

TITLE IX ABROAD: A PROPOSED FRAMEWORK FOR  
EXTRATERRITORIAL APPLICATION

by  
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*Regulatory changes to Title IX made clear that the statute’s sexual assault grievance procedures do not apply to incidents that take place outside the United States. This Comment explores the reasoning underlying these 2020 regulations, which signal a departure from prior interpretations of Title IX and limit recourse for U.S. students who are sexually assaulted while studying abroad. Ultimately, this Comment argues that Title IX should have an extraterritorial reach when both complainant and respondent are affiliated with U.S. institutions. Such a change would harmonize Title IX’s underlying purpose with the practical difficulties of investigating and adjudicating conduct occurring outside of the United States.*

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INTRODUCTION

On August 14, 2020, the Trump Administration’s new Title IX regulations became effective.<sup>1</sup> The Department of Education, the agency tasked with

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<sup>1</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026 (May 19, 2020) (codified at 24 C.F.R. pt. 106).

administering Title IX, promulgated a host of changes to the Title IX framework.<sup>2</sup> One such change was an explicit determination that Title IX sexual assault grievance procedures do not apply to incidents that occur outside of the United States.<sup>3</sup> Under the current regulations, formal complaints will be dismissed if the conduct “did not occur against a person in the United States.”<sup>4</sup> This departs from previous administrations, under which the question of whether Title IX applies to conduct occurring outside of the United States was left open.<sup>5</sup>

This change implicates sexual assault occurring in the context of study abroad programs, which necessarily require students to travel outside of the United States. Under the new regulations, sexual assaults that occur during study abroad programs are not covered by Title IX procedures.<sup>6</sup> This is the case even where the conduct occurs between two students from the same institution; on a U.S. institution’s foreign campus; or during a school-sponsored program. This blanket policy is concerning in light of research indicating that sexual assault occurs as or more frequently in study abroad programs compared to U.S. campuses.<sup>7</sup> This is particularly concerning in light of the COVID-19 pandemic, where many educational institutions are holding classes virtually. Under the new regulations, a student taking virtual classes while outside of the United States would have no recourse under Title IX if subjected to harassment by peers or faculty during virtual learning.

This Comment first explores the justifications and rationale underlying the new regulations. It then considers whether and how these new regulations depart from prior interpretations of Title IX’s applicability to conduct occurring outside of the United States. Next, it advocates that Congress, or future administrations—including the Biden Administration—change the regulatory or statutory language such that Title IX has a limited extraterritorial reach. Specifically, this Comment

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<sup>2</sup> *Secretary DeVos Takes Historic Action to Strengthen Title IX Protections for All Students*, U.S. DEP’T OF EDUC.: PRESS RELEASES (May 6, 2020), <https://www.ed.gov/news/press-releases/secretary-devos-takes-historic-action-strengthen-title-ix-protections-all-students>.

<sup>3</sup> 34 C.F.R. § 106.8(d) (2020) “*Application outside the United States*. The requirements of paragraph (c) of this section apply only to sex discrimination occurring against a person in the United States.”

<sup>4</sup> 34 C.F.R. § 106.45(b)(3)(i).

<sup>5</sup> See Greta Anderson, *Location-Based Protection*, INSIDE HIGHER ED (May 12, 2020), <https://www.insidehighered.com/news/2020/05/12/new-title-ix-regulation-sets-location-based-boundaries-sexual-harassment-enforcement>.

<sup>6</sup> Nondiscrimination on the Basis of Sex in Education Programs, 85 Fed. Reg. at 30,205.

<sup>7</sup> See, e.g., Matthew Kimble, William F. Flack, Jr., & Emily Burbridge, *Study Abroad Increases Risk for Sexual Assault in Female Undergraduates: A Preliminary Report*, 5 PSYCHOL. TRAUMA: THEORY, RES., PRAC., & POL’Y 426, 428–29 (2013) (sexual assault occurs as frequently in study abroad programs in English-speaking European countries and Australia, and more frequently in study abroad programs elsewhere).

posits Title IX complaint procedures should apply to conduct outside of the United States when both parties (complainant and respondent) are affiliated with U.S. institutions. In so doing, this Comment will explore the legal and policy justifications for such an interpretation of Title IX.

