



Summary of Key Changes to the Title IX Regulations on Pregnancy and Parental Status

This document provides a brief summary of key Title IX protections for pregnant and parenting students under pre-2024 Title IX Rules and the Vacated 2024 Regulations. The Department of Education’s pre-2024 Title IX regulations, as amended by the 2020 Title IX Rule, are now being enforced by ED and set the minimum obligations for compliance.

Below, you will find each issue has a summary of the provisions, an analysis, and a best practice recommendation.

- **Analysis:** Offers broader context and an overview of the reasoning provided by the Department of Education for the 2024 changes.
- **Best practice recommendation:** Reflects the Pregnant Scholar’s conclusion as to supportive actions educational institutions can take on the issue while also avoiding potential conflict with the 2020 Rule currently in effect.

Note that this document does not constitute legal advice and is not a substitute for obtaining legal advice from a qualified attorney familiar with your unique circumstance.

Issue	2020 Title IX Rule	Vacated 2024 Rule
Covered conditions	Bans discrimination on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy (abortion, miscarriage, or stillbirth) and recovery in a section titled “pregnancy or related conditions”—but does not explicitly name other pregnancy-related conditions.	Banned discrimination on the basis of <i>past, potential, or current</i> pregnancy, childbirth, termination of pregnancy (abortion, miscarriage, or stillbirth), lactation, recovery, <i>and</i> all related medical conditions.
	<p>Analysis:</p> <p>Title IX’s intent and application has long been based on the principle that pregnancy-related discrimination is a form of sex discrimination. Legal precedent under similar anti-discrimination laws, including Title VII, is instructive and points to the need to look at all pregnancy-related conditions as sex-linked conditions eligible for protection under Title IX. The 2024 Rule also made clear that because discrimination on the basis of pregnancy/sex is prohibited, students cannot be discriminated against on the basis of past, current, or potential pregnancies.</p> <p><i>(See, e.g. Proposed Rules pages 41515-18.)</i></p>	

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	<p>Best practice recommendation:</p> <p>Continue to protect all pregnancy related conditions, not merely those explicitly listed in the text of the 2020 Rule. Adopting 2024 definitions is likely to prevent liability.</p>	
<p>General anti-discrimination provision</p>	<p>Prohibits the application of rules relating to students’ actual or potential parental, family, or marital status that treated students differently on the basis of sex.</p>	<p>Prohibited policies, practices, and procedures relating to students’ past, current, or potential parental, family, or marital status that treat students differently on the basis of sex. Offered an inclusive definition of parental status.</p>
	<p>Analysis:</p> <p>The 2024 regulations clarified that “rules” include <i>all</i> forms of rules (policies, practices, and procedures) so that it is clear this provision does not just govern formally adopted policies that are labeled “rules,” but also the informal rules that arise in the day-to-day operation of an educational institution. Given the potential harm of discriminatory rules, the 2024 Rule also made clear that such rules would be prohibited even before they are actually applied to a specific student. The 2024 regulation also defined “parental status” in keeping with definitions used in other federal law, as an effort to bring consistency. This does not conflict with previous definitions under Title IX, as prior to 2024 parental status was not defined. (See, e.g. Proposed Rules pages 41515-18.)</p> <p>Best practice recommendation:</p> <p>Continue to prohibit any policy, practice, or procedure that discriminates on the basis of pregnancy, parental, family or marital status that treats people differently on the basis of sex. Adopting 2024 definitions re: the scope of protection is likely to prevent liability.</p>	
<p>Leave</p>	<p>Requires educational institutions to allow students with pregnancy-related conditions to take leave for at least as long as medically necessary, then be returned to the status they held prior to taking leave. Medical necessity is determined by the student’s own physician.</p>	<p>Required educational institutions to allow students with pregnancy-related conditions to take leave for at least as long as medically necessary, then be returned to the status they held prior to taking leave. Medical necessity was determined by the student’s own licensed health care provider.</p>

