



Association of
Title IX Administrators

Navigating the Intersection of Title IX and Disability Support for Pregnancy and Related Conditions

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Definitions and Regulatory Requirements

Historical Context

- Title VI of the Civil Rights Act of 1964 did not include sex as a protected characteristic
- Title IX of the Education Amendments of 1972 was enacted to address this gap
- The Department of Health, Education, and Welfare (HEW) published Title IX implementing regulations in 1975
 - Included protections against discrimination on the basis of a student or employee's actual or potential parental, family, or marital status
 - Most institutions focused on ensuring no discrimination occurred in admissions or hiring practices

Title IX and Equity

- Title IX is a sex and gender equity law
- The principles of equity recognize that not all individuals have access to the same resources and opportunities
 - Equity focuses on increasing access by reducing disparities and barriers in order to increase access
 - Title IX imposes a duty on institutions to stop, prevent, and remedy the inequities created by sex and gender discrimination

2024 Title IX Regulations

- Effective August 1, 2024
- Students **and** employees are protected by Title IX, in addition to other applicable federal and state laws
- Revised and new definitions for pregnancy and related conditions
- New and more clear requirements for information sharing, reasonable modifications, and access to lactation time and space
- Pregnancy and related conditions are considered from two different lenses under Title IX
 - Sex Discrimination
 - Temporary Disability

Pregnancy: Title IX's Scope

Individuals and

Status:

- Students
- Employees
- Actual, potential, or past pregnancy and related conditions
- Family status
- Marital status
- Parenting status
- “Head of household”

Non-Discrimination Mandate:

- Academics and access to course offerings
- Admissions
- Athletics
- Employment, Recruitment, and Hiring
- Extra-curricular activities
- Facilities
- Financial Assistance
- Funding
- Lactation space and time
- Health Insurance
- Housing
- Leaves of Absence
- Salaries and Benefits

Prohibited Discrimination

A Recipient may not:

Discriminate in its education program or activity against any student or employee on the basis of such individual's current, potential, or past:

- pregnancy
- related condition

Adopt or implement any policy, practice, or procedure which treats a student or employee differently on the basis of current, potential, or past :

- parental,
- family, or
- marital status

Pregnancy or Related Conditions

Includes the full spectrum of processes and events connected with pregnancy

- Pregnancy, childbirth, termination of pregnancy, or lactation
- Related medical conditions
- Recovery therefrom



Medical Condition Examples

Examples of covered medical conditions include, but are not limited to:

- Pregnancy-related fatigue
- Dehydration (or the need for increased water intake), nausea (or morning sickness), increased body temperature, anemia, and bladder dysfunction
- Gestational Diabetes
- Preeclampsia
- Hyperemesis Gravidarum (i.e., severe nausea and vomiting)
- Pregnancy-induced hypertension (high blood pressure)
- Infertility

Medical Condition Examples Cont.

Examples of covered medical conditions include, but are not limited to:

- Recovery from childbirth, miscarriage, stillbirth, or abortion
- Ectopic Pregnancy
- Prenatal or Postpartum Depression
- Lactation conditions such as swelling or leaking of breast tissue or mastitis

Parental Status

The status of a person who, with respect to another person who is under the age of 18, or who is 18 or older but is incapable of self-care because of physical or mental disability, is:

- A biological parent
- An adoptive parent
- A foster parent
- A stepparent
- A legal custodian or guardian
- *In loco parentis* with respect to such a person
- Actively seeking legal custody, guardianship, visitation, or adoption of such a person

Title IX Coordinator & Pregnancy

Title IX Coordinator is Point Person for:



Documentation



Policies, Practices, and Procedures



Outreach and Support



Reporting



Complaint Resolution Process



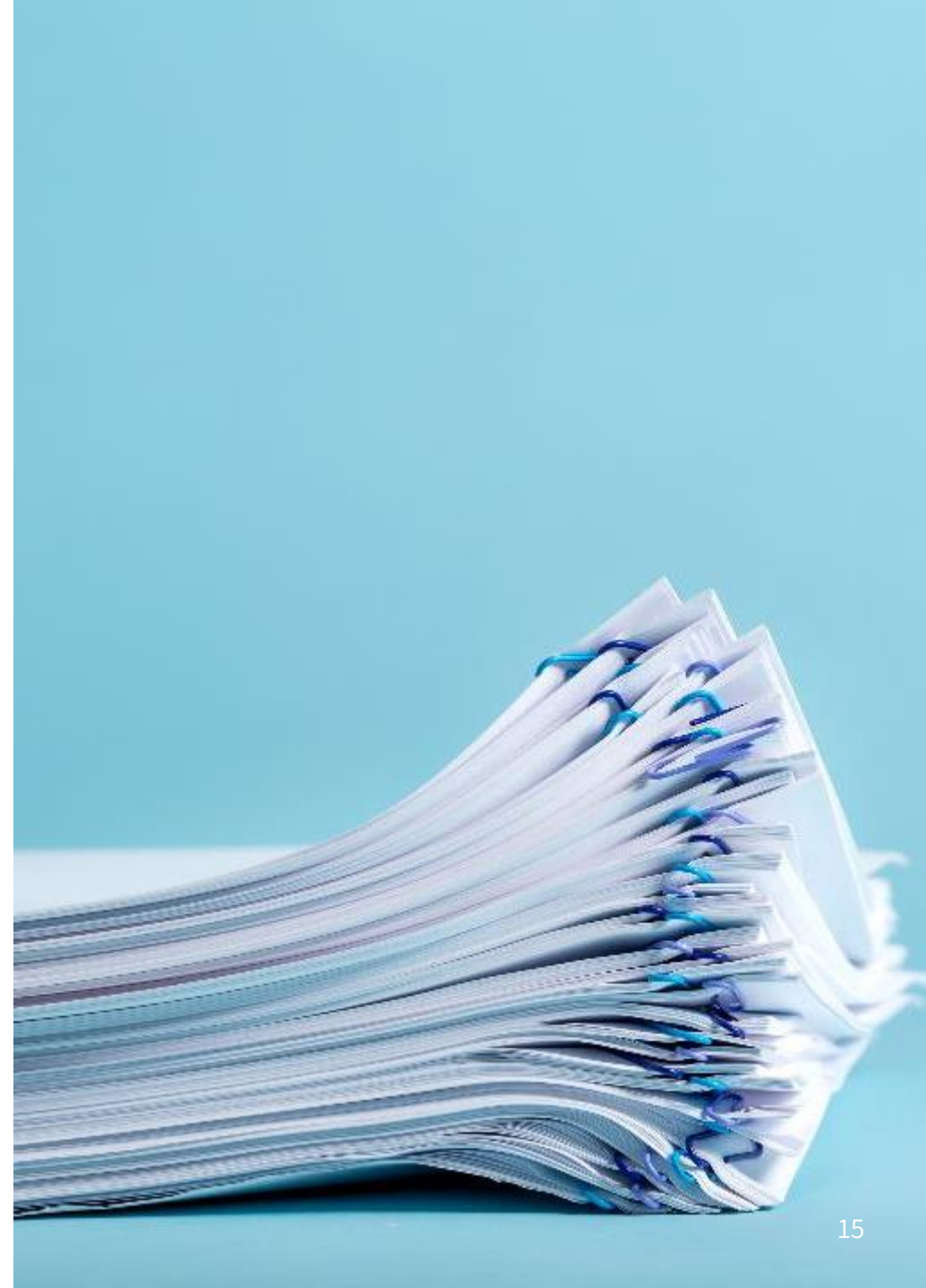
Training

Granting Exceptions to Policies and Processes

- The Title IX request process should be clear and well-advertised
 - Online form or appointment request
- Pre-emptive employee training including scenarios and example communications
- Consider waivers for arbitrary policies (e.g., no leaves of absence longer than two weeks) even if that results in inconsistency with previous practices
- Title IX staff partners with other offices to implement and provide a seamless support process for employees and students

Documentation and Communication

- Clear, detailed documentation regarding reasonable modifications under Title IX is recommended
- TIXC must obtain written consent prior to disclosing personally identifiable information (e.g., pregnancy status)
- Office for Civil Rights (OCR) emphasizes that communication across the institution is key
- Nuance and soft skills to navigate conversations with other departments



