



Association of
Title IX Administrators

Supporting Pregnancy, Parenting, and Related Conditions

An ATIXA Best Practices Workshop

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Strategic Risk
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Introduction



This workshop highlights systems for responding to the needs of pregnant students and employees by providing reasonable modifications consistent with the law and best practices.



Participants will gain an understanding of when a medical necessity arising from pregnancy or a related condition should be addressed as a temporary medical condition by collaborating with disability/accessibility support services staff.



Our goal today is to provide an in-depth examination of the Title IX regulatory requirements and ATIXA's recommended best practices for supporting individuals experiencing pregnancy or related conditions.

Content Advisory

The content and discussion in this course will necessarily engage with sexual harassment, sex discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles, including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

Definitions and Regulatory Requirements

Overview

- Pregnant students and employees are protected by Title IX, in addition to other applicable federal and state laws
- Ensure that pregnant and newly parenting individuals are supported as needed to access their education and workplace
- Ensure individuals know and understand their rights under Title IX, including the role of the Title IX Coordinator (TIXC)
- Pregnancy and related conditions are considered from the lens of sex discrimination under Title IX
 - 1975 Regulations apply



1975 Title IX Regulations

Recipient may not:

- Discriminate in its education program or activity against any student or employee based on
 - Pregnancy
 - Childbirth
 - False pregnancy
 - Termination of pregnancy
 - Recovery therefrom
- Adopt a rule which treats a student or employee differently on the basis of their actual or potential **parental, family, or marital status**
- Applies to applicants for admission and employment

PWFA and PUMP Act may provide rights and protections for pregnant employees, too

Best Practices: Scope

Individuals and Status:

- Students
- Employees
- Pregnancy and related conditions
- Family status
- Marital status
- Parenting status
- “Head of household”

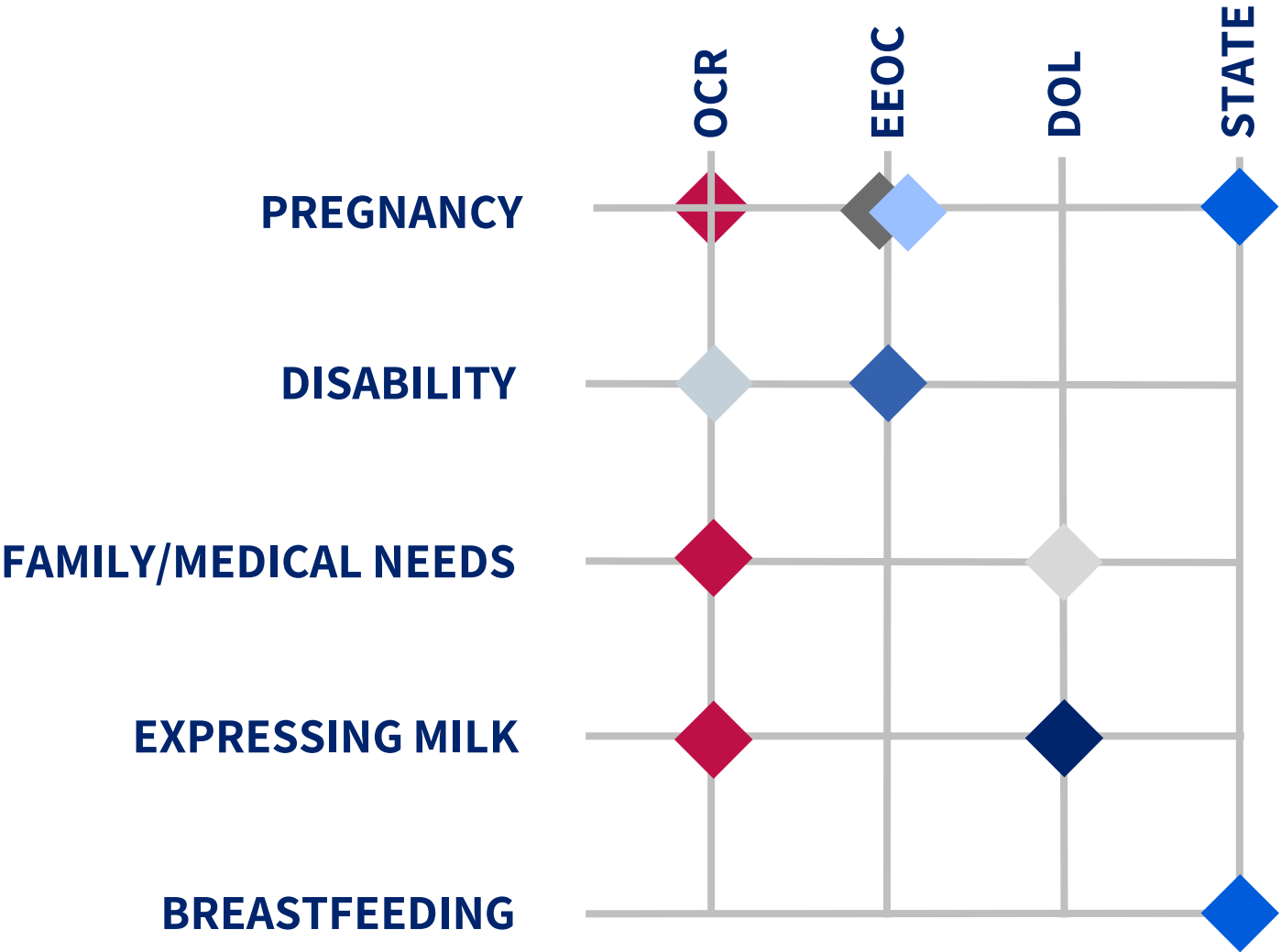
Non-Discrimination Issues:

- Academics and access to course offerings
- Admissions
- Athletics
- Employment, recruitment, and hiring
- Extra-curricular activities
- Facilities
- Externships/clinical placements
- Financial assistance
- Funding
- Lactation space and time
- Health insurance
- Housing
- Leaves of absence
- Salaries and benefits

Federal and State Law Overlap

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-  Title IX
-  Title VII of the Civil Rights Act of 1964
-  Section 504 of the Rehabilitation Act of 1973
-  Americans with Disabilities Act
-  Pregnant Workers Fairness Act
-  Family Medical Leave Act
-  PUMP Act
-  State Laws



Overlap with State Laws

- All but five states have enacted some state-level protections for pregnancy in the workplace
 - Alabama, Indiana, Nevada, North Carolina, and South Dakota
- Forty-two states and Washington, D.C. have state-level protections for pregnancy accommodations
- All states; Washington, D.C.; Puerto Rico; and USVI have some law permitting breastfeeding in any public or private location
- TIXCs need to be aware of the intersection of these federal and state laws when developing and implementing policy

Title IX Coordinator & Pregnancy

Best Practices for TIXC Oversight



Documentation



**Policies,
Practices, and
Procedures**



**Resolution
Process**



**Reporting/
Information
Sharing**



**Outreach and
Support**



Training

Academic Policies and Procedures

TIXC must be well-versed in institutional policies that may have implications for students who are pregnant or have related conditions

**Academic
Incompletes**

Add/Drop

Grade Appeals

**Internships/
Externships/
Co-Ops/Practicums**

Leaves of Absence

**Out-of-Class
Expectations**

Pass/Fail Option

Retakes

General Policy Awareness

- Non-academic policies may also impact individuals who are pregnant or have related conditions
- TIXC should be aware of policies and make themselves available for consultation with those developing and revising policies

Common Policies

- Attendance
- Dress codes
- Financial aid and scholarships
- Housing contracts/live-on requirements
- Minors on campus
- Parking
- Student health insurance
- Visa requirements

