



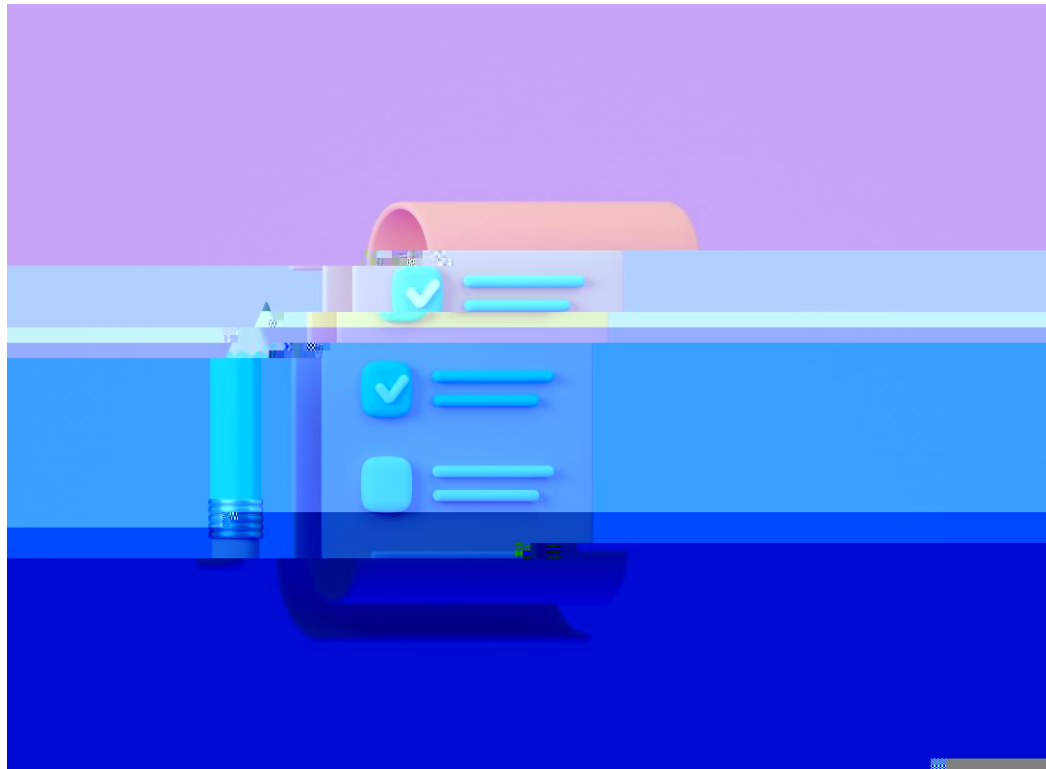
# Complying with the Title IX Requirements Regarding Pregnancy, Parenting, and Lactation

Beth Devonshire

Wentworth Institute of Technology

# Agenda

COMPLIANCE



Current Regulations and  
Resolution Agreements  
Post-Dobbs Guidance and

# Current Regulations and Resolution Agreements



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# Where We are Now

34 CFR § 160

Students

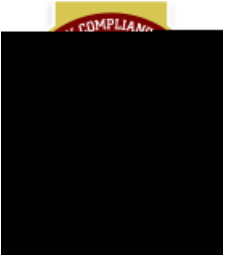
Employees

Salt Lake City Community College

# STUDENTS



# 34 CFR § 106.21(c): Admission and Recruitment



Prohibition relating to marital or parental status . . .

- Cannot treat differently

- Cannot discriminate or exclude

- Cannot treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery differently

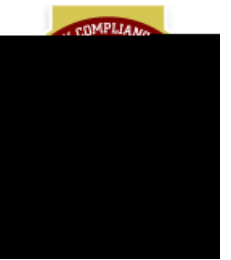
- Cannot make pre-admission inquiries

# 34 CFR § 106.39: Health and Insurance Benefits

COMPLIANCE

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

# 34 CFR § 106.40: Marital or Parental Status



- (a) 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.



## 34 CFR § 106.40(b)(1): Pregnancy and Related Conditions

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.

## 34 CFR § 106.40(b)(2): Pregnancy and Related Conditions

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.

## 34 CFR § 106.40(b)(3): Pregnancy and Related Conditions

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.

