

Navigating Pregnant and Parenting Rights, Access, and Accommodations on College Campuses

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- I. General Info on Student Parents
- II. Student Legal Overview
- III. Student Scenarios and Best Practices
- IV. Employee Legal Overview



Who are parenting students?

**4.8 million college students
are raising children.¹¹**

**Women make up 71%
of all student parents.¹¹**



Women of color

are the most likely students to be raising children while pursuing a postsecondary degree.¹¹

Nearly half of all black women in college have dependent children (47%).¹¹

Who are parenting students?

Students with children

are especially unlikely to complete a certificate or degree within six years of enrollment, with only



33%

attaining a degree or certificate in that time.¹¹

Pregnant and Parenting Students

Problems they encounter (low-hanging fruit):

- Stigmatizing behavior
- Prevented from taking the courses necessary or desired
- Forced to withdraw or prevented from successfully finishing courses
- Challenges navigating absences
- Restricted from activities
- Denied a secure and private lactation space and the time to use it

LEGAL OVERVIEW: STUDENTS





Title IX Protections



- **Who is covered?**
Students/trainees in K-12 school, college, university, vocational school, other academic institution or government-funded training program
- **Where are they covered?**
Any class, externship, internship, or training program that is sponsored/required by their institution and overseen by their institution
- **How are they covered?**
Title IX prohibits discrimination on the basis of sex and pregnancy-related conditions, and requires certain accommodations

Basic Principles

Discrimination on the basis of

sex



...on the basis of

pregnancy



...on the basis of **pregnancy, childbirth, false pregnancy, miscarriage, abortion, recovery and related conditions**

Pregnancy Accommodations

“you don’t have a disability, you just need to go home and be with your baby”

Accommodations: Title IX Regulations

“A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability...”

Sec. 106.40 (b)(4)

“To ensure a pregnant student’s access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student’s temporary pregnancy status.”

Supporting the Academic Success of Pregnant and Parenting Students, U.S. Dep’t of Education, OCR



Accommodations: ADA/Rehabilitation Act



- Requires reasonable accommodations for students with disabilities to ensure equal access to education
- Includes students with physical or mental impairments that “substantially limit a major life activity” (2009)
- Includes “temporary disabilities” (2009)

Key Factors in Accommodation Decision

1) Is there a PREGNANCY or disability/substantially limiting impairment?



2) Is the accommodation responsive to the impairment?



3) Is the accommodation reasonable?



If yes, move to #2



Examples of Pregnancy-related Accommodations:

- Delayed deadlines
- Bathroom breaks
- Permission to eat or drink in class
- Parking space
- Avoiding toxic substances
- Lactation time/space
- A larger chair so student can sit comfortably



Student Maternity Leave

“I was in a lot of pain. And I remember thinking to myself, I shouldn’t be here...”

Student Maternity Leave: Title IX Regulations

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

Student Maternity Leave: Title IX Regulations

“as long as medically necessary”

Is determined by a physician and may include:

- medically-necessary doctor’s appointments
- leave during pregnancy
- childbirth leave

Student Maternity Leave: Title IX Regulations

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

Student Maternity Leave: Title IX Regulations

“...reinstated to the status which she held...”

- Guaranteed re-admittance to program
- No penalty or grade deductions
 - *Must be allowed to make up credits missed*
- The regulations provide no exceptions

Non-Discrimination and Harassment





Common Statements



The “Benevolent Roadblock”

- “I know your priorities have changed...”
- “Pregnant women can’t handle...”

The “Magnifying Glass”

- More critical assessments post-birth
- Hunting for signs of lowered competence

The “Time Warp”

- “Isn’t that your wife’s job?”
- “It’s not fair to the other students to let you take a vacation just because you’re a dad now...”
- “I thought you were a serious student. I’m so disappointed!”



The “Attorney’s Dream”

- “How did you let this happen? Why didn’t you use birth control?”
- “Why don’t you have an abortion?”
- “But you aren’t married! Do you know who your baby’s daddy is?”
- “You should just stay at home.”



Case Example: Harassment



- Tina Varlesi was a graduate student in social work at Wayne State University, assigned to an internship placement as a part of fulfilling her degree requirements.
- Received harassing comments and low ratings from the internship supervisor (not employed by University).
- University officials did not properly investigate or intervene. Varlesi had to leave program.

