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No Department, No Enforcement: Title IX After the Collapse of the Department of Education

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The structural foundations of Title IX enforcement are undergoing a profound transformation. President Trump's 2025 executive order initiating the closure of the Department of Education, combined with the vacatur of the 2024 Title IX regulations and the Supreme Court's elimination of Chevron *deference in* Loper Bright, *has fundamentally dismantled the administrative framework that long anchored Title IX protections. Unlike prior regulatory shifts, these developments raise the question of whether meaningful federal enforcement will continue to exist at all. As administrative structures recede, courts will assume a much greater role in defining Title IX's scope and enforceability, despite their institutional limitations.*

This Article argues that the resulting shift will narrow substantive protections, restrict access to justice, and produce fragmented interpretations of Title IX across jurisdictions. It examines the statute's original design as an evolving administrative framework, explores the barriers marginalized students will face under a litigation-driven model, and explains why courts are ill-equipped to provide consistent, forward-looking guidance. This Article

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concludes by considering potential legislative reforms to restore national coordination in Title IX enforcement, drawing lessons from Congress's intervention following Grove City College v. Bell*.*

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INTRODUCTION

In March 2025, President Trump signed an executive order initiating the closure of the Department of Education,[1] advancing a campaign promise to return control of education to the states. Although the order does not formally dismantle the agency — a step that requires congressional approval[2] — it directs the Secretary of Education to begin winding down operations and halts funding for programs associated with diversity, equity, inclusion, and so-called gender ideology. This action followed closely on the heels of a federal district court decision vacating the Department's new Title IX regulations issued in 2024.[3] The court in *Tennessee v. Cardona* found that the rules exceeded the Department of Education's statutory authority, violated constitutional safeguards, and were arbitrary and capricious.[4] Compounding the disruption, the Supreme Court's decision in *Loper Bright* eliminated *Chevron* deference. Previously, under *Chevron U.S.A., Inc. v. Natural Resources Defense Council*,[5] courts were required to defer to a federal agency's reasonable interpretation of an ambiguous statute that it administered. After Loper Bright, however, courts must now exercise independent judgment in assessing whether agencies act within their legal bounds.[6] Each of these developments alone would have significantly reshaped Title IX enforcement. Together, they mark a foundational realignment. The administrative framework that once anchored Title IX — particularly with respect to sexual harassment — has unraveled, and the courts are now positioned to assume interpretive authority in its place.

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[1] *See* Exec. Order No. 14,242, 90 Fed. Reg. 13,679 (Mar. 25, 2025).

[2] *See, e.g.*, Doe v. Musk, Civil Action No. 25-0462-TDC, 2025 U.S. Dist. LEXIS 49603 (D. Md. 2025) (emphasizing that Congress has plenary control over the existence of executive offices and agencies, and the power to eliminate federal agencies resides exclusively with Congress); Widakuswara v. Lake, No. 1:25-cv-1015-RCL, 2025 U.S. Dist. LEXIS 76500, *42 (D.D.C. 2025) (noting that federal agencies are "creatures of statute" and possess only the authority granted by Congress).

[3] *See* Tennessee v. Cardona, 762 F.Supp.3d 615, 621 (E.D. Ky. 2025).

[4] *Id.* at 622-26.

[5] Chevron U.S.A., Inc. v. Nat'l Res. Def. Council, Inc., 467 U.S. 837 (1984) (establishing the doctrine requiring courts to defer to an agency's reasonable interpretation of an ambiguous statute it administers).

[6] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 396-413 (2024).

What distinguishes the current moment, however, is its structural nature.

Over the past decade, Title IX enforcement has experienced significant volatility.

The 2011 Dear Colleague Letter,[7] the 2017 withdrawal of that guidance,[8] and the 2020 regulations[9] each reflected shifts in how Title IX would be interpreted and enforced. But despite their differences, these past changes operated on the shared premise that the federal government would remain the primary enforcer of educational civil rights. Today's developments do more than shift regulatory philosophy — they raise the question of whether meaningful federal enforcement will exist at all. This is not merely another pendulum swing, but a fundamental reconsideration of the federal government's role in securing sex equality in education. To understand what is at stake in this shift, it is necessary first to examine the administrative enforcement framework that has long sustained Title IX's protections.

Title IX's protections against sex-based harassment have long operated through a reactive, complaint-driven architecture. The Department of Education's Office for Civil Rights (OCR), established in 1980, has until now served as the cornerstone of this system.[10] In addition to providing policy guidance, the OCR has investigated administrative complaints, launched compliance reviews, and

[7] U.S. Dep't of Educ., Off. for C.R., Dear Colleague Letter: Sexual Violence (Apr. 4, 2011), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-201104.pdf [https://perma.cc/7EQP-MD6X].

