



**2024 Joint Guidance on Federal Title IX Regulations**  
**Analysis on Section 106.21(c): Admissions: Parental, family, or marital status; Pregnancy or related conditions**

**July 5, 2024**

*Note:* This document focuses on a summary analysis of Section 106.21(c), specifically Admissions: Parental, family, or marital status; Pregnancy or related conditions.<sup>1</sup> For a full overview of the changes from the 2020 Regulations and the 2024 Final Regulations, see *Title IX Text for Text 2020 and 2024 Regulation Final Comparison*, available at <https://system.suny.edu/sci/titleix/>.

**§ 106.21(c): Parental, family, or marital status; pregnancy or related conditions (Admissions)**

§ 106.21(c) states:

*(c) Parental, family, or marital status; pregnancy or related conditions.* 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:

- (1) Must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions; and
- (2) Must not:
  - (i) Adopt or implement any policy, practice, or procedure concerning the current, potential, or past parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;
  - (ii) Discriminate against any person on the basis of current, potential, or past pregnancy or related conditions, or adopt or implement any policy, practice, or procedure that so discriminates; and
  - (iii) Make a 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.

### **Summary and Analysis**

Recipients are prohibited from engaging in sex-based discrimination in admissions.<sup>1</sup> When it comes to admissions and determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient must treat pregnancy or related conditions “in the same manner and under the same policies as any other temporary medical conditions.”<sup>2</sup>

Recipients are prohibited from adopting or implementing any policy, practice, or procedure concerning the current, potential, or past parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex.<sup>3</sup> Recipients are prohibited from discriminating against or adopting or implementing any policy or practice that discriminates against applicants based on current, potential or past pregnancy or related conditions.<sup>4</sup>

### **“Perceived” and “Expected”**

The Department declined to add “perceived” and “expected” to 106.21(c)(2)(ii) explicitly, citing its rationale in the discussion of 106.10.<sup>5</sup> Specifically, the Department stated that the definition of “pregnancy or related conditions” as it is applied under 106.10 “extends to discrimination based on a perceived status.”<sup>6</sup> Moreover, the Department stated that it was not “necessary” to add “expected” here, as the regulations prohibit discrimination based on “current, potential, or past” pregnancy or related conditions and “potential” captures “expected.”<sup>7</sup>

### **Pre-Admission Inquiries**

Additionally, recipients are prohibited from making a pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss or Mrs.”<sup>8</sup>

Recipients may ask applicants to self-identify their sex, so long as it is asked of all applicants and the response is not used as a basis for discrimination prohibited by this part.<sup>9</sup>

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<sup>1</sup> 34 C.F.R. § 106.21(a).

<sup>2</sup> 34 C.F.R. § 106.21(c)(1).

<sup>3</sup> 34 C.F.R. § 106.21(c)(2)(i).

<sup>4</sup> 34 C.F.R. § 106.21(c)(2)(ii)

<sup>5</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33756 (Apr. 29, 2024) (to be codified at 34 C.F.R. Pt. 106) (hereinafter “2024 Title IX Final Rule”).

<sup>6</sup> 2024 Title IX Final Rule, 89 Fed. Reg. at 33756.

<sup>7</sup> *Id.*

<sup>8</sup> 34 C.F.R. § 106.21(c)(2)(iii).

<sup>9</sup> 34 C.F.R. § 106.21(c)(2)(iii).

## Application

Unlike some other provisions of the regulations, subpart (c) of this section, related to admissions, does not apply to non-vocational elementary and secondary schools.<sup>10</sup>

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<sup>10</sup> 2024 Title IX Final Rule, 89 Fed. Reg. at 33763.