



Serving Pregnant and Parenting Students

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A pregnant or parenting student faces a host of obstacles to academic success. This article provides answers to some frequently asked questions, an overview of the relevant law, and some practical tips on dealing with the unique issues presented by students with adult responsibilities.

1. What laws protect pregnant and parenting students?

The primary source of legal protection for a student who becomes pregnant or is a parent is Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688. Most people are familiar with Title IX as the federal law that prohibits discrimination on the basis of sex in schools receiving federal funding. Title IX protects students from unlawful discrimination in all academic, educational, extracurricular, athletic and other programs or activities offered by school districts. 20 U.S.C. § 1681(a). The federal regulations implementing Title IX include discrimination based on pregnancy or related conditions (e.g., childbirth, false pregnancy, termination of pregnancy or recovery from any of these conditions) as prohibited discrimination. The term “pregnancy” in this article includes all these related conditions. 34 C.F.R. § 106.40(b)(1). Title IX regulations further prohibit districts from applying any rule regarding a student’s actual or potential parental, family, or marital status differently on the basis of sex. 34 C.F.R. § 106.40(a). Therefore, both male and female students with children are protected by Title IX.

2. Can a school district establish a separate program to serve pregnant students?

Excluding a student from any school activity based on pregnancy is prohibited. Schools may implement special programs or classes for these students as long as the programs are comparable to those offered to other students, but a student’s decision to participate in a separate program must be completely voluntary. 34 C.F.R. §§ 106.40(b)(1), (b)(3).

3. Can a district require a doctor’s note for a pregnant student’s participation in educational or extracurricular activities?

Title IX requires schools to treat pregnancy or childbirth in the same manner as any other temporary medical condition. This means that a pregnant student may be required to produce a doctor’s note to continue in a program or activity only if the

district routinely requires medical certification from all students for other conditions requiring medical attention. 34 C.F.R. § 106.40(b)(2). A district must not presume that a student is unable to participate in an activity based solely on pregnancy.

4. Can a pregnant or parenting student be restricted from positions of honor, such as valedictorian or homecoming king or queen?

Under Title IX, a student may not be excluded from an activity based solely on pregnancy. The question sometimes arises whether a student who has engaged in premarital sex may be excluded from a particular activity or position on moral grounds. The answer to this question will depend on the circumstances. However, under the nondiscrimination principles of Title IX, districts must always apply any moral or character-based standard equally to all students regardless of gender.

In a Kentucky case, female students who were excluded from the National Honor Society (NHS) brought a Title IX action against their school district. The court found that the district's selection committee had barred the pregnant students but had not investigated the sexual behavior of other male or female students; therefore, the district was ordered to admit the plaintiffs. *Chipman v. Grant County Sch. Dist.*, 30 F. Supp. 2d 975 (E.D. Ky. 1998). In contrast, the Third Circuit Court of Appeals upheld a pregnant student's dismissal from NHS based on a Pennsylvania district's determination that the student failed to exhibit the high standards of character required for membership in NHS because she had engaged in premarital sex, a neutral standard. *Pfeiffer v. Marion Ct. Area Sch. Dist.*, 917 F.2d 779 (3d Cir. 1990).

These decisions are not binding authority on Texas school districts. Nonetheless, the legal rationale applied in both cases is instructive to districts considering action against a pregnant or parenting student. Standards for participation in any activity, including eligibility criteria for any position of distinction, must be applied equally to all students regardless of pregnancy, family status or gender. A standard of "morality" or "good character" that would disparately impact pregnant or parenting students is legally risky and therefore worthy of careful review.

5. Can a school district be held liable for bullying or harassment of a pregnant student?

Title IX prohibits harassment of a student due to pregnancy or a related condition. Prohibited harassment may include sexual comments or jokes about a student's pregnancy, calling a student suggestive names, spreading rumors about the student's sexual activity, or making sexual propositions or gestures. U.S. Dep't. of Educ., Office for Civil Rights, [*Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*](#) (2013). As with any form of bullying or harassment, districts must act promptly to investigate allegations that a student has been harassed on account of pregnancy. According to the U.S. Department of Education's Office for Civil Rights (OCR), a district may violate Title IX if sexual

harassment or other pregnancy-related harassment “is sufficiently serious that it interferes with a student’s ability to benefit from or participate in the school’s program, and the harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.” U.S. Dep’t of Educ., Office for Civil Rights, [Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972](#), at 9 (2013), citing 34 C.F.R. § 106.40(b)(1).

