

Title IX and Pregnant and Parenting Students

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Agenda

- I. Introduction
- II. General Scope of Title IX
- III. Pregnancy accommodations
- IV. Parental leave/absences
- V. Harassment and discrimination
- VI. Closing and Questions

●● Social Context: Student parents



- 22% of all undergrads
- 31% of graduate students
- 51% of student parents are people of color
- **2x the student loan debt**
- **<33% graduate in 6 years**
- **Have higher GPAs than their childless peers**



Social Context: Common Issues

- Stigmatizing behavior on abortion, pregnancy, and/or parenthood
- Prevented from taking the courses necessary or desired
- Forced to withdraw or prevented from successfully finishing courses
- Challenges navigating absences
- Restricted from activities
- Denied a secure and private lactation space and breaks

Chat:

What is a major barrier that you've had to overcome?

Title IX

Scope and Core Principles

Title IX Basics



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 programming (class, externship, internship, extracurricular, or training program) 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 Title IX Principles

Discrimination on the basis of

sex



Discrimination on the basis of

pregnancy



...pregnancy, childbirth, termination of pregnancy (abortion or miscarriage), lactation, related medical conditions, and recovery from those conditions. Includes current, potential/future, or past conditions relating to pregnancy.

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Basic Principles

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



●● Title IX Basics: Violations



- **Student can file university Title IX complaint**
NEW: Updated regulations make clear that Title IX offices must do more to make complaint process more accessible for students experiencing violations other than sexual assault
NEW: Employees must report sex *discrimination*—not only sexual harassment/assault
- **Student can file complaint with Dept. of Education**
- **Student can file lawsuit**



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 an accommodation

- “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 Accommodations:

- 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





POLL:

Did you need changes at school when you were pregnant?





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...”

Sec. 106.40 (b)(4)

“To ensure a pregnant student’s access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student’s temporary pregnancy status.”

Supporting the Academic Success of Pregnant and Parenting Students, U.S. Dep’t of Education, OCR



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 2024

“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...”

Sec. 106.40 (b)(4)

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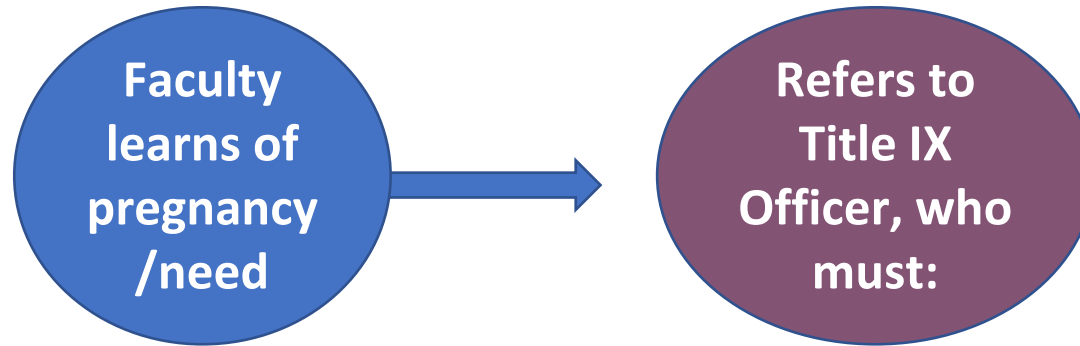
Supporting the Academic Success of Pregnant and Parenting Students, U.S. Dep’t of Education, OCR

“Reasonable modifications to the recipient’s policies, practices, or procedures for a student because of pregnancy or related conditions...Must be provided on an individualized and voluntary basis...”

