



Office of Equity & Inclusion

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# Title IX for Pregnant and Parenting Students

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# Statistics

- Parents who are nontraditional older students are the new college majority.
  - More than half of college students are financially independent, over age 24, and have children.
  - 55% financially independent women
  - 55% students of color
  - 50% parents of young children
  - Twice as likely than traditional students to be living in poverty.
  - Two-thirds work on top of going to school—most more than 20 hours per week
- Nontraditional student parents are at highest risk to drop out.
- The number of single mothers in college more than doubled between 1999 and 2012. About one in five of all women in college.
- Less than half of all single mothers actually graduate.
- Students who graduate college earn on average \$17,500 more per year.

*Report on Resources and Support for PREGNANT AND PARENTING STUDENTS AT HIGHEST RISK OF DROPPING OUT Attending California State Colleges and Universities, Serrin M. Foster and Kellan Monroe, March 8, 2018*

# HISTORICALLY

- Until the 1960s, pregnant students were often forced to drop out of school once their pregnancy was visible.
- Title IX was enacted in 1972 to prohibit discrimination in education on the basis of sex. The act was modeled after Title VII of the Civil Rights Act of 1964.

*Pregnancy Discrimination In Higher Education: Accommodating Student Pregnancy, CARDOZO JOURNAL OF LAW & GENDER, 2013.*

# Title IX

- Title IX provides 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.”

20 U.S.C. § 1681(a)

# The Department of Education

- The Department of Education has enacted additional regulations to assist with ensuring Title IX compliance and outlining standards that specifically apply to pregnancy.
- “A recipient [school receiving federal funds] shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student’s pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.”

-34 C.F.R. § 106.40(b)(5).

# Where are we now?

- Pregnant students are no longer forced to drop out (at least not by explicit policy).
- However, pregnant and parenting students continue to face more subtle barriers to education.
- *Pregnancy Discrimination in Higher Education: Accommodating Student Pregnancy*, CARDOZO JOURNAL OF LAW & GENDER, Emily McNee, 2013.

# How can Schools Comply?

- Designate a Title IX Coordinator and ensure the Title IX Coordinator has adequate training and is able to explain the school's grievance procedures.
- Adopt and publish grievance procedures for students to file complaints of sex discrimination.
- The Office for Civil Rights recommends that a school's nondiscrimination policy make it clear Title IX protections extend to pregnant and parenting students and prohibited sex discrimination covers discrimination against pregnant and parenting students.
  - Note: It is helpful to clarify the word "parenting" in the school's Title IX postings—using the U.S. Department of Education's definitions of pregnant and parenting coverages is more clear than stating only pregnant and parenting students as the legal protections do not extend much beyond recovery from childbirth and nursing.

# Compliance Continued

- It is illegal for schools to exclude a pregnant student from participating in any part of an educational program. This includes advanced placement or honors classes, extracurricular programs, interscholastic sports, honor societies, opportunities for student leadership, etc.
- Schools may implement special instructional programs or classes for a pregnant student, but their participation must be completely voluntary. The school cannot pressure a student to participate in the special instructional programs or classes.
- If a school offers a voluntary alternative program, that program must provide academic, extracurricular, and enrichment opportunities comparable to those provided to the students in the regular school program.

*Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972, U.S. DEPT. OF ED., June 2013.*



# Compliance Continued

- A school must excuse a student's absences because of pregnancy or childbirth for as long as the student's doctor deems the absences medically necessary.
  - This is the one exception—schools are required to excuse a student's absences due to pregnancy and related conditions, regardless of the school's absence policy and how it regards absences for students with other temporary medical conditions.
  - If a student wants to take off more time than their doctor says is medically necessary, the student must consult the school's non-medical leave policy. It may affect their scholarship or student status.
  - Absences must be excused regardless of any professor's absence policy.
- A school may require a pregnant student or student who has given birth to submit medical certification for school participation ONLY IF the school also requires such certification from all students with physical or emotional conditions requiring the attention of a physician.
  - Example: A student who has been hospitalized for childbirth must not be required to submit a medical certificate to return to school if a certificate is not required of students who have been hospitalized for other conditions.
- When the student returns to school, she must be allowed to return to the same academic and extracurricular status as before her medical leave began. This includes giving her the opportunity to make up any work missed.
- A school MUST leave it up to the student and the student's doctor to determine when the student is able to return to school.
  - A school may not force a student to take more leave just because they think it would be better for the student and/or the baby.
  - A school may not have a set rule that prohibits students from returning to classes for a set period of time after childbirth.

*Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*, U.S. DEPT. OF ED., June 2013; Pregnant and Parenting Students' Rights FAQs Fact Sheet, National Women's Law Center, October 2012.