Result: University fined \$848,690



Case Example: Discrimination in Benefits

Kamaria was kicked out of her campus housing when she became pregnant. She filed a complaint to change the policy and won.



Basic Principles

Discrimination on the basis of

sex



...on the basis of

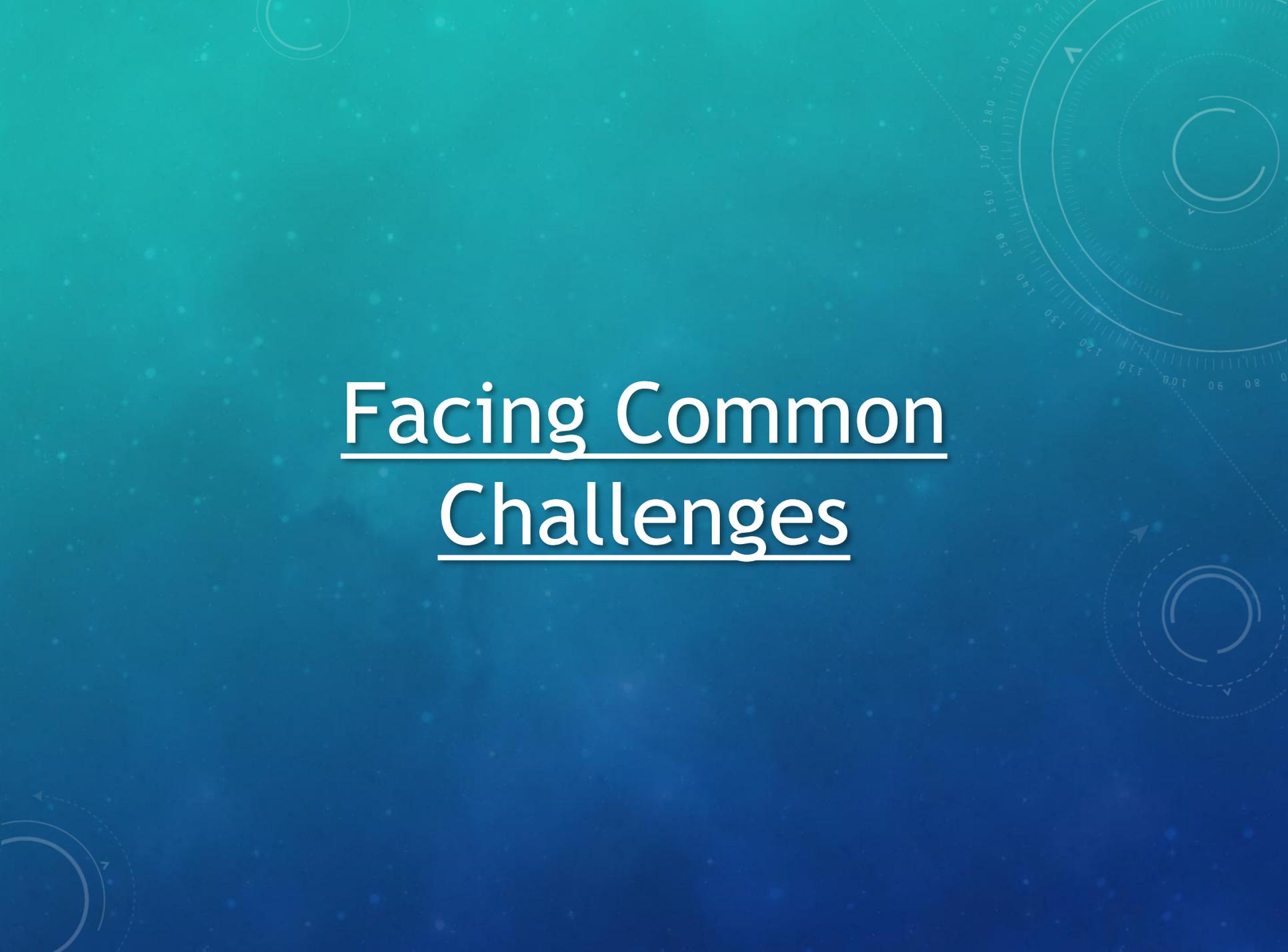
pregnancy



...on the basis of **pregnancy, childbirth, false pregnancy, miscarriage, abortion, recovery and related conditions**

Basic Principles

**When in doubt, look for a
comparator!**

The background is a teal-to-blue gradient with a subtle pattern of small white stars. On the right side, there are several faint, light-colored technical diagrams. One is a large circular gauge with a scale from 0 to 210 and a needle pointing to approximately 180. Another is a smaller circular diagram with concentric circles and arrows. A third is a partial circular diagram at the bottom left with an arrow pointing clockwise.

