

Title IX 2024: Balancing Pregnant Students' Rights and Academic Program Requirements

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Presentation Outline

- The new Title IX regulations emphasizing the rights of pregnant students and student-parents may present new challenges for some academic programs
- Roadmap for today's presentation:
 - Present brief **overview** of pregnant students' rights under Title IX
 - Discuss **best practices** for institutions of higher education
 - Apply best practices to **hypotheticals**

Injunctions on Enforcing New Title IX Regulations

- Recent injunctions have barred the Education Department from enforcing the new Title IX regulations in many states.
 - Pursuant to federal court orders, the Education Department is enjoined from enforcing the new Title IX regulations in 26 states, affecting hundreds of institutions of higher education.
- However, the new regulations related to pregnant students are some of the least controversial.
 - We expect that some version of the regulations relating to pregnant students will ultimately apply to every institution in the future.

Title IX Protections for Pregnant Students

- Title IX prohibits and protects students from sex discrimination based on:
 - Pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions
 - Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions

Examples of “Related Medical Conditions”

- Includes morning sickness, fatigue, nausea, dehydration, gestational diabetes, preeclampsia, prenatal or postpartum depression, infertility, recovery from childbirth, miscarriage or abortion, and lactation conditions or complications
 - (Non-exhaustive list)
- Preamble clarifies that discrimination based on menstruation, perimenopause, menopause, and related conditions constitute prohibited sex discrimination

Title IX Protections for Students

- An employee who is informed of a student's pregnancy must provide the person with the Title IX Coordinator's contact information and must inform the person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the institution's education program or activity.
- The institution must inform the student of its obligations and provide a notice of nondiscrimination to the student.
- Information about a student's pregnancy must be kept confidential.

Reasonable Modifications

- The institution must make reasonable modifications to its policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to its education program or activity.
- Each reasonable modification must be based on the student's individualized needs. The institution must consult with the student to determine what modifications are required.
- However, a modification that the institution can demonstrate would fundamentally alter the nature of its education program or activity is not a reasonable modification.

Reasonable Modifications (continued)

- The student has discretion to accept or decline each reasonable modification offered by the institution. If a student accepts an institution's offered reasonable modification, the institution must implement it.
- Reasonable modifications may include (but are not limited to):
 - Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom;
 - Intermittent absences to attend medical appointments;
 - Access to online or homebound education;

Reasonable Modifications (continued)

- Changes in schedule or course sequence;
- Extensions of time for coursework and rescheduling of tests and examinations;
- Allowing a student to sit or stand, or carry or keep water nearby;
- Counseling;
- Changes in physical space or supplies (for example, access to a larger desk or a footrest);
- Elevator access; and
- Other changes to policies, practices or procedures.

Voluntary Access to Separate and Comparable Portion of the Program or Activity

- The institution must allow the student to voluntarily access any separate and comparable portion of the institution's education program or activity, provided that the separate portion is comparable to that offered to students who are not pregnant and do not have any related conditions
- The institution may not force or pressure the student to participate in the alternate comparable program
- Students have the right to stay in their same classes and extracurricular activities

Voluntary Leaves of Absence

- The institution must allow the student to voluntarily take a leave of absence from the institution's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider.
- To the extent that a student qualifies for leave under a leave policy maintained by the institution that allows a greater period of time than the medically necessary period, the institution must permit the student to take voluntary leave under that policy instead if the student so chooses. When the student returns to the institution's education program or activity, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

Lactation Space

- The institution must ensure that the student can access a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.

Supporting Documentation

- The institution may require supporting documentation of 1) the need for reasonable modifications, 2) voluntary access to separate portions of programs or activities, 3) voluntary leaves of absence, or 4) requirements of lactation space if the documentation is necessary and reasonable for the institution to determine the reasonable modifications to make or whether to take additional specific actions under the above requirements.
- Examples of unnecessary supporting documentation include when the need is obvious, such as the need for a larger size uniform; when the student has previously provided sufficient supporting documentation; when the reasonable modification is allowing the student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the specific action listed in 1-4 above is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

Comparable Treatment to Other Temporary Medical Conditions

- The institution must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the institution administers, operates, offers, or participates in with respect to students admitted to the institution's education program or activity.

Certification to Participate

- The institution may require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the institution's class, program, or extracurricular if:
 - The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
 - The institution requires such certification of all students participating in the class, program, or extracurricular activity;
 - The information obtained is not used as a basis for discrimination prohibited by these regulations

Suggested Best Practices

1. Consolidate all institutional pregnancy and lactation policies into a standalone pregnancy and lactation policy, if possible.
2. Consider a team approach to discuss academic accommodations (and convene the team).
3. We suggest that the final decisionmaker for academic accommodations should be a dean or provost, rather than an individual faculty member.
4. For programs leading to licensure, check on time restrictions to see if flexibility is possible in extraordinary circumstances.
5. Never say never!
6. Determine whether the requested modification or accommodation has ever been provided to a student (even if it was provided many years ago).
7. If leave is the best (or only) reasonable modification and a student requests a tuition refund, consider offering a tuition credit for future semesters.
8. Although the ultimate decision on reasonable academic modifications belongs to the institution, student requests should be seriously considered.

Hypothetical #1

- A doctoral student has completed all coursework and will be defending her dissertation in April. The Graduate School requires students to complete their doctoral program within seven years. The student is scheduled to defend in late April, but her baby is born two days before the scheduled defense and the student is medically unable to defend her dissertation until after the expiration of the seven-year period.

Hypothetical #2

- A student teacher is scheduled to begin teaching in September. She discloses her pregnancy just before the start of the school year in September and is scheduled to deliver in late October. The college's program (and/or state licensing requirements) provide that she must teach for a full academic semester.

Hypothetical #3

- A student in a Physician Assistant graduate program must successfully complete three rotations to graduate “on time.” Her medical provider has said she cannot lift more than ten pounds and must not stand for more than ten minutes at a time. Her remaining rotations are pediatrics, surgery, and orthopedics. These rotations are eight-weeks long. The student is scheduled to deliver halfway through the third rotation. The third rotation will not be available again for eleven months.

Hypothetical #4

- A student, who is majoring in dance, has been told by her health care provider that she cannot jump or run during the third trimester of her pregnancy. The dance curriculum requires both types of physical activity, and the student has just accepted an internship with a dance company in New York City. The internship lasts for six months; the student is nearing the completion of her second trimester.

Hypothetical #5

- A student is a research assistant in nuclear medicine and is the advisee of the head professor of the nuclear medicine lab. Her health care provider has said that she cannot be exposed to radiation in any form while she is pregnant. Some of the equipment that the student is required to work with emits small amounts of radiation, and patients that she works with also emit small amount of radiation immediately after treatment. Her role is central to research grants that her advisor has obtained. The student has just learned that she is pregnant and is estimated by her health care provider to be six weeks pregnant.

Questions?

Thank You

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