

# Title IX 40 years and counting

fact sheet | June 2012

## The Next Generation of Title IX: Pregnant and Parenting Students

**T**itle IX of the Education Amendments of 1972 is the landmark law that bans sex discrimination in federally funded education programs and activities. Unfortunately, four decades after its passage, schools continue to bar pregnant and parenting students from activities, kick them out of school, pressure them to attend alternative programs, and penalize them for pregnancy-related absences.

### Title IX at 40: The Road Traveled

Title IX protects students from discrimination based on their “actual or potential parental, family, or marital status” or based on a student’s “pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.”<sup>1</sup> Generally speaking, this means that schools must give all students who *might be, are or have been* pregnant (whether currently parenting or not) equal access to school programs and extracurricular activities, and schools must treat pregnant and parenting students in the same way that they treat other students who are similarly able or unable to participate in school activities. Specifically, schools must:<sup>2</sup>

- Provide equal access to school for pregnant and parenting students and treat pregnancy and all related conditions like any other temporary disability.
- Provide equal access to extracurricular activities for pregnant and parenting students. For example, a school cannot require a doctor’s note for pregnant students to participate in activities unless the school requires a doctor’s note from all students who have conditions that require medical care.

- Excuse absences due to pregnancy or childbirth for as long as the student’s doctor deems medically necessary. At the conclusion of a pregnancy-related leave, a student must be reinstated to the status she held when the leave began.
- Ensure that any separate programs or schools for pregnant and parenting students are voluntary and offer opportunities equal to those offered for non-pregnant students.

Unfortunately, discrimination against pregnant and parenting students persists. At the high school level, some are steered into inferior alternative programs or told to drop out and get a GED instead. Some are harassed by their teachers or fellow students once it becomes known that they are pregnant. Some schools fail to excuse absences related to pregnancy and childbirth and penalize students for those absences by refusing to allow them to make up the work they miss. Some schools deny pregnant students access to homebound instruction that is given to other students who miss school for medical reasons.

Pregnant college students likewise report experiencing discrimination in school. Some postsecondary and graduate schools leave excused absence and make-up work policies to the discretion of each individual professor. Some professors in turn adjust grades based on class attendance, regardless of the basis for a student’s absence, penalizing those who miss class for bed rest, recovery from childbirth, or other pregnancy-related reasons. But colleges and universities are obligated to ensure that pregnant and parenting students have equal access to their educational programs, and an individual professor’s policy cannot be allowed to stand

if it conflicts with Title IX. Colleges and universities also cannot terminate scholarships based on pregnancy, tell pregnant students they should drop out or switch programs, or exclude qualified pregnant students from opportunities to “work in the field,” through internships, career rotations, or the like.

## Why It Matters:

### The Impact on Women and Girls

The discrimination that pregnant and parenting students face exacerbates the other barriers they experience in meeting their educational goals, pushing far too many students out the school house door. According to a study released in 2010, only about one-half of teen mothers get a high school diploma by the age of 22, compared with 89% of women who do not have a child during their teen years.<sup>3</sup> One-third of teenage mothers never get a G.E.D. or a diploma.<sup>4</sup> Moreover, less than 2% of young teenage mothers attain a college degree by the age of 30.<sup>5</sup>

Teen mothers who drop out of high school face particularly dire economic prospects. Overall, females who drop out of high school are more likely to be unemployed than male high school dropouts,<sup>6</sup> and those who do find jobs face lower earnings,<sup>7</sup> so as a result, they are more likely to have to rely on safety net programs to support themselves and their families.<sup>8</sup> By contrast, when pregnant and parenting students succeed, it benefits not only them but their communities and our nation as a whole, and greatly improves the chances that their children will graduate and achieve economic security too.

