



# SAN DIEGO COMMUNITY COLLEGE DISTRICT

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CITY COLLEGE | MESA COLLEGE | MIRAMAR COLLEGE | CONTINUING EDUCATION

*Title IX Compliance*

## Title IX: Pregnancy as a Temporary Disability

Pregnancy is covered under Title IX's prohibition of discrimination based on sex:

"A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient." 34 C.F.R. § 106.40(b)(1).

Department of Education ("ED") regulations and guidance clearly state that this prohibition of discrimination means that an institution should treat pregnancy in the same manner as any short term disability. § 106.40(b)(4).

In addition to treating pregnancy in the same manner as any other disability (for example, with respect to the need to provide accommodations), Title IX regulations and guidance explicitly state that schools **must**: Excuse absences due to pregnancy or childbirth for as long as the student's doctor says it is necessary and allow them to return to the same academic and extracurricular status as before the medical leave began. This includes giving the opportunity to make up any work missed while were out.

### Recent Developments

1. This requirement is being interpreted increasingly strictly with respect to what accommodations are required to enable a student to return to the "same academic status" or "make up any work missed while out."
  - a. Historically schools treated this as equivalent to the disability requirement to provide "reasonable" accommodations, but in its resolution agreements ED has raised the bar with respect to the reasonableness of accommodations. Sample language approved by OCR:
    - i. The plausibility [of an accommodation] is not governed by an individual faculty member's class rules or policies, but by the nature of the work. Whenever the class work is of a type that it can be completed at a later date—such as papers, quizzes, tests, and even presentations—that option must be made available to the student.
    - ii. Extended deadlines, makeup assignments, and incomplete grades that can be completed at a later date, should all be employed.
  - b. At a recent training, it was described that ED, in responding to complaints of discrimination, frequently analyzes the question of whether an accommodation is

reasonable solely based on whether the accommodation is *theoretically available*, rather than whether it is *onerous* or *difficult*.

2. Though not specifically required, ED has taken to requiring stand-alone policies/procedures pertaining to pregnancy.
3. A student's prior knowledge of their pregnancy is irrelevant to an institution's obligations.

Best practice is for institutions to leverage their disability services offices and/or programs to assist students in obtaining accommodations.

**Accommodations frequently necessary in the event of a student's pregnancy:**

*Easy (Relatively):*

- Permitting a student to take frequent bathroom breaks or breaks to walk around;
- Seating modification (to move closer to exit or closer to/further from heat/cold);
- A separate table and chair;
- Permitting a student to leave class suddenly (e.g., in the event of morning sickness);
- Allowing a student to avoid prolonged standing;
- Permission to eat/drink in class.

*Potentially more onerous:*

- Opportunity to make up missed work (e.g. papers, quizzes, tests and presentations);
- Extended deadlines;
- Remote learning options (e.g. independent study, online course completion);
- Incomplete grades that can be completed at a later date;
- Late drops/withdrawals;
- Course section alterations;
- Responses to severe medical issues stemming from pregnancy or childbirth.

*Hypotheticals:*

- A student delivers the evening prior to her final, which is scheduled for the last day of finals period.
- A student is prescribed 3 months' bedrest 5 weeks into a course.

DSPS can and will provide assistance in facilitating accommodations, such as through:

- Proctoring
- Note-taking
- Tape recording
- Facilities supports (i.e., furniture)

Certain programs (e.g., those involving clinical rotations or use of certain chemicals) may require special consideration pertaining to pregnant students. It may be advisable for the Chairs/Deans for those programs work directly with the Title IX Coordinator and DSPS Coordinator to determine what, if any, particular arrangements should be made pertaining to those programs.

- General rule: Pregnant students cannot be *per se* prohibited from enrolling in or participating in given programs/activities. The District can require a doctor's note, but only if such a note is required from all students who present with a temporary disability.