

Title IX and Education Institution Best Practices

Supporting Equal Access and Appropriate Accommodations



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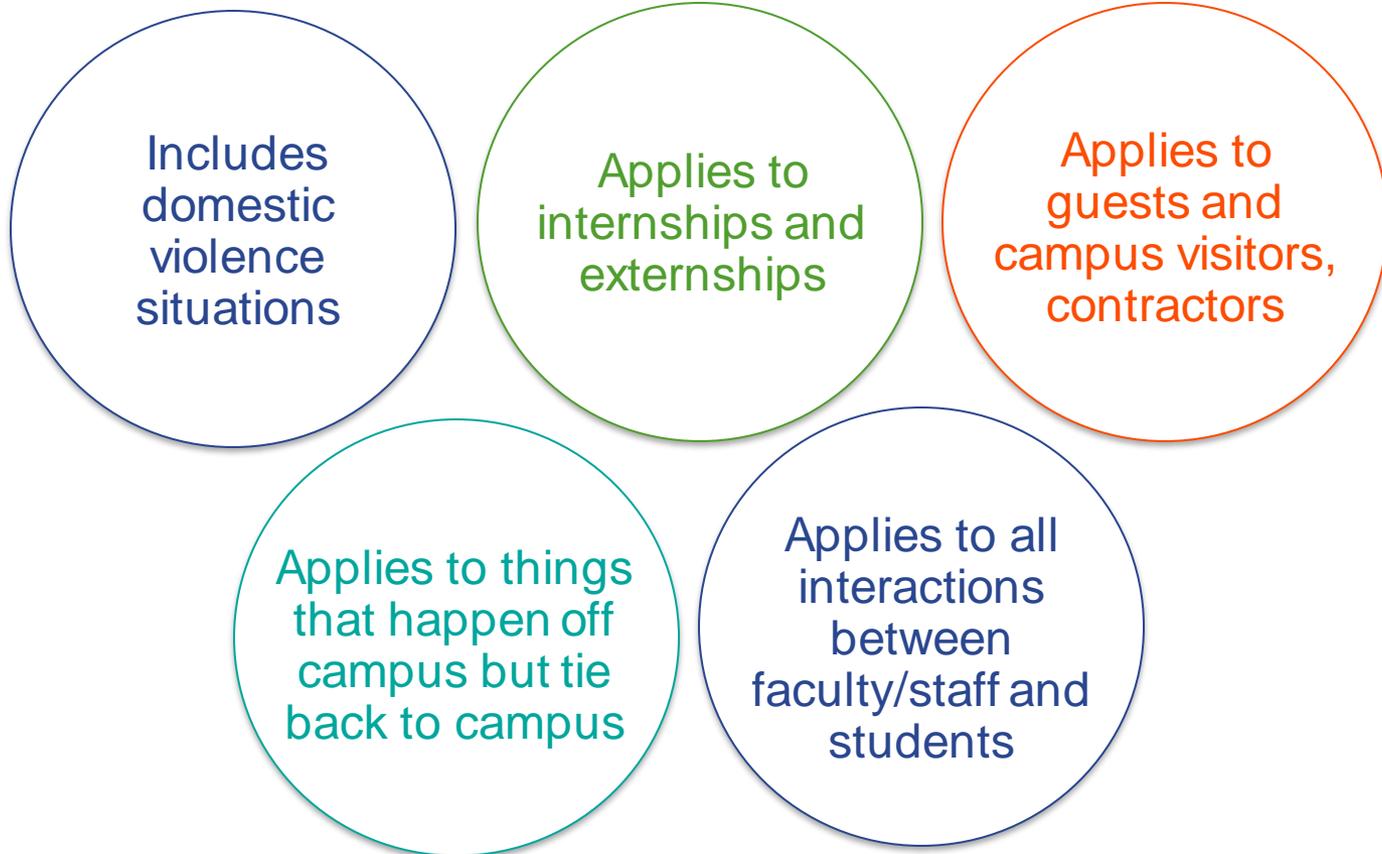
The background of the slide features a group of business professionals in silhouette, standing in a cityscape at sunset. The sun is low on the horizon, creating a warm, golden glow that silhouettes the people and buildings. The scene is reflected on a glossy surface below, creating a clear mirror image of the figures and the city skyline. The overall color palette is dominated by the warm tones of the sunset and the cool blues of the sky and reflections.

