

# PREGNANCY AND LACTATION ACCOMMODATIONS IN LOS ANGELES COUNTY SCHOOL DISTRICTS

CALIFORNIA  
WOMEN'S  
LAW CENTER

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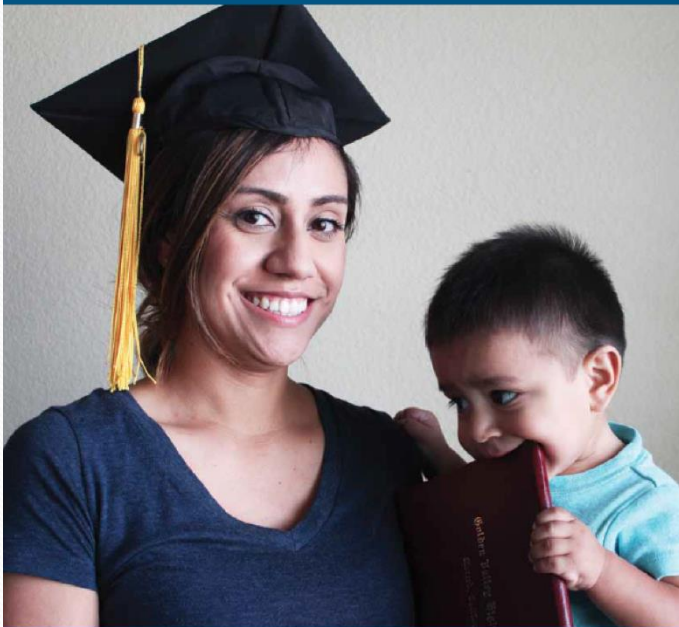
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# THE PROBLEM

*Why is providing accommodations in a school setting important?*

# PROBLEMS PREGNANT AND PARENTING STUDENTS EXPERIENCE

## BREAKING DOWN EDUCATIONAL BARRIERS FOR CALIFORNIA'S PREGNANT & PARENTING STUDENTS



A REPORT BY THE ACLU OF CALIFORNIA

- Stigmatizing behavior in the classroom.
- Prevented from taking the courses necessary to apply to many four year colleges.
- Restricted from school activities.
- Pushed out of their regular schools and into continuation schools.
- Denied a secure and private place to breastfeed or pump milk.

# CONSEQUENCES FOR STUDENTS

- High drop-out rate
- Low probability of earning a college degree
- Decreased opportunity to be hired for higher paying jobs
- Perpetual **cycle of poverty**

# LEAVE

Taking time off

# LEAVE FOR EMPLOYEES

## Two Types of Leave:

### Pregnancy-related Disability Leave

- As long as disabled, typically up to **4 months** job-protected (FEHA/PDL)
- Typically 6-8 weeks of paid leave (Disability, SDI or NDI)

### Caretaking/Parental Leave

- Typically up to **12 weeks** job-protected (FMLA/CFRA)
- **6 weeks** of paid leave (SDI/PFL)

*\*If uncertain whether SDI paid leave applies, check paystub and/or contact union\**

# LEAVE AND ABSENCES FOR STUDENTS

Leave permitted “***for so long a period of time as is deemed medically necessary***”

34 CFR § 106.4 (B)(5)

**Is determined by student’s physician and may include:**

- ▶ medically-necessary doctor’s appointments
- ▶ leave during pregnancy
- ▶ time off for childbirth and recovery
- ▶ post-birth absences related to pregnancy/childbirth (such as for breastfeeding)

# LEAVE AND ABSENCES

## *Following the absence*

“...the student shall be reinstated to the status which she held...”

34 CFR § 106.4 (B)(5)

### Includes:

- ▶ Guaranteed **re-admittance** to program
  - ▶ No penalty or **grade deductions**
  - ▶ Must be allowed to **make up** assignments
  - ▶ Stop-the-clock on time to **degree** policies
- 
- Note: Law provides no exceptions



# LACTATION ACCOMMODATIONS

If you are breastfeeding, what accommodations are you entitled to receive?

# WHY ARE LACTATION ACCOMMODATIONS IMPORTANT?

- When nursing parents can't express breast milk on schedule, they risk infection, illness, and decreased milk supply.
- Workers who had access to both time and space for expressing breast milk are **2.3 times as likely** to be breastfeeding exclusively at 6 months, but nationwide:
  - **41%** of breastfeeding workers are not provided with reasonable break time
  - **55%** do not have access to a private space
  - **60% do not have access to both break time and space<sup>1</sup>**
- Research shows that workers who receive support to express milk at work are:
  - ***more likely to return*** from maternity leave and not to further extend their leave
  - have improved ***morale and productivity***
  - Use **fewer sick days** and have reduced healthcare costs

