

**THE
INTERSECTION
OF TITLE IX &
DISABILITY
LAW:**

*Collaborations at the
Crossroads*

MEET THE PRESENTERS

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TODAY'S ROAD MAP

- ❖ Overview of Title IX and Section 504/ADA
- ❖ The Role of Title IX & Section 504/ADA Coordinators
- ❖ Pregnant and Parenting Students
- ❖ Accommodations and Supportive Measures
- ❖ Q&A

NO PERSON IN THE UNITED STATES SHALL, ON THE BASIS OF SEX, BE EXCLUDED FROM THE PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY EDUCATION PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Title IX of the Education Amendments of 1972

THE TITLE IX LANDSCAPE: WHAT DOES TITLE IX COVER?

- Title IX applies to schools, colleges, universities, local and state educational agencies, which includes approximately 17,600 local school districts, over 5,000 postsecondary institutions, and charter schools, for-profit schools, libraries, and museums.
- Some key issue areas in Title IX are:
 - Recruitment, admissions, and counseling
 - Financial assistance
 - Athletics
 - Sex-based harassment, which includes sexual assault and other forms of sexual violence
 - Treatment of pregnant and parenting students
 - Treatment of LGBTQI+ students
 - Discipline
 - Single-sex education
 - Employment

THE TITLE IX LANDSCAPE: NOW...

- Prohibits Discrimination (different treatment) on the basis of sex
- Does not define “sex”
- Requires a recipient to promptly respond in a manner that is not deliberately indifferent when it has “actual knowledge” of sexual harassment
- Requires a Complainant or Title IX Coordinator to file a Formal Complaint to initiate an investigation or informal resolution into sexual harassment
- Requires recipient to treat Complainants and Respondents equitably in its provision of supportive measures and implementation of grievance process
- Defines Sexual Harassment and Education Program and Activity in narrow manner
- Requires a grievance process that includes a live hearing with cross-examination for postsecondary institutions
- Only references disability as it relates to pregnancy and temporary disability



2022 NOTICE OF PROPOSED RULEMAKING

- Department of Education published a Notice of Proposed Rulemaking on June 23, 2022
- Published in the Federal Register on July 12, 2022
- Comment period closed on September 12, 2022
- Proposes new protections for pregnant and parenting students, broadens definitions of sexual harassment, and modifies policies for the process of responding to sexual harassment
- Department of Education received 235,816 comments

THE TITLE IX LANDSCAPE: ... AND (POSSIBLY) LATER

- NPRM defines discrimination on the basis of sex to include discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity. *See* NPRM § 106.10
- NPRM re-defines Sexual Harassment to Sex-Based Harassment and modifies definitions. *See* NPRM § 106.2
- NPRM *still* requires Title IX Coordinator to be trained. *See* NPRM § 106.8(d)(2) & (4).
- NPRM requires the Title IX Coordinator to monitor the education program or activity for barriers to reporting information about conduct that may constitute sex discrimination under Title IX. *See* NPRM § 106.44(b).
- In the Grievance Process, NPRM **allows** the decisionmaker to be the Title IX Coordinator or Investigator and **does not** require a hearing for postsecondary institutions. *See* NPRM § 106.45(b), 106.46.

THE TITLE IX LANDSCAPE: ... AND (POSSIBLY) LATER

- NPRM adds specific references to disability:
 - Defines a *Student with a disability* as “a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), 20(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3) See NPRM § 106.2
 - If a complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator may, as appropriate, consult with the individual or office that the recipient has designated to provide support to students with disabilities to help comply with Section 504.” See NPRM § 106.8(e), 106.44(g)(7)(ii)
- NPRM provides clarification about pregnancy and temporary disability

NO OTHERWISE [QUALIFIED INDIVIDUAL WITH A DISABILITY] IN THE UNITED STATES...SHALL, SOLELY BY REASON OF [THEIR 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.