[8] U.S. Dep't of Educ., Off. for C.R., Dear Colleague Letter: Title IX Guidance Withdrawal (Sept. 22, 2017), https://web.archive.org/web/20250108111952/https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf [https://perma.cc/9U9S-92YM].

[9] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026 (May 19, 2020) (codified as 34 C.F.R. pt. 106).

[10] *An Overview of the U.S. Department of Education-- Pg 1*, U.S. DEP'T OF EDUC. https://www.ed.gov/about/ed-overview/an-overview-of-the-us-department-of-education–pg-1 (last reviewed Jan. 15, 2025) [https://perma.cc/Y3SC-5HS7] ("In October 1979, Congress passed the Department of Education Organization Act (Public Law 96-88). Created by combining offices from several federal agencies, the Department began operations in May 1980.").

monitored corrective action plans when violations were identified.[11] But its authority was limited. OCR does not file lawsuits directly, represent individual complainants, or impose monetary penalties.[12] Instead it has functioned as a neutral arbiter, seeking voluntary resolutions and negotiated reforms. In exceptional cases, the OCR would refer matters to the Department of Justice's Educational Opportunities Section for litigation, but such referrals were not common.[13] Individuals retain the right to bring private lawsuits under Title IX,[14] yet to succeed they must meet the high bar of proving that an institutions responded to known misconduct with deliberate indifference.[15] This framework — neither fully administrative nor fully judicial — relied heavily on complaints to identify, report, and persist through complex enforcement channels. With OCR's administrative role collapsing and regulatory safeguards receding, the system's remaining enforcement mechanisms are narrower, slower, and less accessible — particularly for students lacking legal resources.

This paper argues that the collapse of the Department of Education's OCR will lead to diminished access to justice and increased uncertainty surrounding Title IX's scope and enforceability. The narrowing of substantive protections, the shift toward litigation-only enforcement, and the erosion of agency interpretive authority collectively threaten to render Title IX a hollow promise that fails to meet the needs of many students and employees. To understand the consequences of dismantling this infrastructure, it is essential to first examine how Title IX was designed to function — particularly the interpretive and administrative roles that have historically given the statute its meaning and force.

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[11] Diane Heckman, *The Golden Anniversary of Title IX of the Education Amendments of 1972: A Look at Its Application to Educational Programs Generally, Along with the Major Players Involved, Its Toolbox, and Remedies*, 403 ED. L. REP. 377, 391-92 (2022).

[12] *Id.*

[13] *See id.*

[14] Cannon v. Univ. of Chi., 441 U.S. 677, 688-89 (1979); Mia Lazarini, Note, *Title IX for What: Enforcing Title IX in the Wake of Controversy*, 53 UNIV. MEM. L. REV. 763, 774 (2023).

[15] Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 648 (1999) (referencing student-on-student harassment); Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290-91 (1998) (referencing teacher-on-student harassment); Lazarini, *supra* note 14, at 776.

I. TITLE IX AS AN INTERPRETIVE FRAMEWORK

The core of Title IX is a single sentence, largely unaltered since the law was enacted in 1972: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."[16] This straightforward language has spawned a comprehensive regulatory framework addressing sex discrimination across educational contexts — from access and sexual harassment to employment practices, pregnancy accommodations, athletics, and disciplinary procedures.[17] Title IX's deliberate brevity, characteristic of civil rights legislation, allows the statute to evolve through interpretation rather than remain static through enumeration.[18] Without specific definitions of prohibited conduct, procedural requirements, or enforcement mechanisms — and with minimal Congressional clarification — Title IX's implementation has necessarily depended on interpretive guidance from federal agencies, particularly the Department of Education's Office for Civil Rights (OCR), and judicial decisions that respond to changing social understandings of sex discrimination.[19]

From its inception, Title IX was designed as a broad mandate rather than a detailed rulebook.[20] Anchored in the Spending Clause of Article I, it operates as a conditional funding mechanism: educational institutions accepting federal funds commit to preventing sex

[16] 20 U.S.C. § 1681(a).

[17] Ronna Greff Schneider, *Title IX of the Education Amendments of 1972—Generally*, *in* EDUCATION LAW: FIRST AMENDMENT, DUE PROCESS AND DISCRIMINATION LITIGATION (Thomson Reuters, 2024).

