENSTRUAL EQUITY, 189–93 (2017). Additionally, tampons and pads were not eligible for reimbursement under federal Flexible Spending Account (FSA) allowances or under Medicaid until the March 2020 with the passage of Public Law 116 – 136, Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). See also *End Diaper Need and Period Poverty: Families Need Cash Assistance to Meet Basic Needs*, NAT’L DIAPER BANK NETWORK & CTR. ON BUDGET & POL’Y PRIORITIES (Sept. 27, 2021), <https://www.cbpp.org/sites/default/files/9-27-21tanf.pdf>.

24. Michael B. Sauter, *Faces of Poverty: What Racial, Social Groups are More Likely to Experience It?*, USA TODAY (Oct. 10, 2018), <https://www.usatoday.com/story/money/economy/2018/10/10/faces-poverty-social-racial-factors/37977173/>

25. STATE OF THE PERIOD 2021, *supra* note 6, at 2.

26. See Bridget J. Crawford & Emily Gold Waldman, *Period Poverty in a Pandemic: Harnessing Law to Achieve Menstrual Equity*, 98 WASH. U. L. REV. 1569 (2021).

27. STATE OF THE PERIOD 2021, *supra* note 6, at 2.

28. Marni Sommer & Diana J. Mason, *Period Poverty and Promoting Menstrual Equity*, 2 JAMA HEALTH FORUM (Aug. 19, 2021); Adrienne Santos-Longhurst, *How Often Should You Change Your Pad?*, HEALTHLINE (Dec. 15, 2020) <https://www.healthline.com/health/menstruation/how-often-should-you-change-your-pad#pad-types>.

29. *What Happens if You Leave a Tampon in Too Long?*, CLEVELAND CLINIC (Sept. 9, 2022), <https://health.clevelandclinic.org/what-happens-if-you-leave-a-tampon-in-too-long/#:~:text=%E2%80%9CThe%20vagina%20can%20be%20a,allow%20good%20bacteria%>

If menstruation and its obstacles affect such a large portion of the population, why are its mechanics and accommodations swept aside not only by school administrations but also by the legislature and our laws? Perhaps it's the taboo that exists surrounding monthly bleeding around the globe and in the U.S. There is a cultural stigma that categorizes menstruation as a girl's dirty little secret that people who menstruate must suffer through in silence and adapt to conceal.³⁰ The stigma is so embedded in our society that it has breached our vernacular. Instead of summarily calling menstruation by its name or even by the shortened term "period,"³¹ coded language has become the comfortable way of disguising a bodily function that can bring about unwarranted shame. "Aunt Flo," "crimson tide," "the curse," "time of the month," "code red," or "shark week" replace the outright statement that "you are on your period."³² This coded language usually has negative connotations, likely because period blood is historically taboo in cultures across the globe³³, including in the U.S.³⁴ Language and word choice can cause "emotional responses or conflict with preexisting beliefs about [a]

20to%20overgrow. TSS comes from wearing a tampon for more than the recommended amount of time and can be fatal. See *Toxic Shock Syndrome (TSS)*, JOHN HOPKINS MED., <https://www.hopkinsmedicine.org/health/conditions-and-diseases/toxic-shock-syndrome-tss> (last visited Apr. 2, 2023).

30. See LAUREN ROSEWARNE, PERIODS IN POP CULTURE: MENSTRUATION IN FILM AND TELEVISION, at 8–9 (2012) (ebook) [hereinafter PERIODS IN POP CULTURE]. "76% of students say there is a negative association that periods are gross and unsanitary and 65% agree that society teaches people to be ashamed of their periods." STATE OF THE PERIOD 2021, *supra* note 6, at 2.

31. Period is short for "menstrual period." *Female Reproductive System – Reproductive Health*, NAT'L INST. OCCUPATIONAL SAFETY & HEALTH (NIOSH) (June 12, 2022) <https://www.cdc.gov/niosh/topics/repro/femalereproductivesystem.html>.

32. See WEISS-WOLFE, *supra* note 23 at xiii–xiv. "[T]o avoid and prevent the embarrassment of violating menstrual taboo, girls creatively use linguistic strategies as slang terms, circumlocutions, pronouns, and euphemistic deixis to find ways to talk about something they are uncomfortable talking about or believe that they should not talk about." Elizabeth Arveda Kissling, "That's Just a Basic Teen-Age Rule": *Girls' Linguistic Strategies for Managing the Menstrual Communication Taboo*, 24 J. APPLIED COMM. RSCH. 292 (1996).

33. "Menstrual taboos and traditions are not new. Going back millennia and continuing to the present day, menstruation has been treated as something that is unclean, mysterious, or both in many cultures." Crawford & Waldman, *supra* note 26, at 1589.

34. Kissling, *supra* note 32 at 292–309 (1996) ("Powerful social taboos dictate that menstruation should not be discussed socially."); Margaret Johnson, *Menstrual Justice*, 53 U.C. DAVIS L. REV. 1, 6, 15 (2019) ("Social science research confirms that the historical cultural bias against menstruators continues."); Jennifer Weiss-Wolf, *The Era Campaign and Menstrual Equity*, 43 HARBINGER 168, 169 (2019) ("[M]any populations [in the U.S.] also struggle with compromised menstrual access and the burden of shame.").

topic.”³⁵ One study found that people today use over 5,000 euphemisms to describe periods, many of which carry a negative connotation.³⁶ Secretive, coded language to describe periods are part of a deeply engrained idea of menstrual etiquette, shaped by shame and sexual self-consciousness.³⁷ The covert linguistic strategies to avoid mentioning the unmentionable emphasizes negative associations with a normal biological process.³⁸ The negative language is pervasive in popular culture through product advertisements, industry-produced educational films, movies, books, and women and men’s magazines.³⁹ “[S]ociety expects menstruators to hide menstruation, to be shamed by menstruation, and to be solely and invisibly responsible for the care of and the effects of their menstruation,”⁴⁰ including the associated costs.⁴¹ This means, to participate in society fully, people who menstruate not only bear an economic burden but also must adapt to exist in a way that doesn’t let anyone know that they bleed.

Contrary to the beliefs of many uninformed people who do not menstruate, the obstacles that menstruation poses put dramatic burdens on young people starting at menarche. Modern studies of the experience of menstruation still find a large gap in understanding surrounding the biological function and pain management associated with periods.⁴² The knowledge gap is present both in people who menstruate and especially in those who do not. Generations of people who do not menstruate have gone on to hold positions of power without a proper understanding of the biological function.⁴³ The result is politicians making political

35. Audrey M. Lamborn, *It’s About ‘That Time’ to Break the Cycle: A Rhetorical Analysis of Challenging Menstrual Taboos*, (Apr. 2017) (M.A. thesis, Abilene Christian University) (on file with author).

36. Roisin O’Connor, *Menstruation Study Finds Over 5,000 Slang Terms For ‘Period’*, INDEP. (Mar. 1, 2016), <https://www.independent.co.uk/life-style/health-and-families/menstruation-study-finds-over-5-000-slang-terms-for-period-a6905021.html>.

37. KAREN HOUPPERT, *THE CURSE: CONFRONTING THE LAST UNMENTIONABLE TABOO—MENSTRUATION* 4–8 (1999).

38. *Id.* at 4–5.

39. *See* HOUPPERT, *supra* note 37, at 11–47 (Part One: The Industry).

40. Johnson, *supra* note 34, at 6.

41. *See id.* at 7.

42. Margaret L. Schmitt et al., *The Intersection of Menstruation, School and Family: Experiences of Girls Growing Up in Urban Cities in the U.S.A.*, 26 INT’L J. ADOLESCENCE & YOUTH, 1, 94–109 (2021).

43. Christina Cauterucci, *Ignorance Is Blessed: Supporters of Alabama’s Extreme Abortion Law Weren’t Just Confused About What Exactly It Does—They were Proud of Their*

decisions without an empathetic understanding of the needs of people who menstruate,⁴⁴ doctors who are dismissive of pain, and school administrators who do not consider the needs of people who menstruate when structuring school policies.

Thus, the indoctrination of periods as a *dirty little secret* extends from public school to public life. Period problems have gone under-addressed for generations at the legislature,⁴⁵ and only recently have the terms “menstrual equity” and “period poverty” made their way into policy vernacular.⁴⁶ Lack of medically accurate menstrual education, the unfettered negative rhetoric and imagery of commercial period products, and the neglect of menstrual issues at the legislature all create a culture of shame and inferiority in the U.S. that people who menstruate endure daily.

Additionally, menarche is an experience that leaves a lasting impression and can be very traumatic or negative without proper preparation. Without pragmatic information on what a period is and why you find blood in the bathroom, the result is a more negative

Cluelessness, SLATE POLS. (May 15, 2019), <https://slate.com/news-and-politics/2019/05/alabama-abortion-law-republican-ignorance-female-reproduction.html>.

44. See generally Katherine R. Allen et al., *More Than Just a Punctuation Mark: How Boys and Young Men Learn About Menstruation*, 32 J. FAM. ISSUES 129 (May 20, 2010) (A qualitative study on how boys learn about menstruation found that “[l]ack of attention to how and what boys learn about menstruation has consequences for their private understanding about the biology of reproduction and also for social and cultural ideologies of gendered relationships.”).

45. It required immense effort to get the FDA to address Toxic Shock Syndrome, a sometimes-fatal condition that comes from wearing a tampon for an extended period of time. *Toxic Shock Linked to Use of Tampons*, 118 SCIENCE NEWS (1), 6–7 (1980). Several women died before the FDA issued regulation requiring tampons to come with a warning label. Jamie M. Kohen, *The History of the Regulation of Menstrual Tampons*, HARV. DASH REPOSITORY (Apr. 6, 2001). To this day, the FDA very loosely regulates period products and does not consider them to be an essential medical device, rather labeling them “type II.” *Id.* at 4–5. There is no requirement for period product companies to list the ingredients of these devices that are inserted into the vagina. *Id.* at 25, 35. Additionally, twenty-two states charge sales tax on period products (as of Sept. 20, 2022) *Tampon Tax*, ALL. PERIOD SUPPLIES, <https://www.period-action.org/advocacy> (last visited Apr. 3, 2023).

