

# Learning for Two: Pregnancy & Parenting Under Title IX and Related Laws

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Sponsored By



**BOISE STATE  
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# Today's Panel

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# Introduction

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## Discrimination based on pregnancy and parenting = discrimination based on sex

A few things to remember and consider:

- Do not ask (and definitely do not assume)
- Abortion and post-abortion conditions – talk to your GC
- How much do you document pregnancy and related conditions – talk to your GC



# Overarching Principles

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Title IX of Education Amendments of 1972

- Title IX prohibits discrimination based on sex in education programs or activities that receive Federal financial assistance. The Department's Title IX regulations prohibit discrimination based on pregnancy and related conditions in institutions that receive Federal funds (referred to here as "schools").
- Has been in place since 1975





# Pregnancy Protections Since 2020

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- 2020 Title IX rule did not address pregnancy and parenting specifically

## **What they did do:**

- Banned discrimination on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy (abortion, miscarriage, or stillbirth) and recovery
- Prohibited rules treating students differently based on actual or potential parental, family, or marital status
- Required schools to provide pregnant students the same services provided to students with temporary disabilities
- Did not clearly limit the types of medical documentation educational institutions could require to establish the need for those services
- Allowed schools to require a student to provide a physician's certification of ability to participate (physical or emotional) if required of other students under a physician's care
- No clear notice requirement for pregnant or parenting students
- Offered no clear right to lactation space
- Provided limited and unclear guidance on what efforts were required to prevent and respond to pregnancy and parenting discrimination claims
- Provided privacy protections for certain information collected during investigations

# Students

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## Discrimination and Exclusion

Clearly covers pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

- Must not exclude from their education program or activity, including any class or extracurricular activity

# Students

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## Discrimination and Exclusion

Classroom policies and practices must not discriminate against students.

Examples:

- A teacher may not refuse to allow a student to submit work after missing a deadline because of related absences due to pregnancy or childbirth.
- If grading is based in part on attendance/participation, the student should be allowed to earn the missed credit.

The student should be reinstated to their pre-leave status.



# Students

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## Harassment

Title IX protects students against harassment by school employees and other students due to pregnancy and related conditions.

May file a grievance with TIXC.



# Students

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## Equal Access

Schools must ensure:

- Pregnant students have access to the same educational opportunities as their peers
- *If you provide special services to students with temporary medical conditions, you must also provide them to pregnant and related condition students.*
- Examples could include homebound instruction/virtual instruction, tutoring, or independent study



# Students

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## Reasonable Adjustments

- Required to provide
  - Larger desk, frequent trips to restroom, temporary breaks as needed, access to elevators

*\*Schools can only require pregnant students to provide medical certification for continued participation in the program or activity only if the same requirement is applied to all students with physical or emotional conditions requiring medical attention*

## Leave Policies

- If a school does not have a leave policy for students, or the student does not otherwise qualify for leave under the policy, a school must provide leave to a student for pregnancy and related conditions for as long as the student's physician deems medically necessary. A
- After that leave, the student must be reinstated to the status the student held when the leave began.
- Any limits on excused absences should be equal to those provided for other temporary conditions or situations

# Students

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## Reasonable Accommodations

Academic  
Requirements

Safety Concerns

Excessive Financial  
or Administrative  
Burden

Program Structure

Absences

# Employees

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## Nondiscrimination

- Schools must not discriminate against any employee, or exclude them from employment opportunities, on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom

## Employment Policies and Practices

- Schools must ensure practices and policies do not discriminate on the basis of pregnancy (includes hiring, promotion, and benefits)

## Leave Policies

- Must treat pregnancy-related conditions the same as other temporary disability for all job-related purposes

# Employees

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## Reasonable Accommodations

Schools must provide reasonable accommodations for pregnant employees if they are requested and are reasonable under the circumstances. This can include adjustments to job duties or work schedules, similar to accommodations provided for other temporary disabilities.



# Abortion and related conditions

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20 U.S.C. §§ 1681 – 1688

Provides that nothing in Title IX requires or prohibits any person or entity from providing or paying for any benefit or service related to abortion.