[18] Robert C. Post & Reva B. Siegel, *Legislative Constitutionalism and Section Five Power: Policentric Interpretation of the Family and Medical Leave Act*, 112 YALE L.J. 1943, 1966-67 (2003) (arguing that Congress has historically played a dynamic role in interpreting and expanding constitutional rights under Section 5 of the Fourteenth Amendment, supporting the view that civil rights laws can evolve beyond original enumerations through legislative and societal reinterpretations).

[19] Lazarini, *supra* note 14, at 766-67.

[20] *Id.*

discrimination.[21] Yet, unlike conventional contractual arrangements with explicit terms, Title IX intentionally left interpretation and enforcement to evolve through agency action.[22] This design reflects the nature of civil rights protections, which must remain responsive to emerging forms of discrimination and changing social contexts. The statute's architects anticipated that federal agencies would develop its meaning through regulation, policy guidance, and administrative practice — establishing a framework flexible enough to address both persistent and newly recognized forms of sex discrimination in education.

Most enforcement occurred through informal guidance, technical assistance, and negotiated settlements, rather than formal adjudication or litigation. This model had two critical consequences. First, because the statute lacked detail, the OCR's interpretations — articulated through Dear Colleague Letters, policy guidance, and, more recently, formal regulations issued through notice-and-comment rulemaking — became the primary source of substantive meaning.[23] These materials shaped institutional practices on everything from grievance procedures to definitions of harassment. Second, schools grew deeply reliant on administrative guidance to understand and meet their obligations.[24] The statute's flexibility, while theoretically empowering, made compliance practically impossible without sustained interpretive signals from OCR.

Title IX's early design reflects a broader feature of civil rights legislation: flexibility is not a defect but a necessity. Laws like Title IX

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[21] Emily Harvey, *Protecting Title IX's Promise: The Injustice of Indifference in Title IX Peer Sexual Harassment Cases*, 73 EMORY L.J. 703, 745 (2024); Heckman, *supra* note 11, at 403-04.

[22] Karen M. Tani, *An Administrative Right to Be Free from Sexual Violence? Title IX Enforcement in Historical and Institutional Perspective*, 66 DUKE L.J. 1847, 1891-97 (2017).

[23] *See* Elizabeth Kaufer Busch, *Sexual Assault: What's Title IX Got to Do with It?*, 47 PERSPS. ON POL. SCI. 104, 108 (2018).

[24] *See* Margaret C. Hershiser, Jackie N. Ryan, John P. Barrett, & Baylie I. Moravec, *The Unintended Consequences of Title IX*, 56 CREIGHTON L. REV. 319, 329-31 (2023); Minyoung Moon & Hyejin Jeon, *A Decade of Title IX Regulation Changes and University Responses from 2013 to 2023*, 24 J. SCH. VIOLENCE 360, 360 (2025) (describing compliance with Title IX in light of the changes between presidential administrations); Annual Review, K. Daw, Austin Donohue, Courtney Hinkle, Hyun seo Lee, Maureen Milmoe, Katherine Shea, & Myunghee Tuttle, *Sexual Harassment in Education*, 21 GEO. J. GENDER & L. 439, 465-74 (2020).

are deliberately broad and open-textured because they must remain responsive to emerging forms of discrimination. Without a functional, responsive administrative infrastructure to interpret and apply them, these statutes and their goals become difficult to enforce and even harder to realize in practice.

The consequences of Title IX's collapsing administrative enforcement structure are already becoming clear.[25] As enforcement authority shifts from the Department of Education's Office for Civil Rights to the Department of Justice, the system that once supported accessible, equitable remedies is giving way to a more limited, litigation-driven model. This loss of administrative enforcement is already taking shape through concrete proposals to dismantle Title IX's federal infrastructure.

II. THE EROSION OF ACCESSIBLE ENFORCEMENT

If the Department of Education is dismantled, access to justice under Title IX is likely to shift toward a litigation-focused model. Project 2025, a comprehensive policy blueprint developed by the Heritage Foundation, outlines this transformation in explicit terms.[26] Under its plan, the OCR would be moved from the Department of Education to the Department of Justice and stripped of its administrative role.[27] It would no longer issue guidance, conduct investigations, or negotiate resolutions. Instead, the OCR's only remaining function would be to litigate sex-based claims of intentional discrimination — a standard that excludes disparate impact, narrows the protected class to biological sex, and bars protections for transgender and nonbinary students. Although President Trump and the Secretary of Education Linda McMahon have

[25] *See* Collin Binkley, *Civil Rights Work Is Slowing as Trump Dismantles the Education Department, Agency Data Shows*, AP NEWS, https://apnews.com/article/education-department-trump-civil-rights-disability-54c4b4a228b4b30e6a6751ec745b3915 (last updated July 18, 2025, 3:25 PM); Natasha Sokoloff, *'This Isn't Just About Us': Connecticut Mother Joins Lawsuit Against the Trump Administration*, CT INSIDER (May 12, 2025) https://www.ctinsider.com/news/education/article/civil-rights-lawsuit-farmington-trump-transgender-20312599.php?utm [https://perma.cc/P8C3-TDBS].

