#  **Pregnancy and Pregnancy under Title IX**

# **Slide 1:**

# PREGNANCY AND PARENTING UNDER TITLE IX

## ***Slide 2:***

## *March 2024*

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## Kateeka J. Harris has nearly two decades of experience in higher education including Title IX compliance, student conduct, multicultural program administration, and undergraduate admissions. Kateeka is a nationally recognized expert in Student Conduct and Title IX.

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# **TODAY’S SESSION**

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# **TODAY’S STUDENT**

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# **MORE ABOUT TODAY’S STUDENT**

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# **TITLE IX**

# **ITLE IX & PREGNANCY**

# **TITLE IX OBLIGATIONS**

# **Do you have a student leave policy? Does this student qualify?**

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## Treat pregnancy like a justification for a leave of absence for so long a period of time as deemed medically necessary by the student’s doctor.

# **"Temporary disability?"**

## 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.

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# TITLE IX

# ADJUSTMENTS UNDER TITLE IX

“Medically necessary” based on assessment and “note” from treatment provider for immediate implementation

* Furniture size, shape, position
* Remote learning/hybrid learning
* Breaks, access to food or hydration
* Ability to reschedule tests
* Excused absences specific to treatment and care
* Late submission of expected work
* Alternative make up work of similar or like nature
* Excused absences for parenting and medical care for infant or child

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# **Rules on Status**

## WHAT IT SAYS:

## 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.

## *34 CFR 106.40*

## WHAT IT MEANS::

## You can't require married women or mothers to drop out but allow married men or fathers to stay enrolled. That's different treatment on the basis of sex concerning parental, family, or marital status.

# **What about "parents" and "parenting?"**

## Cannot apply a rule about the actual or potential parental or marital status of a student, applicant, or employee that treats people differently based on sex.

## These are from 1975!

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# **AMERICANS WITH DISABILITIES ACT AND SECTION 504**

ADA

“…no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

*Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (1990).*

*Section 504*

"No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."

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# **ADA/504 AND PREGNANCY**

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# **PRIVACY CONSIDERATIONS**

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# **WHAT’S THE DIFFERENCE?**

Title IX affords adjustments and/or support measures while ADA/504 affords access and accommodation; each ensure equitable access to educational programs or activities.

Adjustments are time-limited for the period of the documented “medical necessity”

Supportive measures have no medical requirements ; they require only a request as related to a Title IX matter

Accommodations require the presence of a “qualified” disability and/or condition

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# **POLICY TO PRACTICE**

Policies account not only for regulation but provide for a process that is understandable and –

* Identify a single point of first entry (a proactive practice)
* Provide consistent information using the correct terms and definitions
* Support the student into the correct lane or lanes to begin
* Identify appropriate services supports

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# **PRACTICES THAT ACTUALIZE…**

## A one-stop type of service and support consistent information and centralized reporting

## Timely consultation/communication between involved offices

## Effective case management team approach (multiple offices)

## Regular communication between involved offices and the individual student

## Documentation at each stage of service

## Education, education, education to the campus community

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# **Recent ED Resolutions & Guidance**

## Recent Ed Resolutions & Guidance

## JUNE 2022

## Salt Lake Community College Resolution Agreement

## October 2022

## Pregnancy and Parenting Resource

## January 2023

## Troy University Resolution Agreement

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# **Lessons learned**

## Make reasonable responsive adjustments

## Provide accessible information for pregnant students

## Designate a central contact to centralize response

## Respond promptly to pregnancy discrimination complaints

## Engage in the interactive process

## Consider whether there is a temporary disability

## loyees on your rules and process

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# **Implementation**

## Review or create leave policy

## Update community trainings to include pregnancy+

## Create resources for pregnant students for the web, handbooks

## Remember student-employees

## Review policies to ensure inclusion of pregnancy+

## Outreach and collaboration with stakeholders

## Identify lactation spaces

## Get feedback from students with experience

## Coordinate with accessibility office

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# **What's next?**

## Anticipated changes once the 2022 Title IX proposed rules become final...

## One day...

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# **Proposed Regulations: Modify**