Granting Exceptions to Policies and Processes

- Request process should be clear and well-advertised
 - Online form or appointment request
- Pre-emptive employee training including scenarios and example communications
- Consider waivers for arbitrary policies (e.g., no leaves of absence longer than two weeks) even if that results in inconsistency with previous practices
- TIXC partners with other offices to implement and provide a seamless support process for students and employees
- Retroactive reasonable modifications are not required
 - Common and often necessary with pregnancy or related conditions
 - ATIXA recommends developing a framework or rubric to guide consistent retroactive request decisions

Documentation and Communication

- Clear, detailed documentation regarding reasonable modifications is recommended
- Obtain written consent prior to disclosing personally identifiable information (e.g., pregnancy status)
- Office for Civil Rights (OCR) emphasizes that communication across the institution is key
- Consider nuance and employ soft skills to navigate conversations with other departments



Privacy and Recordkeeping Recommendations

- Consult with legal counsel about recordkeeping and sharing practices
- Consider whether to maintain records of:
 - Initial request/contact
 - Reasonable modification information
 - Consultation with disability/accessibility services (if applicable)
 - Notifications
 - Complaints
 - Investigations and resolutions
- Medical records receive at least the same privacy as other Title IX documents
 - Limit access accordingly
- **Note:** Education and employment records are subject to subpoena

Reasonable Modifications

Reasonable Modifications Defined

- The 1975 Title IX Regulations do not require institutions to modify policies or procedures for students or employees on the basis of pregnancy or a related condition
- ATIXA recommends using the term **reasonable modifications** to distinguish support for pregnancy and related conditions from **supportive measures** for sexual harassment and **reasonable accommodations** for disabilities
- **Reasonable Modifications** to the Recipient's policies, practices, or procedures to prevent discrimination:
 - **Individualized:** must consult with the individual before offering
 - **Voluntary:** individual may accept or decline each reasonable modification offered
 - Fundamental alteration of education program or activity is **NOT** reasonable

Training and Information Sharing

ATIXA recommends training all employees on:

- Sex discrimination on the basis of pregnancy and related conditions
- Resources and support available through the TIXC
- Information to provide an individual who discloses a pregnancy or related condition



Outreach and Intake

TIXC should inform the individual of the institution's obligation to:

- Prohibit sex discrimination
- Provide reasonable modifications to prevent discrimination
- Allow access, on a voluntary basis, to any separate and comparable portion of the institution's education program or activity
- Allow a voluntary leave of absence (resuming from the point where they left off)
- Provide information about available lactation space
- Maintain grievance process for alleged discrimination
- Treat pregnancy as comparable to other temporary medical conditions for medical benefit, service, plan, or policy purposes

Reasonable Modification Examples

Determine suitable reasonable modifications through an interactive process

Breaks During
Academic
Activities

Excusing
Intermittent
Absences

Online or
Homebound
Participation

Course Flexibility

Accessing
Alternate Parking

Counseling

Adjusting Physical
Space

Arranging Elevator
Access

Supporting Documentation

- Medical documentation is typically unnecessary to determine reasonable modifications
- Proceeding based on a student's self-attestation of their needs will be the least burdensome for the student and enable the institution to promptly meet the student's needs
- Should only be required in limited circumstances when:
 - **Necessary** and **reasonable** under the circumstances to determine:
 - Reasonable modifications to offer
 - Other specific actions to take

Supporting Documentation

Generally, not necessary or reasonable when:

- Student's need is obvious, such as:
 - Expressing breast milk or breastfeeding
 - Carrying or keeping water nearby and drinking
 - Using a bigger desk
 - Sitting or standing
 - Taking breaks to eat, drink, use the restroom
 - Needing a larger uniform
- Specific actions are available to students for other reasons without supporting documentation
- Not all students have access to healthcare providers or have seen one prior to needing reasonable modifications

Reasonable Modifications Approach

- Approach for pregnant students should be the same as non-pregnant students when considering exclusion from labs, athletics, clinical environments, etc.
 - Safety-related justifications are often discriminatory
- Maintain privacy of the student's pregnancy status to the extent possible
- Complaints alleging failure to provide reasonable modifications would be subject to resolution under institutional procedures for sex discrimination

