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IN FOCUS

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Education Department Updates Title IX Regulations: Protections for Pregnant Students and Employees

Title IX of the Education Amendments of 1972 (hereinafter, "Title IX") bars sex discrimination in education programs that receive federal financial assistance (20 U.S.C. §§ 1681 *et seq.*). The U.S. Department of Education's (ED's) regulations implementing Title IX cover all educational institutions that receive funding from ED programs, including all K–12 public school districts and most colleges and universities. In mid-2024, ED updated these regulations in a number of ways (34 C.F.R. Part 106). Among other things, the updated regulations define the scope of sex discrimination under Title IX to include discrimination based on sexual orientation and gender identity. They also alter the obligations for educational institutions when responding to allegations of sex discrimination, including sexual harassment. Both changes are addressed in other CRS products (see LSB11175 and LSB11200).

The updated Title IX regulations also adopt new requirements for educational institutions aimed at eliminating discrimination against pregnant students and employees. This In Focus discusses these regulatory updates.

The updated Title IX regulations took effect on August 1, 2024. However, various courts have issued preliminary injunctions against the updated regulations in their entirety. The injunctions currently cover 26 jurisdictions as well as an assortment of schools in which students or their parents are members of certain plaintiff groups. In general, the court decisions have largely focused on ED's interpretation of sex discrimination to include discrimination based on gender identity.

The Biden Administration sought to narrow the injunctions. On August 16, 2024, in a 5-4 decision, the Supreme Court denied the government's application for a partial stay of certain preliminary injunctions pending resolution of appeals in the U.S. Courts of Appeals for the Fifth and Sixth Circuits. For now, ED is barred from enforcing any portion of the updated regulations in certain states and selected schools. According to ED, the agency's prior Title IX regulations, amended in 2020, remain in place for these states and schools.

Previous Title IX Regulations on Pregnancy and Notice of Proposed Rulemaking

Prior Title IX regulations, first adopted in 1975, contained several provisions pertaining to pregnancy. For instance, they barred discrimination against students on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom. Educational institutions were also generally required to allow a student's leave of absence based on these conditions as long as it was deemed necessary by a physician. Further, the regulations banned discrimination in employment on these bases and required educational institutions to allow an employee's leave of absence for these conditions. (Though beyond the scope of this In Focus, employees enjoy additional pregnancy related protections under other federal statutes. For more on these laws, see CRS Report R46821, *Pregnancy and Labor: An Overview of Federal Laws Protecting Pregnant Workers*, by April J. Anderson.)

Following a 2022 Notice of Proposed Rulemaking, ED received comments regarding pregnancy discrimination at school. Commenters shared various experiences related to their pregnancy, including being asked to withdraw from a postsecondary institution and being excluded from school activities or programs. Commenters also noted that they had been discouraged by their educational institution from having more children, were denied accommodations generally, and often were unaware of their rights under Title IX regarding pregnancy. Some noted that when schools learn of a student's pregnancy, they may pressure the student to attend a different school of lower quality. Another prominent concern was the lack of lactation spaces, which can impair health and interrupt learning.

Updated Title IX Regulations

In its Final Rule, ED made a number of amendments to its Title IX regulations that pertain to pregnancy. The new rule broadens the definition of pregnancy and related conditions and adds new requirements for educational institutions concerning rights for pregnant students and employees.

Scope of Protection (Definition)

The updated regulations provide that educational institutions must not discriminate based on "current, potential, or past pregnancy or related conditions." Under the regulations, pregnancy or related conditions mean pregnancy, childbirth, termination of pregnancy, lactation, related medical conditions, and recovery. The preamble to the regulations explains that the definition applies to "the full spectrum of processes and events connected with pregnancy." The preamble acknowledges that there are numerous potential medical conditions related to pregnancy, including (but not limited to) fatigue, dehydration, nausea, anemia, and prenatal or postpartum depression.

