

October 14, 2010

Via Facsimile (517) 335-4565 and U.S. Mail

Mr. Michael P. Flanagan
State Superintendent of Public Instruction
Michigan Department of Education
608 W. Allegan Street
P.O. Box 30008
Lansing, MI 48909

Re: Michigan Department of Education Guidelines on *Homebound and Hospitalized Services for Public School Students*

Dear Mr. Flanagan:

We write on behalf of the National Women's Law Center to urge the Michigan Department of Education (MDE) to revise its guidelines on homebound and hospitalized services for public school students, which conflict with Title IX, the federal law prohibiting sex discrimination in any program of a school that receives federal funds, and its implementing regulations. As a national leader on issues of Title IX compliance and gender equity, the National Women's Law Center seeks to ensure that pregnant and parenting students in Michigan receive equal opportunities and benefits in education, including the right to receive homebound or hospitalized instruction when recovering from childbirth.

Under Michigan state law, all school districts are required to provide homebound or hospitalized instructional services to students who are absent from school for 5 or more consecutive school days because of a medical condition. Mich. Comp. Laws. Ann. § 388.1709 (2010). As a matter of educational policy, this requirement is commendable because it helps to encourage students who are absent for an extended period to keep up with their work so they can stay engaged and remain on track. But it has come to our attention that MDE Guidelines expressly exclude pregnant and parenting students from homebound instructional services in violation of Title IX.¹ Specifically, MDE's guidelines on Homebound/Hospitalized Instruction Services, *Homebound and Hospitalized Services for Public School Students*, state:

¹ Title IX provides that “[n]o 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.” 20 U.S.C. § 1681(a). The Department of Education's guidelines also violate the Equal Protection Clause of the 14th Amendment to the U.S. Constitution as well as Art. II, § 1 of the Michigan state constitution.

A normal pregnancy and the period of time following a normal delivery are not considered medical conditions that require a pupil to be hospitalized or confined to the home and are not eligible for [homebound or hospitalized] services. Eligibility is based upon the receipt of a diagnosis from a physician identifying specific medical complications related to pregnancy or delivery that require hospitalization or confinement to the home for a period longer than five school days.²

In other words, the Michigan guidelines allow a school to consider a student who misses school because of a normal pregnancy and recovery from childbirth ineligible for homebound/hospitalized instruction services – clear violations of Title IX. The regulations implementing Title IX expressly state:

A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

34 C.F.R. § 106.40(b)(4).

MDE has a duty to ensure both that its own policies meet the requirements of federal law and that Michigan schools comply with Title IX and its regulations. *See* 34 C.F.R. § 106.40(b) (describing the responsibilities of funding recipients under Title IX with respect to pregnancy); *id.* § 106.2(i) (defining “recipient”). Moreover, the Michigan guidelines have encouraged local school districts to also violate Title IX by excluding pregnant and parenting students from essential services. In fact, we know of at least one school district in Michigan, the Bloomingdale Public School District, which does not provide homebound/hospitalized services for students who miss school due to recovery from childbirth. That district's practice, which follows the Michigan guidelines, also violates Title IX. The enclosed complaint to the U.S. Department of Education's Office for Civil Rights details the problems faced by pregnant and parenting students in that school district in part because homebound/hospitalized instruction services are not provided to these students.

Independent of applicable legal requirements, MDE and the educational community it serves would benefit from taking steps to encourage Michigan high schools to support pregnant and parenting students. A nationwide survey found that close to one-half of female dropouts said that becoming a parent played a role in their decisions to leave school, and 33% of female students said it was a *major* factor. Providing the support necessary for pregnant and parenting students to stay in school – including by offering homebound or hospitalized instruction where appropriate and where provided to other students who are temporarily unable to attend school – is an effective way to reduce the high school dropout rate in Michigan.

² Mich. Dep't of Educ., *Homebound and Hospitalized Services for Public School Students* (Nov. 2008), available at http://www.michigan.gov/documents/homebound_guidelines_2003_122778_7.pdf.

It is critical that MDE expeditiously address its discriminatory policies. We are sure you understand the urgency of addressing this matter given the harm suffered by students because of these policies and the recent commencement of another school year. Accordingly, we will contact you next Wednesday, October 20, 2010, to determine how MDE intends to proceed. Should you wish to contact us earlier, you can reach us at (202) 588-5180.

Sincerely,



Fatima Goss Graves
Vice President for Education and Employment



Lara S. Kaufmann
Senior Counsel

Enclosure