# FEHA

## California's Civil Rights Law:

### Prohibits Harassment and Discrimination on Basis of

- Age (40 and over)
- Ancestry
- Color
- Religious Creed (including religious dress and grooming practices)
- Denial of Family and Medical Care Leave
- Disability (mental and physical) including HIV and AIDS
- Marital Status
- Medical Condition (cancer and genetic characteristics)
- Genetic Information
- National Origin (including language use restrictions)
- Race
- **Sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding)**
- Gender, Gender Identity, and Gender Expression
- Sexual Orientation

# CALIFORNIA LABOR CODE

## Labor Code Sections 1030-1033

Employers are required to provide “**reasonable**” break time to employees who need to express milk

- Break times should be as close to regularly scheduled paid breaks as possible

Any additional break time needed must be provided, but is **unpaid** (unless others are given paid breaks to address similar needs)

- **Exception:** Employer is not required to provide break time if it would “seriously disrupt” the operations of the employer
  - Challenging to meet this standard, particularly in school environment

# LACTATION BREAKS

## Duration of Lactation Breaks

The length must be a **reasonable** amount of time to express milk

Additional variables to consider:

- Time to reach the lactation space
- Time to prepare
- Time to store milk
- Time to clean up/pack up

# LACTATION SPACE

Must make reasonable efforts to provide a private space that is not a bathroom (if regular work space isn't suitable)

The space should be:

- Shielded from view and free from intrusion by other employees
- Close proximity to employee's work area
- Not a bathroom stall

# EMPLOYER CONSEQUENCES

→ Failing to provide a lactation **break** carries a penalty fine for *each violation*

*Labor Code § 1033 (\$100)*

→ **Discrimination** consequences:

- Compensatory damages, money for lost wages, unpaid wages, medical costs
- Punitive damages
- Legal expenses
- Bad publicity!

# STUDENTS -- CAL. ED. CODE 222

## California Law (AB 302) – Effective Jan. 1, 2016

- Schools must provide a **separate** (non-bathroom) space for breastfeeding
- Permission to bring **breast pump** on campus
- Access to a power source for a breast pump or any other **equipment** used to express breast milk.
- Access to a **place to store** expressed breast milk safely.
- Requires **complaints** about lactation accommodations be handled through the uniform complaint procedures process

Note: **AB 2785** (2018) – made these requirements applicable to CA Community Colleges and CSUs as well



# IT WORKS!



Photo: ACLUNC.org

# ABC'S OF BREASTFEEDING

2015 Report Card **released by BreastfeedLA, ACLU of Southern California, California Women's Law Center, and First5LA** on the state of lactation accommodation in Los Angeles County school districts

<http://breastfeedla.org/schooldistricts/>

The report was **updated in 2019:**

# ABC'S OF BREASTFEEDING REPORT



**A**

**B**

**C's**

**of Breastfeeding**

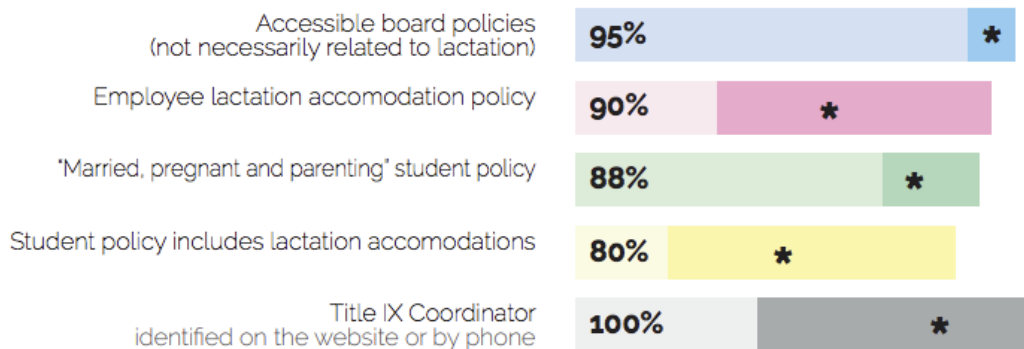
in Los Angeles County School Districts

# 5 QUESTIONS

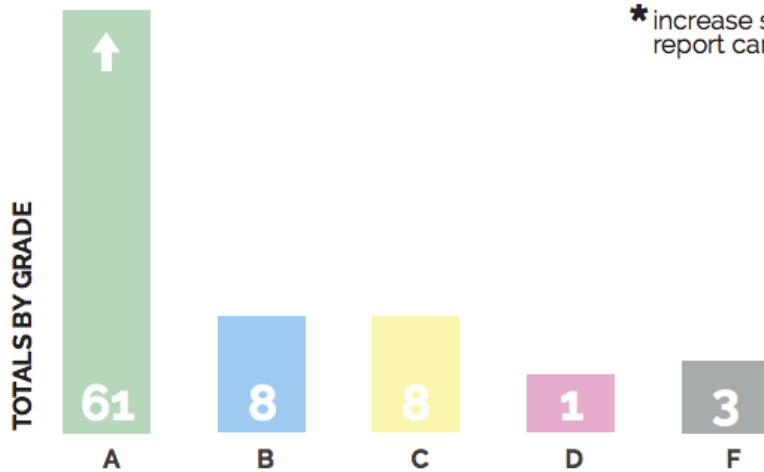
- 1) Is there an easily identifiable Title IX Coordinator?
- 2) Does the District have their Board Policies online?
- 3) Does the District have a lactation accommodation policy for **employees**?
- 4) Does the District have a pregnant and parenting student policy?
- 5) Does the District have a lactation accommodation policy for **students**?

