

Know Your (NEW) Rights: Title IX and Pregnant and Parenting Students

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<https://thepregnantscholar.org/2024-osu-spss/>

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Agenda

- I. Introduction
- II. Pregnancy accommodations
- III. Parental leave/absences
- IV. Documentation and privacy
- V. Other discrimination and harassment issues
- VI. What's next?
- VII. Questions



Title IX

Scope and Core Principles



Title IX Protections



Who is covered?

Students/trainees in K-12 school, college, university, vocational school, other academic institution or government-funded training program

Where are they covered?

Any class, externship, internship, or training program that is sponsored/required by their institution and overseen by their institution

How are they covered?

Title IX prohibits discrimination on the basis of sex and pregnancy-related conditions, and requires certain accommodations



Basic Principles: 2024 Regulations

Scope:

“Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.” § 106.10

<https://www2.ed.gov/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf>



Basic Principles: 2024 Regulations

Discrimination on the basis of

sex

=

...on the basis of

pregnancy

=

...pregnancy, childbirth, termination of pregnancy, **lactation**, related medical conditions, and recovery from those conditions. Includes **past, current, or potential pregnancy/conditions**.

Basic Principles: 2024 Regulations

Discrimination on the basis of

sex and parental status



...on the basis of *sex and* being a
biological or adoptive parent;

foster parent; step-parent; legal custodian/guardian; acting in the place of a parent/guardian; or actively seeking legal custody, guardianship, visitation, or adoption of a child under 18, or a disabled person over 18 who isn't capable of self-care

●● Basic Principles: What is discrimination?

- Harassment, biased statements (hostile environment)
- Treating someone in the protected group worse than others
- Over-scrutinizing someone because of their status, holding them to higher standards
- Not providing legally-required accommodations to someone in the protected group
- Setting up policies or structures that have an indefensible negative impact on a protected group



Basic Principles: Who's in charge?

It is now clearly the Title IX Office's role to:

- *Prevent* discrimination—note the annual training requirement!
- Offer and ensure the provision of accommodations and leave
- Investigate complaints and remedy violations
- “Monitor for and address barriers to reporting” sex discrimination

Pregnancy Accommodations (Adjustments or Modifications)

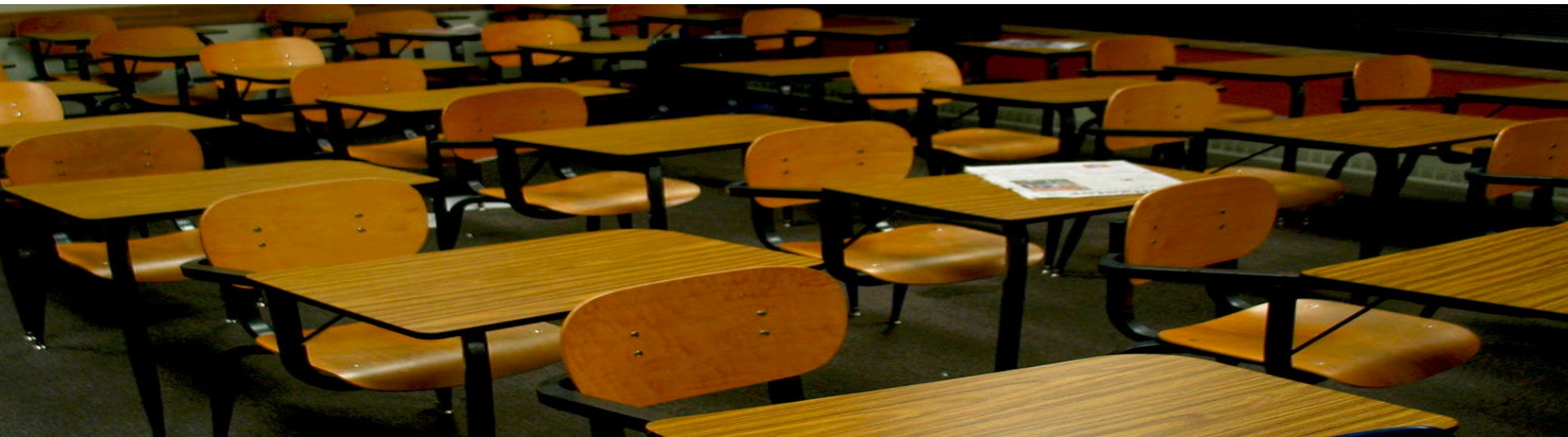
“you don’t have a disability—you just need to go home and be with your baby”

