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Submitted via www.regulations.gov

Dr. Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Catherine E. Lhamon
Assistant Secretary, Office for Civil Rights
U.S. Department of Education
400 Maryland Ave SW
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Re: Docket ID ED–2021–OCR–0166, RIN 1870–AA16, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Dear Secretary Cardona and Assistant Secretary Lhamon:

We, the undersigned, are 75 current and former pregnant and parenting students who submit this comment to the Department of Education (“the Department”) in response to the notice for proposed rulemaking for Title IX of the Education Amendments Act of 1972 (Title IX).

Some of us became pregnant or a parent while in middle school or high school, while some of us were pregnant or parenting while pursuing undergraduate or postgraduate degrees. While some gave birth and decided to parent, many of our pregnancies were not brought to term. We have different cultural, racial, gender, and economic backgrounds, different sexual orientations, and live in different states.

What we all share, is a strong desire for the Department of Education to strengthen civil rights protections for all pregnant and parenting students.

We should not have to choose between our health, the health and wellbeing of our children, and our education. We appreciate that the Department of Education, for the first time since 1975, is proposing new regulations for pregnant and parenting students. At the same time, we note that the Department’s proposed changes do not reach far enough to protect against sex discrimination in school.

To that end, we are pleased to submit this comment, which includes personal anecdotes of some of our experiences in school. For our safety and privacy, we have kept most of these stories anonymous but hope they inform the final Title IX regulations regarding pregnant and parenting students.

1. Title IX Should Protect All Students From Discrimination and Harassment Based on Pregnancy, Related Medical Conditions, Parenting, and Caregiving status.

We know that becoming pregnant or a parent can lead to severe discrimination. Rather than providing us with the support we need to continue our education, educators and classmates often

punish or harass us. From “nasty comments”¹ from our peers that made us feel “judged and not accepted,”² to school employees making some of us feel as if we are “unrespectable,” pregnancy stigma and bias can limit our access to equal education or push us out of the classroom altogether.

As one former pregnant high school student from Colorado noted:

“I was so excited to tell my favorite teacher about my pregnancy and she said ‘you’re making the biggest mistake of your life. You’re too smart to be pregnant. Do you want me to help you look in to abortion clinics or adoption options?’ It was very discouraging and she really tried to convince me to terminate my pregnancy.”

Sometimes we are caught in a double-bind. On the one hand, we have limited access to reproductive health care options—and less access every day. On the other hand, if we become pregnant and decide to parent, we are harassed by an unsupportive school community. As a former pregnant student in California succinctly explained, “I was punished for becoming pregnant, forced to continue the pregnancy and keep the baby[,] then punished further for being a student and parent.”

Likewise, discrimination and harassment does not end following the birth of our children. Parenting and caregiving students also experience discrimination and other barriers to equal educational opportunities.

For these reasons, we offer the following comments on the Title IX rules regarding discrimination and harassment:

- We support the proposed rule prohibiting schools from discriminating against any “person” (including students, trainees and employees) based on “current, potential, or past” pregnancy or related conditions³ and urge the Department to include “perceived” and “expected” pregnancy or related conditions to the list;
- We support the proposed rule adding “lactation” as a pregnancy related medical condition.⁴ We ask the Department to clarify that childbirth, lactation and termination of pregnancy is a non-exhaustive list of “pregnancy or related conditions;”⁵
- We urge the Department to state that schools may not discriminate based on a person’s “current, potential, *perceived*, *expected*, or past parental, family, marital, or *caregiver* status;”

¹ A former pregnant high school student from North Carolina disclosed receiving nasty comments from classmates throughout her pregnancy.

² A current pregnant student in Colorado remarked, “it was difficult showing up during my first trimester because I felt judged and not accepted.”

³ 87 Fed. Reg. at 41568 (proposed 34 C.F.R. § 106.2) (“pregnancy or related conditions”), 41571 (proposed 34 C.F.R. §§ 106.21(c)(2)(ii), 106.40(b)(1)), 41579 (proposed 34 C.F.R. § 106.57(b)).

⁴ 87 Fed. Reg. at 41568 (proposed 34 C.F.R. § 106.2) (“pregnancy or related conditions”).

⁵ The term “pregnancy-related conditions” also includes mental and physical conditions including, but not limited to gestational diabetes, preeclampsia, mastitis, hyperemesis gravidarum (“morning sickness”), fatigue, dehydration, and postpartum depression

- We support the proposed rules stating that schools must address harassment based on pregnancy or related conditions as a form of sex-based harassment⁶ and urge the Department to include harassment based on parental, family, caregiver, or marital status as a type of sex-based harassment; and
- We ask the Department to instruct schools on how to protect student privacy to ensure that school records related to pregnancy discrimination and pregnancy-based harassment are not used to support prosecutions in states where abortion and other reproductive healthcare is criminalized.