46. See generally WEISS-WOLFE, *supra* note 23 (explaining that starting in 2015 there has been a political and cultural shift that forces legislators to see and discuss menstrual issues).

psychological outcome.⁴⁷ Imagine being eight years old⁴⁸ and seeing blood in the bathroom, not knowing what is happening to you.⁴⁹ Then imagine that this happens at school. My guess is that some readers do not have to imagine; many of my colleagues have reported at least one traumatic period experience. These first experiences start a relationship with menstruation that can be embarrassing, uncomfortable, and traumatic. Society relies on parents to relay the essential information about periods, but even parents fall victim to the stigma and often delay what they perceive to be an uncomfortable conversation until it is too late.⁵⁰ A 2007 literature review exploring the communication about menstruation among low-income Black women revealed many received little to no information about menstruation prior to menarche.⁵¹ A 2017 review and synthesis of available data from surveys of low-income American girls on period preparedness found that across the studies, girls reported that they still lacked the information and readiness to cope with the onset of menstruation.⁵² Menarche is a critical moment of development, yet “the research is striking in its lack of quantity and quality to date.”⁵³

“Because menarche is an uncertain, ambiguous, and novel event, the arrival of a first menstrual cycle is often accompanied by negative feelings including anxiety, surprise, dismay, panic, confusion, [and]

47. Herbert et al., *supra* note 12, at 364. Specifically, lower income girls in the survey population described their experiences with menstruation and menarche as “embarrassing, traumatic, scary, and confusing and associated with feeling gross, dirty, smelly, and disgusting.” *Id.* at 366. The students also reported having “felt unprepared and ill equipped for this transition.” *Id.*

48. Menarche begins as early as eight years old for many U.S. girls, especially for Black girls. Reese, *supra* note 4.

49. See generally Jennifer M. Hebert-Beirne et al., *A Pelvic Health Curriculum in School Settings: The Effect on Adolescent Females’ Knowledge*, 30 J. PEDIATRIC ADOLESCENT GYNECOLOGY 188 (2017) (identifying that pelvic-related knowledge deficits are prevalent among female adolescents).

50. Allen et al., *supra* note 44, at 131. Almost seven out of ten (69%) people get advice about their periods from their mothers; however, the statistic is much lower (55%) for those with autism. JONES & DATTA, *supra* note 13, at 6. See also WEISS-WOLFE, *supra* note 23 at 226–27.

51. Spring C. Cooper & Patricia B. Koch, *Nobody Told Me Nothin’: Communication About Menstruation Among Low-Income African American Women*, 46 WOMEN & HEALTH, 57–78.

52. Herbert et al., *supra* note 12.

53. *Study Finds Girls Feel Unprepared for Puberty*, Columbia Univ. Mailman Sch. Pub. Health, www.publichealth.columbia.edu/news/study-finds-girls-feel-unprepared-puberty.

embarrassment”⁵⁴ Without a proper place to turn in the face of this event, children are more likely to report the negative emotional response.⁵⁵ Many schools tuck emergency period products away in the front office or nurse’s office, if they have them at all.⁵⁶ Additionally, many school districts have restrictive policies for bathroom breaks that do not always align with menstrual needs.⁵⁷ The cultural stigma then shapes the daily lives of students as they learn to navigate their new lives incorporating period management.⁵⁸ “Menarche introduces girls to the cultural baggage of secrecy and shame, where they must hide and control the messiness that surrounds the evidence of their womanhood.”⁵⁹

In its current state, menstrual concealment is expected but not always achievable. Being caught one day without a product on hand can be a common mishap among people who menstruate, especially young people who are more likely to have irregular, unpredictable periods. The stigma and shame are shared experiences, and if you ask any person in your life who has a period, they likely have a story of a time they bled through clothes or had to leave school to manage their period.⁶⁰ It is essential to remember that there are menstruators who never had the

54. Misaki N. Natsuaki et al., *Going Through the Rites of Passage: Timing and Transition of Menarche, Childhood Sexual Abuse, and Anxiety Symptoms in Girls*, 40 J. YOUTH & ADOLESCENCE, 1357, 1358 (2010) (internal citations omitted).

55. *Id.* (“[G]irls who mature early tend to exhibit more anxiety symptoms and panic attacks.”).

56. Margaret E. Johnson et al., *Title IX & Menstruation*, 43 HARV. J.L. & GENDER 225, 251 (2020).

57. *Id.* at 241.

58. Tomi-Ann Roberts et al., “*Feminine Protection*”: *The Effects of Menstruation on Attitudes Towards Women*, 26 PSYCH. WOMEN QUARTERLY 131, 132 (2002). Efforts of menstrual concealment “may indeed be well-founded, for reminders of menstruation do appear to lead to negative judgments of women.” *Id.* at 138. This wide-scale concealment has created its own reinforcing cycle, wherein “the sanitized, deodorized, and idealized images of women’s bodies become the only ones we encounter and accept.” *Id.*

59. Allen et al., *supra* note 4444, at 132.

60. STATE OF THE PERIOD 2021, *supra* note 6, at 2. “Two-thirds of respondents feel stress because they don’t have access to tampons and pads, 61% have worn tampons more than four hours, 25% missed class because they didn’t have access to tampons or pads, and 83% think lack of access ‘is not talked about enough.’” Shawna De La Rosa, *Report Finds ‘Period Poverty’ a Top Reason Girls Miss School*, K-12 DIVE (Oct. 21, 2019), <https://www.k12dive.com/news/report-finds-period-poverty-a-top-reason-girls-miss-school/565424/>.

products in the first place and, therefore, cannot comfortably exist in school for several days each month.

People who menstruate are diverse, yet general conversation imagines a cisgender, neurotypical white woman of middle class means and a family structure with a mother to teach her about her period. And even they find themselves caught off guard by their menstrual cycle at school. Further, a lack of timely menstrual education leaves children experiencing menarche in the dark about the involuntary physiological process happening to their bodies, which results in negative psychological outcomes.⁶¹ Negative experiences with menarche are made worse for nearly one in four menstruators who have to navigate their period management while struggling to afford the necessary products.⁶² People who menstruate also bear the burden of shame if they do not properly conceal their “condition”. Even if they succeed at hiding the physical evidence, bullying and harassment related to menstruation is still prevalent.⁶³ A person who menstruates and fails to conceal that they are bleeding may experience targeted bullying. Studies have found that reminders of a woman’s menstruation led peers to have negative views of her,⁶⁴ and public health groups warn that period shaming, along with limited access to necessary menstrual products, has significant physical and mental health effects on girls.⁶⁵ Failure to cover up can lead to diminished perceptions from peers of both competency and hygiene.⁶⁶ Many girls report stuffing a tampon up their sleeve or fearing the sound of unwrapping a pad or tampon in a public bathroom.⁶⁷ One male student recounts,

61. Thirupura Sundari et. al., *Psychosocial Problems of Adolescent Girls During Menstruation*, 3 J. MENTAL HEALTH EDUC. 47 (2022).

62. STATE OF THE PERIOD 2021, *supra* note 6, at 2.

63. Johnson, *supra* note 34, at 7; Kristi Pahr, *Period Shaming: A Not-So New Type of Bullying Parents Need to Know About*, PARENTS (Nov. 4, 2019), <https://www.parents.com/kids/problems/bullying/period-shaming-is-a-kind-of-bullying-parents-need-to-be-aware-of/>.

64. Roberts et al., *supra* note 58, at 131 (“Participants interacted with a female confederate who ostensibly accidentally dropped either a tampon or hair clip out of her handbag. Dropping the tampon led to lower evaluations of the confederate’s competence, decreased liking for her, and a marginal tendency to avoid sitting close to her.”).

65. *Infographic: End the Stigma. Period.*, UNWOMEN, (Oct. 4, 2019), <https://www.unwomen.org/en/digital-library/multimedia/2019/10/infographic-periods>.

66. Roberts et al., *supra* note 5858.

67. Herbert et al., *supra* note 12, at 367; WEISS-WOLFE, *supra* note 23, at 225.

It always seemed like something that guys could make jokes about to make girls embarrassed or to seem superior to them. I recall a time when a girl in my class got up and rushed out of the room and everyone looked at her chair and saw blood and proceeded to make fun of her for weeks.⁶⁸

“Stigma compromises healthy engagement with one's body. It undermines self-care, critical thinking and informed decision-making. It also hurts self-esteem and social status.”⁶⁹

If something as simple as dropping a tampon can lead to decreased perceptions of competence, the environment society has created is certainly hostile toward people who menstruate. This hostile environment, coupled with the actual loss of educational time, has long been an unequal learning environment for young people who menstruate, particularly for students with compounding factors like low socioeconomic status or disability. Dispelling the shame is an essential step in achieving an equitable learning environment that produces community-minded, empathetic constituents and lawmakers.

It is not surprising that traditional laws and policies do not consider the burdens of menstruation, given that the historical makeup of lawmakers is cisgendered men who do not have the biological capacity for a menstrual cycle. The lack of menstrual knowledge for those who do not experience a period is staggering. Nearly four in five students believe they “are taught more about the biology of frogs than the human female body in school.”⁷⁰ Menstrual curriculum has gone largely overlooked as an essential part of public school education, and therefore there is a huge learning gap surrounding the biological process.

When addressed in most school systems, the teaching of menstruation is in the context of sex education and is separated by

68. Allen et al, *supra* note 44, at 145.

69. Malaka Gharib, *New Book Busts Myths About Menstruation Spread By Public Health Groups*, NPR (Jan. 30, 2019), <https://www.npr.org/sections/goatsandsoda/2019/01/30/689943045/new-book-busts-myths-about-menstruation-spread-by-public-health-groups>.

