Association of
Title IX Administrators

Supporting Pregnancy and Related Conditions

An ATIXA Best Practices Workshop

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WELCOME!

- Please log in to your ATIXA Event Lobby each day to access the course slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by the QR code or visiting **www.atixa.org/atixa-event-lobby** in your internet browser.
- Links for any applicable course evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
- If you have not registered for this course, an event will not show on your Lobby. Please email events@atixa.org or engage the ATIXA website chat app to inquire ASAP.

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Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Workshop Introduction

This workshop highlights Title IX practice related to supporting pregnancy and related conditions, including defining key terms and providing supportive measures versus reasonable accommodations.

Participants will apply knowledge throughout the workshop to navigate issues involving pregnancy and related conditions.

Our goal today is to provide an in-depth examination of the Title IX regulatory requirements and ATIXA's recommended best practices for supporting individuals experiencing pregnancy or related conditions.

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Content Advisory

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.

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Pregnancy Statistics

According to a survey conducted by the Bill and Melinda Gates Foundation:

- _____ of young women who did not finish high school stated that becoming a parent played a major role in their decision to leave.

- Only about _____ of young mothers will earn a high school diploma by the age of 22, compared with 89 percent of women who did not have a child during their teenage years.

- _____ of young mothers will never get a G.E.D. or a diploma.

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Definitions and Regulatory Requirements

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Pregnancy and Title IX: Scope

- Students
- Employees
- Actual or potential pregnancy
- Family status
- Marital status
- Parenting status
- “Head of household”

- Academics & access to course offerings
- Admissions
- Athletics
- Break time for employees
- Employment, Recruitment, & Hiring
- Extra-curricular activities
- Facilities

- Financial Assistance
- Funding
- Lactation
- Health Insurance
- Housing
- Lactation
- Leaves of Absence
- Salaries & Benefits

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Current Title IX Regulations: Students

Recipients may not:

Have a rule which treats a student differently on the basis of a student's actual or potential

- parental,
- family, or
- marital status

Exclude any student from its education program or activity on the basis of such student's

- pregnancy,
- childbirth,
- false pregnancy,
- termination of pregnancy,
- or recovery therefrom

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Current Title IX Regulations: Employees

Recipients may not:

Apply any policy or take any employment action which treats an employee differently on the basis of the employee's potential

- parental,
- family, or
- marital status

Exclude from employment any employee on the basis of:

- pregnancy,
- childbirth,
- false pregnancy,
- termination of pregnancy,
- or recovery therefrom

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Proposed Regulations (NPRM)

- Must not **adopt** or **apply**
  - Any **policy**, **practice**, or **procedure**, or
  - Take any employment action,
    - Concerning a student or employee's potential parental, family, or marital status
    - Which treats students or employees differently on the basis of sex
- Must not discriminate in its education program or activity against any student or employee based on **current**, **potential**, or **past pregnancy or related conditions**
- Also applies to applicants for admission and employment

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Proposed Regulatory Definitions (NPRM)

Pregnancy or Related Conditions

Pregnancy, childbirth, termination of pregnancy, or lactation;

- Related medical conditions; OR
- Recovery therefrom

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; or
- Actively seeking legal custody, guardianship, visitation, or adoption of such a person

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Outreach and Intake

- 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 name and contact information

Title IX Coordinator (TIXC) should inform the individual of the institution's obligation to:

- Prohibit sex discrimination
- Provide supportive measures and 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 grievance procedures for alleged discrimination

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Federal and State Laws and OCR Guidance

