

FEDERAL EDUCATION OFFICIALS RELEASE PREGNANCY-RELATED GUIDANCE TO ASSIST WITH TITLE IX COMPLIANCE: 10 QUICK TAKEAWAYS FOR SCHOOLS

Insights
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The Department of Education recently released guidance to assist colleges and universities comply with pregnancy-related aspects of the new Title IX regulations that took effect on August 1. The “Nondiscrimination Based on Pregnancy or Related Conditions & Parental, Family, or Marital Status” guidance, released on September 12, provides both compliance suggestions and proactive measures you should consider taking to ensure you remain on the right side of the law. Note, however, that this guidance doesn’t apply to schools in all states. If you operate in one of the 26 states that are subject to a court order blocking enforcement, you remain outside the boundaries of this guidance – for now. What are the 10 quick takeaways you need to know?

1. Guidelines Apply Broadly

The guidance, [which can be found here](#), makes clear that Title IX’s nondiscrimination prohibitions against sex discrimination apply not only to a school’s treatment of students, but also to applicants for admission and employees and applicants for employment. And they don’t just cover pregnancy and childbirth. They include a wide range of related situations, including termination of pregnancy, abortion, miscarriage, lactation, menstruation, postpartum depression, and any medical conditions or recovery from pregnancy-related conditions.

2. 3 Big Prohibitions

Related People



Sheila M. Abron

Partner

803.740.7676



Andrew Gallinaro

Partner

610.230.6107

The three biggest overarching reminders provided by the guidance make clear that schools must not:

- discriminate against individuals based on **pregnancy or related conditions**;
- treat them differently based on their **parental, family, or marital status**; or
- **punish or retaliate** against them for exercising a right under Title IX, such as seeking pregnancy-related leave or access to a lactation space.

3. Special Protections for Student Applicants

The guidance notes that you are barred from treating a student applicant's pregnancy or related conditions differently than any other temporary medical condition they might otherwise experience.

4. Proactive Steps You Must Take

The guidance requires schools to provide training to all school employees on what they must do if a student reports a pregnancy or related condition. Upon proper notice of a student's pregnancy or related conditions, the guidance says a school must take specific actions, including ensuring the Title IX Coordinator receives notice of the student's pregnancy or related conditions such that they can coordinate specific actions that the student is entitled to under Title IX, which can include the following:

- provide reasonable modifications – which can include flexible breaks during class, intermittent absences to attend medical appointments, access to remote education, schedule changes, classwork extensions, and many other possibilities depending on the situation;
- allow voluntary leave;
- reinstate the student after they are ready to return without requiring them to reapply;
- tell the student about your responsibilities to pregnant students, including your obligations to respond to sex discrimination and how you will limit the sharing of their private information; and
- provide your school's notice of nondiscrimination.



Jenna B. Rubin

Partner

404.260.3410



Emily Warwick

Associate

615.488.2906

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5. Accommodations for Students

Schools are required to allow the student access to other parts of your education programs or activities that are separate and comparable as an accommodation for any pregnancy or related condition. Further, you must also allow a student to take a voluntary leave of absence and be reinstated to their previous academic status they held at the beginning of the leave.

6. Providing Lactation Space for Students

A school must also allow a student access to a lactation space. It must be clean, shielded from view, free from intrusion – and not simply a bathroom. While you may already be in compliance with federal (or state) law when it comes to offering such spaces for your workers, you may not be fully compliant when it comes to your student population. This guidance serves as a good reminder to ensure you are offering similar spaces.

7. Documentation Not Required

The guidance makes clear several times that Title IX does not require students to provide documentation of their pregnancy or related conditions for you to take specific actions. The only exception is if you need documentation to determine the proper modifications or other steps you will need to take to accommodate them. You should proceed cautiously if you seek documentation to make sure your request is necessary and reasonable in scope.

8. Workers Must Receive Protections as Well

For employees, you must treat pregnancy or related conditions the same as any other temporary medical condition for all job-related purposes. Additionally, you must provide an employee reasonable break time to express breast milk or breastfeed and ensure access to a lactation space. [You can fully understand your employment obligations in this regard by reviewing our detailed FAQs on federal pregnancy discrimination and accommodation laws.](#)

9. Worker Leaves of Absence

Your school must also treat pregnancy or related conditions as a valid reason for an unpaid leave of absence if you don't have a leave policy or if the employee has insufficient leave to qualify for such a leave under your policy. At the end of a

leave, you must reinstate the employee to the status they held when the leave began or to a comparable position without a decrease in the rate of compensation, loss of promotional opportunities, or any other right or privilege of employment.

10. Reminder About Prohibited Applicant Questions

A school cannot ask an applicant about their marital status during the admissions or hiring process.

Lawsuit Status

As noted above, several court orders and an August Supreme Court ruling mean that schools across the country face varying Title IX obligations depending on the state in which they operate. A series of federal court rulings from earlier this summer means that schools in 26 states are not covered by the most recent Title IX rules – and thus are also not subject to the enforcement guidance described above.

[You can read a full analysis of this situation and recommendations for schools both in and outside of those 26 states here.](#)

But remember – just because your school may not be covered by this guidance doesn't mean that many of the principles described therein can be ignored. For example, a relatively new federal law called [the Pregnant Worker Fairness Act \(PWFA\)](#) and its [accompanying regulations](#) still apply to your school as an employer regardless of the status of the Title IX litigation. Check with your FP counsel if you have questions about applicability.

Conclusion

Make sure you are [signed up for the FP Insight System](#) to ensure you receive the latest news related to Title IX and other Education developments directly in your inbox. Please contact the [Higher Education Practice Group](#), the authors of this article, or your FP attorney for questions regarding enforcement of the new Title IX regulations.