

# THE CHRONICLE OF HIGHER EDUCATION

## Advice

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### As California Goes, So Goes the Nation?

A new law that more strongly prohibits discrimination against pregnant graduate students could be coming to a state near you

*By Mary Ann Mason*

This fall Gov. Jerry Brown signed two bills that could greatly improve the lives of women in California higher education, and serve as a model for the nation. Seeking to lessen the ambiguity that plagues sexual-assault investigations, the "[yes means yes](#)" law made California the first state to set a clear definition of when people agree to sex and attracted plenty of national attention.

Less heralded but equally important to academe was [the second bill](#), also the first of its kind in the nation. It orders higher education to comply with Title IX's regulations prohibiting discrimination against pregnant graduate students and offers protections beyond that, too. It will play a key role in helping female graduate students to achieve their professional goals.

Why did California have to pass a law to insist that academe comply with a 1972 federal law that already explicitly protected pregnant students from discrimination in such areas as admissions, hiring, and health insurance? Because almost no one in higher education recognized those protections—not even the students.

Some high schools had paid attention to Title IX because it had been used to ensure that pregnant students could finish their educations. But colleges and universities had paid scant attention until recently. Most people in academe believed that Title IX only covered athletes and, in just the past year, sexual assault on campus.

What does pregnancy discrimination against graduate students look like?

You can see it in the attitudes of some scientists who seem to believe that mothers cannot be serious scholars because academic science demands exclusive attention to research. A Berkeley postdoc in neuroscience who is also a mother confided to me that scientists had told her she would never get a tenure-track job, "and people were very upfront about that when I had my child." In the [2013 book](#) I co-wrote with Nicholas H. Wolfinger and Marc Goulden, *Do Babies Matter? Gender and Family in the Ivory Tower*, we related the experiences of women like Sherry Towers, a postdoctoral particle physicist. When she was pregnant, her adviser said that he would refuse to write her a letter of recommendation unless she returned from her pregnancy leave soon after giving birth.

The new California bill began its journey as an amendment last winter. Sarah Brady, a legislative staff member and recent Ph.D. in chemistry, emailed me, saying that her boss, Assemblywoman Susan Bonilla, knew of our research on Title IX and wanted to do something for pregnant graduate students. Our research work at Berkeley, mostly accomplished while I was dean of the Graduate Division, clearly shows that childbirth is the main reason why young female scientists drop out of the academic pipeline. The new law directly quotes our research: "Women who are married with children in the sciences are 35 percent less likely to enter a tenure-track position after receipt of their Ph.D. than married men with children, and they are 27 percent less likely than their male counterparts to achieve tenure upon entering a tenure-track job. The same phenomenon has appeared in non-STEM fields, as studies indicate that married mothers who earn Ph.D.'s are 28 percent less likely to obtain a tenure-track job than are married men with children who earn Ph.D.'s."

In March, Sarah Brady, the legislative staff member, told me the amendment was ready and asked if I would testify before the state higher-education committee. She had lined up convincing support, mostly from student associations, unions, and women's advocacy groups. I prepared my 34 slides and a killer talk. She told me gently that I had two minutes, but that the committee members had already received copies of some of my work. The bill passed that committee without opposition; in fact the members

were enthusiastic. It sailed through a full Assembly vote and on to the Senate for a hearing and a unanimous yes vote. There it passed easily without opposition.

The new California law focuses on childbirth leave for graduate students, is more generous than Title IX, and includes fathers and partners who are not the birth parent. Title IX regulations [state only](#) that if an institution does not have a pregnancy leave policy for students (and few do), it must provide a leave for as long a period of time "[as is deemed necessary](#) by the student's physician, at the conclusion of which a student shall be reinstated to the status she held when the leave began." The new law states that a student may choose to take a leave of absence for childbirth according to the policies of the institution "[or for a period of 12 additional months](#), whichever is longer" and can return in good academic standing. It also allows a graduate student who is not the birth parent to take a leave of up to one month.

Faculty and staff members are mainly well covered by state and federal laws regarding childbirth. The federal Family Medical Leave Act allows employees [12 weeks off](#) for childbirth, and under California law that may be paid leave, based on disability insurance. The federally enacted Title VII (1964) which protects employees against discrimination in the workplace, and is supplemented by the Pregnancy Discrimination Act, offers employees strong protection for the kind of discrimination that the graduate students face.

