

Pregnancy & Other Related Conditions

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Spring 2024
(as of February 6, 2024)



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Agenda

1. Title IX & State Laws
2. Pregnancy Protections
 - Student Protections & Unique Student Circumstances
 - Employee Protections
3. Other Related Laws
4. Documentations and Case Management

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Title IX (Educational Amendments of 1972) prohibits discrimination **on the basis of sex** in educational programs or activities receiving federal financial assistance

Anyone participating in or attempting to participate in educational programs or activities

Title IX

Sex Discrimination
Sexual Harassment
Retaliation

Title IX's prohibition of sex discrimination applies to **pregnancy** and **other related conditions...**

SB 412 Pregnancy and Parenting Policy for Students



- SB 412 requires IHE to provide **reasonable accommodations** for **pregnant students** relating to pregnancy, childbirth, or any resulting medical status or condition.
- SB 412 allows **pregnant or parenting students** (parent or legal guardian of a child under 18 years of age) **academic leave of absence without penalty**, if in good academic standing.
- SB 412 requires institutions to have a **policy** addressing pregnant and parenting related discrimination and accommodations available for this student population.
- The Texas Higher Education Coordinating Board (THECB) must adopt rules to administer SB 412, including **minimum and maximum periods** for which a pregnant or parenting student must be given a **leave of absence**. **(TBD at this time)**
- SB 412 is effective as of September 1, 2023, and the institution's **pregnancy and parenting non-discrimination policy** is effective as of **January 15, 2024**.



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Tex. Edu. Code, Section 51.982

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SB 459 and HB 1361 Student-Parent Eligible Services



- SB 459 requires institutions to provide **early registration** to **parenting students** (parent or legal guardian of a child under 18 years of age), if the IHE provides early registration for any groups of students. This applies beginning with registration for a course or program for the **2024 Spring semester** *(and each semester or term thereafter)*
- HB 1361 requires institutions to have a designated institutional liaison for **parenting students**, and **institutional reporting requirements** to the THECB **May of each year**.
- The Texas Higher Education Coordinating Board (THECB) must adopt rules to administer these bills. **(TBD at this time)**
- SB 459 and HB 1361 are effective as of September 1, 2023.



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Tex. Edu. Code, Section 51.983; Tex. Edu. Code, Section 51.9357

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Pregnancy & Parenting Protections

TITLE IX

SB 412

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Title IX prohibits discrimination based on a student or employee's "actual or potential" status:

- Parental status
- Marital status
- Pregnancy
- Childbirth
- Miscarriage
- False pregnancy
- Termination of pregnancy
- Recovery
- Temporary disability resulting from pregnancy

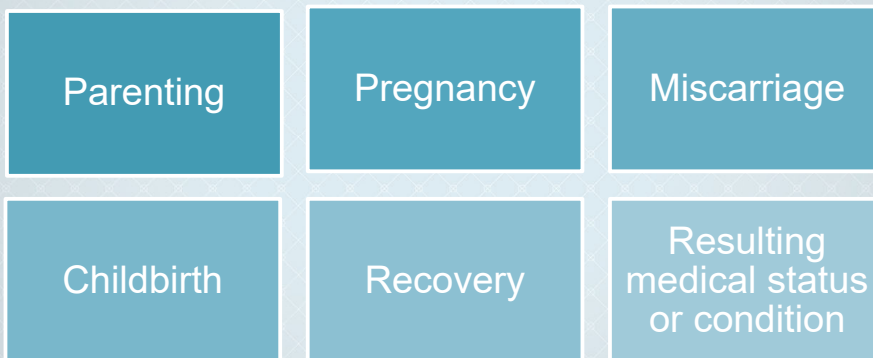
Supporting the Academic Success of Pregnant and Parenting Students,
 U.S. Department of Education (OCR), 2013
 Title IX 34 CFR § 106.40; § 106.57

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2.1

Texas law provides protections for pregnant or parenting students:



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Tex. Edu. Code, Section 51.982

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Examples of Student Pregnancy-Related Impacts & Needs



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Supporting the Academic Success of Pregnant and Parenting Students,
U.S. Department of Education (OCR), 2013

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Student Pregnancy Provisions

TITLE
IX



SB 412

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Title IX - Equal Participation



An institution shall not discriminate against any student or exclude any student from its education program or activity, including any class or extracurricular activities, based on such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the person **voluntarily participates in a separate program or activity** of the institution.

