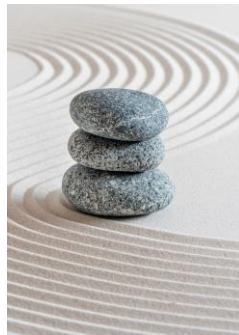





**TITLE IX -
PREGNANCY, FAMILY, & MARITAL STATUS**



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AGENDA

- Key Takeaways
- Title IX Regulations
- Title IX Guidance

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Remember


In addition to Title IX, there are other laws to protect pregnant and nursing employees.

Two of the newest laws are:

- Providing Urgent Maternal Protections for Nursing Mothers Act (in effect now)
- Pregnant Workers Fairness Act (in effect on June 27, 2023)

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Key Takeaways From the Proposed Title IX Regulations

- Refers to “any policy, practice, or procedure” rather than “any rule”
- Added “family” to “parental, family, or marital status”
- Provide definitions for “parental status” and “pregnancy or related conditions”
- Requirements for providing information by the Title IX Coordinator
- Provide comparable treatment to temporary disabilities or conditions
- Must have grievance procedures
- Ensure the availability of lactation spaces
- Must provide reasonable modifications

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TITLE IX REGULATIONS



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**SUBPART C—
DISCRIMINATION
ON THE BASIS OF
SEX IN ADMISSION
AND RECRUITMENT
PROHIBITED**

§ 106.21 Admission
§ 106.37 Financial Assistance



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§ 106.21(c) PROHIBITIONS RELATING TO MARITAL OR PARENTAL STATUS

In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

- (1) 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;
- (2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;
- (3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and
- (4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

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§ 106.37(a) PROHIBITIONS RELATING TO MARITAL OR PARENTAL STATUS

Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

- (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;
- (2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or
- (3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

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**SUBPART D—
DISCRIMINATION ON
THE BASIS OF SEX IN
EDUCATION
PROGRAMS OR
ACTIVITIES
PROHIBITED**

§ 106.40 Marital or
Parental Status

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§ 106.40(a) STATUS GENERALLY.

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.

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§ 106.40(b) PREGNANCY AND RELATED CONDITIONS.

- (1) A recipient shall not discriminate against any student or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.
 - (2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.
 - (3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.
- Continued...

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§ 106.40(b) PREGNANCY AND RELATED CONDITIONS.

- (4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.
- (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 she held when the leave began.

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**SUBPART E—
DISCRIMINATION ON
THE BASIS OF SEX IN
EMPLOYMENT IN
EDUCATION
PROGRAMS OR
ACTIVITIES
PROHIBITED**

§ 106.57 Marital or
Parental Status

§ 106.60 Pre-employment
inquiries

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§ 106.57 (a) GENERAL.

A recipient shall not apply any policy or take any employment action:

- (1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or
- (2) Which 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.

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§ 106.57 (b) PREGNANCY.

A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

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§ 106.57 (c) PREGNANCY AS A TEMPORARY DISABILITY.

A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, 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.

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§ 106.57 (d) PREGNANCY LEAVE

In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to 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 without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

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§ 106.60 PRE-EMPLOYMENT INQUIRIES.

(a) **Marital status.** A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

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TITLE IX GUIDANCE

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U.S. Department of Education
Office for Civil Rights


October 2022

Discrimination Based on Pregnancy and Related Conditions
A Resource for Students and Schools

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2013 (FIRST PUBLISHED IN JULY 1991)



U.S. DEPARTMENT OF EDUCATION

Supporting the Academic Success of Pregnant and Parenting Students

Under *Title IX* of the Education Amendments of 1972

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MAY A SCHOOL REQUIRE A PREGNANT STUDENT TO PARTICIPATE IN A SEPARATE PROGRAM FOR PREGNANT STUDENTS?

No. Any such requirement would violate *Title IX*. A school may offer separate programs or schools for a pregnant student, but participation in those programs or schools must be completely voluntary. A school may provide information to its students about the availability of an alternative program, but it may not pressure a pregnant student to attend that program. A pregnant student must be allowed to remain in her regular classes and school if she so chooses.

