

Title IX In Focus: Pregnancy & Parenting

Kylie E. Stryffeler
Attorney



Presenter – Kylie Stryffeler

- Higher Education Attorney & Consultant
- Currently serves in interim roles when needed, and provide investigative and decision-maker services for civil rights matters
- Based in Northern Virginia

Contact:

Bricker Graydon Wyatt
100 South Third Street
Columbus, OH 43215-4291
614.227.4892
kstryffeler@bricker.com



Disclaimers

- I am not giving you legal advice.
- Consult with legal counsel regarding specific situations.
- You will receive slides for today's presentation after we've concluded.
 - Yes, you can post them! Institutions are required by §106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on its website.

Disclaimers (continued)

- The 2020 Title IX regulations require training on several specific subjects
- While the Title IX In Focus webinar series will discuss *some* of the required subject matter, none of these one-hour webinars will cover *all* of the material required for Title IX training compliance
- Work with your TIXC to make sure that you are trained in accordance with Title IX, Clery, and any applicable state law

Agenda

- Current regulatory and legal framework
- Procedural best practices
- Documentation
- Training
- Learn from others

Title IX

20 U.S.C. §1681 *et seq.*

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX Regulations

- 34 C.F.R § 106.21(c)
 - No discrimination on the basis of Marital or Parental Status - Admissions
- 34 C.F.R § 106.40
 - No discrimination on the basis of Marital or Parental Status - Students
- 34 C.F.R § 106.57
 - No discrimination on the basis of Marital or Parental Status – Employees
- Non-Regulatory Guidance
 - *Supporting the Academic Success of Pregnant and Parenting Students (July 1991, reprinted June 2013)*
 - *Discrimination Based on Pregnancy and Related Conditions (October 2022)*

34 CFR 106.40 (b)(1)-(b)(5)

Access

- No exclusion or discrimination based on “pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.” (“pregnancy related conditions”)
- From Guidance “reasonable and responsive” adjustments.

Certifications

- May require certifications from a physician that the student is “physically” and “emotionally” able to continue only if required of all students requiring treatment of a physician.

Separate Programs (voluntary)

- May offer voluntary separate programs only if it is comparable to those offered to non-pregnant students

Temporary Disability

- Treat pregnancy related conditions “in the same manner and under same policies” as temporary disabilities.
- *e.g.*, if a school provides homebound instruction for a student with a temporary medical condition, they must do it in the same manner for the student who misses for pregnancy related conditions.

