

Implementing the Pregnancy and Parenting Requirements of the 2024 Title IX Regulations

WAICU Training 2

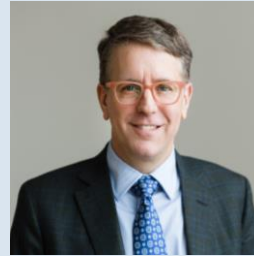
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Meet Our Team



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Ballast Offerings

1

Drafting & Updating

Policy and process development and review

2

Training

Legally compliant Title IX and non-discrimination trainings tailored to individuals' roles and knowledge base

3

Investigators, Alternative Resolution Facilitators, & Decision-makers

Trained, skilled, experienced, and practical

4

Interim Roles

Interim services to fill gaps in various Title IX positions

5

Advice & Coaching

Legal and non-legal advising

Ballast Philosophy & Approach



Collaborative partnerships that honor institutional knowledge and values



Practical solutions that are compliant and make sense for your specific institution and community



Reasonable and fair pricing that acknowledges the financial constraints institutions are facing



First-hand experience and understanding from individuals who have previously worked within higher education institutions

Agenda

- General implementation guidance
- Employee reporting and training
- Title IX Coordinator's role
- Overview of “reasonable modifications”
- Lactation spaces
- Certification and supporting documentation processes
- Scenarios
- Informing your community about these changes
- Q&A

A note about injunctions . . .

- 2024 Title IX regulations have been enjoined in 14 states
- Does not include Wisconsin
- Wisconsin is not on the list of states that have joined lawsuits asking for an injunction
- Expectation is that these regulations will go into effect as planned on August 1

General Implementation Guidance

- Campus coordination
- Documentation dos and don'ts
- Special considerations
- Title IX, Title VII, & ADA intersections
- Unpacking “related conditions” and non-birthing parents

What are we talking about?

No discrimination

Accommodations

**Employee
referrals and
training**

Pregnancy and Parenting

- Pregnancy or related conditions = pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- Institutions must treat pregnancy or related conditions in the same way and under same policies as other temporary medical conditions
- Cannot discriminate on the basis of current, potential, or past pregnancy or related conditions or on the basis of current, potential, or past parental, family, or marital status

Institutional Coordination

- HR involved in employee leaves/accommodations
- Provost may be involved on the faculty side
- Dean of Students
- Disability Services
- Admissions
- Others?

Be clear about who is doing what when it comes to students and employees.

Title IX interaction with other laws

- Complete overlap with other federal laws on the same topic
- Other federal laws are focused on employees; Title IX regs fill in gaps for students
- Clear that the authors of the 2024 regs were aware of all the existing laws regarding employees
- Same obligation to:
 - 1) Accommodate
 - 2) Not discriminate

Pregnant Workers Fairness Act

- Accommodations law
- Applies to employers of 15 or more employees
- Employers must provide reasonable accommodations to qualified employees unless the accommodation would cause the employer “undue hardship”
- “Undue hardship” = significant difficulty or expense
- Applies to pregnancy, childbirth, or related medical conditions including abortion, miscarriage, postpartum depression, delivery (vaginal or c-section), edema, placenta previa, and lactation.
- PWFA does not replace federal, state, or local laws that are more protective of workers

PUMP Act

Broadens workplace protections to allow employees to express breastmilk at work for one year after birth.

Employers must provide 1) a reasonable amount of break time to express milk as frequently as needed; 2) a lactation space that is:

- Functional for pumping milk
- Shielded from view
- Free from intrusion
- Available as needed
- Not a bathroom

Documentation

Should document:

- Employee and student training materials, and the fact that folks have been trained (**Must keep**)
- Students who have met with the TIXC
- Documents related to employee referrals; feedback about how students are referred to you
- Accommodations (**Must keep**)
 - What did they ask for? What did you offer?
 - What was provided and not provided? Why?
 - **Documented via email correspondence with the student/employee**
- Any discrimination concerns brought to your attention from students, employees, prospectives, and those participating in your program or activity (**Must keep**)
 - Intake and their decisions about next steps
 - How the concerns were resolved

Should your response vary depending on the student's/employee's related condition?

