

Title IX and Pregnancy

In April 2024, the Department of Education released updated Title IX regulations which go into effect on August 1, 2024, clarifying some information related to Title IX's protection of individuals who are pregnant or have pregnancy-related conditions (pregnancy, childbirth, termination of pregnancy, lactation, and all related medical conditions or recovery). Title IX prohibits discrimination on the basis of sex in educational institutions that receive federal financial assistance. This includes discrimination against an individual because they are pregnant or have a pregnancy-related condition (see below).

The new regulations also created specific requirements for institutional employees to provide information when a student discloses their pregnancy, to ensure that the student has access to important information about their rights to continue their education. The information in this document is intended to be a resource for employees to understand their obligations under the regulations and highlight key factors for consideration.

Overview:

- Fresno State employees are now obligated to take specific steps when a student informs the employee that they are pregnant or have a pregnancy-related condition:
 - **Do:** Give the student the Title IX Coordinator's contact information.
 - **Do:** Tell the student that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure their equal access to the university's education program.
 - **Do not:** Report the student's pregnancy to the Title IX Coordinator. The regulations are intended to allow a pregnant student to choose whether to seek further assistance from the Title IX Coordinator.
- Title IX prohibits discrimination on the basis of sex including pregnancy and related conditions, including but not limited to:
 - Pregnancy and pregnancy-related illness (i.e., excessive morning sickness, fatigue, nausea, prenatal depression, etc.)
 - Miscarriage
 - Abortion
 - IVF Treatments
 - Childbirth, including recovery from childbirth
 - Lactation and lactation related conditions (i.e., mastitis)
 - Treatment for postnatal/postpartum depression
- This new requirement does not change an employee's existing reporting obligations under the Nondiscrimination Policy to report all instances of discrimination, harassment, and retaliation. If an employee becomes aware that a pregnant student is facing

discrimination or harassment, the information should be reported to the Title IX Coordinator following normal reporting procedures.

- Pregnant students are entitled to reasonable modifications for continued access to their education program or activity, which are based on the student's individualized needs. These modifications may include, but are not limited to:
 - Breaks during class to express breastmilk, use the restroom, or attend to other pregnancy or related needs;
 - Rescheduling of tests or examinations;
 - Access to an elevator or changes in physical space, such as a desk and chair large enough to accommodate a pregnant student;
 - Excusal for pregnancy-related absences;
 - To return to their academic program in the same status that they left.

Q & A:

Q: Do these regulations change the protections of Title IX?

A: Title IX has always prohibited pregnancy discrimination since its inception in 1972. The 2024 regulations have added clarification about what steps schools must take to ensure they are working to proactively prevent pregnancy discrimination on campus and responding to it when it occurs. This includes the new obligation for all employees to provide the Title IX Coordinator's information and a statement that the Title IX Coordinator can coordinate specific actions to students who disclose their pregnancy or related condition to employees.

Q: What do I need to do, if a student discloses pregnancy or a related condition to me?

A: First, provide the person with the Title IX Coordinator's name and contact information. This can be done in a variety of ways and your Title IX Office may have brochures, a specific website, or other information that you can keep on hand should the need arise to share it with a student. Second, inform them that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure their equal access to the university's education program. *For sample language, see "Sample Communications" below.*

Q: What triggers this responsibility?

A: The responsibility is triggered at the time a student discloses to any employee that they are pregnant or have a pregnancy-related condition. That responsibility includes to provide the student with the Title IX Coordinator's contact information and inform the student that the Title IX Coordinator can help ensure the student will have equal access to the university's education program and activity during their pregnancy and for pregnancy-related conditions. In the preamble to the Title IX regulations, the department wrote, "A student or a person who has a legal right to act on behalf of the student 'informs' an employee of a student's pregnancy or related conditions when the student or such person tells the employee that the student is pregnant or experiencing pregnancy-related conditions, either verbally or in writing. For example, if a student tells a teacher, 'I am pregnant and will be late to class on Wednesday due to a doctor's appointment,' the student has informed the teacher of the pregnancy and the teacher's obligations under § 106.40(b)(2) are triggered."

In summary, ALL employees are obligated to provide students with the Title IX Coordinator's information after a student (or their legal representative) discloses to the employee their

pregnancy or related condition.

Q: After speaking with the student, do I need to make a report to the Title IX Coordinator?

A: The short answer is, no; employees do not need to report information they learn about a student's pregnancy to the Title IX Coordinator. In the preamble to the Title IX regulations, the Department said that by providing the Title IX Coordinator's contact information, employees will "give students the information they need to *choose* whether to seek reasonable modifications, voluntary leave, or access to a lactation space as necessary, and will help prevent potential disruptions to their access to education." (emphasis added).

