

May 9, 2013

**MEMORANDUM**

To: CUNY Faculty and Staff

From: Frederick P. Schaffer  
General Counsel & Senior Vice Chancellor for Legal Affairs

Re: Non-Discrimination of Students on the Basis of Pregnancy, Childbirth and  
Related Conditions

---

This memorandum is being sent to inform and remind the University community of the University's obligations not to discriminate against students on the basis of pregnancy, childbirth and related conditions.

The University's Policy on Equal Opportunity and Non-Discrimination makes clear that CUNY does not discriminate against persons on the basis of sex in its educational programs and activities. The legal prohibition against sex discrimination in education comes from, among other places, Title IX of the Education Amendments Act of 1972 ("Title IX"). Title IX prohibits discrimination on the basis of sex—including pregnancy and related conditions—in educational programs and activities that are eligible for federal funding.

Attached is a copy of U.S. Department of Education regulations 34 C.F.R. § 106.40(b) concerning pregnancy and related conditions. The regulations provide, in pertinent part, that a college that is a recipient of federal funding shall not discriminate against any student on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom. Specifically, educational institutions such as CUNY that are covered by Title IX must treat these conditions in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy. In the event that the educational institution does not maintain a leave policy for its students, or in the event that a student does not otherwise qualify for leave under the policy, the institution is required to treat such condition 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.

This means that CUNY must give all students who might be, are, or have been pregnant the same access to school programs and educational opportunities that other students have. Absences due to medical conditions relating to pregnancy must be excused for as long as medically necessary and the students must be given the opportunity to make up missed work, with the goal of having the student graduate on time, if possible and if desired by the student. Professors and administrators should not tell students that they have to drop out of their classes or programs or change their educational plans due to their pregnancies or related conditions. And CUNY cannot terminate or reduce athletic, merit or need-based scholarships based on pregnancy. These rules supersede any school- or instructor-based attendance or other policies regarding allowable numbers of absences or ability to make up missed school work.

In light of this legal requirement, it is critical that faculty and staff who deal with students are knowledgeable about their obligations to students in this situation. In addition, the colleges should include the following in their student handbooks and websites:

[Insert College] does not discriminate against any student on the basis of pregnancy or related conditions. Absences due to medical conditions relating to pregnancy will be excused for as long as deemed medically necessary by a student's doctor and students will be given the opportunity to make up missed work. Students needing assistance can seek accommodations from the Office of Accessibility [Insert contact information] or Title IX Coordinator [Insert name and contact information].

For more information regarding Title IX's prohibition against discrimination based on pregnancy and related conditions, you can access materials from the National Women's Law Center at [www.nwlc.org/pregnantandparentingstudents](http://www.nwlc.org/pregnantandparentingstudents).

**§ 106.40 Marital or parental status.**

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) 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 with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(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.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]



# TITLE IX

## FACT SHEET

### Pregnant and Parenting Students' Rights: FAQs for College and Graduate Students

October 2012

*If you are a pregnant or parenting student, you should know that under Title IX, you have a right to stay in school so you can meet your education and career goals. Below are answers to frequently asked questions from students in post-secondary schools, including colleges, community colleges, universities, for-profit institutions, trade schools, etc.*

#### **How does Title IX apply to pregnant or parenting students?**

Title IX prohibits discrimination on the basis of sex - including pregnancy, parenting, and all related conditions, such as abortion - in all educational programs and activities that get federal funding. This means that schools must give all students who might be, are, or have been pregnant the same access to school programs and educational opportunities that other students have. Your professors or administrators should not tell you that you have to drop out of your classes or program or change your educational plans due to your pregnancy.

#### **Does my school have to excuse my absences due to pregnancy, childbirth, or abortion?**

Your school must excuse your absences due to pregnancy or any related conditions for as long as your doctor says it is necessary for you to be absent. This is true even if there is no leave policy for students with other conditions. When you return to school, you must be reinstated to the status you held before your leave. The school can require you to submit a doctor's note only if that is required of students with other medical conditions.