Title IX 34 CFR § 106.40(b)(1)

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Title IX - Separate Programs

An institution 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 (*Equal Participation*) shall ensure that the separate portion is **comparable** to that offered to non-pregnant students.

Title IX 34 CFR § 106.40(b)(3)



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Texas Law Provisions

Institutions may not require a **pregnant or parenting student**, solely because of the student's status as a pregnant or parenting student or due to issues related to the student's pregnancy or parenting, to:

- Take a leave of absence or withdraw from the student's degree or certificate program;
- Limit the student's studies;
- Participate in an alternative program;
- Change the student's major, degree, or certification program; or
- Refrain from joining or cease participating in any course, activity, or program at the institution.



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Tex. Edu. Code, Section 51.982(b)

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“Parenting student” is defined as “a student who is a parent or legal guardian of a child under 18 years of age”.



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Tex. Edu. Code, Section 51.982

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Leave of Absence

Unenroll from
the student's
current courses

Eligible to
re-enroll in
future courses
and continue the
academic
program at a
later term or
semester

Excused Absence

Stay enrolled in
the student's
current courses

Opportunity to
make-up
coursework or
exams missed

Earn grades or
credit for these
current classes



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Student Leave of Absence Provisions

**TITLE
IX**

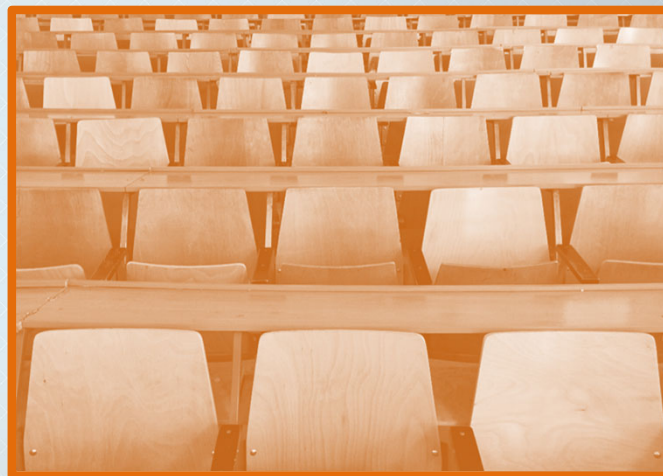


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Title IX - Leave of Absence (Academic Withdrawal)

In the case of an institution which does not maintain a leave policy for its students, or the case of a student who does not otherwise qualify for leave under such a policy, an institution shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a **leave of absence** (e.g. withdrawal from classes or otherwise not enrolled for a period of time) for so long a period as it is deemed **medically necessary**.



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Title IX 34CFR§ 106.40(b)(5)

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Title IX – Reinstated Status after a Leave (Academic Withdrawal)

The school must allow the student to return to the **same academic and extracurricular status** as before their leave (e.g. academic withdrawal or unenrollment period) began.



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Texas Law Leave of Absence Provisions

Institutions must allow a **pregnant or parenting student** to:

- Take a leave of absence; and
- If in good academic standing at the time of the leave of absence, return to the student's degree or certificate program in good academic standing without being required to reapply for admission.



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Tex. Edu. Code, Section 51.982(e)

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Excused Absences & Reasonable Accommodations – Student Pregnancy Provisions

TITLE IX



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Title IX – Excused Absences & Opportunity to Make-up Coursework

The school must excuse a student's absences due to pregnancy or any related conditions.



A student cannot be penalized for missing class due to pregnancy or other related conditions.

There must be an equal opportunity given to earn credit from missed classes/assignments due to pregnancy.



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Title IX - Temporary Disability Policies

An institution shall treat pregnancy, childbirth, false pregnancy, termination or 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 institution administers, operates, offers, or participates in with respect to **students** admitted to the institution's educational program or activity.

Title IX 34 CFR § 106.40(b)(4)



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ADA/Section 504

Federal law prohibits **disability discrimination** and requires institutions to provide reasonable accommodations to qualified individuals with a disability.

Applicable for students and employees.

A **disability** under ADA/504 is

1. A physical or mental impairment that substantially limits one or more **major life activities**;
2. A person who has a history or record of such an impairment; or
3. A person who is perceived by others as having such an impairment.



