



Brigham Young University–Hawaii  
Office of Compliance & Ethics Research Memo  
Pregnant and Parenting Students Accommodations

Law/Act:	Pregnant and Parenting Students Accommodations	
U.S. Code Citation:	<a href="#">20 U.S.C. § 1681</a>	
Code of Federal Regulations Citation:	<a href="#">34 C.F.R. § 106.40</a>	
Responsible Regulator:	U.S. Department of Education	
BYU–Hawaii Responsible Officer:	Title IX Coordinator, Academic VP, VP of Student Life	
	Updated: August 2013	Updated By: TDS
	Version 1.0	Effective Date: 1972

## PURPOSE

Title IX of the Education Amendments of 1972 prohibits sex discrimination in education.<sup>1</sup> Pregnancy is a condition contingent on sex, so any discrimination or exclusion based on pregnancy is prohibited under Title IX.<sup>2</sup>

## HISTORY

Title IX was passed in 1972.<sup>3</sup> The Department of Education Office for Civil Rights (OCR) has occasionally issued guidance regarding pregnant students. In 1991, OCR released a pamphlet discussing acceptable practices regarding pregnant and parenting students, and this pamphlet was updated and rereleased in 2013.<sup>4</sup> On June 25, 2013, OCR released a “Dear Colleague” letter introducing the revised pamphlet and encouraging schools to support parents in completing their education.<sup>5</sup>

## APPLICABILITY TO BYU–HAWAII

With some limited exceptions, Title IX applies to “any education program or activity receiving Federal financial assistance.”<sup>6</sup> Because BYU–Hawaii receives federal student financial aid,<sup>7</sup> the university is required to comply with Title IX.

## REQUIREMENTS

Title IX prohibits discrimination, exclusion, or denial of benefits because of an individual’s sex.<sup>8</sup> Specifically, under Title IX, an educational institution must not do any of the following on the basis of sex.

---

<sup>1</sup> 20 U.S.C. § 1681(a) (2013).

<sup>2</sup> 34 C.F.R. § 106.40(b)(1) (2013).

<sup>3</sup> Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235, 373-75 (1972).

<sup>4</sup> U.S. DEP’T OF EDUC., SUPPORTING THE ACADEMIC SUCCESS OF PREGNANT AND PARENTING STUDENTS UNDER TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 (2013), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>.

<sup>5</sup> Letter from Seth Galanter, Acting Asst. Sec’y for Civil Rights, U.S. Dep’t of Educ. (June 25, 2013), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.pdf>.

<sup>6</sup> 20 U.S.C. § 1681(a). The law provides for some limited exceptions to Title IX compliance. For example, discrimination in admissions is prohibited only for professional and vocational schools, graduate programs, and public institutions of undergraduate education. *Id.* § 1681(a)(1). Exceptions to all sex discrimination prohibitions are available for military institutions, public institutions that traditionally admit only men or women, and religious educational institutions whose religious tenets are inconsistent with the law’s requirements. *See id.* § 1681(a)(3)-(5).

<sup>7</sup>

<sup>8</sup> 20 U.S.C. § 1681(a).



Brigham Young University–Hawaii  
Office of Compliance & Ethics Research Memo  
Pregnant and Parenting Students Accommodations

1. Treat someone differently in determining whether the person qualifies for an aid, benefit, or service.
2. Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner.
3. Deny any person any such aid, benefit, or service.
4. Subject any person to separate or different rules of behavior, sanctions, or other treatment.
5. Apply any rule concerning the domicile or residence of a student or applicant.
6. Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person who sexually discriminates against students or employees.
7. Limit any person in the enjoyment of any right, privilege, advantage, or opportunity.<sup>9</sup>

***Inclusion of Pregnant Students***

The regulations implementing Title IX prohibit application of any rule related to “a student’s actual or potential parental, family, or marital status” including the condition of pregnancy.<sup>10</sup> Specifically, pregnant students may not be excluded from the following activities, among others:

- education programs,
- educational activities,
- classes (including advanced placement and honors classes),
- extracurricular activities (such as school clubs, academic societies, or interscholastic sports), or
- opportunities for student leadership.<sup>11</sup>

Even if programs are operated by a third party, but are part of the school’s program, pregnant students must be allowed to participate.<sup>12</sup> Pregnant students must also be allowed to continue to participate in off-campus internships and “work in the field” programs.<sup>13</sup>

Besides pregnancy itself, students may not be subjected to discrimination or exclusion due to childbirth, false pregnancy, termination of pregnancy, or recovery from pregnancy.<sup>14</sup> While pregnant students cannot be excluded from programs, they may participate in separate programs if they request to do so voluntarily.<sup>15</sup> The alternative programs must be comparable to programs offered to non-pregnant students and must afford students the same academic opportunities offered by standard programs.<sup>16</sup>

Schools are required to act to prevent or cease harassment related to pregnancy.<sup>17</sup> A school is in violation of Title IX if harassment prevents students from benefiting from or participating in the school’s

---

<sup>9</sup> 34 C.F.R. § 106.31(b).

<sup>10</sup> 34 C.F.R. § 106.40(a)-(b).

<sup>11</sup> *Id.* § 106.40(b)(1); U.S. DEP’T OF EDUC., *supra* note 4, at 5, 9.

<sup>12</sup> U.S. DEP’T OF EDUC., *supra* note 4, at 9.

<sup>13</sup> *Pregnant and Parenting Students’ Rights: FAQs for College and Graduate Students*, NAT’L WOMEN’S LAW CTR, 2 (Oct. 2012), [http://www.nwlc.org/sites/default/files/pdfs/pps\\_faqs\\_at\\_dr\\_10.24.12.pdf](http://www.nwlc.org/sites/default/files/pdfs/pps_faqs_at_dr_10.24.12.pdf).