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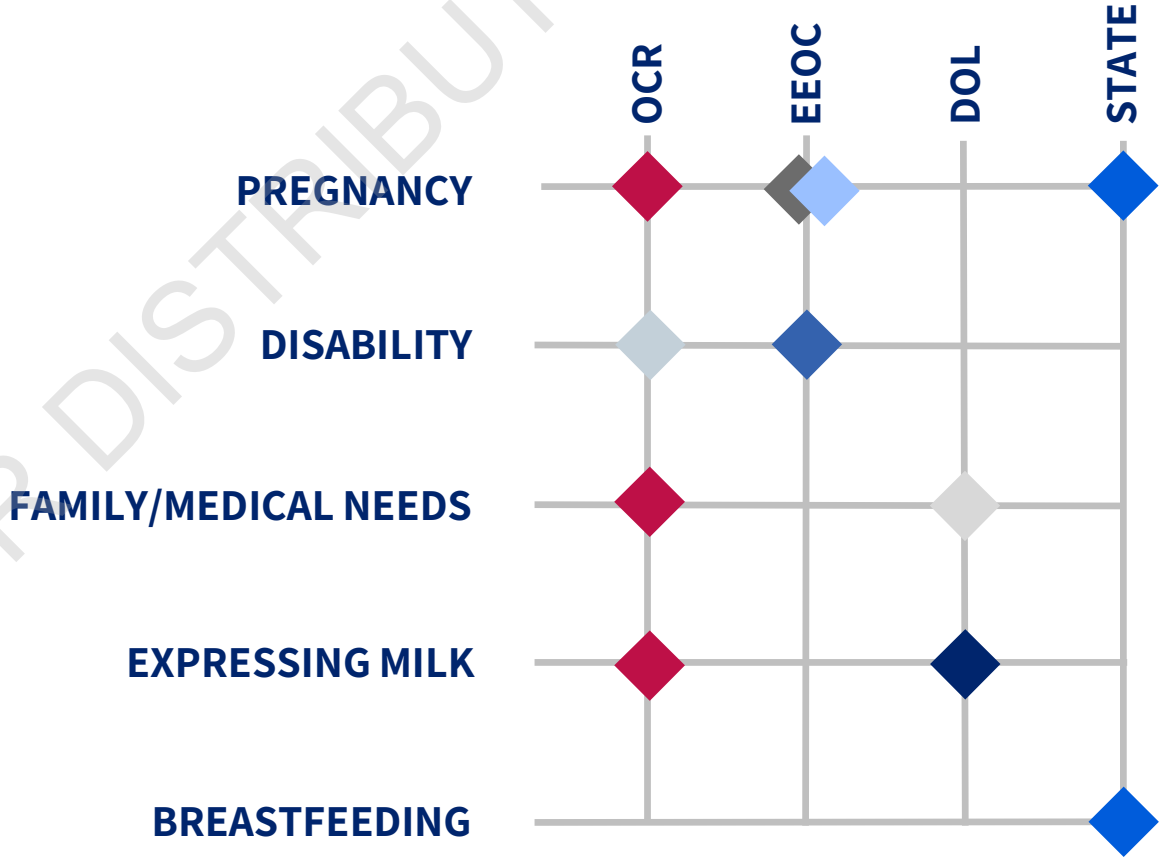
Overlap of Federal and State Laws

- Title IX
- Title VII of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act
- Pregnant Workers Fairness Act
- Family Medical Leave Act
- PUMP Act
- State Laws



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Overlap with State Laws

- All but five states have enacted some state-level protections for pregnancy in the workplace
  - Alabama, Indiana, Nevada, North Carolina, and South Dakota
- Forty-two states and Washington, D.C. have state-level protections for pregnancy accommodations
- All states; Washington, D.C.; Puerto Rico; and USVI have some law permitting breastfeeding in any public or private location
- TIXCs need to be aware of the intersection of these federal and state laws when developing and implementing policy.

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OCR Title IX Complaint Statistics

	FY20	FY21	FY22
Athletics	1264	101	4387
Different Treatment	429	468	722
Employment	105	119	168
Grievance Procedures	104	98	130
Pregnancy/Parenting	7	7	17
Sex/Gender Harassment	618	502	1030
Total Row	**2527**	**1295**	**6454**

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OCR Guidance

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OCR Resolution Agreement: Salt Lake City Community College (2022)

A student alleged that:

1) One professor encouraged her to drop their course because she was pregnant, telling her that she needed to accept responsibility for her pregnancy, and the TIXC did not promptly and equitably respond to her complaint
2) The College did not engage in an interactive process with the Complainant to provide her with academic adjustments and/or related services during her pregnancy in the same manner that the College provides to students with temporary medical conditions
3) The College did not excuse the Complainant's pregnancy-related absences and did not allow her to submit work after pregnancy-related absences

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OCR Resolution Agreement: Salt Lake City Community College (2022)

OCR's investigation determined:

1) The College failed to respond promptly and equitably to the Complainant's complaint that the professor discriminated against her based on her pregnancy (Title IX violation)
2) College did not engage in an interactive process with the Complainant to determine appropriate academic adjustments in light of her pregnancy (Title IX violation)
3) The College failed to excuse the Complainant's absence and tardies caused by her pregnancy (Title IX violation)

Additionally, OCR determined:

1) The College did not consider whether her pregnancy had caused a temporary disability or engage in the interactive process with her to determine whether she required academic adjustments (Section 504 violation)

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OCR Resolution Agreement: Troy University (2023)

A student alleged that:

1) They made various requests to the TIXC as well as directly to professors, and in multiple instances, requests were not communicated to other staff or addressed
2) The TIXC did not consistently intervene when the Complainant contacted him about issues with certain classes and, when he did so, he was not always prompt
3) The TIXC's first and only documented communication with all the Complainant's professors was an email sent after the Complainant advised she had been hospitalized due to pregnancy-related complications, which was one month after she first contacted the TIXC
4) The TIXC did not respond to faculty requests for guidance

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OCR Resolution Agreement: Troy University (2023)

OCR's investigation determined:

1) The University provided pregnant students no information, either in its Student Handbook or on its website about how students could seek adjustments related to pregnancy, and one professor interviewed by OCR had not received training regarding Title IX's application to pregnant students
2) The TIXC was not consistent or prompt in his communication with the Complainant, nor was he responsive to the Complainant's faculty members
3) The University did not engage in an interactive process with the Complainant or otherwise attempt to determine what adjustments would be appropriate for each of her courses
4) Some professors' efforts to provide pregnancy adjustments were ad hoc and uncoordinated and dependent on each professor's individual interpretation of the TIXC's email

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Key Takeaways from OCR Resolution Agreements

- Each resolution agreement included **seven** or more specific action steps
- Institutions must publish non-discrimination statements that include pregnancy and related conditions as well as policies and formal grievance procedures
- All employees must be trained on what constitutes discrimination on the basis of pregnancy and related conditions as well as available resources
- TIXCs must keep records of all complaints related to pregnancy and related conditions
- Even when a Complainant is no longer enrolled or employed by the institution, the institution must remedy the complaint and underlying issues

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Supportive Measures vs. Reasonable Accommodations

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Supportive Measures

- **Supportive Measures:** individualized and voluntary reasonable modifications to the Recipient's policies, practices, or procedures to prevent discrimination
  - OCR uses the terms **appropriate adjustments** and **reasonable modifications** interchangeably
  - Do not require medical necessity
  - Students must complete and meet the academic standards of the course
  - Employees must fulfill essential job functions
- Many students and employees do not request supportive measures in advance
  - Best practice to retroactively grant reasonable supportive measures

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Examples of Supportive Measures

Breaks	Absences	Remote Participation	Course Flexibility
Extensions	Counseling	Access to Physical Space	Parking and/or Elevator Access

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Supportive Measure Reminders

- Leaves of absence (LOA) cannot financially or academically penalize a student
  - Same course catalog
  - Return to the point where they left off before the LOA
  - Cohort/lockstep programs
- Individuals cannot be restricted from activities, even if there are pregnancy-related safety concerns
  - Labs
  - Clinical environments
  - Physical activities
- Individuals are not required to disclose their pregnancy or related condition to faculty or supervisors to receive supportive measures

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Intersection of Pregnancy and Disability

- Pregnancy itself is not a disability under ADA/Section 504 but pregnant students/employees should be treated the same as other individuals who have temporarily disabling conditions
- Some pregnancy-related conditions could manifest as a temporary disability
- Address as any other temporary disability using the interactive process

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Title IX vs. ADA/Section 504 Obligations

ADA/Section 504

- Prohibits discrimination against individuals with disabilities (including temporary ones)
- Applies when someone has a physical or mental impairment that substantially limits one or more major life activities
- Follows institution's interactive process
- Provides **reasonable accommodations** using the interactive process

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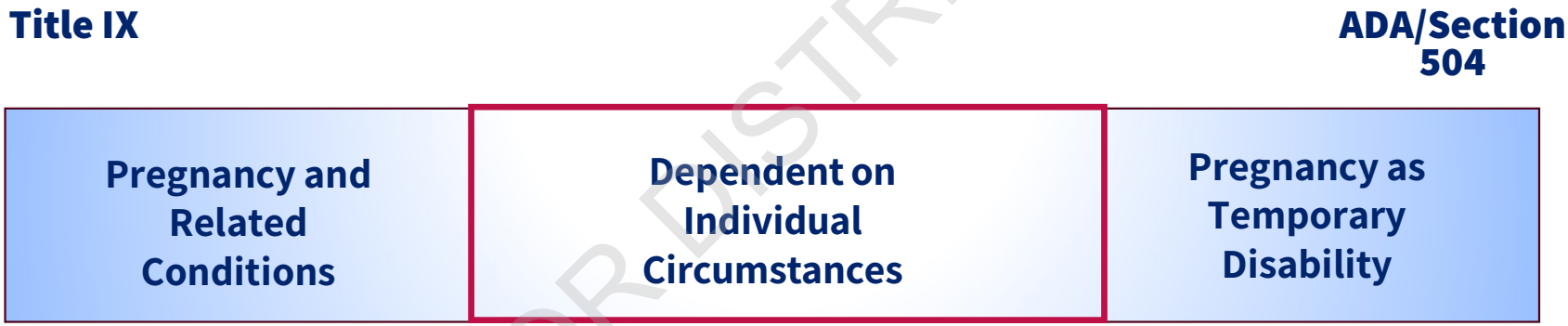
Individualized Assessment