If a student says....they may need a modification

- “I don’t fit my chair”
- “It is hard for me to type”
- “Is that safe??” “I need to take precautions...”
- “My morning sickness is really bad...”
- “I was in the hospital”
- “My doctor said...”
- Leaves for many bathroom breaks, struggles to keep up
- Sudden unexplained absences or tardiness

●● Examples of pregnancy-related modifications:

- Delayed deadlines
- Bathroom breaks
- Permission to eat or drink in class
- Parking space
- Avoiding toxic substances
- Remote learning
- A larger chair so student can sit comfortably





Accommodation process fails

Negative statements about their pregnancy

- *“Are you sure you want to keep it?”*
- *“What a disappointment! I thought you’d be a scientist!”*

Questions about the student’s family makeup

- *“Do you know who the father is?”*
- *“I thought you were gay, how did you get pregnant?”*

Intrusive medical questions

- *“Let me talk to your doctor about this”*
- *“Do you really need to [handle bodily function] so often? Why?”*
- *“How did this happen? Why aren’t you on birth control?”*

“You should just withdraw.”



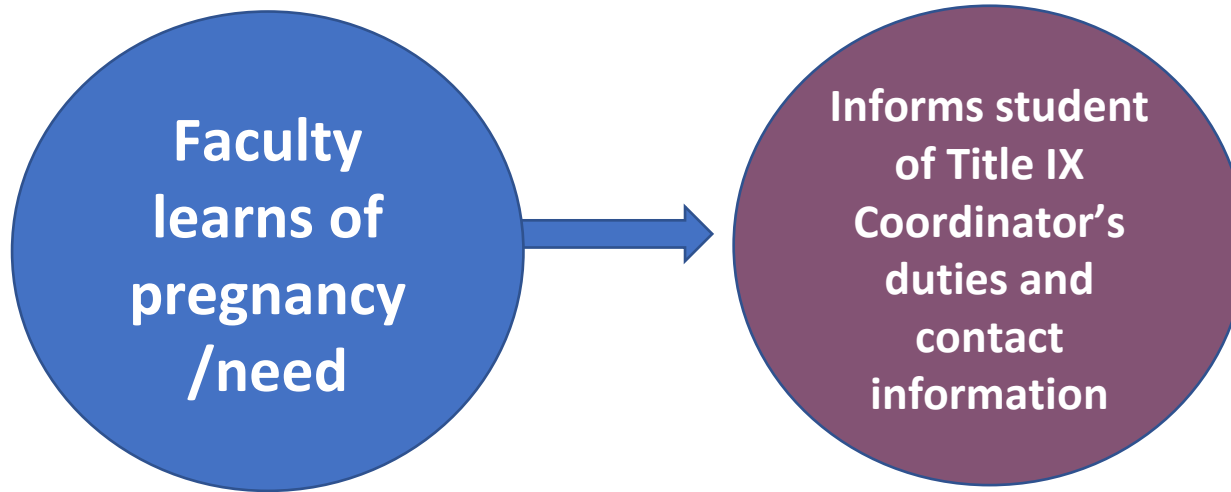
Accommodations: Title IX Regulations

“A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability...”

Old §106.40 (b)(4)