## 34 CFR § 106.40(b)(4): Pregnancy and Related Conditions

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 CFR § 106.40(b)(5): Pregnancy and Related Conditions

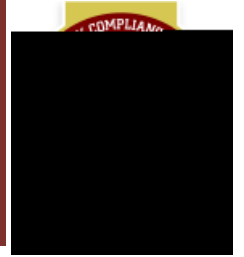
In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification 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.

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# EMPLOYEES



# 34 CFR § 106.57: Marital or Parental Status



A recipient shall not apply any policy or take any employment action:

- (1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or
- (2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

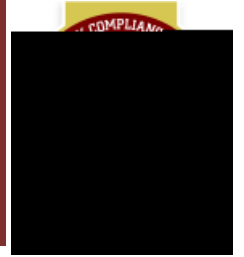
# 34 CFR § 106.57: Marital or Parental Status

COMPLIANCE

A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.



# 34 CFR § 106.57: Marital or Parental Status



A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.



# Takeaways

## Must

- Allow continued participation
- Reasonable adjustments
- Excuse absences
- Leave/return
- Temporary medical condition as needed
- Protect against harassment
- Include in policies and procedures

## Cannot

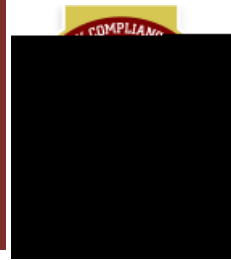
- Impact hiring
- Require Dr. note only for pregnancy
- List pregnancy as an infraction
- Exclude from programs/activities
- Remove financial aid

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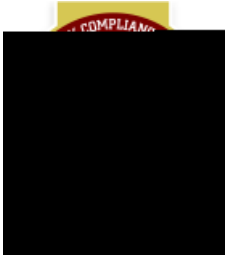
# SALT LAKE CITY COMMUNITY COLLEGE