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Reasonable Accommodations

- **Reasonable Accommodations:** voluntary, necessary, and appropriate modifications to policies, practices, or procedures that are medically necessary and result from an individual's pregnancy or related condition substantially limiting a major life activity, even if only temporary
- Must accommodate temporary disabilities, including pregnancy-related disabilities
  - Short timeframe
  - Not a permanent need
  - Informal approach permissible for a few days up to a few weeks
- Reasonable accommodations are one form of supportive measure
  - Students must complete and meet the academic standards of the course
  - Employees must fulfill essential job functions

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Reasonable Accommodations vs. Supportive Measures

Criteria	Supp. Measures	Accommodations
Voluntary, necessary, and appropriate modification	✓	✓
Pregnancy or related condition substantially limits a major life activity, even if only temporary	✗	✓
Interactive process with disability/accessibility staff	✗	✓
Interactive process with Title IX Coordinator	✓	✗
Academic, living, or co-curricular-related	✓	✓
Employment-related	✓	✓

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Providing Supports

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TIXC is Point Person for Support

- Documentation
- Policies, Practices, and Procedures
- Grievance Process
- Reporting
- Outreach and Support
- Training

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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

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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
- Housing contracts/live-on requirements
- Minors on campus
- Parking
- Student health insurance
- Visa requirements

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Granting Exceptions to Policies and Processes

- Clear and well-advertised request process
  - Online form or appointment request
- Pre-emptive employee training
  - Scenarios
  - Example communications
- Waivers should be considered for arbitrary policies (e.g., no LOAs longer than two weeks) even if that results in inconsistency with previous practices
- TIXC partners with other offices to implement and provide a seamless support process for employees and students

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Documentation and Communication

- Clear, detailed documentation is necessary
  - Electronic database preferred
- OCR has noted that many institutions grapple with poor communication practices, including:
  - Failing to document supportive measures/ accommodations provided
  - Failing to notify individuals of denied requests
  - Failing to document the interactive process
- Communication is key:
  - Nuance and soft skills to navigate conversations with other departments

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Privacy and Recordkeeping

- Consult with legal counsel about recordkeeping and sharing practices
- Medical records receive the same privacy as other Title IX documents
- Education and employment records are subject to subpoena
- Maintain records of:
  - Initial request/contact
  - Supportive measure information
  - Referral to disability/accessibility services (if applicable)
  - Notifications
  - Complaints
  - Investigations
  - Resolutions

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Related Needs

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Pregnancy and Student-Athletes

- Pregnant student-athletes must be permitted to participate in athletics without restriction or modification
- Majority of high school athletics associations have not adopted policies related to pregnancy
- NCAA is the only collegiate governing body to have a specific policy on pregnant student-athlete participation
  - Most others follow the NCAA's lead
  - TIXC and athletic staff, including coaches, should be familiar with NCAA policy

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Key Rights of Pregnant Student-Athletes

- Athletics financial aid awards cannot be conditioned on not becoming pregnant and are protected during the term of the award
- A student-athlete who has taken leave for pregnancy related conditions must be reinstated
- “Misconduct” involving pre-marital sex cannot be used as a justification for limiting a pregnant student-athlete’s participation
- Discrimination prohibitions apply to recruiting
- A pregnant student-athlete cannot be retaliated against for reporting or complaining about pregnancy discrimination

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Equitable 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 receive requests for support from non-birthing parents
- TIXC may choose to engage in an individualized evaluation of circumstances to determine if requested supportive measures are reasonable and appropriate

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Parenting

How is parenting protected by Title IX?