## I. THE 2020 FINAL RULE, AND THE DEPARTMENT'S EXPLANATION AND JUSTIFICATION FOR THE CHANGES MADE

On May 19, 2020, the U.S. Department of Education (the "Department") released final regulations governing Title IX procedures for campus sexual assault.<sup>8</sup> Although most notorious for the controversial introduction of a live hearing requirement, the new regulations included a host of other changes.<sup>9</sup> Central to this Comment is the revision of Section 106.8 of the governing regulations (which mandate grievance procedures for complaints) to state that "[t]he requirements of . . . this section apply only to sex discrimination occurring against a person in the United States."<sup>10</sup> More specifically, institutions' "non-discrimination polic[ies], grievance procedures that apply to sex discrimination, and grievance process[es] that appl[y] to sexual harassment, *do not apply to persons outside the United States.*"<sup>11</sup> Most notably, this removes assault occurring during college-sponsored study abroad programs from Title IX's jurisdiction.

The preamble to the final rule lays out at length the Department's reasoning behind the change. Two themes emerged from the Department's responses to criticisms commenters raised during the rulemaking. First, the Department advocated for a plain-meaning interpretation of the statutory text.<sup>12</sup> Second, the Department relied on the canon against extraterritorial application of statutes.<sup>13</sup> The plain-meaning arguments derive from what is, arguably, the threshold language of Title IX, which reads, "No 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

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<sup>8</sup> See Nondiscrimination on the Basis of Sex in Education Programs, 85 Fed. Reg. at 30,026, 30,030.

<sup>9</sup> See Greta Anderson, *U.S. Publishes New Regulations on Campus Sexual Assault*, INSIDE HIGHER ED (May 7, 2020), <https://www.insidehighered.com/news/2020/05/07/education-department-releases-final-title-ix-regulations>; R. Shep Melnick, *Analyzing the Department of Education's Final Title IX Rules on Sexual Misconduct*, BROOKINGS (June 11, 2020), <https://www.brookings.edu/research/analyzing-the-department-of-educations-final-title-ix-rules-on-sexual-misconduct/>.

<sup>10</sup> 34 C.F.R. § 106.8(d) (2020).

<sup>11</sup> Nondiscrimination on the Basis of Sex in Education Programs, 85 Fed. Reg. at 30,474 (emphasis added).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

assistance . . . .”<sup>14</sup> Under the literal meaning championed by the Department, the words “person in the United States” preclude the application of Title IX to individuals not *physically located* within the borders of the United States.<sup>15</sup> The Department took this tack in responding to concerns, explaining: “The Department believes a plain meaning interpretation of a statute is most consistent with fundamental rule of law principles, ensures predictability, and gives effect to the intent of Congress.”<sup>16</sup>

The Department also raised the “canon against extraterritorial application”—which instructs that “Congress ordinarily intends its statutes to have domestic, not extraterritorial, application.”<sup>17</sup> The Department pointed to a pair of recent Supreme Court cases emphasizing the presumption, indicating that such cases should control interpretation of Title IX.<sup>18</sup> In a 2010 case, the Supreme Court summarized the presumption as follows: “When a statute gives no clear indication of an extraterritorial application, it has none.”<sup>19</sup> Thus, the Department reasoned that: “If Congress intended Title IX to have extraterritorial application, then it could have made that intention explicit in the text when it was passed in 1972, and Congress could amend Title IX to apply to a recipient’s education programs or activities located outside the United States if Congress so chooses.”<sup>20</sup>

Beyond statutory interpretation, the Department also employed practical considerations in its reasoning. For instance, it explained that “schools may face difficulties interviewing witnesses and gathering evidence in foreign locations where sexual misconduct may have occurred” and pointed out that institutions are still able to initiate student conduct proceedings or offer supportive measures, even in the absence of Title IX procedures.<sup>21</sup> However, the Department was adamant that holding institutions potentially liable for misconduct “that took place outside the country could be unrealistically demanding and lead to open-ended liability.”<sup>22</sup>

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<sup>14</sup> 20 U.S.C. § 1681(a) (1970) (emphasis added).

<sup>15</sup> Nondiscrimination on the Basis of Sex in Education Programs, 85 Fed. Reg. at 30,206.

