



2024 Joint Guidance on Federal Title IX Regulations Analysis on Section 106.2: Definition – Pregnancy or Related Condition

July 5, 2024

Note: This document focuses on a summary analysis of Section 106.2, specifically Definition – Pregnancy or Related Condition.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: Pregnancy or Related Conditions

Under the 2024 Final Rule, “pregnancy or related conditions” means:

- (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
- (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation, or (3) Recovery from pregnancy, childbirth, termination of pregnancy, or related medical conditions.²

Summary and Analysis

Context

The Department of Education has described this definition and related provisions in the 2024 Final Rule as an “update” and clarification to the longstanding requirement under Title IX that recipients are prohibited from discrimination on the basis of pregnancy and related conditions.

Application

The Final Rule prohibits a recipient from discriminating against any student based on the student’s current, potential, or past pregnancy or related conditions.³

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 34 C.F.R. § 106.2.

³ 34 C.F.R. § 106.2(b)(1).

The Final Rule *expressly permits* a recipient to allow a student who is pregnant or has a related condition to participate in a separate portion of its education program, provided such is comparable to the program for non-pregnant students.⁴

In considering a person for both admissions and/or employment, recipients must treat pregnancy or related conditions as they would any other temporary medical conditions and must not discriminate on the basis of current, potential, or past pregnancy or related conditions.⁵ The Department also wrote that where a recipient does not have a policy for the treatment of other temporary medical conditions (i.e.: a policy of providing reasonable modifications), the recipient is not required to provide reasonable modifications for pregnancy or related conditions under Title IX.⁶ However, it must still treat individuals who are pregnant or experiencing related conditions the same as it would treat those with other temporary medical conditions in practice.⁷

In the Preamble to the Final Rule, the Department of Education noted that the medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation may include, but are not limited to: pregnancy-related fatigue, dehydration (or the need for increased water intake), nausea (or morning sickness), increased body temperature, anemia, and gladder dysfunction; gestational diabetes; preeclampsia; hyperemesis gravidarum (*i.e.*, severe nausea and vomiting); pregnancy-induced hypertension (high blood pressure); infertility; recovery from childbirth, miscarriage, or abortion; ectopic pregnancy; prenatal or postpartum depression; and lactation conditions such as swelling or leaking of breast tissue or mastitis.⁸

Related Provisions:

Employee Responsibility to Provide Title IX Coordinator’s Contact Information when learning of Student Pregnancy or Related Condition

34 C.F.R. § 106.40(b)(2).

Specific Actions to Prevent Discrimination and Ensure Equal Success

34 C.F.R. § 106.40(b)(3).

Comparable Treatment to Other Temporary Medical Conditions - Students

34 C.F.R. § 106.40(b)(4).

Comparable Treatment to Other Temporary Medical Conditions - Employees

34 C.F.R. § 106.57(c).

⁴ 34 CFR § 106.2(b)(1).

⁵ § 106.2(c); § 106.57(b).

⁶ 89 Fed. Reg. 33474, 33764 (Apr. 29, 2024) (to be codified at 34 C.F.R. Part 106)(hereinafter “2024 Title IX Final Rule).

⁷ 2024 Title IX Final Rule, 89 Fed. Reg. at 33764.

⁸ *Id.* at 33756.

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