- No, shouldn't be treated differently
- Need to consider how different "related conditions" would impact accommodations
- Re: parenting, you aren't obligated to provide childcare directly; however, you will need to take a case-by-case approach when it comes to evaluating accommodations for childcare
 - Employees: is the accommodation "reasonable"?
 - Students: would the accommodation fundamentally alter the program/activity?

Employee Reporting & Training

- Pros/cons of employee reporting requirements
- Approaches to training

Non-Confidential Reporting Obligations for Pregnancy and Related Conditions

Employees who learn about a student's pregnancy or related condition must promptly:

- 1) Provide that student with the Title IX Coordinator's contact information and
- 2) Inform the student that the Title IX Coordinator can coordinate specific actions to prevent discrimination and ensure the student's equal access to programs and activities

*Pregnancy or related conditions = pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.



Reporting Obligations for Student Employees

“A postsecondary institution must reasonably determine and specify whether and under what circumstances a person who is both a student and an employee is subject” to these reporting requirements.

Approaches + Pros/Cons

1. Require all employees, *including* student employees, to be required reporters.
 - Clear and consistent, easy to train on, easier to keep records
2. Require all employees, *excluding* student employees, to be required reporters.
 - Similar as above, but puts less responsibility on students

Confidential employees are subject to the same expectations.

Different from reporting sexual misconduct and risk associated with employees failing to refer to the TIXC.

Could/should educate entire community about TIXC as a resource for pregnant/related condition students and employees

Training Requirements

	All employees	Investigators	Decisionmakers	Persons responsible for grievance procedure or supportive measures	Informal Resolution Facilitators	Title IX Coordinator / Title IX Team
Duty to address sex discrimination in programs and activities	✓	✓	✓	✓	✓	✓
Definitions of sex discrimination and scope of conduct covered (including sex-based harassment and accommodating pregnancy and related conditions)	✓	✓	✓	✓	✓	✓
Reporting obligations including responsibility to provide Title IX Coordinator name, contact and other information when notified of a student's pregnancy or related conditions	✓	✓	✓	✓	✓	✓
Institution's duty to respond promptly and effectively to reports of sex discrimination; duty to identify and address barriers to reporting; duties of non-confidential employees to report or otherwise respond when aware of conduct that may reasonably constitute sex discrimination		✓	✓	✓		✓
Grievance procedures under institution's policy		✓	✓	✓		✓
How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias		✓	✓	✓	✓ – No need to cover avoiding prejudgment of facts	✓

Role of the Title IX Coordinator

- Required steps when made aware of pregnancy or related condition
- Case management approaches

TIXC Role when informed of student pregnancy or a related condition

- Provide notice of nondiscrimination and institutional obligations
- Offer individualized “reasonable modifications” to policies, practices, or procedures to prevent discrimination and ensure equal access to programs and activities
- Must allow voluntary leaves of absence with reinstatement right to cover, at minimum, the student’s healthcare provider’s recommendation
- Permit access to separate but comparable resources
- Maintain grievance process
- Must provide adequate lactation space
- Provisions around when institutions can request supporting documentation and when they can require a healthcare provider’s certification to participate.

Institutional treatment of pregnancy or related conditions for employees

- Comparable treatment to temporary disabilities
- Right to leave and reinstatement for employees
- Right to lactation space and breaks

Case Management Strategies

- Checklist of all the things you cover when meeting with a pregnant/related conditions individual
- Templated emails (introduction emails, follow up emails, etc.) that include all necessary notices and resources, and language confirming what the individual requested if applicable
- Calendar reminders for check-ins
- Create a handout or resource card
- Templated communications with key personnel (professors, HR, supervisors, etc.)
 - Could include templated syllabi statements

“Reasonable Modifications”

- What should this process look like?
- Case management strategies for implementation and monitoring
- Long-term requests

What should this process look like?