Meanwhile, students' only protection is Title IX but that protection has been generally ignored. Many graduate students work as researchers or teaching assistants, but they are not considered "employees" because they are part-time or contingent workers or trainees (and therefore are not protected under Title VII of the FMLA). These positions can be critical to their research and to developing their portfolios for future faculty positions, not to mention their ability to support themselves through the long years of doctoral education.

Women are often in graduate school during their peak childbearing years. Pregnancy leaves, if granted to them at all, are

at the discretion of their professors or advisers. With no rules in place, I think of this as the "kindness of strangers" policy. Except the strangers (the faculty gatekeepers, rather than clear-cut university policies) are often not so kind.

The most important impact of this new law, to my mind, is its insistence that all postsecondary institutions are required to develop a written policy "on pregnancy discrimination and procedures for addressing pregnancy discrimination complaints under Title IX or this section. A copy of this policy shall be made available to faculty, staff, and employees in their required training. This policy shall be made available to all graduate students attending orientation sessions at a postsecondary educational institution."

Students have been powerless to challenge their all-important advisers or professors. Now they will have a voice if they are willing to use it.

The California law is written only for graduate students, in part because promoting women in science under Title IX is a publicly stated goal of the Obama administration, and because our research focused on this group. However, students in medical, law, and other professional schools are also in their prime childbearing years and suffer similar discrimination.

And undergraduates have babies, too. A great many women, many not so young, at community colleges drop out before finishing a degree or credential when they have a baby. Their dropout rate is 64 percent higher than that of their counterparts who did not have children.

In facing the mandate of this new law in California, colleges and universities should understand that Title IX's pregnancy-discrimination protection applies to all students. Policies may be adopted to meet the needs of each higher-education constituency, but it must be remembered that providing accommodation for pregnant students is not just a "good thing" to do, or just for California. It is federal law. It is time for all states to recognize this.

*Mary Ann Mason is a professor in the graduate school at the University of California at Berkeley. She is the author of Title IX and Pregnancy Discrimination in Higher Education, published this year in the NYU Review of Law and Social Change. She is also the author, along with Nicholas H. Wolfinger and Marc Goulden, of Do Babies Matter? Gender and Family in the Ivory Tower (Rutgers University Press). The website for the book is [Dobabiesmatter.com](http://Dobabiesmatter.com). See also [Toolsforchangeinstem.org](http://Toolsforchangeinstem.org) for video presentations of their findings.*

4 Comments

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**schultzjc** • 4 hours ago

Pregnancy is not a disease. It's not something that happens to you. It is a decision to undertake a task that can negatively influence one's ability to pursue a career in science, simply for reasons of time constraints. Mentors and colleagues should not be making discriminatory statements or decisions (e.g., not to write a letter) based on that. However good mentoring should include making the observation that becoming pregnant can place one at a disadvantage simply because it's harder to get as much done. It is a disservice NOT to warn graduate students about behaviors and decisions that lower their competitive ability. It is possible to delay pregnancy until after grad school.

A financial issue can arise as well when a grad student is supported on extramural funds. Grants have expiration dates. While paid leave is a good thing and should be the norm, it's not possible to complete work that depends on a graduate student on time when the student is on leave. Projects and dollars often cannot be extended beyond the life of the grant. This places the PI in a bind.

So while these moves to treat pregnancy and pregnant women fairly are commendable, there are some practicalities that I think need to be addressed in planning, many of which do not represent bias, and some of them may be difficult or impossible to change.

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**bdavi52** → schultzjc • 2 hours ago

Well stated. All this, of course, a function of the inescapable fact that "you cannot have it all" -- no one can. None of us can do everything we want to do, all the time, to the fullest extent of our abilities in every thing we wish to do. Time is limited; life is finite. There is (and always has been) only so much we can do and do well at any one point in time. We must pick our battles, organize our priorities...and live with the consequences of our decisions.

So it is not surprising that those of us who make family a higher priority than our job (not that the job is not important -- it's just not AS important as family), will inevitably give less of ourselves to that job. The reverse is also true. And when we give less of ourselves to any particular venture, we should also recognize that such a diminishment carries with it a price. We will be seen as 'giving less' -- we will become less competitive -- our peers who have different priorities will move beyond us (just as

we, who have different priorities, have moved beyond them in those higher priority choices).

Would we really want it any other way?

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**Bonegirl06** • 3 hours ago

Finally, they are doing something that makes sense!

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**hele3870** • 2 hours ago

Its' common knowledge that women should have their babies at one organization and their careers at another.

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