



# PREGNANCY DISCRIMINATION & ACCOMMODATIONS UNDER TITLE IX

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# HOUSEKEEPING

- Chat Bar
- Recording
- Disclaimer
- Higher Ed/K12

# WHAT IS CURRENTLY REQUIRED?

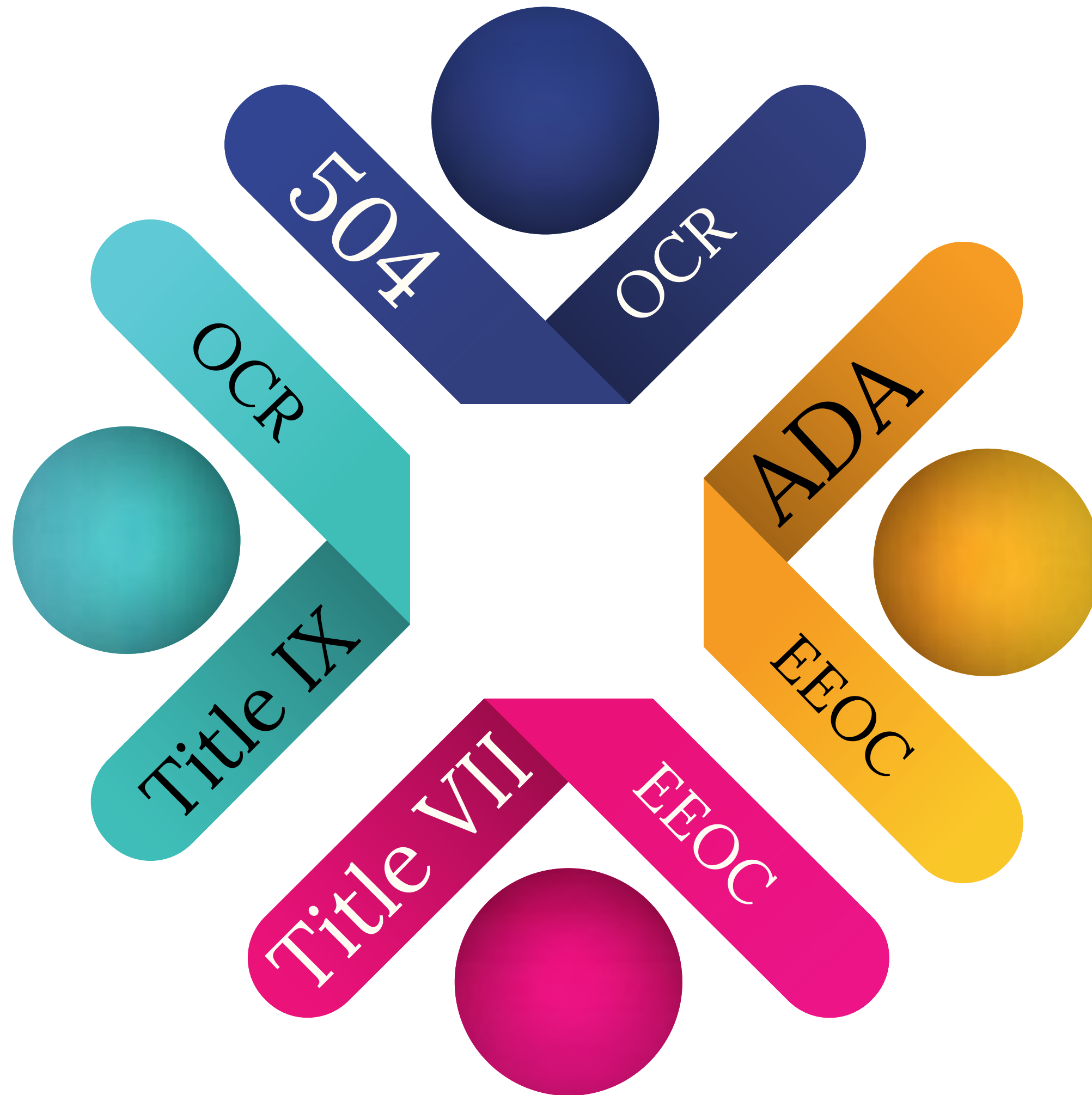
# APPLICABLE LAWS

## Federal Law

- Title IX (education and employment)
- Title VII and Pregnancy Discrimination Act (employment)
- FMLA (employment)
- Patient Protection & Affordable Care Act amended the FLSA (employment)
- American with Disabilities Act/Section 504 of Rehab Act (education and employment)

## State Law

- Vary greatly and may provide more protection than federal law



# Title IX



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.