[26] *See* MANDATE FOR LEADERSHIP 330 (Heritage Found. ed., 2023), https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf [https://perma.cc/N6LW-4LFB].

[27] *Id.*

not directly endorsed this model, early actions suggest partial alignment. According to the Project 2025 Tracker, the administration has already advanced nearly half of the blueprint's overall objectives, including over forty percent of those targeting the Department of Education.[28]

The legal foundation for this transformation reflects a shift toward the Title VI model of enforcement as interpreted in *Alexander v. Sandoval*,[29] rather than one grounded in Title IX's historical administrative practice. In *Sandoval*, the Supreme Court held that Section 601 of Title VI prohibits only intentional discrimination, thereby precluding private plaintiffs from bringing claims based on disparate impact under that provision.[30] Section 601 serves as the basis for private lawsuits alleging intentional discrimination by recipients of federal funds.[31] In contrast, Section 602 authorizes federal agencies to issue regulations to effectuate Section 601's prohibition.[32] The Court assumed, without deciding, that regulations promulgated under Section 602 could validly prohibit practices with a disparate impact.[33] However, it held that even if such regulations are valid, there is no private right of action to enforce them.[34] Because Title IX shares nearly identical language and legal structure with Title VI,[35] courts have increasingly applied *Sandoval*'s reasoning to Title IX. This has effectively foreclosed private disparate impact claims under Title IX regulations as well. In *Robinson v. Kansas*, the Tenth Circuit left open the possibility of

[28] *Project 2025 Observer*, *Department of Education*, PROJECT 2025 TRACKER, https://www.project2025.observer/en?agencies=Dept.+of+Education (last visited Sept. 11, 2025) [https://perma.cc/VJC6-HR2J].

[29] Alexander v. Sandoval, 532 U.S. 275, 293 (2001).

[30] *Id.* at 280.

[31] 42 U.S.C.S. § 2000d (LexisNexis, Lexis Advance through Public Law 119-5, approved April 10, 2025).

[32] *Id.* § 2000d-1.

[33] *Alexander*, 532 U.S. at 281.

[34] *Id.* at 286 (noting that Title VI does not display an intent to create a freestanding private right of action to enforce regulations promulgated under § 602).

[35] 42 U.S.C.S. § 2000d ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.").

prospective injunctive relief under § 1983.[36] However, the Supreme Court has not definitively resolved whether Title IX's implementing regulations are enforceable through private § 1983 actions.

What remains largely unchallenged, however, is that federal agencies retain the power to enforce disparate impact regulations even where private litigants cannot.[37] As the Fifth Circuit noted in *Rollerson v. Brazos River Harbor Navigation District*, *Sandoval* bars private enforcement but expressly preserves the federal government's authority to investigate and act on disparate impact violations.[38] Historically, the Department of Education's OCR exercised precisely this role, using its administrative powers to interpret Title IX broadly and pursue remedies — including addressing disparate impact concerns — that courts would not recognize.[39] The 2001 *Revised Sexual Harassment Guidance* exemplifies this expansive approach, outlining institutional responsibilities that went well beyond what courts required.[40] Project 2025, however, would dismantle that broader administrative authority entirely. It proposes stripping the OCR of its interpretive and investigative role, eliminating the last viable avenue for enforcing disparate impact claims under Title

[36] Robinson v. Kansas, 295 F.3d 1183, 1187 (10th Cir. 2002) ("The Court's decision does not bar *all* claims to enforce such regulations, but only disparate impact claims brought by private parties directly under Title VI. Disparate impact claims may still be brought against state officials for prospective injunctive relief through 42 U.S.C. § 1983 to enforce section 602 regulations." (citation omitted)).

[37] *See Alexander*, 532 U.S. at 281.

[38] Rollerson v. Brazos River Harbor Navigation Dist., 6 F.4th 633, 643 (5th Cir. 2021) ("Thus, *Sandoval* eliminated the possibility of private disparate-impact claims but left untouched *Choate*'s apparent approval of the promulgation and enforcement of disparate-impact regulations by federal agencies.").