70. STATE OF THE PERIOD 2021, *supra* note 6, at 3.

gender⁷¹—an archaic practice that contributes to shame and stigma and reinforces the cultural concept that the conversation about period blood is a girly secret that menstruators must keep behind closed doors and not discuss, especially with boys. The misconceptions that surround periods because of this lack of curriculum make their way into our laws and administrative procedures in schools because culture and the law are so closely tied. One particularly funny misconception is that a woman can just “hold it” until she can access period products, as if the bleeding is like urination.⁷² A study found that “40% of Republican men believe that all women start their period on the first of the month.”⁷³ When Sally Ride made the first female journey into space, NASA scientists packed 100 tampons for the seven-day voyage and asked, “Will that be enough?”⁷⁴ Individual anecdotes such as this only scratch the surface of the lack of understanding, thus lack of empathy, toward a biological process that affects everyone.⁷⁵ If all students learned inclusive menstrual health, there would be a shift in the societal understanding of periods, leading to an empathetic treatment of period issues that arise. If decision-makers better understand the biological facts of menstruation, there might be a greater understanding of why students cannot always wait for bathroom breaks and why it is so important to make menstrual products freely and easily accessible.

But even as women have entered positions of legislative power, there is still a hesitation to provide products or education surrounding the function. The stigma and shame are so ingrained that even mention

71. Bonnie J. Rough, *Why We Shouldn't be Separating Boys and Girls for Sex Ed*, WASH. POST (Oct. 19, 2018), <https://www.washingtonpost.com/lifestyle/2018/10/19/why-we-shouldnt-be-separating-boys-girls-sex-ed/>.

72. *Busting Those Period Myths*, YOUNG SCOT (May 28, 2021), www.young.scot/get-informed/period-myths-busted/; see also Brittany Wong, *Women are Sharing How Little the Men in their Lives Know About Reproduction: A Viral Twitter Thread Revealed the Knowledge Gap on Sex, Periods, and More – Even Though Many Male Legislators are Acting to Regulate Women's Bodies*, HUFFPOST (May 13, 2022), https://www.huffpost.com/entry/women-are-sharing-how-little-the-men-in-their-lives-know-about-reproduction_1_627e8906e4b0eb0f0711cb80?gd.

73. Vivian Kane, *Republican Men Have Some Weird Ideas About Periods and Pregnancy*, MARY SUE (Sept. 3, 2019), <https://www.themarysue.com/are-republican-men-ok/>.

74. Ann Friedman, *Astronaut Sally Ride and the Burden of Being the First: America's Woman Space Pioneer Paid a Price Back on Earth*, AM. PROSPECT (June 19, 2014), <https://prospect.org/culture/books/astronaut-sally-ride-burden-first/>.

75. Because even if you do not have a period, someone you know and care for does.

of the issue can lead to labels like “period lady,”⁷⁶ as if it were an insult. Perhaps this explains why even legislators who menstruate are hesitant to bring up the subject. Equipping the next generation with communication tools to understand, empathize, and appreciate the experiences that women and girls face is essential to combat the stigma and normalize bringing up menstrual issues.⁷⁷

Resolution to the myriad of issues surrounding menstruation is essential to an equitable society.⁷⁸ The conversation currently has three main focal points: tax law, access to products, and menstruation education. These arenas see access to menstrual products and menstruation awareness as issues of equity: menstrual equity. This Note focuses on the latter two issues, particularly within the context of public schools.

I. MENSTRUAL EQUITY IN THE PUBLIC SCHOOL SETTING

Public schools are uniquely situated in the movement to address menstrual equity. Formal education is compulsory in most states within the United States, usually starting somewhere from age five to eight and ending around sixteen or seventeen,⁷⁹ and around 91% of students within these age requirements are enrolled in public school.⁸⁰ By addressing menstrual equity through the public school system, there is a great potential to affect change.

Public schools are also where the impact of inequity is most acute. 51% of public school students come from low-income families.⁸¹ One

76. Katie Kindelan, *This Congresswoman Nicknamed ‘Period Lady’ is on a Mission to Give All Women Access to Period Products*, GMA (Oct. 18, 2019), www.goodmorningamerica.com/wellness/story/congresswoman-nicknamed-period-lady-mission-give-women-access-66232513.

77. WEISS-WOLFE, *supra* note 23, at 225.

78. See generally *id.*

79. *State Compulsory School Attendance Laws*, INFOPLEASE, <https://www.infoplease.com/us/education/state-compulsory-school-attendance-laws> (last visited Jan. 15, 2023).

80. *Private School Enrollment. Condition of Education*, NAT’L CTR. EDUC. STATS. (May 2022), <https://nces.ed.gov/programs/coe/indicator/cgc>.

81. Motoko Rich, *Percentage of Poor Students in Public Schools Rises*, N.Y. TIMES (Jan. 16, 2015), <https://www.nytimes.com/2015/01/17/us/school-poverty-study-southern-education-foundation.html>.

in six children in the United States experiences poverty in their childhood.⁸² With poverty comes the inevitable period poverty.

To participate in their compulsory learning fully and comfortably, students who menstruate require the proper products to manage the blood that is associated with a period hygienically. As of 2021, period poverty is a leading cause of girls missing school, with one in four menstruating students reporting issues affording proper products.⁸³ The COVID-19 pandemic has also brought about new challenges as an increased number of people experience period poverty,⁸⁴ and doctors report a striking increase in early puberty in recent years and speculate that this is caused by increased stress coupled with the sedentary nature of quarantine.⁸⁵

Additionally, settings like school make practical period management more difficult,⁸⁶ especially when children are younger and attempting to manage their period by themselves. Schools may have restrictive bathroom policies or dress codes that require light colored clothing.⁸⁷ These policies ignore their impact on the menstruating student. All of this is compounded by the pervasive messaging in media and the curriculum that periods are shameful.⁸⁸

To achieve menstrual equity, activists like Jennifer Weiss-Wolfe and Bridget Crawford opine that period products should eventually be provided in all public spaces, just as toilet paper, paper towels, and soap are provided currently. Weiss-Wolfe further opines that there should not be an extra economic burden based on whether you have internal or external sex organs.⁸⁹

82. Emily Shrider et al., *Income and Poverty in the U.S.: 2020*, U.S. CENSUS BUREAU (Sept. 14, 2021), <https://www.census.gov/library/publications/2021/demo/p60-273.html>.

83. De La Rosa, *supra* note 60.

84. Emily Hunter et. al, *COVID-19 Made it Harder to Access Period Products: The Effects of a Pandemic on Period Poverty*, FRONTIERS REPROD. HEALTH ECOLLECTION (Nov. 10, 2022).

85. Puja Changoiwala, *Early Puberty Cases in Girls Have Surged During Covid, Doctors Say*, WASH. POST (Mar. 28, 2022), <https://www.washingtonpost.com/lifestyle/2022/03/28/early-puberty-pandemic-girls/>.

86. STATE OF THE PERIOD, *supra* note 6.

87. Johnson et al., *supra* note 56, at 241.

88. See ROSEWARNE, *supra* note 30, at 8–12; Johnson, *supra* note 34, at 2 (“The narrative of menstruation is that it is taboo and shameful, and that menstruators are dirty, impure, and even dangerous. People internalize this narrative and are reluctant to publicly discuss menstruation. This narrative and silence negatively impacts menstruators.”).

89. See WEISS-WOLFE, *supra* note 23, at 125–28, 234 (noticing a need to reconcile word choice with the varying gender identities of people who menstruate while describing the disproportionate economic burden on people who menstruate).

Access to products is essential because, without it, the school environment is decidedly unequal. A person who does not menstruate walks into their elementary or secondary public school building with all of the bathroom supplies they need to be present and successful throughout the day. A person who menstruates does not have the same opportunity. The onus is transferred to over half of the students to carry period products with them, creating an unequal learning environment. A menstruating preteen or teenager is uniquely vulnerable to needing products on unpredictable schedules, further underscoring the importance of providing free menstrual products at school.⁹⁰ The addition of freely accessible menstrual products would facilitate an environment where all people's needs are met the moment they step into a school restroom.⁹¹

Period products are not cheap, and in many states, they are additionally subject to the state sales tax.⁹² A person who menstruates absolutely needs period products to attend class, walk down the halls, and participate in the same activities available to people who do not menstruate. This creates an economic burden that disproportionately affects women, particularly based on economic status. Period products become secondary to food for people experiencing poverty, thus creating yet another hurdle for students who come from low-income families. Access to education should not be based on economic status, and the inability to afford period products affects enough people who menstruate to constitute unequal access.⁹³

Compulsory attendance without this essential necessity puts an unequal economic burden on students who menstruate and parents of students who menstruate. The students who cannot afford products tell anecdotes of resorting to unhygienic methods of period management causing health concerns, or they skip activities and class altogether rather than risk exposure to the fact that they are bleeding.⁹⁴ This can trigger the serious effect of punishment by the criminal legal system for

90. Johnson et al., *supra* note 56.

91. WEISS-WOLFE, *supra* note 23.

92. Meredith Clark, *International Women's Day 2022: Women in 30 States Across America Still Pay a Tampon Tax*, INDEP. (Mar. 8, 2022, 17:34), <https://www.independent.co.uk/life-style/tampon-tax-michigan-eliminated-cost-b2007312.html>.

