



PREGNANCY OR RELATED CONDITIONS UNDER TITLE IX

June 2024

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MEET YOUR FACILITATORS



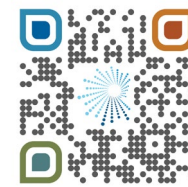
Kateeka Harris

Kateeka J. Harris has nearly two decades of experience in higher education including Title IX compliance, student conduct, multicultural program administration, and undergraduate admissions. Kateeka is a nationally recognized expert in Student Conduct and Title IX.



Dr. Eugene Smith

Dr. Eugene Smith is a Senior Solutions Specialist with Grand River Solutions. He has nine years of professional experience in student affairs, resource management, organizational strategy, change management, and program development. His experience includes policy and advocacy, diversity and anti-racist initiatives, and academic success programs for low-income and underrepresented populations.



TODAY'S SESSION



TODAY'S STUDENT

A greater number of college students weight class schedules with family and parenting responsibilities



The birth rate for women aged 20–24 was 63.0 births per 1,000 women in 2020, down 5% from 2019 (66.6)



The rate for women aged 25–29 was 90.2 births per 1,000 women, down 4% from 2019 (93.7)



In 2020, the mean age of mothers at first birth was 27.1 years, an increase from 27.0 in 2019

MORE ABOUT TODAY'S STUDENT...

- Globally and Socially Aware
- Digitally Connected and Plugged In
- Racially and Culturally Diverse
- First Gen (46%)
- Older (38% over age 25)
- Busier (25% raising children/64% working)
- Financially Strained (35% food and 9% home insecure)
- Too Many Stressors and Too Little Support



Data From: Who is Today's Student?

<https://www.luminafoundation.org/resource/todays-student/>

But first . . . why?

"Pregnancy is consistently the most common family-related reason given by female students" for why they dropped out of school, according to the US Department of Education.

Data from the CDC and National Education Statistics shows that about a quarter of girls who drop out of high school cite pregnancy or parenting as the reason.

"PREGNANCY AND RELATED CONDITIONS"

Includes "childbirth, false pregnancy, termination of pregnancy, or recovery therefrom"



NONDISCRIMINATION IS BROAD

Extends to those experiencing pregnancy and related conditions, and treating parental/family status differently based on sex.

Equitable access and ability to fully participate in academic program, activities, practicums/field placements, and athletics



TITLE IX OBLIGATIONS

Summary of the obligations relating to pregnant students

- Allow them to make up any missed work without penalty
- Treat them similarly to students with a temporary disability.
- They must be allowed to return to the same academic and extracurricular status as before their medical leave began.
- Must provide reasonable adjustments, like a larger desk, elevator access, or allowing frequent trips to the restroom



DO YOU HAVE A
STUDENT LEAVE
POLICY? DOES
THIS STUDENT
QUALIFY?

Treat pregnancy like a justification for a leave of absence for so long a period of time as deemed medically necessary by the student's doctor.

"TEMPORARY DISABILITY?"

Treat disabilities related to pregnancy and related conditions in the same manner and under the same policies as any other temporary disability or physical condition.

ADA/504 AND PREGNANCY

Pregnancy, alone, is not a disability...but:



SECTION 504

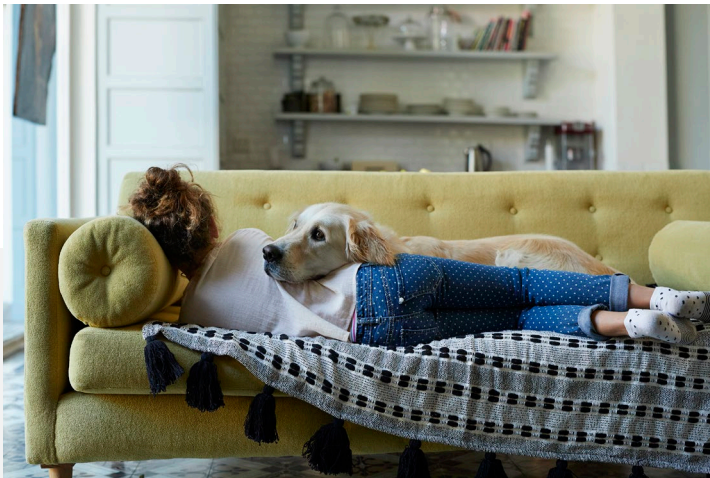
It may be considered a temporary disability in certain circumstances.