Section 504 of the Rehabilitation Act of 1973

APPLICABLE LAW AND POLICY

- Section 504 (1973)
- The Americans with Disabilities Amendments Act (2008)
- State and local disability laws and ordinances
 - But then there are...other federal and state civil rights laws regarding race, national origin, sex, etc.
 - And there are your institution's values, often rooted in DEI, belonging, and/or justice principles!

THE DISABILITY LAW LANDSCAPE

- May 6, 2022 Department of Education announced intent to amend the regulations implementing Section 504 of the Rehabilitation Act of 1973
 - Solicit public comments very broadly – simply asked for written comments on how best to improve the current regulations
 - A number of groups have submitted comments to ED
 - AHEAD
 - Former OCR employees
 - American Occupational Therapy Association
 - Association of Research Libraries
 - Next steps will be publishing proposed rules for comment in the Federal Register (TBD)



**COORDINATOR
ROLES**

TITLE IX COORDINATOR

- Every recipient (e.g. K-12 School District, College, University) **MUST**
 - Designate **AT LEAST ONE** employee to coordinate its responsibilities under Title IX
 - **NOTIFY** applicants for admission and employment, students, parents, employees, and unions/professional organizations of the Title IX Coordinator's contact information (name or title, office address, email address, and telephone number)
 - **PROMINENTLY DISPLAY** the contact information for the Title IX Coordinator and its Title IX Policy on its website, if any, and in each handbook or catalog
 - **ENSURE** Title IX Coordinators, investigators, decision-makers and informal resolution facilitators are trained on the definition of sexual harassment, the scope of the education program and activity, how to conduct an investigation and grievance process, and how to serve impartially.

See 34 C.F.R. § 106.8, § 106.45.

DISABILITY COORDINATOR

- Every recipient (e.g. K-12 School District, College, University) that employs 15 or more persons **MUST**
 - Designate **AT LEAST ONE** person to coordinate its efforts to comply with Section 504
 - Include identification of the 504 Coordinator in its notices
 - Adopt and publish grievance procedures

See 34 C.F.R. § § 104.7, 104.8

- A public entity that employs 50 or more persons **MUST**
 - Designate **AT LEAST ONE** employee to coordinate its efforts to comply with ADA
 - Make available the name, office address, and telephone number of the designated employee
 - Adopt and publish a complaint procedure

28 C.F.R. § 35.107

WHAT DOES A COORDINATOR *ACTUALLY* DO?

- May be dependent on the population served – different coordinator for employees v. students
- Oversee the recipient's compliance
- Implement accommodations or supportive measures
- Implement the grievance procedure, complaint process, etc.
- Provide expertise on the relevant law to other offices
- Collaborate with various stakeholders – Title IX & Disability Services



**PREGNANCY &
PARENTING
ACCOMMODATIONS:
*WHO'S ON FIRST?***

2022 OCR DECISION: SALT LAKE CC

OCR investigated whether:

- Professor encouraged a student to drop a course because she was pregnant and told student that she needed to accept responsibility for her pregnancy; and Title IX Coordinator did not promptly and equitably respond to a report of the Professor's conduct;
- College did not engage in an interactive process with the Complainant to provide her with accommodations during her pregnancy in the same manner that the College provides to students with temporary medical conditions; and
- College did not excuse the Complainant's pregnancy-related absences and did not allow her to submit work after pregnancy-related absences.