# Complaint



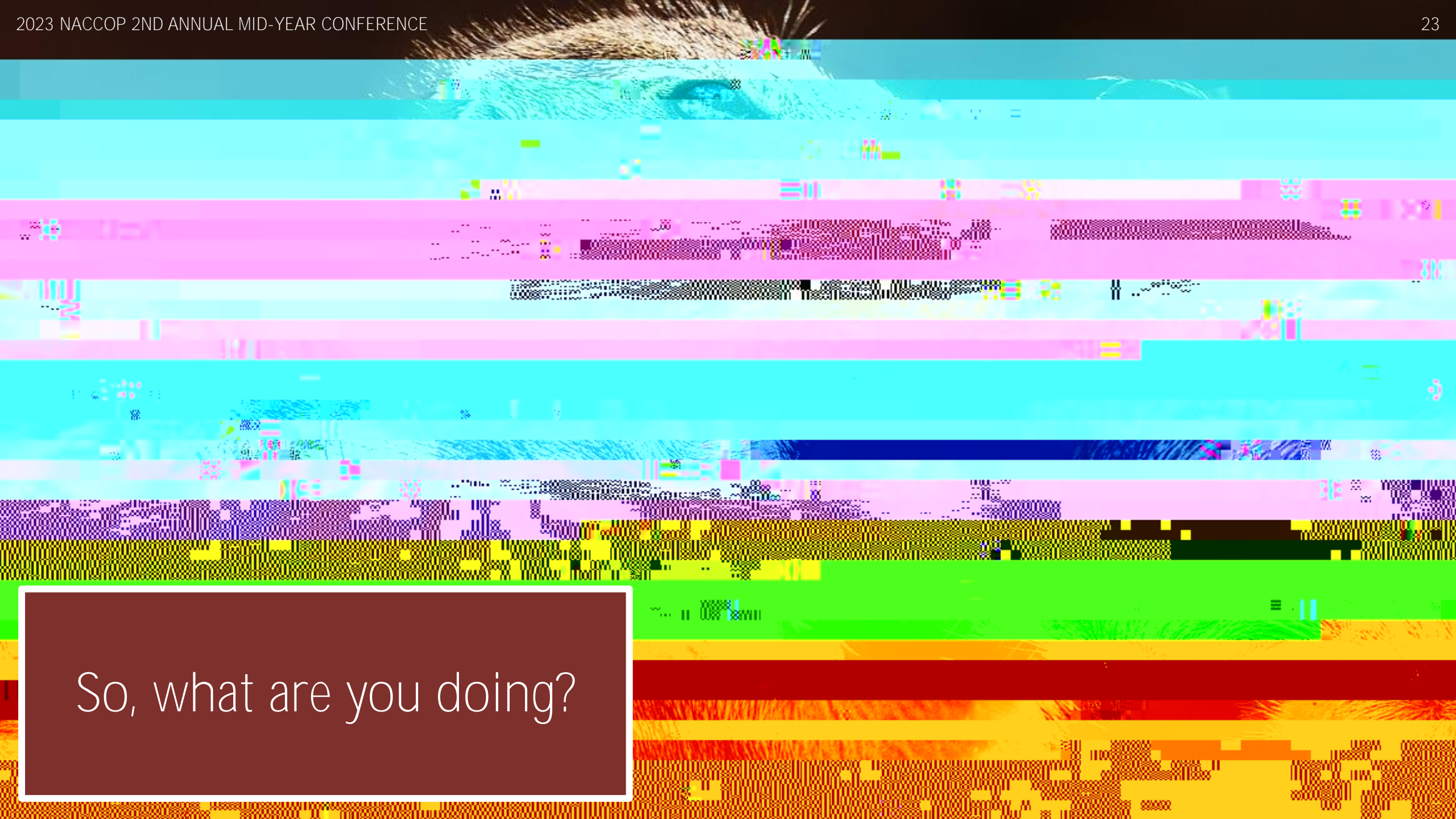
# Takeaways



## Policies

- i Non-discrimination Policy includes potential parental, family, or marital status, including pregnancy and related conditions

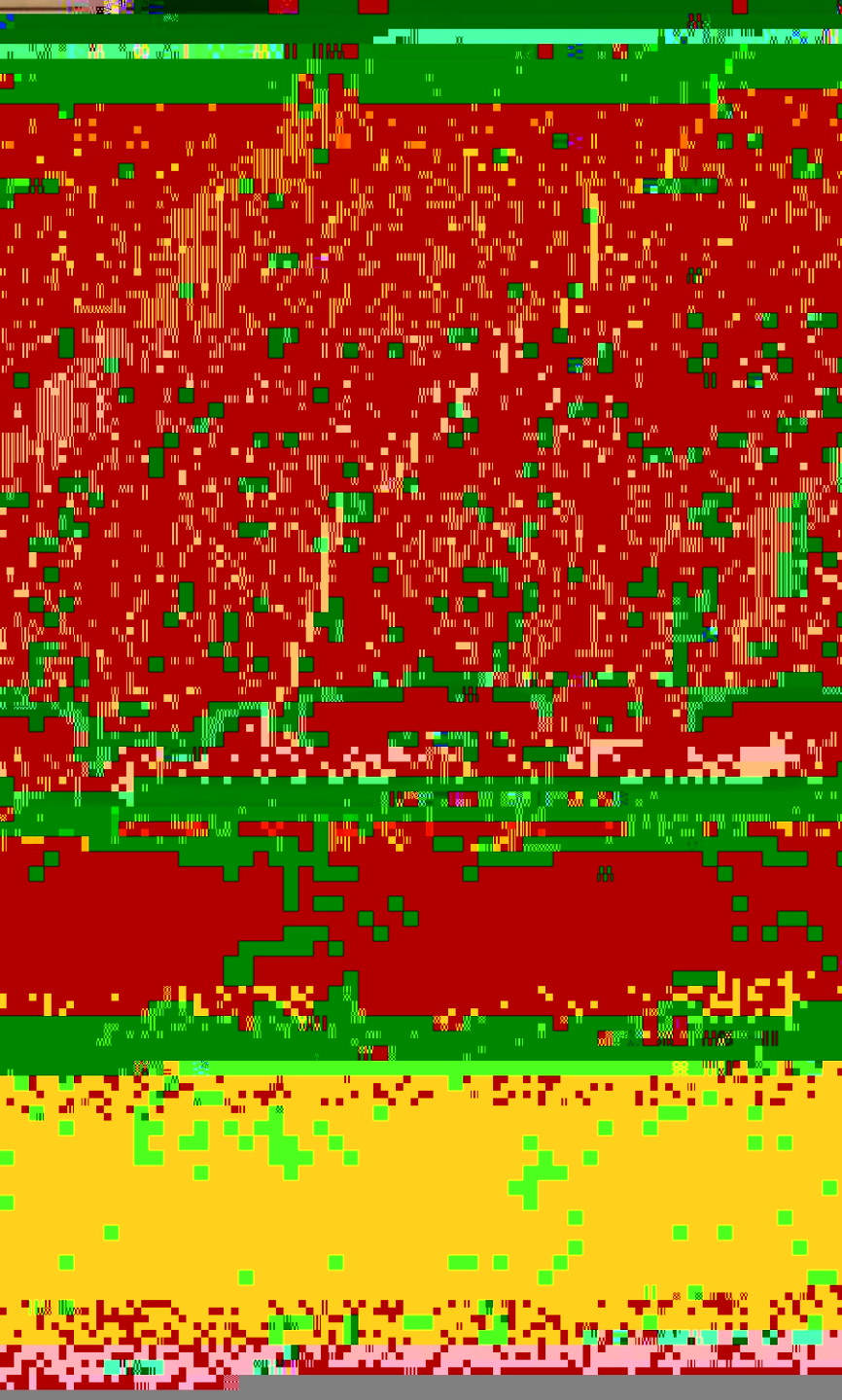
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So, what are you doing?