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<p>Leave, cont.</p>	<p>Analysis:</p> <p>All Title IX Rules have allowed for educational institutions to cover pregnant and postpartum students under other leave policies, but <i>at minimum</i>, educational institutions must provide time off for as long as medically-necessary and then return the student to their studies without penalty. The 2024 Rule expanded who may certify medical necessity for the purposes of this section to include any qualified healthcare provider, rather than just physicians. Expanding the field of who may certify leave supports students as there is a shortage of obstetricians, and students often struggle to access care from a physician in a timely fashion.</p> <p>(See e.g. Proposed Rules pages 41519-20.)</p> <p>Best practice recommendation:</p> <p>Continue to provide leave for at least as long as medically necessary for pregnancy and all related medical conditions. Consider allowing any licensed health care provider to certify leave under your institution’s policy.</p>	
<p>Accommodations</p>	<p>Requires educational institutions to provide pregnant and postpartum students with the same sorts of services as are provided to students with temporary disabilities with respect to any medical or hospital benefit, service, plan, or policy for admitted students. Institutions are also required to ensure that students who are pregnant or have related conditions are not excluded from the educational program or activity.</p>	<p>Required educational institutions to provide pregnant and postpartum students with reasonable modifications— changes to policies, procedures, and practices to support equitable access to education. These adjustments should be facilitated by the Title IX Coordinator or their designee.</p>
	<p>Analysis:</p> <p>Educational institutions have for decades been required to take tailored steps to support students who are pregnant or experiencing related conditions so that they can have equal access to the educational program. This applied regardless of the specific steps taken to support other students. Under the 2020 Rule, that standard left educational institutions without an understanding of the specific steps necessary to meet their duties under Title IX. The 2024 Rule provided clear guidance that pregnant and postpartum students have a right to reasonable academic modifications and that this right is to be interpreted similarly to disability modifications.</p>	

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<p>Accommodations, cont.</p>	<p>(See, e.g. Proposed Rules pages 41522 et.seq., Department of Education Pamphlet - Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972.)</p> <p>Best practice recommendation:</p> <p>Continue to provide reasonable modifications as needed to ensure that students with pregnancy-related impairments can have equal access to education. These accommodations should be provided through an interactive process facilitated by a staff member trained in Title IX and accessibility standards. In addition, ensure that pregnant students with impairments are eligible for the same services as students with temporary disabilities.</p>	
<p>Documentation requirements</p>	<p>Has no clear limits on the types of medical documentation educational institutions could demand from students who need accommodations/modifications beyond the general requirement to refrain from discrimination and ensure equal educational access.</p>	<p>Any medical documentation required by the educational institution for the purposes of setting up modifications must be reasonable and necessary in order to make a determination. It is unreasonable to ask for documentation when the need for a change is obvious.</p>
<p>Analysis:</p> <p>Prior to the enactment of the 2024 Rule, many students were forced to submit lengthy disability documentation forms that did not address the unique needs of pregnant and postpartum students or were needlessly invasive, with some asked to submit their full medical record. Many students struggle to get the documentation they needed for even simple accommodations due to difficulty accessing care, as 1 in 3 counties have no practicing obstetrician. In order to ensure that pregnant and postpartum students are not overly burdened by medical documentation requests, the 2024 Rules placed limits on what information may be required in order to justify accommodation. Limiting medical documentation requests ensures that pregnant and postpartum students have an equal educational access, and reduces staff time spent requesting, reviewing, and safeguarding the documentation.</p> <p>(See, e.g. 2024 Final Rule Preamble pages 33789-91.)</p> <p>Best practice recommendation:</p> <p>Review institutional accommodation policies to reduce documentation burden and keep documentation requests as narrow as possible. Consider making a presumption that a student’s own self-attestation of need is sufficient for</p>		