ADA

It may be considered a disability when one or more impairments related to pregnancy are present OR when a condition arising from pregnancy becomes long-lasting (i.e.: post partum depression or gestational diabetes that becomes Type II)

WHAT'S THE DIFFERENCE?

Title IX affords adjustments and/or support measures while ADA/504 affords access and accommodation; each ensure equitable access to educational programs or activities.



Adjustments are time-limited for the period of the documented "medical necessity"



Supportive measures have no medical requirements ; they require only a request as related to a Title IX matter



Accommodations require the presence of a "qualified" disability and/or condition

ADJUSTMENTS UNDER TITLE IX

“Medically necessary” based on assessment and “note” from treatment provider for immediate implementation

- Furniture size, shape, position
- Remote learning/hybrid learning
- Breaks, access to food or hydration
- Ability to reschedule tests
- Excused absences specific to treatment and care
- Late submission of expected work
- Alternative make up work of similar or like nature
- Excused absences for medical appointments

WHAT ABOUT "PARENTS" AND "PARENTING?"

Cannot apply a rule about the actual or potential parental or marital status of a student, applicant, or employee that treats people differently based on sex.

These are from 1975!



WHAT DO THE CURRENT REGULATIONS SAY?

- "Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;"
- Eligibility for financial assistance won't be made on marital or parental status
- "A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex."
- A recipient shall not apply any policy or take any employment action . . .Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex;

RULES ON STATUS

WHAT IT SAYS

A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

34 CFR 106.40

WHAT IT MEANS

You can't require married women or mothers to drop out but allow married men or fathers to stay enrolled. That's different treatment on the basis of sex concerning parental, family, or marital status.

PRIVACY CONSIDERATIONS

If there is a determination that information is needed that would substantiate the disability/condition, some considerations regarding privacy may include:

- Follow your privacy policies (including FERPA).
- Be mindful of what documents are requested and collected.
- How are you storing and securing files?
- Educating faculty members about how (not) to request medical information from the student
- Educating student on their rights to access and privacy.



POLICY TO PRACTICE

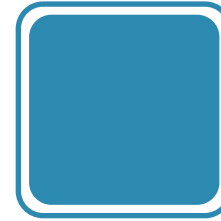
Policies account not only for regulation but provide for a process that is understandable and –

- Identify a single point of first entry (a proactive practice)
- Provide consistent information using the correct terms and definitions
- Support the student into the correct lane or lanes to begin
- Identify appropriate services supports

PRACTICES THAT ACTUALIZE...

- A one-stop type of service and support consistent information and centralized reporting
- Timely consultation/communication between involved offices
- Effective case management team approach (multiple offices)
- Regular communication between involved offices and the individual student
- Documentation at each stage of service
- Education, education, education to the campus community