93. STATE OF THE PERIOD 2021, *supra* note 6, at 2.

94. GO WITH THE FLOW, gowiththeflowaz.org (last visited Apr. 3, 2023).

missing class and prosecution of the student or their parent for truancy.⁹⁵ Schools resort to disciplinary action for truancy when girls miss school due to period pain or lack of necessary products,⁹⁶ and students face the indignity of restrictive bathroom pass policies that sometimes lead to the dreaded leakage.⁹⁷ They might also then face disciplinary action for breaking uniform code by trying to conceal a leak.⁹⁸ Menstruators who miss school due to their pain or lack of products may not get excused absences; restrictive policies surrounding absences that require a doctor's note are common in many school systems.⁹⁹ A doctor's note is something that a low-income student might not be able to procure for lack of affordable health care.¹⁰⁰

While schools may have products hidden away in a nurse's office or with an administrator, the student must risk exposing their secret period to access this essential care. In some schools, a nurse's office may not exist or may only be open on certain days. Unfortunately, biology does not wait until the main office is open, and access to products is a pressing matter. New York City Councilwoman Ferraras-Copeland noted in 2015 that girls would leave school programming when they had their period "[s]ometimes [] due to discomfort, but other times they'd run out of pads and were too embarrassed to ask a teacher or nurse. They preferred to lose learning time in order to save face."¹⁰¹ Over half of the students in public schools manage a period, so over half of the students are not being properly supported to exist and learn with dignity throughout the school day.

95. See Nadja Popovich, *Do U.S. Laws That Punish Parents For Truancy Keep Their Kids in School?*, U.S. EDUC. (Jun. 23, 2014, 11:59 AM), <https://www.theguardian.com/education/2014/jun/23/-sp-school-truancy-fines-jail-parents-punishment-children>.

96. See *id.*; see also Dusty Rhodes, *Feedback: Noble Charter Schools Story Hit a Nerve*, NPR ILL. (Apr. 30, 2018, 10:36 AM), <https://www.nprillinois.org/education-desk/2018-04-30/feedback-noble-charter-schools-story-hit-a-nerve#stream/0>.

97. Johnson, *supra* note 34.

98. Gharib, *supra* note 69.

99. Brendan Birth, *The Classism of Doctor's Notes in the United States*, BLIND INJUSTICE (Feb. 14, 2022), <https://blindinjusticeblog.com/2022/02/14/the-classism-of-doctors-notes-in-the-united-states/#:~:text=Upon%20thinking%20about%20this%20tweet,that%20unfortunately%20lacks%20universal%20healthcare>.

100. *Id.*

101. BRIDGET J. CRAWFORD & EMILY GOLD WALDMAN, *MENSTRUATION MATTERS: CHALLENGING THE LAW'S SILENCE ON PERIODS* 60 (2022).

It is essential that decision-makers understand, empathize, and offer accommodations.

Public schools are certainly a place to begin when collaterally attacking the period stigma that facilitates an inequitable society. Providing menstruation education at the public school level could function to prepare students for the onset of their period, to reduce and eventually to eliminate period stigma, and to cycle the negative language surrounding the normal biological function out of our vernacular. If the school system addresses menstruation, then even people who do not experience a menstrual cycle can have a better understanding and, therefore, empathy toward its effects on daily life.

To properly address menstrual inequity, schools must provide the proper support people who menstruate need to thrive. To meaningfully provide equal access to education and an equitable learning environment for people who menstruate, the public education system should provide timely, inclusive education to all students surrounding menstruation and practical preparation for period management as well as unimpeded access to sanitary bathrooms and free menstrual products.

Menstruating students may miss class due to lack of access to products or simply because they forgot to carry them that day, or they may face bullying or harassment at the hands of their peers, especially if they fail to conceal that they are bleeding.¹⁰² They face a negative self-image, reinforced by the cultural stigma around discussing periods. All of this makes the learning environment inequitable to those who undergo the biological process of menstruation each month. Failure to provide products and education creates unnecessary anxiety surrounding the biological process of menstruation that amounts to discrimination based on sex in violation of Title IX. Further, the federal government promises students equal access to education.¹⁰³ By failing to meet and accommodate the needs of menstruating students and by failing to achieve menstrual equity, the public school system fails to adhere to its promise of equal opportunity.

102. Johnson et al., *supra* note 56.

103. *Your Right to Equality in Education*, ACLU (Aug. 14, 2022), <https://www.aclu.org/other/your-right-equality-education>.

A. Dismantle the Stigma

To fully achieve an equitable learning environment, the stigma that is associated with periods must be dismantled. The public school system is uniquely situated to achieve this goal. Providing students with period products means that their biological needs are met, and they can feel less shame about their regular bodily function. By providing timely, meaningful menstrual health education as well as practical product use instructions with inclusive and positive language, students gain an empathetic understanding of the biological process as well as appropriate language tools to reduce harm and discuss periods respectfully. When the stigma is reduced, people who menstruate and their allies are empowered to address menstrual equity in other arenas. The educational setting is, therefore, an extremely important ground to make a change regarding the perception of periods. The federal Department of Education (“the Department”) has failed people who menstruate by not issuing rules, policy, or guiding documents on menstrual equity initiatives.

B. Access to Products

An obvious step to achieving menstrual equity in the public school setting is to provide all students with access to free period products. The provision of products for all combats both period stigma and poverty stigma at once. By not placing a requirement of demonstrating need, students can get access without the shame associated with their economic status. By providing products for all, the school demonstrates that they recognize and support the needs of students. The symbolic meaning alone combats stigma, taboo, and shame. The tangible results are a lift of the economic burden a period creates. Women and girls do not choose to menstruate. They cannot hold it, and they do not control how long it lasts or how heavy their flow is. Women and children make up 70% of people experiencing poverty in the U.S.¹⁰⁴ Period poverty is

104. *Women and Poverty in America*, WOMEN’S LEGAL DEFENSE & ED. FUND, www.legalmomentum.org/women-and-poverty-america#:~:text=70%25%20of%20the%20Nation's%20Poor,raise%20their%20families%20in%20poverty (last visited Apr. 3, 2023). “Women in America are [] 35 percent more likely than men to be poor in America, with single mothers facing the highest risk. Currently, 35 percent of single women with children live and raise their families in poverty.” *Id.*

no different. Menstrual products are essential school supplies. By treating them as such, the public school systems could combat the current state of unequal learning opportunities for people who experience a period and people who experience poverty.

II. AVENUES OF REDRESS

While an overwhelming majority of U.S. students still report shame, embarrassment, and stigma around their monthly period, there is a growing movement in the U.S. and globally to combat the taboo.¹⁰⁵ Scholars, activists, and even companies in the period product industry have banded together to create a glossary of terms surrounding menstruation.¹⁰⁶ They define menstrual equity using Jennifer Weiss-Wolfe's definition: "The affordability, accessibility and safety of menstrual products for all people - including laws and policies - that acknowledge and consider menstruation."¹⁰⁷ In schools, this translates to policies that promote period product access and privacy for students managing their period, menstrual health education, and cognitive word choice. Students need both practical period management skills as well as positive, non-fear, or shame-based word choice when teaching them about the biological function of menstruation. By using inclusive language, the educational setting promotes gender affirmation and cultural awareness.¹⁰⁸

105. See generally WEISS-WOLFE, *supra* note 23 (discussing the menstrual movement among national and global activists).

106. GLOSSARY FOR THE GLOBAL MENSTRUAL MOVEMENT, MHHUB.ORG & PERIOD.ORG, (Jan. 2022), <https://period.org/uploads/Global-Glossary-for-the-Menstrual-Movement.pdf> [hereinafter MENSTRUAL GLOSSARY].

107. *Id.* at 29 (citing WEISS-WOLFE, *supra* note 23).

108. *Menstrual Dignity for Students Toolkit*, OR. DEP'T EDUC. (Nov. 2022), <https://www.oregon.gov/ode/students-and-family/healthsafety/Documents/ODE%20Menstrual%20Dignity%20For%20Students%20Toolkit.pdf>.

A. Understanding the History of Menstrual Stigma

The period stigma did not historically exist in many Indigenous cultures in what is now the territorial U.S.¹⁰⁹ Many tribes celebrated the menstrual cycle as sacred, relating to power and responsibility, but with colonization, these traditional understandings of the biological process have been buried by the dominant (white) culture, one with a patriarchal skew.¹¹⁰ Then, with the implementation of a requirement for medical licensures in the U.S. in the late 1800s, traditional midwifery, an occupation held by women and, notably, Black and Indigenous women, was outlawed, and licenses were reserved for white men only.¹¹¹ The patriarchal and white supremacist control of medicine took over the business of menstruation and reproductive health¹¹²

Therefore, the Western taboo survives generationally, too. Many young people who menstruate turn to their mothers for information on their period, who in turn give them a commercially produced pamphlet.¹¹³ Educational pamphlets produced by the period product industry have been a part of U.S. culture since the 1930s.¹¹⁴ An analysis of the pamphlets indicated that the information traditionally “emphasized [the need for] secrecy, avoidance of embarrassment, freshness, and delicacy.”¹¹⁵ Health education classes across the U.S. have traditionally relied on films that vaguely describe the menstrual cycle and are typically produced by period product companies.¹¹⁶ Disney and Kotex (a period product company) released a ten-minute

109. See generally Cutcha Risling Baldy, *mini-k'iw'h'e:n (For That Purpose—I Consider Things): (Re)writing and (Re)righting Indigenous Menstrual Practices to Intervene on Contemporary Menstrual Discourse and the Politics of Taboo*, 17 CULTURAL STUDS. ↔ CRITICAL METHODOLOGIES 21 (2017) (providing an Indigenous female critique of contemporary menstrual discourse).

110. *Id.* at 24.

111. See Michele Goodwin, *The Racist History of Abortion and Midwifery Bans*, ACLU (July 1, 2020), <https://www.aclu.org/news/racial-justice/the-racist-history-of-abortion-and-midwifery-bans>.

112. See *id.*

113. Mindy Erchull et al., *Education and Advertising: A Content Analysis of Commercially Produced Booklets About Menstruation*, 22 J. EARLY ADOLESCENCE 455, 456 (2002).

114. *Id.* at 456, 459.

