



Online Course

# Title IX Coordinator Training

**Module 9: Pregnancy and Parenting**

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# Pregnancy and Parenting: Submodules

1. What do the Title IX regulations say about “pregnancy or related conditions”?
2. How does the reasonable modification process work?
3. What other statutes should I be aware of related to pregnancy or parenting?



Submodule 1

**What do the 2024 Title IX regulations say about “pregnancy or related conditions”?**

# Pregnancy or Related Conditions

§ 106.2

**Pregnancy or related conditions** means:

- Pregnancy, childbirth, termination of pregnancy, or lactation;
- Medical conditions related to [above]; or
- Recovery from [above].

# Topic Areas

Sex Discrimination

Admissions and  
Employment

Notice and Response re:  
Students

Reasonable Modifications

Lactation Space



# Sex Discrimination

## § 106.10

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(b)(1)

A recipient must not discriminate in its education program or activity against any student based on the **student's current, potential, or past pregnancy or related conditions**.

## § 106.57(b)

A recipient must not discriminate against any **employee or applicant for employment on the basis of current, potential or past pregnancy or related conditions**.

# Pregnancy or Related Conditions

## § 106.21 - ADMISSIONS

- Treat pregnancy or related conditions the same as it treats a temporary disability or physical condition under the same policies
- Must not adopt any policy, practice, or procedure concerning the current, past, future, or potential parental, family or marital status that treats persons differently on basis of sex
- Must not make pre-admission inquiry into marital status (including Miss/Mrs. designation)

## § 106.57 - EMPLOYMENT

- Cannot discriminate against employees/applicants for employment on basis of current, potential, or past pregnancy or related conditions
- Comparable treatment to other temporary medical conditions
- Voluntary leaves of absence
- Access to lactation time and space

# Notice and Response: Receiving Notice

## § 106.40

Notice requirement re: pregnancy or related conditions - when an employee learns of a student's pregnancy or related condition, the employee must provide the TIXC's contact info and inform them that the TIXC can coordinate specific actions to prevent sex discrimination and ensure student's equal access



# Notice and Response: Responding (1 of 2)

## § 106.40

After receiving notice, a TIXC must:

- Notify the student of the school's obligations re: pregnancy and related conditions and provide school's notice of nondiscrimination
- Allow voluntary access to separate and comparable portion of program or activity
- Allow voluntary leave of absence (and reinstate to same academic/extracurricular status as pre-leave)

# Notice and Response: Responding (2 of 2)

## § 106.40

After receiving notice, a TIXC must:

- Comparable treatment to other temporary medical conditions
- Very limited situations where a certification to participate is permissible
- Provide the student with voluntary reasonable modifications to policies/practices/procedures
- Ensure availability of lactation space

# Lactation Space

## § 106.40(b)(3)(v)

- Must ensure access; must be a space other than a bathroom that is clean, shielded from view, and free from intrusion of others
  - State or local laws may require more specific features, such as a chair, flat surface, electrical outlet, running water, or refrigerated storage
- Under TIX, Institutions have discretion on size, number, and administration of lactation spaces
  - But consider "access" after typical business hours
- No supporting documentation required!

# Pregnancy and Parenting: Submodules

- ✓ 1. What do the Title IX regulations say about “pregnancy or related conditions”?
- 2. How does the reasonable modification process work?
- 3. What other statutes should I be aware of related to pregnancy or parenting?



**Stay tuned for  
submodules 2 and 3!**



## Submodule 2

**How does the reasonable  
modification process work?**

# Topics

Walk through of the reasonable modification process

Common areas for requests

Comparison to other “reasonable accommodation” processes



# Reasonable Modifications

## § 106.40(b)(3)(ii)(A)

"a recipient must make reasonable modifications to its policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the recipient's education program or activity; that each modification must be based on a student's individualized needs; that the recipient must consult with the student when determining what modifications are required; **and that a modification that a recipient can demonstrate would fundamentally alter the nature of its education program or activity is not a reasonable modification.**"

- If a student accepts the offered modification, it must be implemented. (§ 106.40)(b)(3)(ii)(B))



# Reasonable Modifications

§ 106.40(b)(3)(ii)(C)

Examples of reasonable modifications:

- **breaks to express breast milk;**
- **breaks to attend to pregnancy-related health needs and eat, drink, use restroom**
- **intermittent absences to attend medical appts**
- **changes in physical space**
- **elevator access**
- **access to online/homebound education**
- **changes in schedule/course sequence**
- **extensions; rescheduling exams**
- **allowing to sit/stand**
- **counseling**

# Reasonable Modifications

## Supporting documentation

A recipient **must not** require supporting documentation under §106.40(b)(3) unless the documentation is **necessary and reasonable** to determine the reasonable modifications. (89 FR 33789-90)

## Delegation/ Collaboration with Disability Services

TIXC can delegate but must maintain ultimate oversight of this process. A recipient may delegate to personnel to perform the duties, including to those who support persons with disabilities. (89 FR 33778)

# 2024 TIX Regs: Reasonable Modification Process

1

## TIXC receives notice

Remember employee just needs to provide TIXC contact information to student experiencing pregnancy or related conditions.