## Next Generation Issue

### Breastfeeding accommodations

Although the 2010 Affordable Care Act requires employers to provide employees with the time and space to express breast milk for at least one year after the birth of a child, pregnant and parenting students must confront their school’s unwillingness to accommodate the need for time and space for students to do so. This can pose a serious hardship for young mothers, because failure to express breast milk on a set schedule can lead to engorgement, which causes discomfort, pain, and fever, and can even lead to infection, as well as a reduction in the amount of breast milk produced.<sup>9</sup> Without the opportunity for breaks of the necessary duration, breastfeeding young women will likely experience extreme pain and discomfort in school, causing a serious distraction that could negatively impact their ability to learn, and posing a risk to their health. Refusing to accommodate breastfeeding needs also

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## The Road Ahead

**The U.S. Department of Education’s Office for Civil Rights (OCR) should shine a spotlight on this issue** and send a message to school districts that they must take pregnant and parenting students’ civil rights seriously. OCR should: (1) remind schools and districts of their legal obligations to pregnant and parenting students and instruct them to get into compliance; (2) conduct proactive Title IX compliance reviews with this focus; and (3) include data on pregnant and parenting students in the Civil Rights Data Collection.

**Legislation pending in Congress, The Pregnant and Parenting Students Access to Education Act,<sup>10</sup>** would give states and school districts support to provide services that promote the educational success of pregnant and parenting students.

**Schools should make sure they have designated a Title IX coordinator,** a position required in every school and district, and ask the coordinator to act as a liaison for pregnant and parenting students to ensure they get the services they need to succeed – including, when applicable, the time and space to express breast milk.

sends students the message that being a mother is incompatible with educational success.

Women who are nursing should not be forced to choose between going to school under disadvantageous conditions that place their health – and their academic success – at risk and postponing their education until they are no longer breastfeeding. To ensure that young mothers are not put in that position, schools should provide students with breaks of the necessary duration as well as a clean, private space (that is not a restroom) to express breast milk.

1 20 U.S.C. §§ 1681 *et seq.* (2006); 34 C.F.R. § 106.40.

2 *Id.*

3 KATE PERPER, KRISTEN PETERSON & JENNIFER MANLOVE, CHILD TRENDS, DIPLOMA ATTAINMENT AMONG TEEN MOTHERS 1 (2010), available at [http://www.childtrends.org/Files/Child\\_Trends-2010\\_01\\_22\\_FS\\_DiplomaAttainment.pdf](http://www.childtrends.org/Files/Child_Trends-2010_01_22_FS_DiplomaAttainment.pdf).

4 *Id.*

5 HOFFMAN, S.D., THE NATIONAL CAMPAIGN TO PREVENT TEEN PREGNANCY, *By the Numbers: The Public Costs of Adolescent Childbearing* (2006).

6 Bureau of Labor Statistics, Current Population Survey, available at <http://data.bls.gov/cgi-bin/srgate> (last visited May 10, 2012). In 2011, women 25 and older without a high school diploma had an unemployment rate of 14.8 percent, compared to 13.6 percent for men 25 and older without a high school diploma. Data were accessed using codes LNU04027675 (men) and LNU04027679 (women).

7 U.S. Census Bureau, Current Population Survey (CPS), 2011 Annual Social and Economic Survey, Table PINC-03: Educational Attainment – People 25 Years Old and Over, by Total Money Earnings in 2010, Work Experience in 2010, Age, Race, Hispanic Origin, and Sex, available at [http://www.census.gov/hhes/www/cpstable/032011/perinc/new03\\_000.htm](http://www.census.gov/hhes/www/cpstable/032011/perinc/new03_000.htm) [hereinafter Educational Attainment Table]. Earnings data are for men and women 25-64 who worked full time, year round. The typical woman who started, but did not finish high school had earnings of \$20,779, just 71 percent of her male counterpart's earnings (\$29,076).

8 NWLC calculations using U.S. Census Bureau, Current Population Survey, 2011 Annual Social and Economic Survey, public-use microdata files. Calculations based on receipt of WIC, SSI, and TANF. Medicaid data from U.S. Census Bureau, Current Population Survey, CPS Table Creator, available at <http://www.census.gov/cps/data/cpstablecreator.html> (last visited May 10, 2012).

9 See, e.g., U.S. Dep't of Health and Human Services, Office of Women's Health, *Your Guide to Breastfeeding* 34 (2011), <http://www.womenshealth.gov/publications/our-publications/breastfeeding-guide/BreastfeedingGuide-General-English.pdf>.

10 Pregnant and Parenting Students Access to Education Act, H.R. 2617, 112th CONGRESS (2011).