



Coffee and Conversation: Title IX & Pregnancy Series

SESSION #4: Responding to Allegations of Pregnancy Discrimination

March 2, 2023

2pm-3pm Eastern

Presented by Adrienne Meador Murray

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Title IX of the Education Amendments of 1972

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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.

2020 Title IX Regulations



- Promptly respond to individuals **who are alleged to be victims of sexual harassment** by
 - offering supportive measures;
 - follow a fair grievance process to resolve sexual harassment allegations when a complainant requests an investigation or a Title IX Coordinator decides on the recipient's behalf that an investigation is necessary; and
 - provide remedies to victims of sexual harassment.
- **Regarding sexual harassment, the final regulations:**
 - Define the conduct constituting sexual harassment for Title IX purposes;
 - Specify the conditions that activate a recipient's obligation to respond to allegations of sexual harassment and impose a general standard for the sufficiency of a recipient's response, and
 - specify requirements that such a response must include, such as offering supportive measures in response to a report or formal complaint of sexual harassment;
 - Specify conditions that require a recipient to initiate a grievance process to investigate and adjudicate allegations of sexual harassment; and
 - Establish procedural due process protections that must be incorporated into a recipient's grievance process to ensure a fair and reliable factual determination when a recipient investigates and adjudicates a formal complaint of sexual harassment.

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With Regard to Sex-Discrimination (2020 Regs)

Additionally, the final regulations:

Affirm that the Department's Office for Civil Rights ("OCR") may require recipients to take remedial action for discriminating on the basis of sex or otherwise violating the Department's regulations implementing Title IX, consistent with 20 U.S.C. 1682; clarify that in responding to any claim of sex discrimination under Title IX, recipients are not required to deprive an individual of rights guaranteed under the U.S. Constitution; acknowledge the intersection of Title IX, Title VII, and FERPA, as well as the legal rights of parents or guardians to act on behalf of individuals with respect to Title IX rights; update the requirements for recipients to designate a Title IX Coordinator, disseminate the recipient's non-discrimination policy and the Title IX Coordinator's contact information, and notify students, employees, and others of the recipient's grievance procedures and grievance process for handling reports and complaints of sex discrimination, including sexual harassment; eliminate the requirement that religious institutions submit a written statement to the Assistant Secretary for Civil Rights to qualify for the Title IX religious exemption; and expressly prohibit retaliation against individuals for exercising rights under Title IX."

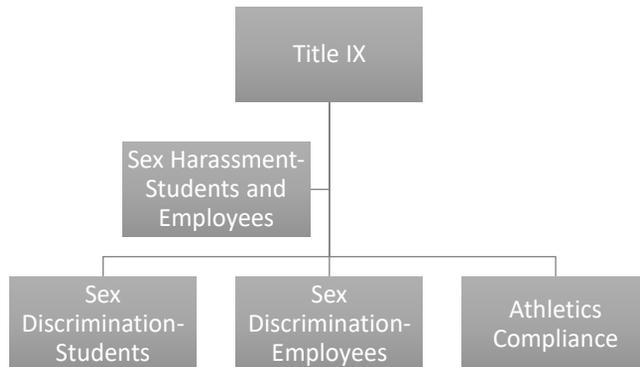
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Prohibition and Grievance Procedures



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Responding to Allegations of Sex Discrimination

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- Given the requirements of the 2020 regulations, most institutions have opted to address sex discrimination, including pregnancy discrimination, in other institutional nondiscrimination policies.
 - Do you have a separate procedure outside of your Title IX procedure to resolve?
 - What process is outlined in that policy or procedure for a person to complain of pregnancy discrimination?
 - Who do those complaints come to at your institution—HR? Disability Services? Title IX? Someone else, like a Dean or Director?
 - Does the response look different for student complaints than it does employee complaints? What about graduate students or student employees?

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Title IX and Pregnancy-Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.40(b)(1), prohibits discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.



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)(4).

Under Title IX, it is illegal for schools to exclude a pregnant student from participating in any part of an educational program.