115. *Id.* at 459–60 (“The most common themes in the advertisements [from 1985–1998] were silence, shame, embarrassment, freshness, security, confidence, and discretion, from which the researchers extracted a core variable that they titled ‘heightened insecurity.’”).

116. HOUPPERT, *supra* note 37, at 65–76. “Menstrual education . . . often relies entirely on a curriculum created and peddled by [period product] companies.” *Id.* at 81.

animated film called *The Story of Menstruation* in 1946, shown to over 100 million American students in health education classes.¹¹⁷ The movie says, “Once you stop feeling sorry for yourself and take [period] days in your stride, you’ll find it easier to keep smiling and even-tempered,”¹¹⁸ dismissing period pain and other regular emotional reactions to the menstrual cycle. The inter-generational passing of information includes this stigma, and the product industry capitalizes on their opportunity to perpetuate shame to produce brand loyalty, warning that other products might not offer the same protections that theirs do.

The business of menstruation, or the feminine hygiene industry, has grown and continues to shape the public discourse on menstruation as a hygienic problem in need of solutions that promote secrecy.¹¹⁹ USA Today reported in 2017 that “[f]eminine hygiene products represent a \$5.9 billion industry in the United States and \$35.4 billion one worldwide.”¹²⁰ The industry profits on insecurities, as evidenced by the very production of scented period products, despite doctor reports that the added fragrance causes unbalanced vaginal pH and irritation of the labia and vagina.¹²¹ These products target the insecurities of people who menstruate and capitalize on the desire to keep their period a secret and further the stigma that periods are dirty, smelly, or otherwise unclean.¹²²

Research suggests that girls are not very knowledgeable about menstruation, and that menstrual education continues to perpetuate[] negative stereotypes about menstruation, “providing girls with confusing mixed messages, such as: menstruation is a normal, natural

117. *The Story of Menstruation... As Told and Animated by Disney in 1946*, WOMEN YOU SHOULD KNOW (Apr. 6, 2016), www.womenyoushouldknow.net/the-story-of-menstruation-as-told-and-animated-by-disney-in-1946/

118. Rae Alexandra, *A Brief History of (Terrible) Menstruation Education Videos*, KQED (Jan. 15, 2019), <https://www.kqed.org/pop/106974/a-brief-history-of-terrible-menstruation-education-videos>.

119. ELIZABETH ARVEDA KISSLING, *CAPITALIZING ON THE CURSE: THE BUSINESS OF MENSTRUATION* 14 (2006).

120. Zlati Meyer & Maeve McDermott, *Tampons Are Out Among Younger Women. Why Feminine Hygiene Is Newest Consumer Battlefield*, USA TODAY (Mar. 24, 2017), <https://www.usatoday.com/story/money/business/2017/03/24/feminine-hygiene-newest-consumer-battlefield/99532850/>.

121. *Are Scented Tampons and Pads Bad for You? The Truth Behind This “Hygiene” Illusion*, CLEVELAND CLINIC (Jan. 13, 2021), <https://health.clevelandclinic.org/are-scented-tampons-and-pads-bad-for-you/>.

122. *Id.*

event but it should be hidden.”¹²³ Media and commercial products of mass culture cue us to accept the idea put in front of us,¹²⁴ so, as a society, we believe that hiding period blood is what is socially acceptable. “[D]ominant rhetorical culture not only influences what we say in public but even infiltrates our private thoughts. Then, when we take the opportunity to ‘say what we think,’ that culture is often reinforced in turn.”¹²⁵ Language and “[w]ays of saying reflect and affect ways of seeing.”¹²⁶ From labeling the industry “feminine hygiene” to refusing to teach the biological process in schools and to the censure of visual representations of period blood,¹²⁷ the taboo infiltrates the societal conscious.

Negative portrayals of menstruation are perpetuated in popular media, or, more commonly, not mentioned at all.¹²⁸ Social media platforms have repeatedly censored allusions to menstruation for violating community guidelines that prohibit “nudity or mature content.”¹²⁹ After an image of a fully clothed woman with a blood stain on her sweatpants was removed from Instagram, artist Rupri Kaur argued back, “How dare they tell me my clothed body, the way I wake up at least once every month, is ‘violating’ and ‘unsafe?’”¹³⁰

There are extremely limited portrayals of the normal experience of a period in movies and television, and when periods do make it on screen, the experience is usually marked by embarrassment, shame, or a general lack of understanding from the male characters.¹³¹ The perspective on menstruation fed to men through media is largely tied to

123. Margaret L. Stubbs, *Cultural Perceptions and Practices around Menarche and Adolescent Menstruation in the United States*, 1135 ANN. N.Y. ACAD. SCI. 58, 58 (2008).

124. RICHARD TOYE, RHETORIC: A VERY SHORT INTRODUCTION 73 (2013).

125. *Id.* at 6.

126. *Id.* at 47.

127. “Allegorical images (e.g., flowers, hearts) and blue liquid (rather than reddish blood) have been used euphemistically in [menstrual product] advertisements to promote secrecy and to suggest delicacy.” Erchull et al., *supra* note 113, at 459.

128. See generally PERIODS IN POP CULTURE, *supra* note 30.

129. Sarah Cascone, *Artist Rupri Kaur Criticizes Instagram for Censoring Photo Showing Period Blood*, ART WORLD (Mar. 31, 2015), <https://news.artnet.com/art-world/instagram-slammed-for-censoring-period-283123>.

130. Caitlin Dewey, *Why did Instagram censor this photo of a fully clothed woman on her period?*, WASH. POST (Mar. 27, 2015), <https://www.washingtonpost.com/news/the-intersect/wp/2015/03/27/why-did-instagram-censor-this-photo-of-a-fully-clothed-woman-on-her-period/>.

131. See PERIODS IN POP CULTURE, *supra* note 30, for an in-depth review of media portrayals of periods.

sex and whether a woman can have it while menstruating or how to react when premenstrual syndrome (PMS) affects her mood.¹³²

Examples of the poor understanding that those who do not menstruate have surrounding the biology of menstruation highlight the severe knowledge gap that the stigma has produced in U.S. culture. “[M]y ex boyfriend thought all women go their period on the 15th of the month. He was 26 at the time,” tweeted one U.S. woman.¹³³ “My ex thought we could just start our periods whenever we wanted,” tweeted another.¹³⁴ The thread opened the floodgates of women sharing stories of the men in their lives who were equally flummoxed by the workings of the menstrual cycle.¹³⁵

There is cultural stigma against menstrual blood specifically. Depictions of non-menstrual blood and gore do not receive nearly the backlash that period blood gets in similar contexts.¹³⁶ Menstruation and

132. Christa Sgobba, *8 Things You Need to Know About Her Period: Your Comprehensive Guide to that Time of the Month*, MEN’SHEALTH (Sept. 23, 2015), <https://www.menshealth.com/sex-women/a19547738/your-guide-to-her-period/>.

133. (@Sabrinafon), TWITTER (May 4, 2022, 6:34 PM), <https://twitter.com/Sabrinafon/status/1521981744668454913>.

134. (@audreygriswold), TWITTER (May 5, 2022, 5:21 PM), <https://twitter.com/audreygriswold/status/1522325698396012546>.

135. (@Sabrinafon), TWITTER (May 4, 2022, 6:34 PM), <https://twitter.com/Sabrinafon/status/1521981744668454913> (view replies to the Twitter thread).

136. Disney/Pixar’s received mixed reviews for its newest film, *Turning Red*, because it depicted puberty and periods. Ariana Garcia, *Parents Are Posting Negative Reviews for Pixar’s ‘Turning Red’ for Talking About Puberty*, CHRON. (Mar. 14, 2022), <https://www.chron.com/culture/article/Turning-Red-Rotten-Tomatoes-review-parents-Pixar-17000768.php>. The mother in the film referred to her child’s period by asking if her “red peony bloomed.” *TURNING RED* (Walt Disney Pictures & Pixar Animation Studios 2022). She then brought her daughter menstrual products like sanitary pads and a hot water bottle. *Id.* On Twitter and Facebook, users called the movie “inappropriate for children.” Jo Tweedy, *Pixar’s latest children’s film, Turning Red, is blasted as ‘inappropriate’ for mentioning periods ‘multiple times’, but others praise it for featuring normal bodily functions*, DAILY MAIL (Mar. 16, 2022), <https://www.dailymail.co.uk/femail/article-10618611/Parents-criticise-Disney-film-Turning-Red-periods-discussion.html>. Meanwhile, Disney/Pixar’s 2009 movie *Up* features two instances of bright, red blood on the screen. Zach Gass, *When Disney Movies Get Gory*, INSIDE MAGIC (Oct. 25, 2022), <https://insidethemagic.net/2022/10/blood-blood-blood-gory-bits-in-disney-movies-zg1/> [hereinafter Disney Blog]; *UP* (Walt Disney Pictures Pixar Animation Studios 2009). In *The Lion King*, there is a brief spray of blood in the battle between Mufasa and Scar. Disney Blog, *supra* note 136; *THE LION KING* (Walt Disney Pictures & Walt Disney Feature Animation 1994). Disney featured red scratches for wounds in *Beauty and the Beast* and *The Little Mermaid*. Disney Blog, *supra* note 136; *BEAUTY AND THE BEAST* (Walt Disney Pictures,

vaginas are undeniably linked, necessarily invoking sex; the menstrual cycle is the center of reproductive health. The connotation of sex and sex education is likely a key reason the legislature declines to address the necessary accommodations and support for menstruators, to the detriment of menstruating students.