Pregnancy itself is **not** a disability, but **complications** from pregnancy or childbirth may qualify.



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*Under ADA, accommodations that constitute **undue hardship** are not reasonable.*

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Texas Law Reasonable Accommodation Provisions

Institutions must provide **reasonable accommodations** to a **pregnant student**, including accommodations that:

- Would be provided to a student with a temporary medical condition; or
- Are related to the health and safety of the student and the student's unborn child, such as allowing the student to maintain a safe distance from substances, areas, and activities known to be hazardous or pregnant individuals or unborn children.



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Tex. Edu. Code, Section 51.982(d)

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Texas Law Provisions (Cont.)

Institutions must, for reasons related to a **student's pregnancy, childbirth, or any resulting medical status or condition**:

- Excuse the student's absences;
- Allow the student to make up missed assignments or assessments;
- Allow the student additional time to complete assignments in the same manner as the institution allows for a student with a temporary medical condition; and
- Provide the student with access to instructional materials and video recordings of lectures for classes for which the student has an excused absence (under this section) to the same extent that instructional materials and video recordings of lectures are made available to any other student with an excused absence.



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Tex. Edu. Code, Section 51.982(e)

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Considerations for Reasonable Accommodations

Length of absences from classes, clinicals, etc.

Timing of the absences

Course objectives

Content missed as a result?

Are there alternative ways for the student to demonstrate competencies or skills?



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Examples of Make-up Coursework and Academic Alternatives

Flexible Attendance

Extensions on Coursework Deadlines

Reschedule Exam(s)

Re-weigh Curriculum Coursework %

Alternative Assignments

Independent Study

Extra Credit Coursework

Remote Participation (Zoom/Teams)

Change Course to Pass/Fail Status

Reduced Courseload Status

Not all of these examples may be reasonable or available, depending on the circumstances or course.

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Student Hypothetical Part 1

Jin, a second-year undergraduate student, is in her third trimester and is due at the end of the semester. Jin has been missing classes periodically due to medical issues from the pregnancy and frequent doctor's appointments as a result.

Jin isn't sure how to handle her absences or what accommodations are available.

Check the institution's **Student Pregnancy and Parenting Nondiscrimination Policy** for requesting reasonable accommodations through the designated office.



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Student Hypothetical Part 2

Jin is due at the end of the semester. Jin has missed classes and assignments periodically due to ongoing medical issues from the pregnancy. Jin's professors have all provided Jin with multiple opportunities to make-up assignments and exams.

In one of her classes, Jin has only completed about 25% of the coursework, even with the opportunities offered by the professor to allow Jin to make-up the coursework missed. There is only one week left of classes, and Jin is due for delivery at the end of the week. Jin says she is unable to make-up the remaining coursework by the end of the semester and asks for an incomplete for the course so she can make-up the remaining work next semester.

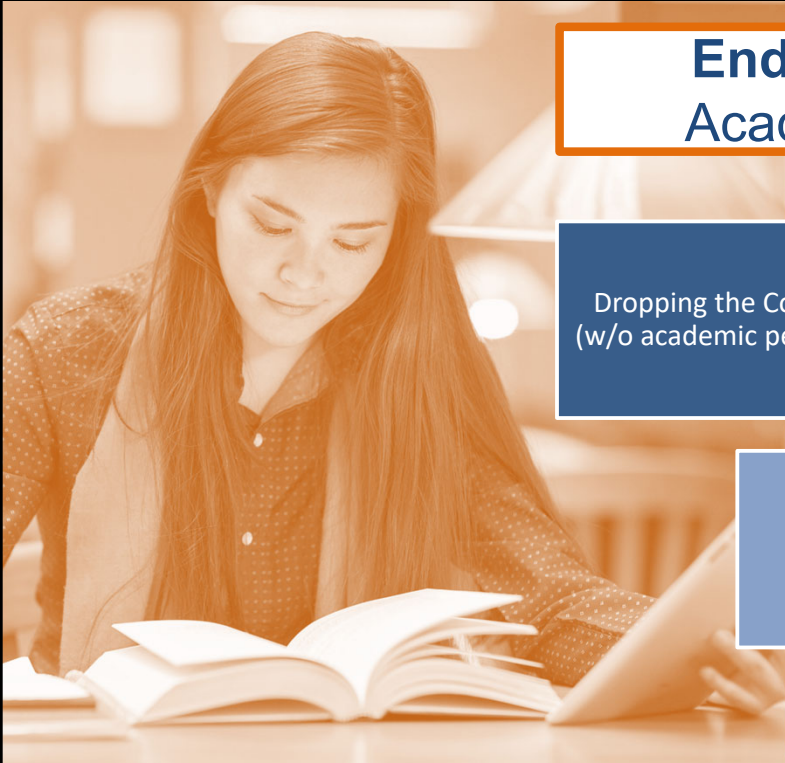
The professor typically only considers giving incompletes when the student has completed more than half (>50% of the coursework) and is unsure what to do.



