



Association of
Title IX Administrators

Time with IX 2024 Regulations Series: Expanded Pregnancy & Parenting Protections

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Description

As the sixth installment of our Time with IX 2024 Regulations Series, this session will provide practical insights into the expanded pregnancy and parenting protections codified in the 2024 Title IX federal Regulations. We will discuss the regulatory requirements that prohibit discrimination based on pregnancy or related conditions and ATIXA's recommended best practices for supporting pregnant students, employees, and parents.

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



Title IX Regulations

A Recipient may not:

Discriminate in its education program or activity against any student or employee on the basis of such individual's current, potential, or past:

- pregnancy
- related condition

Adopt or implement any policy, practice, or procedure which treats a student or employee differently on the basis of current, potential, or past:

- parental,
- family, or
- marital status

Pregnancy or Related Conditions

Includes the full spectrum of processes and events connected with pregnancy

- Pregnancy, childbirth, termination of pregnancy, or lactation
- Related medical conditions
- Recovery therefrom



Medical Condition Examples

Examples of covered medical conditions include, but are not limited to:

- Pregnancy-related fatigue
- Dehydration (or the need for increased water intake), nausea (or morning sickness), increased body temperature, anemia, and bladder dysfunction
- Gestational Diabetes
- Preeclampsia
- Hyperemesis Gravidarum (i.e., severe nausea and vomiting)
- Pregnancy-induced hypertension (high blood pressure)
- Infertility

Parental Status

The status of a person who, with respect to another person who is under the age of 18*, is:

- A biological parent
- An adoptive parent
- A foster parent
- A stepparent
- A legal custodian or guardian
- *In loco parentis* with respect to such a person
- Actively seeking legal custody, guardianship, visitation, or adoption of such a person

*Or who is 18 or older but is incapable of self-care because of a physical or mental disability