<sup>16</sup> *Id.* at 30,205.

<sup>17</sup> *Id.* at 30,474 (citing *Small v. United States*, 544 U.S. 385, 388–89 (2005)).

<sup>18</sup> These cases are *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013) and *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247 (2010).

<sup>19</sup> *Morrison*, 561 U.S. at 255.

<sup>20</sup> Nondiscrimination on the Basis of Sex in Education Programs, 85 Fed. Reg. at 30,205.

<sup>21</sup> *Id.* at 30,206; *see also id.* at 30,456 (clarifying that “mandatory dismissal of allegations in a formal complaint of sexual harassment because the allegations concern sexual harassment that occurred outside the United States is a dismissal only for Title IX purposes and does not preclude action under another provision of the recipient’s code of conduct.”).

<sup>22</sup> *Id.* at 30,207.

## II. PRIOR INTERPRETATIONS OF WHETHER TITLE IX PROCEDURES APPLY TO SEXUAL ASSAULT OCCURRING OUTSIDE OF THE UNITED STATES

Prior to the Final Rule, whether Title IX applied in the context of study abroad was very much an open question.<sup>23</sup> Very little regulatory, judicial, or scholarly commentary existed on the subject.<sup>24</sup> However, the Obama Administration took an expansive view of Title IX's application, particularly with regard to sexual violence.<sup>25</sup> In a 2014 guidance document, the Department stated that off-campus assault falls under Title IX.<sup>26</sup> Specifically, it stated that “a school must process all complaints of sexual violence, *regardless of where the conduct occurred*, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.”<sup>27</sup> While study abroad is not explicitly mentioned in the guidance document, it would seem to fall within the general Title IX philosophy of the Obama-era. One commentator's review of cases obtained through a FOIA request led to a similar conclusion: The Office for Civil Rights (OCR) “interprets ‘off-campus’ to mean off-campus grounds anywhere in the world,” though the OCR did not formally release any guidance on the extraterritorial application of Title IX.<sup>28</sup>

Case law is similarly limited. While no federal appellate court has heard the issue, two district court cases tackled the question head on—each reaching a different conclusion on whether Title IX applies to sexual assault and harassment occurring outside of the United States. In *King v. Board of Control of Eastern Michigan University*, the U.S. District Court for the Eastern District of Michigan held that Title IX was applicable in a situation involving student-on-student harassment occurring within a university study abroad program.<sup>29</sup> That case concerned a university-administered study abroad program in South Africa.<sup>30</sup> Plaintiffs—six female students—asserted that they were subjected to “slurs,

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<sup>23</sup> See Brittany K. Bull, Note, *Raped Abroad: Extraterritorial Application of Title IX for American University Students Sexually Assaulted While Studying Abroad*, 111 NORTHWESTERN U. L. REV. 439, 442 (2016).

<sup>24</sup> *Id.* at 444, 456, 462.

<sup>25</sup> See R. Shep Melnick, *Rethinking Federal Regulation of Sexual Harassment*, 18 EDUC. NEXT 8, 9, 12 (2018), <https://www.educationnext.org/rethinking-federal-regulation-of-sexual-harassment-need-for-deliberation-not-demagoguery-trump/>.

<sup>26</sup> U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE 29 (2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (rescinded).

<sup>27</sup> *Id.* at 29.

<sup>28</sup> Bull, *supra* note, 23 at 456, 461 (emphasis omitted).

<sup>29</sup> *King v. Bd. of Control of E. Mich. Univ.*, 221 F. Supp. 2d 783, 788 (E.D. Mich. 2002).

<sup>30</sup> *Id.* at 784.

derogatory terms and other sexually explicit behavior” by a group of three male students.<sup>31</sup> Plaintiffs alleged that their complaints about the conduct were not addressed by the on-site professors, causing them to leave the program early.<sup>32</sup> Shortly thereafter, plaintiffs brought a sex-discrimination claim against the university.<sup>33</sup>

In *King*, the defendants relied on reasoning similar to that later espoused in the Trump Administration’s new regulations. In short, defendants asserted that the presumption against extraterritorial application and the statutory language barred the suit.<sup>34</sup> The *King* court quickly disposed of the presumption against extraterritoriality, stating that “study abroad programs are operations of the University which are explicitly covered by Title IX and which *necessarily* require students to leave U.S. territory in order to pursue their education.”<sup>35</sup> The court also cited Supreme Court precedent holding that “[r]emedial statutes are to be read broadly so as to effectuate their purposes.”<sup>36</sup>

