

Title IX and Pregnant and Parenting Students: Upcoming Regulations

Jessica Lee, J.D.

Director, Pregnant Scholar Initiative
at the Center for WorkLife Law

UC College of the Law, San Francisco

LeeJessica@uclawsf.edu

@PregnantScholar



ThePregnantScholar.org

Agenda

- I. Introduction
- II. General Scope
- III. Pregnancy accommodations
- IV. Parental leave/absences
- V. Harassment and discrimination
- VI. Implementation

New Regulations: Coming Soon!

0000001

Proposed: 2022

Promised: May 2023

Adjusted: October 2023

Expected???

Full text of proposed regulations here:

<https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm.pdf>



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



Title IX

Scope and Core Principles



Basic Principles: Future Regulations

New 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.”

Full text: <https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm.pdf>

Basic Principles: Current Regulations

Discrimination on the basis of

sex

=

...on the basis of

pregnancy

=

...on the basis of pregnancy, childbirth, false pregnancy,
termination of pregnancy (miscarriage & abortion),
recovery and related conditions



Basic Principles: Future 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 **current, potential, or past pregnancy/conditions.**



Basic Principles: Future 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's your role?

- *Prevent* discrimination
- Offer and ensure the provision of accommodations
- Investigate complaints and remedy violations
- “Identify and address barriers to reporting” sex discrimination

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

Pregnancy Accommodations

“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





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 2023

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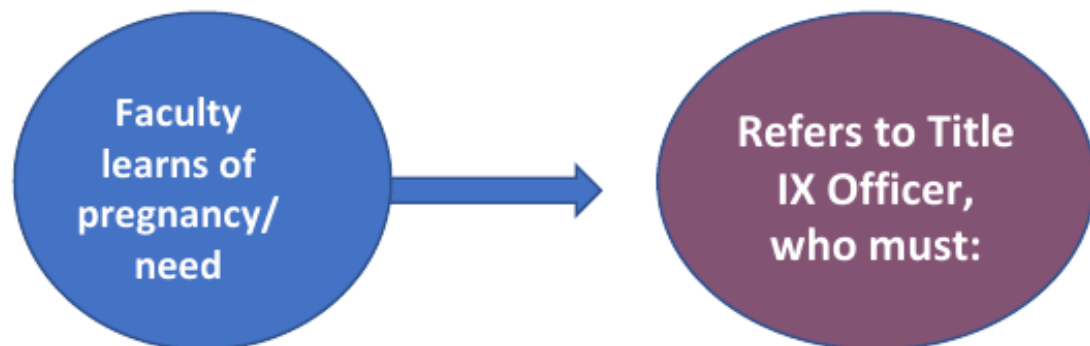
Supporting the Academic Success of Pregnant and Parenting Students, U.S. Dep’t of Education, OCR

“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



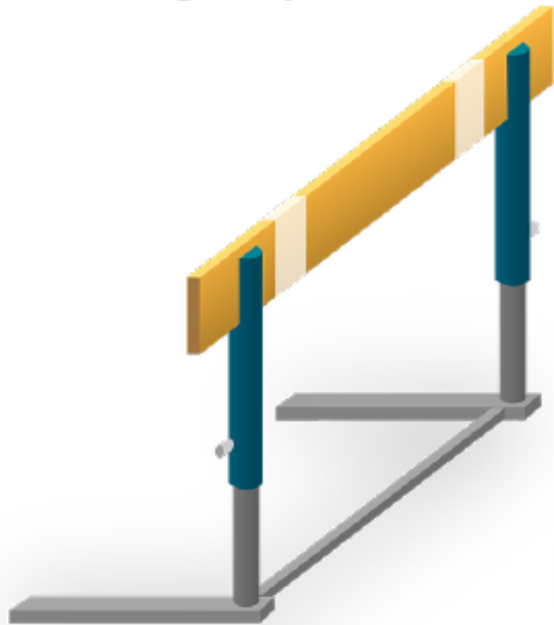
- Provide information about pregnancy accommodations (academic adjustments), leave, and lactation accommodations
- Oversee individualized and interactive process to establish accommodations
- Address any complaints

