



Educational Rights of Pregnant and Parenting Teens Title IX and California State Law Requirements

INTRODUCTION

Title IX -- the federal statute that mandates gender equity in schools -- celebrates its 40th anniversary this year. Its widest impact and greatest successes have been in expanding athletic opportunities for women and girls in high school and college athletics. However, many are surprised to learn that Title IX also includes *explicit* protections for pregnant and parenting students. Coupled with state law protections that both mirror and expand on Title IX, California provides pregnant teens with important legal tools to combat discrimination and harassment in schools.

Passed by Congress in 1972, Title IX prohibits any educational institution that receives federal funds from discriminating on the basis of sex.¹ Its implementing regulations explicitly clarify that these protections extend to pregnant and parenting students.² Under Title IX, pregnant students not only have the right to remain in school, but they also have the right to be treated as *equal* to their non-pregnant peers without discrimination or harassment by school administrators or other students.³ California law provides similar rights and protections under state law.⁴

Despite these protections, pregnant students are still under attack and face a significant amount of discrimination at school. Pregnant girls are routinely pushed, cajoled or threatened out of mainstream schools and forced into “independent” or alternative educational programs that provide an inferior education. School principals unlawfully ban them from school activities, such as graduation ceremonies and homecoming events, because they are deemed to project an “inappropriate image” for the school.⁵ Some are even publicly embarrassed and pilloried – in scarlet letter fashion – for being pregnant.⁶

¹ 20 U.S.C. § 1681(a) (2012) (“No 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”).

² 34 C.F.R. § 106.40 (2012).

³ *Id.*

⁴ Cal. Educ. Code § 230(h) (2012); *see also* Cal. Educ. Code §§ 200-201, 220, 221.5, & 235 (2012); Cal. Code Regs. tit. 5, §§ 4900, 4950 & 4960 (2012).

⁵ These examples are based on complaints regarding actual school practices in Los Angeles and Oxnard area schools. The California Women’s Law Center (“CWLC”) provides state-wide legal trainings on the civil and educational rights of pregnant and parenting students to attorneys, teen advocates and school administrators. The trainings serve two important purposes: (1) to educate key stakeholders about the state and federal laws that protect pregnant and parenting students *and* (2) to uncover illegal school

Discrimination against pregnant students persists for many reasons. Lack of knowledge about Title IX and state law protections for pregnant students is a major problem. School administrators, parents, teen advocates and pregnant students often do not know that such protections exist. Lack of enforcement by the Department of Education's Office of Civil Rights -- the federal agency tasked with enforcing Title IX -- is another significant barrier. The primary emphases of the agency's directives to schools have been on providing equal opportunities for girls in school athletics and prohibiting student harassment, largely ignoring the treatment of pregnant and parenting students.⁷ The fleeting nature of pregnancy, the long and arduous road to securing judicial action and the vulnerable status of young, pregnant girls further coalesce to ensure that very few of these cases are ever litigated.

However, these same barriers also mean that legal advocates can make a significant difference in advancing the educational rights of pregnant students, particularly those who work with these students in other legal contexts. In fact, simply asking pregnant clients about their experiences in school could uncover illegal discriminatory conduct that likely never would have come to light. This brief will highlight the most common types of discrimination that pregnant girls continue to encounter in California schools and the laws that make such behaviors illegal. By aggressively enforcing Title IX and equivalent state laws that protect the educational rights of pregnant and parenting students, legal advocates can fill a wide enforcement gap and ensure that pregnant girls in California receive the equal educational opportunities promised under state and federal laws.

policies that violate these laws – such as those mentioned throughout this brief. The most difficult part of enforcing Title IX and the state law counterparts that protect the rights of pregnant and parenting students is uncovering the discriminatory school policy itself – many of which are unwritten and informal. Throughout this brief are examples of unlawful school policies that were brought to CWLC's attention by individuals attending the state-wide trainings who did not know that their school policy was illegal until they participated in the training. Post-training, CWLC works with those individuals to change illegal practices at their school. In many cases, a simple letter from an attorney explaining how the school policy violates Title IX and state law equivalents is enough to spur the school to change their policy.