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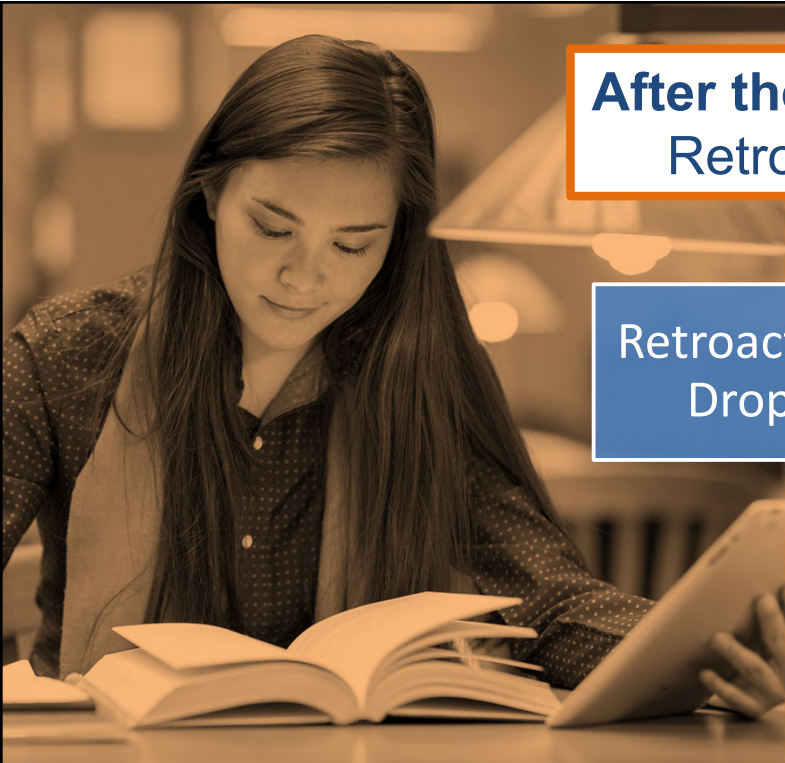


End of Semester Academic Options

- Dropping the Course (w/o academic penalty)
- Leave of Absence – Academic Withdrawal from All Classes (w/o academic penalty)
- Incomplete Grade (if available)

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After the Semester Ends Retroactive Options

- Retroactive Drop
- Retroactive Withdrawal

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Unique Student Scenarios

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Title IX - Medical Certification



An institution 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 certification is **required of all students** for other physical or emotional conditions requiring the attention of a physician.

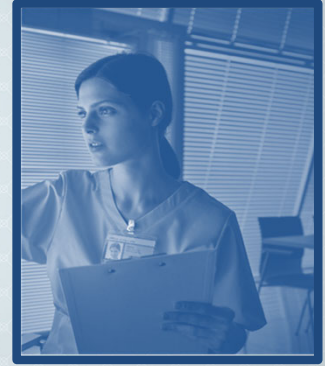
Title IX 34 CFR § 106.40(b)(2)

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Clinicals & Cohort Programs

- **Continued Participation:**
 - Pregnant students are allowed to continue participating in off-campus programs.
 - If their program provides opportunities to work in the field, the program cannot deny participation based on pregnancy.
- **Reasonable Accommodations:**
 - Provide **reasonable accommodations** and allow for make-up work, as applicable to the student's circumstances.
 - If situations in class or clinicals are deemed **unsafe** for pregnant students, the student must be allowed to make-up work later or find a reasonable accommodation for the circumstances.
- **Leave of Absence:**
 - The pregnant student can take a **leave of absence** (withdrawal from classes), if clinicals cannot be completed by end of term.
 - The student must be **reinstated** to the status which was held when the leave began.
- **Hospitals and clinics** that have a contractual arrangement formally integrating students through their education program, these facilities must also adhere to Title IX compliance.



