

Pregnant Student-Athlete Participation Under Title IX

By [Alex-Marie Baez](#)ⁱ

This memorandum reviews how Title IX governs pregnant student-athlete participation in sports. It includes a chart comparing what practices are permissible and impermissible under Title IX and offers best practices for accommodating and supporting students.

Discrimination against pregnant students, including any related conditions or parental or marital status, is prohibited under Title IX of the Education Amendments of 1972.ⁱⁱ Title IX provides that “[n]o 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.”ⁱⁱⁱ Title IX is applicable to Federal financial assistance recipients who sponsor interscholastic, intercollegiate, club or intramural athletics.^{iv} However, Title IX itself does not explicitly address pregnant student-athletes.

After ESPN exposed unique hardships faced by pregnant student-athletes at universities on an episode of “Outside the Lines” in 2007,^v the U.S. Department of Education’s Office for Civil Rights (OCR) responded to the media coverage with a “Dear Colleague” letter sent to all federally funded colleges and universities that explicitly addressed issues surrounding pregnant student-athletes.^{vi} OCR stated that the exclusion of pregnant student-athletes from sports participation based on their pregnancy status or related conditions is prohibited under Title IX.^{vii} In 2013, OCR released guidance regarding pregnant and parenting students stating that in general, pregnant students should be treated the same as other students with temporary medical conditions.^{viii} The guidance details that pregnant students shall not be excluded from participating in any educational, extracurricular, or interscholastic sports programs and shall not be subject to any special classes or programs designed specifically for pregnant students unless participation is voluntary.^{ix} Case law, meanwhile, holds that Title IX discrimination includes pregnancy-based discrimination, but has yet to firmly connect discrimination in athletics against pregnant students to a Title IX violation.^x In the context of admission to academic programs and honors, for example, a school would engage in Title IX discrimination if it excluded otherwise eligible females based solely on pregnancy.^{xi} As such, questions remain regarding Title IX and the best practices for accommodation of pregnant and parenting student-athletes.

Addressing this gap, the NCAA released guidance addressing the needs of pregnant or parenting student-athletes at Division I, II, and III schools in compliance with Title IX.^{xii} The NCAA’s Model Policy supports continued participation in athletics so long as it is medically safe. Noting several potential dangers associated with schools not supporting continued participation of pregnant student-athletes,^{xiii} the NCAA advises that the pregnant student-athlete should primarily be in control of decisions relating to athletic participation in conjunction with the team coach, team physician, and the pregnant student-athlete’s personal healthcare provider most familiar with her individualized pregnancy.^{xiv}

Guidance for the participation of pregnant student-athletes in athletics incorporating Title IX, best practices and NCAA’s policies can be found below.

TITLE IX AND PREGNANT STUDENT-ATHLETES

Permissible Under TIX	Impermissible Under TIX	Best Practices
Offer on-campus resources and support to pregnant student-athletes.	Require pregnant student-athletes to enroll in any special sports programs or classes designed for pregnant students. ^{xv}	Strive to accommodate both the biological and psychological needs of a pregnant student-athlete. ^{xvi}
Monitor the health of the pregnant student-athlete in conjunction with her personal healthcare provider.^{xvii}	Require pregnant student-athletes to sit out of athletics or punish student-athletes for pregnancy. ^{xviii}	Allow the pregnant student-athlete to be the primary decision-maker regarding her participation in athletic programs so long as it is medically safe. ^{xix}
Offer accommodations to pregnant student-athletes that are offered to student-athletes with temporary medical conditions.^{xx}	Treat a pregnant student-athlete different from other students based on pregnancy status. ^{xxi}	Treat each pregnant student-athlete as an individual to account for differences in culture, physical health, and emotional health.
Request that athletes voluntarily disclose pregnancy to coaches and sports team physicians.^{xxii}	Restrict student-athletes from becoming pregnant as a condition of participation in athletic programs. ^{xxiii}	Maintain privacy between pregnant student-athletes, coaches and healthcare providers. ^{xxiv}
Create a supportive, safe environment free of external pressures and stereotypes surrounding pregnancy and athletics.	Create an environment that pressures or mandates a pregnant student-athlete conceal or abort her pregnancy. ^{xxv}	Encourage coaches and teammates to support pregnant student-athletes and future parents on their teams. ^{xxvi}
Work with the NCAA to apply for a “red-shirt” year.^{xxvii}	Perpetuate stereotypes surrounding pregnancy and athletic participation. ^{xxviii}	If a student-athlete gives birth prior to the start of her athletic season, offer parenting support. ^{xxix}

