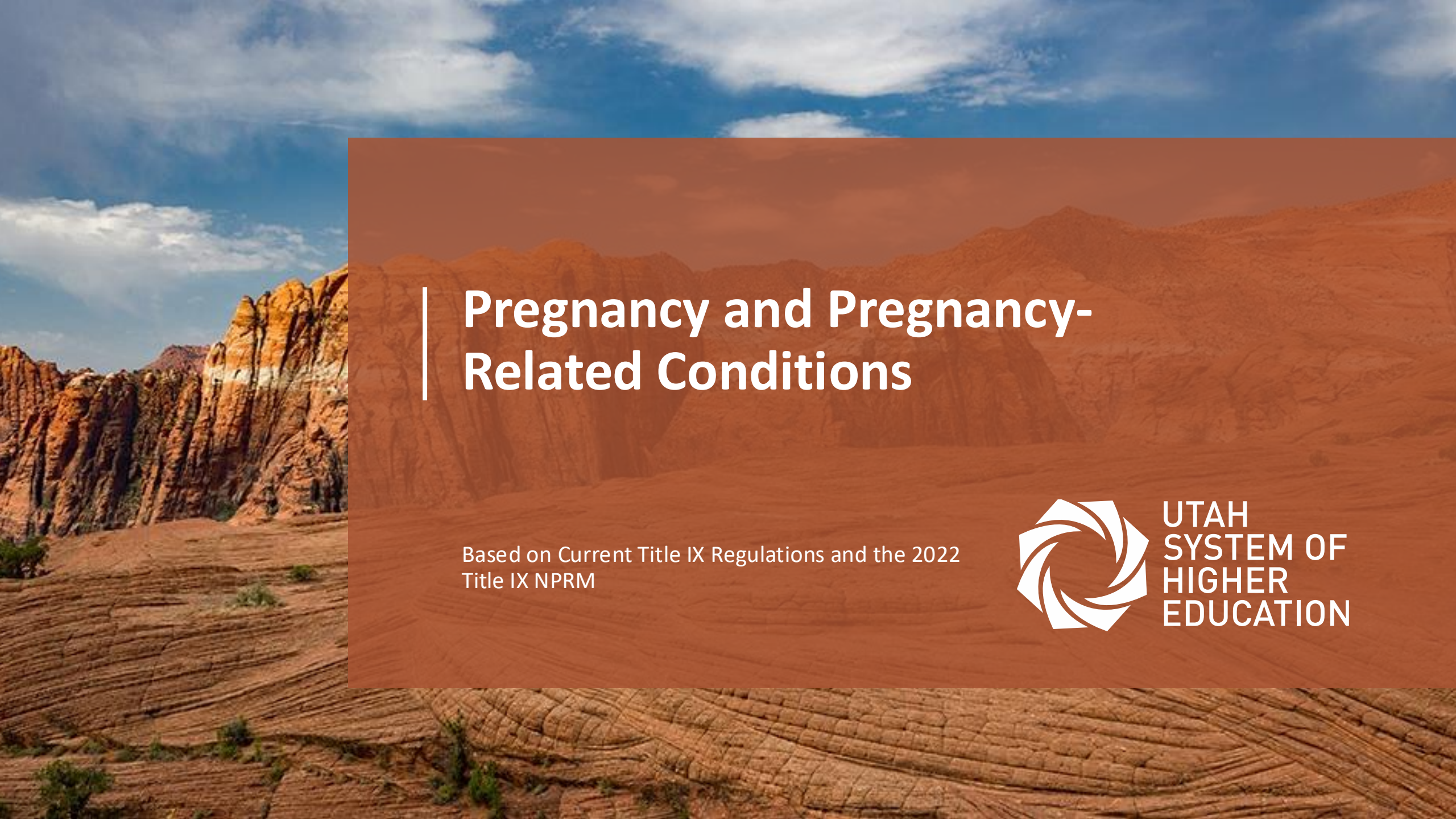


Pregnancy and Pregnancy-Related Conditions

Based on Current Title IX Regulations and the 2022 Title IX NPRM

UTAH SYSTEM OF HIGHER EDUCATION

Legal Advice and Compliance Obligations

Legal Advice: This training does not constitute legal advice. Please consult with your institution's general counsel for legal advice.

Compliance Obligations: This training does not outline every compliance obligation under the Title IX Regulations or 2022 Title IX NPRM. Please review the Title IX Regulations and 2022 Title IX NPRM for all compliance obligations.

Training Overview

This training covers general Title IX compliance obligations for pregnancy and pregnancy-related conditions under the Title IX Regulations and 2022 Title IX NPRM

Current Title IX Regulation Requirements

The Title IX Regulations prohibit discrimination based on sex - including pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom - in education program or activities for institutions that receive Federal funds

Current Title IX Regulation Requirements

- Schools must not discriminate against any student or exclude any student from their education program or activity, including any class or extracurricular activity, based on a student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom. 34 C.F.R. § 106.40(b)(1)
- A school also must not discriminate against or exclude from employment any employee or employment applicant on these bases. 34 C.F.R. § 106.57(b)
- What are examples of discriminatory behaviors?

Current Title IX Regulation Requirements

- Institutions must treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom the same as any other *temporary disability* with respect to any hospital or medical benefit, service, plan, or policy for students. 34 C.F.R. § 106.40(b)(4)
- For employees, institutions must treat pregnancy and the same related conditions, including termination of pregnancy, as well as any temporary disability resulting therefrom, as any other temporary disability for all job-related purposes, including employment-based medical, hospital, and other benefits. 34 C.F.R. § 106.57(c)

Current Title IX Regulation Requirements

A school must ensure that its teachers' policies and practices do not discriminate against students because of pregnancy and pregnancy-related conditions.

