

Title IX Workshop: Title IX and Pregnant & Parenting Students

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Agenda

- Title IX regulations
- Pregnant and parenting students
- Legal protections and rights
- Campus process and request form

NOTE: This training has been created on blank slides to allow for internal sharing of content.

Title IX

"No 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."

- Title IX of the Education Amendments of 1972 (34 CFR Part 106)

Federal Financial Aid

Assurance that the institution of higher education commits to take whatever action necessary to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination.

Areas of Compliance



Title IX: Educational Programs & Activities

Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under **any academic, extracurricular, research, occupational training, or other education program or activity** operated by an institution which receives Federal financial assistance.

34 C.F.R. § 106.31(a)

[emphasis added]

Title IX: Marital or parental status

Discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions is prohibited. 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.** Title IX requires a school to provide the same special services to a pregnant student that it provides to students with temporary medical conditions.

34 C.F.R. § 106.40(b)(1-4) [emphasis added]

Title IX: Marital or parental status, continued

In the case of an institution 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 school 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 the student held when the leave began.**

34 C.F.R. § 106.40(b)(5) [emphasis added]

Pregnant & Parenting Students

- Pregnancy
- False pregnancy
- Childbirth
- Termination or loss of pregnancy
- Related conditions and/or recovery

Additional Considerations

- Be mindful of words; gender inclusive
 - Father vs. Co-parent or Non-birthing parent
 - Mothering room vs. Lactation room
- Law is foundation; institution can build upon it
 - Birthing complications; care of newborn
 - Foster, adoptive parents, parents who have surrogate

Evaluating process: Co-parent requests

- Title IX protects pregnancy and parenting only as a derivative of pregnancy
- Non-birthing individuals are usually not protected
- Birthing parent is a student: consider any application of policies offered to birthing parent **equally** to the non-birthing parent to ensure the college is not engaging in discriminatory practices on the basis of sex
- The law is the foundation; consider how to build upon it to make person-centered decisions
- Example: a co-parent may request time due to complications the birthing parent experienced; someone needs to care for the newborn

Legal protections

- No discrimination based on identified pregnancy and parenting conditions
- Right to absences and leave
- Right to activities and Athletics
- Right to accommodations and adjustments
- Right to complain/report

Right to absences and leave

- Medically necessary = must be excused
- Regardless of professor's or instructor's policy
- Student must not be penalized
 - Opportunity to make up any missed credit
 - Exams, regular deadlines, participation/attendance points
- Required documentation submission = only if required for other medical conditions
- While on leave, work may not be completed
- Develop a plan for make up work

Right to activities and athletics

- Extracurricular activities, including leadership positions, club sports, intramurals
- Participation in collaborative programs renting institutional facilities
- Student athletes
 - Decision-makers = doctor, athletic trainers
 - Medical documentation = if for other medical conditions
 - Scholarships = keeping benefits while in recovery, renewal of award

Right to accommodations and adjustments

- Accommodations: Pregnancy-related disabilities: covered under Americans with Disabilities Act (ADA)
- Adjustments: Temporary medical conditions = same special services
 - Also called accommodations, supportive measures

ADA Accommodations

- Based on disability and individual needs
- Designed to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment
- Modifications necessary to ensure equal educational opportunity
- Not required to lower or waive essential academic requirements or fundamentally alter or cause undue financial/admin burden
- School can request medical/health documentation of disability and functional limitations
- School cannot require student to pay for approved accommodation

Title IX Supportive Measures

- Available to Complainants and Respondents
- Designed to restore or preserve equal access to education/ employment, protect student and employee safety, or deter sexual harassment
- At no cost and as reasonably available
- Do not require a Formal Complaint
- Like student disability accommodations, if they fundamentally alter a program or lower academic standards, they are not reasonably available and need to consider alternatives—BUT...
- The documentation requirements are not as prescriptive as they may be for a student or employee with a disability

Examples of possible adjustments

- A larger desk, table/chair in lieu of desk
- Elevator access
- Notetaker
- Written questions, written copies of relevant materials
- Captioning
- Additional support person
- Breaks during class, frequent breaks (as needed)
- Allowing flexibility with group projects

Examples of possible adjustments, continued

- Rescheduling tests or exams
- Extended time
- Remote participation
- Excusing absences due to pregnancy, childbirth, or related circumstances
- Developing a learning plan for assignments missed due to pregnancy or related circumstances
- Facilitating alternative work assignments due to pregnancy or related circumstances

Evaluating process: Fundamental alteration

- When determining whether a requested academic adjustment or auxiliary aid would constitute a **fundamental alteration of an essential program requirement**, relevant officials within the institution are generally required to engage in a reasoned deliberation that includes a diligent assessment of available options.
- An appropriate process should include the following:
 - 1) the decision is made by relevant officials including faculty members;
 - 2) the decision makers consider a series of alternatives, their feasibility, cost, and effect on the academic program; and
 - 3) after reasoned deliberation, the decision makers reach a rationally justifiable conclusion that the available alternatives would result either in lowering of academic standards or requiring substantial program alternative.

Evaluating process: Retroactive decisions

- ADA: retroactive accommodations are not considered reasonable, not required
- Title IX: critical response may result in “retroactive” requests
 - Emergency surgery
 - Pregnancy loss or miscarriage
 - Pre-term labor
 - Stillbirth
 - Other complications

Lactation Room Considerations

- A private room that must be functional
 - Not a bathroom or toilet stall
 - Shielded from view
 - Free from intrusions by public and coworkers
 - Available whenever person needs to pump or express milk
 - Consider a lock on the door
 - Functional (min.: chair and flat surface other than floor)
 - Permanent, flexible, and temporary spaces may be considered
- Close proximity to workspace
- Not located in or accessed through bathrooms, locker room, or similar facilities

Lactation Room Recommendations

- Lockers or hooks for belongings
- Electrical outlets for pump or recharging batteries
- Comfortable seating (impact on milk flow)
- Small refrigerator or cooler
- Sink with running water
- Mirror to adjust clothing afterwards
- Cleaning supplies, as needed
- White noise machine (optional)

Right to complain/report

- Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education
 - Sex (including pregnancy, child birth, and related medical conditions)
 - Marital status
 - Familial status
- Board Policy 1B.3 Sexual Violence
- System Procedure 1B.1.1 Investigation and Resolution
- System Procedure 1B.3.1 Response to Sexual Violence and Title IX Harassment

Campus Process

- Outline of process
- Who/How to Contact
- Referrals

Disseminating Information

Publish prominently on website and elsewhere, as appropriate, information regarding:

- the Title IX rights of—and the school’s obligations to—pregnant students
- the procedure for requesting academic adjustments, special services, leaves of absence, etc.
- the name and contact information coordinating the requests for adjustments
- if different previous point, the name and contact information for Title IX Coordinator

Disseminating Information, continued

- the process used to determine appropriate academic adjustments and special services
- the process available if decision to deny requested academic adjustments or special services
- the process used to determine when a request constitutes a fundamental alteration
- the grievance procedure to file complaints of sex discrimination, including pregnancy-related complaints
- link to the grievance procedures

Internal Recordkeeping

Develop a system for tracking

- Requests for pregnancy related adjustments for students made to the Title IX Coordinator, faculty or other staff;
- The responses to the requests, including verification of adjustments provided by faculty, staff or others; and
- The reasons for the denial of any requests.

MINNESOTA STATE CONTACT INFORMATION

Office of Equity and Inclusion (OEI)

<http://www.minnstate.edu/system/equity/>