- Any parent is protected if 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/parenting protections

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Non-medical Childcare Needs

- Institution or district not legally required to provide childcare or supportive measures for childcare needs
  - May voluntarily and equitably provide supportive measures 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

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Fertility Treatments/IVF

- More frequent requests for fertility treatment support
- Supportive measures may be protected by Title IX or institutional policy
- Physician needs to document medical necessity

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Case Studies

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Case Study Instructions

- Break into small groups
- Access the case study document in the Course Lobby
- Each group will start on their assigned case study and work through as many as possible in 60 minutes
- Regroup to debrief on exercise for the remaining time

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Case Study 1: Valerie

- Valerie is an incoming first-year student. She has been awarded a prestigious Hopper Scholarship based on her academic performance and leadership potential.
- The Hopper Scholars are a group of twenty students from each incoming undergraduate class selected to receive a full-ride scholarship (tuition, books, room, and board) and participate in a cohort-model program focused on academic excellence and civic engagement.
- To maintain their scholarship, Hopper Scholars are required to enroll in a set curriculum, reside on campus in the Hopper Scholars living learning community, and engage in leadership development and civic engagement opportunities planned by the Hopper Scholars advisor in conjunction with the institution's president who established the program.
- Prior to arriving on campus for her first term, Valerie learns that she is pregnant, and her due date is in late March of the following year.

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Case Study 1: Valerie

- Valerie emails the Hopper Scholars advisor to inquire about her options for continuing with the program now that she is pregnant.
- The advisor informs Valerie that she will be unable to participate in the program and her scholarship will be revoked because she cannot live in on-campus housing with a child and residing in the living learning community is an essential component of the scholarship program.
- Shocked and panicked because she knows she will be unable to attend your institution without her scholarship, Valerie contacts the Title IX office for assistance.

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Case Study 1: Valerie

- If these conditions are true, would revoking Valerie's scholarship be considered discrimination on the basis of sex under Title IX?
  - Why or why not?
- What immediate remedies would be appropriate in this situation?
- What long-term remedies should the institution consider?

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Case Study 2: Chemical Concerns

- The institution's Department of Environmental Health and Safety wants to publish a "Pregnancy in the Lab" guide and require all female employees and students who will engage in laboratory activities where hazardous chemicals may be present to sign a waiver releasing the institution from liability for any potential impacts on a pregnancy or difficulty conceiving as a result of hazardous chemical exposure.
- Joon Woo, an Environmental Health and Safety employee, advised the Director that he believed such a practice would be considered discriminatory and suggested that they consider a different approach.
- The Director dismisses Joon Woo's concerns and tells Joon Woo to mind his own business or he will no longer be included in Department leadership meetings.

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Case Study 2: Chemical Concerns

- Joon Woo submits an anonymous report to Human Resources through the EthicsPoint portal for alleged retaliation.
- The Director of Human Resources forwards the complaint to you as the Title IX Coordinator.

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Case Study 2: Chemical Concerns

- What steps would you take to respond?
- What steps can be taken to determine Joon Woo's identity to follow up on his complaint?
- If implemented, would the proposed policy be discriminatory on the basis of sex under Title IX?
  - Why or why not?
- If Joon Woo is no longer included in the department leadership meetings, would that constitute discrimination under Title IX?
  - Why or why not?

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Case Study 3: Swim Practice

- Ellerie is a high school junior and a member of the girls' varsity swim team.
- She gave birth to her first child over the summer between her sophomore and junior years and has been experiencing post-partum depression since the birth.
- Swim team practice is scheduled for weekday mornings from 6:00-7:30 AM in the shared natatorium. Ellerie often finds herself unable to wake up in the morning in time to make it to practice on time or sometimes at all because of her depression.
- As a result of her inconsistent attendance at practice, Coach Sumner has pulled Ellerie from three relay races and two individual events for the upcoming regional swim meet.
- Ellerie's parents contacted the district athletic director to express their disapproval of Coach Sumner's decision.
- The athletic director has reached out to you as the Title IX Coordinator for assistance.

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Case Study 3: Swim Practice

- How would you navigate this situation?
- If true, would Coach Sumner's actions be considered discrimination on the basis of sex under Title IX?
  - Why or why not?
- What reasonable accommodations or supportive measures may be appropriate in this situation?
- Are there additional remedies that would restore Ellerie's access to the education program or activity?