RECOGNIZING AND ADDRESSING TITLE IX ISSUES

- Title IX prohibits discrimination based on sex in any educational program receiving federal funding.
- Covers *all* programs at the educational institution.
- Covers students and employees.
- Note that some courts and agencies have read “sex” to include sexual orientation and gender identity.
- “Sex” also includes pregnancy.

- **Disparate Treatment:** Treating someone differently based on their sex.
 - Decision-maker was aware of the complainant's sex and took action *at least in part* based on sex.
 - Does not require bad motives on the part of the decision-maker.
- **Disparate Impact:** Applying a facially-neutral policy that has a different impact on one sex over the other.
 - Facially-neutral policy had a disproportionate adverse impact based on sex.
 - There was no substantial legitimate justification for the policy.
- **Retaliation:** Taking an action against someone because they made a complaint or participated in a Title IX investigation.
 - Complainant engaged in protected activity and the actor knew about it.
 - The actor subjected the complainant to adverse action because of the protected activity.

Title IX Requirements Overview



The U.S. Department of Education has proposed several changes to Title IX regulations:

- **Definition of sexual harassment:** Would change to “unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”
 - Narrows from “unwelcome conduct of a sexual nature”
- **Deliberate indifference standard:** Schools will be liable only if their response to sexual harassment is “clearly unreasonable in light of the known circumstances.”
 - Currently liable if the student is denied access to school programming or opportunities because of the harassment.
- **Mandatory reporters:** Would require colleges to investigate only those formal complaints made to an official with the ability to remedy the situation.
 - Currently, all college employees are mandatory reporters of sexual harassment and assault (except the chaplain and nurse).
 - Under current rules, colleges must investigate even complaints raised informally.

- **Presumption of innocence:** Investigations must presume the accused's innocence throughout the process.
 - There are no current presumptions built in to the regulations.

- **Access to evidence:** The accused and accuser must have equal access to all evidence in the investigation.
 - There are no formal requirements for access to evidence built in to the regulations.
 - Proposed rule includes a requirement that the accused (or their representative) be permitted to cross-examine the accuser.

- **Decision-making standard:** Schools may decide whether or not harassment occurred based on the “preponderance of the evidence” or “clear and convincing evidence” standards.
 - Schools are currently using a preponderance standard.
 - Under the new regulations, schools would only be permitted to use a preponderance standard if that is also used for non-sexual harassment code of conduct offenses that carry similar discipline options.

What's Your Responsibility?

Take **ALL** complaints or rumors of inappropriate behavior seriously.

Maintain confidentiality. Only discuss with those who have a **NEED** to know.

Document and aid with investigation after involving HR.

Follow up with all parties and maintain a compliant workplace.

Confidential Resources

Who Are They?

How are their
responsibilities
different?

**Chaplain
and
Nurse**

Informal Process

- What to do if you overhear something
- What to do if you hear a rumor
- What to do if a student comes to you





Everyone has the responsibility to report situations of misconduct and/or harassment

- Think critically through situations first
- Distinguish between what really needs to be reported and what doesn't
 - When is it attention-seeking?
 - When is someone just looking for guidance on interacting with someone?
 - When is it an academic issue rather than sexual harassment?

Scenario Poll

One of your students comes to you and reports that her friend was sexually assaulted but does not want to report. She names her friend. **Are you required to report?**



Scenario Poll

When you begin work at Aultman, a colleague warns you to watch out for another employee because he harasses people. **Are you required to report?**



