

# *2024 Rule Vacated— What's Next?*



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# Agenda

- I. How did we get here?
- II. Where are we now? What do we do?
- III. Core obligations to PPS
- IV. Hot Topics re: supporting PPS
- v. Questions?

- ▶ *"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance."*
- ▶ Federal Title IX regulations bring these words to life.

## How did we get here?

9 lawsuits resulting in injunctions in 26 states and hundreds of institutions:

Alaska

Alabama

Arkansas

Florida

Georgia

Idaho

Indiana

Iowa

Kansas

Kentucky

South Carolina

Louisiana

Mississippi

Missouri

Montana

Nebraska

North Dakota

Ohio

Oklahoma

South Dakota

Tennessee

Texas

Utah

Virginia

West Virginia

Wyoming

- Most lawsuits challenge gender definition—with implications for gender stereotyping broadly.
- Two lawsuits challenge longstanding TIX abortion protections.

## Where are we now?

E.D. Kentucky Judge Reeves vacated the 2024 Title IX Rule **nationwide** with a decision focused on gender.

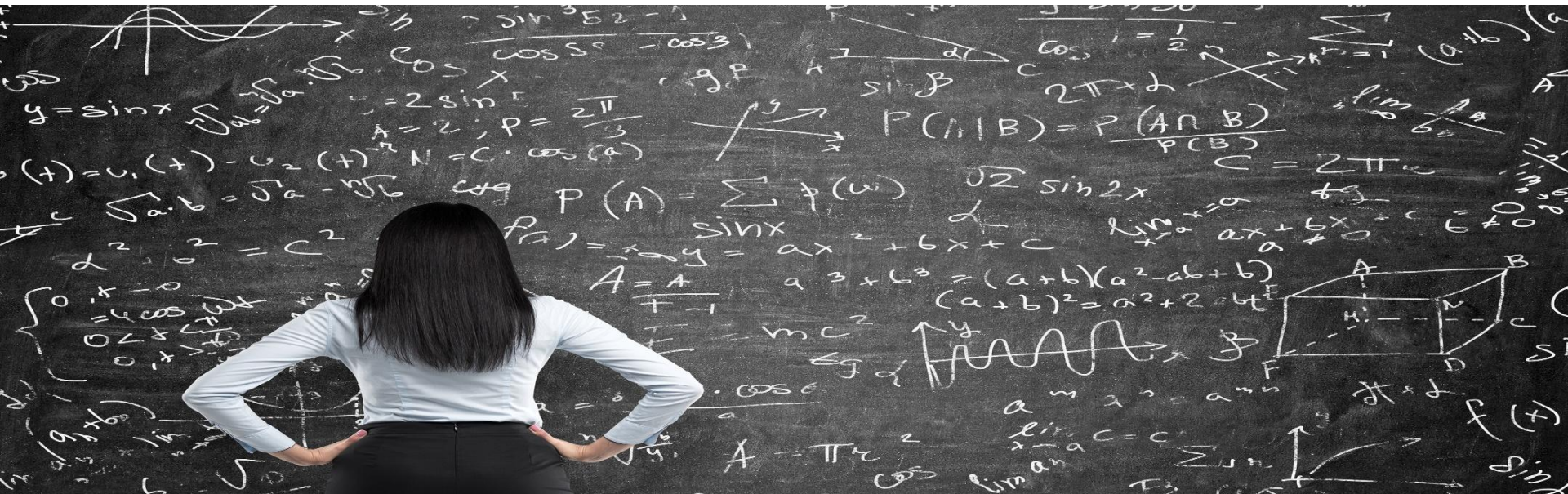
- The U.S. Department of Education is now unable to enforce 2024 Title IX Rule nationwide.
- ED has stated it is applying the regulations as amended by the 2020 Rule.
- Courts will continue to enforce Title IX.

## What do we do?

Institutions should apply the pre-existing Title IX Rule as a baseline for compliance.

Policies enacted in 2024 that do not conflict with the 2020 Title IX Rule can remain in force. Key conflicts: definition of discrimination/harassment, investigation and hearing protocols

*Judge Reeves did not find constitutional issues with the 2024 protections for pregnant and parenting students.*





# How do the Rules conflict?

In the provisions on pregnant and postpartum students, the 2024 regulations largely focused on *process and reducing barriers* to accessing the longstanding protections from prior rules.

Implementing these changes is compliance best practice and reduces potential liability.