Certification to Participate

Must **not** require health care provider or other certification that the student is **physically able to participate** in the program or activity, unless:

- The certified level of physical ability or health is necessary for participation;
- The institution requires such certification of all students participating; **and**
- The information obtained is not used as a basis for pregnancy-related discrimination

Voluntary Leaves of Absence (LOA)

- Must permit voluntary LOA for, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider
- May take a LOA under another policy if that policy provides a longer time-period for LOA than medically necessary (Title IX rights remain intact)
- Must be reinstated to the academic status, and (as practicable), the extracurricular status they held before LOA
 - Provide opportunity to make up any work missed
 - Retaking a semester
 - Taking part in an online course credit recovery program
 - Allowing student additional time in a program to continue at the same pace and finish at a later date
 - Student should be allowed to choose how to make up the work

Best Practices: Lactation Time & Space

Ensure student and employee access to a lactation space that is **functional**, **appropriate**, and **safe**:

- A space other than a bathroom, that is:
 - Clean
 - Shielded from view
 - Free from intrusion from others
 - Available for expressing breast milk or breastfeeding as needed



Pregnancy and Disability Intersection

- Pregnancy itself is not a disability under ADA/Section 504 but some pregnancy-related conditions could manifest as temporary disabilities
- TIXC should collaborate with disability/accessibility services staff to determine reasonable modifications for individuals with temporary disabilities
 - Ensure compliance with Title IX, Americans with Disabilities Act (ADA), and Section 504



Title IX vs. ADA/Section 504 Obligations

Title IX

- Prohibits sex discrimination against students and employees
- Provides the student with the option of **reasonable modifications**
- Allows voluntary access to any separate and comparable portion of the program or activity
- Allows voluntary leaves of absence

ADA/Section 504

- Prohibits discrimination against individuals with disabilities (including temporary ones)
- Involved as requested when someone has a physical or mental impairment that substantially limits one or more major life activities
- Follows institution's interactive process to provide **reasonable accommodations**

Related Issues

Pregnancy and Student-Athletes

- Pregnant student-athletes must be permitted to participate in athletics without restriction or modification (other than what restrictions are applied to all students)
- The National Collegiate Athletics Association (NCAA) is the only collegiate governing body to have a specific policy on pregnant student-athlete participation
 - Most others follow the NCAA's lead
 - TIXC and athletic staff, including coaches, should be familiar with NCAA policy
- The majority of high school athletics associations have not adopted policies related to pregnancy

Key Rights of Pregnant Student-Athletes

- Athletics financial aid awards cannot be conditioned on not becoming pregnant and are protected during the term of the award
- A student-athlete who has taken leave for pregnancy related conditions must be reinstated
- “Misconduct” involving pre-marital sex cannot be used as a justification for limiting a pregnant student-athlete’s participation (subject to religious exemption)
- Discrimination prohibitions apply to recruiting
- A pregnant student-athlete cannot be retaliated against for reporting or complaining about pregnancy discrimination

Support for Non-Birthing Parents

- Title IX:
 - Focuses on providing support and resources to reduce disparities in access to the education program
 - Seeks to remedy the inequities sex discrimination creates
- Narrow application to only the birthing or pregnant individual **may** run afoul of Title IX, if it discriminates on the basis of sex
- TIXC may evaluate and determine on an individualized basis if requested modifications are reasonable and appropriate for a non-birthing parent
 - Can also support without relying on legal requirements

Parenting

If the institution would provide protections/modifications to a birthing parent, it might be sex discrimination under Title IX to refuse them to the non-birthing parent

- Title IX covers attending to:
 - The pregnancy-related medical needs of the birthing parent
 - The birth-related immediate post-partum health/medical needs of the child
- Length of post-partum leave as determined medically necessary by a healthcare provider
- Sick/unhealthy birth parents/children are not otherwise covered by Title IX pregnancy or related conditions protections