The Fifth Circuit Court of Appeals has ruled that a school district may be legally liable for student-on-student sexual harassment where (1) school officials have actual knowledge of the harassment; (2) the harasser is under the control of the school district; (3) the harassment is based on the victim’s sex (which could include pregnancy-based harassment); (4) the harassment is so “severe, pervasive, and objectively offensive” that it effectively bars the victim’s access to an educational opportunity or benefit; and (5) the school district is deliberately indifferent to the harassment. *Sanchez v. Carrollton-Farmers Branch Indep. Sch. Dist.*, 647 F.3d 156, 165 (5th Cir. 2011), citing *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999). Harassment of a student by another student of the same sex may violate Title IX, but the conduct must be based on sex. In *Sanchez v. Carrollton-Farmers Branch Independent School District*, a high school cheerleader claimed she was harassed where another female cheerleader called her derogatory names and started a rumor that she was pregnant. The Fifth Circuit Court of Appeals held that the conduct was not severe, persistent or objectively unreasonable so as to rise to the level of prohibited sex discrimination under Title IX. To be based on sex, offensive conduct must include more than mere sexual connotation. *Sanchez v. Carrollton-Farmers Branch Indep. Sch. Dist.*, 647 F.3d 156 (5th Cir. 2011).

Even if mistreatment of a pregnant student does not rise to the level of sexual harassment under Title IX, school district staff should be aware that these students are potential targets for bullying and cyberbullying as defined by state law. Tex. Educ. Code § 37.0832. See TASB Legal Services’ article [Bullying, Cyberbullying, and Hazing](#) for more information.

Districts can take steps to prevent bullying and sexual harassment by training both students and staff on how to recognize and report problematic conduct. It is especially important to ensure that Title IX coordinators, and any other staff members with responsibilities related to Title IX, are appropriately trained regarding the prohibition against pregnancy-related harassment.

6. Must school districts provide accommodations for pregnant or parenting students?

OCR recognizes that school district officers and employees are in a unique position to make a difference in the lives of students who are pregnant or parenting. In [Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972](#) (2013) (OCR Guidance) the agency outlined its campaign to help schools achieve the goal of enabling young pregnant and parenting students to graduate from high school. To ensure that pregnant and parenting students

are able to access the educational program on the same basis as other students, OCR advises that districts may be required to make reasonable adjustments. For example, a pregnant student may require a different desk or chair, more frequent trips to the bathroom than other students, or temporary access to faculty elevators.

Excused absences are another form of accommodation sometimes available to pregnant and parenting students. Under state law, students must be excused from attending school due to a health care appointment for either the student or the student's child if the student commences classes or returns to school on the same day as the appointment. Tex. Educ. Code § 25.087(b). A school district is not required by law to grant excused absences for a student who must miss school due to other parenting responsibilities, such as caring for a sick child. However, allowing a parenting student to miss school and make up work in this circumstance may be an appropriate accommodation.

Administrators, take note: some teachers' grading requirements may have a disparate impact on pregnant or parenting students. Districts must ensure that these practices do not run afoul of Title IX. If a student misses class or fails to submit homework on time due to pregnancy or a parenting-related reason, the student must be allowed to make up the credit on the same basis as any other student. U.S. Dep't of Educ., Office for Civil Rights, [Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972](#) (2013).

7. Are there special academic services for a student who is pregnant or parenting?

Under state law, a student who is pregnant or a parent is considered to be at risk of dropping out of school, regardless of the student's actual GPA or performance in school. Tex. Educ. Code § 29.081(d)(5). This means that school districts have a duty to identify these students and provide them with accelerated instruction and other appropriate programs and services, as outlined in TASB Policy EHBC(LEGAL) and the district's policies and procedures. Note that both male and female students may be defined as at risk on this basis.

Under the nondiscrimination provisions of Title IX, if a district offers homebound instruction or tutoring to students with other temporary medical conditions, then it must also be offered to pregnant students. Remember, a student's participation in such a program must be completely voluntary and offered on the same basis as to any other student. 34 C.F.R. § 106.40(b)(3).