Recordkeeping

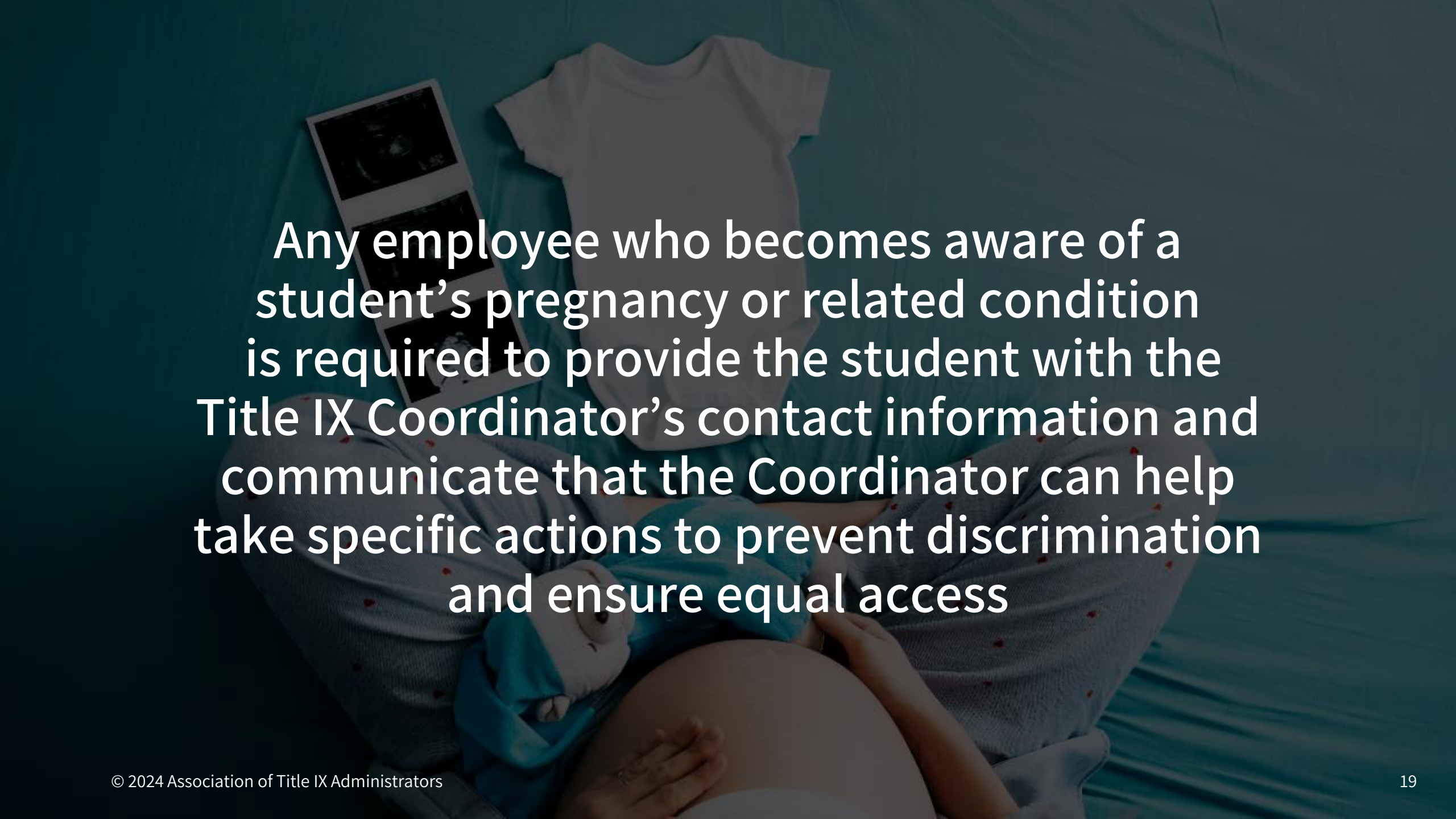
- TIXC may consult with legal counsel about recordkeeping and sharing practices
- Consider whether to maintain records of:
 - Initial request/contact
 - Reasonable modification information
 - Consultation with disability/accessibility services (if applicable)
 - Notifications
 - Complaints
 - Investigations and Resolutions

Privacy

- Medical records receive at least the same privacy as other Title IX documents
 - Limit access accordingly
- Education and employment records are subject to subpoena
 - State abortion laws



Reasonable Modifications

A pregnant woman is lying down, her hands resting on her belly. She is wearing a grey long-sleeved shirt with small red polka dots. Next to her are a white baby onesie and a stack of three ultrasound images. The background is a teal-colored fabric.