B. Status of Legal Redress

There is not currently any legislation, federal or state, surrounding menstrual education specifically. Thirty-eight states and D.C. mandate sex education be taught in public schools, but of those states, only seventeen require the information to be “medically accurate.”¹³⁷ Activists in the field of menstruation and period poverty awareness are pushing for a cultural narrative that includes periods, and even mainstream media has taken to rally against the taboo in the years since 2015, “The Year the Period Went Public.”¹³⁸ Periods have started making headlines because of this budding Western activist movement to bring awareness to issues surrounding global menstrual equity. Activists like Jennifer Wiess-Wolfe took to social media and the U.S. legislature to combat another area of inequity involving periods: the tampon tax.¹³⁹

i. *The Tampon Tax*

The initiative to repeal the sales tax applied to menstrual products aims to bring awareness to the economic burden of menstruation and to the unequal tax code that generates revenue from a product that half of the population requires for full participation in society.¹⁴⁰ The rhetoric

Walt Disney Feature Animation, & Silver Screen Partners IV 1991); THE LITTLE MERMAID (Walt Disney Pictures, Walt Disney Feature Animation, & Silver Screen Partners IV 1989). *Sleeping Beauty* shows the Dragon being slain by a sword, showing some blood. Disney Blog, *supra* note 136; SLEEPING BEAUTY (Walt Disney Productions 1959).

137. *Sex and HIV Education*, GUTTMACHER INST. (Dec. 1, 2022), <https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education>.

138. WEISS-WOLFE, *supra* note 23, at 4.

139. *See id.* at 121–47.

140. “The tampon tax refers to menstrual products being categorized and taxed as luxury items. Items within this luxury category are deemed to be expensive and non-essential and are taxed extra for this reason. The luxury taxed is placed on things such as private jets, jewelry, yachts, exotic cars, etc. This means that menstrual products are considered to be items of luxury,

to repeal the tampon tax calls to light the other ways the legislature fails to acknowledge menstrual equity.¹⁴¹ The movement among activists, on social media, and within the period product industry itself to alter the narrative.¹⁴² Social media campaigns by companies within the industry have begun to highlight the issues of menstrual equity and period poverty. The U.S. Food and Drug Administration categorizes menstrual cups, and tampons as secondary medical products, meaning they are a “luxury” item and not federally exempt from taxation,¹⁴³ but as of December 2019, moved unscented pads to the tax exempt status of Class I medical device.¹⁴⁴ Additionally, many states have individually repealed their sales tax on period products.¹⁴⁵ Twenty-three states (plus Washington D.C.) exempt period products from taxation and another five states do not have a state sales tax.¹⁴⁶

ii. Access to Free Period Products

and not of essential or necessary. In contrast, many products like Viagra and Rogaine are considered essential and exempt from the sales tax.” *Tampon Tax*, *supra* note 45.

141. Even still, the current conversation tends to forget to decenter the white middle-class perspective and address the generational, cultural stigma that is perpetuated by those who have traditionally held political power in the U.S. “Much of the existing learning around U.S.A. girls’ menstrual experiences is derived from literature published during the 1980s-1990s, and primarily focuses on the experiences of menstruation and menarche for middle to high income white females.” Schmitt et. al., *supra* note 42, at 95.

142. 2015 was deemed the “Year of the Period” by *Cosmopolitan Magazine*. WEISS-WOLFE, *supra* note 23, at 4. Menstrual activists, social media influencers, and legislators alike went to work on altering the perception of periods across the globe. *Id.* at 93–115.

143. 21 C.F.R. § 884.5400 (2019); 21 C.F.R. §§ 884.5460, 884.5470 (1980). “Menstrual pads and tampons are not exempt from federal sales tax, despite advocates noting that Viagra (medication that treats erectile dysfunction) and Rogaine (hair regrowth treatment) are exempt.” Shirin Ali, *The US Movement To Make Period Products Free Is Growing*, HILL (Aug. 16, 2022), <https://thehill.com/changing-america/respect/accessibility/3604347-the-movement-to-make-period-products-free-is-growing-in-the-u-s/>.

144. 21 C.F.R. § 884.5435 (2019) (uncounted menstrual pad).

145. “At least 20 states in the US have eliminated the tampon tax, but 30 states still apply an additional sales tax on menstrual products.” Meredith Clark, *International Women’s Day 2022: Women In 30 States Across America Still Pay A Tampon Tax*, INDEP. (Mar. 8, 2022), <https://www.independent.co.uk/life-style/tampon-tax-michigan-eliminated-cost-b2007312.html>.

146. States that exempt period products from sales tax: California, Colorado, Connecticut, District of Columbia, Florida, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, Washington. *Tampon Tax*, *supra* note 45. States with no sales tax: Alaska, Delaware, Montana, New Hampshire, Oregon. *Id.*

Even with modern lawmakers that consist of a more diverse variety of genders, classes, and races, there is still pushback to federal legislation surrounding access to period products. The federal legislative process, the traditional lawmaking procedure that is delegated to Congress by Article I of the Constitution of the United States, is slow and difficult to achieve ground, particularly in the current political climate that views poverty as a personal failure rather than what it is: a policy decision. The process holds its lawmakers politically accountable to its constituents and, therefore, can have a chilling effect on progress.

1. Federal Action

Grace Meng from New York at the 115th Congress introduced H.R. 6953 (GIRLS Act), but it died in 2018 without a vote.¹⁴⁷ Meng in May of 2021 introduced H.R.3614 (Menstrual Equity For All Act of 2021) and is currently referred to a subcommittee for review and amendments before it can be introduced again in the House.¹⁴⁸ A specific goal of the Menstrual Equity for All Act is to amend § 4108(5)(C) of the Elementary and Secondary Education Act of 1965¹⁴⁹ to require elementary and secondary schools to “[p]rovide free menstrual products to students who use menstrual products.”¹⁵⁰ The bill further highlights other potential ways to combat period poverty, such as the provision of free products to inmates and students in higher education, and makes menstrual products a covered medical item in Medicare healthcare plans.¹⁵¹

2. State & Local Action

State and local stakeholders have stepped in to individually take some responsibility for menstrual equity. Currently, fifteen states and Washington D.C. have passed legislation to ensure students who menstruate have free access to period products while in school (as of

147. GIRLS Act, H.R. 6953, 115th Cong. (2018).

148. H.R. 3614, 117th Cong. (2021–2022).

149. 20 U.S.C. § 7118(5)(C).

150. H.R. 3614, 117th Cong. (2021).

151. *Id.*

Oct. 12, 2022).¹⁵² Five additional states provide funding for period products in schools that choose to distribute products but do not mandate distribution.¹⁵³ Overall, the details of period products in schools' legislation vary widely between states in regards to funding and the schools' individual responsibility to distribute free period products.¹⁵⁴ Georgia, for example, uses the money procured from the state sales tax on menstrual products to fund the provision of products in schools.¹⁵⁵ Many states require period products to be available in middle and high school restrooms, while others include their elementary schools.¹⁵⁶ Some legislation also requires period products in restrooms of public colleges and universities.

C. Federal Potential for Redress: Title IX

Because menstruation is a biological function tied to internal sex and reproductive organs and because internal sex and reproductive organs are most often associated with the female gender, this quickly becomes an issue that falls under the purview of Title IX.¹⁵⁷ U.S. Constitution Articles I and II allow for the development of federal agencies that undertake specific goals,¹⁵⁸ and the same authority allows procedure for those agencies to perform quasi-legislative and quasi-judicial functions.¹⁵⁹ *Brown v. Board of Education*, decided by the Supreme Court in 1954, gave the executive branch a legal precedent for enforcing

152. *Period Products in Schools*, ALL. PERIOD SUPPLIES, <https://allianceforperiodsupplies.org/period-products-in-schools/> (last visited Apr. 3, 2023) (The fifteen states are California, Connecticut, Delaware, Illinois, Hawaii, Maryland, New Hampshire, New York, Nevada, Oregon, Rhode Island, Utah, Vermont, Virginia, and Washington.).

153. *Id.* (The five states are Alabama, Colorado, Georgia, Missouri, and North Carolina.).

154. *Id.*

155. Maya T. Prabhu, *Georgia Oks Providing Menstrual Products to Low-Income Girls*, *WOMEN*, ATLANTA JOURNAL-CONSTITUTION (Apr. 9, 2019), https://www.ajc.com/news/state--regional-govt--politics/georgia-oks-providing-menstrual-products-low-income-girls-women/8wRDKwffieuHFslCsg0TML/?fbclid=IwAR0XCnR1MC6BQJVnNs31Oj8uLw8bLOq_i_1Uxd-AtmsdlAC7glc-yIbJhf0.

156. *Period Products in Schools*, *supra* note 152.

157. Title IX of the Education Amendments of 1972, 20 U.S.C.A. § 1681 (Westlaw through Pub. L. No. 117-228).

158. U.S. CONST. art. I, § 8, cl. 3 (conferring Congress with the power to regulate foreign and interstate commerce); *Id.* art. II, § 2, cl. 2.

159. *Id.*

equal access to education.¹⁶⁰ In 1979, Congress established the Department to address the issues that arise in education at the federal level.¹⁶¹ The Department is intended to be comprised of professionals who are particularly well-situated to research and understand the needs and potential flaws of the public educational system.¹⁶² Collectively, the Department establishes policy for, administers, and coordinates most federal assistance to education. The statute that established the Department also established within it the Office of Civil Rights,¹⁶³ with authority to enforce the provisions of the previously enacted Title IX of the Education Amendments of 1972.¹⁶⁴ The Department also bears the responsibility of ensuring the provisions of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, are adhered to.¹⁶⁵

While ultimate curriculum decisions are reserved to the States by statute¹⁶⁶ and through the Tenth Amendment,¹⁶⁷ the Secretary of the Department and its officers

may exercise any authority available by law . . . with respect to such function to the official or agency from which such function is transferred, and the actions of the Secretary in exercising such authority shall have the same force and effect as when exercised by such official or agency.¹⁶⁸

In the years since its establishment, the Department has executed the function of enforcing the provisions of Title IX. They have done so by

160. *Brown v. Board of Ed.*, 347 U.S. 483, 493 (1954) (“Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.”).

161. 20 U.S.C. § 3401.