Conversely, in *Phillips v. St. George’s University*, the U.S. District Court for the Eastern District of New York determined that a student could not sue her university under Title IX for its mishandling of her complaint after she was sexually harassed by a mailroom employee on the university’s Grenada campus.<sup>37</sup> Citing the presumption against extraterritorial application, the court found that the plaintiff had “failed to point to anything in Title IX to suggest that [C]ongress intended that [the] statute apply to students who are not enrolled in an educational institution located in the United States.”<sup>38</sup> The court asserted that *King* was factually distinguishable, stating, “In contrast to the EMU study abroad program at issue in *King*, Phillips was attending SGU in Grenada, alleged that she was harassed by an SGU employee in Grenada, and that SGU employees ignored her complaints in Grenada.”<sup>39</sup> Important to the outcome in *Phillips* was the university’s lack of connection to the United States, particularly given that SGU’s sole campus is in Grenada.<sup>40</sup> Moreover, the plaintiff’s only connection with New York was the fact

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<sup>31</sup> *Id.* at 785.

<sup>32</sup> *Id.* at 784–86.

<sup>33</sup> *Id.* at 786.

<sup>34</sup> *Id.* at 786–87.

<sup>35</sup> *Id.* at 788 (emphasis original).

<sup>36</sup> *Id.*

<sup>37</sup> *Phillips v. St. George’s Univ.*, No. 07-CV-1555 (NGG), 2007 WL 3407728, at \*1, \*5 (E.D.N.Y. Nov. 15, 2007).

<sup>38</sup> *Id.* at \*3 (alterations in original).

<sup>39</sup> *Id.* at \*5. The court went on to write, “Even assuming the *King* outcome was correct on its facts, it is not persuasive given the distinguishable facts of this case.” *Id.*

<sup>40</sup> *Id.* at \*3.

that she had been recruited by and paid for SGU while in New York.<sup>41</sup> Thus, *Phillips* is a far cry from a case where a student of a U.S. university tries to use Title IX to remedy assault occurring abroad. That said, the Department praised the *Phillips* court's reasoning in defending its changes to the Title IX framework.<sup>42</sup>

### III. FUTURE ADMINISTRATIONS OR CONGRESS SHOULD ALLOW EXTRATERRITORIAL APPLICATION OF TITLE IX WHERE BOTH PARTIES ARE UNIVERSITY AFFILIATED

This Comment advocates for a common-sense interpretation of Title IX which allows its policies to apply extraterritorially when the complained-of conduct occurs between two members of the same U.S. institution (such as two students enrolled in a study abroad program). This interpretation would provide much-needed protection for students abroad while respecting the practical and jurisdictional difficulties of investigating and adjudicating conduct that occurs overseas.

#### A. *The Importance of Title IX Protection Abroad*

The necessity of investigating and adjudicating sexual assault does not abate when students travel abroad for college-sponsored educational opportunities. Though research on sexual assault occurrence in study abroad programs is limited, existing literature suggests that it is at least as common as it is in the United States, where one in five students report experiencing sexual assault or harassment.<sup>43</sup> One study found that female students are three to five times more likely to experience unwanted sexual activity during study abroad programs than when they are on campus.<sup>44</sup> Another study that polled female study abroad participants found that nearly 19% of the respondents “indicated one or more types of sexual assault victimization.”<sup>45</sup> Commentators have pointed to a variety of risk factors that may contribute to these findings. For instance, “hook-up culture” is prevalent in study

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<sup>41</sup> *Id.* at \*3.

<sup>42</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026, 30,206 (May 19, 2020) (codified at 24 C.F.R. pt. 106) (stating “[w]e find the *Phillips* Court’s reasoning to be well-founded . . .”).

<sup>43</sup> Nick Anderson & Scott Clement, *1 in 5 College Women Say They Were Violated*, WASH. POST (June 12, 2015), <https://www.washingtonpost.com/sf/local/2015/06/12/1-in-5-women-say-they-were-violated/>.