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Jamie is enrolled in an accelerated dentistry program. Two months into the year-long program she finds out she is pregnant. The program has a strict absence policy with required classes and clinicals, in accordance with the program's accreditation requirements. If a student misses more than 2 days of classes or clinicals, the student will be dismissed from the program.

Clinical Hypothetical

The absence rule concerns Jamie since she has already missed 2 days of clinicals due to pregnancy-related conditions and she will need to miss a portion of her clinicals again due to additional doctor's appointments related to her pregnancy. Jamie looked at her program's course syllabus and there were no explicit exceptions or modifications addressed regarding pregnancy or related conditions.

Through an interactive process with the student, faculty, and/or the program's coordinator, explore whether reasonable accommodations can be identified based on the student's circumstances.

An alternative can also be a leave of absence (academic withdrawal from classes w/o penalty) and be reinstated to the same academic status before the leave.



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Student-Athletes

- **Continued Sport Participation:**
 - Pregnant student-athletes may continue participating in their sport or apply for a **red shirt season** (if pregnant).
 - Student-athletes can obtain the **medical certification** of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity.
 - A **student-athlete's physician** should make **medical recommendations** regarding sports participation, not the coaches.
- **Leave of Absence:**
 - The pregnant student-athlete can take a **leave of absence** from the athletics program due to pregnancy or related conditions.
 - The student must be **reinstated** to the **student-athlete status** which was held when the leave began.
- **Financial Awards:**
 - **Athletic financial awards** cannot be conditioned on not becoming pregnant and are protected during the term of award.



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Participation Heavy Courses

- **Participation-Based Grading:**
 - If there are “specific points or grades” assigned to **attendance or participation**, a student cannot be penalized when missing classes or participation based on pregnancy or related conditions.
 - Provide **reasonable accommodations** and allow for make-up work due to pregnancy or related conditions, as applicable to the student's circumstances.
 - Academic alternatives to participating in class may be reasonable, if it's not a fundamental alteration to the curriculum or otherwise an undue hardship.



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Lab Hypothetical

Scout is enrolled in a chemistry course that includes exposure to various chemicals for experiments, and grades are based heavily on attendance and lab participation.

Scout asks the professor to complete their labs remotely (Zoom) with another student facilitating Scout's experiments in person simultaneously in real time, under Scout's direction (to demonstrate her knowledge/comprehension of the course). The professor doesn't usually allow for alternative lab participation but also doesn't think it's safe for a pregnant student to be exposed to chemicals. The professor recommends that Scout drop the course and re-take in the future.

Through an interactive process with the student and faculty, explore whether reasonable accommodations can be identified based on the student's circumstances. Are there any reasonable alternatives available?

Dropping the class or taking a leave of absence (academic withdrawal from classes w/o penalty) are alternatives, voluntary to the student. 39



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Labs/Chemical Exposure

- **Health and Safety Restrictions:**
 - Faculty can recommend but **cannot restrict** pregnant students from chemical or disease exposure in lab settings; cannot impose penalties for pregnant students who choose to abstain from chemical or disease exposure.
 - **Reasonable restrictions** for health & safety are permitted (as determined by a physician or doctor's note, voluntarily provided by the student).
- **Reasonable Accommodations:**
 - Provide **reasonable accommodations** and allow for make-up work, as applicable to the student's circumstances.
 - If situations in class or labs are deemed **unsafe** for pregnant students, the student must be allowed to make-up work later or find a reasonable accommodation for the circumstances.