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

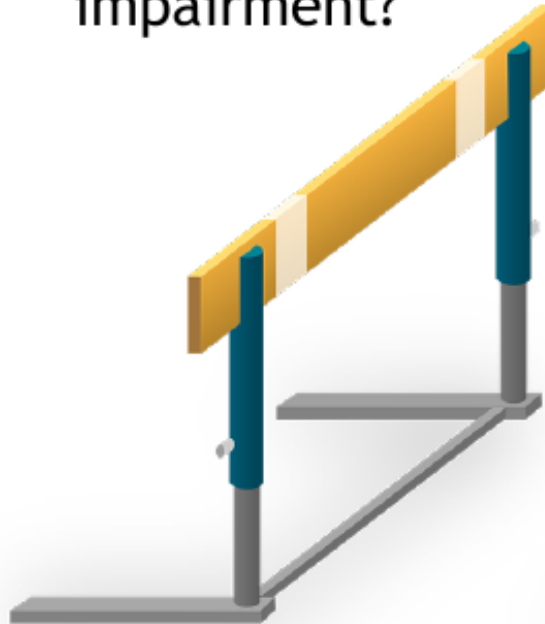
See our checklist for Title IX Coordinators here: <https://thepregnantscholar.org/wp-content/uploads/Checklist-for-Title-IX-Coordinators.pdf>

Key Factors in Accommodation Decision

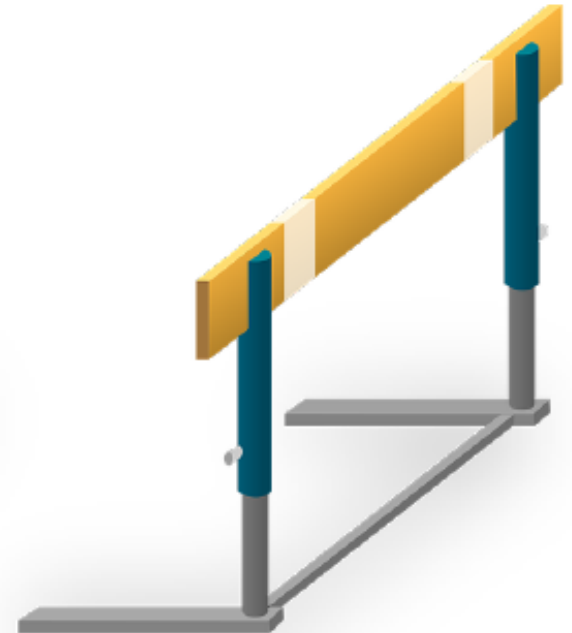
1) Is there a PREGNANCY or disability/substantially limiting impairment?



2) Is the accommodation responsive to the impairment?



3) Is the accommodation reasonable?



Accommodating Faculty/Staff

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 state law and 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/pregnant-workers-fairness-act/>
- <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
- Prepare for increased demand for lactation spaces
 - Map existing spaces, assemble lactation space working group
- 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...”

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.



Current Regulations: “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



●● Current 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 Regulations

- Continue the “medically necessary” principle.
- May establish reasonableness test for intermittent absences—stay tuned.
- Require students be returned to same extracurricular status, too (as practicable)
- Change documentation requirements





NEW Regulations: Leave/Absence Documentation

- Licensed healthcare providers (e.g. RN, midwife) can certify need for absence/leave, not just doctors
- Certification to return/remain in school can no longer be required re: student's "emotional" ability to continue studies
- Certification can only be required if:
 1. a certain level of physical ability or health is *necessary* for participation in the activity, *and*
 2. certification is required for ALL participating students, and
 3. the documentation isn't used to discriminate.



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!"*

Basic Principles: 2023 Update

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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.”



Intent versus impact

Intent

Impact

Under Title IX both matter!



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 will be unexcused as there is "no such thing as daddy leave. This just isn't something we do."



●● 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?



Minimum Steps

- Map *existing* resources and policies
- Establish *and communicate* points of contact/authority
- Set the stage for more changes



**TITLE IX
COMMUNICATIONS
GUIDE:**

**SUPPORTING PREGNANT AND
PARENTING STUDENTS**

 **The Pregnant Scholar**

WORKLIFE 
LAW UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

A communications guide and toolkit
for campus administrators & staff to
support pregnant and parenting
students through the lens of Title IX.

Building Capacity

- Consider hosting student workers to support communication efforts
- Strengthen partnerships with those in direct service roles, find your people
- Make the case for more institutional resources—NOW is the time!

What do you need to secure the buy-in of senior administrators?





- Model policy templates
- Example university policies
- Tips for faculty and administrators
- Know Your Rights Guides for students and postdocs
- Toolkits on communications

COMING SOON:

Toolkit on the new regulations and student parent advocacy guide.