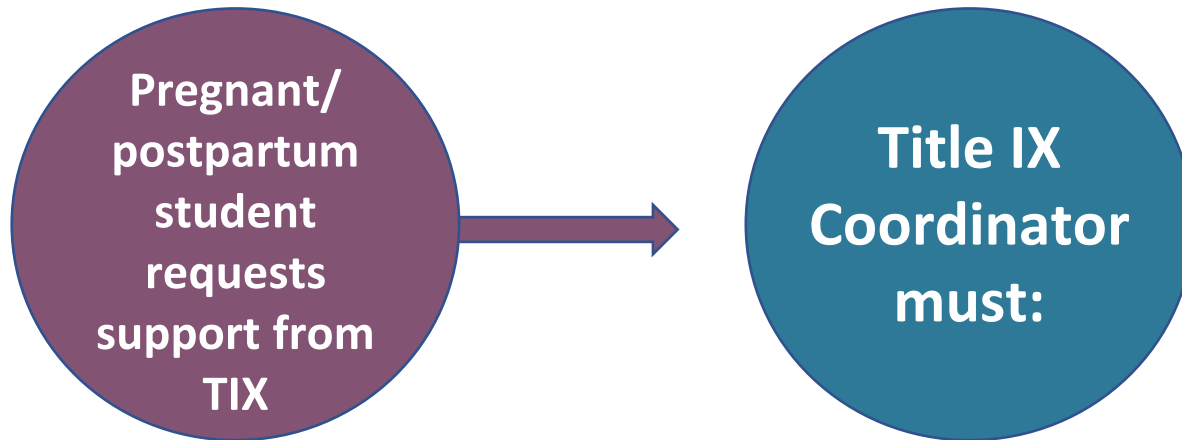
“The recipient must make reasonable modifications to the recipient’s policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the recipient’s education program or activity. Each reasonable modification must be based on the student’s individualized needs. In determining what modifications are required under this paragraph, the recipient must consult with the student...” § 106.40(b)(3)(ii)

NEW Modifications Process: Faculty Obligations





NEW Modifications Process: Title IX Office Duties



- Provide information about the institution's obligation to provide pregnancy accommodations (academic modifications/adjustments), leave, and lactation accommodations. Share non-discrimination notice. (See § 106.40(b).)
- Address any complaints
- Oversee individualized and interactive process to establish accommodations

Note: May delegate duties or be informed by the disability office or others, but the ultimate responsibility belongs to the TIX Coordinator.



NEW Modifications Process: Interactive process

- Modifications can be changes to policies, procedures, or practices.
- The institution *must* provide reasonable modifications, when needed.
- “Reasonable” modifications are those which do not fundamentally alter the nature of an education program or activity.
- Title IX Coordinators must facilitate a process that directly involves the student and is individualized to the students’ needs. No “one-size-fits-all” approach.





NEW Modifications Process: Scenario

Jada is a nursing student who is 9 months pregnant and struggling to stand for full clinical shifts due to swelling and back pain. Her professor encourages Jada to reach out to Title IX to make changes to support her.

Jada requests permission to shorten her clinical days and extend the length of her externship.

Is this a reasonable accommodation?

What is the best way to serve Jada?





NEW Modifications Process: Scenario 1

Jada is a nursing student who is 9 months pregnant and struggling to stand for full clinical shifts due to swelling and back pain. A professor encourages Jada to reach out to Title IX to make changes to support her.

Jada requests permission to end her clinical placement 2 months early.

*Remember: an “unreasonable” determination is **not** the end of the process.*



Lactation Accommodations

Institutions are required to provide lactation spaces that students can access when needed.

These spaces must be:

- Clean
- Not a bathroom
- Free from intrusion and view
- Appropriate and functional



Lactation Accommodations: Beyond Lactation Space

Lactating students must be provided with reasonable modifications.