Nothing in Title IX permits a penalty to be imposed on any person because the person is seeking or has received any benefit or service related to abortion.



# We received a complaint. Now what?

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If a student, employee, or applicant feels they have been discriminated against based on pregnancy or related conditions, including termination of pregnancy, they may file a complaint through their school's grievance procedures.

Must have a mechanism to investigate and evaluate complaints and must provide for prompt and equitable resolution of complaints.

Obligation to make sure these procedures are widely known to staff, students, parents, etc.

# 2024 Rule

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Applies to all levels of education including students and staff – K12, undergraduate, graduate, students at professional schools, vocational students, incarcerated students, and non-employee postdoctoral trainees.

Specifically require:

- 1) Non-Discrimination against students
- 2) Equal Access and Adjustments (reasonable accommodations)
- 3) Medical and Parental Leave
- 4) Lactation Breaks (private, non-bathroom)
- 5) Must communicate grievance procedures to students and families, ensure they know how to report discrimination or request accommodations

# 2024 Rule: Protects all pregnancy related conditions

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- Now includes infertility
- Since 1975 has included protections for "termination of pregnancy"
- At a minimum, leave must be provided for as long as medically necessary as determined on an individual basis by the person's health care provider
- A common presumption is 6 weeks of recovery for an uncomplicated vaginal birth and 8 weeks for an uncomplicated cesarean birth. Any leave must be entirely voluntary



# 2024 Rule – Title IX Coordinator Responsibility

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Title IX Coordinators are ultimately responsible for ensuring that individualized reasonable modifications for pregnancy-related conditions are provided to students who needs them

- may delegate but TIXC must still oversee efforts

- not identical to disability accommodation standards





# 2024 Rule – Medical Documentation

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## When is it okay to ask?

- Faculty members should never request (instead, their obligation is to inform the student that the TIXC can help facilitate modifications and provide them with the TIXC contact information)

- The TIXC may request only under certain circumstances

- Remember to keep information on a need-to-know basis only

The institution has an obligation to protect personally identifiable information under section 106.44(j)

# 2024 Rule – Lactation Spaces

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# 2024 Rule

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- A note about Licensing programs
- Modifications only required for students who have pregnancy-related conditions, not all parents
- Schools may make leave policies or provide changes for parenting students (for the purpose of caregiving). Parental leave or accommodation policies for caregiving purposes must be administered without distinction on the basis of sex or gender

# Other Pregnancy Related Laws

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Title VII of the Civil Rights Act of 1964

Pregnancy Workers Fairness Act (PWFA)



# Other Pregnancy Related Laws

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Fair Labor Standards Act (FLSA) as amended by the Affordable Care Act of 2010 & the Providing Urgent Maternal Protections (PUMP) Act

- Affordable Care Act 2010 amended FLSA to require break times for nonexempt employees who are nursing (but did not cover exempt employees)
- PUMP Act extends protections to exempt employees
- One year after child's birth, an employer must provide all nursing employees with:
  - Reasonable break times to lactate
  - A private place to express milk free from intrusion
  - Full regular salaries regardless of breaks (exempt), nonexempt breaks can be unpaid

Exception: less than 50 employees



# Panel Discussion

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Maria is a sophomore at your educational institution. She is five months pregnant and finds it increasingly challenging to sit through long classes due to back pain and frequent bathroom breaks. Maria requests modifications that will help her continue her studies comfortably.

# Panel Discussion

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Devin is in the last semester of her nursing program. Her due date is March 30 , which is about one month before classes end, and she is currently on track to graduate. She currently completes about 10 clinical hours a week at a local hospital. Devin contacts the nursing program in early February, which then sends her to the Title IX Coordinator for help with accommodations. At the time she meets with the Title IX Coordinator, she estimates that if she continues at her current rate of clinical hours, she will be 40 hours short at her due date.

# Panel Discussion

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For employees who are pregnant, what are some examples of accommodation requests you have heard that the school was not able to provide?

# Panel Discussion

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What are some things you have all seen go wrong in the process and what were your takeaways?

# Panel Discussion

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What types of documentation are you keeping on file regarding pregnancy and pregnancy-related conditions right now?



# Panel Discussion

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**Questions from you?**