[39] *See, e.g.*, U.S. DEP'T OF EDUC., OFF. FOR C.R., 2024 FISCAL YEAR ANNUAL REPORT: REPORT TO THE PRESIDENT AND SECRETARY OF EDUCATION 8-9 (2024) ("Through mediation, OCR redressed allegations in FY 2024 ranging from discriminatory harassment to physically inaccessible school buildings to disparate treatment on the basis of race and national origin") [hereinafter "2024 FISCAL YEAR ANNUAL REPORT"].

[40] U.S. DEP'T OF EDUC., OFF. FOR C.R., REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES, at i (2001), https://www.ed.gov/media/document/shguidepdf-33957.pdf [https://perma.cc/Z5XH-BRLM] ("The revised guidance re-grounds these standards in the Title IX regulations, distinguishing them from the standards applicable to private litigation for money damages and clarifying their regulatory basis as distinct from Title VII of the Civil Rights Act of 1964 (Title VII) agency law.").

IX.[41] Although federal agencies currently retain the ability to address disparate impact through administrative enforcement, if the proposed changes are implemented that enforcement capacity would effectively disappear.

The shift from administrative enforcement to litigation will sharply restrict access to justice for students experiencing sex-based discrimination. For decades, the Department of Education's OCR offered a low-cost, accessible mechanism for pursuing institutional accountability. Students could initiate investigations without legal counsel, and the OCR has had the capacity to resolve complaints through negotiated agreements that were designed to address systemic failures — not just individual harm. These pathways have been especially vital for marginalized students, who often lack the financial resources or institutional support to navigate the legal system. In contrast, litigation in federal court demands substantial time, money, and emotional labor. Legal representation is essential, procedural barriers are high, and cases may take years to resolve. For many students, especially those dealing with trauma or financial instability, this model is simply out of reach. The chilling effect is intensified by the narrow legal standard for relief, which excludes many valid complaints that fall outside the strict bounds of judicial liability. Without the OCR's accessible process and its commitment to forward-looking institutional change, Title IX's protections risk becoming largely symbolic — legally available but functionally unattainable.

III. THE NEW BOUNDARIES OF TITLE IX LIABILITY

The narrowing of Title IX's scope will further limit students' ability to obtain relief, particularly in cases of sexual harassment and discrimination that fall outside the strict confines of private causes of action. With the 2024 regulations vacated, the 2020 rules are once again

[41] Mandate for Leadership, *supra* note 26, at 335 ("In addition to rescinding the policy and any related guidance, the next Secretary should work with the next Attorney General on a regulation that would clarify current regulations to state that Title VI of the Civil Rights Act does not include a disparate impact standard.").

in effect — rules that significantly restrict the conduct for which educational institutions can be held accountable.[42]

Most notably, the 2020 rules define sexual harassment as conduct that is "severe, pervasive, and objectively offensive," requiring all three elements to be satisfied before a school must intervene.[43] This threshold was designed to mirror the judicial standard articulated in *Davis v. Monroe County*,[44] but it goes further in administrative enforcement by requiring all three elements to be met concurrently. By contrast, the 2024 rules would have restored a more flexible standard, allowing schools to address conduct when it is either severe or pervasive, so long as it is subjectively and objectively offensive and limits a student's ability to access educational opportunities.[45] This standard better reflects how a single serious incident, such as a sexual assault or an explicit threat, can independently create a hostile environment without requiring repeated occurrences. The 2020 framework, by demanding both severity and pervasiveness, excludes many kinds of gender-based misconduct that cause real harm, including persistent lower-level harassment or isolated but traumatic acts that would meet the 2024 threshold.[46]

Beyond narrowing what counts as harassment, the 2020 regulations also restrict when institutions must act — by tightening the rules on the scope of knowledge and responsibility. Under the 2020 rules, a school is not considered to have "actual knowledge" unless actual notice is given

[42] *See* U.S. Dep't of Educ., *U.S. Department of Education to Enforce 2020 Title IX Rule Protecting Women* (Jan. 31, 2025), https://www.ed.gov/about/news/press-release/us-department-of-education-enforce-2020-title-ix-rule-protecting-women; U.S. Dep't of Educ., Off. for C.R., Title IX Enforcement Directive (Feb. 4, 2025), https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf [https://perma.cc/252V-FBGC].

[43] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026, 30,574 (May 19, 2020) (to be codified at 34 C.F.R. § 106.30(a)).

[44] *See* Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 652 (1999).

[45] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474, 33,884 (Apr. 29, 2024) (to be codified at 34 C.F.R. § 106.2).