Scenario Poll

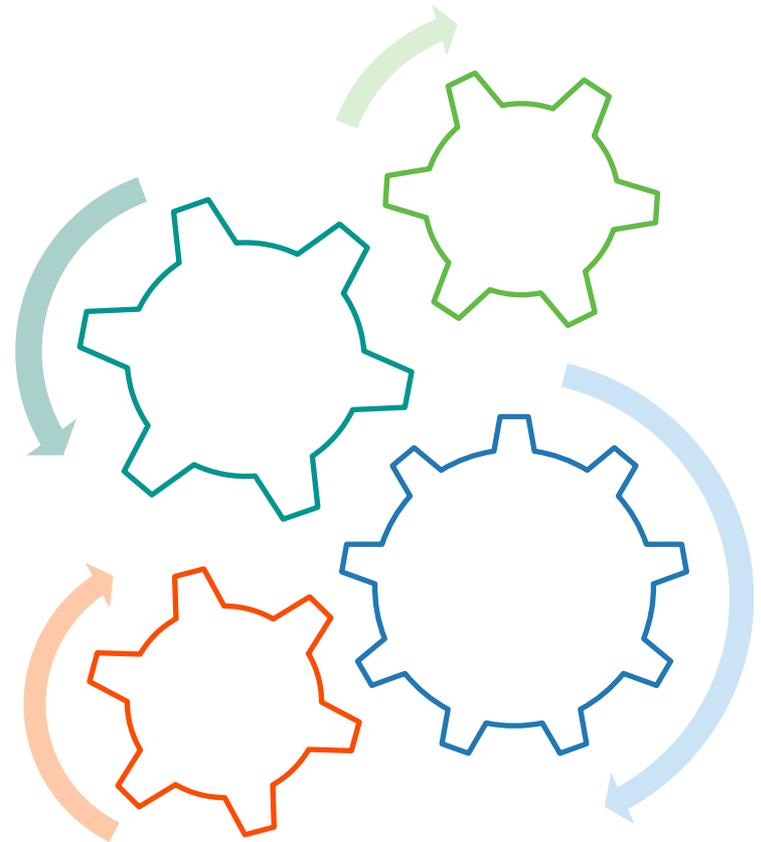
A female student reports to you that she feels uncomfortable because her study group has been discussing and debating recent state legislation regarding abortion.

Is this a Title IX issue?



Ohio has focused on five strategies for trauma informed response to sexual violence:

- Focus on data to guide action
- Empower campus constituencies to prevent and respond
- Encourage a culture of respect and responsibility
- Create a comprehensive response protocol
- Ensure your response is survivor-centered



If You are Accused...

1

Stay professional; remember your role as a leader!

2

Refer matter to the Title IX Compliance Officer

3

Cooperate in the investigation

4

Maintain confidentiality

Reporting Involving Minors

Avoid singling them out; same policies apply

Does anything need to be reported as suspected abuse?

Is there a need to report the incident to parents? When?

Update on Accommodations



**Disability
Accommodations**

**What is a
reasonable
accommodation?**

**Anything that enables the employee to
perform the essential functions of the job or
a student to access the curriculum**

**What is NOT a
reasonable
accommodation?**

**Elimination of an essential job function or
fundamental alteration to the program
Accommodations that cause undue
hardship to the employer**

Examples

**Accessible and usable facilities
Job restructuring
Flexible work/class schedules
Acquisition or modification of equipment
Qualified readers or interpreters**

Particular Issues for Clinical Programs

- Variability of practice settings
 - Wide range of possible placement settings can make it difficult to provide consistent accommodations.
 - Consider whether the student can be placed in a particular setting as an accommodation.
- Capabilities necessary to provide safe care
 - Beware of stereotyping capabilities based on the individual's disability.
 - There is not good data about specific levels of ability required to perform clinical job tasks, so rely on the individual's medical paperwork for limitations.
- Clinician and patient expectations
 - Be prepared to assist students with addressing supervisor and/or patient concerns about abilities.

Preparing for Accommodation Discussions

- Develop detailed standards (based on accreditation requirements, and professional and licensing requirements) for each program.
 - Standards should include hours requirements, skills requirements and professionalism/behavior expectations.
 - Articulate the purpose of the program.
 - Set forth how mastery of the skills and concepts will be measured.
- Communicate the standards to all applicants and students.
- Make sure you understand what accommodations are available.
- Make clear to students that certain accommodations may only be possible in the classroom, not clinical settings.
- Ensure clinical site supervisors are trained in the program's standards and in implementing reasonable accommodations.
- Document **ALL** accommodation discussions – what was requested, what options were discussed, what (if anything) was granted.

Scenario Poll

A student provides documentation that they have been diagnosed with an anxiety disorder. The student requests an accommodation of taking tests multiple times. **Is that a reasonable accommodation?**