For example: a teacher may not refuse to allow a student to submit work after missing a deadline because of absences due to pregnancy or childbirth. Additionally, if a teacher's grading is based in part on class attendance or participation, the student should be allowed to earn the missed credits and be reinstated to the student's pre-leave status. OCR Pamphlet at 11

Current Title IX Regulation Requirements

If an institution does not have a leave policy for students, or the student does not otherwise qualify for leave under the policy, a school must provide leave to a student for pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, for as long as the student's physician deems medically necessary. After that leave, the student must be reinstated to the status the student held when the leave began. 34 C.F.R. § 106.40(b)(5)

Current Title IX Regulation Requirements

For employees, if a school does not have a leave policy, or if an employee has insufficient leave or accrued employment time to qualify for leave under the school's policy, the school must treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time. After that time, the employee must be reinstated to the employee's pre- leave status or to a comparable position without reduction of compensation or loss of promotional opportunities or any other employment rights or privileges. 34 C.F.R. § 106.57(d)

Current Title IX Regulation Requirements

Institutions must treat pregnancy and the same related conditions and any temporary disability resulting therefrom as any other temporary disability for commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, along with other employment-based benefits. 34 C.F.R. § 106.57(c)

Department of Education Guidance

An institution must:

- Allow a student to continue participating in classes and extracurricular activities even though they are pregnant. This means that a student can still participate in school clubs, sports, honor societies, student leadership opportunities, and other activities, like after-school programs operated at the school.
- Allow a student to participate in classes and extracurricular activities even though they are pregnant and not require them to submit a doctor's note unless your institution requires a doctor's note from all students who have a physical or emotional condition requiring treatment by a doctor. Your institution also must not require a doctor's note from a student after they have been hospitalized for childbirth unless it requires a doctor's note from all students who have been hospitalized for other conditions.
- Provide students with reasonable adjustments, like a larger desk, elevator access, or allowing a student to make frequent trips to the restroom, when necessary because of their pregnancy.

Department of Education Guidance

An institution must:

- Excuse absences due to pregnancy or childbirth for as long as the student's doctor says it is medically necessary.
- Allow a student to return to the same academic and extracurricular status as before their medical leave began, which should include giving them the opportunity to make up any work missed while they were out.
- Provide pregnant students with the same special services it provides to students with temporary medical conditions. This includes homebound instruction/at-home tutoring/independent study.

Current Title IX Regulation Requirements

What are examples of accommodations for pregnancy or pregnancy-related conditions?

Current Title IX Regulation Requirements

Students, employees, or applicants for employment who believe they may have been discriminated against based on pregnancy or related conditions, including termination of pregnancy, may file a complaint through their school's grievance procedures. Every school district and postsecondary institution covered by Title IX is required to prominently display – on its website and in student and employee handbooks and catalogs – contact information for the Title IX Coordinator, who is responsible for overseeing all Title IX complaints, including for discrimination based on pregnancy and related conditions. 34 C.F.R. § 106.8(b)(2)

2022 Title IX NPRM

Defines Pregnancy or Related Conditions as:

(1) Pregnancy, childbirth, termination of pregnancy, or lactation;

(2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.

2022 Title IX NPRM

Under the proposed regulations, a school would be required to ensure that when a student (or a student's authorized legal representative) tells a school's employee about the student's pregnancy or related conditions, the employee must provide information on how to contact the Title IX Coordinator for further assistance. Proposed § 106.40(b)(2)

2022 Title IX NPRM

Once a student or the student's representative notifies the Title IX Coordinator, the Title IX Coordinator must:

- Provide the student with the option of individualized, reasonable **modifications** as needed to prevent discrimination and ensure equal access to the recipient's education program or activity. Proposed § 106.40(b)(3)(ii) and (b)(4)
- Allow the student a voluntary **leave of absence** for medical reasons and reinstatement upon return. Proposed § 106.40(b)(3)(iii)
- Provide the student a clean, private space for **lactation**. Proposed § 106.40(b)(3)(iv)

2022 Title IX NPRM

A school would be required to provide its employees with reasonable break time for lactation, as well as a clean and private lactation space.

Proposed § 106.57(e)(1)-(2)

Additional Laws

- Federal Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act
  - Requires covered employers to provide reasonable break time for an employee to express breast milk and a place to pump at work, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public.
- Federal Pregnant Workers Fairness Act
  - A new federal law that requires covered employers to provide "reasonable accommodations" to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."
- Title VII & the Pregnancy Discrimination Act of 1987, FMLA, Americans with Disabilities Amendments Act, FLSA
- Utah Code section 13-7a-102
  - A woman may breastfeed in any place of public accommodation, as defined in Utah Code.
- Utah Code section 34-49-202
  - Reasonable breaks and private room required for breastfeeding or expressing milk.

Next Steps

- Assess who is responsible for compliance with requirements related to pregnancy and pregnancy related-conditions for employees and students
- Review your institution's policy and procedures for to pregnancy and pregnancy-related conditions for students and employees, including policies related to accommodations, grievance procedures, etc.
  - USHE has a Model Pregnancy and Pregnancy-Related Conditions Policy
  - Who engages in the interactive process with the student or employee? What is your process for determining if a request is a fundamental alteration to the course?

Next Steps

- Review the information you provide on your institution's website
  - Do you have a form online where individuals can request pregnancy accommodations?
  - Do you list the locations of all lactation spaces on campus?
- Assess the training offered at your institution related to these requirements
- Determine policy updates that may be required based on the 2022 Title IX NPRM, recognizing that the final Title IX regulations may have changes



QUESTIONS?

Alison Adams

alison.adams@ushe.edu