2022 OCR DECISION: SALT LAKE CC

OCR's Factual Findings:

- Student was enrolled in a program with an attendance policy that did not allow lateness (or tardiness) in more than 20% of classes for each course.
- Student experienced nausea throughout the day and requested modification of policy and deadlines for assignments.
 - Professor: "health is more important than a class"
- Student contacted Disability Resource Center
 - DRC: "pregnancy falls under Title 9"
- Student contacted Title IX Coordinator about request for adjustment and professor's comments
 - Title IX Coordinator: adjustments possible "with limits" but request constituted a fundamental alteration; alternatives not provided to Student

2022 OCR DECISION: SALT LAKE CC

OCR's Conclusions:

- The College failed to **respond promptly and equitably** to the student's complaint of pregnancy discrimination, in violation of Title IX.
- The College failed to **engage in an interactive process** with the student to **determine the appropriate special services and/or academic adjustments** to provide in light of her pregnancy, in violation of Title IX.
- The College failed to engage in an interactive process with the student and failed to **consider whether** the student's pregnancy caused a **temporary disability requiring academic adjustments**, in violation of Section 504.
- The College failed to **excuse the student's absences** related to pregnancy, **provide her the opportunity to make up work** missed due to absences related to pregnancy, **or provide alternatives** to making up missed work at a later date, in violation of Title IX.

2022 OCR DECISION: SALT LAKE CC

Requirements of the Resolution Agreement:

- **Policies and procedures**
 - Notice of Non-Discrimination (revise to include pregnancy and related conditions, parental/familial/marital status)
 - Grievance Procedures (revise to include information about opportunity to file pregnancy discrimination grievances)
- **Title IX and Disability Resource Center webpages**
 - Information about rights of pregnant and parenting students
 - Information about process for requesting accommodations/adjustments and addressing denials of requests
 - Information about fundamental alteration process
- **Training** for faculty member, Title IX staff, and Disability Resource Center staff
- Individual remedies

OCR'S CURRENT GUIDANCE

- June 2013 *Dear Colleague Letter* and Pamphlet on *Supporting the Academic Success of Pregnant and Parenting Students under Title IX of the Education Amendments of 1972*
- October 2022 Fact Sheet: *Discrimination based on Pregnancy and Related Conditions*
 - Discrimination and exclusion
 - Medical and other benefits and services
 - Leave policy

More to come with proposed changes to the Title IX and/or Section 504 Regulations???



**ACCOMMODATIONS
& SUPPORTIVE
MEASURES**

SET THE STAGE FOR SUCCESS

- Title IX and Section 504/ADA Coordinators (and their designees) must effectively coordinate and regularly communicate
- Develop, prominently publish, and consistently implement clear processes for requesting disability accommodations and/or “Title IX accommodations”/supportive measures
- Educate community members (faculty/staff/students) on the differences between the processes—and the roles of the Title IX and 504/ADA Coordinators
- Develop a feedback loop through advocacy/ally committees, online feedback forms, surveys, etc.
- Periodically update processes as necessary and appropriate

WHERE TO GO FOR HELP?

DISABILITY SERVICES

- Register as a student with a disability
- Engage in the interactive process
- Auxiliary aids and academic adjustments (i.e., “reasonable accommodations”) in the classroom
- Modifications to policies and procedures
- Accommodations for extracurricular activities (e.g., debate club, athletics)
- Pregnancy (or other temporary disability) accommodations
- Informal *voluntary* process for review of approved accommodations

TITLE IX/EQUITY OFFICE

- Supportive measures (e.g., extension of time, connection to counseling, etc.) with or without filing a Formal Complaint
- Pregnancy (and related conditions) and parenting accommodations
- Report concerns/file a Formal Complaint about failure to accommodate or other discrimination/harassment/retaliation related to a protected characteristic (e.g., sex, disability, etc.)
- Learn about your rights

BEST PRACTICE: TITLE IX RESOLUTION PROCESS



TITLE IX COORDINATOR

- Check with Disability Services as to whether parties are registered as students with disabilities (do not include party role or details)
- Include in Notices of Investigation/Hearing, etc. a statement advising parties to request reasonable accommodations for a disability, as needed



TIX & DISABILITY SERVICES

- Both parties request disability-related accommodations
- Title IX and Disability Services consult to identify appropriate accommodations



POSSIBLE OUTCOMES

- Written questions in advance
- Time to process before answering questions
- Presence of an emotional support animal
- **IMPORTANT NOTE:** do not have to be registered with Disability Services to receive accommodations