[46] *See* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. at 30,174 (Note that OCR explicitly intends for a single instance of sexual assault to be covered under § 106.30).

to the Title IX Coordinator or a specific official with authority to institute corrective measures.[47] Constructive notice — where an institution should have known about the harassment based on surrounding circumstances — is expressly excluded, and schools are not obligated to respond unless a formal complaint is filed by the complainant or the Title IX Coordinator.[48] This narrow standard allows institutions to, for example, ignore serious allegations simply because the report was made to the "wrong" employee — such as a coach, advisor, or faculty member — who lacked formal authority.

The 2024 rules would have expanded this framework significantly. They required that all nonconfidential employees who have administrative, teaching, or advising responsibilities notify the Title IX Coordinator upon learning of conduct that could constitute sex discrimination.[49] In K–12 settings, all nonconfidential employees had that duty. In higher education, employees without formal authority were at minimum required to inform students of how to contact the Title IX Coordinator.[50] This broader "knowledge" standard reflects a more realistic understanding of how students report misconduct — often informally, to the trusted adults around them. The 2024 rules also eliminated the "deliberate indifference" standard, replacing it with a clearly defined set of institutional duties when sex-based discrimination is reasonably suspected.[51] By reverting to the 2020 framework, Title IX enforcement once again allows schools to claim ignorance, delay intervention, and avoid responsibility unless very specific procedural conditions are met. The result is a regulatory system that makes student protections contingent on internal hierarchies, rather than on the urgency or seriousness of the underlying harm.

The 2020 regulations also narrowed who could file a complaint and under what circumstances, excluding many individuals with valid claims from the Title IX process altogether. For example, under the 2020 rules, a complainant had to be the direct alleged victim, who had to submit a formal written complaint while currently participating in the school's

[47] *Id.* at 30,574.

[48] *Id.*

[49] 89 Fed. Reg. at 33,562-63.

[50] *Id.*

[51] *Id.* at 33,559-61.

program or activity.[52] As a result, students or employees who had already withdrawn or graduated — even if the misconduct occurred while they were enrolled — could be excluded from protection. The requirement for a formal complaint, coupled with strict participation criteria, placed significant procedural hurdles between victims and institutional accountability.

The 2024 regulations broadened access by redefining "complainant" to include anyone denied access to education on the basis of sex and eliminating the formal complaint requirement.[53] Any oral or written communication that could reasonably be understood as requesting an investigation was sufficient to trigger a school's responsibility.

Reverting to the narrower 2020 framework once again limits who can seek protection, how misconduct must be reported, and when schools are obligated to act — leaving many forms of discrimination outside the law's reach. These procedural restrictions compound a larger problem: as administrative enforcement recedes, courts will bear increasing responsibility for defining Title IX's scope and obligations. Yet courts are poorly equipped to offer the kind of consistent, forward-looking interpretation that Title IX has historically depended on.

IV. THE LIMITS OF LITIGATION AS A FORM OF REGULATORY INTERPRETATION

As administrative enforcement recedes, including a significant reduction in the Department of Education's workforce,[54] courts will become the primary arbiters of Title IX disputes — despite being structurally ill equipped to provide comprehensive or consistent guidance. While the Department of Education's Office for Civil Rights (OCR) once acted as a proactive regulator, educator, and enforcer,

[52] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. at 30,574.

[53] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. at 33,882.

[54] Amy Howe, *Supreme Court Clears the Way for Trump Administration to Massively Reduce the Size of the Department of Education*, SCOTUSBLOG (July 14, 2025), https://www.scotusblog.com/2025/07/supreme-court-clears-the-way-for-trump-administration-to-massively-reduce-the-size-of-the-department-of-education/ [https://perma.cc/3RXL-CNC6].

courts typically serve as retrospective adjudicators of individual disputes.[55] The OCR had the authority to issue guidance, answer compliance questions, investigate institutions, monitor implementation, and develop model policies — functions that courts cannot fully replicate.[56] Its regulatory interventions shaped national standards and offered forward-looking solutions to emerging forms of discrimination. Unlike administrative agencies, courts can only respond to contested cases and issue rulings that are reactive, case specific, and limited by procedural posture. Beyond their procedural limits, courts are also structurally incapable of addressing the volume and urgency of discrimination claims that arise in the educational context.