# Post-Dobbs Guidance and Considerations





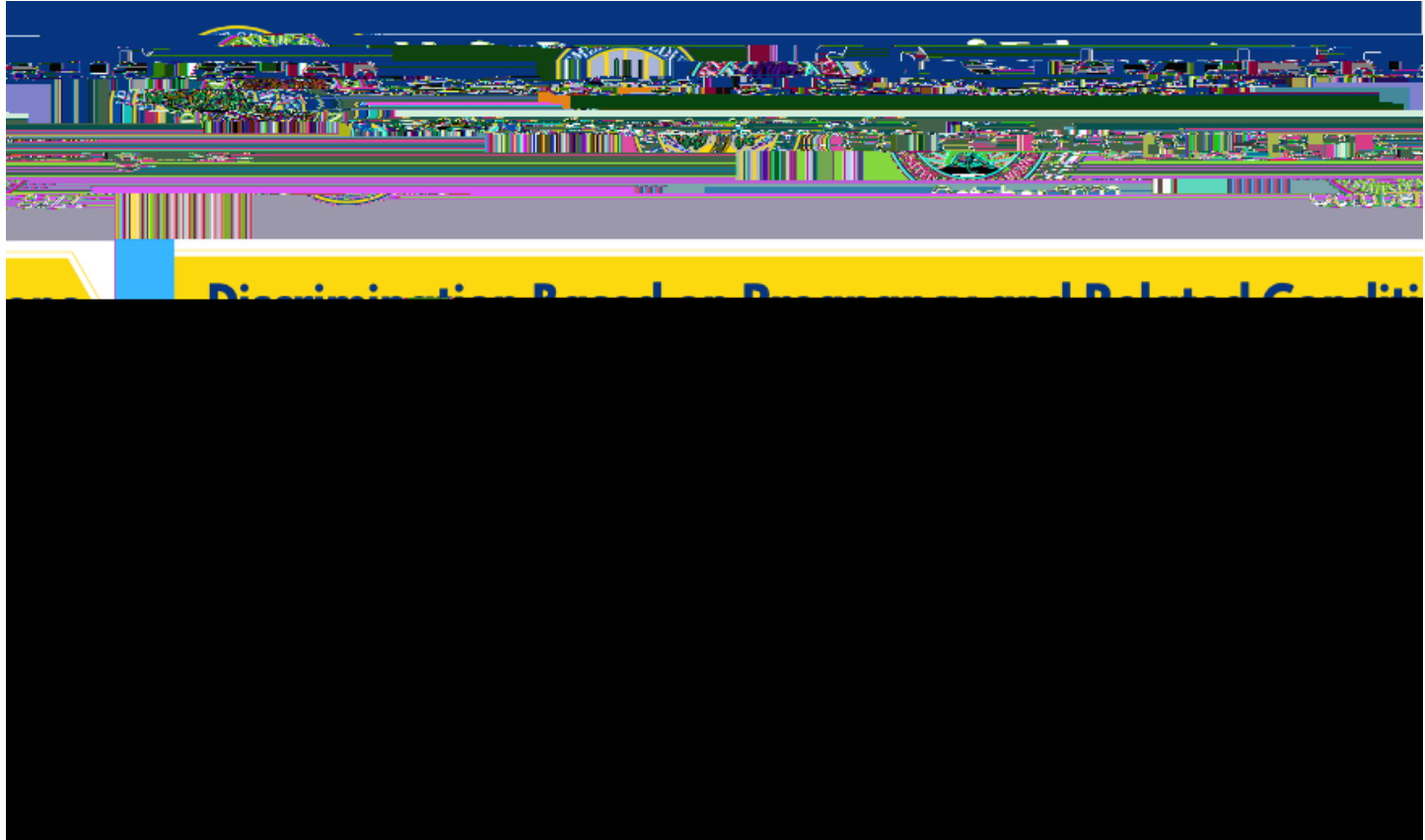
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# Post-Dobbs