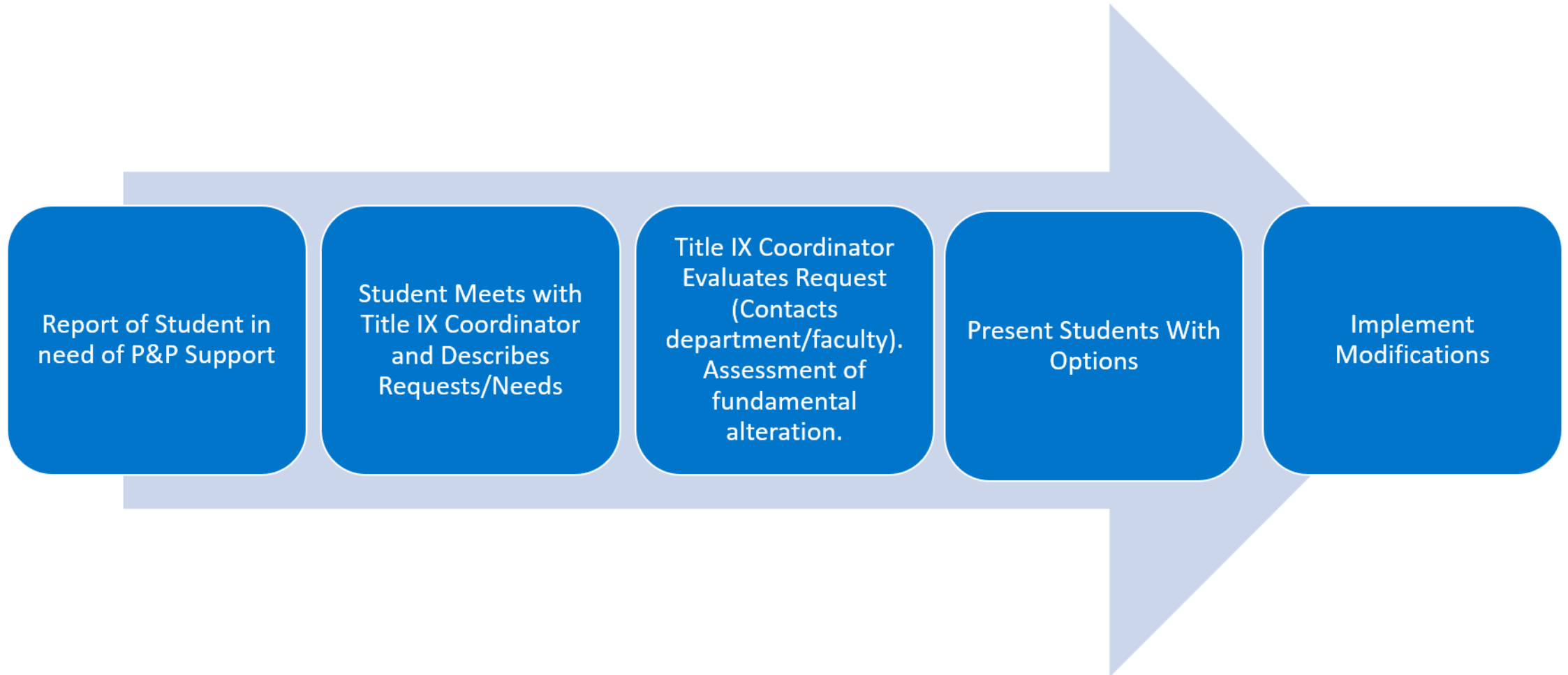
Leave and Reinstatement

- Treat pregnancy related conditions as justification for a leave of absence “for so long a period of time as is deemed medically necessary by the student’s physician” and reinstate the student “to the status she held when the leave began.”

Title IX and Disabilities

- Holding students to academic requirements that are essential to the instruction does not equal discrimination
- Declining to provide modifications if they would fundamentally alter the nature of the public service provided does not equal discrimination
- Reasonable accommodations/adjustments may be requested
 - Institution **must** engage in an **interactive process** to determine what accommodations are reasonable
 - Medical documentation to support accommodations **may** be requested

Model Interactive Process



Absences as Modifications

- 2013 Guidance from OCR:
 - Institutions are required to excuse student absences due to pregnancy or related conditions, for as long as the student's doctor deems the absences to be medically necessary.
 - When the student returns to school, they must be reinstated to the same status held when the leave began, including the opportunity to make up any work missed.
 - As an alternative to making up missed work, the school may offer retaking a semester, taking part in an online course credit recovery program, or allowing the student additional time in a program to continue at the same pace and finish at a later date. The student should be allowed to choose how to make up the work.
 - Schools must ensure that the policies and practices of individual faculty members do not discriminate on the basis of pregnancy.
- Fresno City College OCR case, April 2018 – Student was giving birth on the days the final exam was offered. Professor said she could retake the class or take an incomplete and make up the exam, but ultimately did not allow her to retake the exam. OCR noted that the College needed to provide the student the opportunity to make up the exam.

Modifications in labs and other “dangerous” settings

- Fact specific – **no bright line test**. Must work closely with stakeholders (including faculty) to assess the specific circumstances. Consider if the request is a fundamental alteration or would constitute an undue burden.
- Consider accreditation
- Be flexible and **INTERACTIVE**
- Be **consistent** under similar circumstances
 - If the circumstances are different – and justify a different course of action – document the circumstances and course of action
- Informed consent.

