

New OCR Guidance Regarding Title IX and Pregnancy

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On the heels of the United States Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* (2022) ___ U.S. ___ [142 S.Ct. 2228] (overturning various abortion rights precedents) and the recently proposed changes to the regulations under Title IX of the Education Amendments of 1972 (Title IX), the U.S. Department of Education (Department) Office for Civil Rights (OCR) has released a [new resource](#) regarding the intersection of Title IX and pregnancy. Most notably, the resource makes clear that Title IX provides protections for “termination of pregnancy.”

OCR Guidance on Title IX and Pregnancy

Title IX is the federal law that ensures educational institutions that receive federal financial assistance (recipients) do not discriminate on the basis of sex. In 2020, the Department issued regulations setting clear parameters around how recipients must handle allegations of sexual misconduct. This new resource is the latest in a series of efforts by the Biden Administration to make significant changes to the Title IX regulations issued in 2020. For other recent changes to the 2020 regulations see Lozano Smith's [2021 CNB Number 15](#), [2022 CNB Number 1](#), and [2022 CNB Number 32](#). The new resource reminds recipients that Title IX provides certain protections for employees and students based on pregnancy and related conditions, including abortion.

The resource outlines three main areas of protection:

1. Discrimination and exclusion: Recipients must not discriminate against any student or employee, or exclude any student or employee from the recipient's education program or activity, based on the student's or employee's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.
2. Medical and other benefits and services: Recipients must treat pregnancy and the related conditions listed above the same as any other temporary disability. Meaning, they must provide the same benefits and accommodations to students and employees with these conditions as would be provided to any other student or employee with a temporary disability.

3. Leave policy: Upon return after leave caused by pregnancy or related conditions, both students and employees must be reinstated to their pre-leave status. For employees, this may be a comparable position without a reduction of compensation or loss of promotional opportunities or any other employment rights or privileges. Recipients must also treat pregnancy and related conditions the same as any other temporary disability for purposes of commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, along with other employment-based benefits.

In addition to the resource published by OCR, the Department's proposed changes to the 2020 Title IX regulations demonstrate a focus on providing protections for pregnancy and related conditions. (See Lozano Smith Client News Brief [Number 32](#).)

Takeaways

With OCR's clarification through this resource that "on the basis of sex" includes protections for pregnancy and related conditions, including abortion, recipients should ensure their policies clearly prohibit discrimination on the basis of pregnancy and related conditions for both students and employees. Policies should also provide the required leave provisions for students and employees, and explain the process for students and employees to request accommodations and services for pregnancy and related conditions, as well as how to file a complaint.

If you have any questions about the new OCR resource on Title IX and pregnancy or Title IX in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [mobile app](#).

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