



Accommodating Pregnant Students on SUNY Campuses

August 2013

By Seth Gilbertson, Associate Counsel

Under the Department of Education's (DOE) regulations implementing Title IX of the Education Amendments of 1972, a college or university "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." This directive has been highlighted recently in an Early Complaint Resolution Agreement between the Office for Civil Rights (OCR) and the City University of New York (below), a [Dear Colleague Letter from OCR](#), and a 30 page "pamphlet" from DOE entitled "[Supporting the Academic Success of Pregnant and Parenting Students](#)."

According to these materials, not discriminating against a pregnant student means granting her leave "for so long a period of time as is deemed medically necessary by the student's physician," and then effectively reinstating the student "to the status which she held when the leave began."

This generally means that pregnant students should be treated as if they had a temporary disability, and then given an opportunity to make up missed work wherever possible. Extended deadlines, makeup assignments, and incomplete grades that can be completed at a later date, should all be employed. To the extent possible, pregnant students should be placed in the same position of academic progress that they were in when they took leave. The plausibility of doing so 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.

In situations where the temporal particularities of the task do not allow for a "break," such as clinical rotations, large performances, and some lab or group work, the institution should work with the student to devise an alternative path to completion. Notably, OCR does not even seem to contemplate the existence of such situations, suggesting that they should occur with exceeding irregularity.

Ideally, students will always work with their professors, as well as any support systems that the institution has in place, to come up with a plan for how to handle their absence and get back on track as quickly and comfortably as possible. In order to encourage this, the institution should post conspicuous notices directing students to a clear pregnancy policy and any responsible offices, including the office of disability services (or its equivalent) and the Title IX Coordinator. Your campus counsel is always available to discuss how to best draft and implement such policies.

EARLY COMPLAINT RESOLUTION AGREEMENT

U.S. Department of Education, Office for Civil Rights

OCR Case No. 02-13-2065

In order to resolve the complaint [REDACTED] ("Complainant") filed with the U.S. Department of Education, New York Office for Civil Rights ("OCR") (OCR Case No. 02-13-2065), the Borough of Manhattan Community College - City University of New York ("CUNY"), and the Complainant reached the following agreement:

1. CUNY agrees to the following:
 - (a) CUNY will reimburse Complainant the sum of [REDACTED] in tuition-related expenses by check issued to [REDACTED] and mailed to [REDACTED] within 45 days of both parties' execution of this agreement;
 - (b) Complainant will be recognized as an Out-in-Two scholarship recipient for the Spring 2012, Fall 2012, and Spring 2013 academic semesters at Borough of Manhattan Community College;
 - (c) CUNY's Office of Legal Affairs will distribute a memorandum (annexed hereto as Exhibit A) concerning the University's obligations relating to student pregnancy and related conditions under Title IX of the Education Amendments Act of 1972 ("Title IX") (the "Memorandum") to all faculty and staff, with a copy to CUNY college legal departments, and CUNY college student and academic affairs departments;
 - (d) CUNY will post the Memorandum on its Legal Affairs website;
 - (e) Per the Memorandum, CUNY will include a paragraph regarding Title IX's prohibition of discrimination based on pregnancy and related conditions in all CUNY college student handbooks, beginning with the next edition published following the execution of this settlement agreement, so long as that edition has not already been finalized, and/or websites; and said paragraph shall contain at a minimum the following language:

[Insert College] does not discriminate against any student on the basis of pregnancy or related conditions. Absences due to medical conditions relating to pregnancy will be excused for as long as deemed medically necessary by a student's doctor and students will be given the opportunity to make up missed work. Students needing assistance can seek accommodations from the Office of Accessibility [insert contact information] or the Title IX Coordinator [Insert name and contact information].

- (f) CUNY will conduct training on the University's obligations relating to student pregnancy and related conditions to all Title IX Coordinators and Directors of Student Affairs at all CUNY colleges;
- (g) CUNY's Office of Legal Affairs will discuss the University's obligations relating to student pregnancy and related conditions at the next meeting of the legal designees for the various colleges, will advise each of the legal designees to inform the faculty, administrators and relevant advisors at each of their colleges, and will ask each of the legal designees to figure out the best way to inform new faculty members who begin working for CUNY at each of their colleges;
- (h) CUNY's Office of Legal Affairs will discuss the University's obligations relating to student pregnancy and related conditions at a forthcoming meeting with the colleges' Chief Diversity Officers;
- (i) On an ongoing basis, CUNY will include training on the University's obligations relating to student pregnancy and related conditions in any trainings regarding Title IX that CUNY conducts for faculty members, administrators and/or CUNY college students;
- (j) CUNY will not retaliate against Complainant—or allow its students, faculty, or staff to do so—for exercising her rights under Title IX.