Student Employees

- Will need to accommodate both as a student and, potentially, as an employee – two analyses that may have overlapping results (e.g., may have designated lactation rooms open to students and employees with breaks during class and work)
- Some considerations:
 - Is this person here primarily as a student and who also works as an employee (e.g., as a resident assistant, cashier at the on-campus café, assistant in the library)?
 - Is this person here primarily as an employee and who also takes classes as a student (e.g., works full time in the library and takes one or two classes a semester as part of an employment benefit)?
 - What if it's unclear (e.g., part-time student and part-time employee)?

Guiding Themes

- Treat pregnant people the same way you treat non-pregnant people who have similar needs.
- Consider what you have done in the past.
- Let pregnant people decide if/when they can no longer participate.
- When it comes to risks to pregnant people, informed consent is key. You are not their parent.

Document, Document, Document

- The request itself
- Any dates/times of outreach and meetings with the student
- The assessment of the request including:
 - Whether the request was a fundamental alteration
 - Whether an alternative was offered.
 - Who did you consult with? When? What information were you provided? Was the request referred elsewhere?
 - Document the reasons for the denial, if any.
- Document efforts to ensure the accommodation/modification was effectively implemented.

Training & Communication

- Regularly train staff and faculty on:
 - Your Policy & Students' rights under Title IX
 - The role of the Title IX Coordinator (and how to contact them)
 - How to respond to requests
 - Modifications and faculty/staff responsibilities therein
- Consider: updates to policies and websites to include information related to pregnancy and related conditions

Varlesi v. Wayne State U., 643 Fed. Appx. 506 (6th Cir. 2016)

- **The Facts:** Varlesi was a graduate student assigned to an internship placement. She excelled in her first year of her program, but became pregnant before her second year. She continued to excel in the classroom, but reported issues with her field placement—including that one individual there complained that Varlesi rubbed her belly, wore tight clothing, and “stimulat[ed]” men with her pregnancy. That same individual gave Varlesi a failing evaluation, despite being told two weeks before that she was “doing great.”
- **The Complaint:** Varlesi alleged pregnancy discrimination & retaliation
- **The Outcome:** Jury awarded the student \$849,000;
- **The Appeal:** the 6th Circuit affirmed the District Court and the Jury Award

Campbell v. Drexel U., 785 F. Supp. 3d (E.D. Pa. June 3, 2025).

(slide 1 of 2)

- Facts:
 - Campbell was a student in a CRNA program at Drexel, was pregnant and completing clinical hours at ASPA, (Anesthesia Services, P.A., another defendant)
 - Campbell reported two pregnancy related disabilities including (1) laryngitis and (2) gestational diabetes.
 - Campbell was marked as “Needs Improvement” on several clinical evaluations, including, in one case, for her performance on a procedure. Campbell claimed at the time of the procedure she was suffering from “pregnancy related laryngitis.” Additionally, Campbell was cited for use of a cell-phone in clinic, which Campbell said was related to need to check her blood sugar (an approved accommodation). Other errors included pharmaceutical distribution mistakes and inaccurate accounting of the same.
- Allegations: Campbell alleged she was held to higher standards than non-pregnant peers and that the defendants violated Title IX, Title VII, the Pennsylvania Human Rights Act, and the ADA.
- ASPA moved for summary judgment.

Campbell v. Drexel U., 785 F. Supp. 3d (E.D. Pa. June 3, 2025).

(slide 2 of 2)

- Outcome: Summary Judgment granted for ASPA.
 - Title IX:
 - Defendant ASPA was entitled to summary judgment because the court found that ASPA was not an “education program or activity” and did not receive federal funds.
 - The court determined ASPA was not an education program or activity, in part, because ASPA did not hold itself out as having an education program and the affiliation between ASPA and the University was limited to clinical hours. The court likened ASPA to a “third party vendor providing services” to Drexel.
 - ADA:
 - The court found that ASPA did not deny Campbell a reasonable accommodation or discipline her, finding that Drexel disciplined her.
- Allegations against Drexel went to jury trial. On October 31, 2025, a jury found in favor of Drexel.