October 2022 Fact Resource

Letter from Committee on Education and Labor

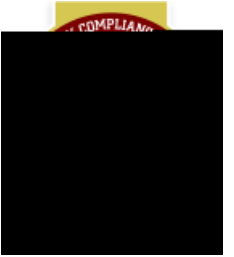
Practical Considerations



# FACT RESOURCE OCTOBER 2022

<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-pregnancy-resource.pdf>

# Committee on Education and Labor



Accommodations

Religious  
exemptions

Compliance and  
challenges

# Fact Resource

COMPLIANCE

## Discrimination and exclusion

- | Cannot discriminate based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery

## Medical and other benefits and services

- | Treat same as any other temporary disability for the above

## Leave policy

- | Must provide leave for as long as necessary

# Practical Considerations

COMPLIANCE

Statistics

Sexual Assault

Athletics

Legal  
Consequences

Campus Response?

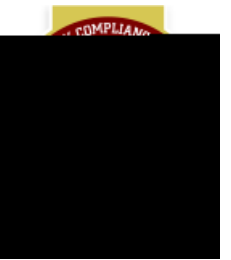
2022  
Notice  
of  
Proposed

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# NPRM: Enhanced Protections for Pregnancy and Parenting



## 106.2: Definitions



Pregnancy or related conditions means:

- (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
- (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.



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# 106.40: Parental, Family, or Marital Status; Pregnancy or Related Conditions

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## (a) Status

Treat the same

## (b) Pregnancy

Nondiscrimination

Provide information to student about  
TIXC

Actions to prevent discrimination

Provide information about the TIXC

Leaves of absence

Lactation space and time

Reasonable modifications

No doctor certifications permitted

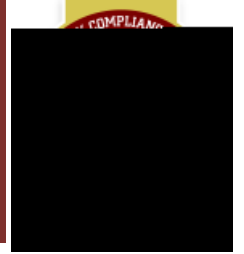
## Reporting Requirements

Employees MUST provide TIXC  
contact Information

TIXC MUST

- ; Provide student with options
- ; Allow for voluntary leave
- ; Lactation space
- ; Employees: break time and lactation space

