

Title IX Protections for Pregnant and Parenting Students: A Guide for Schools¹

Title IX of the Education Amendments of 1972 prohibits schools that receive federal funds from discriminating against students on the basis of sex, which includes a student's "actual or potential" parental, family or marital status and a student's "pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery there from." Generally speaking, this means that schools must give all students who *might be, are or have been* pregnant (whether currently parenting or not) equal access to school programs and extracurricular activities, and schools must treat pregnant and parenting students in the same way that they treat other students who are similarly able or unable to participate in school activities.

Note that your state's own laws may also prohibit pregnancy discrimination, and may impose requirements that go beyond those of Title IX. You should seek legal counsel on the scope of your state law obligations.

Health Concerns:

Schools may wonder "How do we know if a girl is able to continue going to school or continue participating in sports or other activities once she is pregnant?" or "Isn't it dangerous for a pregnant student to attend school late in her pregnancy? Our school does not want to be responsible for her health and safety at that point."

Title IX prohibits schools from assuming that pregnant students cannot attend school or participate in school activities. In fact, these are precisely the types of stereotypes and limitations on girls' activities that Congress intended to eliminate when it passed Title IX. The presumption must be that the student can continue her studies and activities as normal, unless the student and her physician decide otherwise. The school cannot impose participation

What specifically does Title IX require with respect to pregnant and parenting students?

- ⊙ A school must provide equal access to school and extracurricular activities for students who are pregnant, who have been pregnant, or who have a child, and special services provided for temporarily disabled students must be provided for pregnant students as well
- ⊙ Separate programs or schools for pregnant and parenting students must be completely *voluntary* and must offer opportunities equal to those offered for non-pregnant students.
- ⊙ Absences due to pregnancy or childbirth must be excused for as long as is deemed medically necessary by the student's doctor
- ⊙ A doctor's note can be required for pregnant students to participate in activities *only* if the school requires a doctor's note from *all* students who have conditions that require medical care.

¹ This document is not intended to constitute legal advice. It is intended to be general guidance only, and schools with specific questions about their treatment of pregnant and parenting students should consult with an attorney. A school's treatment of its pregnant and parenting students may be subject to legal challenges.

requirements on pregnant girls that the school does not establish for *all* students who are temporarily disabled.

Under normal circumstances, there is no reason that a pregnant student's attendance at school and participation in activities would have adverse effects on her health. So the student must be allowed to continue attending school for as long as she wants, even up to the date of her delivery. You cannot require pregnant students to produce a doctor's note in order to stay in school or do activities, unless you apply the same requirement to all students with medical conditions requiring the treatment of a physician. And not only must you allow the student to attend and participate as usual; you also should encourage her to continue her education and support her efforts to do so. As a matter of policy, such an approach is critical for any school interested in improving its graduation rates and helping all of its students to succeed.

Excused Absences:

Other schools may have questions about excusing pregnancy-related absences. *For how long a period of time must schools allow students who are pregnant or who give birth to miss school? And do we have to let pregnant and parenting students go to doctors' appointments during the school day?*

Schools must allow students who are pregnant or who give birth to miss school for as long as that student's doctor says she has to be absent. At the conclusion of that period, the student must "be reinstated to the status which she held when the leave began."

For doctors' appointments, if you allow other students to attend doctors' appointments during the school day, then you must also allow pregnant students to attend their doctors' appointments. You may require the pregnant students to bring in a doctor's note in order to have the absence excused *only* if you require the same proof from other students who miss school for doctors' appointments.

While Title IX does not explicitly state that schools must excuse parenting students' absences to take their children to doctors' appointments or to take care of their sick children², it is advisable for schools to do so as a matter of policy, especially for the child's custodial parent. Schools interested in improving their graduation rates will accommodate this need of parenting students, who tend to be highly motivated to finish school but often need some assistance with the logistics of juggling parenting and high school. If such absences are treated as unexcused and students are not given the opportunity to make up the work missed, those students likely will fall behind and may get discouraged and become disengaged.