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Title IX and Pregnancy-Legal Standards

Under 34 C.F.R. § 106.40(b)(5), in the case of a recipient 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 recipient 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.



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Rights of Students

A school must...

- Allow a student to continue participating in classes and extracurricular activities even though they are pregnant. This means that a student can still participate in advanced placement and honors classes, school clubs, sports, honor societies, student leadership opportunities, and other activities, like after-school programs operated at the school.
- Allow the student to choose whether they want to participate in special instructional programs or classes for pregnant students. A student can participate if they want to, but the school cannot pressure them to do so. The alternative program must provide the same types of academic, extracurricular and enrichment opportunities as your school's regular program.

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix.html>

Continued

- Allow a student to participate in classes and extracurricular activities even though they are pregnant and not require them to submit a doctor's note unless the school requires a doctor's note from all students who have a physical or emotional condition requiring treatment by a doctor. The school also must not require a doctor's note from them after they have been hospitalized for childbirth unless it requires a doctor's note from all students who have been hospitalized for other conditions.

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix.html>



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- Provide the student with reasonable adjustments, like a larger desk, elevator access, or allowing them to make frequent trips to the restroom, when necessary because of their pregnancy.

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix.html>

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Excused Absences and Medical Leave – A School MUST:

- Excuse absences due to pregnancy or childbirth for as long as their doctor says it is necessary.
- Allow them to return to the same academic and extracurricular status as before their medical leave began, which should include giving you the opportunity to make up any work missed while they were out.
- Ensure that teachers understand the Title IX requirements related to excused absences/medical leave. Their teacher may not refuse to allow them to submit work after a deadline they missed because of pregnancy or childbirth. If their teacher's grading is based in part on class participation or attendance and you missed class because of pregnancy or childbirth, they should be allowed to make up the participation or attendance credits they didn't have the chance to earn.
- Provide pregnant students with the same special services it provides to students with temporary medical conditions. This includes homebound instruction/at-home tutoring/independent study.

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix.html>

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Time Away

- An institution must accommodate any lactation-related impairments, such as serious infections, as they would other medical conditions.



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Establishing Jurisdiction-OCR

“OCR must have jurisdiction over the subject matter of the allegation(s). An allegation(s) over which OCR lacks subject matter jurisdiction is not subject to further processing and will be dismissed pursuant to subsection 108(a).

For OCR to establish subject matter jurisdiction, the written information must allege, or OCR must be able to infer from the facts provided, an allegation of:

- (1) discrimination based on race, color, national origin, sex, disability, or age,
- (2) discrimination in violation of the Boy Scouts of America Equal Access Act of 2001, or
- (3) retaliation for the purpose of interfering with any right or privilege secured by the civil rights laws and regulations enforced by OCR, or as a result of making a complaint, testifying, or participating in any manner in an OCR proceeding. See 34 C.F.R. §§ 100.7(e), 104.61, 106.81, 108.9, 110.34; and 28 C.F.R. § 35.134.”

[Case Processing Manual \(PDF\) \(ed.gov\)](#)

<https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

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OCR has jurisdiction pursuant to the following statutory and regulatory authorities:

- **Title VI of the Civil Rights Act of 1964**, 42 U.S.C. §§ 2000d et seq., 34 C.F.R. Part 100. Under Title VI, OCR has jurisdiction to investigate allegations that involve discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as certain employment complaints, based on race, color, or national origin. With respect to employment, OCR has jurisdiction if:
 - (1) the alleged discrimination could adversely affect program beneficiaries Case Processing Manual Page 8 of 32 Return to Table of Contents on the basis of race, color, or national origin, or
 - (2) a primary objective of the federal financial assistance is to provide employment. See subsection 701(b) for processing Title VI allegations with respect to proprietary vocational schools. For employment allegations, OCR follows procedures consistent with the employment coordinating regulations at 28 C.F.R. Part 42 and 29 C.F.R. Part 1691. See subsection 701(c).
- **Title IX of the Education Amendments of 1972**, as amended, 20 U.S.C. §§ 1681 et seq., 34 C.F.R. Part 106. Under Title IX, OCR has jurisdiction to investigate allegations that involve individuals who allege discrimination on the basis of sex in a recipient's education program or activity, including allegations filed by applicants, students, parents, and recipient employees. For employment allegations, OCR follows procedures consistent with the employment coordinating regulations at 28 C.F.R. Part 42 and 29 C.F.R. Part 1691. See subsection 701(c).
- **Section 504 of the Rehabilitation Act of 1973**, as amended, 29 U.S.C. § 794, 34 C.F.R. Part 104. Under Section 504, OCR has jurisdiction to investigate allegations that involve individuals who allege discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as employment allegations based on disability. For employment allegations, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640. See subsection 701(e).
- **Age Discrimination Act of 1975**, 42 U.S.C. §§ 6101 et seq., 34 C.F.R. Part 110. Under the Age Discrimination Act, OCR has jurisdiction to investigate allegations that involve individuals who allege discrimination in a recipient's education program or activity, including applicants, students, and parents. For instructions regarding the referral of allegations to the Federal Mediation and Conciliation Service (FMCS) before investigation, see subsection 701(a). OCR does not have jurisdiction over employment under the Age Discrimination Act. See subsection 701(a).
- **Title II of the Americans with Disabilities Act of 1990**, 42 U.S.C. § 12131 et seq., 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction to investigate allegations that involve individuals who allege discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as employment allegations based on disability. For employment allegations, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640, which address coordinating disability employment allegations with the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC). See subsection 701(e).
- **Boy Scouts of America Equal Access Act of 2001**, 20 U.S.C. 7905, 34 C.F.R. Part 108. Under the Boy Scouts Act, OCR has jurisdiction to investigate allegations that involve the denial of equal access or a fair opportunity to meet to, or discrimination against, any group officially affiliated with the Boy Scouts of America or officially affiliated with any other youth group listed in Title 36 of the United States Code.

[Case Processing Manual \(PDF\) \(ed.gov\)](#)

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Troy University (Alabama)

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On January 26, 2023, the U.S. Department of Education's Office for Civil Rights (OCR) announced the resolution of an investigation into whether Troy University in Alabama responded to a student's requests for pregnancy-related adjustments during the 2020-21 school year in a manner that complied with Title IX of the Education Amendments of 1972 (Title IX). (The complaint was filed on 12/2/2020).

OCR's investigation confirmed that the student notified the university of her pregnancy before the start of the fall 2020 semester and reflected repeated instances in which the student experienced negative consequences stemming from a lack of accommodations for her pregnancy.

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OCR Investigates

OCR's investigation identified concerns that:

1. The university did not make reasonable and responsive adjustments responsive to the student's pregnancy-related requests.
2. Those responses the university did offer to the student's requests were ad hoc and uncoordinated.
3. The Title IX coordinator did not consistently or timely intervene when the student alerted him to issues with certain classes.
4. No evidence reflected that the Title IX coordinator responded to a professor who sought guidance in addressing the student's requests. And,
5. The absence of available information about how to obtain pregnancy-related adjustments contributed to the university's uncoordinated response and left the student to make multiple requests through both the university's Title IX coordinator and individual professors.

https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04212060-b.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=



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Troy University Enters Agreement pre-Conclusion of Investigation

To resolve the investigation, the university's commitments include the following:

- Providing the student adjustments to grades negatively impacted by the university's handling of her requests, as well as reimbursement for documented expenses related to courses she has had to retake since the semester when she was pregnant.
- Reviewing and, where necessary, revising or drafting policies and procedures on how to address requests for adjustments from pregnant students to ensure that it complies with Title IX.
- Updating its website to provide information such as the Title IX rights of pregnant students, the process for requesting adjustments, and a link to the grievance procedures that apply to complaints of pregnancy-related or other sex discrimination.
- Faculty and staff training regarding the Title IX rights of pregnant students and the university's obligations regarding pregnant students, as well as a survey to gauge the effectiveness of the training. And,
- Tracking of students' requests for pregnancy-related adjustments and the university's responses to the requests.