Texas districts may also decide to offer pregnancy related services (PRS) during the prenatal and postpartum periods to help pregnant students keep up with school. The *Student Attendance Accounting Handbook* published annually by the Texas Education Agency (TEA) contains detailed provisions regarding student eligibility for, and district reporting of, PRS. If a district opts to provide PRS, then it must offer compensatory education home instruction (CEHI) consisting of face-to-face instruction by a certified

teacher employed by the district for up to ten weeks of the postpartum period. Other optional on-campus support and counseling services may also be provided as part of a PRS program. A district is eligible to receive weighted funding for a student who receives PRS support services. In order to receive weighted funding, the *Student Attendance Accounting Handbook* specifies that the PRS services must be regular and routine; sporadic or occasional accommodations will not suffice. Tex. Educ. Agency, *2020-2021 Student Attendance Accounting Handbook*.

8. What about students receiving special education?

If a student receiving special education under the Individuals with Disabilities in Education Act (IDEA) becomes pregnant, the student's admissions, review, and dismissal (ARD) committee should convene a meeting promptly after learning of the pregnancy. The ARD committee will determine the appropriate services for the student. If the district offers a PRS program, the ARD committee must collaborate with PRS program staff to address the student's service needs. During any periods of confinement to the student's home or hospital setting, special education services must be provided in the CEHI or homebound instructional setting. Further, a student's eligibility for CEHI may extend beyond 10 weeks if the ARD committee determines the services are necessary to provide a free and appropriate public education (FAPE). Tex. Educ. Agency, *2020-2021 Student Attendance Accounting Handbook*.

9. Can a school district offer other support services for pregnant or parenting students?

OCR's Guidance sets out numerous optional strategies that school districts may implement to further support pregnant and parenting students. These optional strategies include, but are not limited to:

- preparing training and guidance materials for teachers, counselors, and other staff to address the specific needs of pregnant and parenting students;
- designating a private room for breastfeeding students;
- establishing prenatal, parenting and life skills classes;
- setting up support groups for students dealing with pregnancy and parenting responsibilities;
- improving communications with pregnant and parenting students in order to keep them informed of services that may be available and learn how the district can support their academic success; and
- following up with students who drop out of school to determine the reason and analyze the impact of early parenthood.

U.S. Dep't of Educ., Office for Civil Rights, [*Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*](#) (2013).

Similarly, the *Student Attendance Accounting Handbook* lists optional support services such as counseling, health, transportation, or on-campus childcare services, which a district could provide on a voluntary basis as part of a PRS program.

10. Can a school district employee provide a student with a pregnancy test or require that she take a pregnancy test?

Whether to make pregnancy tests available to students is a local decision. However, a student may not be required to take a pregnancy test as a condition of further attendance or participation in any school activity. 34 C.F.R. § 106.40(b)(2). When discussing these matters with students, district employees must be careful not to take any action that could be construed as forceful or coercive. This issue has been litigated in Texas and other jurisdictions.

In one case, a school nurse at San Marcos CISD who administered a pregnancy test to a student was sued by the student's parents for assault, battery, and invasion of privacy. The court found that a pregnancy test administered in a coercive environment (i.e., a situation in which the student felt that she had no choice but to submit to the school official's wishes) would constitute an unreasonable search and seizure in violation of the U.S. Constitution Fourth Amendment. However, the San Marcos CISD program made pregnancy tests available to students on a voluntary basis only. Since the district did not attempt to coerce the student, the court dismissed the lawsuit. *Villanueva ex rel. M.V. v. San Marcos Consol. Indep. Sch. Dist.*, No. A-05-CA-455 LY, 2006 WL 2591082 (W.D. Tex. Sept. 7, 2006).

In *Gruenke v. Seip*, a male coach in a Pennsylvania school district suspected that a member of the varsity swim team was pregnant. When confronted, the student denied that she was pregnant. The mother of another student suggested to the coach that he require the student to take a pregnancy test and provided a test for that purpose. After much pressure from the coach, who had no medical training, the student took the test and the result was positive. Her parents sued the coach in federal court, alleging violation of privacy and the Fourth Amendment. The Third Circuit Court of Appeals held that the coach was not entitled to qualified immunity because his actions were unreasonable. This meant that the coach could be found personally liable for violation of the student's clearly established constitutional right to be free from unreasonable searches and disclosure of protected medical information. *Gruenke v. Seip*, 225 F.3d 290 (3d Cir. 1990).

