

What to Expect (from UNC Charlotte) When Students Are Expecting: Where Title IX Meets the ADA

Michelle Reinken, Director of Title IX Compliance and Gena Smith, Director of Disability Services

Division of Institutional Integrity Annual Legal Symposium

November 12, 2020

Pregnancy and Parenting: Two Lenses



Title IX of the Education Amendments of 1972

- ▶ Title IX prohibits sex-based discrimination in a university's educational programs and activities, including:
 - ▶ Applying any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.
 - ▶ Discriminating against any student, or excluding any student from an 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).
 - ▶ Requiring a doctor's note to certify that a pregnant student is physically and emotionally able to continue participation unless such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

Title IX of the Education Amendments of 1972

- ▶ Under Title IX, a university is required to:
 - ▶ Operate any separate education program or activity for pregnant students on a completely voluntary basis and ensure that such separate program or activity is comparable.
 - ▶ Treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any university medical or hospital benefit, service, plan, or policy.
 - ▶ Treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom 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 they held when the leave began.

<https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.html>

Title IX Office



- ▶ What does this mean?
 - ▶ Title IX requires that pregnant students receive reasonable adjustments to coursework, schedules, or other requirements if necessary based on their pregnancy.
- ▶ What do we do (in relation to pregnancy and parenting students)?
 - ▶ Attempt to establish and engage in preventative/proactive efforts
 - ▶ Encourage open and transparent dialogue between students and faculty
 - ▶ Facilitate reasonable accommodation conversations
 - ▶ Partner/Consult with the Office of Disability Services
 - ▶ Serve as a resource for students and faculty
 - ▶ Address formal complaints as appropriate

<https://titleix.uncc.edu/students/pregnant-and-parenting-students>

Disability Services and the ADA

- ▶ The Americans with Disabilities Act (1990): Anti-discrimination, civil rights statute that mandates equal access, including access to colleges and universities. Its purpose is to ensure that people with disabilities have the same rights and opportunities as everyone else.
 - ▶ Defines **disability** as a **physical or mental impairment that substantially limits one or more major life activities** (self-care, walking, talking, performing manual tasks, seeing, hearing, communicating, learning, working, sleeping, etc.)

The ADA, Amended (2008)

- ▶ ADA Amendments Act (ADAAA): Expands the interpretation of *disability*, reiterating that the scope of the ADA was intended to be broad and inclusive. Major life activities now include **major bodily functions** (functions of the immune system, digestive, bowel, bladder, neurological, respiratory, circulatory, endocrine, reproductive functions, etc.)
- ▶ Temporary Impairments and Disability
 - ▶ ADAAA allowed for consideration of temporary conditions as disabilities, if severe enough to substantially limit a major life activity.
 - ▶ How severe must the temporary condition be to warrant ADA coverage? Colds, the flu, a sprain, no. **The severity and duration of the impairment both matter.**

So, Is Pregnancy Considered a Disability?

- ▶ A routine pregnancy, in and of itself, is not a disability.
- ▶ However, a condition or impairment arising from pregnancy may be a disability, and as such, might require accommodations through Disability Services.
- ▶ If the student experiences a pregnancy-related condition or impairment that qualifies as a disability under the ADA, those ADA protections are triggered.

Office of Disability Services

▶ What we do:

- ▶ Disability Services is the campus office designated to determine accommodations for UNC Charlotte students with disabilities.
- ▶ We work to ensure that students with disabilities have access to education and campus life at UNC Charlotte.
- ▶ The process of providing accommodations is interactive and ongoing. Students with documented disabilities may be eligible for a variety of accommodations that are individualized to meet their needs.

<https://ds.uncc.edu/>

Common Language...Executed Differently



Documentation

- ▶ **Office of Disability Services:** In order to determine if a pregnancy-related diagnosis rises to the level of disability, our office requires appropriate documentation from the appropriate health care provider. That documentation is protected information and is not shared with faculty.
- ▶ **Title IX Office:** We do not require documentation in order to verify pregnancy.
- ▶ **Absence Verification Considerations and Differences**
 - ▶ Office of Disability Services
 - ▶ Title IX Office



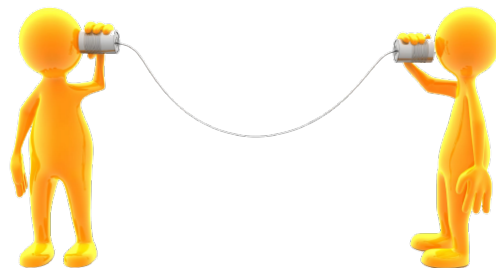
Reasonable Accommodations



- ▶ Title IX Office: Title IX Pregnancy Accommodation Request Letter comes from the Title IX Office. The letter serves as a request for consideration of reasonable accommodations and is offered to students but not required in order to facilitate possible accommodations.
 - ▶ For example: Attendance, Incomplete(s), Modification of Assignment(s), etc.
- ▶ Office of Disability Services: Accommodation Letter comes through the DS Portal and outlines specific, required accommodations for that student.
 - ▶ For example: Attendance, More Frequent Breaks, Ability to Sit as Needed, etc.

Communication

- ▶ Sometimes the accommodation itself requires communication.
 - ▶ Example: Communicating an absence
- ▶ Both offices facilitate communication between faculty and students. Additionally, both offices serve as resources for faculty and students regarding accommodations.
 - ▶ Faculty Perspective: Do I have to do _____?
 - ▶ Student Perspective: I would like _____.



A Little Practice...



Scenario 1 – “Jasmine”

Jasmine comes to you and shares she is pregnant. She indicates that she needs nothing at this time but just wanted you to be aware that she is due the week before finals. Jasmine shares she'll communicate with you throughout the semester if needs arise.

Scenario 2 – “Jasmine, Part 2”

Since proactively communicating with you about two months ago, Jasmine has not reached out to you again. Today you receive an email notice that Jasmine has an Accommodation Letter ready for your review in the DS Portal. The email includes contact information for Jasmine’s DS counselor, and the Letter indicates she is registered with Disability Services and outlines the specific accommodations that she requires.

Scenario 3 – “Amanda”

Early in her pregnancy, Amanda elects to connect with the Title IX Office. As her instructor, you receive a Title IX Pregnancy Accommodation Request from the Title IX Case Manager. Amanda also proactively reaches out to you regarding her pregnancy. She understands she will need to get a doctor’s note for each medical appointment for absence verification (per your attendance policy in your syllabus), and she has provided a note to you with each absence. Now in October, her absences have become more frequent, and she doesn’t always have a note. She shares that she now has episodes of rapid heart rate and lightheadedness, and is often too dizzy to drive to campus. She’s under medical care, but does not see her doctor with every episode.

Additional Considerations

- ▶ Give and take – Collaborative approach
- ▶ Comfortability with nuance
- ▶ Flexibility
 - ▶ Even “normal” pregnancies are unpredictable
 - ▶ Each individual experiences pregnancy differently
- ▶ An early delivery or a late return will bring unique circumstances that will require additional dialogue and consideration(s)



Need Guidance? Contact Us

- ▶ **Michelle Reinken, Director of Title IX Compliance**

Title IX Office

Location: Cato 132

Phone: 704-687-6130

- ▶ **Gena Smith, Director**

Office of Disability Services

Location: Fretwell 230

Phone: 704-687-0046