## For health needs; expressing milk

## **BREAKS**

## To attend medical appointments

## **ABSENCES**

## Course sequence, scheduling, extensions

## **ACADEMIC ADJUSTMENTS**

## Counseling

## **SERVICES**

## And supplies

## **PHYSICAL SPACE**

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# **Proposed Regulations: Notify**

## Let pregnant students know about the school's obligations:

## Prohibit sex discrimination, including sex-based harassment;

## Provide the student with the option of reasonable modifications;

## Allow access, on a voluntary basis, to any separate and comparable portion of the education program or activity;

## Allow a voluntary leave of absence;

## Ensure the availability of lactation space;

## Maintain grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination.

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# **Proposed Regulations: Space (& Time)**

## Break time for employees

## For expressing breastmilk or breastfeeding as needed

## "Reasonable modifications" for students may include time here

## Clean space that is not a bathroom

## Private: shielded from view, free from intrusion by others

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# **What about....**

## What about a space with an outlet?

## What if a student misses a lot of class time?

## Does this mean we have to let babies go to class or come to work?

# **Outstanding questions re: proposed rules**

## Department of Education could address the overlap between existing laws

## Records maintenance requirements for these very private records; open records laws

## Do we want schools tracking who is or was pregnant? And if their status changes?

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# **WHAT WOULD YOU DO IF…?** Scenario 1

Fatima is a senior in a very fast-moving BSN nursing program. She was elated to discover she is pregnant, but complications have developed, and she is undergoing tests. Fatima has completed most of her senior practical placement, only two weeks remain before she is able to graduate. Her medical provider has encouraged a change in diet and bed rest as soon as possible.

Fatima goes to the Clinical Site Coordinator (not an employee of the university but of the hospital, a university partner) to request the ability to complete her practical hours early (several days in a row to equal the remaining 4 days of required practical). Fatima’s request is denied and the Site Coordinator shares that when she was in school, she had a miscarriage, took care of in the bathroom and “just soldiered on.”

Further, the Site Coordinator contacts the Practical Coordinator at the university citing Fatima’s unprofessional conduct in the situation and requests Fatima be removed and required to repeat the entire term.

Fatima, believing she has a right to 504 accommodations comes into the Accessibility Office and discloses her situation to be told that pregnancy is not a qualifying condition. Somehow, Fatima ends up at the Dean of Student Office. What might the Dean do to help?

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# **WHAT WOULD YOU DO IF…?** Scenario 2

Jon, an average student in a challenging program, approaches his professor early in the semester and requests to have the ability to make up the next 3 class sessions because, he is happy to announce, he is “having a baby with his male partner.”

The professor laughs, asks Jon if he is pulling a prank on him, and is then is alleged to have replied: “Gay men don’t have babies” before he denies Jon’s request.

Jon immediately goes to the Chair of his program in engineering and is told by the Chair that the Chair cannot overrule the professor, who is “captain of his course’s ship.” The Chair also cites the request would be a fundamental alternation of the curriculum and he is concerned this change would be precedent setting.

Upset and disheartened, Jon goes to his academic advisor and requests a retroactive withdrawal from the course. Jon is willing to take the financial hit but is not going to miss the birth of his infant daughter. The advisor is irate and soon after Jon leaves, tells another colleague, who discourages any type of reporting because the professor in question is a “big deal” in the endowment world of the university. You get wind of this issue at a meeting regarding another issue within the same department.

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Troy University, AL OCR# 04-21-2060 (2023) Failure to engage and offer adjustments

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04212060-a.pdf>

Salt Lake Community College OCR# 08-22-2021 (2022) Policy and practices leading to forced drop

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08222021-b.pdf>

University of Maine at Fort Kent OCR# 01-17-2317 (2020) Policy, procedures and qualified personnel

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01172317-a.pdf>

Northeastern University OCR# 01-19-2158 (2019) Failure to provide adjustments

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01192158-a.pdf>

Rivertown School of Beauty OCR# 04-15-2363 (2019) Dismissal at 7 months based on pregnancy based on policy that violated Title IX

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04152363-a.pdf>

California State University East Bay OCR# 09-18-2245 (2017)  Pregnancy related hospitalization

[https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09182245-a.pdf](http://chttps:/www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09182245-a.pdf)

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# Questions?

# **THANKS FOR JOINING US!**