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NACUA 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 parental status? And how has OCR interpreted these regulations?
- 2. What other statutes should I be aware of related to pregnancy or parenting?

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Submodule 1

What do the Title IX regulations say about pregnancy and parental status? And how has OCR interpreted these regulations?

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Title IX Framework

- Title IX prohibits sex discrimination "on the basis of sex"
- Pregnancy discrimination = sex discrimination under federal law
- Covers students, employees, applicants, and participants in education programs and activities

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This is not new.

- 1975 regulations first codified protections for pregnancy and parenting
  - Provisions have remained intact through 2020 regulations
- Consistent area of OCR enforcement
- Often misunderstood area of Title IX

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Key Regulation 34 CFR § 106.40

- Schools cannot discriminate against students based on pregnancy and related conditions:
  - Pregnancy
  - Childbirth
  - False pregnancy

- Termination of pregnancy
- Recovery from any of the above

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Students – Title IX

- 34 CFR § 106.21 (c)- admissions
- 34 CFR § 106.40
  - (a) marital or parental status
  - (b)(1) non-discrimination
  - (b)(2) health certifications
  - (b)(3) separate programs
  - (b)(4) temporary disabilities
  - (b)(5) leaves of absence

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Students - Admissions

- Recipient:
  - 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;
  - Shall not discriminate or exclude any person on the basis of pregnancy and related conditions, or establish or follow any rule or practice which so discriminates or excludes;
  - Shall treat disabilities related to pregnancy and related conditions in the same manner and under the same policies as any other temporary disability or physical condition; and
  - Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including Miss or Mrs.

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Students – Marital or Parental Status

- 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.
  - Rivertown School of Beauty, September 2019

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Students – Non-discrimination

- 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 and related conditions, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.
  - Salt Lake Community College, June 2022
  - Fresno City College, April 2018
  - Northeastern University, January 2020

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Students – Health Certificates

- 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.
    - Chicago State University, March 2018
    - Rivertown School of Beauty, September 2019

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Students – Separate Programs

- 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.

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Students – Temporary Disabilities (TIX)

- A recipient shall treat pregnancy and related conditions 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.
    - Salt Lake Community College, June 2022
    - University of Maine at Fort Kent, October 2020
    - Hill College, June 2017

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Students – Temporary Disabilities (ADA/504)

- Section 504 provides that a qualified person with a disability may not be excluded from participation in, be denied the benefits of, or otherwise subject 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 right and protections of other students with a temporary disability." Salt Lake Community College OCR Letter, June 2022.

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Students – Leaves of Absence

- 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 and related conditions 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 held when the leave began.
    - Salt Lake Community College, June 2022
    - Chicago State University, March 2018
    - Hill College, June 2017
    - Fresno City College, April 2018
    - Northeastern University, January 2019

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Employees – 34 CFR § 106.57

- Don't use potential marital, pregnancy, or family status (including being the breadwinner or not) of an employee or applicant as a reason for employment decisions.
- Can't discriminate against or exclude from employment on the basis of pregnancy and related conditions.
- Temporary disabilities from pregnancy and related conditions must be treated the same as employer treats any other temporary disability.
- If no leave with pay is available, offer leave without pay and reinstate employee to "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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Submodule 2

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

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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

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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.

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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

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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.

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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

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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.

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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"

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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"

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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

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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

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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
- Educate your coaches to consult with you when they are told a student-athlete is pregnant
- Partner with your disability services office so that they know that pregnancy is not always a disability and should not be treated as one
- 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 is the individual's (not the institution's)

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Thank you!

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