# But Wait, There is More . . .

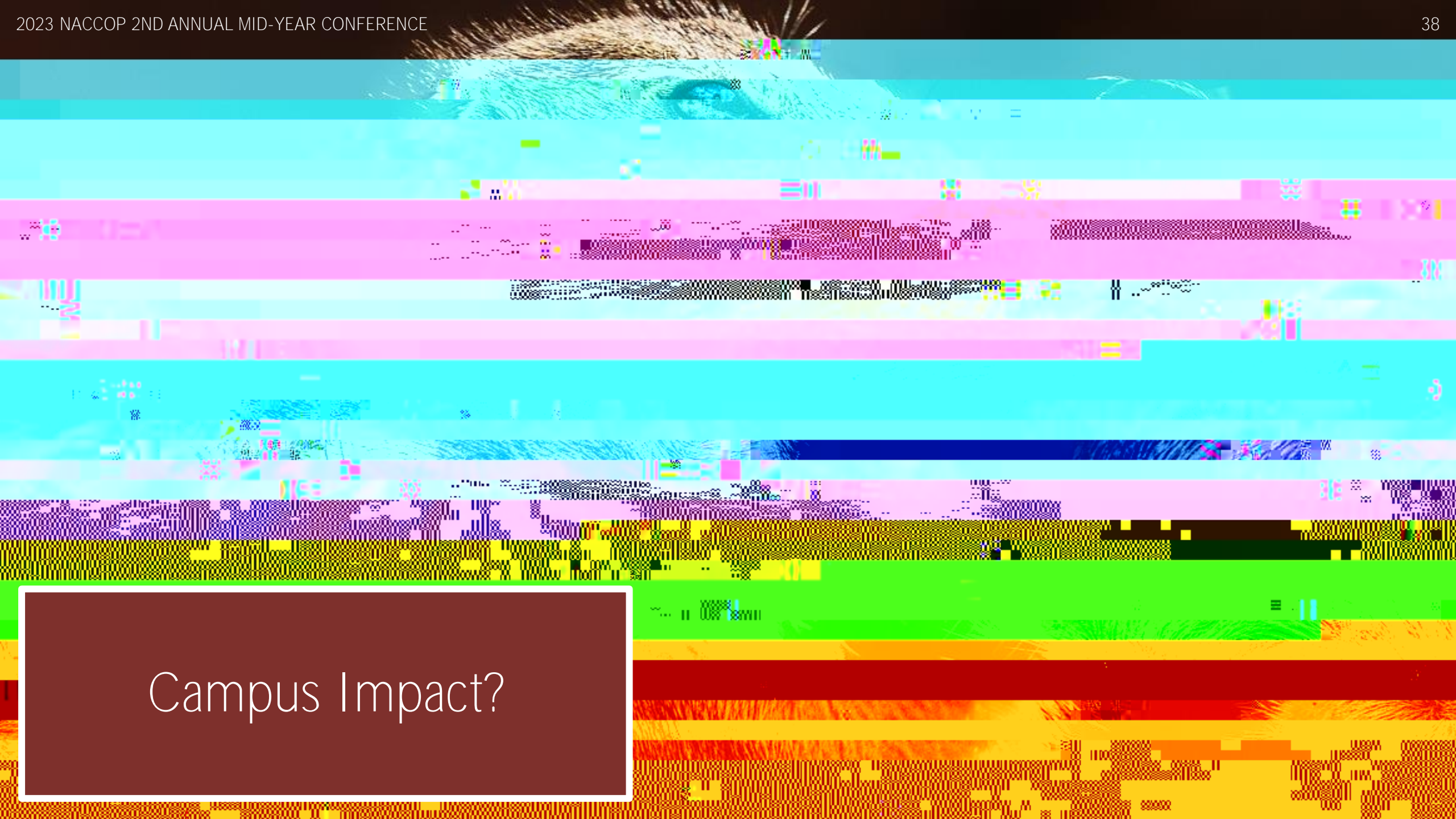


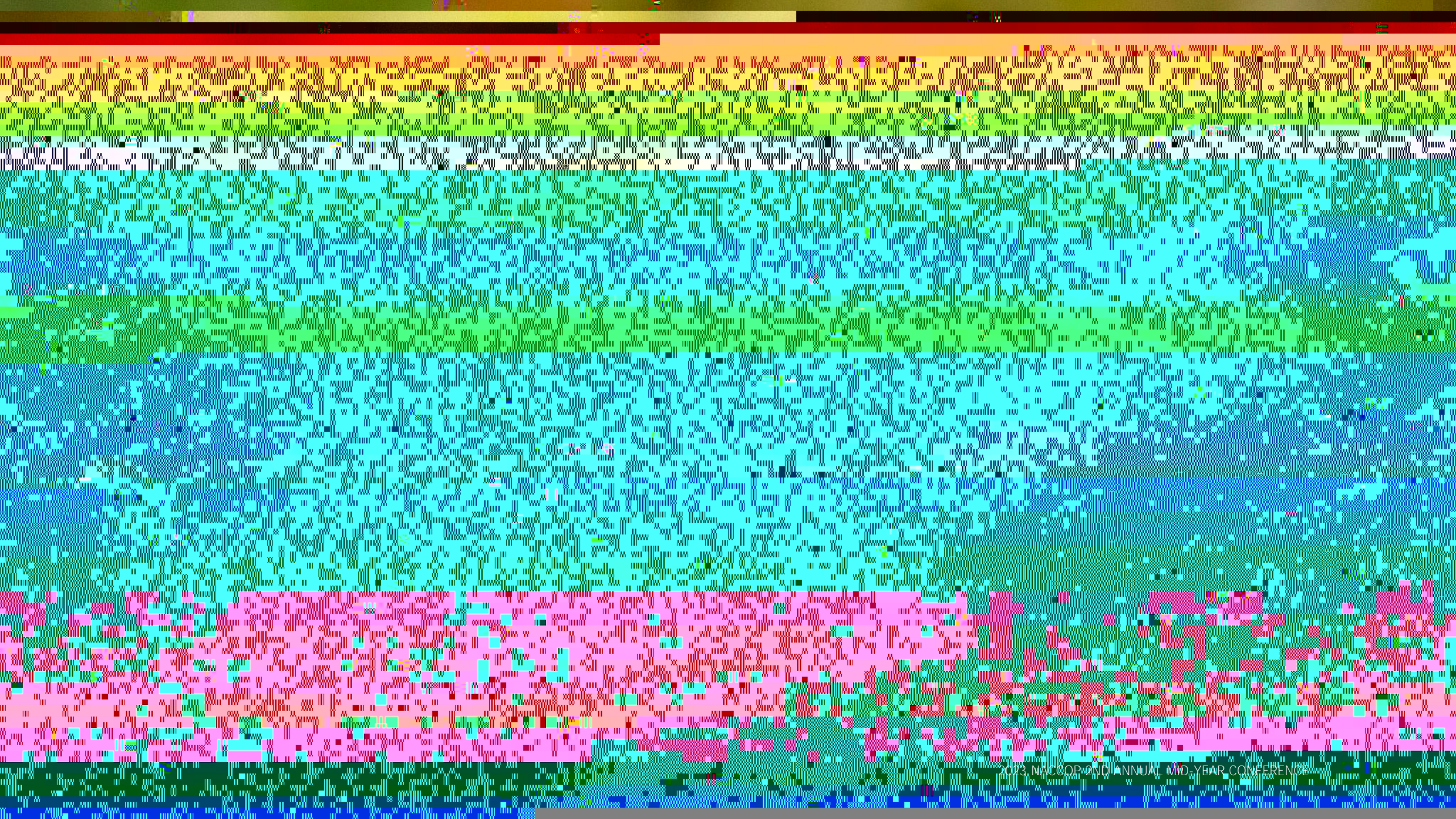
Obligation to  
report sex  
discrimination

Grievance  
process

Records kept  
for 7 years