- Case by case basis; dependent on the circumstances
- Interactive and individualized approach to determine reasonable modifications

What are you going to need in order to continue to have access to and participate in these programs/activities?

Are you getting pushback from others? Do you need assistance in obtaining accommodations from any professors, coaches, etc.?

Have you thought about different accommodations that may be available? Some common examples are...

Your needs may change over time; please keep me posted and we can continue to assess your needs.

Examples from the Regs

- Breaks during class to express breastmilk, breastfeed, or attend to health needs associated with pregnancy/related conditions (including eating, drinking, using the restroom)
- Intermittent absences to attend medical appointments
- Access to online or home-bound education
- Changes in schedules or course sequence
- Extensions of time for coursework and rescheduling of exams
- Allowing a student to sit or stand; carry or keep water nearby
- Counseling
- Changes in physical spaces or supplies (e.g., larger desk or footrest)
- Elevator access



Leaves of Absence for Students

- Ensure that students are voluntarily permitted to take a leave of absence
- Must cover at a minimum the time deemed medically necessary by the healthcare provider
 - If the institution has a leave of absence policy that would permit greater amount of leave, then the student must be allowed to take leave under that policy
 - Student must be reinstated to the academic and extracurricular status (as practicable) that the student held when the leave began



What about long-term requests?

- No set time limits exist for accommodations/modifications (although some may relate to “during pregnancy,” so they would not last past birth).
- How will you know if accommodations are still needed after a certain amount of time?
- Good strategy to not challenge at the front end, but to check in once you suspect the accommodation may no longer be necessary.

Lactation Spaces

- Floor vs. ceiling

Requirements (the “floor”)

Cannot be a bathroom

Must be:

- Clean
- Shielded from view
- Free from intrusion

Other considerations

- Comfortable seating
- Fridge to store breastmilk
- White noise machine
- Adequate storage space
- Quiet
- Table/surface
- Outlets
- Appropriate lighting
- Sink/hand sanitizer
- Paper towels/cleaning spray



Certification & Supporting Documentation

- Dos and Don'ts
- Assessing when this is necessary

Supporting Documentation for Modifications

Must ensure that supporting documentation is **not** requested unless:

- necessary to determine whether reasonable modifications are needed
- AND
- to determine what reasonable modifications to make



Certification for participation

Cannot require certification from healthcare provider to participate in program or activity unless:

- The certified level of physical activity/health is necessary for participation in the class/program/activity
- AND the institution requires such certification of all students in that class/program/activity
- AND the information obtained is not used as a basis for discrimination

Ideal to think of these issues ahead of time, as opposed to after you have a pregnant student in your class/activity.



Potential sticking points

- Courses/labs/activities where chemicals are used?
- Courses/clubs that require a certain level of physical activity or mobility?
Standing for long periods of time?
- Potentially problematic personnel?
- Others?

What about employees?

- Legal risks are different with workers compensation
- Seeking documentation must be reasonable under the circumstances
- Fitness for duty examinations

Scenarios

Scenario 1

The Students 4 Life group are holding their annual rally. You as the Title IX Coordinator receive a complaint from a student who states that this rally is discriminatory against them due to their previous abortion.

Scenario 1.5

The Students 4 Life group post a list on social media of individuals who they believe have had abortions in the past in an effort to raise awareness and deter students from having abortions.

Scenario 2

A nursing student reports that she is being discriminated against because of her pregnancy. She was told by the Nursing Department Chair that while she can take a leave of absence during the spring semester for the birth of her child, she won't be able to resume her studies until the following spring a year from now (when the course she needs to take is offered again). The student believes she should be able to receive an accommodation to take this course once she's eligible to return to school in the fall.

Informing Your Community

Ideas and examples

Steps to consider

- Training is key for both employees and students
- Resource development
 - Helps with consistency in messaging
- Website updates
- Recorded video on your website
- Email reminders sent out to the community
- Strategic collaborations with student groups, departments, etc.
- Student newspaper interviews, Alumni Magazine stories, Parent Newsletters, etc.
- FAQ section of the website
- Others?



Q & A



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