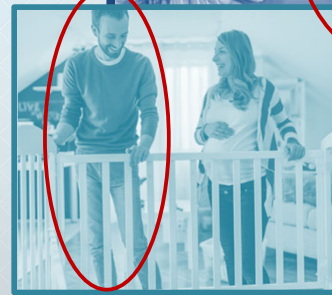
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Co-Prospective Parent (Non-Pregnant Person)

- **Co-Prospective Parent:**
 - Under Title IX or state law, there are no provisions that require schools to provide reasonable accommodations to parenting students or the co-prospective parent (non-pregnant person) that is also a student.
 - Under state law, **parenting students** are eligible for a **leave of absence** (academic withdrawal from classes).
- **Other circumstances:**
 - Processes relating to **adoption, fostering, or fertility** are not explicitly addressed under Title IX or state law, but schools have discretion on how to apply reasonable accommodations and leaves of absence under these circumstances.



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Children in the Classroom

- **Childcare:**
 - Under Title IX or state law, there are **no requirements** permitting student's children in the classroom.
 - Children in the classroom can **interfere** with the learning environment.
 - **Childcare**, itself, is not considered "medically necessary" under Title IX.
 - There are **no requirements** under Title IX for schools to provide childcare for students or excuse absences due to lack of childcare available.



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Employment Pregnancy Laws

TITLE VII Civil Rights Act

TITLE IX

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2.2

Employee Protections Based on Pregnancy or Related Condition

Title IX prohibits sex discrimination of employees in education programs or activities, including pregnancy or related status.

Title VII as amended by the **Pregnancy Discrimination Act (PDA)**, which prohibits employment discrimination based on:

- Current pregnancy
- Past pregnancy
- Potential or intended pregnancy
- Medical conditions related to pregnancy or childbirth

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Examples of Employee-related Impacts & Needs

Work-related
Accommodations due
to pregnancy or
related conditions

Excused Work
Absences (Paid or
Unpaid Leave)

Changes in the Work
Environment

Alternative
Participation Options

Breast Milk
Expression



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Employees: Family Medical Leave (FML)

FML is a benefit that provides eligible employees **up to 12 workweeks of unpaid leave a year** and requires group health benefits to be maintained during leave, as if employees continued to work instead of taking leave.

Employees are entitled to return to their **same or an equivalent job** at the end of their FML.



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ADA Reasonable Accommodations for Employees

A **reasonable accommodation** is a change in the workplace or in the way things are customarily done that enables an individual with a disability to apply for a job, perform a job's essential functions, or enjoy equal benefits and privileges of employment.

An employer may only deny a reasonable accommodation to an employee with a disability if it would result in an **undue hardship** (an action requiring significant difficulty or expense).

ADA Amendments of 2008, U.S. Equal Employment Opportunity Commission (EEOC)

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ADA Reasonable Accommodations (Employee-Related Examples)

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Redistributing **marginal functions** (i.e. non-fundamental/non-essential job duties).

Altering **how a job function is performed** (e.g. modifying standing, lifting, climbing, or bending requirements).

Modifying **workplace policies**.

Purchasing or modifying **equipment or devices** (e.g. foot stool, larger desk).

Modifying **work schedules**.

Temporary assignment to a **"light duty" position**.

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Pregnant Workers Fairness Act (PWFA)

- Effective June 2023
- Similar to ADA obligations, requiring **reasonable accommodations** to employees and applicants with **temporary physical or mental limitations** due to pregnancy or related conditions.
- Similar to ADA, incorporates an “**interactive process**” – good faith discussion between employer and employee to try to identify reasonable accommodations.

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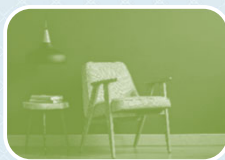
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Other Related Laws