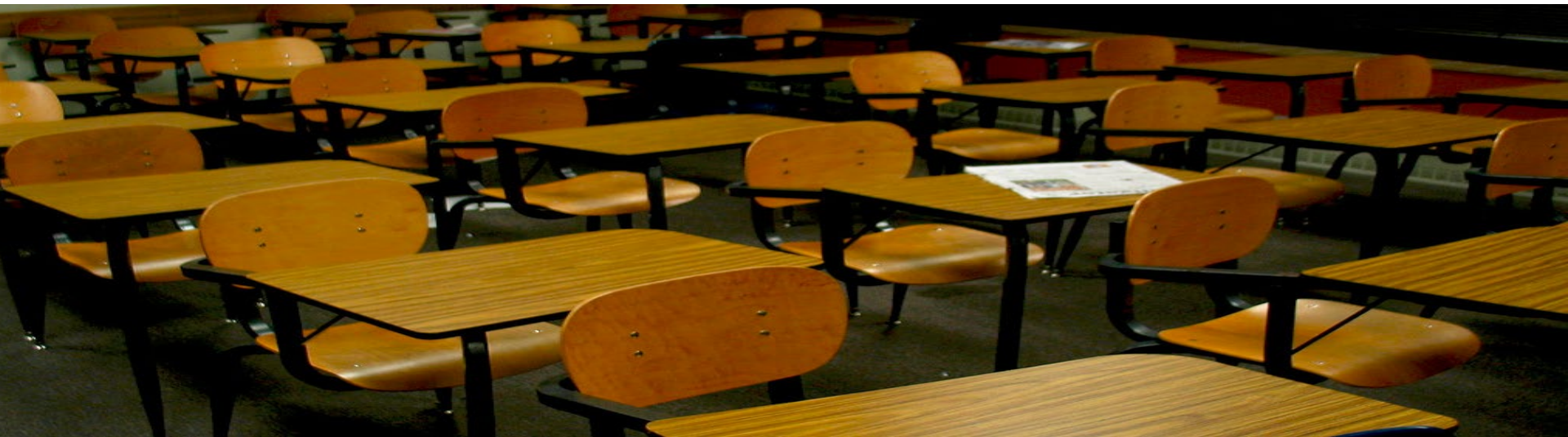
Common modifications include:

- New uniforms, waiving or adjusting uniform requirements
- Notetakers or permission to “Zoom” in to class during pumping breaks
- Additional time during exams
- Situating exam location near a lactation space
- Time off for complications



Reshaping Campus

- Update webpage and complaint forms
- Assemble accommodation process working group
- Designate key points of contact
- Prepare for increased demand for lactation spaces
 - Map existing spaces and users, assemble lactation space working group
- Start drafting new policies!



Student Leave and Absences

“I was in a lot of pain. And I remember thinking to myself, I shouldn’t be here...”

Student Pregnancy/Postpartum Leave: Old Title IX Regulations

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

Old Regulations: Leave length

“As long as medically necessary” is determined by the student’s own physician and may include:

- doctor’s appointments
- leave during pregnancy
- childbirth leave
- abortion or miscarriage leave





Old Regulations: Reinstatement

- Guaranteed re-admittance to program
- No penalty or grade deductions
- Medical certification can be requested prior to return if it is required of students with other conditions



NEW Leave/Absence Regulations

- Continue the “medically necessary” principle for leave.
- Treat brief intermittent absences (e.g. prenatal appointments) as a reasonable modification.
- Require students be returned to same extracurricular status, too (as practicable)



●● Leave or absence?

- What is the line between an “absence” and “leave?”
- How will campuses guard against discrimination?
- How will campuses guard against overwork?




Best practice interim approach:
Establish a procedure that sets a high bar for objections. Reduce overwork by presuming reasonableness for certain absences.



Student Parental Leave

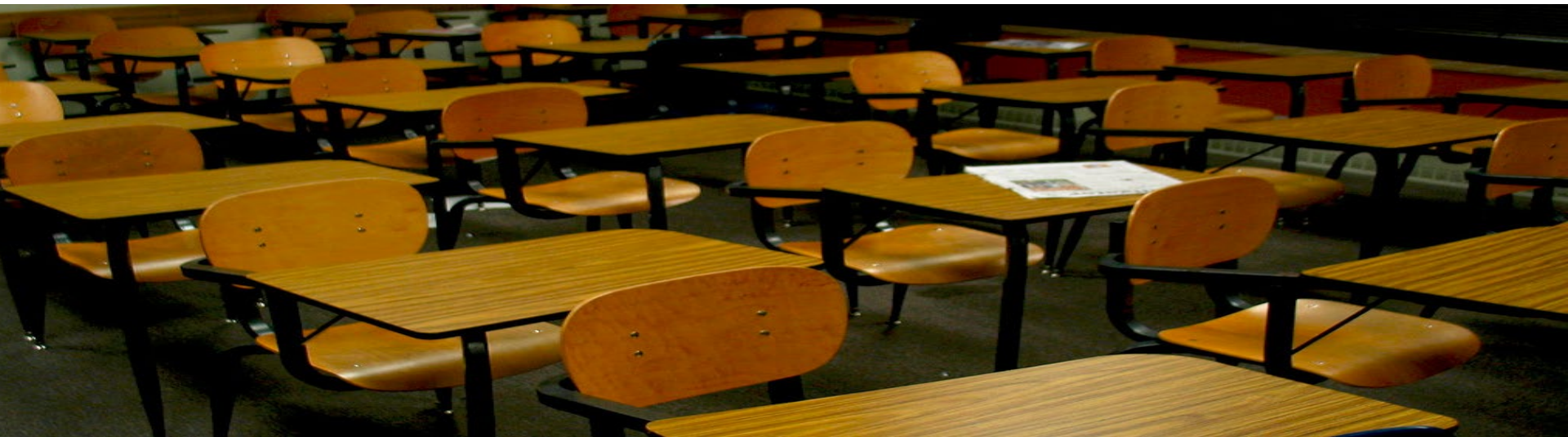
Title IX only requires schools give leave to the pregnant/postpartum parent for their *own* health needs.

