

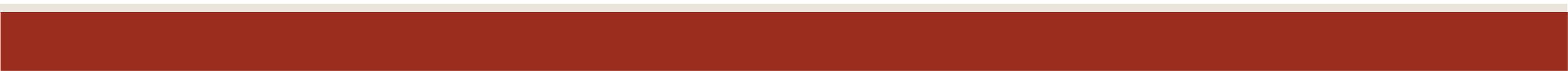
Accommodating Pregnant and Parenting Students in Academic and Athletics Settings in Higher Education

HEATHER HENDRICKS, ASSISTANT GENERAL COUNSEL

LINDY ROBERTS-IVY, SENIOR ASSOCIATE ATHLETIC DIRECTOR

THE UNIVERSITY OF OKLAHOMA

OCTOBER 13, 2021



Title IX

- Title IX of the Education Amendments Act of 1972 provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

- Title IX was historically considered most significant in the context of athletics, and provides a framework for compliance in three areas: participation, scholarships, and treatment or benefits. Over time, non-discrimination principles have also been extended to include a prohibition against sexual harassment, including sexual violence, and discrimination on the basis of pregnancy.
- Title IX serves two purposes, it is a contract between a recipient of federal funding but may, in some cases, afford a person a private right of action.

The Americans With Disabilities Act and the Pregnancy Discrimination Act

- Pregnancy is not, in itself, a disability protected by the ADA, though many complications associated with pregnancy may cause a person to be impaired and require accommodations. The U.S. Supreme Court has interpreted the law to require the same types of accommodations be made for pregnancy-related impairments as other disabilities.
- The Pregnancy Discrimination Act is another important non-discrimination law, but it is applicable in the context of employment and does not apply to most students.
- Therefore, the Title IX regulations and (for student-athletes) NCAA Guidelines are the most significant sources of authority on pregnancy of students in higher education.

Title IX and Pregnancy

- Title IX regulations prohibit discrimination on the basis of sex- including pregnancy and all related conditions, in educational programs and activities that receive federal funding.
- Title IX sets forth a ban on pregnancy discrimination, stating that schools must treat pregnancy and all related conditions in the same way as they treat other temporary disability.
- Further, Title IX regulations provide special protection for pregnant students by requiring an institution to provide them with necessary medical leave, and to reinstate them to the same status as they held when the leave began, even if the school does not have a leave policy or if the students do not qualify under its policy.

Title IX and Pregnancy

- In 2007, the U.S. Department of Education issued a “Dear Colleagues Letter” to all recipients of federal financial aid, re-affirming the applicability of the Title IX Regulations to athletic departments.
- The strongly worded letter stated:

“I want to reiterate that terminating or reducing financial assistance on the basis of pregnancy or a related condition is prohibited under *Title IX*. Subjecting only students of one sex to additional or different requirements, such as requiring female athletes to sign athletic contracts listing pregnancy as an infraction, or excluding students from participating in a recipient’s program or activity, including extracurricular activities and athletics, on the basis of the student's pregnancy or a related condition is also prohibited under *Title IX*.”

University Policy on Pregnant and Parenting Students

- Pregnant and parenting students have a right to stay in college to meet their educational and career goals under Title IX.
- Pregnant and parenting students are permitted excused absences due to pregnancy or other related issues.
- Pregnant and parenting students are permitted to continue participating in off-campus programs such as internships, career rotations, and other off-campus elements of a program.

University Policy on Pregnant and Parenting Students

- Professors cannot penalize students who miss class for pregnancy-related absences and must provide make up opportunities for points awarded for class attendance.
- The University does not terminate or reduce athletic, merit, or need-based scholarships based on pregnancy. If the student remains enrolled in school, the student can keep her scholarship.

Pregnancy, Parenting, and Student-Athletes

- The OU Athletics Department regards pregnancy as it applies to intercollegiate athletics participation as a medical condition. The head team physician, in collaboration with the student-athlete and her physician, make the determination regarding participation and return to competition.
- The University supports the rights of all students, including student-athletes, to make their own medical decisions about pregnancy continuation, pre-natal care, and breastfeeding.

Applicable NCAA Guidelines

- Upon confirmation of a pregnancy, a student-athlete does not have to withdraw from her sport.
- Scholarships will remain in place for the remainder of the granting year, August - May (NCAA bylaw 15.3.3.1).
- If a student-athlete becomes pregnant before reporting to the university and has been accepted for admission and been awarded financial aid, the scholarship will also remain intact for the granting year (15.3.2.2), as the NCAA prohibits reduction or cancellation of a scholarship during the period of its award based upon not being able to compete (NCAA bylaw 15.3.4.3).

Pregnancy Guidelines: After Pregnancy

- After giving birth, the student-athlete will typically need to wait 6-8 weeks before resuming training for sport. Clearance by the student-athlete's physician and the University of Oklahoma's team physician is required before participation may resume following giving birth or termination of a pregnancy.
- It is fully expected and encouraged that student-athletes return to sport participation after giving birth or terminating a pregnancy; however, participation is always at the discretion of the Head Team Physician.
- In addition, University staff work with the student-athlete to support continued academic progress.

Pregnancy Guidelines: Support

- Student-athletes are strongly encouraged to discuss their scholarship and eligibility options with the senior staff, who will clarify options and explain rules and policies when necessary. There are many factors to take into consideration when making decisions about pregnancy and sport participation, and student-athletes are encouraged to seek support from inside the University community and trusted others.
- Student-athletes, including male student-athletes, may utilize the Special Assistance Fund to assist in paying for their travel expenses for the birth of their child. In addition, if eligible, both male and female student-athletes may use a \$500 per year clothing allowance from the Special Assistance Fund to purchase clothes for his or her child.

Questions?