2. Title IX Must Prohibit Schools From Forcing Pregnant and Parenting Students to Attend Alternate Programs.

Rather than offer support to help us continue our education, when educators or counselors learn of our pregnancy or parental status, we are often pressured to attend an alternate school of lower quality and fewer options for courses and extracurricular activities, or forced to withdraw from our educational program or activity altogether. For example, one high school student in Georgia was encouraged by administrators to sit out of most extracurricular activities and to not participate in school functions.

For some, particularly those of us who were pregnant as teenagers, decisions about our education were made without our input. For example, another former high school student from Georgia recalled,

“I was removed from everything and denied summer school. I was told in my senior year that I had to attend day school and night school in order to graduate with my class due to not completing my 11th grade year. Decisions were made and I was told what to do. No one ever asked nor gave me options. I was kicked out of the beta club and the debate team, no warning.”

Another former pregnant and parenting student from California explained:

“When it was found out that I was pregnant I was immediately enrolled into independent study. I was told it was for my safety being pregnant that I had to be taken out of general education. No one told me my options[;] it was all decided for me. After having my baby I was placed into continuation school[.] [I]t was never explained to me why I couldn’t go back to a regular high school...It was later...at the [alternate] program graduation that I learned I could’ve c[o]me to any public school and rejoined the program.”

It is important to note that while some of us have been pushed to alternate education programs of inferior quality, others voluntarily attended supportive institutions specifically designed with pregnant and parenting students in mind. Rather than enrolling in night school with limited course options, some of us attend or have attended schools for pregnant and parenting students that provide holistic, on-campus services needed to balance our health, child care responsibilities, and

⁶ 87 Fed. Reg. at 41572 (proposed 34 C.F.R. §§ 106.40(b)(3)(i)(F)).

our education. This distinction is important because tailored educational programs motivated some of us to recommit to our studies. As a parenting student in Colorado recalled, “I was so discouraged, I dropped out but when I heard about [the school for pregnant and parenting students], I was so happy to find out that there were other girls in my situation and understanding teachers that would be accepting of me and my baby and actually be supportive.”

Therefore,

- We support the proposed rule allowing students who are pregnant or have a related condition to participate ‘voluntarily’ in a separate portion of their school’s program or activity;⁷ and
- We urge the Department to explicitly prohibit schools from requiring pregnant and parenting⁸ students to participate in separate programs and to specify that such programs must be substantially equal “in purpose, scope, and quality” to those offered to students who are not pregnant, have a related condition, or are parenting.

3. Title IX Must Require Schools to Train Employees on the Rights of Pregnant and Parenting Students.

Despite Title IX’s long history of prohibiting sex discrimination against pregnant and parenting students, many employees at educational institutions and many pregnant and parenting students are not aware of these civil rights. For example, 10 former pregnant and parenting students, from a variety of states (CA, GA, NC, NY, SC, NM, CO, and TX) all disclosed that they were never told about the rights of pregnant and parenting students under Title IX. As a former pregnant high school student from California noted,

“I had a few supportive teachers that bent the rules for me to graduate on time[,] however on the greater scale of this...the education system stood against me. I missed out on a lot [of] my high school years and that breaks my heart knowing now (12 years later) it didn’t have to be like that.”

Therefore,

- We support the Department’s proposal to explicitly require recipients to train employees, including Title IX Coordinators, of their obligations to pregnant and parenting students;⁹ and
- We urge the Department to require recipients to specifically state in their published notice of nondiscrimination¹⁰ that sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation,

⁷ 87 Fed. Reg. at 41571 (proposed 34 C.F.R. § 106.40(b)(1)).

⁸ The proposed rule only mentions pregnancy and related conditions despite the reality that parenting students are also pushed into inferior alternative programs.

⁹ 87 Fed. Reg. at 41570 (proposed 34 C.F.R. §106.8(d))

¹⁰ 87 Fed. Reg. at 41570 (proposed 34 C.F.R. §106.8(c))

gender identity, and parental, family, caregiver, or marital status. These additions should be in the notice because students may not know all that “sex discrimination” covers.

4. Title IX Must Require Schools to Excuse Medically Necessary Absences.

Punitive attendance policies push pregnant and parenting students out of school by punishing us for missing class for medical appointments, childbirth and recovery, when our children are ill, or if child care arrangements fall through.

For example, a graduate student was given a failing grade because she was in the hospital recovering from a miscarriage during her final exams.

Similarly, a nursing student from South Carolina explained

“When I tried to make a plan for childbirth recovery I was told the school would just wait to cross that bridge when we get to it. So then they contacted me right after I delivered. Days after giving birth I was told I needed to come back and take exams and clinicals. I couldn’t take the time my doctor recommended. I had just gotten out of the hospital and could barely think straight but here I was having to choose between my degree and my health.”

