Coffee and Conversation: Title IX & Pregnancy Series

SESSION #2: Creating a Campus Lactation Policy

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2pm-3pm Eastern

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Title IX of the Education Amendments of 1972

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

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Pregnancy and Other Related Conditions

Title IX specifically prohibits discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.

Title IX regulation also prohibits a school from applying any rule related to a student's parental, family, or marital status that treats students differently based on their sex. Under Title IX, it is illegal for schools to exclude a pregnant student from participating in any part of an educational program.

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The Current Rights of Students: A Review

A school must…

- Allow a student to continue participating in classes and extracurricular activities even though they are pregnant. This means that a student can still participate in advanced placement and honors classes, school clubs, sports, honor societies, student leadership opportunities, and other activities, like after-school programs operated at the school.
- Allow the student to choose whether they want to participate in special instructional programs or classes for pregnant students. A student can participate if they want to, but the school cannot pressure them to do so. The alternative program must provide the same types of academic, extracurricular and enrichment opportunities as your school's regular program.

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- Allow you to participate in classes and extracurricular activities even though you are pregnant and not require you to submit a doctor's note unless your school requires a doctor's note from all students who have a physical or emotional condition requiring treatment by a doctor. Your school also must not require a doctor's note from you after you have been hospitalized for childbirth unless it requires a doctor's note from all students who have been hospitalized for other conditions.

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- Provide you with reasonable adjustments, like a larger desk, elevator access, or allowing you to make frequent trips to the restroom, when necessary because of your pregnancy.

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Excused Absences and Medical Leave – A School MUST:

- Excuse absences due to pregnancy or childbirth for as long as your doctor says it is necessary.
- Allow you to return to the same academic and extracurricular status as before your medical leave began, which should include giving you the opportunity to make up any work missed while you were out.
- Ensure that teachers understand the Title IX requirements related to excused absences/medical leave. Your teacher may not refuse to allow you to submit work after a deadline you missed because of pregnancy or childbirth. If your teacher's grading is based in part on class participation or attendance and you missed class because of pregnancy or childbirth, you should be allowed to make up the participation or attendance credits you didn't have the chance to earn.
- Provide pregnant students with the same special services it provides to students with temporary medical conditions. This includes homebound instruction/at-home tutoring/independent study.

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Lactation is Tied to Sex

"Because lactation is a condition tied to sex and gender, Title IX protects people from discrimination on the basis of lactation. No student should face harassment or other discrimination as a result of their lactation status. And, to avoid treating lactating students less favorably than others in violation of the law, educational institutions must meet the needs of lactating students at least to the extent they meet the health needs of other students. For example, if professors permit students to take breaks when necessary to check blood sugar, use the restroom, or address another health condition, they should do the same for lactating students."

The Pregnant Scholar, Fact Sheet, Protections for Lactating Students

https://thepregnantscholar.org/wp-content/uploads/FACT-SHEET-Breastfeeding.pdf

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Breastfeeding and Lactation: ED “Encourages”

- The U.S. Department of Education **encourages schools** to provide lactating students with a private room to breastfeed or pump.
- Current Title IX guidance offers little guidance on the specifics of lactation rooms for students.
- That said, if a student’s ability to get an education is limited because there is no suitable space for you to pump, that is likely a violation of Title IX.
- Additionally, if other students are given access to private space, refrigerators, or electrical outlets to address non-pregnancy/childbirth-related medical conditions, you should be given the same special services to address your lactation-related needs.

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Time Away from Class: What is Reasonable?

- Each mom and baby are different. Most examples cite between 15-25 minutes to pump; however, location of the lactation space (travel to and from) must also be considered.
- If a student must miss class to nurse or pump, their absence should be excused, and they should not be penalized for their time away. This means that a student's grade cannot be lowered due to poor attendance, they must be given the ability to make up any work missed, and they must be able to get the information you missed as well.
- If a student has difficulty getting excused absences, they may need to provide a doctor's note stating that it is medically necessary for them to pump on a certain schedule.