# Compliance Continued

- Any special services provided to students who have temporary medical conditions **MUST ALSO** be provided to a pregnant student.
  - Example: If a school provides special services (e.g., homebound instruction or tutoring) for students who miss school because they have a temporary medical condition, it must do the same for a student who misses school because of pregnancy or childbirth.
- Any rule related to a student's parental, family, or marital status must not treat students differently based on their sex.
- A school cannot terminate or reduce athletic, merit or need-based scholarships based on pregnancy. If a student stays in school, she can keep her scholarship.

*Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*, U.S. DEPT. OF ED., June 2013; Pregnant and Parenting Students' Rights FAQs Fact Sheet, National Women's Law Center, October 2012.

# Also Covered

- The requirement that pregnant and parenting students must be eligible to participate in and hold leadership positions, receive honors, etc. is true EVEN IF the activity is not operated directly by the school. Example: A local non-profit rents space on campus to conduct an event.
- Things taking place on a campus must be in compliance with Title IX.

# Pregnancy Might not be Considered a Disability

- “An uncomplicated pregnancy by itself, does not constitute a physical impairment and therefore is not considered a disability.”
- “Complications resulting from pregnancy may be impairments.”
- “Whether a student with a complication resulting from pregnancy is protected [by laws other than Title IX] depends on whether the complication is an impairment that substantially limits a major life activity, or alternatively, whether the student has a record of or is regarded as having such impairment.”
- Endnote 21 of *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*, U.S. DEPT. OF ED., June 2013.

# If a Pregnancy-Related Disability is Covered under the ADA

- The ADA office has specially-trained staff to assist students and will collect information from the student and their doctor about medical needs. The ADA office will also help the student negotiate solutions that allow the student to participate fully.

# Accommodations

- When necessary, a school must make adjustments to the regular education program that are **reasonable** and **responsive** to the student's temporary pregnancy status.
  - Provide a larger desk
  - Change seating to allow closer access to a bathroom
  - Ability to sit rather than stand
  - Extended breaks or exam taking time (to eat in order to control nausea, to nurse, to use the bathroom)
  - A note taker or a typist for an exam (carpal tunnel common in pregnancy)
  - Distance learning or teleworking options (bedrest)
  - Revised schedules for meetings or group activities
- A school **MUST** let a student make up the work they missed while they were out due to pregnancy or any related conditions, including recovery from childbirth. This includes participation points or points given for attendance.
- The student should be allowed to choose how to make up the work (as long as it is reasonable and not overly burdensome).
- A school may offer the student alternatives to making up missed work.
  - Retaking a semester
  - Taking an online course
  - Allowing additional time in a program to continue at the same pace and finish at a later date (especially after longer periods of leave)

# What is Reasonable and Responsive?

- Title IX is silent about pregnancy accommodations and how pregnant students should be treated compared with other students.
- An important initial question to a student seeking accommodations is: What does the student really want versus what are they willing to settle for?
- If providing an accommodation would be burdensome for the school or particular professor, there are options available. Schools do not need to accommodate unreasonable requests by students, and can offer alternative accommodations where a student's requested accommodation would be too burdensome.
- *Pregnancy Discrimination In Higher Education: Accommodating Student Pregnancy*, CARDOZO JOURNAL OF LAW & GENDER, 2013.

# Harassment

- Title IX prohibits harassment of students based on sex—which includes harassment because of pregnancy or related conditions.
  - Name calling (calling a pregnant student sexually charged names)
  - Verbal acts (making sexual comments or jokes about a student’s pregnancy, spreading rumors about her sexual activity)
  - Graphic and written statements
  - Other conduct that may be humiliating or physically threatening or harmful (making sexual propositions or gestures)
- Schools have an affirmative duty to protect students from harassment. They must take prompt and effective steps reasonably calculated to end pregnancy-related harassment, prevent its recurrence, and eliminate any hostile environment created by the harassment.



# Discrimination

- Tends to fall into four categories:
  1. Environment of discouragement
    - Lack of guidance, support, encouragement
    - Active hostility at school
    - Rigid application of the rules
  2. Unequal alternatives
  3. Inaccessible homebound instruction
    - Not offering it
    - The same as a school would do for a student with a temporary disability
  4. Breastfeeding
    - It should be covered in a school-based setting, but it is not totally clear in the law. Best practice is to accommodate breastfeeding. There may be protections outside of Title IX for breastfeeding.

*Representing Pregnant and Parenting Students Facing Discrimination at School, WEBINAR, Kelli Garcia & Galen Sherwin, June 21, 2017.*

# Why Go Above and Beyond the Requirements?

- Encouraging pregnant and parenting students to stay in school will have a positive effect on their lives and their children's lives. The nation as a whole will benefit from having a generation of young adults who are better educated and more economically self-sufficient.
- *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*, U.S. DEPT. OF ED., June 2013.