Scenario Poll

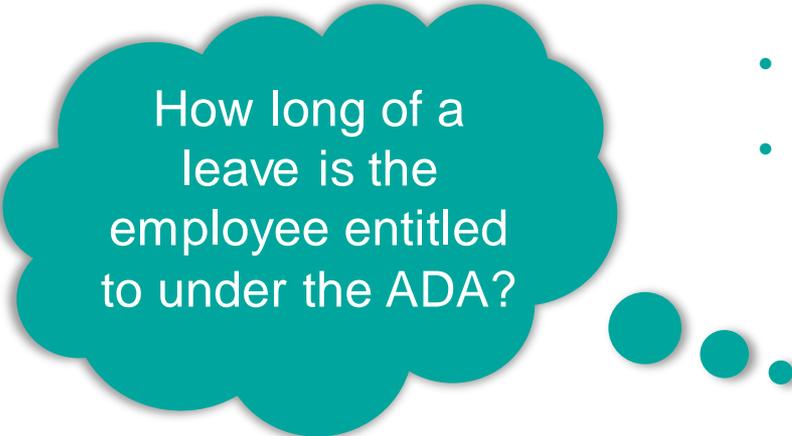
A social work student is in a wheelchair. After her first home visit to a client, she reports that there were steps to get into the home and requests that Aultman require the family to install a ramp to their front door.

Is that a reasonable accommodation?



Leave as a Reasonable Accommodation

- If employee is a qualified individual with a disability, and no other leave is available (i.e., company-provided leave, FMLA), treat request for leave as request for reasonable accommodation and start the interactive process
- Can deny unpaid leave if it would be an undue hardship
- Upon return from leave, may need to initiate interactive process again if employee has restrictions



How long of a leave is the employee entitled to under the ADA?

- No bright line test (Sorry!)
- Indefinite leave is not required
 - If request for leave appears open-ended, you may ask for further information from health care provider.

Absences as a Reasonable Accommodation

- Relaxing an attendance policy *may* be a reasonable accommodation for students.
- Consider whether:
 - There is classroom interaction between instructor and students, and/or among students.
 - Student contributions constitute a significant component of the learning process.
 - The fundamental nature of the course relies on student participation.
 - A student's failure to attend constitutes a significant loss to the educational experience of other students.
 - The course description and/or syllabus refer to regular attendance.
 - Grades are dependent on attendance.
 - There are classroom policies/practices regarding attendance.

Scenario Poll

A nursing student is undergoing chemotherapy treatments and requests having every Wednesday off for that purpose. **Is that a reasonable accommodation?**



Scenario Poll

A nursing student has IBS and needs to periodically miss class when the condition flares up. **Is that a reasonable accommodation?**



Scenario Poll

A nursing student has ADHD and requests permission to come in at 10 a.m. every day instead of 7 a.m. because he has a hard time waking up in the morning.
Is that a reasonable accommodation?



A pregnant woman in a dark blue business suit and a striped shirt is standing at a light-colored wooden desk. She is gently holding her belly with both hands. On the desk in front of her is an open laptop, a white coffee cup on a saucer, a smartphone, and several colorful sticky notes (yellow, pink, and blue). The background is a bright, modern office space with a white desk and a green plant.