If a school offers a voluntary alternative program, that program must provide academic, extracurricular, and enrichment opportunities comparable to those provided to the students in the regular school program. Although an alternative program need not be identical to the regular school program in the specific courses or range of courses, if it provides only vocational-track courses, with no opportunity for advanced academic or college-preparatory classes, it would not be considered comparable. It is critical to provide clear information about what courses are available, how credits are transferred between the regular program and alternative program, and how the student can meet graduation requirements. This helps ensure that any separate programs offered to a pregnant student are both voluntary and comparable to the regular program.

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MAY A SCHOOL REQUIRE A PREGNANT STUDENT TO OBTAIN A DOCTOR'S PERMISSION BEFORE ALLOWING HER TO ATTEND SCHOOL LATE IN HER PREGNANCY IF THE SCHOOL IS WORRIED ABOUT THE STUDENT'S HEALTH OR SAFETY?

Schools cannot require a pregnant student to produce a doctor's note in order to stay in school or participate in activities, including interscholastic sports, unless the same requirement to obtain a doctor's note applies to all students being treated by a doctor. That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor, even when a student is in the later stages of pregnancy; schools should not presume that a pregnant student is unable to attend school or participate in school activities.

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CAN HARASSING A STUDENT BECAUSE OF PREGNANCY VIOLATE *TITLE IX*?

Yes. *Title IX* prohibits harassment of students based on sex, including harassment because of pregnancy or related conditions. Harassing conduct can take many forms, including verbal acts and name-calling, graphic and written statements, and other conduct that may be humiliating or physically threatening or harmful. Particular actions that could constitute prohibited harassment include making sexual comments or jokes about a student's pregnancy, calling a pregnant student sexually charged names, spreading rumors about her sexual activity, and making sexual propositions or gestures. Schools must take prompt and effective steps reasonably calculated to end pregnancy-related harassment, prevent its recurrence, and eliminate any hostile environment created by the harassment. The school violates *Title IX* if sexual harassment or other pregnancy-related harassment by employees, students, or third parties is sufficiently serious that it interferes with a student's ability to benefit from or participate in the school's program, and the harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.

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WHAT TYPES OF ASSISTANCE MUST A SCHOOL PROVIDE TO A PREGNANT STUDENT AT SCHOOL?

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. For example, a school might be required to provide a larger desk, allow frequent trips to the bathroom, or permit temporary access to elevators.

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IN ADDITION TO ALLOWING A PREGNANT STUDENT TO ATTEND CLASSES, DOES A SCHOOL NEED TO ALLOW HER TO PARTICIPATE IN SCHOOL CLUBS, CLASS ACTIVITIES, INTERSCHOLASTIC SPORTS, AND OTHER SCHOOL-SPONSORED ORGANIZATIONS?

Yes. *Title IX* prohibits a school from excluding a pregnant student from any part of its educational program, including all extracurricular activities, such as school clubs, academic societies, honors programs, homecoming court, or interscholastic sports. A pregnant student must also be eligible to hold leadership positions in these activities. In addition, a pregnant student may not be excluded from an activity that is part of the school's educational program even if the activity is not operated directly by the school. For example, an after-school program run by a local nonprofit agency that rents the school's facilities at a reduced rate and is advertised and promoted by the school may not exclude a pregnant student from enrolling.

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DOES A SCHOOL HAVE TO EXCUSE A STUDENT'S ABSENCES DUE TO PREGNANCY OR CHILDBIRTH?

Yes. *Title IX* requires a school to excuse a student's absences due to pregnancy or related conditions, including recovery from childbirth, for as long as the student's doctor deems the absences to be medically necessary. When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving her the opportunity to make up any work missed. A school may offer the student alternatives to making up missed work, such as retaking a semester, taking part in an online course credit recovery program, or allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave. The student should be allowed to choose how to make up the work.

If the school requires students with other medical conditions to submit a doctor's note, it may require the same from a pregnant student.

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DOES A SCHOOL NEED TO PROVIDE SPECIAL SERVICES TO A PREGNANT STUDENT?

Title IX requires a school to provide the same special services to a pregnant student that it provides to students with temporary medical conditions. For example, if a school provides at-home instruction or tutoring to students who miss school because of temporary medical conditions, it must do the same for a student who misses school because of pregnancy or childbirth.

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WHAT IF SOME TEACHERS AT A SCHOOL HAVE THEIR OWN POLICIES ABOUT CLASS ATTENDANCE AND MAKE-UP WORK?