Because we are often denied an opportunity to make up for missed work or exams, we feel pressured to return to school before we are physically capable or to have our academic schedule dictate our health decisions. For example, some of us have induced labor to avoid missing classes. Likewise, a postdoctoral trainee recalled that her supervising professor “visited [her] at the hospital” and asked if she could return in two to three weeks. She didn’t feel like she could say no, so she returned to campus. “[The] [a]dministration actually had me get a release from my doctor because I came back in 4 weeks after a C-section birth with many complications,” she recalled.

Parenting and caregiving students are also forced to choose between their families and education. Many high schools and colleges lack on campus child care, child-friendly housing, parenting student support services, or other indicators of a family-friendly environment. For example, since the pandemic, at least a dozen of us college student parents were denied time off from school to take care of a child who was sick with COVID-19.

Another parenting college student from South Carolina noted that her child was in a terrible car accident and was hospitalized for 3 months. Her school told her she had no rights and was not allowed to make up an exam. As a result, she failed the class and had to leave her program. When she asked what her options were, an administrator replied “find another school.” She is a non-traditional student because her son is disabled, and notes that she “still deserve[s] a chance.”

Therefore,

- We support the proposed rule requiring schools to allow students who are pregnant or have a related condition to take a voluntary leave of absence for as long as deemed medically necessary and to reinstate students when they return to their prior academic

status;

- We support the proposed change allowing any healthcare provider (not just a physician) to determine how much leave is medically necessary.
- We urge the Department to make medically necessary absences available to *parenting and caregiving* students for as long as they need to care for a birthing parent in recovery, or a minor child or disabled adult who is sick.

5. Title IX Must Increase Pregnant and Parenting Students' Access to Reasonable Supports, Including Functional Lactation Spaces.

While schools often mistake requests for support as frivolous or too burdensome, they are, in fact, reasonable and necessary for us to remain in school. Many of us were denied necessary accommodations or were never told we could request such support. A former pregnant high school student from Georgia shared,

"I asked for a larger desk when I began to show because I could not fit. I was placed on the side of the teacher's desk in front of the class but only in Science. The office declined but my teacher helped me because she was also pregnant at the time. When I got to 5 months it was harder to focus and stay awake but I had the same time of completion as the rest of the class for work."

Lactation accommodations are also necessary to guarantee equal education access. A former breastfeeding young mother from Georgia recalled "the school was not prepared and often made makeshift accommodations when I needed to express milk. Struggles such as those are enough to make a parent want to quit." Similarly, a Colorado college student was delayed in obtaining her degree because she was denied lactation breaks and was incorrectly told Title IX does not require schools to provide a lactation space.

Even in states where this right is recognized, access to functional lactation spaces varies from school to school. For example, a former lactating high school from North Carolina recalled that when she attended a predominately white institution, she was allowed to pump milk whenever she needed, but when she attended a high school with fewer resources, she was denied lactation breaks. This caused her to stop producing milk.

Additionally, several of those of us who are college student parents were harassed and denied permission to turn off our camera to tend to lactation needs during virtual classes.¹¹ Pumping breastmilk can take 15 to 40 minutes and requires specialized equipment and supplies. A lack of accommodations frustrates our ability to provide nutrition for our children, especially as the formula shortage rages on. As a parenting college student from California noted "It is so important to me to breastfeed my daughter because I give her the vitamins and nutrients she needs...Breastfeeding is and was the only plan I ever had for my baby."¹²

Therefore,

¹¹ See, e.g. Jessica Lee, *Pregnant Scholar Profiles: Marcella Mares*, *The Pregnant Scholar* (Nov. 13, 2020), <https://thepregnantscholar.org/profiles-marcella-mares/>

¹² *Id.*

- We support the Department's proposal to require schools to provide pregnant students reasonable modifications to help us remain in our education program or activity;
- We ask the Department to clarify that parenting and caregiving students (not just students who are pregnant or have a related condition) have an affirmative right to reasonable modifications;
- We ask the Department to add more specific examples of modifications for pregnant and parenting students including accessible parking; academic counseling, homework assistance to address medically necessary absences, referral to child care or preschool options, a case manager, and assistance in accessing social assistance programs (e.g., public health care, nutrition assistance);
- We support the proposed rule requiring schools to give lactating students and workers reasonable breaks and a clean, private non-bathroom space for expressing breastmilk or feedings;
- We urge the Department to clarify that lactation spaces must be in reasonable proximity to our place of study, include a flat surface and a chair, and access to an electrical outlet. There should also be nearby access to running water and a refrigerator in which we can store expressed milk; and
- We urge the Department to explicitly state that students and workers still have a right to express milk or breastfeed in places other than designated lactation spaces, if we wish. This language gives us agency and challenges outdated messages that it is shameful or indecent to express breastmilk in public.

Thank you,

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