Pregnancy Accommodations

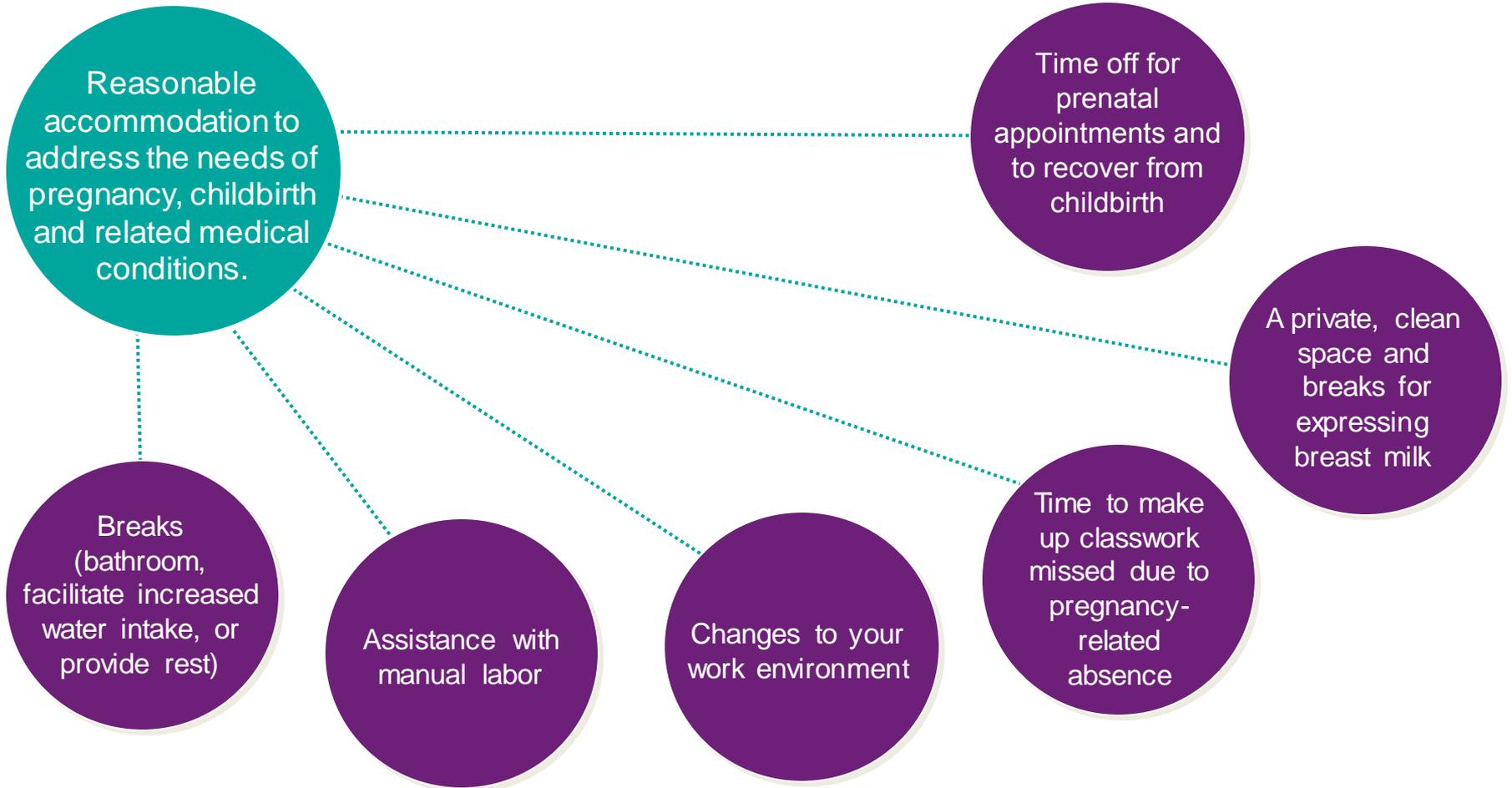
Pregnancy Discrimination



- Pregnancy Discrimination Act prohibits “sex discrimination on the basis of pregnancy.”
 - Covers discrimination "on the basis of pregnancy, childbirth, or related medical conditions.”
 - Applies to current and past pregnancies, potential and intention to become pregnant, and new fathers
- Title IX prohibits discrimination against a pregnant student based on her pregnancy status.
 - Institutions cannot deny participation based on pregnancy or pregnancy-related conditions.
 - After taking leave, women must be allowed to return to their programs with the same status they had pre-pregnancy.

Pregnancy-Related Medical Conditions

- Lactation and breastfeeding are considered conditions that schools and employers must accommodate to the same extent they accommodate other non-incapacitating conditions.
- Pregnancy-related conditions that may qualify someone as “disabled” under the ADA:
 - Carpal tunnel syndrome
 - Sciatica
 - Mandatory bed rest
 - Depression
 - Nausea
 - Painful swelling
 - Conditions that limit walking
- Light duty must be available to pregnant women to the same extent it is available to employees/students with other medical conditions.
- Any leave provided to bond with/care for the baby must be offered to both mothers and fathers.



Scenario Poll

A nursing student is pregnant and ordered onto bed rest, so she cannot complete clinical days. She asked to observe on clinical days rather than actively participate. **Is this a protected accommodation?**



Scenario Poll

A social work student is pregnant and ordered onto bed rest, so she cannot meet in person with clients. She asked to conduct sessions via video conference. **Is this a protected accommodation?**



Scenario Poll

A nursing student is pregnant and ordered onto bed rest the day before an exam. She asks to take the exam at home. **Is this a protected accommodation?**



Scenario Poll

A nursing student's wife gives birth on a day the student is supposed to be at his clinical assignment where they have a zero absence policy. The student misses the day of his child's birth and asks to make it up. **Is this a protected accommodation?**



Scenario Poll

A nursing student is pregnant and wants to limit exposure to communicable diseases. She requests being excused from work in the emergency room. **Is this a protected accommodation?**



Scenario Poll

A nursing student is pregnant and is working with cancer patients. She requests to transfer to another rotation during her pregnancy to avoid the risk of coming into contact with cancer treatment drugs. **Is this a protected accommodation?**



Questions