Facing Common Challenges

Scenario 1

Sarah told her adviser that she can't finish a writing intensive course because she has pregnancy-related carpal tunnel syndrome and finds it challenging to type.

- At your institution, how is the adviser informed of their obligation?
- Are potential accommodations available? How would they be accessed?

Scenario 1, Part II

Sarah told her adviser that she can't finish her lab course because of concerns regarding chemical exposures.

Are potential accommodations available? How would they be accessed?

Accommodations: Your Hurdles

Why may your *current* ADA/504 process be poorly suited to address pregnancy-related accommodation needs?

- Does not account for common pregnancy conditions and concerns re: fetal harm
- Designed for “permanent” disabilities
- Staff need training
- Disability stigma and lack of awareness



Accommodations: Best Practices

- Include pregnancy in training/materials on disability referrals
- Work with the student disability services (ADA/504 Office) re: eligibility for pregnant students
- Establish clear roles, points of contact
- Co-create supplemental policies or amend polices, where needed
- Establish systems for informing faculty of student accommodations

Scenario 2

Jennifer needs to be on bed rest for the last few weeks of the semester. Her professor will not deviate from the syllabus which provides that students' grades are based in part on participation credits, and more than 3 absences will result in automatic failure.

- Is this legal?
- At your institution, how would this situation be handled?
- What options are available?

Scenario 2

Jennifer needs to be on bed rest for the last few weeks of the semester. Her professor will not deviate from the syllabus which provides that students' grades are based in part on participation credits, and more than 3 absences will result in automatic failure.

Professor says “unreasonable.” Consider:

- How do other professors teaching the course view the issue?
- Does the department have an opinion?
- Have others received or been denied similar accommodations in the past?
- WHY is it unreasonable? Is there a compromise?

Student Maternity Leave: Best Practices

Have a policy!

Student Maternity Leave: Best Practices

- Acknowledge a typical time period to make expectations clear (6-8 weeks), but don't force or limit leave
- Establish guidelines that provide flexibility for unforeseen circumstances
- Consider health insurance, housing, and other critical benefits
- Educate faculty that harassment and retaliation for taking leave is illegal

Student Parental Leave: Title IX Regulations

Caretaking/bonding leave (leave that is not linked to physical condition) must be provided equally

- ✓ Birthing parent disability leave
- ✗ Birthmother-only caretaking leave

Student Parental Leave: Beyond Birth

Key factors to consider:

- Title IX doesn't have explicit regulations on this, but policies that exclude parents often disproportionately impact women
- Best practice minimum: don't penalize students for parenting
- Best practice minimum: sick leave for students' children
- Your support = student retention

- Who has set the tone?
- Who is responsible—
do they know it?
- What training materials and
procedures include pregnancy?



●● Building The Net: Policies

No written policy



Overuse of discretion



RISK!



Employees

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Right to Non-Discrimination

Illinois Human Rights Act, Title IX, Title VII

Right to Leave

FMLA, Illinois Human Rights Act, Title IX, Title VII

Right to Accommodations for Pregnancy and Lactation

Illinois Human Rights Act, Title VII

Right to Leave

FMLA, Illinois Human Rights Act, ADA, Title IX, Title VII

FMLA: 12 weeks job protected leave for eligible employees

Illinois Human Rights Act and ADA: Leave as a reasonable accommodation for pregnancy and/or disability.

Title VII: Must be provided any disability benefit available to others similarly in ability/inability to work, including job-protected leave or short-term disability pay, if applicable

Title IX: “leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.”

Right to Accommodations for Pregnancy and Lactation

Illinois Human Rights Act, Title VII (when applicable)

Illinois law requires reasonable accommodations for pregnancy and related conditions (childbirth recovery, lactation, etc.). These must be provided absent an undue hardship. A timely and good-faith interactive process is required.

Examples include:

- Light duty
- Temporary transfers
- Seating
- More frequent or longer breaks
- Job or schedule restructuring
- Lactation break time and space*
- Leave



- Model policy template
- Example university policies
- Tips for faculty and administrators
- Guides for students and postdocs
- Back to Campus COVID-19 Guide

Questions? Need more training?

Contact Jessica Lee

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