A. Volume and Capacity Constraints

The difference in volume and speed between the two systems is stark. In FY 2024, OCR received 22,687 complaints — more than double the number it received in FY 2009 — even as its staffing declined over the same period.[57] Over half of those complaints involved allegations of sex discrimination.[58] By contrast, in all of 2024, federal district courts nationwide saw just 866 civil rights cases related to education.[59] Moreover, the federal judiciary is severely understaffed, with no realistic capacity to absorb more cases even if litigants turned exclusively to the courts as an alternative.[60] This disparity reveals the profound gap

[55] *See* Timothy Endicott, *Adjudication and the Law*, 27 OXFORD J. OF LEGAL STUD 311, 312 (2007) (explaining that courts typically impose liability retrospectively, based on events already in dispute, rather than proactively creating new policy); Austin Sarat & Joel B. Grossman, *Courts and Conflict Resolution: Problems in the Mobilization of Adjudication*, 69 AM. POL. SCI. REV. 1200, 1200-01 (1975) (describing courts as "concerned with enforcing existing norms" and "almost totally reactive," in contrast to proactive policy-making bodies).

[56] Hershiser, *supra* note 24, at 322.

[57] 2024 FISCAL YEAR ANNUAL REPORT at 8.

[58] *Id.* (noting that 6,749 complaints were filed by a single individual).

[59] Admin. Off. of the U.S. Courts, Table C-2 (Dec. 31, 2024), https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables [https://perma.cc/JQX8-QLX9].

[60] *See, e.g.*, Nate Raymond, *US Judge Urges Congress to Revive Effort to Expand Judiciary*, REUTERS (last updated February 25, 2025),

between the scope of need and the capacity of the courts to meet it. OCR's administrative process, while far from perfect, functioned as the primary mechanism for civil rights enforcement in education. Litigation never came close to filling that role.

In contrast to the lengthy and adversarial nature of federal litigation, OCR offered rapid, accessible mechanisms for resolving complaints. OCR offered mediation at the time of filing to facilitate early resolution, resolving 778 complaints through mediation alone — some in as few as seventeen days from the date of filing.[61] Its Rapid Resolution Procedure resolved another 638 complaints efficiently, allowing the agency to manage its growing caseload while also delivering timely outcomes.[62] By contrast, courts operate much more slowly: civil cases take an average of two years to reach trial, require formal pleadings, and often take several more years to achieve final resolution.[63] Most students thus simply do not have the time, resources, or support to pursue relief through federal litigation.

B. Interpretive Fragmentation and Institutional Limits

The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* eliminated *Chevron* deference, requiring courts to interpret ambiguous statutes independently.[64] This development has intensified the interpretive instability already introduced by the collapse of administrative enforcement.[65] For Title IX specifically, this means that federal courts are no longer required to defer to the Department of Education's interpretations of compliance. This is even the case when the agency has developed its position through expertise, stakeholder engagement, or formal rulemaking. Each court will now define the

https://www.reuters.com/legal/government/us-judge-urges-congress-revive-effort-expand-judiciary-2025-02-25/?utm.

[61] 2024 FISCAL YEAR ANNUAL REPORT at 8.

[62] *Id.*

[63] *The Need for Additional Judgeships: Litigants Suffer When Cases Linger*, U.S. CTS. (Nov. 18, 2024), https://www.uscourts.gov/data-news/judiciary-news/2024/11/18/need-additional-judgeships-litigants-suffer-when-cases-linger [https://perma.cc/3UZZ-HVEY].

[64] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 396-413 (2024).

[65] *See* Tennessee v. Cardona, 762 F.Supp.3d 615, 622-26 (E.D. Ky. 2025).

statute's scope independently, even where expert agency guidance exists. The likely result is a patchwork of legal standards and increasing interpretive fragmentation. Circuit splits are all but inevitable on fundamental questions, such as whether Title IX protects transgender students, how institutions must respond to off-campus or online harassment, and what procedural protections are required for accused students. And the Supreme Court cannot be relied upon to quickly and reliably resolve these splits.[66] Without a coordinating agency voice or a reliable judicial mechanism to resolve these conflicts quickly, Title IX's protections will vary based on geography, judicial philosophy, and litigation capacity.

But interpretive fragmentation is only part of the problem. Even beyond doctrinal inconsistencies, courts are structurally ill suited to carry out the kind of dynamic, expert-driven interpretation that Title IX requires. The statute's broad, open-textured language depends on interpretive development through agency rulemaking and administrative enforcement. With the decline of OCR's regulatory role and the ascendancy of judicial primacy, Title IX risks becoming a fragmented and unpredictable body of law — one that lacks the clarity, adaptability, and accessibility that effective civil rights enforcement requires.

V. THE STATES ARE NOT ENOUGH: WHY CIVIL RIGHTS REQUIRE A FEDERAL FLOOR

The retreat from federal enforcement is framed not as a void but as a transfer: President Trump and Secretary McMahon have urged that authority over education should "return to the states," a vision commentators have echoed.[67] The judicial fragmentation following

[66] *See generally* Deborah Beim & Kelly Rader, *Legal Uniformity in American Courts*, 16 J. EMPIRICAL LEGAL STUD. 448 (2019).