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Case Study 4: Women's Clinic

- Cedar is a transmale graduate student who has chosen not to undergo gender confirmation surgery to date.
- He is due for his annual gynecological exam and wants to discuss the potential impact of taking testosterone on a fetus if he were to become pregnant.
- Cedar wants to be seen at the Student Health Center (SHC) because annual preventative exams are provided free of charge to students as a part of their student health fee.
- When Cedar logs in to the appointment request portal, he is unable to select a gynecological exam as his appointment type because the system recognizes his gender as male and does not allow males to schedule gynecological exams.

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Case Study 4: Women's Clinic

- Frustrated, Cedar telephones the Student Health Center and speaks with a scheduler about the issue.
- The scheduler informs Cedar that it is against SHC policy to schedule a male for an appointment in the Women's Clinic and gynecological exams are only offered in the Women's Clinic at the SHC.
- Cedar then sends an email to the institution's president alleging discrimination and threatening to go to the media.
- The President's Office forwards the email to the Title IX office for resolution.

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Case Study 4: Women's Clinic

- How would you navigate this situation?
- If true, is the SHC policy discriminatory on the basis of sex under Title IX?
  - Why or why not?
- Is having a Women's Clinic discriminatory on the basis of sex under Title IX?
  - Why or why not?
- What could remedy this situation in the short term?
- What long-term solutions should the institution consider?

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Case Study 5: Cheyenne

- Cheyenne is the captain of the dance team that performs at home football and basketball games, school pep rallies, and a variety of other school and community events throughout the year. They also compete in state-wide and national competitions.
- Cheyenne became pregnant shortly after the school year began. Her doctor has approved her to continue with her full participation in dance team activities.
- The dance team uniforms are midriff-bearing, and Cheyenne's "bump" begins to become noticeable during basketball season. Cheyenne requests a larger size uniform, and the coach provides another uniform without issue.

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Case Study 5: Cheyenne

- However, several parents of other dance team members begin pressuring the coach to remove Cheyenne as dance team captain because they don't believe that an unwed, teenage mother is an appropriate role model or leader for their daughters.
- Some have gone so far as to bring posters to dance team performances calling for Cheyenne's removal and publicly slut shaming her.
- For example, there were posters that said, "Dancers should know to keep their legs shut when facing an audience," and, "Where's your pole, Cheyenne?"
- At one performance, a group of dance team parents started to chant, "Hey ho, preggo's gotta go!"
- Cheyenne's mother doesn't want her daughter to feel further ostracized by filing a formal complaint, but she also wants the parents' behavior to stop.

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Case Study 5: Cheyenne

- How would you navigate resolving this situation?
- What is the school/district's authority related to parents/guardians?
- What supportive measures may be appropriate?
- Is Informal Resolution a potential option?

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Case Study 6: Miray

- In late January, the international student services program advisor reaches out to you as the Title IX Coordinator about a student concern.
- Miray, a junior from Turkey, is studying in the radiation therapy program on an F-1 visa. This term Miray is enrolled in four in-person courses: two off-site clinical courses, one lecture course in the radiation therapy program, and one general education lecture course. The clinical hours are required both for her academic program and for her licensure.
- Miray came to speak with the advisor about needing to reschedule two large exams for her general education course later in the semester, as she will be needing to take a leave of absence after she gives birth.

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Case Study 6: Miray

- She shared that her first child is due in late March and that she anticipates being out of classes for 2-3 weeks. Her husband will be present and able to support her with the baby.
- Miray also expressed that she is stressed after speaking with the faculty member for her radiation therapy lecture course who told her she would need to abide by the class attendance policy and miss no more than three class sessions.
- She has asked for assistance in creating a plan that will allow her to remain in school full time to maintain her F-1 visa status.

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Case Study 6: Miray

- If true, what discriminatory actions are present under the Title IX policy?
- What supportive measures are available to Miray?
- What happens if she cannot return to class after three weeks?
- How would you communicate with faculty?
- Who else do you need to communicate with in this situation?

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Case Study 7: Fiona

- Fiona, a human resources benefits specialist, recently gave birth to her second child.
- The infant has developmental delays and is unable to drink from a bottle.
- Fiona is requesting to be able to work remotely so that she is available to breastfeed her child on demand.

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Case Study 7: Fiona

- Does Title IX protect individuals in Fiona's situation?
- What would you consider when reviewing Fiona's request?
- How would this scenario change if Fiona was a school resource officer or campus police officer?
- How would this scenario change if Fiona was enrolled as a student rather than being an employee?

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Questions?

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