SAMPLE NOTICE LANGUAGE

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PROCEDURE FOR REQUESTING REASONABLE ACCOMMODATIONS

IF YOU ARE AN INDIVIDUAL WITH A DISABILITY AND NEED A REASONABLE ACCOMMODATION IN ORDER TO FULLY AND EFFECTIVELY PARTICIPATE IN THE UNIVERSITY'S RESOLUTION PROCESS, PLEASE NOTIFY ME AS SOON AS POSSIBLE. I WILL WORK WITH THE [DISABILITY SERVICES OFFICE] TO ENSURE REASONABLE ACCOMMODATIONS ARE PROVIDED. WHILE SUCH REQUESTS MAY BE MADE AT ANY POINT DURING THE PROCESS, INDIVIDUALS ARE STRONGLY ENCOURAGED TO MAKE THEIR REQUESTS KNOWN AT THE EARLIEST POSSIBLE TIME AND, IF POSSIBLE, FIVE BUSINESS DAYS IN ADVANCE OF AN ANTICIPATED ACTIVITY WHERE THE ACCOMMODATION IS NEEDED (SUCH AS AN INTERVIEW OR HEARING).

WHAT ARE TITLE IX SUPPORTIVE MEASURES?

- Non-disciplinary, non-punitive individualized services offered as appropriate, as *reasonably available*, and without fee or charge
- Designed to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment
- Available to a student whether they choose to file a Formal Complaint or not
- Can look a lot like disability-related accommodations (e.g., extended time, remote participation, etc.)—**AND...**
- Like disability accommodations, if they fundamentally alter a program or lower academic standards, they are not *reasonably available* and need to consider alternatives—**BUT...**
- The documentation requirements are not as prescriptive as they may be for a student with a disability
- Beneficial for Title IX to consult with Disability Services about range of possible options

WEB PAGE EXAMPLE



Office for Equity, Equal Opportunity, and Title IX

Get Help ▾ Policy and Reporting Options ▾ Training and Other Resources ▾ Employment Equity About Us What Are My Choices?



Student Supportive Measures

All About Student Supportive Measures

1. What are supportive measures?

Supportive measures are non-disciplinary, non-punitive, individualized support services available to students who believe they may have currently (or in the past) experienced discrimination, harassment, or retaliation related to one or more protected characteristics, such as race, gender, disability, etc.

2. What is their purpose?

They are designed to address a student's safety and well-being as well as to ensure that, despite what students may be experiencing, their continued access to University programs and activities is preserved or restored.

EEO-TIX Partnership with Keck Medicine of USC

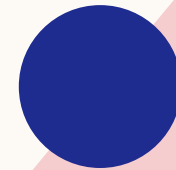
What Are My Choices?

Student Supportive Measures

Confidential and Private Resources

COMMON SUPPORTIVE MEASURES

- Academic accommodations
- Housing accommodations
- No contact directives
- Access to counseling
- Schedule modifications
- Workplace modifications
- Any other reasonably available measure



PREGNANCY ACCOMMODATIONS ³¹

Some common accommodations: not an exhaustive list

- Excused absences/leave
- Extended time
- Frequent breaks
- Remote participation
- Change in seating assignments
- Cannot subject to discrimination or harassment based on *sex*—which includes:
 - Pregnancy
 - Childbirth
 - False pregnancy
 - Termination from pregnancy or
 - Recovery therefrom

LACTATION ACCOMMODATIONS

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- Lactation is a pregnancy-related condition that must be accommodated
- Best practice to have a Pregnancy Accommodations Policy
- Under proposed Title IX rule, must provide lactation spaces that are:
 - clean
 - shielded from view
 - free from intrusion from others
 - may be used by a student for expressing milk or breastfeeding as needed

Where to start if you don't have a policy?

Stanford's Pregnancy, Childbirth, Adoption, and Lactation Policy 5.9.1



QUESTIONS

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