162. *ED Operating Structure*, U.S. DEP’T EDUC. (last modified June 28, 2022), <https://www2.ed.gov/about/offices/list/index.html>.

163. 20 U.S.C.A. § 3413 (Westlaw through Pub. L. No. 117-228).

164. § 1681 (Westlaw).

165. “The purpose of this title is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.” 20 U.S.C.A. § 6301 (Westlaw through Pub. L. No. 117-262).

166. 20 U.S.C.A. § 3403(b) (Westlaw through Pub. L. No. 117-262).

167. The Tenth Amendment reserves all functions not delegated to the federal government to the states. U.S. CONST. amend. X.

168. 20 U.S.C.A. § 3471(a) (Westlaw through Pub. L. No. 117-228).

adjudication, a case-by-case inquiry with certain elements that must be established to bring a claim,¹⁶⁹ but this is not the only way the Department is authorized to address concerns in public schools.

The core language of Title IX creates a duty that the federal Government, under Title IX, must ensure 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”¹⁷⁰ After another landmark Supreme Court decision in 2020, *Bostock v. Clayton County*,¹⁷¹ President Biden issued Executive Order No. 14021, which said that the freedom from discrimination in the public school setting included on the basis of sex, sexual orientation, and gender identity.¹⁷² It is therefore important in the context of menstruation to provide services that would be attainable by all people who menstruate, which may include someone with the gender identity of male, non-binary, intersex, or gender fluid.

Title IX specifically calls for the Department to enforce an equal opportunity to participate in educational programs funded with federal dollars.¹⁷³ The ESEA further requires the educational experience to be “equitable” and to “close educational achievement gaps.”¹⁷⁴ “Use by students of school restrooms is part and parcel of the provision of educational services covered by Title IX.”¹⁷⁵ Tampons, pads, sanitary

169. See § 1681 (Westlaw); 34 C.F.R. § 106.33 (2020) To allege a violation of Title IX, a plaintiff must show: (1) that he was excluded from participation in an education program because of his sex; (2) that the educational institution was receiving federal financial assistance at the time of his exclusion; and (3) that the improper discrimination caused the plaintiff harm. See *G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 718 (4th Cir. 2016), *vac’d and rem’d*, 197 L. Ed. 2d 460, 137 S. Ct. 1239 (2017) (citing *Preston v. Virginia ex rel. New River Cmty. Coll.*, 31 F.3d 203, 206 (4th Cir. 1994) (citing *Cannon v. Univ. of Chi.*, 441 U.S. 677, 680, (1979)). Case law interpreting Title VII of the Civil Rights Act of 1964 provides guidance in evaluating a claim brought under Title IX. *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007).

170. § 1681(a) (Westlaw).

171. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020).

172. Exec. Order No. 14021, 86 F.R. 13803 (2021) (Although *Bostock* was a decision in the context of employment and Title VII of the Civil Rights Act on 1965, Title VII jurisprudence is often used to inform Title IX. Executive order 14021 solidifies this interpretation to disallow discrimination on the basis of status as transgender.).

173. §§ 1681(a), (c) (Westlaw); § 1687 (Westlaw).

174. 20 U.S.C.A. § 6301 (Westlaw through Pub. L. No. 117-228).

175. *A.H. v. Minersville Area Sch. Dist.*, 408 F.Supp.3d 536, 551 (D.M.D. Pa. 2019).

wipes, or other period management products are required for a girl to function comfortably during the school day while menstruating. By requiring girls to bring their own, the schools fail to provide their students with an equal opportunity to learn. When a non-menstruating student arrives on campus for the school day, they have everything they need to address their regular bodily functions, and sometimes they even have a specialized mechanism for their biology: a urinal. “A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be *comparable* to such facilities provided for students of the other sex.”¹⁷⁶ In a way that is *not comparable*, people who menstruate do not have everything they need without the appropriate products to address their monthly period. Denying consistent access to period products in public schools thereby violates the very letter of Title IX, yet there are no federal guiding documents from the Department regarding the provision of menstrual products in public elementary and secondary schools.¹⁷⁷ Additionally, the destigmatization of periods across genders is an essential element of an equitable learning environment because period shame and stigma have a disparate impact based on internal sex and reproductive organs. There is no federal reference to the need for emotional and psychological support of students during the transition of menarche or reference to the need for support during monthly periods.¹⁷⁸

As the Glossary of the Period Movement puts it, “Language helps form the beliefs and attitudes that surround our experiences. Language affects how people who menstruate - and those who do not - feel about and understand periods.”¹⁷⁹ If the Department will not put menstruation concerns in its guidance documents, it reflects an unwillingness of the Administration to view menstrual equity as the concern it poses. “A society’s arguments reveal what it considers important—and also, obliquely, the issues it doesn’t much want to discuss.”¹⁸⁰

176. 34 C.F.R. § 106.33 (2020).

177. Kayla Jimenez, *Period Products Aren't Free or Accessible in Schools. Students Want to Make that Happen*, USA TODAY (Nov. 28, 2022), <https://www.usatoday.com/story/news/2022/11/28/advocates-fighting-period-poverty-demand-free-pads-tampons-schools/10729315002/>.

178. *U.S. Department of Education's Guidance Homepage*, U.S. DEP'T EDUC. (last modified May 5, 2022), <https://www2.ed.gov/policy/gen/guid/types-of-guidance-documents.html> (searches for “menstruation,” “menstrual,” and “period” yield no results).

179. MENSTRUAL GLOSSARY, *supra* note 106, at 4.

180. TOYE, *supra* note 124, at 31.

The Department clearly does not argue that menstrual equity is a concern, despite the pervasive existence of menstrual taboos and consequences in public schools that stem from menstrual inequity. By leaving the menstrual needs of access, inclusivity, education, and privacy entirely up to the states, the federal government fails to adhere to its statutory responsibility “to strengthen the Federal commitment to ensuring access to equal educational opportunity for every individual,” resulting in what this Note argues is a denial of the benefits thereof, in violation of Title IX.¹⁸¹

By overlooking the obstacles that people who menstruate—including the poor, disabled, and transgender people—who menstruate, surmount daily in public elementary and secondary schools, the Department fails to address menstrual equity in a way that violates their charge under Title IX and the ESEA.

Steps such as normalizing conversations about periods and adequately stocking school bathrooms with period supplies will help all children and ease their diverse situations that make menstruation that much harder. The Department, therefore, has an important role in removing some of the obstacles that stand in the way of full participation in public education. Access to and visibility of period products carries a significant expressive value; it not only normalizes the sight of these essential items but also shows that the school environment is supportive of all people and their distinct needs. To address access to products, the Department could use its statutory authority to promulgate a rule requiring all public elementary and secondary schools that receive federal funding to provide free menstrual products. The language of the statute granting authority to the Department clearly states “[t]he Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.”¹⁸² Because one of the functions is ensuring equal access and bridging any disparate gaps, a federal rule requiring the provision of products falls in the purview of the Department’s statutory authority.

Along with the rule, all schools, including private schools, should receive federal guidance that outlines practices of product access and

181. 20 U.S.C.A. § 3402 (1) (Westlaw through Pub. L. No. 117-228).

182. 20 U.S.C. §3474 (Westlaw through Pub. L. No. 117-228).

placement that would be most beneficial to menstruating students. This would include open and free access to products in every restroom in the school building. The provision of products with conspicuous placement normalizes viewing these products, which moves the conversation toward societal acceptance of periods.

While many states have begun to legislate to address local access, federal intervention is needed to achieve equity across the U.S. Several states and D.C. require the provision of period products in at least some levels of public schools, and some school boards have made this choice at the local level.¹⁸³ Of the states that mandate the provision of period products, the language still refers to them as “feminine hygiene products,” most do not include elementary schools, and few mention the need for products in all bathrooms regardless of gender.¹⁸⁴ These oversights may seem slight, but the rhetoric has a large impact on the cultural understanding of the issue. By promulgating legislation that uses language that evokes the sentiment that periods are dirty, the bills, while pragmatic, miss the opportunity to dismantle the period stigma and undermine their own objectives. Also, the inclusion of all people who menstruate includes those who experience early puberty, which science tells us is as early as eight or third grade, as well as transgender and nonbinary students who may use the men’s restroom, who also deserve access and dignity in their period management.

A rule promulgated by the Department that uses positive language to describe periods and requires the universal availability of period products in public school restrooms would reduce the stigma associated with the products themselves.¹⁸⁵ Normalizing the idea that non-menstruators can view period products in bathrooms will help combat

183. *Period Products in Schools*, *supra* note 152; Cheyenne McNeill, *N.C. Schools Aren't Required to Provide Period Products. One Student is Providing Them Herself*, EDNC (June 7, 2022), ednc.org/harnett-central-student-supplies-menstrual-products-in-school/.

184. *See Menstrual Equity Bills Passed in the United States*, WOMEN’S VOICES EARTH, <https://www.womensvoices.org/menstrual-equity-bills-passed-in-the-united-states/> (last visited Feb. 1, 2023).

