

THE RIGHTS OF PREGNANT AND PARENTING STUDENTS UNDER TITLE IX AND CALIFORNIA LAW



Amy Poyer
Senior Staff Attorney



Anissa Palmer
Executive Director

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AGENDA

- Statutory Guidance for Pregnant and Parenting Teens
- What is Title IX?
 - Enforcement of Title IX
 - Title IX Coordinator
- Pregnancy/Parental Status Discrimination
 - Categories of Protection:
 - (1) Policies and procedures
 - (2) Classes and school activities
 - (3) Excused absences and medical leave
 - (4) Harassment
 - (5) Confidentiality
- ABC's of Breastfeeding Report Card
- Filing a Title IX Complaint

STATUTORY GUIDANCE FOR PREGNANT AND PARENTING TEENS IN CALIFORNIA SCHOOLS

(1) Federal:
Title IX

(2) State:
**Cal. Ed. Code
222**

WHAT IS TITLE IX?

- Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681)
 - “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 educational program or activity receiving federal financial assistance.”
- Federal law prohibiting gender discrimination in any school receiving federal funds
- Both public and private schools must comply

ENFORCEMENT OF TITLE IX

- **Lawsuit:** A school can be sued in federal or state court for damages (private lawsuits for violation of Title IX)
- **Complaint:** Filed with the U.S. Department of Education, Office for Civil Rights (OCR)
 - a school can lose its federal funding if found in violation of Title IX

TITLE IX COORDINATOR

- Schools must:
 - Designate at least one person to be Title IX Coordinator
 - Notify students and public how to contact Title IX Coordinator
 - Adopt and publish grievance procedures to be followed if a Title IX issue arises

EXAMPLES OF UNLAWFUL PREGNANCY/PARENTAL STATUS DISCRIMINATION

- Not allowing student to stay in or return to school after pregnancy
- Forcing teen into alternative schools
- Failing pregnant/parenting teen for excessive absences
- Requiring pregnant/parenting teen to stay out of school
- Restricting pregnant/parenting teen's access to school activities

IMPACT OF UNLAWFUL PREGNANCY/PARENTAL STATUS DISCRIMINATION

- High Drop Out Rate
- Low Probability of College Degree
- High Probability of Welfare Dependency
- Perpetual Cycle of Poverty



CATEGORIES OF PROTECTION

There are types of protection for pregnant and parenting students:

1. Policies and procedures
2. Classes and school activities
3. Excused absences and medical leave
4. Harassment
5. Confidentiality



(1) POLICIES AND PROCEDURES

Schools **must have and distribute** a policy against sex discrimination



(1) POLICIES AND PROCEDURES

→ Schools **must adopt and publish** grievance procedures for students who want to report sex discrimination, pregnancy related harassment, or parental status harassment

→ Also must **designate a Title IX Coordinator** who will oversee complaints of discrimination and harassment

(2) CLASSES AND SCHOOL ACTIVITIES

Schools **MUST** allow pregnant and parenting students to **continue participating** in classes and extracurricular activities

- This means any advanced placement or honors classes
- Any school clubs or sports
- Any honor societies or student leadership positions
- Any after school programs

(2) CLASSES AND SCHOOL ACTIVITIES

Unless the school has a policy of requiring doctor's note from **all students** with a medical condition, the school cannot require one from a pregnant student just to continue participating in classes and activities



(2) CLASSES AND SCHOOL ACTIVITIES

Schools also **must** let pregnant and parenting students **choose** whether they want to participate in an alternative education program

→ Schools **cannot pressure or coerce** pregnant/parenting students to enter these programs

→ Alternative programs must provide the **same** academic and extracurricular **opportunities** as the regular program



(2) CLASSES AND SCHOOL ACTIVITIES

Schools **must** provide reasonable accommodations such as:

- A larger desk
- Elevator access
- Flexible scheduling
- Allowing for frequent trips to the bathroom
- At home tutoring (if offered to other students with temporary medical condition)



(2) CLASSES AND SCHOOL ACTIVITIES

While not mandated by Title IX, the Department of Education has suggested school administrators **designate clean and private rooms** for students to breastfeed

In California employees are specifically protected from any retaliation for taking breaks to breastfeed and the Labor Code specifies that accommodations must be made for breastfeeding employees



ABC'S OF BREASTFEEDING

2016 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 July 2016:**

<http://cwlc.org/web/wp-content/uploads/2013/09/Cnty-SchoolDist-2016-ONLINE.pdf>



ABC'S OF BREASTFEEDING

Report Card Comparisons from 2015 vs. 2016

- 53 % of school districts had lactation accommodation policies for employees.

↑ from 33%

- Only 51 % of school districts had an easily identifiable Title IX Coordinator.

↑ from 23%

- Only 22 % had lactation accommodations policies for students.

↑ from 17%

- Of the 81 school districts graded, only 8 received an “A” and the majority (51) scored a “C” or lower.

↑ from 1 school district

ABC'S OF BREASTFEEDING

Effective Implementation Strategies:

1. **Adopt Policy**

Adopt affirmative policies that support breastfeeding women and their specific lactation accommodation needs.

2. **Train Staff and Communicate Policy**

Give staff appropriate training to implement, evaluate, and monitor compliance. Inform employees, parents, and students of their rights under these policies.

ABC'S OF BREASTFEEDING

Effective Implementation Strategies:

3. Identify Staff Name

Of who will be responsible for implementing these policies and handling complaints.