RIN 1870-AA16



NEW Process and responsibilities



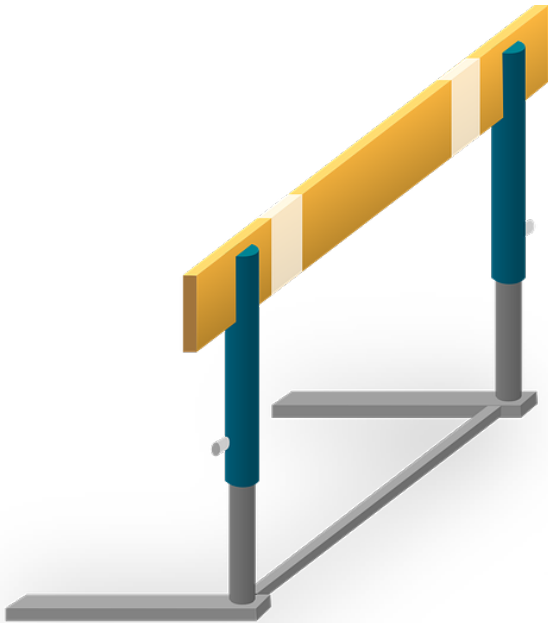
- Provide information about pregnancy accommodations (academic adjustments), leave, and lactation accommodations
- Oversee individualized and interactive process to establish accommodations
- Address any complaints

May be informed by the disability office or others, but the ultimate responsibility belongs to the TIX coordinator.

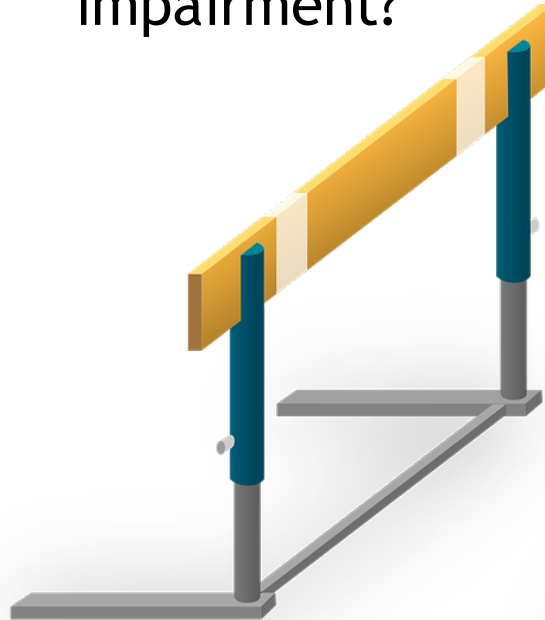
See our checklist for Title IX Coordinators here: <https://thepregnantscholar.org/wp-content/uploads/Checklist-for-Title-IX-Coordinators.pdf>

●● Key Factors in Accommodation Decision

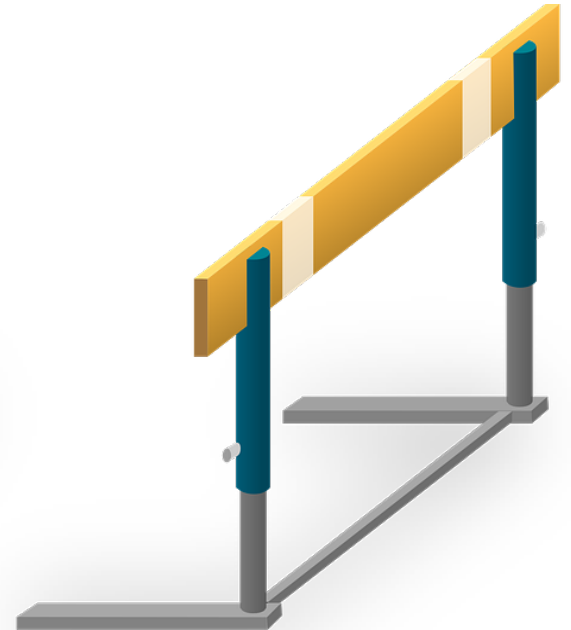
1) Is there a PREGNANCY related health need?



2) Is the accommodation responsive to the impairment?



3) Is the accommodation reasonable?





