



2024 Joint Guidance on Federal Title IX Regulations Analysis on Section 106.2: Definition – Parental Status

July 5, 2024

Note: This document focuses on a summary analysis of Section 106.2, specifically Definition – Parental Status.¹ 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/>.

§ 106.2: Parental Status

The term “parental status” refers to a person who, with respect to another person who is either under the age of 18 or over the age of 18 but incapable of self-care due to a physical or mental disability, is:

- (1) A biological parent;
- (2) An adoptive parent;
- (3) A foster parent;
- (4) A stepparent;
- (5) A legal custodian or guardian;
- (6) In loco parentis with respect to such a person; or
- (7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person.

Title IX prohibits recipients from adopting or implementing any policy, practice, or procedure concerning a student’s current, potential, or past parental, family, or marital status that treats students differently on the basis of sex. This prohibition extends to recipients’ admissions practices, including when determining whether a person satisfies any policy or criterion for admission, or in making any offer for admission.²

Title IX also prohibits recipients from adopting or implementing any policy, practice, or procedure, or taking any employment action, which concerns an employee’s (or applicant for

¹ The effective date of these Regulations will be August 1, 2024 and will apply prospectively. The Department has stated it will provide technical assistance during the transition period and after the effective date.

² See 34 C.F.R. § 106.40(a); § 106.21(c)(2)(i).

employment’s) current, potential, or past parental, family or marital status, which treats persons differently on the basis of sex.³

In the Preamble to the Final Rules, the Department of Education noted that the definition of “parental status” is not limited to the timeframe immediately following the birth or adoption of a child and applies throughout a student’s participation in a recipient’s education program or activity.⁴ Regarding the definition of “employee,” the Department noted that recipients are in the best position to determine who is an employee, and declined to mandate that all independent contractors be covered by § 106.57.⁵ It wrote that to make that determination would depend upon additional factors, such as the possible cost, administrative burden, and interplay with common law principles and other legal requirements. However, to the extent a recipient determines that an independent contractor is an employee, the contractor will be entitled to the protections of § 106.57.⁶ Nothing prohibits a recipient from choosing to affirmatively cover independent contractors under § 106.57, in order to ensure compliance with these regulations.⁷

Related Provisions:

Reasonable Modifications - Students

34 C.F.R. § 106.40(b)(3).

Reasonable Modifications - Employees

The Department declined to require recipients to provide reasonable modifications to parenting employees or applicants for employment at this time, but noted it might consider whether modifications for parenting employees are necessary under Title IX in the future.⁸

Lactation Time and Space – Students & Employees

Recipients must ensure that both students and employees are given time or breaks to express breast milk or breastfeed as needed. Additionally, the recipient must provide a lactation space, other than a bathroom, that is clean, shielded from view, and free from the intrusion of others.⁹

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³ 34 C.F.R. § 106.57(a)(1).

⁴ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33765 (Apr. 29, 2024) (to be codified at 34 C.F.R. Part 106) (hereinafter “2024 Title IX Final Rule”).

⁵ 2024 Title IX Final Rule, 89 Fed. Reg. at 33795.

⁶ *Id.*

⁷ *Id.*

⁸ 2024 Title IX Final Rule, at 33795.

⁹ 34 CFR § 106.40(b)(3); § 106.57(e).

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