Rivertown School of Beauty (September 2019)

- Allegations:
 - School **POLICY** said:
 - No pregnant students in the esthetician program
 - Students dismissed at seven (7) months pregnant
 - Pregnancy-related appointments must be scheduled outside the school day (other appointments not restricted)
- Findings:
 - The policies were in violation of Title IX and were rescinded.
 - Student was provided a full refund.

Troy University – January 2023 (1 of 2)

- OCR's Concerns:
 - Student struggled with attendance and meeting deadlines due to pregnancy-related complications, early labor, and childbirth.
 - Student's request for assistance were not promptly responded to by the Title IX Coordinator.
 - Professor's request for guidance was not responded to by the Title IX Coordinator.
 - Pregnancy adjustments from professors were "ad hoc and uncoordinated and dependent on each professor's individual interpretation" of the Title IX Coordinator's limited guidance.
 - University updated its website to include protections for pregnant students, but it was unclear whether it had provided any training for faculty and staff regarding pregnant students who request adjustments.

Troy University – January 2023 (2 of 2)

- Resolution Agreement:
 - Required training for faculty and staff who may assist pregnant students with adjustments.
 - Post-training survey to determine the effectiveness of the training.
 - Tracking system for pregnancy-related adjustments for students: request, responses, reasons for denial (if any)
 - Removed student's grades for the semester in question and required the University to "work to limit the negative impact on the Complainant's future applications for financial aid that any disbursement of financial aid for the Courses may have had and reimburse the Complainant for Fall 2020 documented expenses related to any of the Courses the Complainant has since retaken."

California Career College (February 2023)

- Allegations:
 - Student in nursing was told by two administrators that if she was pregnant, she would need to take a leave of absence and would not be able to complete her clinical assignment.
 - Student withdrew from the program due to pregnancy
 - When Student was ready to come back, she was told she would have to complete the entire semester over again
- Resolution Agreement (no factual findings):
 - College must offer the student the option to return to the Program at the same time and status in the semester as when she began her leave of absence, and will not require her to redo assignments, exams, or coursework that she had previously completed.
 - If the student requires additional support to make up missed work, the College will offer the option of allowing the Student to retake the semester if she chooses.

Salt Lake Community College June 2022 (1 of 3)

- Complainant learned she was pregnant and informed her professor that she had missed or had been tardy to class as a result of morning sickness.
- Professor had an attendance policy: three late arrivals was one absence, a student that misses 20% of the class is not eligible to pass the class.
- Student requested the ability to turn in assignments late and to excuse her absences.
- Professor agreed to allow Student to miss some (but not all) of the classes, and would apply a penalty to late assignments.

Salt Lake Community College June 2022 (2 of 3)

- Student continued to struggle with morning sickness, and the Professor then advised the student to drop the class because her “health is more important than a class” and she “needed to take some responsibility for the things that were going on.”
- The Title IX Coordinator was contacted and then denied the student’s requests for academic adjustments because they would constitute “fundamental alterations” to the course. Title IX Coordinator said they corresponded with the instructor and dean but did not document those discussions.

Salt Lake Community College June 2022 (3 of 3)

OCR said:

- The College failed to respond promptly and equitably to the Complainant's complaint of pregnancy discrimination, in violation of Title IX.
- The College failed to engage in an interactive process with the Complainant to determine the appropriate special services and/or academic adjustments to provide in light of her pregnancy, in violation of Title IX.

Final thoughts.

- Respond promptly
- Be open minded and creative
- Document your work:
 - Communication with students
 - Communication with staff/faculty
 - Communication with the Title IX Coordinator
- Show your work – someone unfamiliar with the matter should be able to review the files and understand why/how decisions were made.
- Treat students equitably.
- Keep the Title IX Coordinator involved!

Thank You