Parental caretaking/bonding leave (leave that is not linked to physical condition) must be provided equally without regard to sex or gender. That means:

-  Pregnancy/postpartum leave
-  Mother-only caregiving leave
-  Caregiving leave for all genders

●● Reshaping Campus

- Assemble leave process working group
- Assess current policies—what is already written? What is in existing medical leave/withdrawal policy?
- Remember to set guardrails for assessing absence reasonableness





Breakout

Jada is due in a month, but due to complications she was admitted to the hospital—three weeks before the semester ends.

- What leave or accommodation options does she have?
- What barriers might be in her way---and what process could help ease them?



Documentation and Privacy

NEW Regulations: Documentation

- Licensed healthcare providers (e.g. RN, midwife) can provide medical documentation, not just doctors
- Documentation to support modifications must be both reasonable *and* necessary.



NEW Regulations: Documentation

It is **not** acceptable to require documentation when:

- The need is obvious
- The student has already provided enough documentation.
- The information requested is *only* to confirm pregnancy.
- Other students are provided the change without submitting documentation.
- The modification requested is for:
 - carrying and drinking water
 - a bigger desk
 - sitting or standing
 - taking breaks to eat, drink, or use the restroom
 - lactation breaks and space



NEW Regulations: Certification to participate

- Certification to return/remain in school can no longer be required re: student's "emotional" ability to continue studies, only physical ability
- Certification can only be required if:
 1. a certain level of physical ability or health is *necessary* for participation in the class, program, or activity; *and*,
 2. certification is required for ALL participating students; and,
 3. the documentation isn't used to discriminate.



NEW Regulations: Privacy

Personally identifiable information collected in the course of complying with Title IX cannot be disclosed except:

1. When written consent has been provided
2. To parents, guardians or other people with legal rights to disclosures on behalf of the student
3. To meet Title IX obligations (e.g. addressing discrimination)
4. As required by federal law, regulations, or federal awards
5. When required by state or local law or when permitted under FERPA, **IF not in conflict with Title IX**



Non-Discrimination and Harassment

“I thought you were a serious student.
I’m so disappointed!”

Are students treated differently on the basis of sex or gender?

Including on the basis of:

- Pregnancy-related conditions
- Gender roles—what does it mean to be a “good” man? Woman? Mother? Father?
- Sex-linked stereotypes about parents, their competence, availability, commitment, etc.





Common Statements



The “Benevolent Roadblock”

- “I know your priorities have changed...”
- “Pregnant women can’t handle...”

The “Magnifying Glass”

- More critical assessments post-birth
- Hunting for signs of lowered competence

The “Time Warp”

- “Isn’t that your wife’s job?”
- “It’s not fair to the other students to let you take a vacation just because you’re a dad now...”
- “I thought you were a serious student. I’m so disappointed!”





The “Attorney’s Dream”

- “How did you let this happen? Why didn’t you use birth control?”
- “Why don’t you have an abortion?”
Or “Better not have an abortion!”
- “But you aren’t married! Do you know who the baby daddy is?”
- “You should just stay at home.”





Parental/Gender Bias: Scenario

Michael requested to miss class to take his newborn baby to the doctor. Other students have received excused absences for a variety of reasons, including extracurriculars and doctor's appointments.

The professor responded by asking him to submit documentation that he is actually a caregiver and that his wife can't take the baby.

