



Title IX Compliance: Pregnancy & Parenting On Campus Based On The New 2024 Regulations

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1

WEBINAR OBJECTIVES

1

Discuss the new definitions regarding pregnancy or related conditions and parental status.

2

Identify the regulations related to pregnancy and related conditions included in 2024 Final Title IX Regulations.

3

Explore the requirements for "reasonable modifications" to the recipient's programs under the 2024 Final TIX Regulations.

4

Examine best practices for faculty and administrators related to reasonable modifications and referrals to the Title IX Coordinator.

2

AUDIENCE POLL

Please let us know who is participating today!

- A. Title IX Team
- B. Human Resources
- C. Student Affairs
- D. Faculty
- E. Other Staff

3

DISCLAIMER

- This presentation does not constitute legal advice.
- Today, we are focusing on the 2024 Title IX Regulations – Effective August 1, 2024.
- Students and employees are treated differently under federal law. There are additional federal laws relevant to employees, which we are not covering today.
- Your state may have other applicable laws relevant to this subject.
- There are approximately 26 states suing the 2024 Title IX Regulations. Stay tuned.

4

ASK YOUR QUESTIONS!

- Please feel free to submit questions!
- I may not get to answer all of them today, but I will try to get to them!

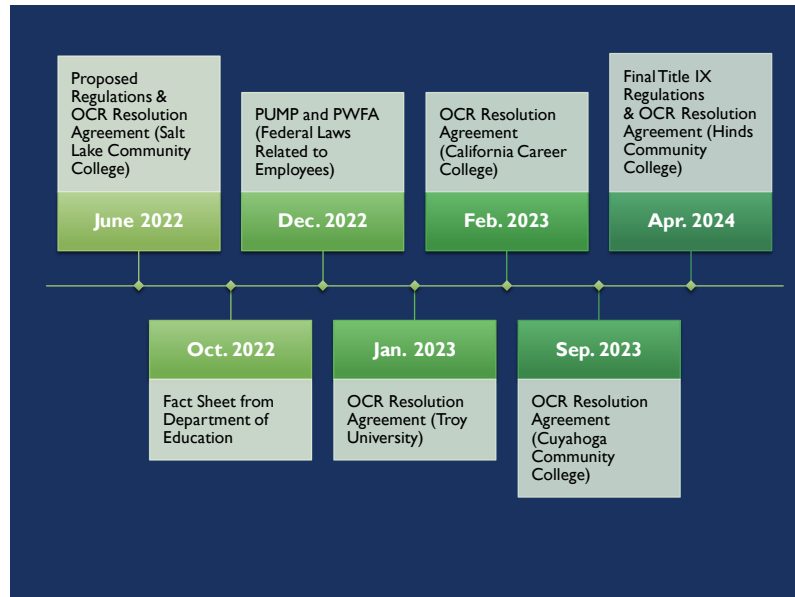
5

WHERE WE WERE...THE 2020 REGULATIONS

- 34 C.F.R. 106.21(c) – No discrimination on the basis of marital or parental status in admissions
- 34 C.F.R. 106.40 – No discrimination on the basis of marital or parental status for students
- 34 C.F.R. 106.57 – No discrimination on the basis of marital or parental status for employees
- Non-Regulatory Guidance:
 - *Supporting the Academic Success of Pregnant and Parenting Students* (July 1991, reprinted June 2013)
 - *Discrimination Based on Pregnancy and Related Conditions A Resource for Students and Schools* (October 2022)

6

RECENT DEVELOPMENTS – JUNE 2022 TO PRESENT



7

TAKEAWAYS FROM OCR RESOLUTIONS

Update Website

Develop Procedures

Engage in Interactive Process

Be Consistent & Responsive

Role of Title IX Coordinator

Document!

8

WHAT DO THE 2024 REGULATIONS DO?

- Non-regulatory guidance has been adopted as regulatory!
- Pregnancy and Parenting appears in numerous sections:
 - **106.2 – Definitions**
 - 106.10 – Scope includes “pregnancy or related conditions”
 - 106.21(c) – Admissions
 - **106.40 – This provides the bulk of the requirements for students**
 - 106.51(b)(6) – Leaves
 - **106.57 – This provides the bulk of the requirements for employees**

9

STUDENTS UNDER 2024 TITLE IX REGULATIONS

NON-REGULATORY GUIDANCE
INCORPORATED INTO EXISTING
FRAMEWORK

10

THE 2020 REGULATIONS: 34 CFR 106.40

- Non-discrimination on the basis of parental, family or marital status. 34 CFR 106.40 (a)
- Non-discrimination on the basis of "student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom...." 34 CFR 106.40 (b)(1)
- Physician certifications. 34 CFR 106.40 (b)(2)
- Separate programs. 34 CFR 106.40 (b)(3)
- Temporary Disability. 34 CFR 106.40 (b)(4)
- Leave of Absence. 34 CFR 106.40 (b)(5)

11

NEW DEFINITION – PARENTAL STATUS (34 C.F.R. 106.2)

The status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

- 1) A biological parent;
- 2) An adoptive parent;
- 3) A foster parent;
- 4) A stepparent;
- 5) A legal custodian or guardian;
- 6) *In loco parentis* with respect to such a person; or
- 7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person.