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ⁱⁱ See 34 C.F.R. § 106.40(a)-(b).

ⁱⁱⁱ 20 U.S.C. § 1681.

^{iv} See 34 C.F.R. § 106.41(a)-(d).

^v *Outside the Lines: Pregnant Pause* (ESPN television broadcast May 13, 2007),

<https://www.tvguide.com/tvshows/outside-the-lines/episode-6688182/203626/>

^{vi} Dear Colleague Letter from Stephanie Monroe, Office of the Assistant Sec'y, Office for Civil Rights, DEP'T OF EDUC., June 25, 2007, available at <http://www.ed.gov/about/offices/list/ocr/letters/colleague-20070625.html> (“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 . . . athletics, on the basis of the student’s pregnancy or related condition is also prohibited under *Title IX*.”).

^{vii} *Id.*

^{viii} *Supporting the Academic Success of Pregnant and Parenting Students*, U.S. DEP’T. OF EDU.,

<https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.html#note15> (last visited Feb. 11, 2020) (“Any special services provided to students who have temporary medical conditions must also be provided to pregnant students.”); see 34 C.F.R. § 106.40(b)(4). Similarly, this is applicable to absences related to pregnancy and childbirth. See *Supporting the Academic Success of Pregnant and Parenting Students* (“In addition, a school must excuse a student’s absences because of pregnant or childbirth for as long as the student’s doctor deems . . . medically necessary. When a student returns to school, she must be allowed to return to the same academic and extracurricular status as before her medical leave began.”); see 34 C.F.R. § 106.40(b)(5).

^{ix} See *id.*

^x *Conley v. Nw. Fla. State Coll.*, 145 F. Supp. 3d 1073, 1077-80 (N.D. Fla. 2015); *Frankola v. La. State Univ. Sch. of Med.*, No. 15-5933, 2017 U.S. Dist. LEXIS 10855, at *9 (E.D. La. Jan. 26, 2017).

^{xii} See generally Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA,

<http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf>. Wright State University’s Faculty Athletics

Representative and nursing professor Elizabeth Sorensen proposed that the National Collegiate Athletic Association (NCAA) develop a policy addressing pregnant athletes. Susanto, *Do Colleges Need “Pregnant Athlete” Policies?*, SPORTS NEWS UPDATE, <http://sportnewszz.blogspot.com/2006/05/do-colleges-need-pregnant-athlete.html> (last visited Feb. 11, 2020). As a former gymnast, Sorensen believes that the lack of pregnant student-athlete policies at educational institutions causes pregnant student-athletes to silently suffer psychological trauma or drop out of school because they do not feel safe in revealing their pregnancies. Amy Rainey, *What Athletes Can Expect When They’re Expecting*, CHRONICLE OF HIGHER EDU. (May 26, 2006), <https://www.chronicle.com/article/What-Athletes-Can-Expect-When/22417>. She assisted in drafting a pregnant student-athlete policy for Wright State University, which established a support group to counsel pregnant student-athletes and encourages student-athletes to notify their coaches of their pregnancies without withdrawing from their respective sports. *Id.*; see *Pregnant and Parenting Resources*, WRIGHT ST. U: OFF. OF EQUITY & INCLUSION, <https://www.wright.edu/equity-and-inclusion/title-ix-gender-based-violence/pregnant-and-parenting-resources> (last visited Feb. 11, 2020).