⁶ Complaint for Damages to Remedy Federal Civil Rights Violations and Federal Statutes, *Hicks v. Wingate Elementary School*, No. 1:12-cv-00231 (D.N.M. Mar. 6, 2012), available at

http://www.aclu.org/files/assets/file_stamped_complaint.pdf. Case involved eighth grade student at Wingate Elementary School near Gallup, New Mexico, who was kicked out of school after school administrators learned she was pregnant. The student was told to enroll in an "alternative" education program at a local high school, even though she was still only in middle school. When the student insisted on her right to stay in school, school administrators publicly embarrassed her by forcing her to stand up in front of the entire middle school during an assembly and announced that she was pregnant.

⁷ See, e.g., Dear Colleague Letter, Office of the Assistant Secretary Russlynn Ali, Office for Civil Rights (April 4, 2011) <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>; Dear Colleague Letter, Office of the Assistant Secretary Russlynn Ali, Office for Civil Rights (April 20, 2010) <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.pdf>; (Of the 11 Dear Colleague Letters issued by the Office for Civil Rights concerning Title IX, six have discussed athletics and four have discussed harassment. Full list of Title IX related Dear Colleague letters available at <http://www2.ed.gov/about/offices/list/ocr/publications.html#TitleIX-Docs>).

HOW TO PROTECT PREGNANT STUDENTS IN SCHOOLS

Pregnant students encounter many forms of discrimination while at school. Until the late 1960's, pregnancy and education were effectively incompatible. Pregnant girls were forced to drop out of school once their pregnancies became noticeable. Some schools even passed policies that prohibited pregnant girls from *ever* returning to school.⁸ The justification for these policies was that the presence of unwed teen mothers in schools would “taint” the education of other students.⁹

Title IX and state law counterparts have largely stopped blatant school policies that discriminate against pregnant students but discrimination still persists, often through informal or unwritten school policies that funnel pregnant girls out of mainstream schools or restrict limited school resources to students who are deemed to be more “deserving.” The following sections highlight some of the ways that schools still discriminate against pregnant students and the provisions of Title IX and state education codes that make these actions unlawful.

Pregnant Students Must Be Treated Equal to Non-Pregnant Peers.

At its most basic, Title IX requires equal treatment in schools.¹⁰ This mandate covers pregnant students and requires that they be treated equal to their non-pregnant peers.¹¹ Yet schools violate these regulations in many different contexts. Pregnant teens are still plagued by negative stereotypes concerning their morality and intelligence (among other stereotypes) and still encounter a significant amount of hostility. These negative attitudes often result in discriminatory school policies and practices.

Schools Cannot Exclude Pregnant Students from Programs or Benefits Based on Negative Stereotypes or Assumptions

Pregnant students face discrimination under school policies that prohibit them from participating in a variety of school activities, particularly those that are seen as a “reward” for good students or emblematic of school leadership, such as running for class president.¹² These actions are based on persistent stereotypes that pregnant girls are of low moral character or are otherwise personally unfit.

In fact, the bulk of the published legal cases relating to pregnant teen students concern whether they can be excluded from National Honor Society membership -- inclusion in which is based, in

⁸ *E.g., Shull v. Columbus Municipal Separate School District*, 338 F. Supp. 1376, 1376 (N.D. Miss. 1972) (school district's policy stated that “no female student who is an unwed mother is permitted to attend the schools of the district”).

⁹ *Id.* at 1377. *See also Ordway v. Hargraves*, 323 F. Supp. 1155, 1158 (D. Mass. 1971) (discussing school district's fear that students might be led to believe that school authorities are “condoning premarital relations if they were to allow girl students in plaintiff's situation to remain in school”).

¹⁰ 20 U.S.C. § 1681(a).

¹¹ *Id.*; 34 C.F.R. § 106.40.

