

## 2024 Title IX Rule Comparison

The following are the key Title IX Implementing Regulations that relate specifically to pregnant and parenting students. Substantively new text appears in *blue*.

Current Regulation	2024 Regulation
<p><b>§106.21 Admission</b></p> <p>(c) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:</p> <ol style="list-style-type: none"> <li>(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;</li> <li>(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;</li> <li>(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and</li> <li>(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss” or “Mrs.” A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.</li> </ol>	<p><b>§106.21 Admission</b></p> <p>(c) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:</p> <ol style="list-style-type: none"> <li>(1) <i>Must treat pregnancy or related conditions</i> in the same manner and under the same policies as any other temporary <i>medical conditions</i>; and</li> <li>(2) Must not: <ol style="list-style-type: none"> <li>(i) Adopt or apply any <i>policy, practice, or procedure</i> concerning the current, potential, <i>or past</i> parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;</li> <li>(ii) Discriminate against any person on the basis of current, <i>potential, or past</i> pregnancy <i>or related conditions</i>, or <i>establish or follow any policy, practice, or procedure</i> that so discriminates; and</li> <li>(iii) Make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss or Mrs.” A recipient may ask an applicant to self identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this part.</li> </ol> </li> </ol>
<p><b>§ 106.40 Marital or Parental Status</b></p>	<p><b>106.40 Parental, family, or marital status; pregnancy or related conditions.</b></p> <p>(a) <i>Status generally.</i> A recipient must not <i>adopt or implement any policy, practice, or procedure</i> concerning a student’s current, potential, <i>or past</i></p>

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(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.

(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.

parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy or related conditions.*

(1) *Nondiscrimination.* A recipient must not discriminate in its education program or activity against any student based on the student's current, *potential, or past* pregnancy or *related conditions*. *A recipient does not engage in prohibited discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education program or activity provided the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.*

(2) *Responsibility to provide Title IX Coordinator contact and other information.* *A recipient must ensure that when a student, or a person who has a legal right to act on behalf of the student, informs any employee of the student's pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee promptly provides that person with the Title IX Coordinator's contact information and informs 1526 that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity.*

(3) *Specific actions to prevent discrimination and ensure equal access.* *A recipient must take specific actions under paragraphs (b)(3)(i) through (vi) of this section to promptly and effectively prevent sex discrimination and ensure equal access to the recipient's education program or activity once the student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions. The Title IX Coordinator must coordinate these actions.*

(i) *Responsibility to provide information about recipient obligations.* *The recipient must inform the student, and if applicable, the person who notified the Title IX Coordinator of the student's pregnancy or related conditions and has a legal right to act on behalf of the student, of the recipient's obligations under*



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paragraphs (b)(1) through (5) of this section and § 106.44(j) and provide the recipient's notice of nondiscrimination under § 106.8(c)(1).

(ii) *Reasonable modifications.* (A) The recipient must make reasonable modifications to the recipient's policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the recipient's education program or activity. Each reasonable modification must be based on the student's individualized needs. In determining what modifications are required under this paragraph, the recipient must consult with the student. A modification that a recipient can demonstrate would fundamentally alter the nature of its education program or activity is not a reasonable modification.

(B) The student has discretion to accept or decline each reasonable modification offered by the recipient. If a student accepts a recipient's offered reasonable modification, the recipient must implement it.

(C) Reasonable modifications may include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.

(iii) *Voluntary access to separate and comparable portion of program or activity.* The recipient must allow the student to voluntarily access any separate and comparable portion of the recipient's education program or activity under paragraph (b)(1) of this section.

(iv) *Voluntary leaves of absence.* The recipient must allow the student to voluntarily take a leave of absence from the recipient's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's *licensed healthcare provider*. To the extent that a student qualifies for leave under a leave policy maintained by a recipient that allows a

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<p>(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.</p>	<p>greater period of time than the medically necessary period, the recipient must permit the student to take voluntary leave under that policy instead if the student so chooses. When the student returns to the recipient's education program or activity, the student must be reinstated to the academic status and, <i>as practicable, to the extracurricular status</i> that the student held when the voluntary leave began.</p> <p>(v) <i>Lactation space. The recipient must ensure that the student can access a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from 1528 intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.</i></p> <p>(vi) Limitation on supporting documentation. A recipient must not require supporting documentation under paragraphs (b)(3)(ii) through (v) unless the documentation is necessary and reasonable for the recipient to determine the reasonable modifications to make or whether to take additional specific actions under paragraphs (b)(3)(ii) through (v). Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to, when the student's need for a specific action under paragraphs (b)(3)(ii) through (v) is obvious, such as when a student who is pregnant needs a bigger uniform; when the student has previously provided the recipient with sufficient supporting documentation; when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the specific action under paragraphs (b)(3)(ii) through (v) is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.</p> <p>(4) <i>Comparable treatment to other temporary medical conditions. To the extent consistent with paragraph (b)(3) of this section</i>, a recipient must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary <i>medical conditions</i> with respect to any medical or hospital benefit, service, plan, or policy the recipient administers, operates,</p>
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<p>(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.</p> <p>(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.</p>	<p>offers, or participates in with respect to students admitted to the recipient's education program or activity.</p> <p>(5) <i>Certification to participate. A recipient may not require a student who is pregnant or has related conditions to provide certification from a physician or other licensed healthcare provider that the student is physically able to participate in the recipient's class, program, or extracurricular activity unless:</i></p> <ul style="list-style-type: none"> <li><i>(i) The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;</i></li> <li><i>(ii) The recipient requires such certification of all students participating in the class, program, or extracurricular activity; and</i></li> <li><i>(iii) The information obtained is not used as a basis for discrimination prohibited by this part.</i></li> </ul>
<p><b>§106.51 Employment.</b></p> <p>(b) ...The provisions of this subpart apply to:</p> <p>(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;</p>	<p><b>§106.51 Employment.</b></p> <p>(b) ...The provisions of this subpart apply to:</p> <p>(6) Granting and return from leaves of absence, leave for pregnancy <i>or related conditions</i>, leave for persons of either sex to care for children or dependents, or any other leave;</p>
<p><b>§106.57 Marital or parental status.</b></p> <p>(a) <b>General.</b> A recipient shall not apply any policy or take any employment action:</p> <p>(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</p>	<p><b>§106.57 Parental, family, or marital status; pregnancy or related conditions.</b></p> <p>(a) <i>Status generally.</i> A recipient shall not adopt or apply any policy, practice, or procedure, or take any employment action on the basis of sex:</p> <ul style="list-style-type: none"> <li>(1) Concerning the current, potential, <i>or past</i> parental, family, or marital status of an employee or applicant for employment which treats persons differently; or</li> <li>(2) That 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.</li> </ul>

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(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.

(b) **Pregnancy.** 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.

(c) **Pregnancy as a temporary disability.** 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.

(d) **Pregnancy leave.** In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to 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 without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(b) *Pregnancy or related conditions.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of current, *potential, or past pregnancy or related conditions.*

(c) *Comparable treatment to temporary medical conditions.* A recipient shall treat pregnancy or related conditions as any other temporary medical conditions 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.

(d) *Voluntary leaves of absence.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy or related conditions as a justification for a *voluntary* leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(e) *Lactation time and space.*

(1) *A recipient must provide reasonable break time for an employee to express breast milk or breastfeed as needed.*

(2) *A recipient must ensure the availability of a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.*