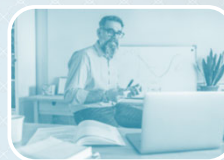
Breastfeeding & Lactation Challenges



Time



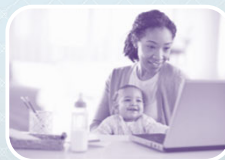
A Safe Space



Accommodations



Free from Harassment



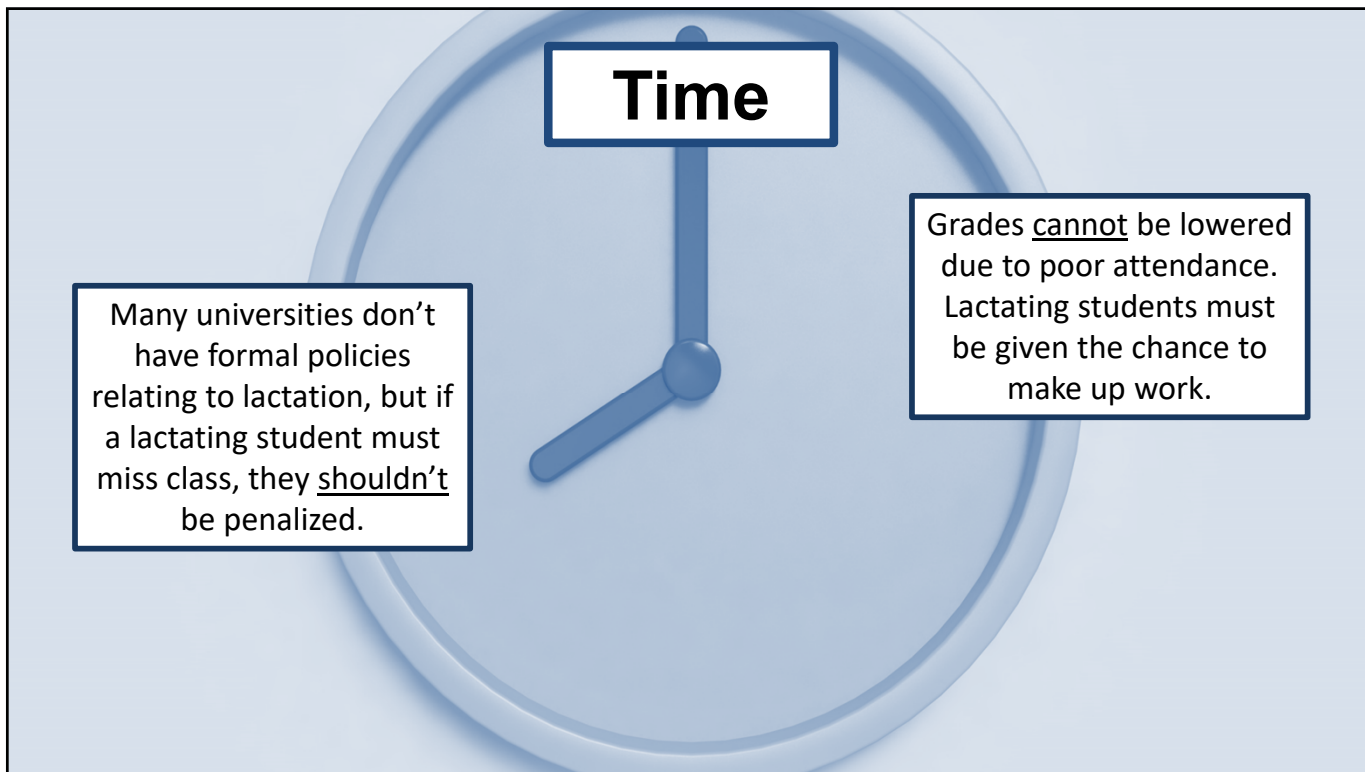
Finding A Pump or Other Support



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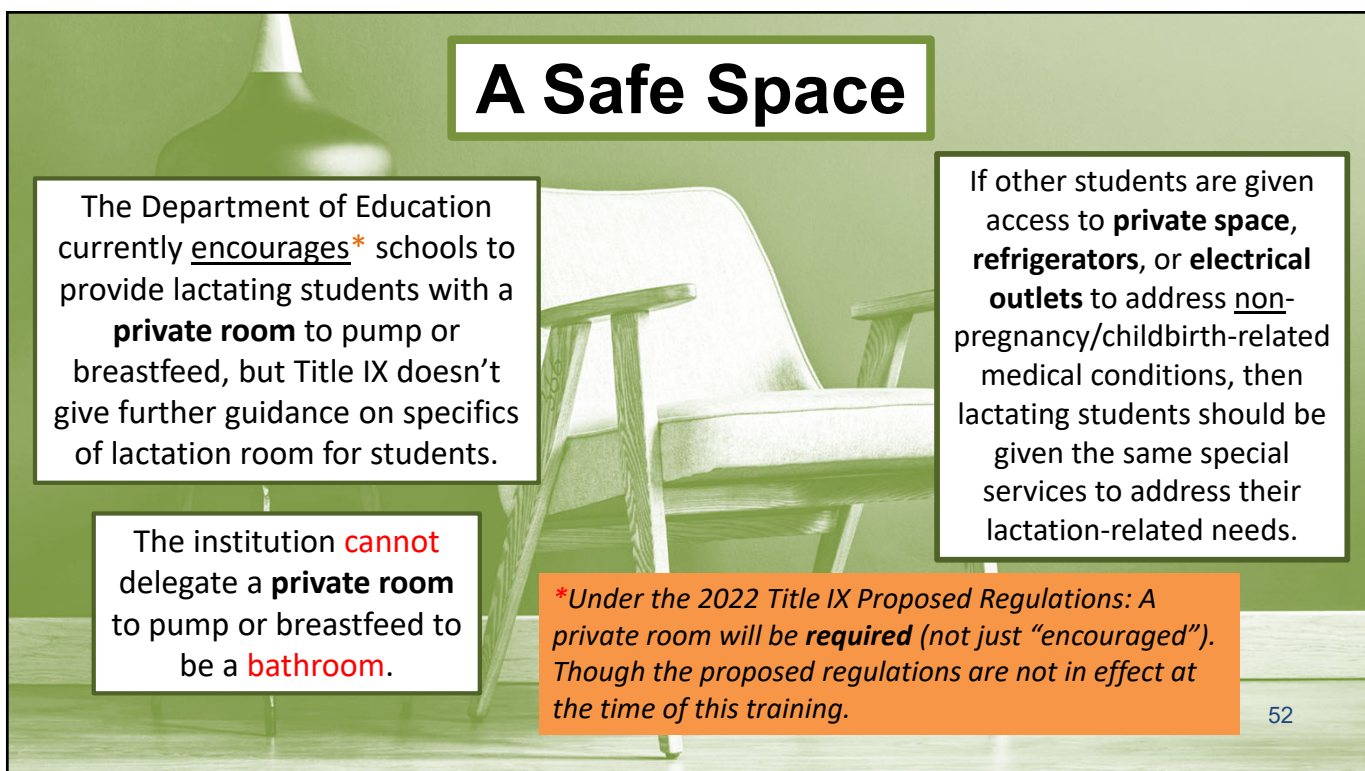


Time

Many universities don't have formal policies relating to lactation, but if a lactating student must miss class, they shouldn't be penalized.

Grades cannot be lowered due to poor attendance. Lactating students must be given the chance to make up work.

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A Safe Space

The Department of Education currently encourages* schools to provide lactating students with a **private room** to pump or breastfeed, but Title IX doesn't give further guidance on specifics of lactation room for students.

If other students are given access to **private space, refrigerators, or electrical outlets** to address non-pregnancy/childbirth-related medical conditions, then lactating students should be given the same special services to address their lactation-related needs.

The institution **cannot** delegate a **private room** to pump or breastfeed to be a **bathroom**.

Under the 2022 Title IX Proposed Regulations: A private room will be **required (not just "encouraged"). Though the proposed regulations are not in effect at the time of this training.*

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Employees: PUMP Act (2022)

Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act

- Amended the Fair Labor Standards Act (FLSA) that requires employers to provide:
 - a) **Reasonable break time** for an employee **to express breast milk** as they need to for one year after the child's birth; and
 - b) A **place**, other than a bathroom, that is shielded from view and free from intrusion for an employee **to express breast milk**.
- Applies to non-exempt and exempt employees; not guaranteed paid break time though.



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Accommodations

The school must accommodate any **lactation-related impairments**, such as serious infections, as with other **medical conditions** and accommodations.

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Free from Harassment

The school must protect students from pregnancy or nursing-related harassment or other discrimination, including having **policies** that prohibit sex discrimination, and having **grievance procedures** to respond to complaints.

Comments that may constitute prohibited harassment include, but are not limited to:

- Making sexual comments or jokes about the person's pregnancy;
- Calling the person sexually charged names;
- Spreading rumors about the person's sexual activity;
- Making sexual propositions or gestures toward the person.

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Finding a Pump & Other Support

The **Affordable Care Act** requires most health insurers to cover the cost of a breast pump and counseling on breastfeeding.

The **Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)** also provides pumps and other breastfeeding benefits.

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TIXC Documentation & Record Keeping - Examples

- Professor Notifications
- Supervisor Notifications
- Documentation
- Any other coordinated supportive measures or assistance

Q & A

Contact Information

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