¹² Based on complaint by teen advocate regarding school policy in San Diego area.

part, on “character.”¹³ In *Cazares v. Barber*,¹⁴ an unmarried pregnant student was denied entry into her school’s chapter of the National Honor Society (“NHS”) despite being ranked first in her sophomore class. The sole reason for the student’s rejection was that she was pregnant, unmarried and not living with her child’s father.¹⁵ In comparison, a male counterpart who had fathered a child out of wedlock was accepted into the chapter. The trial court found that this discrimination violated Title IX, among other protections, and ordered the school not to hold the induction ceremony without the student.¹⁶

The school responded to the court’s order by canceling the entire induction ceremony and terminating its participation in the NHS, thereby depriving all of its students of the opportunity to participate in the honors program rather than allow one pregnant student into the organization. This is a phenomenon termed “leveling down” and essentially means taking away a benefit from the favored group instead of providing that benefit to the mistreated group.

Although courts have condoned the option of leveling down benefits in Title IX and other equality-based actions, the option of leveling down benefits may be ripe for challenge in certain contexts, like the *Cazares* case, where there is strong evidence of intentional discrimination and hostility toward the plaintiff.¹⁷ In these situations, the option of simply leveling down or denying both groups the contested benefit (here, membership into the NHS), as opposed to extending benefits to the mistreated group, compounds the discrimination suffered by pregnant teens and creates a chilling effect on those seeking to enforce their Title IX rights. Equality simply cannot be achieved by treating everyone poorly in order to perpetuate the oppression of unpopular groups.¹⁸

Pregnant students also face discrimination under school policies that make negative assumptions about their intelligence and motivation to succeed in school or desire to obtain a career other than being a mother. For example, some high schools offer students opportunities to apply for various forms of financial assistance, such as small grants to pay for the costs of applying to college. However, school policies that provide assistance based on assumptions of who is most

¹³ *E.g.*, *Chipman v. Grant County School District*, 30 F.Supp.2d 975, 978-980 (E.D. Ky. 1998) (granting preliminary injunction because plaintiff was likely to succeed on the merits in showing that exclusion of pregnant girls from National Honor Society membership was discrimination based on sex); *Wort v. Vierling*, No. 82-3169, slip op. (C.D. Ill. Sept. 4, 1984), *aff’d* 778 F.2d 1233 (7th Cir. 1985) (court concluded that plaintiff had been dismissed from the National Honor Society on the basis of her pregnancy rather than the premarital sex that resulted in the pregnancy); *but see Pfeiffer v. Marion Ctr. Area Sch. Distr.*, 917 F.2d 779, 784 (3rd Cir. 1990) (holding that exclusion of pregnant student from National Honor Society membership was not necessarily sex discrimination because both genders were excluded based on their engagement in premarital sex).

¹⁴ *Cazares v. Barber*, No. CIV-90-0128-TUC-ACM, slip op. (D. Ariz. May 31, 1990), *aff’d*, 959 F.2d 753 (9th Cir. 1992) (regarding granting of attorneys’ fees to plaintiff).

¹⁵ *Id.* at 755.

¹⁶ *Id.*

¹⁷ See Deborah L. Brake, *When Equality Leaves Everyone Worse Off: The Problem of Leveling Down in Equality Law*, 46 *Wm & Mary L. Rev.* 513 (2004) (discussing the phenomenon of “leveling down” and circumstances when it is not an acceptable fix for inequality or unequal treatment).

¹⁸ *Id.*

likely to get into college and succeed – attributes rarely given to pregnant girls – violate Title IX.¹⁹

Pregnant Students Have A Right To Stay In Mainstream Schools.

Under Title IX (and its state counterpart), pregnant students have the right to remain in their regular or mainstream school program.²⁰ This includes the right to remain in honors and magnet programs, special education placements, alternative or options programs, and extracurricular, intramural, and interscholastic activities.²¹ Students cannot be expelled, suspended, or otherwise excluded from their current program, or required to participate in school programs, based solely on the basis of their pregnancy or related conditions, including marital or parental status.²²

Schools Cannot Funnel Pregnant Girls into Inferior Alternative Programs

Despite these protections, pregnant girls are still being funneled away from mainstream schools into “alternative” or “independent” programs that often provide minimal educational opportunities or interactions with teachers. The overtly discriminatory school policies of the past have been replaced by more informal, subtle practices that push, lure or scare pregnant girls into alternative programs. For example, the ACLU settled a case against the Antelope Valley Union High School District which had a policy that required pregnant girls to transfer out of regular high schools and into alternative school programs if they wanted access to any school-provided daycare services and other supportive programs.²³ The Bellflower Unified School District fired a school guidance counselor after she refused to disclose the names of pregnant students to the school vice-principal and counsel such students to transfer out of regular high schools and into alternative programs.²⁴

