



Coffee and Conversation: Title IX & Pregnancy Series

SESSION #1: Ensuring the Rights of Pregnant and Parenting Students

January 10, 2023

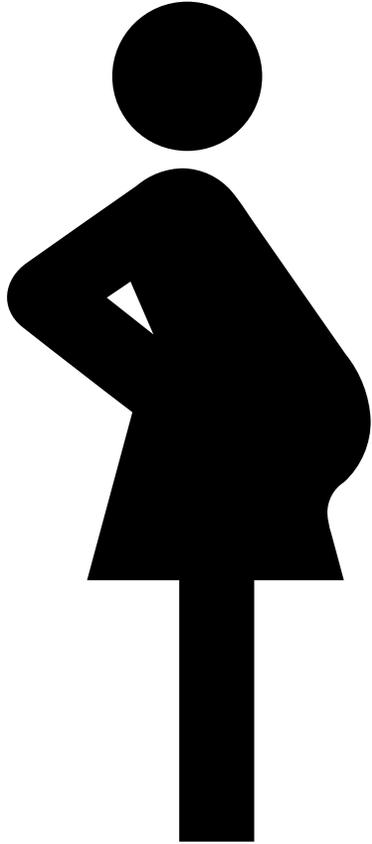
2pm-3pm Eastern

Presented by Adrienne Meador Murray





Where we are now....LOTS to discuss...



- Prior 2020 requirements
- 2020 Regs-Silent
- Enter Dobbs Decision
- Draft new 2023 Regs-Expansive and Proscriptive!
 - Students
 - Employees
- Intersections with other laws
- Audit Findings-Salt Lake City Case
- What should I do now?



Title IX of the Education Amendments of 1972

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.



(c) "Educational institution" defined

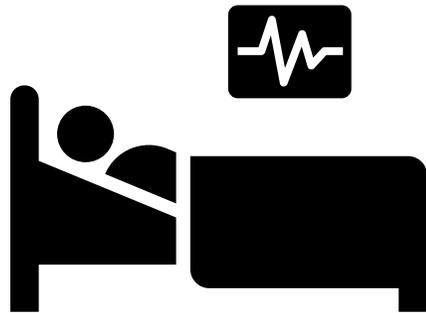
For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.



What Pre-2020 Regs Required...



- PREGNANT



- Childbirth
- False Pregnancy
- Recovery from any of these conditions



- The Title IX regulation also prohibits a school from applying any rule related to a student's parental, family, or marital status that treats students differently based on their sex.



34 CFR § 106.21(c): Admission and Recruitment

- Prohibition relating to marital or parental status . . .
 - Cannot treat differently
 - Cannot discriminate or exclude
 - Cannot treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery differently
 - Cannot make pre-admission inquiries



34 CFR § 106.39: Health and Insurance Benefits

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.



34 CFR § 106.40: Marital or Parental Status

(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.



34 CFR § 106.40(b)(1): Pregnancy and Related Conditions

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.



34 CFR § 106.40(b)(2): Pregnancy and Related Conditions

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.



34 CFR § 106.40(b)(3): Pregnancy and Related Conditions

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.



34 CFR § 106.40(b)(4): Pregnancy and Related Conditions

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.



34 CFR § 106.40(b)(5): Pregnancy and Related Conditions

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.



Post-Dobbs

- October 2022 Fact Resource
- Letter from Committee on Education and Labor
- Practical Considerations



FACT RESOURCE OCTOBER 2022

<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-pregnancy-resource.pdf>



U.S. Department of Education Office for Civil Rights

October 2022

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

The Department of Education's Office for Civil Rights (OCR) enforces Title IX of the Education Amendments of 1972 (Title IX), which 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"). These protections, which include a prohibition on discrimination based on termination of pregnancy, have been in place since 1975, when the Department's regulations implementing Title IX were first issued following Congressional review.* The regulations make clear that Title IX protects students and employees from discrimination based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom. Specifically, the regulations provide:



NPRM: Enhanced Protections for Pregnancy and Parenting

- Define Pregnancy and related conditions
- Expand 2020 to clarify pregnancy is form of sex discrimination
- Reporting and notification requirements
- Grievance process required
- Protections against retaliation
- Trainings specific to pregnancy



What do I do now?