Any employee who becomes aware of a student's pregnancy or related condition is required to provide the student with the Title IX Coordinator's contact information and communicate that the Coordinator can help take specific actions to prevent discrimination and ensure equal access

Outreach and Intake

Title IX Coordinator must inform the individual of the institution's obligation to:

- Prohibit sex discrimination
- Provide reasonable modifications
- Allow access, on a voluntary basis, to any separate and comparable portion of the institution's education program or activity
- Allow a voluntary leave of absence
- Ensure lactation space availability
- Maintain Resolution Process for alleged discrimination
- Treat pregnancy as comparable to other temporary medical conditions for medical benefit, service, plan, or policy purposes

Reasonable Modifications

- **Reasonable Modifications** to the Recipient's policies, practices, or procedures to prevent discrimination:
 - Applies only to students (not employees)
 - Individualized: must consult with the student before offering
 - Voluntary: student may accept or decline each reasonable modification offered
 - If accepted, institution must implement
 - Fundamental alteration of education program or activity is **NOT** reasonable
- OCR emphasizes the importance of consulting with a student to meet their individualized needs in a prompt and effective manner

Reasonable Modification Examples

Not all reasonable modifications are appropriate for all contexts, but could include:

**Breaks During
Academic
Activities**

**Excusing
Intermittent
Absences**

**Online or
Homebound
Participation**

**Providing
Course
Flexibility**

**Accessing
Alternate
Parking**

Counseling

**Adjusting
Physical Space**

**Arranging
Elevator Access**

Retroactivity

- Title IX regulations do not require retroactive reasonable modifications
 - Common and often necessary with pregnancy or related conditions
 - ATIXA recommends developing a framework or rubric to guide consistent retroactive request decisions

Medical Documentation

- Medical documentation is typically unnecessary to determine reasonable modifications
- Proceeding based on a student's self-attestation of their needs will be the least burdensome for the student and enable the institution to promptly meet the student's needs
- Can only be required in limited circumstances when:
 - **Necessary** and **reasonable** under the circumstances to determine:
 - Reasonable modifications to offer
 - Other specific actions to take

Supporting Documentation

Not necessary or reasonable when:

- Student's need is obvious, such as:
 - Expressing breast milk or breastfeeding
 - Carrying or keeping water nearby and drinking
 - Using a bigger desk
 - Sitting or standing
 - Taking breaks to eat, drink, use the restroom
 - Needing a larger uniform

Supporting Documentation Cont.

Not necessary or reasonable when:

- Specific actions are available to students for other reasons without supporting documentation
- Not all students have access to healthcare providers or have seen one prior to needing reasonable modifications

Reasonable Modifications

- Approach for pregnant students should be the same as non-pregnant students when considering exclusion from labs, athletics, clinical environments, etc.
 - Safety-related justifications are often discriminatory
- Maintain privacy of the student's pregnancy status to the extent possible
- Complaints alleging failure to provide reasonable modifications would be subject to resolution under the procedures outlined in 34 C.F.R. § 106.45 (a form of disparate treatment)
- Cannot use Title IX Informal Resolution for reasonable modification complaints against the institution

Certification to Participate

- Must **not** require health care provider or other certification that the student is **physically able to participate** in the program or activity, unless:
 - The certified level of physical ability or health is necessary for participation;
 - The institution requires such certification of all students participating; **and**
 - The information obtained is not used as a basis for pregnancy-related discrimination

Voluntary Leaves of Absence (LOA) - Students

- Must permit voluntary LOA for, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider
- May take a LOA under another policy if that policy provides a longer time-period for LOA than medically necessary (Title IX rights remain intact)
- Must be reinstated to the academic status, and (as practicable), the extracurricular status they held before LOA

Voluntary Leaves of Absence (LOA) - Employees

- Only applicable under Title IX if:
 - Institution doesn't have another leave policy;
 - Employee doesn't have enough leave under the other policy; or
 - Employee has not been employed long enough to qualify
- Employee must be reinstated to the status held when leave began or a comparable position without a negative effect on any employment privilege or right

Lactation Space and Time

Ensure student and employee access to a lactation space that is functional, appropriate, and safe:

- A space other than a bathroom, that is:
 - Clean
 - Shielded from view
 - Free from intrusion from others
 - Available for expressing breast milk or breastfeeding as needed



Title IX vs. ADA/Section 504 Obligations

Title IX

- Prohibits sex discrimination
- Provides the student with the option of **reasonable modifications**
- Allows voluntary access to any separate and comparable portion of the program or activity
- Allows voluntary leaves of absence
- Ensures availability of lactation space

ADA/Section 504

- Prohibits discrimination against individuals with disabilities (including temporary ones)
- Applies when someone has a physical or mental impairment that substantially limits one or more major life activities
- Follows institution's interactive process to provide **reasonable accommodations**