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Salt Lake Community College

“OCR determined that the college violated both Title IX of the Education Amendments of 1972 (Title IX) and Section 504 of the Rehabilitation Act of 1973 (Section 504) after investigating allegations that Salt Lake Community College encouraged a pregnant student to drop a course because she was pregnant, did not engage in an interactive process to provide her with academic adjustments or necessary services during her pregnancy, and did not excuse her pregnancy-related absences or allow her later to submit work following those absences.”

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Salt Lake Community College- Complaint

- 1) a College Professor encouraged her to drop a course because she was pregnant, the Professor told her that she needed to accept responsibility for her pregnancy, and the Title IX Coordinator did not promptly and equitably respond to her [redacted content] complaint regarding the Professor’s conduct;
- 2) the College did not engage in an interactive process with the Complainant to provide her with academic adjustments and/or related services during her pregnancy in the same manner that the College provides to students with temporary medical conditions; and
- 3) the College did not excuse the Complainant’s pregnancy-related absences and did not allow her to submit work after pregnancy-related absences, both of which [redacted content] with the Professor.

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OCR Findings-Salt Lake CC

OCR found that the college violated Title IX and its implementing regulations by failing:

- (1) to respond promptly and equitably to the student's complaint of pregnancy discrimination,
 - (2) to engage in an interactive process with the student to determine the appropriate special services and/or academic adjustments to provide in light of her pregnancy, and
 - (3) to excuse her absences related to pregnancy, provide her the opportunity to make up work missed due to these pregnancy-related absences, or provide her with alternatives to making up missed work at a later date.
- In addition, OCR found that the college violated Section 504 and its implementing regulations by failing to engage in an interactive process with the student and to consider whether her pregnancy caused a temporary disability requiring academic adjustments.



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Disability Intersection-SLCC

“The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability.

Although a normal, healthy pregnancy is *generally not considered a disability*, a pregnant student *may become temporarily disabled and thus entitled to the same rights and protections of other students with a temporary disability*.

If students with disabilities in postsecondary education believe that they need a disability-related modification, *they have the obligation to identify themselves as having a disability and to request the modification*.

The Section 504 regulation, at 34 C.F.R. § 104.44(a), requires a post-secondary institution to *modify its academic requirements as necessary* to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability.”

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Disability Intersection-SLCC

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“Section 504 envisions a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between a post-secondary institution and the student. Students are responsible for knowing these procedures and following them. Generally, upon receiving documentation of a disability and a request for academic adjustments, a postsecondary institution’s evaluation of a student’s request requires a fact specific, case-by-case inquiry. This evaluation process should be interactive, with information exchanged between the student and the postsecondary institution to arrive at a conclusion about the academic adjustment requested.”

https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08222021-a.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

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SLCC Voluntary Commitments in the Resolution Agreement

- Revising its non-discrimination notice and grievance procedures to comply with Title IX.
- Publishing information on its website for pregnant students about their Title IX rights and how to seek academic adjustments, special services, or excused absences.
- Training its Title IX coordinator, Disabilities Resource Center staff, and other school employees regarding Title IX 's and Section 504's protections for pregnant students and the academic adjustments and special services available to pregnant students.
- Completing and documenting its investigation of the student's complaint of pregnancy discrimination.
- Taking other measures to remedy the discrimination against the student.



https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08222021-a.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

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Questions to Ask

- Does a student know where to request pregnancy-related modifications?
 - Is your 504 administrator trained to understand Title IX and 504 implications of temp disability based on pregnancy?
- Do your institutional policies and procedures clarify the rights of students?
 - What about your website?
- What would the interactive process with pregnant students look like for us to work together to determine what modifications are needed and appropriate?
- Are modifications ad hoc and determined by individual faculty members based on their understanding of the legal requirements? Or is there a coordinated effort by your institution?
- Do faculty and staff receive appropriate training about the institution's obligations under Title IX regarding pregnant students who request modifications?
- How does your institution document requests and modifications provided?

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