

West Virginia University at Parkersburg Board of Governors

**POLICY A-63
RIGHTS OF PREGNANT AND NURSING MOTHERS**

Section 1. General

- 1.1 Purpose. - To establish West Virginia University at Parkersburg Board of Governors' policy regarding the rights of pregnant and nursing mothers who are employees or students of WVU Parkersburg.
- 1.2 Authority. - [W.Va. Code § 18B-1-6](#)
- 1.3 Scope. - This policy applies to all members of the West Virginia University at Parkersburg campus community.
- 2.4 Effective Date. – April 25, 2017

Section 2. Introduction

As set forth in [Policy A-34, Equal Opportunity, Affirmative Action and Nondiscrimination](#), West Virginia University at Parkersburg is committed as an employer and an educational institution to creating and maintaining a community where all individuals enjoy freedom from discrimination, including discrimination on the basis of sex. Sex discrimination, which can include discrimination based on pregnancy, marital status, or parental status, is prohibited and illegal in admissions, educational programs and activities, hiring, leave policies, employment policies, and health insurance coverage. WVU at Parkersburg hereby establishes the following guidelines for ensuring the protection and equal treatment of pregnant individuals, persons with pregnancy-related conditions, and new mothers.

Section 3. Pregnancy

3.1 Students

- 3.1.1. Under the U.S. Department of Education's (DOEd) regulations for implementing Title IX of the Education Amendments of 1972 (Title IX), an institution that receives federal funding "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." According to the DOEd, appropriate treatment of a pregnant student includes granting the student leave "for so long a period of time as is deemed medically necessary by the student's physician," and then effectively reinstating the student to the same status as was held when the leave began. This federal regulation supersedes any college- or instructor-based attendance or other policies regarding allowable numbers of absences or ability to make up missed school work.
- 3.1.2. To the extent possible, WVUP will take reasonable steps to ensure that pregnant students who take a leave of absence or medical leave return to the same position of academic progress that they were in when they took leave, including access to the same course catalog that was in place for that student when the leave began. Appropriate methods for accommodating pregnancy-related absences or leaves may include extended deadlines, make-up assignments (such as papers, quizzes, tests, and

presentations), tutoring, independent study, online course completion options, and incomplete grades that can be completed at a later date, in addition to any other ergonomic and assistive supports typically provided by Disability Services.

- 3.1.3 The Title IX Coordinator may designate the Director of Disability Services to receive requests for accommodations from students related to medical leave and/or temporary disabilities associated with pregnancy and related conditions. On the basis of medical documentation provided by the student's physician faculty members will be notified regarding reasonable accommodations authorized for the student. The Title IX Coordinator has the authority to determine that such accommodations are necessary and appropriate under Title IX, and to advise faculty members or others, as necessary.
- 3.1.4 Every effort will be made to devise alternative paths to completion, when possible, in situations such as clinical rotations, performances, labs, and group work. In progressive curricular and/or cohort-model programs, medically necessary leaves are sufficient cause to permit the student to shift course order, substitute similar courses, or join a subsequent cohort when returning from leave. WVUP faculty, staff, or other employees will not require a student to limit her studies as the result of pregnancy or pregnancy-related conditions. Pregnant students cannot be channeled into alternative programs against their wishes.
- 3.1.5 No artificial deadlines or time limitations will be imposed on requests for accommodations; however, WVUP is limited in its ability to impact or implement accommodations retroactively. Reasonable accommodations may include, but are not limited to:
 - a. Accommodations requested by the pregnant student to protect the health and safety of the student and/or the pregnancy (such as allowing the student to maintain a safe distance from hazardous substances);
 - b. Modifications to the physical environment (such as accessible seating);
 - c. Extending deadlines and/or allowing the student to make up tests or assignments missed for pregnancy-related absences;
 - d. Providing remote learning options;
 - e. Excusing medically-necessary absences (irrespective of classroom attendance requirements set by a faculty member, a division or otherwise established by the institution);
 - f. Granting leave or implementing incomplete grades for classes that will be resumed at a future date.

Modification to the essential elements of any academic program are not required by these guidelines.

- 3.1.6 Students are encouraged to work with their advisors, faculty members and WVUP's support systems to devise a plan for how to best address the conditions as pregnancy progresses, anticipate the need for absences and leaves, minimize the academic impact of their absences and get back on track as efficiently and comfortably as possible. The Title IX Coordinator will assist with plan development and implementation as needed.
- 3.1.7 Administrative responsibility lies with the Title IX Coordinator, who will maintain all appropriate documentation related to accommodations. Information about pregnant students' requests for accommodations will be shared with other faculty and staff only to the extent necessary in order to provide the reasonable accommodation. Faculty and staff will regard all information associated with such requests as private and will not disclose this information unless necessary.