The professor later said the absence will be unexcused as there is "no such thing as daddy leave. This just isn't something we do."





Breakout

Michael was told he was not a caregiver worthy of support.

- Is this discrimination?
- Where can Michael go for help?
- What steps can your campus take to make clear that parental discrimination is unacceptable?



Taking Action

✓ Advocate!

✓ Escalate

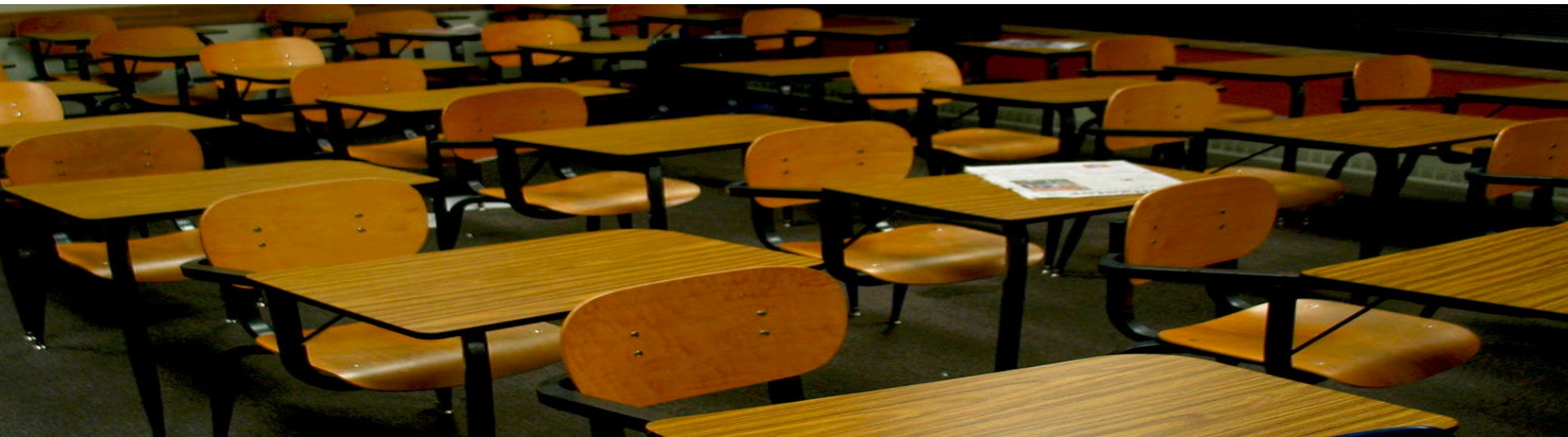
✓ Educate

✓ Investigate



Reshaping Campus

- Update Title IX webpage with information about harassment *beyond* sexual behavior
- Re-evaluate training—does it include diverse examples of harassment and discrimination?
- Establish points of contact
- Are services related to parenting provided in a non-discriminatory manner?



What's Next?



New Regulations: Key Themes

- “Sex” and “sexual harassment” are expansive terms
- Proactive steps must be taken to prevent discrimination and offer accommodations
- Title IX Coordinators have clearer authority—and responsibility



Building Capacity

- Consider hiring student workers to support communication and policy implementation efforts
- Strengthen partnerships, find your people
- Make the case for more institutional resources—NOW is the time!



●● Parenting Students' Rights

If your school *only* uses Title IX, it is not protecting parenting students enough...

what could parenting accommodations look like?





Breakout

- What policy changes would make the biggest difference for student parents at your institution?
- What support would you most need to bring the policy change?

Or

- What victories have you had in bringing policy change?



2024 TITLE IX UPDATES

Toolkit for Supporting Pregnant and
Parenting Students in Compliance
with Title IX

- <https://thepregnantscholar.org/titleix-updates-toolkit/> is being updated daily with new resources
- Full toolkit packet available soon:
 - Communications tools
 - Model Policies
 - Checklist
 - Sample forms and language
 - KYR Guides



TITLE IX TUESDAYS

**DROP-IN TECHNICAL
ASSISTANCE
SESSIONS FOR
POSTSECONDARY
ADMINISTRATORS**

www.PregnantScholar.org/sign-up



Questions?