ACCESS

This webinar assumes basic understanding of Title IX.



# REGULATORY LANGUAGE

Recipients of federal funds "shall not apply any rule concerning a student's actual or potential parental, family or marital status which treats students differently on the basis of sex... [and] shall not discriminate against any student, or exclude any student from its education programs or activity, including any class or extracurricular activity, ***on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom***, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient." 34 CFR 106.40



# DEPARTMENT OF EDUCATION GUIDANCE

*Addresses issues of assistance, program progression and leave:*

- Adjustments must ensure access to the educational program (i.e. larger desks)
- A student shall be reinstated to the status she held when leave related to pregnancy began
- Excused absences for medical reasons
- Exceptions for late work and class attendance or participation credit



INSTITUTIONAL  
COMPLIANCE SOLUTIONS

# TITLE IX/PREGNANCY DISCRIMINATION

*Explicitly included in regs. A form of sex discrimination against women.*

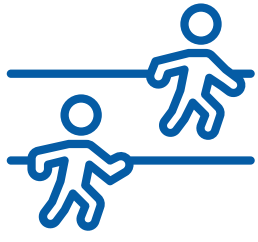
Pregnant women must be treated the same as other students with a temporary medical condition that requires treatment. Institution/schools cannot unilaterally presume what limitations, if any, should be placed on a pregnant woman's participation

# APPLIES TO:



Admissions

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Physical Education

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Counseling/Guidance

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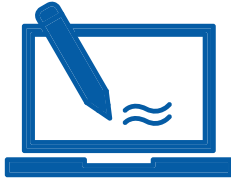
Discipline

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Employment

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Classroom Assignment

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Athletics

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Housing

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Recreation

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Academic Programs

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Recruitment

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Grading

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Vocational Education

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Student Treatment/Services

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Financial Aid

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## Admissions

An institution must treat impairments related to pregnancy, etc. in the same way and under the same policies as any other temporary impairment or physical condition

34 CFR 106.21 (c)

## Financial Aid

An institution cannot, on the basis of sex

- Provide different amounts of types of aid
- Limit eligibility for assistance
- Apply different criteria
- Discriminate based on marital/parental status

34 CFR 106.37



# Note:

# Higher Ed



# EMPLOYMENT

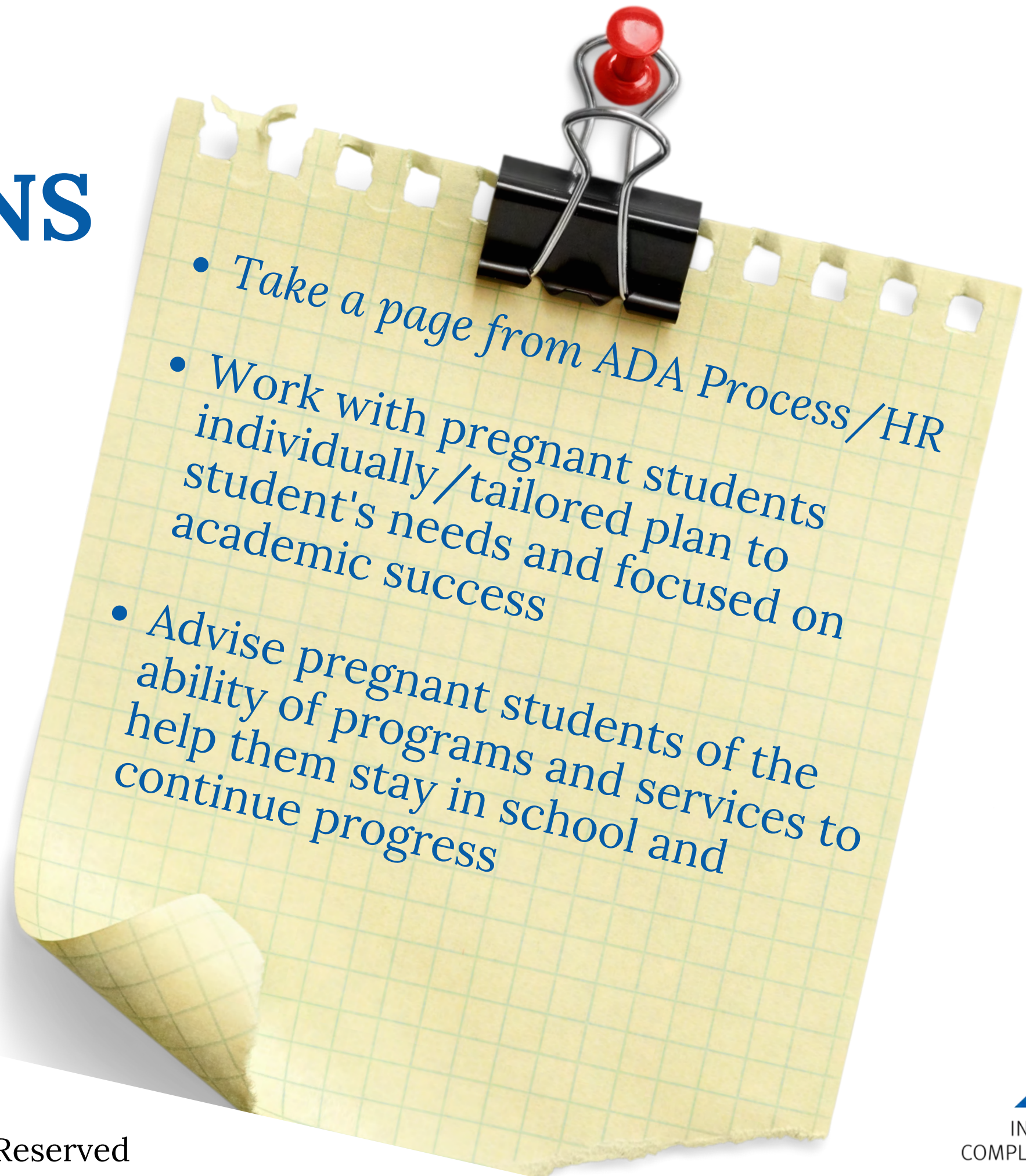
- Institutions "shall not discriminate against or exclude from employment any employee or applicant for childbirth, false pregnancy, termination of pregnancy, or recovery therefrom."  
34 CFR 106.57 (b)
- Title VII also states in regulation policies relating to pregnancy and childbirth.

# ACCOMMODATIONS

- Must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status.
- Requires recipient to provide same special services to a pregnant student it provides to a student with temporary medical conditions.

106.40(b)(4) and (5)

# INTERACTIVE ACCOMMODATIONS PROCESS





# INTERACTIVE PROCESS UNDER ADA

**REPORT OF A DISABILITY THAT  
IMPACTS ABILITY TO PERFORM JOB**



**MEETING WITH HR TO CONDUCT  
INITIAL ASSESSMENT**

**IS REQUEST REASONABLE?**



**NEED FOR BRAINSTORMING  
ALTERNATIVE ACCOMMODATIONS**

**IMPLEMENT ACCOMMODATION,  
IF REASONABLE**



**CONTINUE INTERACTIVE PROCESS  
UNTIL EXHAUSTED OPTIONS**



**DOCUMENT!! DOCUMENT!! DOCUMENT!!**





# ACCOMMODATIONS: EXCUSED ABSENCES

- Excused absences for pregnancy-related medical appointments
- Any limits on excused absences for pregnancy and parenting students should be consistent with limits on excused absences for other students. i.e. documentation may be required for prolonged absences

# ACCOMMODATIONS: LEAVE OF ABSENCE

Pregnancy is justification for leave of absence for so long as is deemed medically necessary by the student's physician (length of leave will vary)

Once leave concluded, reinstated to status held when leave began

Sometimes leave of absence only feasible alternative

Watch out for course sequencing/  
pre-requisite issues

# ACCOMMODATIONS: ACADEMIC ADJUSTMENT CONSIDERATIONS:

Do not have to eliminate or lower essential requirements of program or activity ***or make modifications that would result in a fundamental alteration of its programs or activities or impose an undue burden.***



# "THE REQUIREMENT SHOULD BE ESSENTIAL TO THE EDUCATIONAL PURPOSE OR OBJECTIVE OF A PROGRAM OR CLASS. OCR CONSIDERS AMONG OTHER FACTORS, WHETHER:



- the decisions regarding essential program requirements were be made by a group of people who are trained, knowledgeable, and experienced in the area through a careful, thoughtful, and rational review of the academic program and its requirements; and
- the decision-makers considered a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a specific student with a disability. OCR affords considerable deference to academic decisions made by post-secondary institutions, including what is or is not an essential program requirement."



# ACCOMMODATIONS: NURSING/ LACTATION SPACES

- DOE encourages schools to "designate a private room" (not a restroom)
- Increased access to lactation stations can increase retention
- Attention to campus maps and closest lactation space



# PUMP Act

<b>Expands employee's right to express breast milk at a private location other than a restroom</b>	<b>Salaried and hourly employees entitled to this right</b>
<b>Remote workers entitled to this right</b>	<b>If expressing during a break must be compensated in same way other employees are compensated for break time</b>
<b>If not in compliance, liable for lost wages and other damages (including punitive damages in some instances)</b>	<b>DOJ began enforcement April 28th</b>

# BOTTOM LINE

Courts have routinely held that discrimination on the basis of pregnancy, childbirth, or related medical conditions is a form of sex discrimination prohibited under Title IX.

# PARENTING ACCOMMODATIONS: ABSENCES

DOE: Institutions should consider developing policies that allow parenting students to take leave time or make up hours for "parenting students (both male and female) who need to take their children to doctors' appointments or to take care of their sick children."





# PARENTING ACCOMMODATIONS: MALE PARENTS

Josh wants to take time off after the birth of his daughter. He is a graduate student and wants relief from teaching duties and to reschedule finals. How and should you accommodate Josh?



# NEW OCR RESOURCE ON PREGNANCY DISCRIMINATION

*\*\*References Dobbs. v Jackson Women's Health Organization\*\**

# OCR RESOLUTION

## AGREEMENTS/INVESTIGATIONS:

*Pregnancy Discrimination*

### OCR Resolution Agreement with Salt Lake Community College

OCR found that the College "failed to respond equitably to complainant's complaint" and did not engage in an "interactive process" to provide necessary academic services. College failed to excuse absences and tardies. The student's late work was also marked unexcused.

### OCR Resolution Agreement with Bryant & Stratton College

OCR found no alternative policy related to reasonable adjustments due to pregnancy status - relying on Student Handbook designed to assess all medical conditions. Concerns staff not sufficiently trained to respond to pregnancy status request.

# OCR RESOLUTION AGREEMENTS/ INVESTIGATIONS:

*Pregnancy Discrimination*

## **OCR Resolution Agreement with Career Care Institute**

OCR found that the College's Title IX Coordinator's information was not available on its website, and it was unable to find a statement indicating how a complaint could be filed with the Title IX Coordinator.

**Practical Note:** OCR found "Institute [had] not made publicly available on its website all materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates informal resolution process."



# WHERE ARE THINGS HEADED?





# **NPRM RELEASED IN MAY?**

# CLARIFIES PROTECTIONS FOR STUDENTS AND EMPLOYEES PREGNANT OR EXPERIENCING PREGNANCY-RELATED CONDITIONS



**Proposed  
definition clarifies  
that sex-based  
harassment  
(currently "sexual  
harassment")  
includes  
harassment based  
on pregnancy or  
related conditions.**



# Students §106.40, p. 669

"A recipient must not adopt or apply any policy, practice, or procedure concerning a student's current, potential, or past parental, family or marital status that treats students differently on the basis of sex."

p. 669; §106.40 (a)



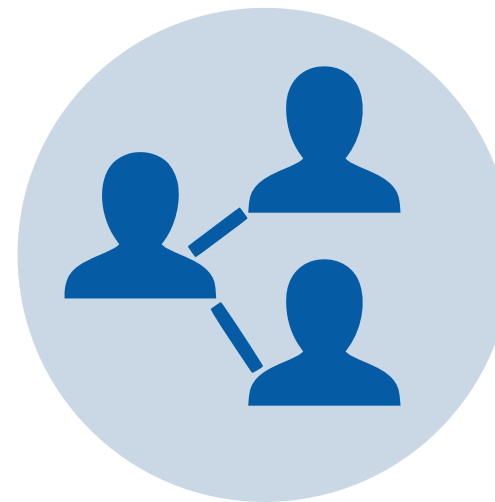
# NONDISCRIMINATION:

"A recipient must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions. A recipient may permit a student based on pregnancy or related conditions to participate voluntarily in a separate portion of its education program or activity provided the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions."

# NOTICE RE: PREGNANCY OR RELATED CONDITIONS



**Employee informed of a student's pregnancy or related conditions by the student or person with legal right to act on behalf of the student**



**Inform the person how to notify Title IX Coordinator for assistance**



**Provide contact information for the Title IX Coordinator**

# ONCE NOTIFIED OF PREGNANCY OR RELATED CONDITIONS BY STUDENT OR INDIVIDUAL WITH A LEGAL RIGHT TO ACT ON THE STUDENT'S BEHALF, TITLE IX COORDINATOR MUST:



## Inform

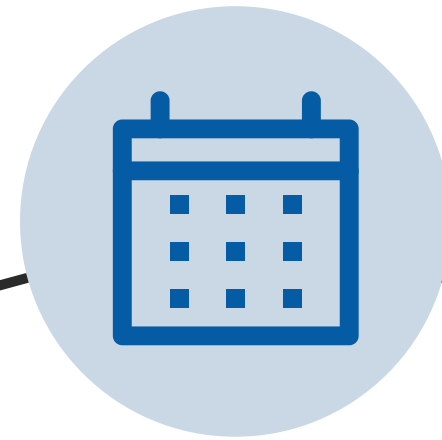
Inform student (and individual who has legal right to act on their behalf) of the following obligations of the recipient:

- Prohibit discrimination
- Option for reasonable modification
- Allow access to separate and comparable portion of education program or activity
- Voluntary leave of absence
- Lactation space
- Grievance Procedures



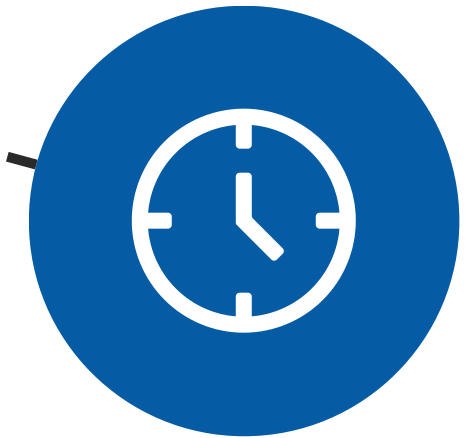
## Provide

Provide voluntary reasonable modifications to education program or activity (modifications defined on p. 671)



## Allow

Allow for a voluntary leave of absence for period of time deemed medically necessary by physician or other licensed healthcare provider



## Ensure

Ensure availability of lactation space (other than a bathroom; clean and private)

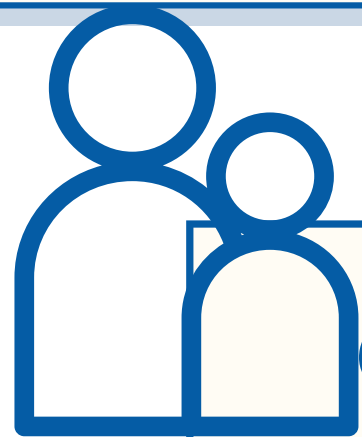




# Employees §106.57, p. 698



A recipient shall not adopt or apply any policy, practice, or procedure, or take any employment action on the basis of sex:



Concerning current, potential, or past parental, family or marital status of an employee or applicant for employment



Which is based on whether an employee or applicant for employment is the head of household or principal wage earner.



A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.



Comparable treatment  
to temporary disabilities  
or conditions

Pregnancy Leave

Lactation time and space

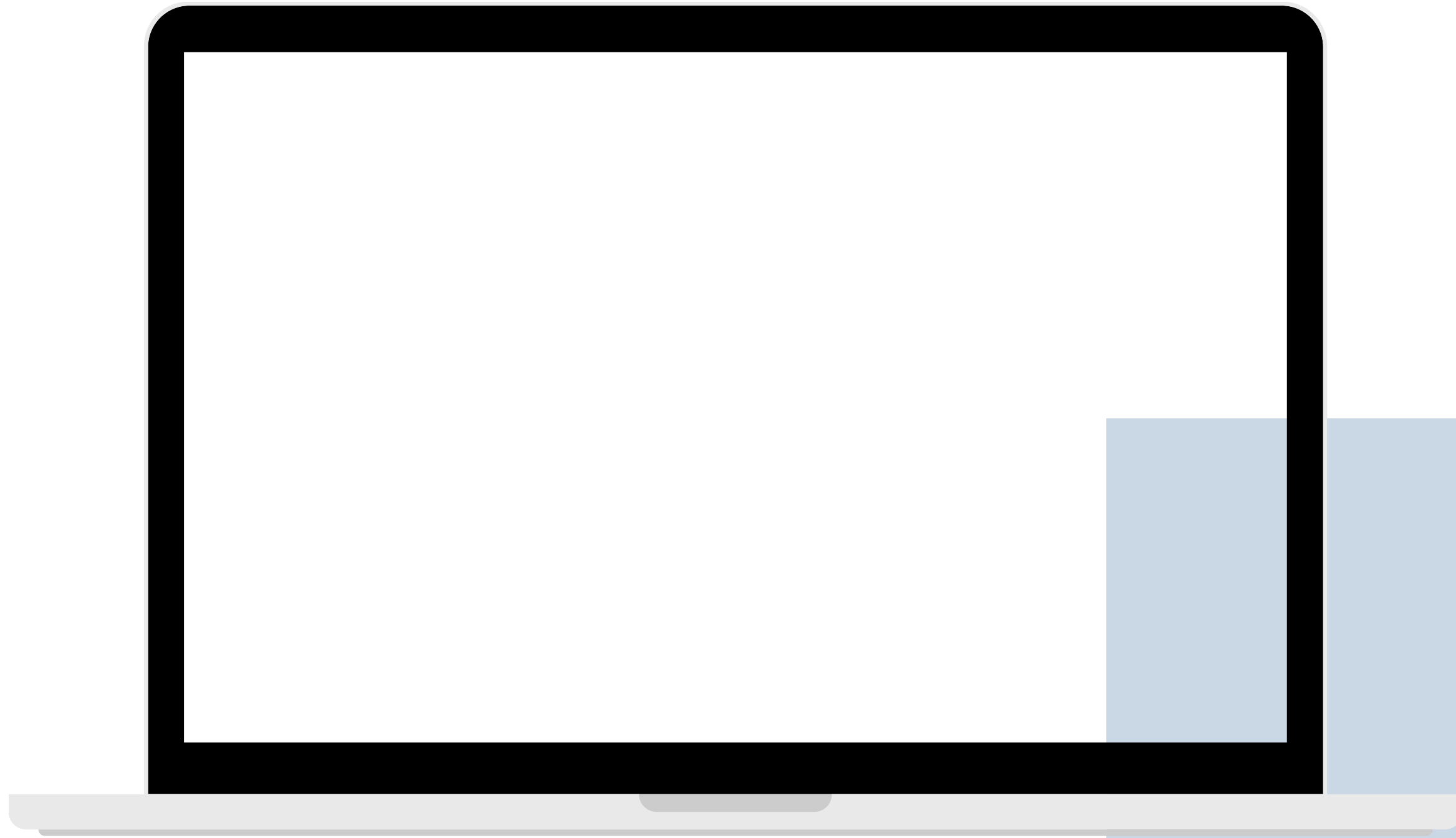
Pre-Employment Inquiries

# ALL MUST BE IMPLEMENTED AND COORDINATED BY THE TITLE IX COORDINATOR



# PRACTICAL TAKEAWAYS






**START  
NOW!**



# COMPLIANCE ASSESSMENT



Conduct a thorough, honest assessment of your current approach to accommodating pregnancy and parenting students (think like a student)

Consider both history of accommodating (or not) pregnancy and parental requests

Be on offense, not defense

# EVALUATE STRUCTURE AND STAFFING

*Weigh the pros and cons of these approaches based on your institution/district:*

## Centralized approach (like ADA requests)

- Through Title IX Coordinator
- Through Disability Resource Center

## Decentralized approach

- Academic Deans
- Individual Professors

*Identify at least one employee to carry out these responsibilities, including overseeing complaints of discrimination against pregnant and parenting students.*

# EVALUATE STRUCTURE AND STAFFING

- Cannot require students to identify as pregnant even if it appears obvious
- Students must choose to voluntarily identify
- Consider developing a "Pregnancy Disclosure Policy"
- Build multiple opportunities to self-identify in the admissions process or course selection process



# POLICIES & PROCEDURES

- Must have and distribute a policy against sex discrimination
- Adopt and publish grievance procedures
- Identify at least one employee to carry out these responsibilities, including overseeing complaints of discrimination against pregnant and parenting students



# COMMON MISTAKES/ POLICY

- Targeted medical documentation requirements
- Deference to policies that are discriminatory at clinical sites/schools
- Restart requirements from beginning rather than when leave began
- Zero absence attendance policies



# COMMON MISTAKES/ PROCEDURE

- OCR often finds lack of prompt response to student Title IX grievances
- Individuals who report any type of discrimination should receive a prompt response
- Evaluate your school's grievance procedures. Does every students receive a response to a report of discrimination and is the response timely?

# COMMUNICATE, COMMUNICATE

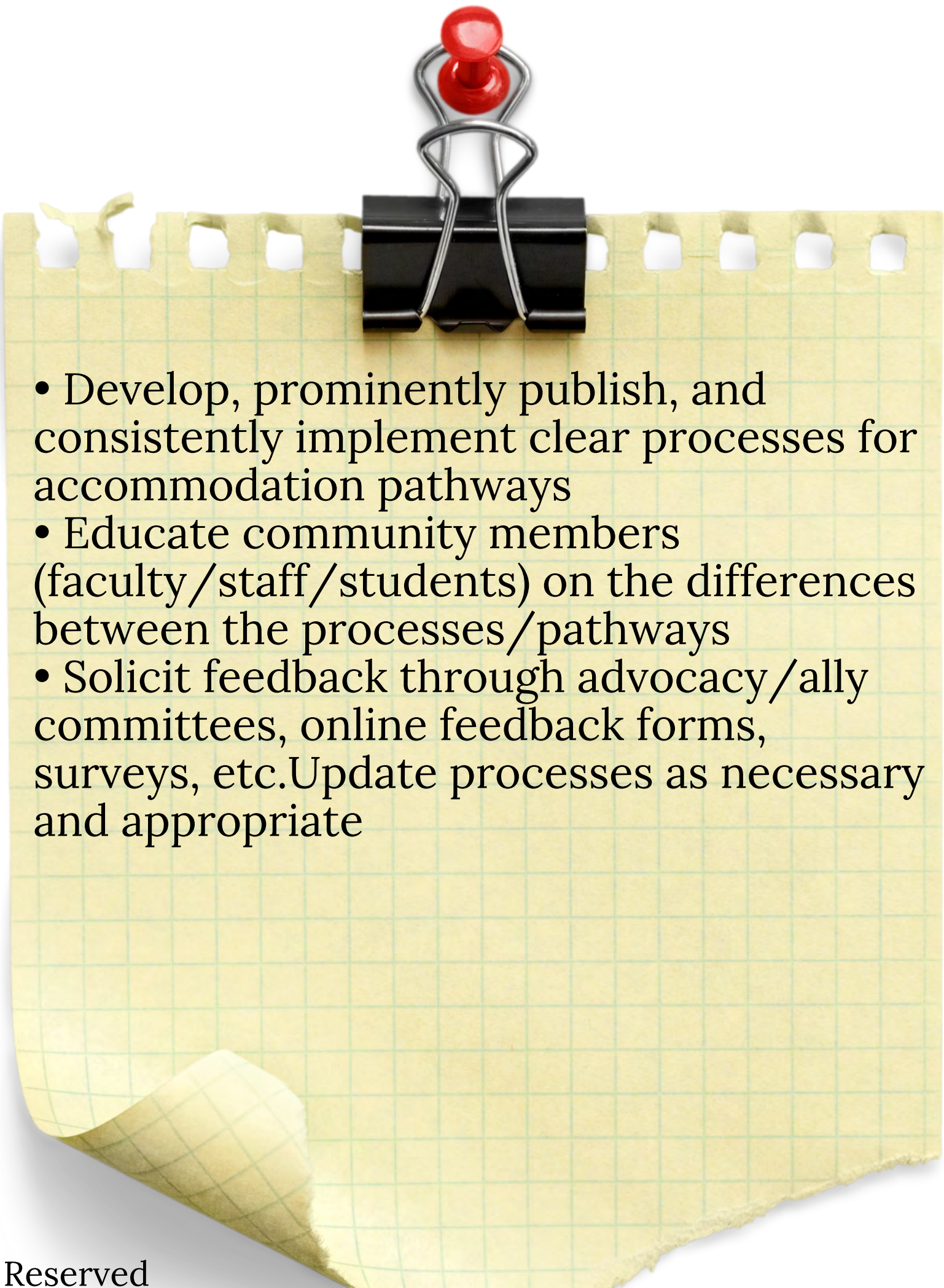
Broadly communicate the accommodations process and factors for consideration through:

- Periodic discussion of program requirements
- Use of technical standards specific to program
- Orientation before clinical training
- Student and program handbooks

**\*\*COMMUNICATE/DO NOT ASSUME KNOWLEDGE!\*\***

# SET THE STAGE FOR SUCCESS

*Title IX and Section 504/ADA  
Coordinators (and their designees)  
must effectively coordinate and  
regularly communicate*

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- Develop, prominently publish, and consistently implement clear processes for accommodation pathways
  - Educate community members (faculty/staff/students) on the differences between the processes/pathways
  - Solicit feedback through advocacy/ally committees, online feedback forms, surveys, etc. Update processes as necessary and appropriate



# DISABILITY COORDINATOR

*Every recipient (e.g. K-12 School District, College, University) that employs 15 or more persons MUST:*

*A public entity that employs 50 or more persons MUST:*

Designate AT LEAST ONE person to coordinate its efforts to comply with Section 504

Designate AT LEAST ONE employee to coordinate its efforts to comply with ADA

Adopt and publish grievance procedures See 34 C.F.R. § § 104.7, 104.8

Make available the name, office address, and telephone number of the designated employee

Include identification of the 504 Coordinator in its notices

Adopt and publish a complaint procedure 28 C.F.R. § 35.107



# FINAL TAKEAWAYS:



Lactation space audit

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Training, Training, Training

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Summer updates - process for discrimination  
based on pregnancy

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# Upcoming Trainings



# Connect With Us!



- Institutional Compliance Solutions
- Title IX Coordinators
- K-12 Title IX Coordinators



- Institutional Compliance Solutions
- Courtney Bullard
- Betsy Smith
- Celeste Bradley



@Title9Authority



@titleixauthority