Title IX Coordinator & Pregnancy

TIXC is Point Person for Support



Documentation



**Policies,
Practices, and
Procedures**



**Outreach and
Support**



Reporting



**Complaint
Resolution
Process**



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

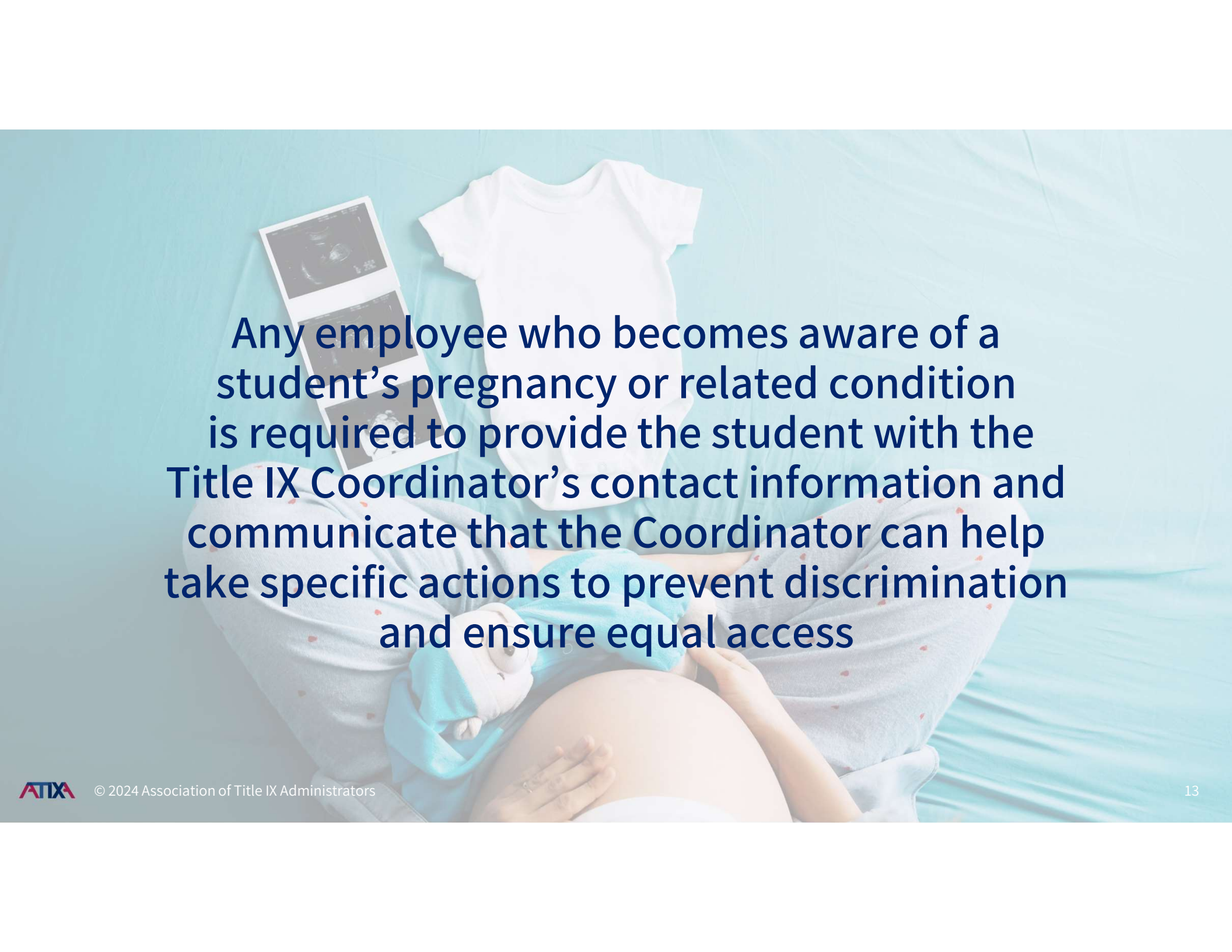
Retakes

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

A pregnant woman is lying on her back on a light blue surface. She is holding a white baby onesie in her hands. A smartphone is placed on the surface next to her, displaying two ultrasound images. The text is overlaid on the image.

Any employee who becomes aware of a student's pregnancy or related condition is required to provide the student with the Title IX Coordinator's contact information and communicate that the Coordinator can help take specific actions to prevent discrimination and ensure equal access

Outreach and Intake

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

- Prohibit sex discrimination
- Provide reasonable modifications
- 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
- Ensure lactation space availability
- Maintain Resolution Process for alleged discrimination
- Treat pregnancy as comparable to other temporary medical conditions for medical benefit, service, plan, or policy purposes

Reasonable Modifications

- **Reasonable Modifications** to the Recipient's policies, practices, or procedures to prevent discrimination:
 - Applies only to students under Title IX
 - Other laws provide modification/accommodation requirements for employees
 - Individualized: must consult with the student before offering
 - Voluntary: student may accept or decline each reasonable modification offered
 - If accepted, institution must implement
 - Fundamental alteration of education program or activity is **NOT** reasonable
- OCR emphasizes the importance of consulting with a student to meet their individualized needs in a prompt and effective manner

Reasonable Modification Examples

Not all reasonable modifications are appropriate for all contexts, but could include:

**Breaks During
Academic
Activities**

**Excusing
Intermittent
Absences**

**Online or
Homebound
Participation**

**Providing
Course
Flexibility**

**Accessing
Alternate
Parking**

Counseling

**Adjusting
Physical Space**

**Arranging
Elevator Access**

Retroactivity

- Title IX regulations do not require retroactive reasonable modifications
 - Common and often necessary with pregnancy or related conditions
 - ATIXA recommends developing a framework or rubric to guide consistent retroactive request decisions

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
- Can 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

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

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)

Students

- 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

Employees

- Only applicable under Title IX if:
 - Institution doesn't have another leave policy;
 - Employee doesn't have enough leave under the other policy; or
 - Employee has not been employed long enough to qualify
- Employee must be reinstated to the status held when leave began or a comparable position without a negative effect on any employment privilege or right

Lactation Space and Time

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



Related Issues

Support for Non-Birthing Parents

- As a gender equity law, Title IX:
 - Focuses on providing support and resources to reduce disparities in access to the education program
 - Seeks to remedy the inequities sex and gender discrimination create
- 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
- No rule for how long post-partum medical protections apply
 - Six months is a reasonable estimate
 - Exceptions that can justify a longer protection period
- 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

Questions

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THANK YOU



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