Title IX and Disability Support Collaboration

Academic Policies and Procedures

Staff must be well-versed in institutional policies that may have implications for students who are pregnant or have related conditions

**Academic
Incompletes**

Add/Drop

Grade Appeals

**Internships/
Externships/
Co-
Ops/Practicums**

**Leaves of
Absence**

**Out-of-Class
Expectations**

Pass/Fail Option

Retakes

General Policy Awareness

- Non-academic policies may also impact individuals who are pregnant or have related conditions
- TIXC should be aware of policies and make themselves available for consultation with those developing and revising policies

Common Policies

- Attendance
- Dress codes
- Financial aid
- Housing contracts/live-on requirements
- Minors on campus
- Parking
- Student health insurance
- Visa requirements

Pregnancy and Disability Intersection

- Pregnancy itself is not a disability under ADA/Section 504 but some pregnancy-related conditions could manifest as temporary disabilities
- TIXC should collaborate with disability/accessibility services staff to determine reasonable modifications for individuals with temporary disabilities
 - Ensure compliance with Title IX, Americans with Disabilities Act (ADA), and Section 504



Fertility Treatments/ In Vitro Fertilization

- More frequent requests for fertility treatment support
- Reasonable modifications may be protected by Title IX or institutional policy
- Supporting documentation requests must comply with Title IX Regulations



Menstruation and Related Conditions

- Discrimination pertaining to menstruation, perimenopause, menopause, and related conditions is a basis of prohibited sex discrimination
- If a student's menstruation or related conditions meet the definition of "pregnancy or related conditions," then the student is entitled to reasonable modifications under Title IX
- If a student's or employee's menstruation-related condition qualifies as a disability under Section 504 or the ADA, then they are protected under ADA/504 as well

Dual Enrollment Students

- TIXC should collaborate with disability/accessibility services staff to determine reasonable modifications for dual enrollment students who are pregnant or have related medical conditions
 - Work with school/district administrators
 - Ensure compliance with Title IX, Americans with Disabilities Act (ADA), Section 504, and IDEA (if applicable)

Office for Civil Rights Resolution Agreements

OCR Resolution Agreements

- **Salt Lake Community College (UT)**
 - Sex Discrimination
 - Disability Discrimination
- **Troy University (AL)**
 - Sex Discrimination
- **Hinds Community College (MS)**
 - Sex Discrimination
 - Harassment on the basis of pregnancy

Agreement Themes

- **Awareness, education, and training**

- All Title IX and disability services staff, as well as faculty and staff need to be trained on what constitutes discrimination on the basis of pregnancy or a related condition
- Resources available to students and employees who seek assistance

- **Policies and procedures**

- Clearly published non-discrimination statements that include pregnancy and related conditions
- Formal grievance procedures for discrimination complaints on the basis of pregnancy or a related condition

Agreement Themes Cont.

▪ **Communication**

- Centralize and coordinate communication to help ensure prompt, effective response
- Promptly follow-up with students and employees about their requests for support and/or complaints
- Document communication with faculty and employees regarding providing reasonable modifications

▪ **Remedies**

- Institutions who have not appropriately complied with Title IX must remedy complaints, even if the Complainant is no longer enrolled at the institution

Case Studies

Swim Practice

- Ellerie is a junior and a member of the women's varsity swim team
- She gave birth to her first child over the summer between her sophomore and junior years and has been experiencing post-partum depression since the birth
- Swim team practice is scheduled for weekday mornings from 6:00-7:30 AM in the shared natatorium
- Ellerie often finds herself unable to wake up in the morning in time to make it to practice on time or sometimes at all because of her depression

Swim Practice Cont.

- As a result of her inconsistent attendance at practice, Coach Sumner has pulled Ellerie from three relay races and two individual events for the upcoming regional swim meet
- The Athletic Director has reached out to you and the Title IX Coordinator for assistance

Swim Practice Discussion

- How would you navigate this situation?
- What reasonable accommodations or supportive measures may be appropriate in this situation?
- Are there additional supports that would assist Ellerie's access to the education program or activity?

Fiona

- Fiona, a graduate student, recently gave birth to her second child
- The infant has developmental delays and is unable to drink from a bottle
- Fiona is requesting to be able to attend classes remotely so that she is available to breastfeed her child on demand

Fiona Discussion

- Does Title IX protect individuals in Fiona's situation?
- What would you consider when reviewing Fiona's request?
- How would this scenario change if Fiona was an employee rather than being an enrolled as a student ?

Questions?

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