Educational Concerns:

Some schools offer separate programs for pregnant and parenting students. *Does Title IX require schools to provide a separate program for pregnant and parenting students? What*

² This *is* required, however, under North Carolina law and possibly those of other states too. N.C.G.S.A. § 115C-375.5.

about requiring that schools offer tutoring or at-home instruction for students recovering from childbirth?

Not at all. Title IX simply requires that if schools *do* choose to offer separate programs or schools for pregnant and parenting students, participation in those programs must be voluntary. This means that a school can tell its students about the alternative program as an option, but cannot urge or pressure its pregnant or parenting students to attend.

Also, any alternative programs for pregnant and parenting students must offer those students access to the same range of educational opportunities (both in terms of coursework and extracurricular and enrichment activities) as those offered for students who are not pregnant or parenting. Schools cannot segregate pregnant and parenting students into dead-end schools with parenting classes but no opportunities for graduation or preparation for post-secondary education, and school districts with programs like these must shut them down.

By contrast, a number of schools across the country have had great success implementing quality programs that provide support for their pregnant and parenting students – with services such as childcare, transportation, counseling, social service referrals, support groups, and homebound instruction for extended absences – while maintaining rigorous and relevant curricula that foster student engagement and prepare students for careers and post-secondary education opportunities. These types of supports can help pregnant and parenting students to stay in school and graduate.

As far as tutoring or at-home instruction for students recovering from childbirth, Title IX requires that schools provide pregnant students with any special services they provide to temporarily disabled students. Therefore, if a school provides special services, such as at-home tutoring, for students who miss school because they are temporarily disabled, it must do the same for students who miss school because of pregnancy or childbirth. Regardless of what a school provides for students generally, it should consider providing at-home tutoring or other academic support for students with extended absences for reasons including pregnancy and parenting. This is a good investment, and makes sense as a matter of educational policy.

Administrative Concerns:

An administrator might think, “I’m a school administrator and it is fine with me if pregnant girls keep coming to school but one of my teachers does not want them in his class. That means I’m not violating Title IX myself, right?”

However, everyone at any school that receives federal funds is bound by Title IX – administrators, faculty and staff – so if there is a teacher who you think is discriminating against students (or limiting educational opportunities for them – including extracurricular activities) because they are pregnant or parenting, you need to set him/her straight on the law and his/her obligations. You must get cooperation from him/her if they remain on your staff, because your school can be held liable for the illegal conduct of its staff.

Another question might be, “If we give special treatment to pregnant and parenting students, other students will want to get pregnant too. Shouldn’t we instead “make an example” out of the students who get pregnant?”

The notion that teenagers who see their classmates getting some help from the school in juggling schoolwork, childrearing, and other activities will think that having children is easy and will want to get pregnant themselves is a myth. Having children is extremely difficult, especially as a teenager, and high school students understand that. At the schools that offer supportive services to pregnant and parenting students and treat them fairly and equally, pregnancy has not proven to be “contagious.” To effectively discourage teens from getting pregnant, schools should instead provide them with comprehensive information about the risks associated with sex and the ways to protect themselves if they do engage in sexual activity. But “making an example” of the pregnant and parenting students is not just a flawed strategy, it is illegal.

Finally, “If we provide special services for pregnant and parenting students, do we need to provide them for others?”

Generally speaking, pregnant and parenting students are uniquely situated, so the services you choose to provide for them may not be required for others (nor necessarily desired by them). However, there are federal and state disability rights laws that ban discrimination and require schools to accommodate the needs of students with disabilities. If you have specific questions about your legal obligations, you should consult with an attorney.

Conclusion

Not only is discrimination against pregnant and parenting students illegal under Title IX, but such treatment also decreases pregnant and parenting students’ engagement in school, increasing the risk that they will drop out. Schools must, at a minimum, prevent discrimination against pregnant and parenting students, but schools can – and should – do much more to support pregnant and parenting students so they succeed in school. For more information, please contact the National Women’s Law Center at info@nwlc.org, or go to www.nwlc.org/dropout.