# ABC'S OF BREASTFEEDING - 2019

## 2019 LA County Average Grade: A



\* increase since our last report card in 2016



# ABC'S OF BREASTFEEDING

## Report Card Comparisons from 2015 vs. 2019

- **90%** of school districts had lactation accommodation policies for employees.  
↑ from 33% in 2015
- **100%** of school districts had an easily identifiable Title IX Coordinator.  
↑ from 23% in 2015
- **80%** had lactation accommodations policies for students.  
↑ from 17% in 2015
- Of the 81 school districts graded, **61 received an A!** (75%)  
↑ from 1 school district in 2015

# COMMON PROBLEMS FACED

- Finding the right contact person
- Non-responsiveness
- Hostility/Defensiveness
- Procedures vs. Policies
  - BP 4033
  - BP 5146
- Board Approval Procedures

# BOARD POLICIES

## CSBA Sample Board Policy

Students

BP 5146(a)

### MARRIED/PREGNANT/PARENTING STUDENTS

The employee shall be provided a private location, other than a restroom, which is in close proximity to her work area and meets the requirements of Labor Code 1031 and 29 USC 207, as applicable.

Employees are encouraged to notify their supervisor or other appropriate personnel in advance of their intent to make use of the accommodations offered for employees who are nursing mothers. As needed, the supervisor shall work with the employee to address arrangements and scheduling in order to ensure that the employees' essential job duties are covered during the break time.

## CSBA Sample Board Policy

All Personnel

BP 4033(a)

### LACTATION ACCOMMODATION

The school shall provide reasonable accommodations to any lactating student to express breast milk, breastfeed an infant child, or address other needs related to breastfeeding. A student shall not incur an academic penalty for using any of these reasonable accommodations, and shall be provided the opportunity to make up any work missed due to such use. Reasonable accommodations include, but are not limited to: (Education Code 222)

1. Access to a private and secure room, other than a restroom, to express breast milk or breastfeed an infant child
2. Permission to bring onto a school campus a breast pump and any other equipment used to express breast milk
3. Access to a power source for a breast pump or any other equipment used to express breast milk
4. Access to a place to store expressed breast milk safely
5. A reasonable amount of time to accommodate the student's need to express breast milk or breastfeed an infant child



# TITLE IX INFORMATION – SB 1375

Parents & Students » Title IX

## **Title IX**

### **Title IX**

Each student and employee has a right to learn and work in an environment that is free from unlawful discrimination. No District student or employee shall be excluded from participation in, be denied the benefits of, or be subject to discrimination on the basis of actual or perceived sex, sexual orientation, gender, or gender identity or expression.

Title IX of the Educational Amendments of 1972 is one of several federal and state anti-discrimination laws that ensure equality in education. Title IX prohibits discrimination, harassment, exclusion, denial, limitation or separation based on sex or gender. Title IX applies to both male and female students in any educational institution receiving federal funding.

Title IX equity and compliance concerns should be directed to the Director of Student Services:

Dr. Nicole Wesley  
District Title IX Coordinator  
(310) 379-5449, ext. 1223  
[nwesley@rbusd.org](mailto:nwesley@rbusd.org)  
1401 Inglewood Avenue  
Redondo Beach, CA 90278

### **Filing a Title IX Complaint**

Students or parents/guardians should report their verbal or written Title IX complaint to the school administrator or District Title IX Coordinator within six months from the date the alleged incident occurred or first obtained knowledge. Complainants have a right to a timely and informal resolution at the school site.

# FILING A TITLE IX COMPLAINT

- Via your school's **Title IX Coordinator**
- Through **OCR**:
  - **Online**: File an electronic complaint with OCR at <https://ocrcas.ed.gov/>
  - **By e-mail**: File a complaint by emailing [ocr@ed.gov](mailto:ocr@ed.gov)
- Contact CWLC or Center for WorkLife Law!

# RESOURCES

- **California Women's Law Center**  
(323) 951-1041  
[info@cwlc.org](mailto:info@cwlc.org)  
[www.cwlc.org](http://www.cwlc.org)
- **Center for WorkLife Law**  
(415) 703-8276  
[hotline@worklifelaw.org](mailto:hotline@worklifelaw.org)  
[www.pregnantscholar.org](http://www.pregnantscholar.org)
- **BreastfeedLA** – for technical assistance!  
(323) 210-8505  
[www.breastfeedla.org](http://www.breastfeedla.org)

# QUESTIONS