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	<p>common accommodation needs (e.g. drinking water, using the restroom, different seating). For more information and sample language, review the Pregnant Scholar’s Guide to Medical Documentation under the 2024 Rule.</p>	
<p>Lactation space and breaks</p>	<p>Does not state an explicit right to lactation space. (The right to lactation breaks and space is implied through the general anti-discrimination provision and breaks are protected via the protection of medically-necessary absences.)</p>	<p>Required that students (and employees) be provided with a clean, non-bathroom space to pump milk or breastfeed. Appropriate spaces are shielded from view and free from intrusion. Prohibited requiring documentation in order for students to access lactation space.</p>
<p>Medical certification to participate</p>	<p>Allows educational institutions to require a physician’s certification that a student is “physically or emotionally” able to participate in their education program if certification is required of other students under a physician’s care.</p>	<p>Only permitted institutions to request medical clearance when all students participating in the class/activity are required to provide certification, the certification is necessary, <i>and</i> the information isn’t used to discriminate. Allowed non-physician healthcare providers to certify.</p>
<p>Analysis:</p> <p>The right to lactation breaks and space was not explicitly listed in pre-2024 Rules, however the right has long been inferred because legal precedent under similar laws makes clear that lactation is a sex-linked condition and should be protected/accommodated as such. State laws requiring lactation breaks, space, and non-discrimination also apply. Further, note that employees must be provided with lactation breaks and space under other laws, such as the PUMP Act (FLSA) and Pregnant Workers Fairness Act.</p> <p><i>(See, e.g. Proposed Rules page 41514, 41521 et. seq. (explanation of ED’s inclusion of lactation); Pregnant Scholar Factsheet on Lactation and Title IX (explaining why lactation is a sex-linked condition warranting Title IX protection); and, PregnantatWork.org (providing information on employee rights to lactation breaks and space).)</i></p> <p>Best practice recommendation:</p> <p>Continue providing lactating students with clean, private, non-bathroom lactation space and the as-needed break time to use it. There is no set number of lactation spaces that must be provided; to avoid violating Title IX and other law(s), ensure you provide enough space so that lactating students and employees have access to a space as often as needed. See Pregnant Scholar’s Model Student Lactation Policy for more information.</p>		

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<p>Medical certification to participate, cont.</p>	<p>Analysis:</p> <p>Requiring medical certification to continue to participate in educational programs and activities can exclude pregnant and postpartum students in violation of the law. Further, requiring certification of a students’ emotional capacity to participate in programming relies on outdated and inappropriate stereotypes of pregnant and postpartum students. By limiting the ability of educational institutions to require medical certification to participate, the 2024 Rule aided the ability of this standard to prevent discrimination in practice. No Title IX Rule <i>requires</i> any medical certification for pregnant and postpartum students to participate in their educational program. (See, e.g. Proposed Rules pages 41524-25.)</p> <p>Best practice recommendation:</p> <p>If your institution requires any medical certification for a student to participate, continue to respect the 2024 Rule’s provisions. Limiting certification barriers enables students to more easily return to their studies and activities and lowers the risk of exclusion in violation of Title IX.</p>	
<p>Privacy protections</p>	<p>Provides privacy protections for certain information collected during investigations.</p>	<p>Provided privacy protections for any personally identifiable information collected to follow Title IX rules, including medical information shared while seeking adjustments or leave.</p>
<p>Analysis:</p> <p>Pregnant students often report feeling violated due to unauthorized disclosures of their pregnancy status and related health information. Further, are uncomfortable asking for assistance due to fear of their pregnancy information being revealed to others, including law enforcement. (See, e.g. 2024 Final Rule Preamble pages 33619-23.)</p> <p>Best practice recommendation:</p> <p>Institutions should review their data collection, retention, and sharing procedures to implement as many safeguards as state/local law will allow. In consultation with your legal counsel and impacted people, implement institutional level privacy protections and related training to ensure that data regarding pregnant and postpartum students is handled with discretion.</p>		

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<p>Notice of rights</p>	<p>No clear notice requirements specific to pregnant and parenting students. Basic requirement to have a Title IX Coordinator and publish their information.</p>	<p>Required faculty and staff to inform students (or their representative) who disclose pregnancy/related conditions of the Title IX Coordinator’s contact information and that the Coordinator can help them access leave and accommodations, if needed.</p>
	<p>Analysis:</p> <p>The 2024 provision ensured that pregnant students and those with pregnancy-related conditions had clear notice of their right to accommodations, leave, and non-discrimination. This provision made it easier for students to get assistance, and for institutions to ensure legal compliance with their Title IX duties, because students were referred to qualified and trained employees before problems arose.</p> <p>(See, e.g. Proposed Rules pages 41519-21.)</p> <p>Best practice recommendation:</p> <p>Continue to notify students that the Title IX Coordinator (or their properly trained designee) can assist with accommodations, leave, and non-discrimination concerns. Adopting 2024 notification standards is likely to prevent liability.</p>	