2. The Complainant hereby withdraws OCR Case No. 02-13-2065 before OCR and releases and discharges CUNY and CUNY's affiliated colleges, trustees, officers, employces, attorneys, agents, representatives, and all persons acting with or on behalf of them, from all charges, complaints, claims, liabilities, obligations, promises, agreements, actions, or causes of action, debts, attorneys' fees or other costs or expenses, of any nature whatsoever, including but not limited to claims arising under local, state or federal statute, regulation, or ordinance relating to discrimination or education, or any other claim related to or arising out of the Complainant's education at CUNY, known or unknown, which the Complainant may ever before have had or claim to have had, from the beginning of the world through the date of this agreement.

3. Both parties agree that they are entering into this agreement willingly, without any coercion or duress, that this agreement contains all of the agreed-upon terms and no other promises have been made outside of this stipulation, and that this stipulation completely resolves and terminates the complaint pending before OCR.

4. A facsimile copy of this agreement will have the same force and effect as the original.

5. This agreement may be signed in counterparts.

6. Both the Complainant and CUNY agree that this agreement resolves the complaint filed in the above-referenced OCR complaint, and that this agreement does not constitute any admission, by either party, of discrimination or wrongdoing, including any violation of law, policy, procedure, or right belonging to either party, or any other party.

7. The parties understand that if a breach of this agreement occurs, the Complainant has the right to file another complaint with the Office for Civil Rights. To be considered timely, the new complaint must be filed either within 180 days of the date of the original alleged discrimination or within 60 days of the date the Complainant obtains information that a breach of this agreement occurred, whichever date is later. If such a new complaint is filed, OCR will address the original allegation(s) and will not address the alleged breach of the agreement. This agreement does not affect Complainant's right to file a complaint with OCR or a lawsuit if she experiences retaliation for asserting her rights under Title IX.

[REDACTED]

The City University of New York

By: [Signature]
Stacey B. Creem

4/30/2013
Date

4/30/13
Date

Exhibit A



Office of the General Counsel & Sr. Vice Chancellor for Legal Affairs

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April 29, 2013

MEMORANDUM

To: CUNY Faculty and Staff
From: Frederick P. Schaffer, General Counsel and Senior Vice Chancellor for Legal Affairs
Re: Non-Discrimination of Students on the Basis of Pregnancy, Childbirth and Related Conditions

This memorandum is being sent to inform and remind the University community of the University's obligations not to discriminate against students on the basis of pregnancy, childbirth and related conditions.

The University's Policy on Equal Opportunity and Non-Discrimination makes clear that CUNY does not discriminate against persons on the basis of sex in its educational programs and activities. The legal prohibition against sex discrimination in education comes from, among other places, Title IX of the Education Amendments Act of 1972 ("Title IX"). Title IX prohibits discrimination on the basis of sex—including pregnancy and related conditions—in educational programs and activities that are eligible for federal funding.

Attached is a copy of U.S. Department of Education regulations 34 C.F.R. s 106.40(b) concerning pregnancy and related conditions. The regulations provide, in pertinent part, that a college that is a recipient of federal funding shall not discriminate against any student on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom. Specifically, educational institutions such as CUNY that are covered by Title IX must treat these conditions in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy. In the event that the educational institution does not maintain a leave policy for its students, or in the event that a student does not otherwise qualify for leave under the policy, the institution is required to treat such condition as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

This means that CUNY must give all students who might be, are, or have been pregnant the same access to school programs and educational opportunities that other students have. Absences due to medical conditions relating to pregnancy must be excused for as long as medically necessary and the students must be given the opportunity to make up missed work, with the goal of having

the student graduate on time, if possible and if desired by the student. Professors and administrators should not tell students that they have to drop out of their classes or programs or change their educational plans due to their pregnancies or related conditions. And CUNY cannot terminate or reduce athletic, merit or need-based scholarships based on pregnancy. ~~These rules~~ supersede any school- or instructor-based attendance or other policies regarding allowable numbers of absences or ability to make up missed school work.

In light of this legal requirement, it is critical that faculty and staff who deal with students are knowledgeable about their obligations to students in this situation. In addition, the colleges should include the following in their student handbooks and websites:

[Insert College] does not discriminate against any student on the basis of pregnancy or related conditions. Absences due to medical conditions relating to pregnancy will be excused for as long as deemed medically necessary by a student's doctor and students will be given the opportunity to make up missed work. Students needing assistance can seek accommodations from the Office of Accessibility [Insert contact information] or Title IX Coordinator [Insert name and contact information].

For more information regarding Title IX's prohibition against discrimination based on pregnancy and related conditions, you can access materials from the National Women's Law Center at www.nwlc.org/pregnantandparentingstudents.

C: Chancellor
Cabinet
Presidents
Chief Academic Officers
Dean Jennifer Robain
Karin Wong, University Title IX Coordinator
Chief Student Affairs Officers
Recruitment and Diversity Coordinators
Title IX Coordinators
Legal Affairs Designees