2

## Initial meeting between TIXC and student

Meeting offered to discuss student's requests, options for addressing any concerns, and resources for student. Focus on the student's expressed individualized needs.

3

## Evaluate modification requests

This will likely require communications with the home unit/department. Consider if and what documentation is necessary. Assess whether a fundamental alteration.

4

## Offer reasonable mod based on student's individualized needs

School can offer a single option, select options, or a range - as long as they are based on student's individualized needs.

5

## Implement IF accepted by student

Student retains ultimate decision of whether to suggest an alternative, accept the offered modification, or maintain status quo.

# Common Requests for Modifications

- excused absences for appts
- remote learning option
- rescheduling exams because of pregnancy-related absences
- periodic breaks to move, express milk, use restroom
- remaining in program while on bedrest
- clinical student requests to miss portions of their clinical rotation
- clinical instructors concerned about their pregnant students' ability to engage in physical tasks (or be exposed to chemicals)

# Reasonable Modifications under Title IX

## § 106.40(b)(3)(ii)(A)

- applies to students experiencing pregnancy or related conditions
- limited documentation permitted
- threshold: “fundamentally alter the nature of its education program or activity”



# Reasonable Accommodations under PWFA

## 29 CFR 1636

- applies to qualified applicants or employees who have known “limitations.”
  - limitations: physical or medical conditions related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.
- once employer is notified; engage in interactive process
- limited documentation permitted
- threshold: “undue hardship”



# Reasonable Accommodations under ADA/504

89 FR 31320

- applies to qualified individuals with a disability
- supporting documentation regarding the nature of the disability and the requested accommodation is permissible
- interactive process required
- threshold: undue hardship



**Train, train, and train some more.**







**Stay tuned for  
submodule 3!**



## Submodule 3

**What other statutes should I be aware of related to pregnancy or parenting?**

# Pregnancy and Parenting: Submodules

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# There's more?!

TITLE IX ✓

ADA/ 504

TITLE VII/ PREGNANCY  
DISCRIMINATION ACT

EEOC/ PREGNANT WORKERS  
FAIRNESS ACT

FLSA / PUMP ACT

FMLA



# Disability Law: ADA/504

- The ADA and Section 504 will apply where a pregnancy or childbirth-related concern substantially limits one or more major life activities (walking, sitting, standing, etc.)
- When this is the case, engage in the interactive process to determine whether the accommodations requested by the employee are reasonable.

**Remember...**

**A healthy pregnancy is *not* a disability.**

# Pregnancy Discrimination Act

- The PDA amended Title VII of the Civil Rights Act of 1964 to make employment discrimination on the basis of pregnancy, childbirth or related medical conditions constitute sex discrimination under Title VII.
- People who are pregnant or affected by pregnancy-related conditions must be treated in the same manner in all terms and conditions of employment as other applicants or employees with similar abilities or limitations.

# Pregnancy Discrimination Act

- Practical reminders:
  - employers must permit a pregnant employee to do the job for as long as the employee is capable
  - if you are providing temporary assistance to non-pregnant employees, plan on doing the same for pregnant employees
  - if a pregnant employee goes on leave, they are entitled to the return and accrual rights of other employees that go on leave

# Pregnant Workers' Fairness Act

- The PWFA requires all private and public sector employers with at least 15 employees, to make reasonable accommodations for known limitations related to the pregnancy, childbirth, or related medical condition of a job applicant or employee, unless doing so would impose an undue hardship.
- "Pregnancy, childbirth or related medical conditions" includes vaginal and Cesarean deliveries, miscarriage, abortion, postpartum depression, edema, placenta previa, and lactation



# Pregnant Workers' Fairness Act

- Reasonable accommodations may include-- flexible breaks; changing equipment/uniform; changing work schedules; telework; temporary reassignment; leave for health care appointments; temporary suspension of one or more essential functions of the job; leave for healthcare appointments; leave to recover from childbirth/other medical condition related to pregnancy/childbirth
- Employer is not required to seek medical documentation and should only do so when it is "reasonable under the circumstances"

# Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act

- Expands FLSA
- Provides covered employees who are nursing with reasonable break time to express milk for up to one year after the child's birth
- Requires employers to provide a space other than a bathroom, that is shielded from view, and free from intrusion to express breast milk.
- Applies to exempt & non-exempt employees
- Applies regardless of work site, including telework

# Family Medical Leave Act (FMLA)

- If the employee is eligible for FMLA leave, they may take up to 12 work weeks in a 12-month period for:
  - birth/adoption (even if no serious health condition)
  - to care for a spouse, child, or parent with a serious health condition
  - for a serious health condition that makes the employee unable to perform the essential functions of the job

# General Takeaways

- educate your faculty/supervisors to consult with TIXC when they are informed of a student/colleague who is experiencing pregnancy or a related condition and is seeking some changes to their work/school arrangements
- when on notice that a student or employee is experiencing pregnancy or a related condition and needs some adjustments made, make sure you understand the underlying needs
- the decision to take or leave an accommodation/modification is the individual's (not the institution's)

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**Thank you!**

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