Non-Medical Childcare Needs

- Institution not legally required to provide childcare or reasonable modifications for childcare needs
 - May voluntarily and equitably provide reasonable modifications under institutional policy
- Requests for childcare support are usually for excused absences, remote learning options, or access to hybrid work environments
- TIXC may choose to evaluate each request case-by-case, considering the proximity of time to the pregnancy, necessity, etc.
- Modifications should have clear start and end dates and applicable parameters

Common Challenges

- Lack of clear process for requesting supports/modifications
 - Ad hoc and uncoordinated approach
 - No or poor communication with individual regarding options
- Faculty/staff:
 - Failing to consult with TIXC
 - Unwilling to accommodate
- Failing to engage in an interactive process
- Discriminatory documentation requirements
- State law intersections with pregnancy and pregnancy records/documentation



Case Studies

Case Study Instructions

- Break into small groups
- Access the case study document in the Course Lobby
- Each group will start on their assigned case study and work through as many as possible in 60 minutes
- Regroup to debrief on exercise for the remaining time

Case Study 1: Valerie Introduction

- Valerie is an incoming first-year student.
- She has been awarded a prestigious Hopper Scholarship based on her academic performance and leadership potential.
- The Hopper Scholars are a group of 20 students from each incoming undergraduate class selected to receive a full-ride scholarship (tuition, books, room, and board) and participate in a cohort-model program focused on academic excellence and civic engagement.
- To maintain their scholarship, Hopper Scholars are required to enroll in a set curriculum, reside on campus in the Hopper Scholars living-learning community, and engage in leadership development and civic engagement opportunities planned by the Hopper Scholars advisor in conjunction with the institution's President who established the program.
- Prior to arriving to the institution for her first term, Valerie learns that she is pregnant, and her due date is in late March of the following year.

Case Study 1: Valerie Communication

- Valerie emails the Hopper Scholars advisor to inquire about her options for continuing with the program now that she is pregnant.
- The advisor informs Valerie that she will be unable to participate in the program and her scholarship will be revoked because she cannot live in on-campus housing with a child and residing in the living-learning community is an essential component of the scholarship program.
- Shocked and panicked because she knows she will be unable to attend the institution without her scholarship, Valerie contacts the Title IX office for assistance.

Case Study 1: Valerie Discussion

- If these conditions are true, would revoking Valerie's scholarship be considered discrimination on the basis of sex under Title IX?
 - Why or why not?
- What immediate remedies would be appropriate in this situation?
- What long-term remedies should the institution consider?

Case Study 2: Chemical Concerns

- The institution's Department of Environmental Health and Safety wants to publish a "Pregnancy in the Lab" guide and require all female employees and students who will engage in laboratory activities where hazardous chemicals may be present to sign a waiver releasing the institution from liability for any potential impacts on a pregnancy or difficulty conceiving as a result of hazardous chemical exposure.
- Joon Woo, an Environmental Health and Safety employee, advised the Director that he believed such a practice would be considered discriminatory and suggested that they consider a different approach.
- The Director dismisses Joon Woo's concerns and tells Joon Woo to mind his own business or he will no longer be included in department leadership meetings.

Case Study 2: Chemical Concerns, Report

- Joon Woo submits an anonymous report for alleged discrimination to Human Resources through the EthicsPoint portal.
- The Director of Human Resources forwards the complaint to you as the Title IX Coordinator.

Case Study 2: Chemical Concerns, Discussion

- What steps would you take to respond?
- What steps can be taken to determine Joon Woo's identity to follow up on his complaint?
- If implemented, would the proposed policy be discriminatory on the basis of sex under Title IX?
 - Why or why not?
- If Joon Woo is no longer included in the department leadership meetings, would that constitute discrimination under Title IX?
 - Why or why not?