RECENT ED RESOLUTIONS & GUIDANCE



JUNE 2022

Salt Lake Community College
Resolution Agreement



October 2022

Pregnancy and Parenting
Resource



January 2023

Troy University Resolution Agreement

LESSONS LEARNED

Make reasonable responsive adjustments

Provide accessible information for pregnant students

Designate a central contact to centralize response

Respond promptly to pregnancy discrimination complaints

Engage in the interactive process

Consider whether there is a temporary disability

Train employees on your rules and process

IMPLEMENTATION

Review or create
leave policy

Update
community
trainings to
include
pregnancy+

Create resources
for pregnant
students for the
web, handbooks

Remember
student-
employees

Review
policies to
ensure
inclusion of
pregnancy+

Outreach
and
collaboration
with
stakeholders

Identify
lactation
space

Get
feedback
from
students
with
experience

Coordinate with
accessibility
office

NEW RULES



2024
TITLE
IX

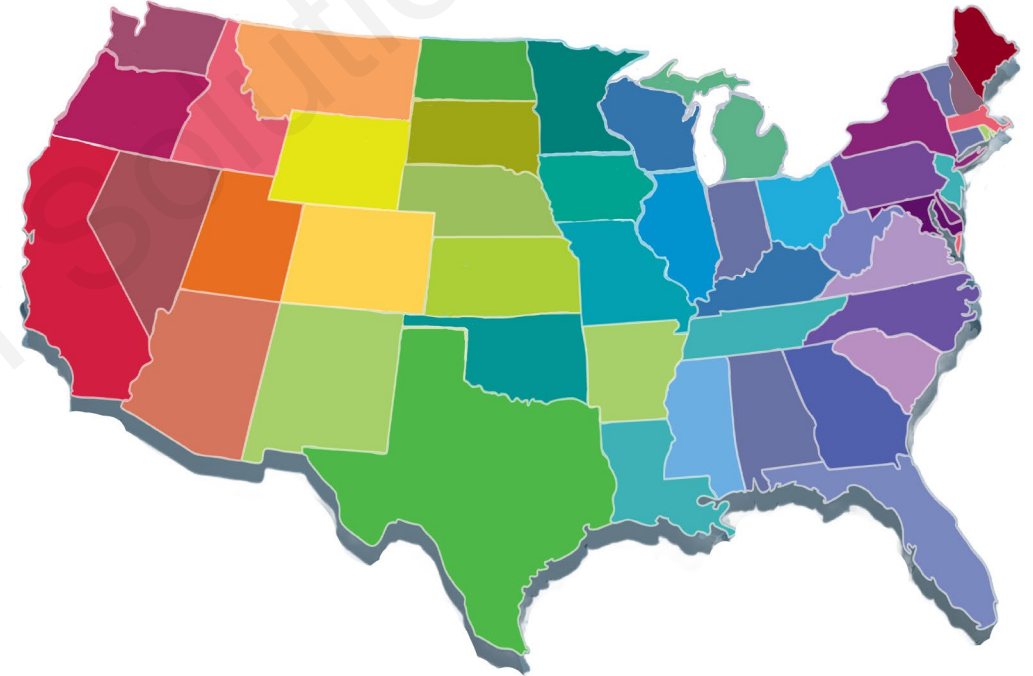
2024 Final Title IX Regulations

*Effective August 1, 2024**

NOT NECESSARILY NEW, BUT CLARIFIED

§ 106.40

- Depending on state law, not necessarily new, but clarified
- Reasonable Modifications
- Voluntary leaves or separate but comparable programs
- Lactation spaces
- Comparable treatment to other medical conditions



