

Department of Education Releases New Guidance on Pregnancy and Related Conditions

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The U.S. Department of Education's Office for Civil Rights (OCR) released [a fact resource](#) on October 4, 2022, reaffirming that Title IX of the Education Amendments Act protects students and employees from discrimination based on pregnancy and related conditions.

This publication was released four months after OCR announced resolution of its pregnancy discrimination investigation involving Salt Lake Community College. OCR had determined the college violated Title IX and Section 504 of the Rehabilitation Act of 1973 when it failed to engage a pregnant student in the interactive process and did not excuse pregnancy-related absences.

Noting that the regulations have prohibited discrimination based on pregnancy and related conditions since 1975, the OCR fact resource is designed to remind school communities (including students, faculty, families, and educators) that Title IX protects students and employees from discrimination based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from pregnancy. The resource also discusses issues such as discrimination, exclusion, medical and other benefits and services, and leave policies. Additionally, it notes that Title IX provides an exemption for educational institutions controlled by a religious organization if Title IX's nondiscrimination requirement is inconsistent with the religious tenets of such organization.

Examples of measures that an educational institution must take pertaining to students:

- Not discriminate against or exclude any student, or exclude any student from their education program or activity, including any class or extracurricular activity, based on a student's pregnancy or pregnancy-related condition
- Prohibit harassment based on pregnancy or pregnancy-related conditions
- Treat pregnancy and pregnancy-related conditions the same as any other temporary disability regarding medical benefits, services, plan, or policies
- Absent a leave policy, provide leave to pregnant students and students with pregnancy-related conditions for as long as the student's physician deems medically necessary
- Ensure its instructors' policies and practices do not discriminate against students because of pregnancy or pregnancy-related conditions
- If grading is based in part on class attendance or participation, allow students to earn missed credits and be reinstated to the student's pre-leave status

Examples of measures that an educational institution must take pertaining to employees:

- Not discriminate against or exclude from employment any employee or applicant on the basis of pregnancy or pregnancy-related condition
- Prohibit harassment based on pregnancy or pregnancy-related conditions
- Treat pregnancy and pregnancy-related conditions the same as any other temporary disability for all job-related purposes
- Absent a leave policy, treat pregnancy-related conditions as justification for a leave of absence without pay for a reasonable period of time

Educational institutions should consider reviewing their relevant policies, such as anti-discrimination and student/employee leave policies, to ensure alignment with legal protections related to pregnancy discrimination. Additionally, schools may consider revising any harassment prevention training to include information on the protections of pregnant students and students with pregnancy-related conditions under federal civil rights laws.

The Jackson Lewis Higher Education Group continues to analyze ongoing developments in this area and from the U.S. Department of Education, particularly medical sciences or other programs that involve increased risks, such as radiography, for pregnant students. Please contact a Jackson Lewis attorney with any questions about the fact resource and other Title IX-related developments, policies, and training.

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