<sup>14</sup> 34 C.F.R. § 106.40(b)(1).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* § 106.40(b)(3); U.S. DEP’T OF EDUC., *supra* note 4, at 7.

<sup>17</sup> U.S. DEP’T OF EDUC., *supra* note 4, at 8 (“Schools must take prompt and effective steps reasonably calculated to end pregnancy-related harassment, prevent its recurrence, and eliminate any hostile environment created by the harassment.”).



Brigham Young University–Hawaii  
Office of Compliance & Ethics Research Memo  
Pregnant and Parenting Students Accommodations

educational program—but only if school employees encourage, tolerate, ignore, or fail to adequately address the harassment.<sup>18</sup> OCR considers an institution responsible to address harassment if “a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment.”<sup>19</sup>

***Academic Accommodation of Pregnant Students***

Pregnancy and related conditions must be treated in the same way as temporary disabilities.<sup>20</sup> Any services (such as tutoring) and policies the institution has in relation to short-term disabilities must be administered in the same way for pregnant students.<sup>21</sup>

The institution must make reasonable accommodations to allow pregnant students to maintain access to its education program.<sup>22</sup> Appropriate assistance may include providing a larger desk or granting temporary access to elevators that are normally restricted from student use.<sup>23</sup> Schools may also consider designating a private room for young mothers to breastfeed or pump milk during the school day.<sup>24</sup>

Whether or not the institution has a policy for student leave, pregnant students must receive a leave of absence for as long as the student’s physician deems necessary.<sup>25</sup> After the leave has ended the student must return to the same status held when the leave began.<sup>26</sup> If grades are based on attendance or participation, the student must be given the opportunity to earn missed credit so as to return to her original academic status.<sup>27</sup> Institutions may require the student’s doctor to certify that the student is physically and emotionally able to return to classes before allowing the student to return, but only if all students who are treated by physicians for other physical or emotional conditions are required to submit similar certifications before returning to classes.<sup>28</sup>

Schools must ensure individual instructors’ policies and practices on absences comply with the law;<sup>29</sup> that is, schools must excuse absences due to pregnancy and related conditions and give pregnant students the opportunity to make up missed work.<sup>30</sup>

***Addressing Complaints about Pregnancy Discrimination***

---

<sup>18</sup> *Id.*; 34 C.F.R. § 106.31(a); U.S. DEP’T OF EDUC., *supra* note 4, at 8-9.

<sup>19</sup> Letter from Russlyn Ali, Asst. Sec’y for Civil Rights, U.S. Dep’t of Educ. 2 n.9 (Oct. 26, 2010), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

<sup>20</sup> 34 C.F.R. § 106.40(b)(4).

<sup>21</sup> *Id.*

<sup>22</sup> U.S. DEP’T OF EDUC., *supra* note 4, at 9.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 16.

<sup>25</sup> 34 C.F.R. § 106.40(b)(5).

<sup>26</sup> *Id.* The student should return to not only the same academic status, but also the same status in extracurricular programs. U.S. DEP’T OF EDUC., *supra* note 4, at 5.

<sup>27</sup> U.S. DEP’T OF EDUC., *supra* note 4, at 11.

<sup>28</sup> 34 C.F.R. § 106.40(b)(2).

<sup>29</sup> U.S. DEP’T OF EDUC., *supra* note 4, at 11.

<sup>30</sup> *Id.* at 10.



Brigham Young University–Hawaii  
Office of Compliance & Ethics Research Memo  
Pregnant and Parenting Students Accommodations

Institutions covered by Title IX must adopt and publish procedures for individuals to follow when making complaints about discrimination based on sex or pregnancy.<sup>31</sup> The institution must also designate a Title IX coordinator to oversee compliance with Title IX and review any complaints that are made.<sup>32</sup> The institution must publish a notice stating that it does not discriminate based on sex, and this notice must be included in all announcements and forms it uses to recruit students or employees.<sup>33</sup>

Students who wish to enforce their rights under Title IX may make a complaint through the school's published grievance procedure, submit a complaint to the Office for Civil Rights, or file a suit in court.<sup>34</sup>

### STAYING UP-TO-DATE

The following websites provide valuable information regarding this law and its applicability.

DOCUMENT/REFERENCE	DESCRIPTION
<a href="#">Pregnant and Parenting Students' Rights: FAQs for College and Graduate Students</a>	A list of frequently asked questions prepared by the National Women's Law Center about how Title IX applies to pregnant and parenting students.
<a href="#">Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972</a>	Pamphlet from the Department of Education giving guidance on how to comply with Title IX's protections of pregnant and parenting students.
<a href="#">2013 "Dear Colleague" Letter on Pregnant and Parenting Students</a>	Letter issued by the Office of Civil Rights of the U.S. Department of Education that emphasizes schools' responsibilities to support students that become pregnant or have children.

---

<sup>31</sup> *Id.* at 11; 34 C.F.R. § 106.8(a)-(b).

<sup>32</sup> 34 C.F.R. § 106.8(a); U.S. DEP'T OF EDUC., *supra* note 4, at 12.

<sup>33</sup> 34 C.F.R. § 106.9(b); U.S. DEP'T OF EDUC., *supra* note 4, at 12. In addition to applicants for admission and employment, schools are to notify students and parents of elementary and secondary school students, employees, referral sources of students and employees, and all unions or professional organizations holding collective bargaining or professional agreements with the institution. 34 C.F.R. § 106.9(a).

<sup>34</sup> U.S. DEP'T OF EDUC., *supra* note 4, at 13-14.