#### **My professor adjusts grades based on class attendance. Can she lower my grade because of the classes I miss?**

You cannot be penalized for pregnancy or other related conditions. If a professor provides specific "points" or other advantages to students based on class

#### **Where do I start to figure out whether or not my school is violating Title IX?**

- A good first step in measuring your school's compliance is to compare how they treat pregnant students to how they treat students with other temporary disabilities. Under Title IX, schools must offer pregnant students the same benefits they offer to students with other temporary medical conditions.
- One exception to this rule is absences - Title IX requires that schools excuse absences due to pregnancy and related conditions, regardless of the school's absence policy.
- Your school is required to designate a Title IX Coordinator who should be able to answer questions for you about Title IX and pregnancy.
- Some states and school districts have their own laws that provide other protections, or even support services, for students. You should talk to a lawyer to find out what policies apply in your area.

attendance, you must be given the opportunity to earn back the credit from classes you miss due to pregnancy, so that you can be reinstated to the status you held before you took leave.

#### **Does my school have to let me make up the work I missed while I was absent?**

Yes, your school must let you make up the work you missed while you were out due to pregnancy or any related conditions, including recovery from childbirth.

## PREGNANT AND PARENTING STUDENTS' RIGHTS FAQS • FACT SHEET

For example, if you have a doctor's note that excuses you from class for several weeks because you were on "bed rest" before giving birth, your school has to provide you with the appropriate assignments and information to make up all of the work you would have been required to complete while you were out. For an extended absence, it is best if your school provides you with the work you miss regularly, so you do not fall far behind.

**But what if my school says that absence or make-up work policies are up to each individual professor?**

While that may be the school's practice, the school administration and professors are bound by federal civil rights law. Title IX requires that schools ensure that all faculty and staff comply with the law and do not discriminate against pregnant and parenting students. An individual professor's policy is not okay if it breaks the law.

**Does my school have to provide special academic services to me, like tutoring?**

Title IX requires that schools provide pregnant students with any special services they provide to students with temporary disabilities. If students with temporary disabilities get at-home tutoring to help them keep up with work they miss when absent, the school must provide students who miss class because of pregnancy or childbirth with the same benefit.

**What about internships, career rotations, and other off-campus elements of my program - do I have a right to participate in those?**

Yes. Your school must allow you to continue participating in off-campus programs. For example, if your program provides opportunities to "work in the field" your school cannot deny you participation based on your pregnancy. The school cannot require a doctor's note for continued participation, unless the school requires one for all students who have a medical condition that requires treatment by a doctor. If they do ask for a note, they cannot second-guess your doctor's decision.

**Classmates and even professors have made offensive comments to me about my pregnancy. Should I complain to the school about it?**

Title IX requires schools to prevent and address sex-based harassment, including harassment based on pregnancy. If you experience this sort of treatment

at school, you should seek help immediately. The law prohibits the school from retaliating against you for making a complaint or raising a concern.

**I have a scholarship - can my school take it back when they find out I am pregnant?**

No, schools cannot terminate or reduce athletic, merit, or need-based scholarships based on pregnancy. If you stay in school, you can keep your scholarship.

**I want to take a semester off. Can I keep my student status, scholarship, etc.?**

Not necessarily - it depends on the leave policy at your school. If you want to take off more time than your doctor says is medically necessary, you will need to consult your school's non-medical leave policy.

**What if I work for the school as a graduate assistant, in addition to being a student? Do I still have the same rights? Do I qualify for maternity leave?**

Your rights as an employee are different from your rights as a student. If you work for the school, you may be eligible for family or medical leave, or may qualify for maternity leave under the school's policy, but that may not include leave from your classes, beyond what is medically necessary.

**I am no longer pregnant and/or have already graduated - is there anything I can do about the discrimination I experienced as a pregnant student?**

You may still have options. Contact your Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or the National Women's Law Center to learn more. Even if it is too late for you, you can help us ensure that women who find themselves in your shoes do not run into the same barriers.

**I want to return to school 3 days after I have the baby, so I don't fall too far behind, but my department head thinks I should take more time off to recover. What should I do?**

Your school must leave it up to you and your doctor to decide when you can return. While the school must offer to excuse more leave than that (under Title IX your absence must be excused for as long as your doctor says is medically necessary), no one can force you to take more leave just because they think it would be better for you (or your baby). And the school cannot have a rule that prohibits students from returning to classes for a set period of time after childbirth.