<sup>44</sup> Kimble et al., *supra* note 7, at 428.

<sup>45</sup> William F. Flack, Jr., Matthew O. Kimble, Brooke E. Campbell, Allyson B. Hopper, Oana Petercă & Emily J. Heller, *Sexual Assault Victimization Among Female Undergraduates During Study Abroad: A Single Campus Survey Study*, 30 J. INTERPERSONAL VIOLENCE, 3453, 3453, 3458–59 (2015) (39 of 208, or 18.8%, of students surveyed reported “sexual assault victimization”).

abroad programs, as is legal access to alcohol.<sup>46</sup>

Though extraterritorial application of Title IX would clearly implicate study abroad participants, these issues merit special consideration given the recent COVID-19 pandemic, which resulted in many colleges holding classes virtually. A student who is taking courses while physically located outside of the United States may be subject to repeated harassment in the virtual classroom with no Title IX protection. Additionally, as our world becomes more globalized and digital, the importance of extending protection to students in a variety of circumstances becomes more pressing.

### B. *Legal Reasoning*

As previously discussed, the Department's justification for its final rule lies in the plain text of 20 U.S.C. § 1681 and the canon against extraterritorial application. More specifically, the Department finds that the phrase "[n]o person in the United States" should control the interpretation of the statute, triggering the canon against extraterritorial application which the Supreme Court emphasized in *Morrison*.<sup>47</sup> However, Section 1681(a) reads in full: "No 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 . . ." <sup>48</sup> The Department's interpretation reads out the term "*any*" whenever an educational program or activity takes a student outside of the bounds of the United States. However, this interpretation conflicts with the Department's definition of "education program or activity" applied in other portions of Section 106, which includes "locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs."<sup>49</sup> As the *King* court noted, "study abroad programs are operations of the University which are explicitly covered by Title IX and which *necessarily* require students to leave U.S. territory in order to pursue their education."<sup>50</sup> While the Department makes much ado about the canon against extraterritorial application, other principles of statutory interpretation may require a different result. For instance, the Supreme Court has also indicated that

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<sup>46</sup> See Elizabeth Thompson, *The Underreported Trend of Sexual Assault During Study Abroad Programs*, DAILY TAR HEEL (Sept. 12, 2019, 1:49 AM), <https://www.dailytarheel.com/article/2019/09/assault-study-abroad> (discussing hook-up culture); Kimble et al., *supra* note 7, at 428 (discussing legal access to alcohol).

<sup>47</sup> See *supra* Part II.

<sup>48</sup> 20 U.S.C. § 1681(a) (1970) (emphasis added).

<sup>49</sup> 34 C.F.R. § 106.44(a) (2020) (this definition applies to 34 C.F.R. §§ 106.30, 106.44, and 106.45 (2020)).

<sup>50</sup> *King v. Bd. of Control of E. Mich. Univ.*, 221 F. Supp. 2d 783, 788 (E.D. Mich. 2002) (emphasis original).



statutes must be read as a whole<sup>51</sup> and interpreted such to avoid absurd results.<sup>52</sup> Moreover, the Supreme Court has stated that remedial statutes should be interpreted broadly to effectuate their purposes.<sup>53</sup>

In fact, the very section the Department urges *precludes* extraterritorial application may actually *command* it. Title IX commands equal access to educational opportunities, and such access may be undermined by conduct that occurs abroad. For instance, take two students from the same university both enrolled in the same study abroad course. If student A rapes student B while abroad, causing student B to return home early, student B is deprived not only of access to the study abroad program, but potentially any number of educational opportunities at her home university when both students return to campus. Likewise, imagine a student athlete at a Detroit-based college. If he or she were sexually harassed by the coach at a game in Windsor, Canada (approximately two miles away) and quit the team as a result, Title IX recourse for the assault would not be available. And the Department's interpretation sanctions this deprivation of access by requiring dismissal of Title IX complaints when the conduct did not occur against a person located in the United States. There is simply no way to read the statute harmoniously without allowing at least some extraterritorial application.