The exception to the above is when the student discloses to an employee that they are not only pregnant, but they have experienced conduct that could reasonably constitute sex discrimination. In cases where a student discloses that they have experienced sex discrimination (for example, being prohibited from participating in a university-sponsored event due to their pregnancy or being told to withdraw from a class and take it the following semester), the employee should report the allegations to the Title IX Coordinator as they would any other allegations of sex discrimination.

Q: What do I do if I am informed indirectly about a student's pregnancy or suspect that a student is pregnant?

A: The regulations only require you to provide the student with information about the Title IX Coordinator when the pregnant student or their legal representative has disclosed their pregnancy or related condition directly to you. In the preamble to the regulations, "...the Department clarifies that § 106.40(b)(2) does not require a school employee to approach a student unprompted, ask a student about their pregnancy or any other subject, or make assumptions about the student's needs or medical status." The Department further stated, "It is not enough for an employee to be informed indirectly, or by someone other than the student or their legal representative, or to merely suspect that a student may be pregnant or experiencing pregnancy-related conditions."

Sample communications:

The following sample scripts demonstrate some ways you can fulfill the above obligations when a student discloses pregnancy or a related condition.

Scenario 1:

Professor: Thank you for telling me. I'd like to give you some information. ____ is the Title IX Coordinator on our campus and this is their email address/ office location. (It may be helpful to ask the Title IX office for a brochure or business card to share with the student, or to pull up the website to show the student where to access more information). It is up to you whether you'd like to reach out to them, but I want you to know that it is the Title IX Coordinator's job to coordinate specific actions to prevent sex discrimination and ensure your equal access to the university's education program.

Student: I learned about Title IX in orientation, but I thought they deal with sexual harassment?

Professor: You're right. That is part of their job, but Title IX encompasses all discrimination on the basis of sex, including ensuring equal access to the university's programs for pregnant students.

Student: So, if I talk to the Title IX Coordinator, can they help me with classes I need to miss for doctor's appointments?

Professor: I don't know a lot of the specifics about how those requests work, but I know that

they can absolutely help you with requests for reasonable modifications to make sure you can fully participate in your classes. (It's okay to not know exactly what reasonable modifications may be available and to let the student know that the Title IX Coordinator is the best person to have this discussion with since this is an individualized determination based on the student's needs).

Scenario 2:

A professor receives an email from one of their students stating the following:

Dear Professor,

I can't come to class on Thursday because I will be having a medical procedure for an abortion. Please let me know if I can make up the quiz.

Sincerely,

Student

The professor responds:

Hi Student,

I appreciate you letting me know about your absence, it will be excused. Part of my responsibility as a Fresno State employee is to provide you with information for the Title IX Coordinator who can coordinate specific actions to prevent sex discrimination and ensure your equal access to the university's education program. I've included the Title IX Coordinator's email below and also a link to their website if you want to learn more about their role.

Don't worry about the quiz. We can schedule a make-up session for you when you are ready to return.

Take care,

Professor

Other considerations:

- Do you know where the nearest lactation space is? Parenting students must be given breaks to pump breast milk.
- Do you know who your Title IX Coordinator is and have their contact information on hand should a student disclose their pregnancy or related condition?
- Do you know how to file a report with the Title IX Office if someone tells you they've been subjected to pregnancy-related discrimination or harassment?

Additional Information

Summary of Key Provisions:

Definition of Pregnancy and Related Conditions:

The regulations contain specific definitions for “pregnancy and related conditions” which are an important starting point for understanding the breadth of a school’s obligations under Title IX. 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:

The regulations require institutions to prevent sex discrimination; ensure equal access to their education program and activity; and to promptly respond when reported sex discrimination occurs. Institutions have a clear obligation to respond to and investigate pregnancy discrimination on campus.

Pregnant students and those with pregnancy-related conditions have a right to equal access to their education. To that end, schools must provide pregnant students and students with related conditions with "reasonable modifications." Reasonable modifications will be based on a student's individualized needs, but can include things like:

- 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;
- Other changes to policies, practices, or procedures.

The Title IX Coordinator and other relevant administrators will work with faculty, the student, and staff to determine reasonable modifications that do not "fundamentally alter the nature" of the education program or activity.

In addition to the above, schools are also required to allow students voluntary access to any "separate and comparable portion" of their education program or activity; voluntary leaves of absence with reinstatement to the same academic status upon return; and access to clean, private lactation space that is not a bathroom.

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