12

**NEW DEFINITION
– PREGNANCY
OR RELATED
CONDITION
(34 C.F.R. 106.2)**

(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.

13

2024 REGULATIONS - NON-DISCRIMINATION

- NEW 34 C.F.R. 106.40(a)
 - Recipients "must not adopt or implement any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex."
- NEW 34 C.F.R. 106.40(b)(1)
 - A recipient is not engaging in discrimination when it allows a student to voluntarily participate in a separate, but comparable program.
 - No discrimination based upon "pregnancy or related conditions"

14

2024 REGULATIONS - TITLE IX COORDINATOR ROLE



- NEW 34 C.F.R. 106.40(b)(2)
- When a student/person with legal right to act on behalf of the student informs "ANY EMPLOYEE" of pregnancy or related condition, the employee **MUST** provide the student with the Title IX Coordinator's information and informs the student that the Title IX Coordinator can coordinate measures to preserve equal access to the education program or activity.
- Exception: if the employee reasonably believes that the Title IX Coordinator has already been notified.

15

2024 REGULATIONS - ACTIONS TO PREVENT DISCRIMINATION AND ENSURE EQUAL ACCESS



- NEW 34 C.F.R. 106.40(b)(3)(i)
 - Responsibility to provide information regarding the institution's obligations.

16

SPECIFIC ACTIONS – PROVIDE REASONABLE MODIFICATIONS

- NEW 34 C.F.R. 106.40(b)(3)(ii)(B)
- "The recipient must make **reasonable modifications** to the recipient's policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the recipient's education program or activity. Each reasonable modification must be **based on the student's individualized needs**. In determining what modifications are required under this paragraph, **the recipient must consult with the student.**"

17

SPECIFIC ACTIONS – FUNDAMENTAL ALTERATION

- NEW 34 C.F.R. 106.40(b)(3)(ii)(B)
- "A modification that a recipient can demonstrate would **fundamentally alter** the nature of its education program or activity **is not a reasonable modification.**"

18

SPECIFIC ACTIONS – POSSIBLE MODIFICATIONS

- NEW 34 C.F.R. 106.40(b)(3)(ii)(C)
 - 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;
 - 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;
 - or other changes to policies, practices, or procedures.

19

REASONABLE MODIFICATIONS – SUPPORTING DOCUMENTATIO N

- NEW 34 C.F.R. 106.40(b)(3)(vi)
- A recipient **must not** require supporting documentation under paragraphs (b)(3)(ii) through (v) **unless** the documentation is **necessary and reasonable** for the recipient to determine the reasonable modifications to make or whether to take additional specific actions under paragraphs (b)(3)(ii) through (v).

20

VOLUNTARY LEAVE OF ABSENCE

- NEW 34 C.F.R. 106.40(b)(3)(iv)
- The recipient must allow the student to **voluntarily take a leave of absence** from the recipient'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 a recipient that allows a greater period of time than the medically necessary period, the recipient must permit the student to take voluntary leave under that policy instead if the student so chooses. When the student returns to the recipient'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

21

SPECIFIC ACTIONS: LACTATION SPACES

- NEW 34 C.F.R. 106.40(b)(3)(v)
- The recipient **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.

22

TEMPORARY MEDICAL CONDITION

- NEW: 34 C.F.R. 106.40(b)(4)
- To the extent consistent with paragraph (b)(3) of this section, a recipient 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 recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's education program or activity.

23

CERTIFICATIONS

- NEW: 34 C.F.R. 106.40(b)(5)
- Certification to participate. A recipient **must not** 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 recipient's class, program, or extracurricular activity **unless**:
 - The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
 - The recipient requires such certification of all students participating in the class, program, or extracurricular activity; and
 - The information obtained is not used as a basis for discrimination prohibited by this part.

24

BEST PRACTICES

- 01

Receive report of a student with a pregnancy or related condition
- 02

Offer meeting to discuss requests/options/resources
- 03

Evaluate requests for reasonable modifications. This could include obtaining information from the unit. Assess whether fundamental alteration.
- 04

Present student with options regarding reasonable modifications.
- 05

Implement reasonable modifications.

25

EMPLOYEES UNDER 2024 TITLE IX REGULATIONS

26

NON DISCRIMINATION

- NEW 34 C.F.R. 106.57(a)
- Do not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:
 - Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or
 - That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

27

NON DISCRIMINATION

- NEW 34 C.F.R. 106.57(b)
- A recipient must not discriminate against any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.

28

COMPARABLE TREATMENT TO OTHER TEMPORARY MEDICAL CONDITIONS

- NEW 34 C.F.R. 106.57(c)
- Treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes.
- This includes: including commencement, duration and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

29

LEAVE OF ABSENCE

- NEW 34 C.F.R. 106.57(d)
- If no leave policy, or employee does not have sufficient leave/accrued employment time under the applicable policy, recipient must treat pregnancy or related conditions as a **justification for a voluntary leave of absence without pay** for a **reasonable period of time**,
- Reinstatement to same status as before the leave began, or give comparable role.
- Cannot decrease compensation/opportunities

30

LACTATION SPACE

- NEW 34 C.F.R. 106.57(e)
- Employees must be given reasonable time to express breast milk/breast feed
- "A recipient must ensure that an employee 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"

31

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32