### C. Policy Reasoning

Providing for extraterritorial application of Title IX proceedings limited to circumstances where both parties are members of a US institution makes sense for several reasons. As discussed, sexual assault occurrence in study abroad programs appears to be at least as common as it is on college campuses in the US. And student-on-student sexual assault is a significant risk. At least one study has found that the majority of perpetrators of assaults reported in study abroad cases were fellow university students.<sup>54</sup> Another found that the majority of perpetrators were nonstudent locals but recognized that "factors that are thought to place undergraduate females at increased risk for sexual assault on domestic campuses may also play a role in a semester abroad."<sup>55</sup>

Moreover, in our globalized world, it does not make sense to rigidly affix Title IX applicability to geographic location. In other words, conduct that would be actionable under Title IX in a U.S. dorm room should not be exonerated simply

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<sup>51</sup> *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006) ("Interpretation of a word or phrase depends upon reading the whole statutory text . . .").

<sup>52</sup> *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.").

<sup>53</sup> *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967).

<sup>54</sup> Flack, Jr., et al., *supra* note 45, at 3460.

<sup>55</sup> Kimble et al., *supra* note 7, at 428.

because it occurred in a dorm room on an overseas campus. Taken with *Kimble's* finding that the majority of perpetrators in their sample were fellow university students, common sense demands that universities take some role in responding to complaints of sexual assault committed by their own students.<sup>56</sup>

However, because U.S. higher education institutions cannot exert jurisdiction over nonstudent locals outside of the United States, Title IX protections may fall short in circumstances where the perpetrator was not associated with the institution. That said, universities can exert influence over a range of private actors, even abroad.<sup>57</sup> As such, Title IX remedies could be modified to include disqualifying a host family because a member sexually harasses a student or requiring a private study abroad program to discipline an employee. Title IX proceedings should provide an avenue for universities to use their influence to make students whole—*especially* where the perpetrator is a student or employee of the university.

Finally, students may have no other recourse to deal with an assault when out of the country or on a study abroad program. Because “crime occurring overseas cannot be prosecuted in the U.S., filing a Title IX report with the recipient might be the survivor’s only option.”<sup>58</sup> Reporting to local law enforcement may not be a viable option where language barriers and cultural differences exist.<sup>59</sup> As one commentator noted: “Because of the students’ lack of knowledge in the international context, students necessarily rely (to varying degrees) on university advisors and program staff for protection of their well being.”<sup>60</sup> And notwithstanding these challenges, the criminal justice system and Title IX procedures are fundamentally different. Survivors should be free to pursue the resolution process of their choice—especially where both parties attend the same institution. Without the disciplinary action offered by Title IX, a student studying abroad who was raped by a fellow student attending the same program may be forced to attend classes with their rapist upon return to their home campus. This creates a loophole which gravely undermines the principal purposes of Title IX’s sexual assault regulations and procedures.

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<sup>56</sup> This is consistent with Oregon state law, which requires institutions of higher education to “respond to any complaint received by the institution, regardless of whether the incident occurred on the campus of the institution or elsewhere.” OR. REV. STAT. § 350.253(2)(d) (2020).

<sup>57</sup> Melnick, *supra* note 9 (emphasizing that “nothing prevents schools from including study abroad programs in their student conduct codes.”).

<sup>58</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026, 30,205 (May 19, 2020) (codified at 24 C.F.R. pt. 106) (referencing comments submitted).

<sup>59</sup> Kimble et al., *supra* note 7, at 429.

<sup>60</sup> Naomi M. Wright, *Experience of a Lifetime: Study Abroad, Trauma, and Institutional Betrayal 6* (June 2015) (unpublished B.A. thesis, University of Oregon), <https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/19093/Thesis%20Final-Wright.pdf?sequence=1>.

## CONCLUSION

Title IX has evolved to become an important tool for dealing with campus sexual assault and harassment. In our globalized world, recourse for survivors of assault should not be tied to stringent geographical boundaries. As universities in the United States expand their educational programming such that students are encouraged to study abroad or take courses online, Title IX's regulations should retain flexibility to address sexual misconduct that occurs across *all* educational programs. The Biden Administration should update Title IX regulations to govern sexual misconduct occurring outside of the United States when both parties are affiliated with a U.S. institution. Doing so would harmonize Title IX's underlying purpose and demand for equal access with the practical difficulties of investigating and adjudicating conduct occurring outside of the United States.