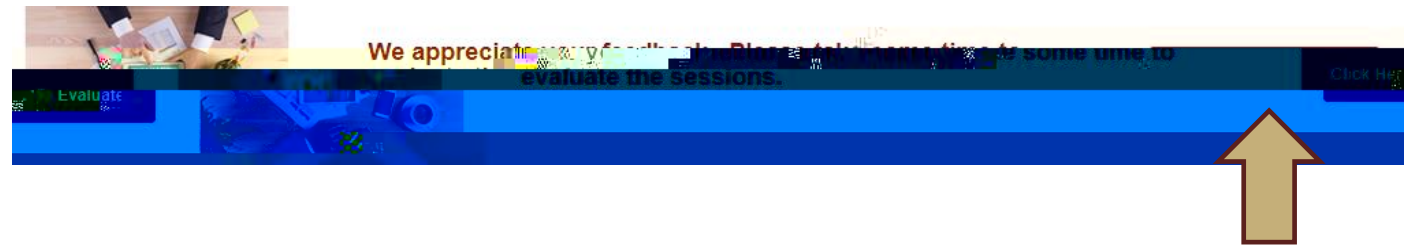
Campus Impact?





# Session Evaluation

1. Scan the QR code to evaluate the sessions.



2. Or, visit <https://www.surveymonkey.com/r/NACCOPMidYear2023> to evaluate this session.