Although some of these violations are discovered, most are not. Pregnant girls are often simply told that they cannot stay in their regular high school and have no other option but to transfer to an independent or alternative program. They are often told that it is a “safety” or liability issue for themselves and their babies, as schools cannot protect their physical condition in a regular

¹⁹ Based on complaints from teen advocates about school policies in the Fresno and Los Angeles area. See 34 C.F.R. § 106.37 (“... in providing financial assistance to any of its students, a [federally-funded school] shall not: on the basis of sex, provide different amount or types of such assistance, limit eligibility... apply different criteria, or otherwise discriminate” and schools should make sure that “students are selected for award of financial assistance on the basis of nondiscriminatory criteria”).

²⁰ 34 C.F.R. § 106.40(a) & (b)(1); Cal. Educ. Code § 230.

²¹ *Id.*

²² *Id.*

²³ ACLU of Southern California, *ACLU/SC Announces Settlement to Increase Educational Opportunities for Antelope Valley Students*, October 17, 2005, <http://www.aclu-sc.org/aclusc-announces-settlement-to-increase-educational-opportunities-for-antelope-valley-students/>.

²⁴ *Holt v. Superior Court*, No. BC257305, 2002 WL 1399106 (Cal.App. 2 Dist) (The guidance counselor filed suit but the case was disposed of on procedural grounds and thus failed to address the glaring Title IX violations that should have been its focus, including the fact that it is illegal to retaliate against individuals for enforcing Title IX rights (e.g., *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173-74 (2005)).

high school. And, because most pregnant students do not know about Title IX or state law protections, they go. Moreover, once funneled into an alternative school, it can be difficult for the student to transfer back to the regular high school because of different grading and credit structures between the mainstream and alternative programs that make transferring back problematic.²⁵

Alternative Educational Programs Are Not Comparable

Title IX also requires that any alternative or special education programs for pregnant and parenting students be comparable to schools and programs offered to non-pregnant students.²⁶ The California counterpart to Title IX actually requires that these programs be equal.²⁷

Yet few alternative programs are comparable or equal to the mainstream school program. In fact, most are far from it. For example, a pregnant student in the San Diego area was told that her only option during her pregnancy was to attend a nearby independent studies program which provided only one hour of actual instruction from a teacher per week.²⁸ Although neither Title IX nor the state counterpart is clear about what specific factors are considered in determining whether alternative programs are comparable to mainstream programs, many alternative programs, like the one described above, are so substantially inferior to regular high school programs that it would not be difficult to prove inferiority under any standard.

Moreover, the following factors, used to evaluate whether school programs are comparable in other, similar contexts (such as single-sex programs), suggest a high bar for achieving comparability:

policies and criteria of admission; the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology; the quality and range of extracurricular offerings; the qualifications of faculty and staff; geographic accessibility; the quality, accessibility, and availability of facilities and resources; and intangible features, such as reputation of faculty.²⁹

²⁵ Based on complaints from teen advocates about school policies at San Diego area schools.

²⁶ 34 C.F.R. § 106.40(b)(3).

²⁷ Cal. Code Regs. tit. 5, § 4950(c) (“minors who do voluntarily participate in such alternative programs shall be given educational programs, activities and courses equal to those they would have been in if participating in the regular program.”).

²⁸ Complaint from teen advocate regarding a school program in the San Diego area.

²⁹ 34 C.F.R. § 106.34(c)(3). *See also Newberg v. Board of Public Education*, 26 Pa. D. & C.3d 682 (Ct. of C.P. Phila. County 1983), *appeal quashed* 478 A.2d 1352 (Pa. Super. Ct. 1984) (finding that operation of “separate but equal” sex-segregated magnet schools violated the Equal Protection Clause; in making its determination, the court compared factors including: course offerings, type of degrees available, class size, teaching qualifications, academic and recreational facilities, library resources, availability of computers and other equipment, extracurricular activities, student performance, average per student expenditures and school reputations.).

In a practical sense, it's hard to see how schools could provide alternative programs that are equal to mainstream schools.

This is an area where legal advocates can make a particularly significant impact and close the wide enforcement gap by being proactive and asking their teenage clients who come in for other services about their school situation. If the client is in an alternative education program, legal advocates should ask them about the quality of the curriculum and how the student got into the program. If the client was forced or shuttled into the program, the advocate can work with the school to change this illegal policy. If the curriculum is inferior – albeit a much harder lift, the advocate can use Title IX and state law equivalents to require the school to improve its program.

Legal advocates can also make a significant impact by demanding policy changes in this area. A key problem in enforcing the rights of pregnant and parenting students is the lack of any mandatory data collection requirements -- schools are not required to collect or report data on pregnant and parenting students. No specific mandates require schools to report the numbers of pregnant students who drop out of school, or transfer to alternative or independent programs. Current data collections gather information on only the basics -- like ethnicity and gender -- but fail to collect data on pregnant students. For example, the Civil Rights Data Collection (CRDC) required by the U.S. Department of Education under Title IX and other statutes fails to require schools to provide specific information about pregnant students, even though the Department oversees the enforcement of Title IX (including the specific protections for pregnant students) and the purpose of the data collection is to ensure that schools are meeting their “obligation to provide equal educational opportunity.”³⁰ Similarly, California Education Code § 252(b)(5) requires data be collected by gender and ethnicity on the “number of pupils who leave school before graduation,” but not on the specific reason for leaving.³¹

Also, data on alternative or non-traditional education programs is limited to the very basics, such as whether the school or district provides such programs, and frequently lacks any data regarding their quality or the number of pregnant students shuttled into them.³² Without basic data, it is much more difficult to assess whether schools are implementing the equality mandates of Title IX for pregnant and parenting students.

³⁰ E-mail from J. Cacilia Kim, Senior Staff Attorney, to Eduardo Abalo, Contractor, Civil Rights Data Collection Partner Support Center (April 30, 2012, 2:54 PM) (on file with author); Email from Eduardo Abalo, Contractor, CRDC Partner Support Center to J. Cacilia Kim, Senior Staff Attorney, CWLC (June 5, 2012, 9:33 AM) (on file with author); Department of Education, Civil Rights Data Collection FAQ, 1(2009-10) <http://ocrdata.ed.gov/FAQ>.

³¹ Cal. Educ. Code § 252 (statute also only requires data collection “to the extent possible within existing resources”).

³² E-mail from J. Cacilia Kim, Senior Staff Attorney, to Eduardo Abalo, Contractor, Civil Rights Data Collection Partner Support Center (April 30, 2012, 2:54 PM) (on file with author); Email from Eduardo Abalo, Contractor, CRDC Partner Support Center to J. Cacilia Kim, Senior Staff Attorney, CWLC (June 5, 2012, 9:33 AM) (on file with author); Department of Education, Civil Rights Data Collection FAQ, 2-3 (2009-10) <http://ocrdata.ed.gov/FAQ>.

Pregnant Students Must Be Treated Like Other Students with Temporary Disabilities.

Title IX requires schools to treat pregnancy, childbirth or related conditions in the same manner and under the same policies as any other temporary disability.³³ Health plans, medical benefits, and related services are to be provided to pregnant students in the same manner as these services are provided to students with other temporary disabilities.³⁴ A school can require a pregnant student to provide a doctor's certification of fitness to continue in the regular education program or activity -- but only if the school imposes this same requirement on all other students with physical or emotional conditions requiring a doctor's care.³⁵

Schools Cannot Exclude Pregnant Students from Limited Resources and Benefits Provided to Other Students with Temporary Disabilities

Despite these protections, pregnant students are often not viewed or treated like other students with temporary disabilities. A significant problem is that many of the support programs and services available to students with temporary disabilities are severely limited, resulting in resource allocations being made in a discriminatory manner.

One such problem area concerns home instruction services. California Education Code §48206.3, states that a student with a "temporary disability which makes attendance" in school "impossible or inadvisable" shall receive individual instruction at home or other location outside of school. Nonetheless, a pregnant student in Los Angeles, who was on extended leave after having a baby, was not allowed to access home instruction services that were provided by her school to other temporarily disabled students with extended absences. The school informed the student that home instruction services were a precious and limited resource and reserved for students with illnesses like cancer.³⁶

Home instruction services must be provided to students who cannot attend school because of pregnancy or childbirth on the same basis as they are provided to students who miss school for other health reasons. Similarly, pregnant students must be provided with the same accommodations and support services available to other students with similar medical needs, such as bathroom breaks, extra time to get to classes and use of an elevator.

³³ 34 C.F.R. § 106.40(b)(4); Dear Colleague Letter, Office of the Assistant Secretary Stephanie J. Monroe, Office for Civil Rights (June 25, 2007) <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20070625.html> ("Title IX regulation instructs recipients to treat pregnancy or childbirth in the same manner and under the same policies as any temporary disability... requiring female athletes to sign athletic contracts listing pregnancy as an infraction, or excluding students from ... athletics on the basis of the student's pregnancy or a related condition is also prohibited").

³⁴ 34 C.F.R. § 106.40(b)(4).

³⁵ 34 C.F.R. § 106.40(b)(2).

³⁶ Based on complaint from teen advocate about school in the Los Angeles area.

Absences Due To Pregnancy Or Related Medical Conditions Must Be Excused.

Under Title IX, absences due to pregnancy, childbirth or related medical conditions must be excused and cannot be treated or penalized like unexcused absences.³⁷ Under California law, parenting students who are absent from school because of their child's illness or medical appointments must also be excused.³⁸ Despite these special protections for pregnant and parenting students, rigid school absence policies are often strictly applied to all students.

Consider the following unlawful policies. One school district in Central California required all students to physically make up *all* absences, even those that were medically excused.³⁹ Another school district, this time in Southern California, allowed magnet and honors programs to have strict attendance requirements, permitting students to be dismissed from these programs if they have a certain number of absences.⁴⁰

Schools Cannot Have Attendance Policies that Penalize ALL Absences

School districts that have blanket attendance and absence policies -- such as those that penalize all absences -- violate the law. Unlike the general rule that pregnant students must be treated like other students with temporary disabilities (as discussed above), in terms of absences, pregnant students are provided *greater* statutory protections in certain circumstances. Schools must excuse absences due to pregnancy or related conditions even if the school has no leave policy for other students or if the pregnant student does not qualify for the existing leave policy.⁴¹ In these circumstances, the school must provide a pregnant student with a leave of absence for as long as it is deemed to be medically necessary by the student's medical doctor.⁴² At the end of her leave, she must be reinstated to the status she held when her leave began.⁴³

A school also may not ask a pregnant or parenting student to obtain certification from a physician for a medically-related absence unless such verification is similarly required for absences due to other medical conditions.⁴⁴ Moreover, after returning from an excused absence, pregnant and parenting students must be allowed a reasonable amount of time to make-up the assignments and tests that were missed during the absence.⁴⁵ The make-up assignments and tests

³⁷ 34 C.F.R. § 106.40(b)(5); Cal. Educ. Code § 48205(a)(1), (3) & (b).

³⁸ Cal. Educ. Code § 48205(a)(6) (provided the student is the custodial parent).

³⁹ Based on complaint from teen advocate about school in the Salinas area.

⁴⁰ Based on complaint from teen advocate about a number of schools in Orange County.

⁴¹ Cal. Educ. Code § 48205.

⁴² 34 C.F.R. § 106.40(b)(5) ("In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth . . . as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.").

⁴³ *Id.*

⁴⁴ 34 C.F.R. § 106.40(b)(2); Cal. Code Regs. tit. 5 § 4950(d).

⁴⁵ *Id.*; Cal. Educ. Code § 48205(a)(1), (3) & (b).

must be reasonably equivalent to those missed during the absence, but need not be identical.⁴⁶ The student's teacher makes this determination.⁴⁷

Absences are an important issue for pregnant and parenting students and a right that legal advocates should aggressively and vigilantly protect. Pregnancy and childbirth almost always require a substantial number of absences and school policies that penalize all absences will disproportionately impact this population. The number of absences is a critical factor in whether a pregnant student will stay in school or drop out. According to a 2009 Report by National Center for Education Statistics, high school sophomores who subsequently dropped out of school identified absences or "missing too many school days" most frequently for the reason why they dropped out.⁴⁸

Pregnant Students Have the Right to Participate in All School Programs.

Under Title IX and its state counterpart, pregnant students have the right to participate in all school programs -- including physical education classes.⁴⁹ Schools cannot assume that pregnancy makes it unsafe for a student to participate in physical education classes or require medical permission before participation unless they require it of all students with similar medical conditions.⁵⁰ Schools must provide a pregnant student who cannot accomplish the requirements of the regular physical education curriculum with an alternative program that is modified to accommodate her physical condition and provide her with appropriate credit.⁵¹

Schools Cannot Exclude Pregnant Students from Physical Education Classes

Consider the following violation: a pregnant student in the Riverside area was not allowed to participate in physical education classes as soon as she told her school that she was pregnant. The school told her that she was a huge liability to the school and they had no insurance to cover her. In lieu of participating in physical education classes, the student was required to spend the time in front of the computer, reading about the importance of physical exercise.⁵²

Despite the protections provided by state and federal laws, some schools -- like the one in Riverside -- still prohibit pregnant students from participating in physical education classes. Schools often justify the exclusion on the grounds that it will protect the student from potential physical harm. However, any physical limitations or restrictions during pregnancy are decisions for the pregnant student and her physician to make, not school administrators.

⁴⁶ Cal. Educ. Code § 48205(b).

⁴⁷ *Id.*

⁴⁸ National Center for Education Statistics (NCES), U.S. Department of Education, *Late High School Dropouts: Characteristics, Experiences, and Changes Across Cohorts*, at 21-22 (June 2009).

⁴⁹ 34 C.F.R. § 106.40(a) & (b)(1); Cal. Educ. Code § 230.

⁵⁰ 34 C.F.R. § 106.40.

⁵¹ Cal. Educ. Code §§ 48205(a) & (b), 51241(a)(1) & (b)(2).

⁵² Based on complaint from teen advocate regarding school policy in Riverside area.

Legal advocates should be particularly cognizant of violations relating to pregnant student athletes and whether they can continue to play on athletic teams while pregnant – a common trouble spot. Under current laws, pregnant student athletes must be treated the same as student-athletes with knee or foot injuries. Given that workouts are commonly modified to accommodate athletic injuries, these modifications should be provided on the same basis for pregnant athletes. Financial assistance to student-athletes also cannot be terminated or reduced on the basis of pregnancy and institutions cannot require female student-athletes to sign athletic contracts listing pregnancy as an infraction – therefore, financial aid awards cannot be conditioned on not becoming pregnant.⁵³ In 2007, OCR specifically forbade institutions from treating pregnant athletes worse in any respect than athletes with other medical conditions.⁵⁴

CONCLUSION

Although millions of women and girls have benefitted from Title IX's equal educational mandate over the past 40 years, significant work remains to be done to ensure that pregnant and parenting students receive the equal educational opportunities promised by Title IX and its state counterpart. It is time to make this promise a reality. Legal advocates can be pivotal in filling a void by aggressively enforcing Title IX and state law protections for pregnant students and ensuring that schools stop discriminatory school policies that disproportionately impact this population.



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CWLC is dedicated to eliminating the barriers that keep women and girls in poverty and ensuring that women and girls in poverty have full and complete access to the benefits and support services to which they are entitled.

This policy brief provides general background information on California and Federal law and is not intended as legal advice.

For additional inquiries regarding this policy brief, please contact the author, J. Cacilia Kim, Senior Staff Attorney.

⁵³ Dear Colleague Letter, Office of the Assistant Secretary Stephanie J. Monroe, Office for Civil Rights, (June 25, 2007) <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20070625.html>.

⁵⁴ *Id.*