CURRENT V. NEW

Current § 106.40

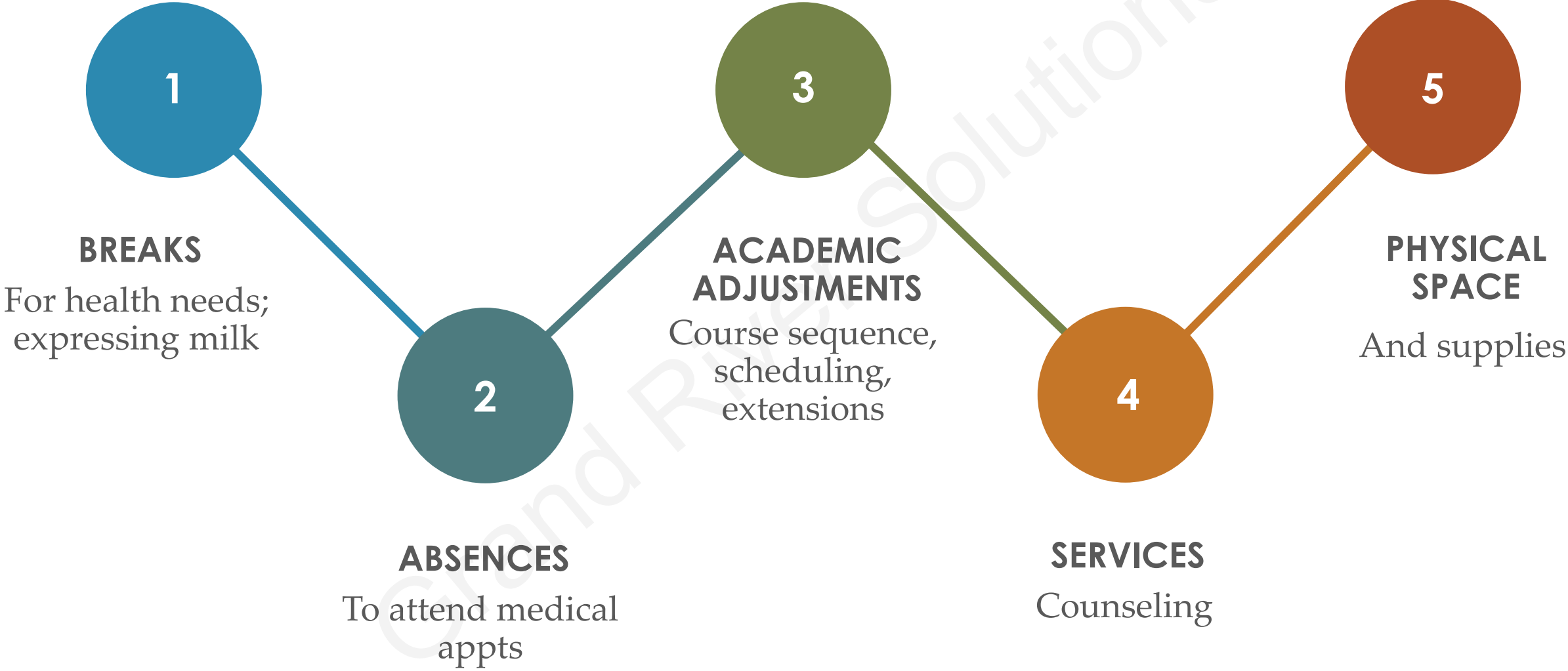
- "Marital or parental status."
- No discrimination "on the basis of" pregnancy and related conditions.
- Treat comparably.
- Allow leaves

2024

- "Parental, family, or marital status; pregnancy or related conditions."
- No discrimination "based on the student's current, potential, or past . . ."
- Employees provide required information
- Coordinator must respond & coordinate!

ALLOW MODIFICATIONS

Non-Exhaustive



COORDINATOR MUST:

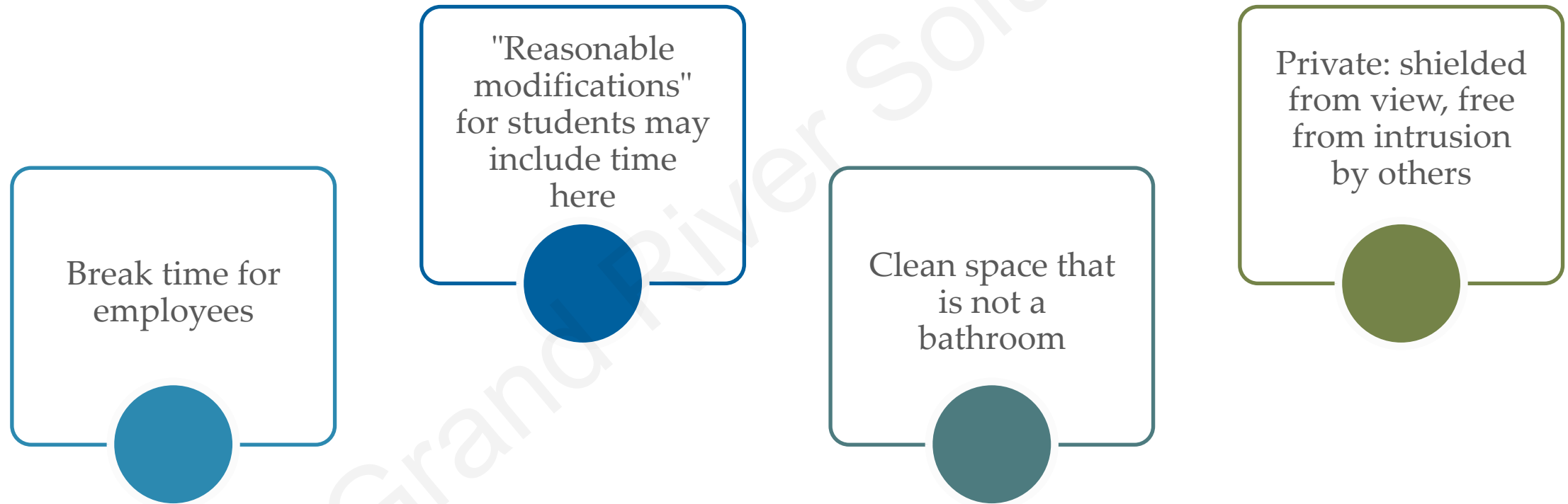
Let pregnant students know about the school's obligations, including:

- Prohibit sex discrimination, including sex-based harassment;
- Provide the student with the option of reasonable modifications;
- Allow access, on a voluntary basis, to any separate and comparable portion of the education program or activity;
- Allow a voluntary leave of absence;
- Ensure the availability of lactation space;
- No certifications required to participate



PROVIDE SPACE (& TIME)

For expressing breastmilk or breastfeeding as needed



WHAT ABOUT....



What about a space with an outlet?



What if a student misses a lot of class time?



Does this mean we have to let babies go to class or come to work?

PREGNANCY AND RELATED CONDITIONS

- Since 1975, "pregnancy **and** related conditions" includes "pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom[.]"
- Section 106.2 (2024), "pregnancy **or** related conditions" includes:
 - (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
 - (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

PREGNANCY MODIFICATIONS– FROM THE PREAMBLE

- if a recipient provides an applicant who is recovering from back surgery an extension of time for a medically necessary period to submit a required application essay, it must do the same for a student who is recovering from childbirth



DOCUMENTATION?

Should you, can you ask for it?

- Reasonable modifications
- Voluntary access to separate but comparable program
- Voluntary leaves of absence
- Lactation space



DOCUMENTATION? SHOULD YOU ASK FOR IT?

NO, when:

- Needs are obvious (like a bigger uniform)
- Student previously provided sufficient documentation
- Reasonable modification is sitting or standing, keeping water nearby, taking breaks for basic needs
- **Action is available to students for reasons other than P or RC without submitting such documentation**



TERMINATION OF PREGNANCY

- Consistent with the definition included in 1975 regulations: the end of pregnancy in any manner, including, miscarriage, stillbirth, or abortion

Examples of potential discrimination from Preamble:

- a high school may not exclude a student from participating in the student council solely because the student has had an abortion
- a college may not deny a professor a raise just because it learned she planned to have an abortion

NOTICE AND REQUIRED RESPONSE

§ 106.40

When a student* informs any employee of the student's pregnancy or related conditions...the employee promptly:

- (1) provides the Title IX Coordinator's contact information and
- (2) informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access....



PRIVACY OF PREGNANCY



Preamble

- No recordkeeping or reporting requirement
- "The requirement that the employee act only when directly informed in this manner balances a student's interest in privacy and autonomy with the necessity of preventing or eliminating sex discrimination in a recipient's education program or activity."

HOW WILL THEY KNOW WHAT TO DO?

- Annual training for all employees on specific topics



NOW WHAT?

- A student in a science program asks a faculty member if they can be excluded from a series of lab sessions involving in chemicals that may be harmful for pregnant people. The instructor is insistent that they must complete these labs in order to not fail the class:
 - o As Title IX Coordinator, what are your next steps?
 - o Who else are you bringing into the conversation?
 - o How can we be creative to ensure equal access for this student?



