

# Department of Education Releases New Guidance on Pregnancy and Related Conditions

By Susan D. Friedfel, Carol R. Ashley, Desireé H. Langley &

October 10, 2022

## Meet the Authors



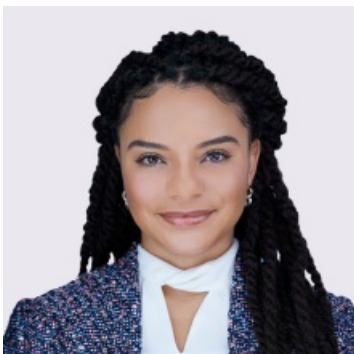
**Susan D. Friedfel**

Principal  
914-872-8027  
Susan.Friedfel@jacksonlewis.com



**Carol R. Ashley**

Of Counsel  
Carol.Ashley@jacksonlewis.com



**Desireé H. Langley**

(Dez-i-ray • She/Her)  
Associate

The U.S. Department of Education's Office for Civil Rights (OCR) released [a fact resource](#) on October 4, 2022, reaffirming that Title IX of the Education Amendments Act protects students and employees from discrimination based on pregnancy and related conditions.

This publication was released four months after OCR announced resolution of its pregnancy discrimination investigation involving Salt Lake Community College. OCR had determined the college violated Title IX and Section 504 of the Rehabilitation Act of 1973 when it failed to engage a pregnant student in the interactive process and did not excuse pregnancy-related absences.

Noting that the regulations have prohibited discrimination based on pregnancy and related conditions since 1975, the OCR fact resource is designed to remind school communities (including students, faculty, families, and educators) that Title IX protects students and employees from discrimination based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from pregnancy. The resource also discusses issues such as discrimination, exclusion, medical and other benefits and services, and leave policies. Additionally, it notes that Title IX provides an exemption for educational institutions controlled by a religious organization if Title IX's nondiscrimination requirement is inconsistent with the religious tenets of such organization.

### *Examples of measures that an educational institution must take pertaining to students:*

- Not discriminate against or exclude any student, or exclude any student from their education program or activity, including any class or extracurricular activity, based on a student's pregnancy or pregnancy-related condition
- Prohibit harassment based on pregnancy or pregnancy-related conditions
- Treat pregnancy and pregnancy-related conditions the same as any other temporary disability regarding medical benefits, services, plan, or policies
- Absent a leave policy, provide leave to pregnant students and students with pregnancy-related conditions for as long as the student's physician deems medically necessary
- Ensure its instructors' policies and practices do not discriminate against students because of pregnancy or pregnancy-related conditions
- If grading is based in part on class attendance or participation, allow students to earn missed credits and be reinstated to the student's pre-leave status

### *Examples of measures that an educational institution must take pertaining to employees:*

## Related Services

Accommodations  
Disability, Leave and Health  
Management  
Employment Litigation  
Higher Education  
National Compliance and Multi-  
State Solutions

- Not discriminate against or exclude from employment any employee or applicant on the basis of pregnancy or pregnancy-related condition
- Prohibit harassment based on pregnancy or pregnancy-related conditions
- Treat pregnancy and pregnancy-related conditions the same as any other temporary disability for all job-related purposes
- Absent a leave policy, treat pregnancy-related conditions as justification for a leave of absence without pay for a reasonable period of time

Educational institutions should consider reviewing their relevant policies, such as anti-discrimination and student/employee leave policies, to ensure alignment with legal protections related to pregnancy discrimination. Additionally, schools may consider revising any harassment prevention training to include information on the protections of pregnant students and students with pregnancy-related conditions under federal civil rights laws.

The Jackson Lewis Higher Education Group continues to analyze ongoing developments in this area and from the U.S. Department of Education, particularly medical sciences or other programs that involve increased risks, such as radiography, for pregnant students. Please contact a Jackson Lewis attorney with any questions about the fact resource and other Title IX-related developments, policies, and training.

©2022 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.