

FAQ RESOURCES

Currently, the disability services office coordinates our process for providing adjustments to pregnant students. Do we need to change the process, so that the Title IX Coordinator is doing this?

You do not need to change your current process, so long as the Title IX Coordinator is informed, consulted, and updated appropriately. The regulations give the Title IX Coordinator the option to delegate this responsibility.

No matter the process for providing adjustments, be careful to distinguish between *reasonable modifications* for pregnant students and *accommodations* through disability services. Under the regulations, the university should not ask for supporting documentation “unless the documentation is necessary and reasonable for the recipient to determine the reasonable modifications to make or whether to take additional specific actions.”

Is the institution obligated to provide reasonable modifications for childcare?

The Title IX regulations only cover pregnancy and related conditions, and do not extend to childcare. If a parenting situation related to pregnancy arises, it would be covered under the regulations; however, parenting situations not involving pregnancy, or related conditions would not be entitled to reasonable modifications. For example, if a student needs to leave class to pump breastmilk, that is always covered regardless of how old the child is or how recently the student was pregnant. On the other hand, if a student needs to miss class because their daycare closed early, this would not be a covered absence.

Please note, parenting is still a protected status under Title IX and an institution cannot discriminate and/or implement policies, practices, or procedures that treat parenting students differently from others.

A lot of the above language deals with pregnant students-- What about employees?

If an employee discloses their pregnancy to another employee, they do not need to provide the Title IX Coordinator’s contact information. That obligation only applies to students. If a student-employee discloses their pregnancy or related condition, the employee's obligation to share the Title IX Coordinator’s information will depend on the context in which the disclosure was made. If the student tells another employee in the course of their employment position, employee rules apply.

Employees in need of adjustments or modifications should be referred to Human Resources.

What happens when a pregnant student takes leave from their cohort or sequenced classes?

In general, pregnant students should be treated like other students who had to take leave for a

medical condition. The institution is not required to create new programs for students who take leave; however, efforts should be made for the student to be reinstated to the same academic status as when their leave began. The school may want to explore whether the student can take courses out of sequence and should ensure the student does not have to repeat courses.

Can pregnant students or students with pregnancy related conditions take classes remotely as a reasonable modification?

Remote class attendance may be a reasonable modification, but it must be assessed on a case-by-case basis. Each reasonable modification must be based on the student's individualized needs. An institution does not need to provide a requested reasonable modification if it would fundamentally alter the nature of its education program or activity. For example, remote attendance may be a reasonable modification for a lecture-style class that would not require the student's in-person participation; however, remote attendance would likely not be a reasonable modification for a lab that requires hands-on work that cannot be conducted outside of the classroom, as it would fundamentally alter the nature of the course.

Summary of Key Provisions:

Definition of Pregnancy and Related Conditions:

Section 106.2 of the Title IX Regulations defines pregnancy or related conditions as follows:

- (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 related medical conditions.

In the preamble to the regulations, the Department wrote, "The definition includes the full spectrum of processes and events connected with pregnancy. For many, needs related to pregnancy, childbirth, termination of pregnancy, lactation, recovery, and related medical conditions will be highly intertwined, and in many cases inseparable." The Department further acknowledged that there are many medical conditions related to pregnancy, childbirth, and termination of pregnancy. They declined to list out specific medical conditions to "avoid confusion or the implication that a specific medical condition may not be covered..."

Requirement of Nondiscrimination:

Section 106.4 of the Title IX Regulations prohibits discrimination on the basis of a person's parental, family, or marital status. It states:

- a) *Status generally.* A recipient must not adopt or implement any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.

This section further prohibits discrimination based on past, potential, or current pregnancy, childbirth, termination of pregnancy (including abortion, miscarriage, or stillbirth), lactation, recovery, and all related medical conditions. It reads in relevant part:

- (b) *Pregnancy or related conditions.*
 - (1) *Nondiscrimination.* 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.

In the preamble to the regulations, the Department provided some examples of pregnancy discrimination including: “stopping or reducing financial assistance on the basis of pregnancy or related conditions; subjecting students of one sex to additional or different requirements, such as requiring women athletes to sign contracts listing pregnancy as an infraction; or excluding students from participating in a recipient’s education program or activity, including extracurricular activities and athletics, on the basis of the student’s pregnancy or a related condition.”