Every school that receives federal financial assistance is bound by *Title IX*. Schools must ensure that the policies and practices of individual teachers do not discriminate against pregnant students. For example, a teacher may not refuse to allow a student to submit work after a deadline that she missed because of absences due to pregnancy or childbirth. Additionally, if a teacher's grading is based in part on class attendance or participation, the student should be allowed to earn the credits she missed so that she can be reinstated to the status she had before the leave. Schools should ensure that their teachers and staff are aware of and follow *Title IX* requirements.

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WHAT PROCEDURES MUST A SCHOOL DISTRICT HAVE IN PLACE RELATED TO DISCRIMINATION ON THE BASIS OF SEX, INCLUDING DISCRIMINATION RELATED TO PREGNANCY AND PARENTAL STATUS?

School districts must adopt and publish grievance procedures for students to file complaints of sex discrimination, including discrimination related to pregnancy or parental status. The grievance process should provide a mechanism for school districts to investigate and evaluate complaints and must provide for prompt and equitable resolution of complaints. School districts should make sure that their grievance procedures are widely distributed and understandable by students, parents, and employees.

A school district must also designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the law. The coordinator's responsibilities include overseeing all *Title IX* complaints, including those alleging discrimination against pregnant and parenting students, and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The *Title IX* coordinator must have adequate training in *Title IX* requirements and must be able to explain the operation of the district's grievance procedures. A school district must notify all students and employees of the name, office address, and telephone number of its *Title IX* coordinator(s).

Continued...

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WHAT PROCEDURES MUST A SCHOOL DISTRICT HAVE IN PLACE RELATED TO DISCRIMINATION ON THE BASIS OF SEX, INCLUDING DISCRIMINATION RELATED TO PREGNANCY AND PARENTAL STATUS?

In addition, a school district must publish a notice that it does not discriminate on the basis of sex in its educational programs or activities. The notice must also state that inquires concerning the application of *Title IX* and its implementing regulations may be referred to the *Title IX* coordinator or to OCR. The notice must be displayed prominently in each announcement, bulletin, catalog, or application form used in connection with the recruitment of students or employees. *Title IX* does not require a school district to adopt a policy specifically prohibiting discrimination against pregnant or parenting students, but OCR recommends that a school district's nondiscrimination policy makes clear that prohibited sex discrimination covers discrimination against pregnant and parenting students.

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HOW DO I ENFORCE MY RIGHTS UNDER *TITLE IX*?

If you wish to file a complaint of discrimination with OCR, you may use the online complaint form available at <http://www.ed.gov/ocr/complaintintro.html>. If filing your complaint online, you will need to provide an original signature to read, which may be done by printing and mailing the consent form linked at the bottom of the online complaint form.

Alternatively, you may send a letter to the OCR enforcement office responsible for the state in which the school is located. To find out which enforcement office is responsible for your state and to get contact information for it, call 1-800-421-3481 or check OCR's website at <http://www.kohsokoloff.ed.gov/CFAPPS/OCR/contactus.cfm>. In your letter, you should provide us with the name of the school or school district you are complaining about, the name of the person who has been discriminated against, a description of the events or actions that you believe constitute discrimination, and the date(s) on which the events or actions occurred. You should sign and date your letter and provide your contact information so we can reach you by phone, letter, and mail.

The complaint must be filed with OCR within 180 days from the date of the incident that is the basis of your complaint, although there may be limited exceptions that would allow additional time. You are not required to use a school district's grievance procedures before filing a complaint with OCR. Note that it is unlawful for a school to retaliate against an individual for bringing concerns about the rights of a pregnant and parenting student to a school's attention, making a complaint to OCR, or otherwise participating in an OCR investigation or proceeding.

You also may have the right to file suit in court claiming that a school violated *Title IX*. You need not file a complaint with OCR before filing a suit in court. If you file a suit in court, OCR will close any complaint you filed with OCR that involves the same allegations against the same school. OCR cannot represent you in court. Thus, if you wish to file a court action, you must do so through your own attorney or on your own through the court's clerk's office. You may *not* file your complaint with OCR within 60 days following the termination of the court proceeding if there was no decision on the merits or settlement of your complaint allegations.

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