# Pre-Emptive Steps

- At the beginning of an academic year, your school can offer sample wording for professors to include in their syllabi about Title IX protections highlighting its coverage of pregnant and parenting students.
- It would be helpful for this wording to include information about the Title IX Coordinator (name and contact information) as well as the grievance process.

# Pre-Emptive Steps Continued

The Title IX Office or Administration can send out or publish on its website something like UC Berkeley's Office for the Prevention of Harassment and Discrimination publishes on its website. **It is hopeful, yet informational.**

- **UC Berkeley's Statement**
- **6. ACCOMMODATION FOR PREGNANCY AND PARENTING**

In alignment with Title IX of the Education Amendments of 1972, and with the California Education Code, Section 66281.7, it is the policy of the University of California at Berkeley to not discriminate against or exclude any person on the basis of pregnancy or related conditions, and to provide reasonable accommodations to students as appropriate. Instructors are reminded of their responsibilities for excusing medically necessary absences for pregnancy and related conditions and making reasonable accommodations in the areas of class sessions, exams, tests, project deadlines, field trips, and any other required activities. For graduate students, faculty advisors are reminded of policies regarding parental leave and the extension of normative time for academic milestones, as set out in the Guide to Graduate Policy.
- While we anticipate that most academic accommodation issues can be resolved quickly between students and faculty, if a mutually satisfactory arrangement cannot be achieved, a student may seek further assistance or file a complaint using the campus appeals process or the complaint process in the [Office for the Prevention of Harassment and Discrimination \(link is external\)](#) or (specific to graduate students) email the Graduate Division at [graddean@berkeley.edu](mailto:graddean@berkeley.edu) (link sends e-mail).

# What to do if a professor does not Comply?

- A student can contact the Title IX Coordinator to get assistance in securing the accommodation. Professors may be unwilling to make accommodations for a pregnant or parenting student if they are not aware of Title IX's requirements.
- Schools have an obligation to ensure that individual professors' grading and missed-work policies conform to Title IX.
- A professor that does not comply may be engaged in discrimination or harassment against the student requesting accommodations. This may be the subject of a separate compliance inquiry.

# Best Practices

- Title IX sets a floor, not a ceiling for schools to support pregnant and parenting students.
- A school may go above and beyond its basic legal obligations under Title IX.
- Collaborate—talk with other folks in the system about the ways they support pregnant and parenting students. Pool resources when possible—especially when geographically co-located.
- Provide information about available accommodations and resources on a website or other area where a student does not have to identify themselves to staff and faculty as a student who is pregnant and/or parenting in order to learn of options. This could have a big impact on a student's decision to remain in school—if a student drops out, the school may not know the reason.
- Provide added guidance and case management to help students develop short- and long-term education goals, apply for public benefits, and access available health and other social services.

# Consider

- Allowing excused absences for parenting students (both male and female) who need to take their child(ren) to doctors' appointments or to take care of their sick child(ren). By treating these absences as excused, you give these students the opportunity to make up the work they missed without being penalized, and you prevent them from falling behind.
- Be mindful of issues facing male students who are parenting and opportunities to reach out to them.
- Provide workshops for administrators, faculty and staff about laws and policies relating to providing services to pregnant and parenting students.
- Provide training to students to ensure they know that Title IX prohibits discrimination against pregnant and parenting students.
- Allow students time and space to express breast milk.

# Consider Continued

- Ask pregnant and parenting students (on a voluntary basis) to share their views on ways that the school can help them stay in school.
- Designate a private room for young mothers to breastfeed, pump milk, or address other needs related to breastfeeding during the day.
- Contact pregnant and parenting students who have dropped out and encourage them to return. Let them know of any school programs and assistance that may be available to them.
- Set up support groups to help pregnant and parenting students stay in school.
- Designate a central place on campus for pregnant and parenting students to inform students of available on- and off-campus resources.
- Consider allowing students to earn course credits for taking part in prenatal care, child development, and parenting skills courses provided by community-based nonprofits and assist students to access such programs. This may include not only pregnant students, but their partners too.
- Offer child care on campus – or help pregnant and parenting students locate and secure high-quality, affordable early learning programs and services.



# KEY Findings

- Despite legal protection under Title IX, pregnant and parenting students often face discrimination in school.
- Barriers to education lead many pregnant and parenting students to leave school.
- Knowledge is key to ending discrimination.
- Stronger enforcement is needed.
- Greater support for pregnant and parenting students can help ensure retention.

*Pregnant and Parenting Students Supporting Academic Success Through Title IX, TITLE IX AT 45, 2017.*

# Questions:

- What resources are available to pregnant and parenting students on your campus?
- What practices or accommodations are in use at your school?
- What has worked well?
- What has been less successful than anticipated?
- What goals does your school have in this area?
- Who can students go to on your campus to get assistance with pregnancy and parenting resources/information? Discrimination or harassment based on pregnancy or parenting status?