NOW WHAT?

- A student who suffered a miscarriage is experiencing complications from a resulting procedure and needs to limit activity. They tell Professor A the circumstances and request to log in to lectures remotely during this time.
- What should Prof A do next?

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NOW WHAT?

- Prof A is resistant to allowing remote access. The students comes to the Coordinator for support.
- What are your next steps?
- What questions do you have?

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NOW WHAT?

- Prof A is increasingly hostile to Student in their subsequent interactions. Student learns that Prof A is on the board of a pro-life organization and thinks that Student A had an abortion.
- What are your next steps?
- What questions do you have?

PERCEIVED CHARACTERISTICS

- "Perceived" characteristics are also covered under Title IX
- Making discriminatory decisions based on assumptions about someone's sexual orientation or pregnancy status is prohibited

Example:

- If a professor refuses to allow a student to participate in a clinical course based on the mistaken belief that the student is pregnant. Is this an issue?

WHAT WOULD YOU DO IF...?

Scenario 1

Fatima is a senior in a very fast-moving BSN nursing program. She was elated to discover she is pregnant, but complications have developed, and she is undergoing tests. Fatima has completed most of her senior practical placement, only two weeks remain before she is able to graduate. Her medical provider has encouraged a change in diet and bed rest as soon as possible.

Fatima goes to the Clinical Site Coordinator (not an employee of the university but of the hospital, a university partner) to request the ability to complete her practical hours early (several days in a row to equal the remaining 4 days of required practical). Fatima's request is denied and the Site Coordinator shares that when she was in school, she had a miscarriage, took care of in the bathroom and "just soldiered on."

Further, the Site Coordinator contacts the Practical Coordinator at the university citing Fatima's unprofessional conduct in the situation and requests Fatima be removed and required to repeat the entire term.

Fatima, believing she has a right to 504 accommodations comes into the Accessibility Office and discloses her situation to be told that pregnancy is not a qualifying condition. Somehow, Fatima ends up at the Dean of Student Office. What might the Dean do to help?

WHAT WOULD YOU DO IF...?

Scenario 2

Jon, an average student in a challenging program, approaches his professor early in the semester and requests to have the ability to make up the next 3 class sessions because, he is happy to announce, he is “having a baby with his male partner.”

The professor laughs, asks Jon if he is pulling a prank on him, and is then alleged to have replied: “Gay men don’t have babies” before he denies Jon’s request.

Jon immediately goes to the Chair of his program in engineering and is told by the Chair that the Chair cannot overrule the professor, who is “captain of his course’s ship.” The Chair also cites the request would be a fundamental alternation of the curriculum and he is concerned this change would be precedent setting.

Upset and disheartened, Jon goes to his academic advisor and requests a retroactive withdrawal from the course. Jon is willing to take the financial hit but is not going to miss the birth of his infant daughter. The advisor is irate and soon after Jon leaves, tells another colleague, who discourages any type of reporting because the professor in question is a “big deal” in the endowment world of the university. You get wind of this issue at a meeting regarding another issue within the same department.

SOME CASE REFERENCES

Troy University, AL OCR# 04-21-2060 (2023) Failure to engage and offer adjustments
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04212060-a.pdf>

Salt Lake Community College OCR# 08-22-2021 (2022) Policy and practices leading to forced drop
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08222021-b.pdf>

University of Maine at Fort Kent OCR# 01-17-2317 (2020) Policy, procedures and qualified personnel
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01172317-a.pdf>

Northeastern University OCR# 01-19-2158 (2019) Failure to provide adjustments
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01192158-a.pdf>

Rivertown School of Beauty OCR# 04-15-2363 (2019) Dismissal at 7 months based on pregnancy based on policy that violated Title IX
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04152363-a.pdf>

California State University East Bay OCR# 09-18-2245 (2017) Pregnancy related hospitalization
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09182245-a.pdf>

Questions?

Grand



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