Case Study 3: Swim Practice

Introduction

- Ellerie is a high school junior and a member of the girls' varsity swim team.
- She gave birth to her first child over the summer between her sophomore and junior years and has been experiencing post-partum depression since the birth.
- Swim team practice is scheduled for weekday mornings from 6:00-7:30 AM in the shared natatorium.
- Ellerie often finds herself unable to wake up in the morning in time to make it to practice on time or sometimes at all because of her depression.
- As a result of her inconsistent attendance at practice, Coach Sumner has pulled Ellerie from three relay races and two individual events for the upcoming regional swim meet.
- Ellerie's parents contacted the district Athletic Director to express their disapproval of Coach Sumner's decision.
- The Athletic Director has reached out to you as the Title IX Coordinator for assistance.

Case Study 3: Swim Practice Discussion

- How would you navigate this situation?
- If true, would Coach Sumner's actions be considered discrimination on the basis of sex under Title IX?
 - Why or why not?
- What reasonable accommodations or supportive measures may be appropriate in this situation?
- Are there additional remedies that would restore Ellerie's access to the education program or activity?

Case Study 4: Cheyenne

- Cheyenne is the captain of the dance team that performs at home football and basketball games, school pep rallies, and a variety of other school and community events throughout the year.
- They also compete in state-wide and national competitions.
- Cheyenne became pregnant shortly after the school year began.
- Their doctor has approved them to continue with their full participation in dance team activities.
- The dance team uniforms are midriff-bearing, and Cheyenne's "bump" begins to become noticeable during basketball season.
- Cheyenne requests a larger size uniform, and the coach provides another uniform without issue.

Case Study 4: Cheyenne Complaints

- However, several parents of other dance team members begin pressuring the coach to remove Cheyenne as dance team captain because they don't believe that an unwed, teenage mother is an appropriate role model or leader for their daughters.
- One parent even created a petition calling for Cheyenne's removal from the team.
- After one performance, a group of dance team members were giggling in the locker room after viewing a TikTok video about Cheyenne at their recent performance.
- The video included the caption, "Hey, ho, preggo's gotta go!"
- Cheyenne's mother doesn't want her child to feel further ostracized by filing a formal complaint, but she also wants the parents' behavior to stop and for the school to address the TikTok video.

Case Study 4: Cheyenne Discussion

- How would you navigate resolving this situation?
- What is the school/district's authority related to the TikTok video?
- What Supportive Measures may be appropriate?
- Is Informal Resolution a potential option?

Case Study 5: Miray Introduction

- In late January, the international student services program advisor reaches out to you as the Title IX Coordinator about a student concern.
- Miray, a junior from Turkey, is studying in the radiation therapy program on an F-1 visa.
- This term, Miray is enrolled in four in-person courses: two off-site clinical courses, one lecture course in the radiation therapy program, and one general education lecture course.
- The clinical hours are required both for her academic program and for her licensure.
- Miray came to speak with the advisor about needing to reschedule two large exams for her general education course later in the semester, as she will be needing to take a leave of absence after she gives birth.

Case Study 5: Miray Concerns

- She shared that her first child is due in late March and that she anticipates being out of classes for 2-3 weeks.
- Her husband will be present and able to support her with the baby.
- Miray also expressed that she is stressed after speaking with the faculty member for her radiation therapy lecture course who told her she would need to abide by the class attendance policy and miss no more than three class sessions.
- She has asked for assistance in creating a plan that will allow her to remain in school full-time to maintain her F-1 visa status.

Case Study 5: Miray Discussion

- If true, what discriminatory actions are present under the Title IX policy?
- What Supportive Measures are available to Miray?
- What happens if she cannot return to class after three weeks?
- How would you communicate with faculty?
- Who else do you need to communicate with in this situation?

Case Study 6: Fiona Introduction

- Fiona, a human resources benefits specialist, recently gave birth to her second child.
- The infant has developmental delays and is unable to drink from a bottle.
- Fiona is requesting to be able to work remotely so that she is available to breastfeed her child on demand.

Case Study 6: Fiona Discussion

- Does Title IX protect individuals in Fiona's situation?
- What would you consider when reviewing Fiona's request?
- How would this scenario change if Fiona was a school resource officer or campus police officer?
- How would this scenario change if Fiona was enrolled as a student rather than being an employee?



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Questions?

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