

May 9, 2013

MEMORANDUM

To: CUNY Faculty and Staff

From: Frederick P. Schaffer 
General Counsel & Senior Vice Chancellor for Legal Affairs

Re: Non-Discrimination of Students on the Basis of Pregnancy, Childbirth and
Related Conditions

This memorandum is being sent to inform and remind the University community of the University's obligations not to discriminate against students on the basis of pregnancy, childbirth and related conditions.

The University's Policy on Equal Opportunity and Non-Discrimination makes clear that CUNY does not discriminate against persons on the basis of sex in its educational programs and activities. The legal prohibition against sex discrimination in education comes from, among other places, Title IX of the Education Amendments Act of 1972 ("Title IX"). Title IX prohibits discrimination on the basis of sex—including pregnancy and related conditions—in educational programs and activities that are eligible for federal funding.

Attached is a copy of U.S. Department of Education regulations 34 C.F.R. § 106.40(b) concerning pregnancy and related conditions. The regulations provide, in pertinent part, that a college that is a recipient of federal funding shall not discriminate against any student on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom. Specifically, educational institutions such as CUNY that are covered by Title IX must treat these conditions 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. In the event that the educational institution does not maintain a leave policy for its students, or in the event that a student does not otherwise qualify for leave under the policy, the institution is required to treat such condition as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

This means that CUNY must give all students who might be, are, or have been pregnant the same access to school programs and educational opportunities that other students have. Absences due to medical conditions relating to pregnancy must be excused for as long as medically necessary and the students must be given the opportunity to make up missed work, with the goal of having the student graduate on time, if possible and if desired by the student. Professors and administrators should not tell students that they have to drop out of their classes or programs or change their educational plans due to their pregnancies or related conditions. And CUNY cannot terminate or reduce athletic, merit or need-based scholarships based on pregnancy. These rules supersede any school- or instructor-based attendance or other policies regarding allowable numbers of absences or ability to make up missed school work.

In light of this legal requirement, it is critical that faculty and staff who deal with students are knowledgeable about their obligations to students in this situation. In addition, the colleges should include the following in their student handbooks and websites:

[Insert College] does not discriminate against any student on the basis of pregnancy or related conditions. Absences due to medical conditions relating to pregnancy will be excused for as long as deemed medically necessary by a student's doctor and students will be given the opportunity to make up missed work. Students needing assistance can seek accommodations from the Office of Accessibility [Insert contact information] or Title IX Coordinator [Insert name and contact information].

For more information regarding Title IX's prohibition against discrimination based on pregnancy and related conditions, you can access materials from the National Women's Law Center at www.nwlc.org/pregnantandparentingstudents.

c: Chancellor
Cabinet
Presidents
Chief Academic Officers
Dean Jennifer Rubain
Kam Wong, University Title IX Coordinator
Chief Student Affairs Officers
Recruitment & Diversity Coordinators
Title IX Coordinators
Legal Affairs Designees

§ 106.40 Marital or parental status.

(a) *Status generally.* 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.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program 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.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) 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.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]