11. Can school district employees provide students with information about abortion?

As with pregnancy tests, the law does not prohibit providing information about abortion to students, but district employees should refrain from actions that might be interpreted as coercive or invasive when discussing this issue with students. Minors in Texas are prohibited from receiving an abortion without parental notification unless an exception applies. Tex. Fam. Code § 33.002. In *Arnold v. Board of Education of Escambia County*, a well-publicized case decided by the Eleventh Circuit Court of Appeals, the

parents of a high school couple alleged that a vice principal and a counselor forced their children to obtain an abortion when the employees procured a pregnancy test, paid the students money in exchange for tasks in order to raise money for the abortion, and paid a driver to transport the students to the abortion facility—all while encouraging the students not to inform their parents of the pregnancy. *Arnold v. Bd. of Educ. of Escambia County, Ala.*, 880 F.2d 305 (11th Cir. 1989). The court held that the plaintiffs' allegations were sufficient to state a legal claim of invasion into the privacy of the familial relationship. Although the court did not find a constitutional duty on the part of the district employees to notify the parents, the court concluded that, as a matter of common sense, students should be encouraged to talk to their parents about these difficult decisions.

12. What if a pregnant student confides in a district employee? Can the employee notify the student's parents? Must the employee notify the parents?

The law does not explicitly address what to do in this challenging scenario, but certain principles are clear:

- Parents are entitled to “full information” regarding their child’s school activities (except in certain child abuse investigations). Tex. Educ. Code § 26.008(a).
- As discussed above, districts have the duty to identify pregnant students as at risk. Tex. Educ. Code § 29.081(d)(5).
- If the school maintains a record in any form that indicates that the student is or may be pregnant, the parent has the right to request and receive the record pursuant to state law and the federal Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g; Tex. Educ. Code § 26.004.
- Texas Education Code section 26.008(b) provides that any attempt by a school district employee to encourage or coerce a child to withhold information from the child’s parent may result in discipline, including contract nonrenewal or termination. Tex. Educ. Code § 26.008(b).
- Courts that have considered similar issues have declined to recognize a minor student’s right to privacy in sexual behavior that would prevent disclosing pregnancy to the student’s parents. See *Wyatt v. Fletcher*, No. 11–41359, 2013 WL 2371280 (5th Cir. May 31, 2013) (holding that softball coaches who revealed a student’s sexual orientation to her mother were entitled to qualified immunity); *Nguon v. Wolf*, 517 F.Supp.2d 1177 (C.D. Cal. 2007) (holding that a principal who revealed a student’s sexual orientation did not violate the student’s constitutional right to privacy).

Upon learning of a student's pregnancy, a district employee should encourage the student to talk to a parent; if the student is reluctant, the employee could offer to facilitate the conversation. If the student does not take action within a specified timeframe, the best practice is likely for an appropriate school official to disclose the pregnancy to the parents.

An exception may apply if the employee has cause to believe that a student's pregnancy may be the result of child abuse. Any employee who believes that a child's mental or physical well-being has been adversely affected by child abuse or neglect has a legal duty to report the situation to a law enforcement agency or Child Protective Services (CPS) immediately. Tex. Fam. Code § 261.101(a), .103. An additional reporting standard applies to professional employees such as teachers, nurses, or counselors. Professional employees must report within 48 hours if the employee has cause to believe a child has been subject to child abuse. Tex. Fam. Code § 261.101(b). A child abuse investigation of a student's parent is an exception to the general right of parents to be fully informed of their child's activities in school. Tex. Att'y Gen. OR98-2929 (1998). In addition, the attorney general has opined that in limited circumstances, records of a licensed professional counselor (LPC) that qualify as sole possession records under FERPA may also be withheld from parents when the LPC determines that the release of the records would be harmful to the student's physical, mental or emotional health. Tex. Att'y Gen. Op. No. JC-0538 (2002). See also 34 C.F.R. § 99.3 (defining *sole possession* records as records that are "kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any person except a temporary substitute for the maker of the record").

When in doubt as to a student's right to privacy versus a parent's right to information, school officials would be wise to call the school district's attorney.