4. Provide Space and Time to Pump

Identify appropriate space and allow time for staff and students to pump, without any penalty.

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

EXCUSED ABSENCES AND MEDICAL LEAVE

Schools **must**:

- Excuse any absences related to pregnancy and childbirth for as long as a doctor says is necessary
- Allow pregnant/parenting students to return to the same academic status as before the medical leave began
 - Including the opportunity to make up any work missed

(3) EXCUSED ABSENCES AND MEDICAL LEAVE

Extended Absences:

- **Temporary Disability**
 - Treat pregnancy like other temporary medical conditions
 - Entitled to individual instruction if attendance is impossible or inadvisable
- **Length of Leave**
 - No time limit
 - As long as medically necessary
 - Student must be reinstated at the same level

(3) EXCUSED ABSENCES AND MEDICAL LEAVE

Schools **must**:

- Provide the same special services other students with temporary medical conditions receive
- Excuse any students' absence due to illness of the students' child (in CA)

(3) EXCUSED ABSENCES AND MEDICAL LEAVE

Pregnant and Parenting Graduate Students – Cal. Ed. Code. 66281.7 - (2014)

- Extends sex discrimination protection to pregnant and parenting graduate students
- Requires California postsecondary schools to excuse absences for pregnant graduate students
- School must grant leave of absence up to 12 months (or longer if medically necessary)
- Student must be allowed to return in same academic standing as when they took leave

(4) HARASSMENT

Schools **must** protect pregnant and parenting students from harassment based on their pregnancy or pregnancy related conditions

- Examples of pregnancy related harassment:
 - Sexual comments or jokes about a student's pregnancy
 - Calling a pregnant student sexually derogatory names
 - Spreading rumors about a pregnant student's sexuality
 - Making sexual propositions or gestures to the pregnant student
 - Cyber bullying

(5) CONFIDENTIALITY

- Generally parental consent is required for all minors' medical treatment
- However, students under 18 do have Statutory and Constitutional rights to medical confidentiality under California Law



Statutory Confidentiality

California Statutory Right to Medical Confidentiality:

- Schools may excuse a student for confidential medical services without parental consent
- Cal. Educ. Code 46010.1; Fam. Code 6925
- Attorney Gen. Opinion No. 04-112

Statutory Confidentiality

Age Limits regarding parental notification:

- Pregnancy related services No age limit
 - Pregnancy prevention
 - Prenatal care
 - Labor and delivery
 - Contraception
 - Abortion
- Treatment for STDs Age 12
- Rape diagnosis/treatment Age 12
- Treatment for substance abuse Age 12
- HIV Testing Age 12
- Outpatient mental health services Age 12
 - If certain requirements are met
- Cal. Family Code § 6924-6929 & Educ. Code § 42805(a)(3)

Statutory Confidentiality

Mandatory Reporting Requirements:

- Pregnancy alone does NOT trigger a school's requirement to report
- Must report if
 - reasonably suspect child abuse
 - reasonably suspect sexual assault (e.g., forced, coerced)
 - some voluntary sexual activity (EX: if minor is under 14 and sexual partner is at least 10 years older)

Constitutional Confidentiality

Minors have California Constitutional right to:

Sexual Privacy

- The right of “mature minors” (age 14 or older) to engage in voluntary sexual conduct
- Also right to decide whether or not to continue a pregnancy



Constitutional Confidentiality

Minors have California
Constitutional right to:

Informational Privacy

- The right to control circulation of personal information
- “No aspect of a woman's medical profile is more sensitive in terms of privacy interests than her obstetrical-gynecological history.” *Planned Parenthood Affiliates v. Van de Kamp*



Confidentiality and Emancipation

Emancipated minors are age 14 or older and have all the legal rights of adults

- **EXCEPT** must still attend school
- This means they get to make their own medical choices without any parental notification

Q&A About Confidentiality

1. Should I inform teens about confidentiality?
2. What is confidential?
3. Who must keep information confidential?

TITLE IX PREGNANCY & PARENTING: TEST YOUR KNOWLEDGE! (T/F)

1. Schools are not allowed to report a minor's abortion to their parents or guardians.
2. Graduate students are allowed up to 6 months of extended leave after giving birth.
3. The U.S. Department of Education has advised schools to provide lactation rooms.

FILING A TITLE IX COMPLAINT

- **Via your school**
- **Through OCR:**
 - **Online:** File an electronic complaint with OCR at <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>
 - **By e-mail:** File a complaint by emailing ocr@ed.gov

INCLUDE ON COMPLAINT FORM:

- Name, address, email
- Name and address of discriminator
- When discrimination occurred
- Type of discrimination

RESOURCES

- **California Women's Law Center**
 - (323) 951-1041
 - <http://cwlc.org/>
- **BreastfeedLA**
 - (323) 210-8505
 - <http://breastfeedla.org>

OFFICE FOR CIVIL RIGHTS (OCR) GUIDANCE LINKS

- U.S. Department of Education – Office of Civil Rights, “Supporting the Success of Pregnant and Parenting Students” (June 2013)
[\[http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf\]](http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf)
- In 2013-2014 the OCR received 81 complaints of discrimination against pregnant students
[\[http://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2013-14.pdf\]](http://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2013-14.pdf)

QUESTIONS

- Concerns
- Comments

