



Complying with the Title IX Requirements Regarding Pregnancy, Parenting, and Lactation

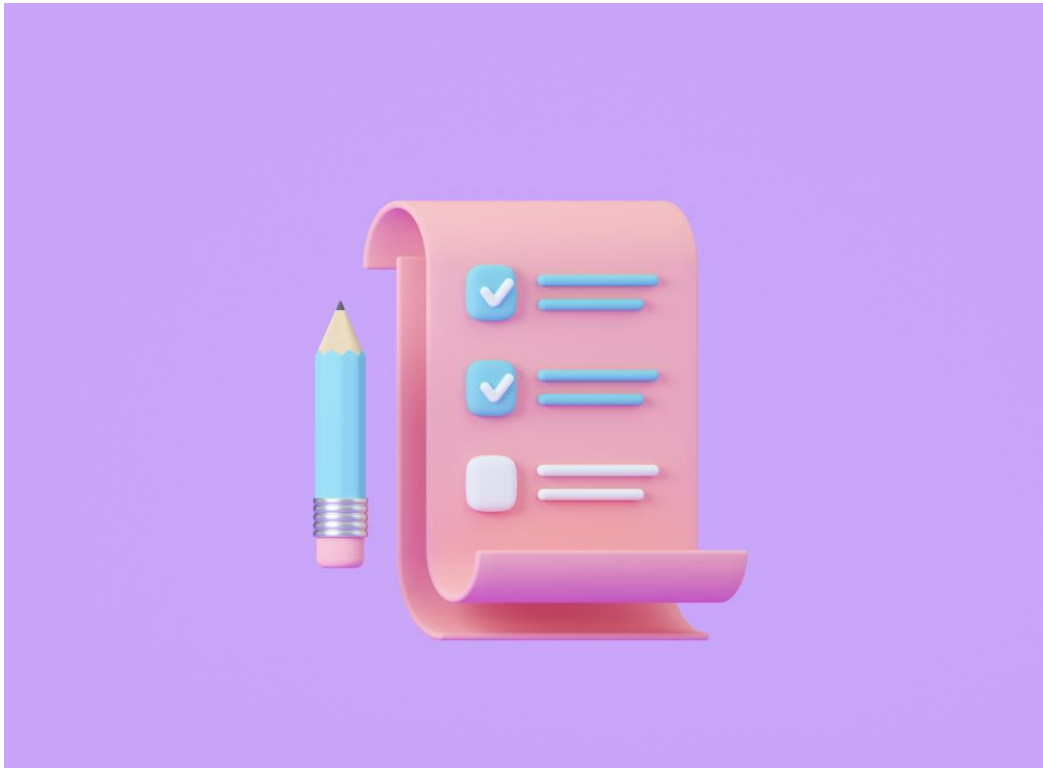
2nd Annual Mid-Year Conference

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Agenda



- Current Regulations and Resolution Agreements
- Post-Dobbs Guidance and Considerations
- 2022 Notice of Proposed Rulemaking

Current
Regulations
and
Resolution
Agreements



Where We are Now

- 34 CFR § 160
 - Students
 - Employees
- Salt Lake City Community College

STUDENTS



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.

EMPLOYEES



34 CFR § 106.57: Marital or Parental Status



- **(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.

34 CFR § 106.57: Marital or Parental Status



(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.

34 CFR § 106.57: Marital or Parental Status



(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.

34 CFR § 106.57: Marital or Parental Status



(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.

Takeaways



Must

- Allow continued participation
- Reasonable adjustments
- Excuse absences
- Leave/return
- Temporary medical condition as needed
- Protect against harassment
- Include in policies and procedures

Cannot

- Impact hiring
- Require Dr. note only for pregnancy
- List pregnancy as an infraction
- Exclude from programs/activities
- Remove financial aid

SALT LAKE
CITY
COMMUNITY
COLLEGE



Complaint



Facts

- Pregnant student asking for accommodations; encouraged to drop class; no documentation

Did not respond to claims of discrimination

- 106.40(b)(1)

Special Services

- 106.40(b)(4) and (5)

Did not excuse absences

- 106.40(b)(5)

504 of ADA

- 104.43(a)
- Pregnancy is not a disability, but related conditions are

Takeaways



Policies

- Non-discrimination Policy includes potential parental, family, or marital status, including pregnancy and related conditions

Procedures

- Include information regarding opportunity to file grievance based on pregnancy discrimination

Education

- Website and published materials
- Notice to the Community
- Trainings for the Community



So, what are you doing?

Post-Dobbs Guidance and Considerations



Post-Dobbs

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



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:

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

FACT RESOURCE OCTOBER 2022

Committee on Education and Labor



Accommodations

Religious
exemptions

Compliance and
challenges

Fact Resource



Discrimination and exclusion

- Cannot discriminate based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery

Medical and other benefits and services

- Treat same as any other temporary disability for the above

Leave policy

- Must provide leave for as long as necessary

Practical Considerations



Statistics

Sexual Assault

Athletics

Legal
Consequences



Campus Response?

2022
Notice
of
Proposed
Rulemaking



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

106.2: Definitions



Pregnancy or related conditions means:

- (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 their related medical conditions.

106.10: Scope



Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

106.40: Parental, Family, or Marital Status; Pregnancy or Related Conditions

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- (a) Status
 - Treat the same
 - (b) Pregnancy
 - Nondiscrimination
 - Provide information to student about TIXC
 - Actions to prevent discrimination
 - Provide information about the TIXC
 - Leaves of absence
 - Lactation space and time
 - Reasonable modifications
 - No doctor certifications permitted

Reporting Requirements

Employees **MUST** provide TIXC contact Information

TIXC MUST

- Provide student with options
- Allow for voluntary leave
- Lactation space
- Employees: break time and lactation space

But Wait, There is More . . .



Obligation to
report sex
discrimination

Grievance
process

Records kept
for 7 years



Campus Impact?



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