13. Can a school district policy require students or employees to notify school authorities when a student is pregnant?

While Texas courts have not considered this issue, a federal district court in New York upheld a school district's policy requiring employees to notify school authorities upon learning of a student's pregnancy. *Port Washington Teachers Assoc. v. Bd. of Educ. of the Port Washington Union Free Sch. Dist.*, No. 04-CV1357TCPWDW, 2006 WL 47447 (E.D.N.Y. Jan 4, 2006). Title IX prohibits school districts from applying any policy or practice related to a student's parental, family, or marital status differently based on sex. 34 C.F.R. § 106.40(a). Therefore, any policy or practice requiring school notification in the case of a pregnant student must apply equally in the case of a male student who impregnates someone. A district considering this course of action would be wise to consult with the school district's attorney and proceed with caution.

14. Does a minor student who is pregnant or a parent have special rights to consent to medical treatment?

In some situations, state law grants pregnant or parenting minors broader rights to consent to medical treatment of themselves or their children. A pregnant minor has the right to consent to medical treatment related to the pregnancy, except abortion Tex. Fam. Code § 32.003(a)(4). An unmarried minor who is a parent and has actual custody of his or her child may consent to medical treatments and immunizations of the child. Tex. Fam. Code § 32.003(a)(6). A minor who is pregnant, or who is a parent with actual custody of his or her child, may also consent to his or her own immunization if the U.S. Centers for Disease Control and Prevention recommends or authorizes that the initial dose of the immunization for a disease be given before the age of seven. Tex. Fam. Code § 32.1011.

15. What do we do if a student goes into labor at school?

As discussed above, a pregnant minor has the right to consent to pregnancy-related medical treatment, except abortion Tex. Fam. Code § 32.003(a)(4). If a pregnancy-related medical emergency occurs at school, school authorities should call for medical assistance immediately and follow district protocol for contacting the student's parent or guardian. Further, as in any medical emergency situation, the district may release personally identifiable student information to third parties, such as emergency medical personnel, if necessary, to protect the health and safety of the student or other individual. 34 C.F.R. § 99.36.

16. How can school districts address student pregnancy in the curriculum?

While some matters may be decided by local policy, such as whether to provide birth control or pregnancy tests to students, keep in mind that the Texas Education Code sets out strict standards that govern any formal instruction to students regarding sexual behavior. Specifically, the board of trustees must adopt any course materials and instruction related to human sexuality, sexually transmitted diseases, HIV or AIDS with the advice of the local school health advisory council (SHAC). The materials and instruction must: (1) present abstinence as the preferred choice of behavior for unmarried adolescents; (2) devote more attention to abstinence than to any other behavior; (3) teach students that consistent and correct use of abstinence is the only method that is 100 percent effective in preventing pregnancy and STDs; (4) direct students to abstinence as a standard of behavior; and (5) if contraception and condom use is included in the curriculum, the success rates of such methods must be taught in terms of human use rate rather than theoretical laboratory rates. Tex. Educ. Code § 28.004(e). A school district may offer students courses in life skills, parenting, and related matters as long as any instruction regarding sexual behavior conforms with these standards.

17. What laws apply to married students?

In Texas, minors who are at least 16 years old can get married without parental consent. Lawfully married minors have the same rights and powers as an adult under state law. Tex. Fam. Code § 1.104. Districts must not discriminate against students on the basis of marital status. Texas courts of appeal have held that school districts must permit married students to participate in any extracurricular activity on the same basis, and subject to the same requirements, as unmarried students. *Carrollton-Farmers Branch ISD v. Knight*, 418 S.W.2d 535 (Tex. Civ. App.—Texarkana 1967); *Bell v. Lone Oak Ind. Sch. Dist.*, 507 S.W.2d 636 (Tex. Civ. App.—Texarkana 1974). Note that a district may adopt specific policies or procedures regarding married students' attendance, as long as the policies or procedures do not unlawfully discriminate. For example, a district may require students to notify school authorities of the marriage or the name of his or her spouse. See TASB Policy FND(LOCAL).

Conclusion

Looking beyond the basic legal duty to treat pregnant and parenting students fairly, a school district's policies and practices can impact a pregnant or parenting student's decision whether to stay in school. By ensuring compliance with Title IX, and implementing one or more of the suggestions outlined above, school district decision makers can help provide the guidance and support that a pregnant or parenting student needs to succeed in school and in life.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/students/documents/serving-pregnant-and-parenting-students.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district's own attorney in order to apply these legal principles to specific fact situations.

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