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Title IX and Pregnancy Discrimination: Who Knew?

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Established by Congress in the peak years of the women's rights movement, Title IX promised to overturn years of bias by banning sex discrimination in federally funded schools, colleges, and universities ("recipients"). Now, more than 40 years after its passage, Title IX has fulfilled part of its promise, providing access to sports for millions of women and girls who did not previously have the opportunity. Recently it has also forced schools and colleges to take seriously sexual harassment of all kinds including student on student.

However, Title IX's specific protection against pregnancy discrimination has largely been ignored. According to the Title IX regulations, pregnancy discrimination is prohibited in admissions, hiring, coursework accommodations and completion, pregnancy leave policies, workplace protection and health insurance coverage in educational programs and activities. Some judicial attention has been given to pregnant teenagers so that they may finish high school and presumably go to college, but until recently almost no attention has been given to female students in higher education; in addition, college students, graduate students and postdoctoral fellows ("postdocs") who are in their prime childbearing years are probably unaware that Title IX covers pregnancy discrimination.

This may change. As part of its commemoration of the 40th birthday of Title IX in 2012, the Obama administration announced measures aimed at further boosting the number of women in the science, technology, engineering and mathematics ("STEM") fields. A major focus of Obama's STEM initiative is to develop common guidance for Title IX compliance among the federal agencies:

Building on the success of previous interagency collaboration efforts on Title IX and STEM, the Department of Education is

directed to 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. These activities will consolidate agency expertise – which currently differs from agency to agency – to help institutions better understand their compliance obligations . . .

Specifically recommended as a model for ensuring Title IX compliance is the 2012 NASA toolkit, "Title IX and STEM: A Guide for Conducting Self-Evaluations." This guide focuses on pregnancy discrimination, among other forms of discrimination, as a major concern for women scientists who are students and trainees.

Childbirth is the main reason young female scientists 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. Married mothers who do obtain a tenure track job are also 27% less likely than married fathers to achieve tenure.

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, Sherry Towers, 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.”

Colleges and universities must start paying attention to this issue. 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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article “Title IX and Pregnancy Discrimination: The New Frontier” is forthcoming in the *NYU Review of Law and Social Change*. See also: toolsforchangeinstem.org for further information on her research on women in the STEM fields.

Discrimination and Title IX

Women’s Rights and Universities’ Obligations: Pregnancy

- Title IX prohibits pregnancy discrimination in higher education, including with respect to admissions, hiring, coursework accommodations and completion, leave policies, and workplace protection and health insurance coverage
- Preventing pregnancy discrimination is vital in averting the “leak” of women from the pipeline in the STEM fields and other disciplines
- Universities are responsible for gathering and disseminating relevant data regarding pregnancy and childbirth on their campuses
- Universities should conduct periodic self-evaluations of their Title IX compliance
- Institutions should publicly display their pregnancy and childbirth policies, and make them easily accessible to students and employees
- Colleges and universities are in violation of Title IX if they fail to allow reasonable maternity leaves and to guarantee that working students can return to their former positions following leave
- A qualified Title IX Coordinator must be employed, and that person must lead the institution’s response to any pregnancy discrimination complaints received
- Title IX complaint and enforcement procedures should be established and should be user-friendly and clearly written, such that complaints can be resolved in a timely fashion
- If a university’s policies and procedures fail to meet compliance standards, they must be brought into compliance and the university should take appropriate steps to remedy any discrimination resulting from the failure to comply
- Universities should endeavor to implement family-friendly policies such as on-campus child care facilities, full health care coverage, family housing, and one year of absence for graduate students with childbearing and caregiver responsibilities, among other things
- Students may exercise their legal protections under Title IX through a variety of means: via a private right of action, or by filing a complaint with the institution’s Title IX Coordinator, the federal funding agency, or the Department of Education’s Office of Civil Rights
- Students should be able to bring claims under Title IX where there is evidence of disparate treatment and/or disparate impact based on sex (including pregnancy)

¹Obama Administration Commemorates 40 Years of Increasing Equality and Opportunity for Women in Education and Athletics, The White House: Office of the Press Secretary (June 20, 2012), <http://www.whitehouse.gov/the-press-office/2012/06/20/obama-administration-commemorates-40-years-increasing-equality-and-oppor>.

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