Interaction with Abortion Neutrality Provision and Religious Exemption in Title IX

While both the prior and updated regulations prohibit covered educational institutions from discriminating against

students and employees based on termination of pregnancy, this requirement sits alongside two related statutory provisions in Title IX. First, the statute provides that it shall not be construed to "require or prohibit" an entity to pay or provide for a benefit or service related to abortion. The statute further provides that it shall not be construed to authorize a penalty against someone for seeking or receiving a benefit or service related to abortion. (20 U.S.C. § 1688). In light of these provisions, the preamble to the updated regulations explains that the law does not require a campus health facility to offer abortions, nor does it require student health insurance plans to cover abortions. In contrast, educational institutions that provide health insurance for temporary conditions generally may not deny coverage for treatment of miscarriage, as that does not fall within the abortion neutrality provision's scope. The agency goes on to note that an educational institution may not retaliate against or punish a student or employee solely for seeking or obtaining an abortion. For instance, a school may not deny a student a place on the student council solely because of an abortion or deny a professor a raise on that basis.

Second, Title IX contains a religious exemption, which provides that the law shall not apply to an entity controlled by a religious organization when its application would conflict with the religious tenets of the organization (20 U.S.C. § 1681(a)(3)). The preamble to the updated regulations acknowledges that this exemption remains in place, and ED's Office for Civil Rights website appears to acknowledge exemptions from certain pregnancy requirements for religious institutions. (For more on Title IX's religious exemption, see CRS Report R47613, *Title IX's Religious Exemption: Agency Practice and Judicial Application*, by Jared P. Cole and Christine J. Back.)

Requirements Concerning Students

Under the updated regulations, educational institutions must ensure that when a student, or someone with a legal right to act on their behalf, informs any school employee of the student's pregnancy or related condition, the employee must promptly provide contact information for the school's Title IX Coordinator and inform the student that the coordinator can take action to ensure equal access to education programs. Once a student informs the Title IX Coordinator of their status, educational institutions must provide a general notice of nondiscrimination and inform the student of Title IX requirements regarding pregnancy, including reasonable modifications, voluntary leave, and access to a lactation space.

Educational institutions must make reasonable modifications as necessary, based on a student's individual needs, to ensure equal access to education programs. Students have discretion to accept or decline each modification offered; if accepted, an educational institution must implement it. Reasonable modifications can include breaks during class for expressing breast milk, breastfeeding, eating, drinking, or using the restroom; intermittent absences for medical appointments; access to online classes; changes in schedules or course sequences; extensions of deadlines and rescheduling of tests; allowing a student to either sit or stand or keep water nearby; counseling; changes in space or supplies such as access to a larger desk; or other changes. Educational institutions must allow pregnant students to take a leave of absence and return to the same academic status and, as practicable, the same extracurricular status previously held.

Educational institutions must provide students with a lactation space that is not a bathroom and is clean, shielded from view, and free from intrusion. The regulations do not require that the space be any particular size or designated solely for lactation throughout the entire day.

Requirements Concerning Employees

In addition to protections for pregnant students, the updated regulations impose obligations for educational institutions with respect to employees who are pregnant.

Educational institutions must offer reasonable break time for employees to express breast milk or breastfeed. They must ensure that employees also have access to a lactation space that is not a bathroom and is clean, shielded from view, and free from intrusion. However, unlike relevant obligations for pregnant students, the Title IX regulations do not require reasonable workplace modifications that are based on an employee's individual needs (although, as mentioned above, other federal laws may do so).

Selected Bills in Recent Congresses

Two bills since 2019 have sought to address the rights of pregnant students outside of the Title IX rulemaking context. H.R. 6914 in the 118th Congress, which has passed the House, would require all institutions of higher education (IHEs) participating in the federal student aid programs authorized under Title IV of the Higher Education Act (HEA) to provide information on resources available to help pregnant students "carry the baby to term and parent the baby after birth." In the 116th Congress, H.R. 5222 would have required each IHE participating in the HEA Title IV federal student aid programs to publish expectant parent and parenting student policies, which would have included information on accommodations.

At least one congressional measure aims to oppose the updated regulations. The Congressional Review Act (CRA) establishes procedures to enact a joint resolution of disapproval that will render a regulation ineffective if passed by both houses and signed by the President (or if Congress overrides a veto). Pursuant to the CRA, H.J.Res. 165, which passed the House on July 11, 2024, would overturn the Final Rule and prohibit the Administration from reissuing the rule "in a substantially similar form" or from issuing a "new rule that is substantially the same" unless "the reissued or new rule is specifically authorized" by a later enacted law.

Jared P. Cole, Legislative Attorney
Adam K. Edgerton, Analyst in Education Policy

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