^{xiii} See *id.* at 16-17 (explaining that the dangers in not supporting pregnant student-athletes include the students facing pressure into choosing abortion, not seeking necessary medical help before birth, concealing the pregnancy out of fear of loss of scholarship, concealing the pregnancy that leads to loss of life, or performing her own abortion).

^{xiv} See *id.* at 13 (“[C]ontinued participation in sports should be individually determined by the student-athlete, her maternity care provider, and the team physician and trainer, with the goal of academic retention and progress.”)

^{xv} *Supporting the Academic Success of Pregnant and Parenting Students*, U.S. DEP’T. OF EDU.,

<https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.html#note15> (last visited Feb. 11, 2020)

^{xvi} See generally Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA,

<http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf>.

^{xvii} Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA 13,

<http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf>

^{xviii} See Dear Colleague Letter from Stephanie Monroe, Office of the Assistant Sec'y, Office for Civil Rights, DEP'T OF EDUC., June 25, 2007, available at <http://www.ed.gov/about/offices/list/ocr/letters/colleague-20070625.html> (“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 . . . athletics, on the basis of the student’s pregnancy or related condition is also prohibited under *Title IX*.”).

^{xix} Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA 13, <http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf> (“[C]ontinued participation in sports should be individually determined by the student-athlete, her maternity care provider, and the team physician and trainer, with the goal of academic retention and progress.”). However, institutions *may* make athletics decisions based on skill, consistent with decisions made regarding other student athletics.

^{xx} Supporting the Academic Success of Pregnant and Parenting Students, U.S. DEP’T. OF EDU., <https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.html#note15> (last visited Feb. 11, 2020) (“Any special services provided to students who have temporary medical conditions must also be provided to pregnant students.”); see 34 C.F.R. § 106.40(b)(4). Similarly, this is applicable to absences related to pregnancy and childbirth. See *Supporting the Academic Success of Pregnant and Parenting Students* (“In addition, a school must excuse a student’s absences because of pregnant or childbirth for as long as the student’s doctor deems . . . medically necessary. When a student returns to school, she must be allowed to return to the same academic and extracurricular status as before her medical leave began.”); see 34 C.F.R. § 106.40(b)(5).

^{xxi} See 34 C.F.R. § 106.40(a)-(b).

^{xxii} Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA 18, <http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf>

^{xxiii} See 34 C.F.R. § 106.40(a)-(b); Dear Colleague Letter from Stephanie Monroe, Office of the Assistant Sec’y, Office for Civil Rights, DEP’T OF EDUC., June 25, 2007, available at <http://www.ed.gov/about/offices/list/ocr/letters/colleague-20070625.html>.

^{xxiv} Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA 18, <http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf>.

^{xxv} See Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA 16-17, <http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf> (explaining that the dangers in not supporting pregnant student-athletes include the students facing pressure into choosing abortion, not seeking necessary medical help before birth, concealing the pregnancy out of fear of loss of scholarship, concealing the pregnancy that leads to loss of life, or performing her own abortion).

^{xxvi} See Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA 13-18, <http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf>.

^{xxvii} Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA 35, <http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf> (noting that students may be granted a hardship waiver for pregnancy, provided that there is medical documentation indicating that the student-athlete was unable to compete for the season or remainder of the season due to pregnancy). See *Butler v. Nat’l Collegiate Athletic Ass’n.*, No. 06-2319, 2006 WL 2398683 (D. Kan. Aug. 15, 2006) (holding that the NCAA’s policy extending red-shirt eligibility to pregnant student-athletes “for reasons of pregnancy” is different from reasons of paternity or maternity and thus need not extend to male student-athlete fathers).

^{xxviii} See Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA 32, <http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf>; 34 C.F.R. § 106.40(a)-(b).

^{xxix} Nancy Hogshead-Maker, J.D., & Elizabeth A. Sorensen, Ph.D., RN, CNOR et. al, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA 10, <http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf>.