185. *See* Tomi-Ann Roberts et al., “*Feminine Protection*”: *The Effects of Menstruation on Attitudes Towards Women*, 26 PSYCH. WOMEN Q. 131, 133 (2002) (A 1999 study involving participants contacting a variety of items designed to elicit disgust and revulsion used a new unused tampon as an item of interest. “The tampon was unwrapped in front of the participants, who were asked to put it to their lips and put the tip in their mouth. The authors found that 46% of their male and female participants refused to touch it to their lip, and 69% refused to put the tampon in their mouth; 3% would not even touch it. These findings suggest that both men and women view menstruation with disgust.”).

the idea that the products themselves are dirty, simply for what they accomplish, and the use of appropriate language begins to dismantle the stigma. Since several states are already working toward this goal, a federal rule would simply augment the direction most schools are moving toward. The benefits of a federal rule include the opportunity to use language to destigmatize bodily function and the provision of products to all U.S. students in states where legislation has not been passed.

i. Title IX: Menstruation vs. Pregnancy

Pregnancy is a biological process linked to people’s internal sex and reproductive organs, which are by the vast majority women and girls. Guidance documents for Title IX explicitly mention pregnancy accommodations.¹⁸⁶ Specifically, “a [school] recipient [of federal funding] shall not discriminate against any student, or exclude any student from its education program or activity . . . on the basis of such student’s pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.”¹⁸⁷ Menstruation, unlike pregnancy, is not specifically mentioned in Title IX’s regulations, but it is certainly part of the biological process of the reproductive cycle: menstruation results when an ovulated egg is not fertilized, and the uterine lining is released from the body in the form of blood, while pregnancy results when the ovulated egg has been fertilized.¹⁸⁸ The Department certainly has precedent to promulgate regulations and guidance on menstruating students based on this parallel. The heading “pregnancy and related conditions” could be interpreted to include menstruation, seeing how menstruation is directly tied to the reproductive cycle.¹⁸⁹ While the guidance on pregnancy and its related conditions does not explicitly use the word “accommodate,” there is a section that implies a requirement

186. *Know Your Rights: Pregnant or Parenting? Title IX Protects You from Discrimination at School* U.S. DEP’T EDUC., OFF. FOR CIV. RTS. (last modified Jan. 1, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix.html>.

187. Johnson et al., *supra* note 56, at 247.

188. *Your Menstrual Cycle*, OWH, *supra* note 2.

189. *But see* *Coleman v. Bobby Dodd Inst.*, No. 4:17-CV-29, 2017 WL 2486080, at *2 (M.D. Ga. June 8, 2017) (rejecting Title VII plaintiff’s argument that menstruation is itself a pregnancy-related condition).

for the accommodation of medical leave as determined by a doctor.¹⁹⁰ The section further states that schools *might* be required to provide a larger desk, frequent bathroom breaks, or elevator access.¹⁹¹ A subsequent section of the pamphlet specifically lists “examples of possible strategies . . . that are not legally mandated,”¹⁹² which some scholars have interpreted to imply that the other accommodation-type suggestions are—at least administratively—constructively mandated.¹⁹³

“It is difficult to see why Title IX's prohibition of sex discrimination would require schools to give pregnant students frequent bathroom breaks but impose no comparable requirement to give menstruating students the very same sorts of breaks.”¹⁹⁴

While medical leave or access to period supplies is not going to resolve the pain that causes a person who menstruates experiences, it does bridge a gap for low-income students who represent 51% of the public education setting.¹⁹⁵ It also has the potential to make period management much easier and therefore bridge the current inequity students who menstruate face.

III. CONCLUSION

The stigmatized nature of menstruation leads to a lack of information for both mental and practical preparation for menarche and then period management. According to one of the leading researchers on the subject, the current “state of menstrual education in the United States is profoundly uneven,” leaving students who do not receive menstrual education at home unprepared for their period to begin.¹⁹⁶ Providing meaningful, practical, and comprehensive lessons on menstruation starting in early elementary school is essential so that all students are aware of the physiological process before they experience

190. Letter from Seth Galanter, Acting Assistant Sec’y for C.R., to Colleague (June 25, 2013) (on file with U.S. Department of Education); U.S. DEP’T OF EDUC., SUPPORTING THE ACADEMIC SUCCESS OF PREGNANT AND PARENTING STUDENTS: UNDER TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 5 (2013).

191. *Id.* at 9 (emphasis added).

192. *Id.* at 15.

193. Johnson et al., *supra* note 56, at 249.

194. *Id.* at 249.

195. Motoko Rich, *Percentage of Poor Students in Public Schools Rises*, N.Y. TIMES (Jan. 16, 2015), <https://www.nytimes.com/2015/01/17/us/school-poverty-study-southern-education-foundation.html>.

196. CRAWFORD & WALDMAN, *supra* note 101, at 83.

it. Menstrual education can also serve as a tool to dispel period myths and simultaneously work to dismantle the period stigma that is pervasive in U.S. culture. Therefore, the laws, regulations, and federal guidance that governs the public education system in the U.S. is uniquely situated to have a key role in disrupting the negative period narrative and its residual effect on society. Public education is available to all U.S. residents, including the 10.5 million children living in poverty in 2019.¹⁹⁷ By providing timely, medically accurate menstrual education to all genders that also addresses the emotional aspects of menarche, children are exposed to a more empathetic understanding of periods that will reduce the harm associated with a negative narrative.¹⁹⁸ Giving thoughtful instruction using positive language to all students in a non-gendered classroom assures that all people who menstruate receive the information they need and work to dissolve the stigma associated with periods.¹⁹⁹ The hostility of the cultural perception of menstruation is currently perpetuated by gender-segregated classrooms that emphasize the cultural belief that menstruation is a girl's dirty little secret that she must conceal from men.²⁰⁰ Instruction that includes all genders in the discussion of periods would begin to break down the wedge that currently divides male and female.²⁰¹ It would also help raise a generation of people who do not menstruate that are empathetic and understanding of the obstacles that people who have a period surmount. Some may argue that the gender distinction serves to create an environment where people who menstruate feel safe asking questions,

197. *The State of America's Children 2021: Child Poverty*, CHILD.'S DEF. FUND, <https://www.childrensdefense.org/wp-content/uploads/2021/04/The-State-of-Americas-Children-2021.pdf> (last visited Apr. 3, 2023) (“Children remain the poorest age group in America, with children of color and young children suffering the highest poverty rates. Nearly 1 in 7 children—10.5 million—were poor in 2019. Nearly 71 percent of poor children were children of color. More than 1 in 4 Black children and more than 1 in 5 Hispanic and American Indian/Alaska Native children were poor compared with 1 in 12 white children. The youngest children are the poorest. Nearly 1 in 6 children under 6 were poor and almost half lived in extreme poverty below half the poverty line.”).

198. Megan Evershed, *It's Time to Expand the Menstruation Conversation*, ESTABLISHMENT, <https://theestablishment.co/its-time-to-expand-the-menstruation-conversation/index.html> (last visited Feb. 2, 2023).

199. See CRAWFORD & WALDMAN, *supra* note 101, at 84–85, 69–71.

200. *Id.* at 83–84.

201. Allen et al., *supra* note 44, at 151–53; see CRAWFORD & WALDMAN, *supra* note 101, at 84–85.

but this can easily be surmounted using anonymous question boxes and individual appointments with trusted teachers and nurses. To truly achieve menstrual equity, the objective must be to “aim to change the social norms and period stigma.”²⁰²

Developing this avenue for all children to understand and manage their bodily functions, regardless of familial and economic background, is essential to creating an equitable learning environment. General ideas around rhetoric and its effect on framing issues suggest that promoting the use of unified positive language²⁰³ and disrupting the secrecy in educating students about periods can make an impact on society’s treatment of periods.²⁰⁴ Therefore, the Department must use their statutory authority to promulgate rules that require consistent access to products in the public-school environment and issue guidance that private schools should do the same. Additionally, the Supreme Court’s ruling in *Bostock* expanding the definition of “sex” in the Title VII context to include “gender identity” and “sexual orientation”, leaves schools that separate genders in the classroom for menstrual or sex education vulnerable to challenges of discrimination in violation Title IX or the Equal Protection Clause of the Fourteenth Amendment.²⁰⁵ Continuing education in this manner disregards what we have previously discussed: that not all women menstruate and that not all who menstruate identify as women. While the Department does not have the authority to assign curriculum, it is within its purview to create a general curriculum that could be issued as guidance and adopted on a local basis. The Secretary, therefore, should delegate a committee to develop a comprehensive menstrual health curriculum for all levels of public school education, including a glossary of terms. This would be ideal to expedite the process to destigmatize periods. There is also potential to recommend that topics on menstruation are not only added to health education but also incorporated into subjects like literature, history, and cultural studies. Instruction that considers various cultural perceptions

202. See CRAWFORD & WALDMAN, *supra* note 101, at 84.

203. MENSTRUAL GLOSSARY *supra* note 106, at 4 (“Without appropriate or uniform language, communications and advocacy can fail in connecting our efforts effectively to who we aim to influence, namely policymakers, donors, activists and other changemakers.”).

204. See generally TOYE, *supra* note 124.

205. William N. Eskridge Jr. & Christopher R. Riano, *Bostock: A Statutory Super-Precedent for Sex and Gender Minorities*, AM. CON. SOC’Y (July 1, 2020), <https://www.acslaw.org/expertforum/bostock-a-statutory-super-precedent-for-sex-and-gender-minorities/>.

and incorporates menstruation into everyday vernacular is the ultimate goal and would indicate a society that appreciates the physiological process that defines many students lives.

Currently, there are no guiding documents promulgated by the federal government that provides any information on periods. This is the result of the perpetuation of a culture of shame throughout generations; no one speaks up. Non-menstruators traditionally have had the power to write and promulgate legislation, most of whom never grapple with the reality of accommodating a multi-day span each month where blood seeps from between their legs. This lack of consciousness has played a part in the perpetuation of period taboo and lack of recognition in the laws and policies of this nation.

Providing products in schools and meaningful menstrual education empowers people who menstruate and their allies to address menstrual equity in other areas of the law, creating a future of public policy with menstruation in mind. The unmentionable blood stains students' thighs on a monthly basis, whether or not we talk about it. It is a student's right to be educated about what is happening to their body as it bleeds. It is also a student's right to be properly situated to exist comfortably in society, including while bleeding at school.

To properly carry out its functions as prescribed by Title IX and the ESEA and its amendments, the Department could promulgate rules requiring the provision of free menstrual products in public schools, starting in elementary school. In addition, the Department should devise a curriculum to post as guidance for schools to adopt inclusive language, which helps dismantle the stigma, the pinnacle of menstrual equity.