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Title IX and Babies: The New Frontier?

By Mary Ann Mason

Did you know that Title IX specifically includes important protections for pregnant women and mothers? You probably didn't, and neither do most pregnant graduate students and postdocs, or their teachers, principal investigators, department chairs, and deans.

Most people think of Title IX, which prohibits gender discrimination in any education program receiving federal money, as focusing on athletics and sexual harassment.

Employment discrimination against pregnant women is a real but rarely discussed problem. Childbirth is the main reason young female scholars drop out of the academic pipeline before obtaining their first job. According to the National Science Foundation's Survey of Doctorate Recipients, among scientists, married women with children are 35 percent less likely to step into a tenure-track job than married men with children. Single women without children, on the other hand, are almost as likely as married men with children to obtain that first job.

The same pattern prevails in the humanities, social sciences, and professional schools: Over all, female Ph.D.'s who are married with children are 28 percent less likely to find a tenure-track job than married fathers. Quitting the academic market is certainly not what those women intended when they began their long quest to obtain a Ph.D.

What does discrimination against pregnant women and mothers 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 female Ph.D. in neuroscience who is also a mother told me, "I don't think I'll ever do a tenure-track job and people were very upfront about that when I had my child." And consider the postdoctoral particle physicist who was effectively blacklisted by her adviser when she had a baby. When she was pregnant, her adviser said he would refuse to write her a letter of recommendation unless she returned from her pregnancy leave soon after giving birth.

It is not just individuals who discriminate. Colleges and universities are in violation of Title IX if they fail to allow pregnant mothers a reasonable period of leave for childbirth and if they fail to guarantee that students can return to their former positions as teaching assistants or postdoctoral research fellows after maternity leave. The regulations state clearly that "In the case of a recipient [of federal funds] that does not maintain a leave policy for its students"—and many institutions do not—"a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery there from as a justification for a leave of absence for as long a period of time as is deemed necessary by the student's physician, at the conclusion of which student shall be reinstated to the status that she held when the leave began."

That coverage is critical for our female graduate students and postdocs who are in their peak childbearing years. Even though they are most often employed as research or teaching assistants, they often do not fall under Title VII or under the Family and Medical Leave Act (FMLA) workplace protections since they are considered contingent, part-time employees or trainees. Nor do Title VII and FMLA provide any protection for students in academic programs.

But under Title IX, all students have the right to return to their academic programs and to the teaching and research posts they held before they took leave, with no change in status during pregnancy and after childbirth.

Title IX offers great protection, but the scope of it is rarely made known to students. After giving birth, few students seek to enforce their Title IX protections since very few of them even know they can complain on those grounds. At many colleges and universities, there are no published procedures on filing complaints and no Title IX coordinators to handle them. Faculty members and administrators are often ignorant of the law as well.

But there is a sign of hope. The Obama administration has shown concern about the issue of how childbearing affects a woman's ability to pursue a scientific career. In 2011 the White House and the National Science Foundation established the "NSF Career-Life Balance Initiative," which supports scientists who are starting families by providing grant extensions, parental supplements for childbirth, and other family-friendly policies. In that same year, the Department of Justice coordinated a Title IX Interagency Working Group that focused on effective ways to conduct compliance reviews with the law for academic programs in STEM fields.

This year, while commemorating the 40th anniversary of Title IX, the Obama administration announced that "building on the success of previous interagency collaboration efforts on Title IX and STEM, the Department of Education will lead an initiative with the Department of Justice and science & technology agencies (including the Department of Energy, NASA, National Science Foundation, and the Department of Health and Human Services) to develop common guidance for grant recipient institutions to comply with Title IX." Administration officials admitted that compliance with Title IX was uneven and the rules poorly known.

So colleges and universities must start paying attention to this issue. How do you know if your institution is in compliance with or is guilty of discrimination against pregnant women? A report published last summer by NASA, "A Guide for Conducting Title IX Self-Evaluations in Science, Technology, Engineering, and Mathematics Programs," outlines some key proposals and says questions like these must be asked:

- Does your institution take steps to disseminate information pertaining to Title IX compliance and enforcement?
- Are the procedures easily accessible to students? Is the Web site for the office of Title IX coordinators easily found?
- Are grievance procedures clearly written and up-to-date? Are they as user friendly as possible?

The guide focuses on discrimination against pregnant women and mothers and states that universities should provide:

- Written family-friendly policies and procedures pertaining to maternity leave and parental leave for students.
- Statistics on the number of graduate students, by gender, who have requested leave for childbearing or dependent care, and the number approved for such leave.
- Information on the status (whether graduated, still enrolled, changed major, or left program) of students, by gender, who were approved or not approved for maternity or parental leave.

Compliance begins at home. Look carefully at the message and practices that your campus follows to prevent discrimination for pregnancy. Conduct a climate survey of your students and postdocs to understand their concerns and anxieties about combining career and family. Find out what your faculty's families look like. How many female faculty members do you have in vulnerable fields, such as math and engineering? What do their family situations look like? Nationally, only 44 percent of tenured women are married with children, compared with 70 percent of men.

We all know that promoting the retention of women in science is a good thing for the university, for the federal agencies who mostly support them (a serious economic commitment), and for a society that depends on a strong and innovative scientific work force to promote the economy. It is also a good thing to make sure our female students in the humanities and social sciences are offered a level playing field.

But keep in mind: There is a real penalty for not complying with federal law. If a university, department, faculty member, or staff member is found in serious noncompliance following a federal investigation and grievance procedure, they will most likely be asked to provide a remedy to the complainant and to change their procedures. But they could be asked to give money back to the federal agency that supported the research. If an institution or individual is found in a private court action to have intentionally discriminated against a woman based on pregnancy or parental status, there could be a sizable award of damage, which has occurred in Title IX discrimination cases brought by female athletes and more recently in some Title IX sexual-harassment cases. Babies may indeed become the new Title IX frontier.

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