Employee Responsibility to Provide Information:

Section 106.4(b)(2) of the Title IX Regulations creates a new requirement when a student (or someone who has a legal right to act on behalf of a student) informs an employee of their pregnancy or related condition (including childbirth, recovery, termination of pregnancy, lactation, and other related medical conditions as defined above). This section requires the employee to:

- 1) Promptly provide the student with the Title IX Coordinator’s contact information; and
- 2) Inform the student that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student’s equal access to the school’s education programs and activities.

Institutional Requirements:

Section 106.4(b)(3) lists specific actions schools must take to “promptly and effectively prevent sex discrimination and ensure equal access,” as follows:

(i) *Responsibility to provide information about recipient obligations.* The recipient must inform the student, and if applicable, the person who notified the Title IX Coordinator of the student’s pregnancy or related conditions and has a legal right to act on behalf of the student, of the recipient’s obligations under paragraphs (b)(1) through (5) of this section and § 106.44(j) and provide the recipient’s notice of nondiscrimination under § 106.8(c)(1).

(ii) *Reasonable modifications.* (A) The recipient must make reasonable modifications to the recipient’s policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the recipient’s education program or activity. Each reasonable modification must be based on the student’s individualized needs. In determining what modifications are required under this paragraph, the recipient must consult with the student. A modification that a recipient can demonstrate would fundamentally alter the nature of its education program or activity is not a reasonable modification.

(B) The student has discretion to accept or decline each reasonable modification offered by the recipient. If a student accepts a recipient’s offered reasonable modification, the recipient must implement it.

(C) Reasonable modifications may include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby;

counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.

(iii) *Voluntary access to separate and comparable portion of program or activity.* The recipient must allow the student to voluntarily access any separate and comparable portion of the recipient's education program or activity under paragraph (b)(1) of this section.

(iv) *Voluntary leaves of absence.* The recipient must allow the student to voluntarily take a leave of absence from the recipient's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. To the extent that a student qualifies for leave under a leave policy maintained by a recipient that allows a greater period of time than the medically necessary period, the recipient must permit the student to take voluntary leave under that policy instead if the student so chooses. When the student returns to the recipient's education program or activity, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

(v) *Lactation space.* The recipient must ensure that the student can access a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.

(vi) *Limitation on supporting documentation.* A recipient must not require supporting documentation under paragraphs (b)(3)(ii) through (v) unless the documentation is necessary and reasonable for the recipient to determine the reasonable modifications to make or whether to take additional specific actions under paragraphs (b)(3)(ii) through (v). Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to, when the student's need for a specific action under paragraphs (b)(3)(ii) through (v) is obvious, such as when a student who is pregnant needs a bigger uniform; when the student has previously provided the recipient with sufficient supporting documentation; when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the specific action under paragraphs (b)(3)(ii) through (v) is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

In the preamble, the department further discussed the above requirements stating, "Determining promptness in each case is a fact-specific inquiry that depends on a variety of factors, including the needs of the student, the substance and timing of the requested modification, and the characteristics of the education program or activity. A recipient should consider the importance to a student of accessing reasonable modifications to ensure full participation in the recipient's education program or activity, and whether the absence of a modification to a policy, practice, or procedure could impede a student's academic or educational progress. As explained in greater detail in the discussion of § 106.40(b)(3)(ii)(A), a recipient is not required to make a modification that the recipient can demonstrate would fundamentally alter the nature of its education program or activity."

Importantly, the preamble also states that the Title IX Coordinator "must be responsible for

coordinating the actions” under § 106.40(b)(3); however, provides clarification that the Title IX Coordinator can delegate specific duties to one or more designees.

Section 106.4(b)(4) discusses comparable treatment to other temporary medical conditions stating: “To the extent consistent with paragraph (b)(3) of this section, a recipient must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the recipient administers, operates, offers, or participates in with respect to students admitted to the recipient’s education program or activity. “

Finally, section 106.4(b)(5) is clear that institutions cannot require healthcare certification for a pregnant student to participate when it is not required for everyone:

A recipient must not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the recipient’s class, program, or extracurricular activity unless:

- (i) The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
- (ii) The recipient requires such certification of all students participating in the class, program, or extracurricular activity; and
- (iii) The information obtained is not used as a basis for discrimination prohibited by this part