Accommodating Employees

Lactation breaks for *employees* are expected to be in the new regulations, too. Proposed regulations match the *new* federal PUMP Act requirements

- Break time *as needed*
- Private, non-bathroom space
- <https://worklifelaw.org/wp-content/uploads/2023/01/PUMP-Act-Explainer.pdf>
- <https://www.dol.gov/agencies/whd/pump-at-work>

Other pregnancy accommodations are required by the *new* federal Pregnant Workers Fairness Act

- Includes changes for pregnancy-related *symptoms*, not only complications or disabilities
- Can include leave, changed schedules, duty modifications, etc. so long as accommodation doesn't cause undue hardship
- Employer's ability to request documentation is limited
- <https://pregnantatwork.org/pwfa>
- <https://www.federalregister.gov/documents/2023/08/11/2023-17041/regulations-to-implement-the-pregnant-workers-fairness-act>



●● What's next?

- Assemble accommodation process working group
- Designate key points of contact
- Update webpage and complaint forms to mention pregnancy & related conditions
- Prepare for increased demand for lactation spaces
- Identify and assess current policies—what is already written?



Student Leave

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

POLL:
How long is student
maternity leave under
Title IX?

Student Maternity Leave: Current 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.

●● “as long as medically necessary”

Is determined by the student’s own physician and may include excused absences/leave for:

- doctor’s appointments
- pregnancy complications
- childbirth & recovery
- abortion or miscarriage care/recovery





Post-Leave Reinstatement

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



NEW Regulations

- Continue the “medically necessary” principle for all covered conditions.
- ED may establish reasonableness test for *intermittent* absences—stay tuned.
- Require students be returned to same extracurricular status, too (as practicable)
- Narrow ability to request documentation for return



Employee Maternity Leave

Title IX requires job-protected leave to be provided for *at least* a reasonable period of time. This includes student employees.

Leave also provided by:

- Temporary disability policies (*varies*)
- Pregnant Workers Fairness Act (*reasonable period of time*)
- ADA (*reasonable period of time, limited eligibility*)
- FMLA (*12 weeks, limited eligibility*)

Student Parental Leave

Title IX does not specifically require leave other than medically-necessary leave for pregnant/birthing parent.

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



Birthing parent disability/medical leave



Mother-only caregiving leave



Caregiving leave for all genders

●● What's next?

- Assemble leave process working group
- Assess current policies—what is already written? What is in existing medical leave/withdrawal policy?
- Look very carefully at new regulation language re: what leave *must* be provided



Non-Discrimination and Harassment

*"I thought you were a serious student.
I'm so disappointed!"*



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Basic Principles: Parental Status

Discrimination on the basis of

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...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

●● 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.”



Case Example: Harassment

Tina Varlesi was a graduate student in social work at Wayne State University, assigned to an internship placement as a part of fulfilling her degree requirements.

Received harassing comments and low ratings from the internship supervisor (not employed by University). No proper investigation. Tina was pushed out.

**Result: University fined
\$848,690**



Case Example: Gender Stereotyping

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 prove he is a caregiver and that his wife can't take the baby.

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



Scenario 3: Stephanie

Stephanie is a sophomore in college. To get an abortion she had to travel back to her home state—and missed a week of classes.

When she returns to class, Stephanie's professor tells her that there is no point in coming back; she has now missed three classes and will automatically fail.

Stephanie provides a doctor's note from her healthcare provider to excuse her absence. Realizing her absence was for an abortion, the professor calls Stephanie demeaning names and says he is reporting her to the administration. Stephanie's advisor suggests she withdraw before she is kicked out.



●● What's next?

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



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



●● Pregnant and Parenting Students' Rights

- Saying, “we follow Title IX,” is not enough!
- New regulations lay the foundation, up to us to build the rest—eliminate room for interpretation and confusion
- **What could parenting accommodations look like?**
- **What would a family and pregnancy-responsive culture look like?**





- Model policy templates & examples
- Tips for faculty and administrators
- Know Your Rights Guides
- Toolkits on communications

COMING SOON:

Toolkit on the new regulations and student parent advocacy guide.

www.pregnantscholar.org/sign-up

Presentation
PDF and form
for feedback
and newsletter
sign up here:

