



PREGNANCY AND STUDENTS

Supporting pregnant students,
and the laws that may apply

Vermont Legal Issues Conference

October 2023

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MEET YOUR FACILITATORS



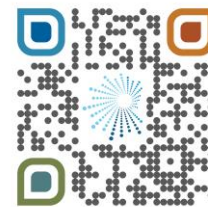
Andrea Stagg

Director of Consulting Services, Andrea Stagg has extensive experience consulting, writing and training on Title IX, Equity and safety. Andrea was Deputy General Counsel and Director of Government Relations & Compliance at Barnard College and was counsel to three colleges within the SUNY system. She has worked with federal and state legislators to develop state laws and follow best practices in campus safety and sexual harassment prevention.

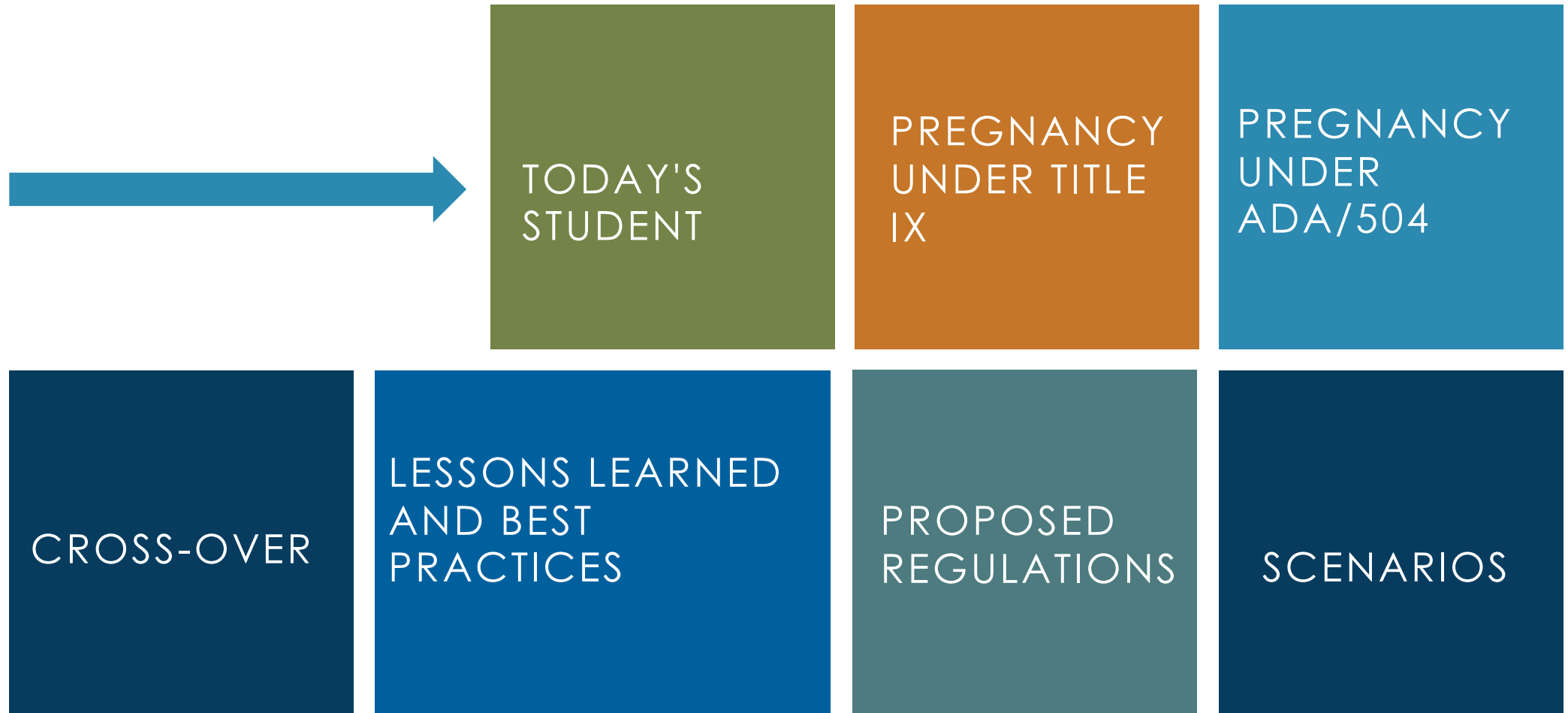


Jody Shipper

Co-Founder & Managing Director of Grand River Solutions, Jody Shipper is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively throughout the U.S.



TODAY'S SESSION



TODAY'S STUDENT

A greater number of college students weight class schedules with family and parenting responsibilities



The birth rate for women aged 20–24 was 63.0 births per 1,000 women in 2020, down 5% from 2019 (66.6)



The rate for women aged 25–29 was 90.2 births per 1,000 women, down 4% from 2019 (93.7)



In 2020, the mean age of mothers at first birth was 27.1 years, an increase from 27.0 in 2019

MORE ABOUT TODAY'S STUDENT...

- Globally and Socially Aware
- Digitally Connected and Plugged In
- Racially and Culturally Diverse
- First Gen (46%)
- Older (38% over age 25)
- Busier (25% raising children/64% working)
- Financially Strained (35% food and 9% home insecure)
- Too Many Stressors and Too Little Support



Data From: Who is Today's Student?

<https://www.luminafoundation.org/resource/todays-student/>

TITLE IX



Title IX prohibits discrimination on the basis of sex, which includes pregnancy and parental status – in educational programs and activities.

TITLE IX & Pregnancy



Cannot exclude or treat students (or employees or applicants) differently based on pregnancy or related conditions.

"Related conditions" include "childbirth, false pregnancy, termination of pregnancy, or recovery therefrom"

TITLE IX OBLIGATIONS

Summary of the obligations relating to pregnant students

- Allow them to make up any missed work without penalty
- Treat them similarly to students with a temporary disability.
- They must be allowed to return to the same academic and extracurricular status as before their medical leave began.
- Must provide reasonable adjustments, like a larger desk, elevator access, or allowing frequent trips to the restroom



DO YOU HAVE A
STUDENT LEAVE
POLICY? DOES
THIS STUDENT
QUALIFY?

Treat pregnancy like a justification for a leave of absence for so long a period of time as deemed medically necessary by the student's doctor.

"TEMPORARY DISABILITY?"

Treat disabilities related to pregnancy and related conditions in the same manner and under the same policies as any other temporary disability or physical condition.

TITLE IX

Nondiscrimination here is broad.

Extends to those experiencing pregnancy and related conditions, and treating parental/family status differently based on sex.

Equitable access and ability to fully participate in academic program, activities, practicums/field placements, and athletics



ADJUSTMENTS UNDER TITLE IX

“Medically necessary” based on assessment and “note” from treatment provider for immediate implementation

- Furniture size, shape, position
- Remote learning/hybrid learning
- Breaks, access to food or hydration
- Ability to reschedule tests
- Excused absences specific to treatment and care
- Late submission of expected work
- Alternative make up work of similar or like nature
- Excused absences for parenting and medical care for infant or child

RULES ON STATUS

WHAT IT SAYS

A recipient 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.

34 CFR 106.40

WHAT IT MEANS

You can't require married women or mothers to drop out but allow married men or fathers to stay enrolled. That's different treatment on the basis of sex concerning parental, family, or marital status.

WHAT ABOUT "PARENTS" AND "PARENTING?"

Cannot apply a rule about the actual or potential parental or marital status of a student, applicant, or employee that treats people differently based on sex.

These are from 1975!



AMERICANS WITH DISABILITIES ACT AND SECTION 504

ADA

“...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (1990).

SECTION 504

"No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.) Code of Federal Regulations, title 28 (2002):516-544

ADA/504 AND PREGNANCY

Pregnancy, alone, is not a disability...EXCEPT UNDER...



SECTION 504

It may be considered a temporary disability in certain circumstances.

ADA

It may be considered a disability when one or more impairments related to pregnancy are present OR when a condition arising from pregnancy becomes long-lasting (i.e.: post partum depression or gestational diabetes that becomes Type II)

PRIVACY CONSIDERATIONS

If there is a determination that information is needed that would substantiate the disability/condition, some considerations regarding privacy may include:

- Follow your privacy policies (including FERPA).
- Be mindful of what documents are requested and collected – what's actually necessary?
- How are you storing and securing files?
- Educating faculty members about how (not) to request medical information from the student
- Educating student on their rights to access and privacy.



WHAT'S THE DIFFERENCE?

Title IX affords adjustments and/or support measures while ADA/504 affords access and accommodation; each ensure equitable access to educational programs or activities.



Adjustments are time-limited
for the period of the
documented “medical
necessity”



Supportive measures have no
medical requirements ; they
require only a request as
related to a Title IX matter



Accommodations require the
presence of a “qualified”
disability and/or condition

POLICY TO PRACTICE

Policies account not only for regulation but provide for a process that is understandable and –

- Identify a single point of first entry (a proactive practice)
- Provide consistent information using the correct terms and definitions
- Support the student into the correct lane or lanes to begin
- Identify appropriate services supports

PRACTICES THAT ACTUALIZE...

- A one-stop type of service and support consistent information and centralized reporting
- Timely consultation/communication between involved offices
- Effective case management team approach (multiple offices)
- Regular communication between involved offices and the individual student
- Documentation at each stage of service
- Education, education, education to the campus community

RECENT ED RESOLUTIONS & GUIDANCE



JUNE 2022

Salt Lake Community College
Resolution Agreement



October 2022

Pregnancy and Parenting
Resource



January 2023

Troy University Resolution Agreement

LESSONS LEARNED

Make reasonable responsive adjustments

Provide accessible information for pregnant students

Designate a central contact to centralize response

Respond promptly to pregnancy discrimination complaints

Engage in the interactive process

Consider whether there is a temporary disability

Train employees on your rules and process

IMPLEMENTATION

Review or create
leave policy

Update
community
trainings to
include
pregnancy+

Create resources
for pregnant
students for the
web, handbooks

Remember
student-
employees

Review
policies to
ensure
inclusion of
pregnancy+

Outreach
and
collaboration
with
stakeholders

Identify
lactation
space

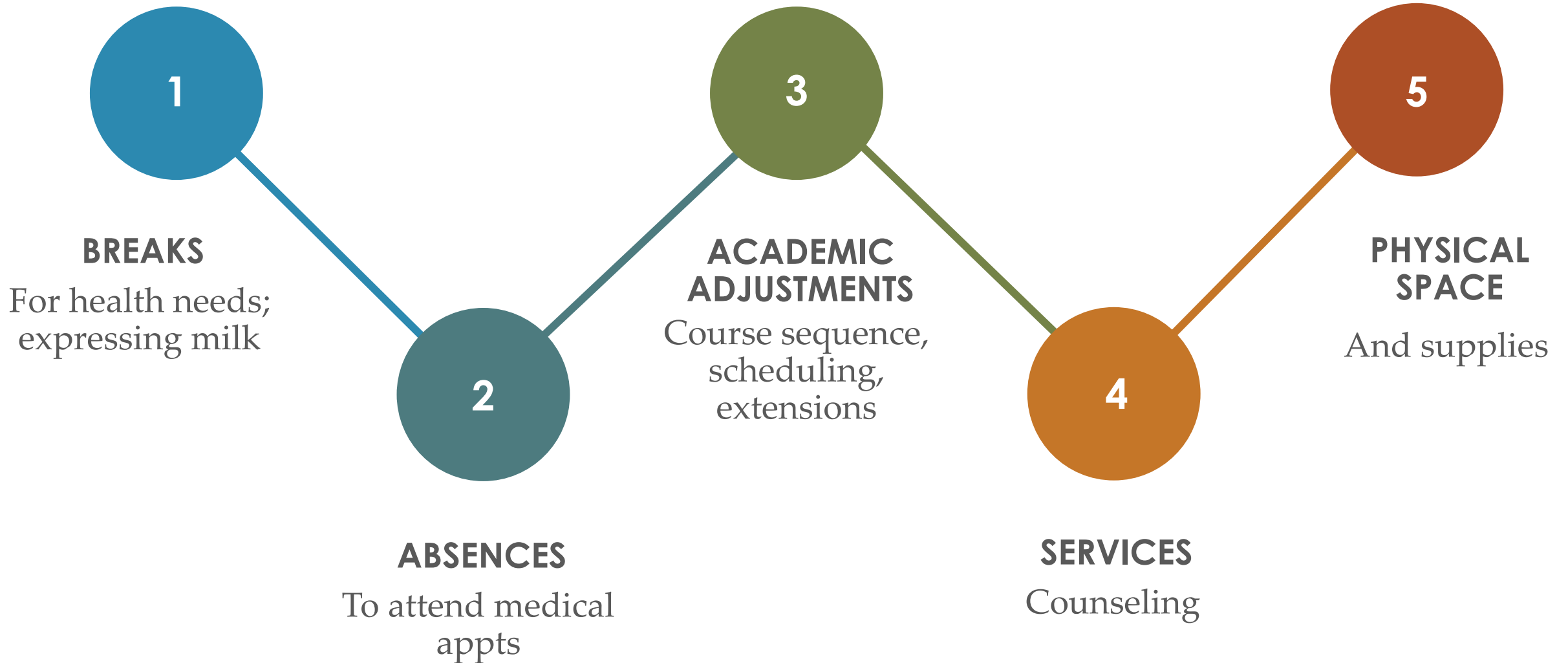
Get
feedback
from
students
with
experience

Coordinate with
accessibility
office

WHAT'S NEXT?

Anticipated changes once the 2022 Title IX proposed rules become final...one day...

PROPOSED REGULATIONS: MODIFY Non-Exhaustive



PROPOSED REGULATIONS: NOTIFY

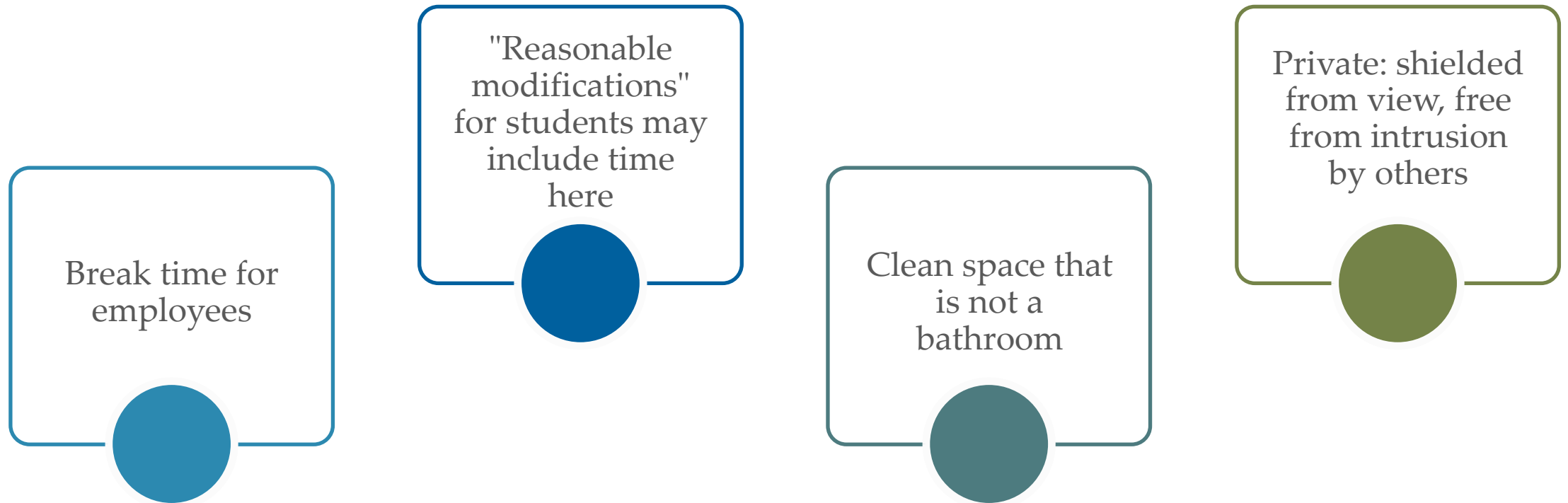
Let pregnant students know about the school's obligations:

- Prohibit sex discrimination, including sex-based harassment;
- Provide the student with the option of reasonable modifications;
- Allow access, on a voluntary basis, to any separate and comparable portion of the education program or activity;
- Allow a voluntary leave of absence;
- Ensure the availability of lactation space;
- Maintain grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination.



PROPOSED REGULATIONS: SPACE (& TIME)

For expressing breastmilk or breastfeeding as needed



WHAT ABOUT....



What about a space with
an outlet?



What if a student misses a
lot of class time?



Does this mean we have
to let babies go to class
or come to work?

OUTSTANDING QUESTIONS RE PROPOSED RULES

- Department of Education could address the overlap between existing laws
- Records maintenance requirements for these very private records; open records laws
- Do we want schools tracking who is or was pregnant? And if their status changes?

WHAT WOULD YOU DO IF...?

Scenario 1

Fatima is a senior in a very fast-moving BSN nursing program. She was elated to discover she is pregnant, but complications have developed, and she is undergoing tests. Fatima has completed most of her senior practical placement, only two weeks remain before she is able to graduate. Her medical provider has encouraged a change in diet and bed rest as soon as possible.

Fatima goes to the Clinical Site Coordinator (not an employee of the university but of the hospital, a university partner) to request the ability to complete her practical hours early (several days in a row to equal the remaining 4 days of required practical). Fatima's request is denied and the Site Coordinator shares that when she was in school, she had a miscarriage, took care of in the bathroom and "just soldiered on."

Further, the Site Coordinator contacts the Practical Coordinator at the university citing Fatima's unprofessional conduct in the situation and requests Fatima be removed and required to repeat the entire term.

Fatima, believing she has a right to 504 accommodations comes into the Accessibility Office and discloses her situation to be told that pregnancy is not a qualifying condition. Somehow, Fatima ends up at the Dean of Student Office. What might the Dean do to help?

WHAT WOULD YOU DO IF...?

Scenario 2

Jon, an average student in a challenging program, approaches his professor early in the semester and requests to have the ability to make up the next 3 class sessions because, he is happy to announce, he is “having a baby with his male partner.”

The professor laughs, asks Jon if he is pulling a prank on him, and is then is alleged to have replied: “Gay men don’t have babies” before he denies Jon’s request.

Jon immediately goes to the Chair of his program in engineering and is told by the Chair that the Chair cannot overrule the professor, who is “captain of his course’s ship.” The Chair also cites the request would be a fundamental alternation of the curriculum and he is concerned this change would be precedent setting.

Upset and disheartened, Jon goes to his academic advisor and requests a retroactive withdrawal from the course. Jon is willing to take the financial hit but is not going to miss the birth of his infant daughter. The advisor is irate and soon after Jon leaves, tells another colleague, who discourages any type of reporting because the professor in question is a “big deal” in the endowment world of the university. You get wind of this issue at a meeting regarding another issue within the same department.

SOME CASE REFERENCES

Troy University, AL OCR# 04-21-2060 (2023) Failure to engage and offer adjustments
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04212060-a.pdf>

Salt Lake Community College OCR# 08-22-2021 (2022) Policy and practices leading to forced drop
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08222021-b.pdf>

University of Maine at Fort Kent OCR# 01-17-2317 (2020) Policy, procedures and qualified personnel
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01172317-a.pdf>

Northeastern University OCR# 01-19-2158 (2019) Failure to provide adjustments
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01192158-a.pdf>

Rivertown School of Beauty OCR# 04-15-2363 (2019) Dismissal at 7 months based on pregnancy based on policy that violated Title IX
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04152363-a.pdf>

California State University East Bay OCR# 09-18-2245 (2017) Pregnancy related hospitalization
<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09182245-a.pdf>

Questions?



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