3.2 Employees

- 3.2.1 Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under the [Pregnancy Discrimination Act](#) (PDA), an amendment to Title VII of the Civil Rights Act of 1964. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees who are similar in their ability or inability to work. The PDA forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, pay, job assignments, promotions, layoffs, training, fringe benefits, firing, and any other term or condition of employment.
- 3.2.2 Supervisors may not single out pregnancy-related conditions for medical clearance procedures that are not required of employees who are similar in their ability or inability to work pursuant to Policy B-24, [Employee Leave](#), Section 5.8.
- 3.2.3 Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy related condition and recovers, she will not be required to remain on leave until the baby's birth. No predetermined length of leave time may be established by an administrator or supervisor for an employee to take leave after childbirth. WVUP will hold open a job for a pregnancy-related absence the same length of time that jobs are held open for employees on sick or temporary disability leave.
- 3.2.4 Under the [Family and Medical Leave Act \(FMLA\) of 1993](#), enforced by the U.S. Department of Labor, a new parent (including foster and adoptive parents) may be eligible for 12 weeks of leave (unpaid, or paid if the employee has earned or accrued it) that may be used for care of the new child. To be eligible, the employee must have worked for WVUP for 12 months prior to taking the leave. [Institutional procedures](#) shall further define details regarding FMLA leave.
- 3.2.5 If an employee is temporarily unable to perform her job due to pregnancy, she will be treated the same as any other temporarily disabled employee; for example, by providing light duty, modified tasks, alternative assignments, disability leave, or leave without pay. Additionally, impairments resulting from pregnancy (for example, gestational diabetes) may be disabilities under the Americans with Disabilities Act (ADA). An employee will be entitled to a reasonable accommodation for a disability related to pregnancy, absent undue hardship (significant difficulty or expense).
- 3.2.6 Employees on medical leave for pregnancy related conditions will have equal access to benefits provided to employees on medical leave. Expenses for pregnancy related conditions will be covered by health insurance and be reimbursed in the same manner as for other medical conditions according to the PDA. Employees with pregnancy related disabilities will be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases, and temporary disability benefits.

Section 4. Nursing Mothers

4.1 Support

- 4.1.1 In recognition of the documented health advantages of breastfeeding for infants and mothers, WVU at Parkersburg provides a supportive environment to enable any employee or student mother to express milk during their time on campus. In addition, pursuant to [W.Va. Code § 16-1-19](#), a mother has the right to "breast feed a child in any location open to the public." All faculty, staff and administrators will assist in providing a positive atmosphere of support for breastfeeding employees and students.

- 4.1.2 According to the Patient Protection and Affordable Care Act, which amended Section 7 of the [Fair Labor Standards Act](#) (FLSA) in 2010, supervisors must “provide a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk.” Employees are allowed to breastfeed or express milk during work hours using their normal breaks and meal times. For time that may be needed beyond the usual break times, nonexempt employees may make up the time with a flexible schedule arranged between the employee and supervisor or use annual leave time.

4.2 Facilities

- 4.2.1 The FLSA requires employers to “provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.” At WVUP, a private room that is not a toilet stall or restroom shall be made available as needs arise for any employee or student mother to express milk. Such room will be private and sanitary, located near a sink with running water for washing hands and rinsing out breast pump parts, and have an electrical outlet.
- 4.2.2 Although not required by law to create a permanent dedicated space for use by nursing mothers, WVUP may choose to establish one or more dedicated lactation lounge(s) to be available exclusively to lactating employees and students during the hours the campus is open. Such a space must meet the minimum requirements specified in Section 4.2.1. The designation of any dedicated space and the procedures for its access and use shall be communicated to all employees and students.
- 4.2.3 Employees may breastfeed or express milk in their own private offices if they prefer or in other comfortable locations agreed upon in consultation with the employee’s supervisor.

Section 5. Harassment and Retaliation

- 5.1 Harassment of any member of the WVUP community based on sex, including pregnancy or related conditions and parental status, is prohibited.
- 5.2 Faculty, staff, and other WVUP employees are prohibited from interfering with an employee’s or student’s right to take leave, seek reasonable accommodation, or otherwise exercise their rights under the institution’s nondiscrimination policy.
- 5.3 Faculty, staff, and other WVUP employees are prohibited from retaliating against an employee or student, including imposing or threatening to impose negative educational or employment outcomes because a student or employee requests leave or accommodation, files a complaint, participates in a complaint investigation, or otherwise exercises their rights under the institution’s nondiscrimination policy.
- 5.4 [Policy B-62, Mandatory Reporters](#), establishes that any employee of WVUP who receives a report of discrimination on the basis of sex (which includes pregnancy or related conditions) is responsible for promptly forwarding such report to the Social Justice Officer/Title IX Coordinator.
- 5.5 All allegations of harassment, discrimination or retaliation will be investigated and handled promptly and equitably under the supervision of the institution’s Social Justice Officer/Title IX Coordinator.

Section 6. Complaints

6.1 Complaints of discrimination, harassment or retaliation may be filed with West Virginia University at Parkersburg:

Social Justice Officer/Title IX Coordinator, Room 1010
West Virginia University at Parkersburg
300 Campus Drive
Parkersburg, WV 26104
E-mail: Social.Justice@wvup.edu
Telephone: (304) 424-8201
FAX: (304) 424-8302

6.2 Complaints may also be filed (under Title IX) with the U.S. Department of Education, Office for Civil Rights:

Office for Civil Rights
U.S. Department of Education
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541
FAX: 215-656-8605; TDD: 877-521-2172
Email: OCR_Philadelphia@ed.gov
Website: www2.ed.gov/about/offices/list/ocr/index.html

6.3 Employees may also file complaints (under Title VII or other employment laws) with the U.S. Equal Employment Opportunity Commission:

United States Equal Employment Opportunity Commission
801 Market Street, Suite 1300
Philadelphia, PA 19107-3127
Telephone: 866-408-8075
Fax: 215-440-2606
TTY: 800-669-6820
Website: www.eeoc.gov/