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Developing a Campus Lactation Policy: Key Components

- Who does the policy apply to?
  - Employees
  - Students
- Cite Federal law protections, including time to pump
- Cite State law protections, if applicable, including time to pump
- Provide locations of on-campus lactation spaces
- Procedure for accessing spaces
- Explanation of cleanliness, no intrusion, access to water, electricity, etc.
- Explain the rights of lactating persons
- Explain the responsibilities the schools has agreed to
- Discuss the storage of expressed milk

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Time Away

- An institution must accommodate any lactation-related impairments, such as serious infections, as they would other medical conditions.

Examples- Missed Class

- *Jodi has a breast infection due to lactation. She misses class for three class meetings. She explains to her professor that she has been ill with a breast infection and unable to come to school. Jodi's professor doesn't require doctor's notes from any student who miss work due to illness and allows Jodi to make up her missed assignments without a note and without penalty.*

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Example: Missed Exam

Jasmine misses class for 30 minutes to pump her breastmilk. Her faculty member explains that a percentage of her grade is participation and so she cannot be awarded full credit if she is not present even though she is pumping.

This would be a violation of Title IX. Jasmine must be permitted to make up missed work or provided with an alternative assignment to allow her to receive the participation credit.

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Example: Pumping In Class

Deidra has to pump her breastmilk while at school. She doesn't like to miss lecture, and uses a portable, near silent pump that fits to her body under her clothes to pump. Another student complains when he learns what Deidra is doing. The faculty member tells Deidra that she will have to leave class to pump her milk because it is "unhygienic." Deidra disagrees and refuses.

Deidra is correct. Deidra's medical device is no different than a glucose monitoring system or other small, worn medical device. It doesn't interrupt the class and is self-contained, meaning nothing from the environment is entering or exiting the device into the open. Deidra cannot be made to miss her class lecture because she is lactating.

Examples-Time to Pump

- *Marissa's baby is 12 days old and eats every two hours. While Marissa is at school, her doctor told her to pump every two hours so her body can continue producing on the baby's schedule. Marissa has a 2 hour and 45-minute lab on Tuesdays and must pump during lab. Marissa explains to her professor what her doctor told her. Her professor explains that any student who needs to miss class time would need to present a doctor's note, or the absence would be unexcused. Marissa should bring in a doctor's note so she may be excused.*

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Example: Breast Milk Expression and Storage

Sylvie's school doesn't have a dedicated lactation space for students, only for employees. She is currently using the restroom or going to her car to pump. She is ok with that because she doesn't feel comfortable in using the faculty pumping space. She does, however, wish to use the faculty refrigerator to store her expressed breast milk so it can be preserved while she is at school. She asks her Dean if she can use the fridge and they allow her to as long as she labels her bags and stores the milk according to their guidelines (no milk left overnight, all milk in same larger storage container, etc.)

This passes the Title IX vibe check for now (although we need to add a dedicated student space that is NOT a restroom…)

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Sample Campus Lactation Policies

- UCONN, https://policy.uconn.edu/2016/12/21/lactation-policy/
- University of Northern Colorado (see page 146), https://www.unco.edu/trustees/pdf/university_regulations.pdf
- Johns Hopkins University, https://hr.jhu.edu/benefits-worklife/family-programs/new-expecting-parents/
- Virginia Commonwealth University (brand new!): https://vcu.public.doctract.com/doctract/documentportal/08DA3DA7F4225988911BBD7F09A2D983
- North Dakota State University: https://www.ndsu.edu/equity/resources/pregnancy_lactation/
- The Pregnant Scholar: https://thepregnantscholar.org/
- Fun Reading: https://www.elle.com/culture/career-politics/g28143/the-best-lactation-rooms-across-america/

What's Coming?
NPRM: Enhanced Protections for Pregnancy and Parenting

- Define Pregnancy and related conditions
- Expand 2020 to clarify pregnancy is form of sex discrimination
- Reporting and notification requirements
- Grievance process required
- Protections against retaliation
- Trainings specific to pregnancy

What do I do now?

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