PREGNANCY AND PARENTING UNDER TITLE IX

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MEET YOUR FACILITATORS

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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

PREGNANCY UNDER TITLE IX

PREGNANCY UNDER ADA/504

CROSS-OVER

LESSONS LEARNED AND BEST PRACTICES

PROPOSED REGULATIONS

SCENARIOS
TODAY’S STUDENT

A greater number of college students weigh 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

National Vital Statistics Reports Volume 70, Number 17, February 7, 2022
https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-17.pdf
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/
Title IX prohibits discrimination on the basis of sex, which includes pregnancy and parental status – in educational programs and activities.
Cannot exclude or treat students (or employees or applicants) differently based on pregnancy or related conditions.

"Related conditions" include "childbirth, false pregnancy, termination of pregnancy, or recovery therefrom"
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.
TITLE IX

Nondiscrimination here 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.
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 parenting and medical care for infant or child
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.

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.

34 CFR 106.40
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!
AMERICANS WITH DISABILITIES ACT AND SECTION 504

ADA

“...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”


SECTION 504

"No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."

ADA/504 AND PREGNANCY

Pregnancy, alone, is not a disability…EXCEPT UNDER:

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)
 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 – what’s actually necessary?
• 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.
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
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 spaces
- Get feedback from students with experience
- Coordinate with accessibility office
WHAT'S NEXT?

Anticipated changes once the 2022 Title IX proposed rules become final...

One day...
PROPOSED REGULATIONS: MODIFY

1. BREAKS
   For health needs; expressing milk

2. ABSENCES
   To attend medical appointments

3. ACADEMIC ADJUSTMENTS
   Course sequence, scheduling, extensions

4. SERVICES
   Counseling

5. PHYSICAL SPACE
   And supplies
PROPOSED REGULATIONS: NOTIFY

Let pregnant students know about the school’s obligations:

• 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;
• Maintain grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination.
PROPOSED REGULATIONS: SPACE (& TIME)
For expressing breastmilk or breastfeeding as needed

- Break time for employees
- "Reasonable modifications" for students may include time here
- Clean space that is not a bathroom
- Private: shielded from view, free from intrusion by others
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?
OUTSTANDING QUESTIONS RE: PROPOSED RULES

• Department of Education could address the overlap between existing laws
• Records maintenance requirements for these very private records; open records laws
• Do we want schools tracking who is or was pregnant? And if their status changes?
WHAT WOULD YOU DO IF…?

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 is 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?
THANKS FOR JOINING US!

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