# ●● Core Protections: Pregnant and Postpartum Students

## **No Discrimination re: Pregnancy-Related Conditions:**

- Pre-2024: *pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery, (and related conditions)*
- 2024: *spelled out the related conditions based on longstanding interpretation*

## **Provide Medically-Necessary Leave:**

- Pre-2024: *leave must be provided for as long as medically necessary, as determined by student's physician*
- 2024: *leave must be provided for as long as medically necessary, as determined by any HCP*

## **Provide Reasonable Accommodations:**

- Pre-2024: *right to supportive measures but many used a comparative analysis between pregnancy-related impairments and temporary disabilities*
- 2024: *spelled out an affirmative right...based on disability precedent*



# Non-Discrimination

**The 2024 Rule codified ED’s view of pregnancy-related conditions—in line with previous interpretations.**

For example:

“Termination of pregnancy” (abortion, miscarriage and pregnancy loss) has been protected since Title IX first became law.

“Lactation” has been defined by courts as a pregnancy-related condition since 2013, though not explicit spelled out in earlier Rules.



**The 2024 Rule and earlier Rules have all interpreted Title IX as requiring leave “for as long as medically-necessary,” after which the student will be reinstated in the same status.**

**2024 Rule:** could be based on advice of any licensed medical provider

**Pre-2024:** determined by physician

**No longer required to:**

- Approve leave based on the advice of a non-physician

*...though this is best practice and does not conflict with previous rules.*



# ●● Accommodation Process

**Students with pregnancy related conditions are entitled to reasonable academic adjustments. (Also know as accommodations or modifications.)**

- Does not require a “complication” or separate diagnosis—just an impairment in need of relief
- Interactive process
- Pregnant students should receive no less than students with disabilities

## **No longer required to:**

- Inform students to contact Title IX Coordinator
- Report non-compliance

*...though this is best practice and does not conflict with previous rules.*



# Hot Topics: Notification

2024 Rule: required employees to inform pregnant/postpartum students that the TIX Coordinator could facilitate leave and accommodations

Pre-2024: no notification requirement

Bottom line: Notification can and should continue so that students can access their rights. Continue to train your employees on this issue.



# Hot Topics: Documentation

**The 2024 Rule implemented limitations on documentation requests. Preexisting regulations had no limitations beyond the basic ban on discrimination.**

Given the time-sensitive nature of pregnancy-related accommodations, the potential for bias, and student's difficulty accessing Ob-Gyn care, maintaining limitations on documentation is best practice.

You may want to review your disability policies to identify ways to bring parity and add documentation assumptions to your procedures.

**For more information, see here:**

*<https://thepregnantscholar.org/wp-content/uploads/Title-IX-Documentation-Standards.pdf>*

# Hot Topics: Lactation

The 2024 Rule implemented a requirement for lactation spaces and reasonable breaks.

Pre-2024: no explicit requirement—but standard was read in.

**Bottom Line**: Continue to provide students with lactation spaces that are:

- Clean
- Not a bathroom
- Free from intrusion and view
- Appropriate and functional

Remember: lactation breaks are medically-necessary intermittent leave related to pregnancy.



# Hot Topics: Lactation

Remember:

Employees remain protected under the **PUMP Act** (FLSA), the **Pregnant Workers Fairness Act**, and state/local law.

All employees must have access to a private, non-bathroom lactation space and the break time to use it.

In most states, this applies for *at least* one year and continues for as long as it does not cause a hardship to continue providing the breaks/space.

For more information, visit:

[www.pregnantatwork.org](http://www.pregnantatwork.org)



# Hot Topics: Privacy

2024 Rule: limited disclosures of information collected to comply with Title IX.

Pre-2024: extremely limited disclosure protection.

Bottom line: Institutions should review their data collection, retention, and sharing procedures to implement as many safeguards as state/local law will allow.





# Hot Topics: Parents Generally

2024 Rule: defined parental status, re-affirmed non-discrimination protection

Pre-2024: no definition, parents cannot be treated differently on the basis of sex

**Bottom line**: Don't discriminate against parents on the basis of sex. Use 2024 definition. Best practice: implement family-responsive policies at institutional level.



# Our response

## Pregnant Scholar's To-Do List:

- Reinstate pre-2024 Rule materials to website, will continue to keep 2024 implementation tools on a separate page to aid best practice.
- Publish explanation of why implementing 2024 best practices fosters compliance with pre-existing regulation.
- Support state and local enforcement of best practices, advocate for reinstatement of 2024 Rule provisions on PPS.

[www.pregnantscholar.org/titleix-updates-toolkit/](http://www.pregnantscholar.org/titleix-updates-toolkit/)