[67] *See, e.g.*, Neal McCluskey, *Top 5 Reasons to End the US Department of Education*, CATO INST. (Mar. 20, 2025, 3:58 p.m.), https://www.cato.org/blog/top-5-reasons-end-us-department-education#:~:text=3.,a%20benefit%20to%20the%20country [https://perma.cc/5QFW-LX3Y] (noting that the responsibility for education should fall to states, districts, families and educators and not Washington); *Improving Education Outcomes by Empowering Parents, States, and Communities*, WHITE HOUSE (Mar. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/03/improving-education-

Loper Bright might suggest that states could step in to fill the void left by weakened federal enforcement. Yet experience has demonstrated that state-level efforts, while important, are no substitute for a coordinated national framework.[68] Litigation challenging the 2024 Title IX regulations underscores a deeper problem: without federal coordination, legal protections become fragmented and inconsistent.[69]

Some defenders of the Department of Education's dismantling argue that states are well positioned to assume responsibility for enforcing sex discrimination protections.[70] And indeed, a number of states have enacted strong policies.[71] California, for example, has created systemwide Title IX offices and incorporated broad equity mandates into state law.[72] But even the most ambitious state efforts cannot

outcomes-by-empowering-parents-states-and-communities/ [https://perma.cc/BXN6-K5B4] (assigning authority to the States); Kalyn Belsha, *Trump Signs Executive Order to End Education Department*, CHALKBEAT (Mar. 20, 2025, 2:43 p.m.), https://www.chalkbeat.org/2025/03/20/trump-signs-executive-order-to-end-education-department/ [https://perma.cc/4S49-DPJ2] ("'Beyond these core necessities, my administration will take all lawful steps to shut down the department,' Trump said. 'We're going to shut it down, and shut it down as quickly as possible. It's doing us no good. We want to return our students to the states.'"); Alex Gangitano, *McMahon: Abolish Education Department*, HILL (Apr. 2, 2025, 10:59 a.m.), https://thehill.com/homenews/education/5162816-mcmahon-abolish-education-department-trump/.

[68] See, e.g., Joshua E Weishart, Protecting a Federal Right to Educational Equality and Adequacy, in A Federal Right to Education: Fundamental Questions for Our Democracy 303, 304 (Kimberly Jenkins Robinson ed., 2019); Derek Black, Unlocking the Power of State Constitutions with Equal Protection: The First Step Toward Education as a Federally Protected Right, 51 Wm. & Mary L. Rev. 1343, 1348-50 (2010).

69 Tammi Walker, Title IX Reimagined: The Power of Principles-Based Governance, 93 U. Cin. L. Rev. 739, 761-62 (2025).

70 Mandate for Leadership, supra note 26.

71 See, e.g., Fla. Stat. § 1000.05 (2023) (prohibiting discrimination against students and employees in Florida's K–20 public education system and requiring equality of access to programs and services); id. § 1006.71 (requiring gender equity in intercollegiate athletics and authorizing penalties, including withholding of state funds, for noncompliance).

[72] *See* Cal. Educ. Code § 221.61 (West 2024); *id.* § 66271.6 (setting forth legislative findings supporting equal opportunities for male and female students in athletics and educational programs); *id.* § 66280.5 (establishing a systemwide Office of Civil Rights for the University of California to oversee compliance with state and federal nondiscrimination laws, including Title IX); *Sex Equity in Education Act Annual*

replace the role of the federal government. Title IX exists not because the states failed to act uniformly, but because they failed to act consistently, equitably, or sufficiently to prohibit sex-based discrimination.

Civil rights enforcement depends on a uniform federal baseline. States are not neutral platforms for protecting rights; they are political bodies with widely divergent records on issues of race, gender, and equality. Federal law ensures that core civil rights protections do not depend on geography. Only the federal government can compel compliance across all jurisdictions, apply consistent interpretations through nationwide precedent, and condition billions of dollars in funding on adherence to antidiscrimination rules. Federal agencies also have the capacity to investigate systemic discrimination, issue binding regulations, and provide interpretive guidance to institutions that are trying to meet evolving legal expectations.

State-level laws addressing sex discrimination in education vary significantly in both scope and enforceability. Some states provide expansive protections, while others offer only limited coverage or lack enforcement mechanisms altogether.[73] Meanwhile, Idaho only recently adopted compliance reporting requirements.[74] And many states still do not offer explicit protections for LGBTQ+ students.[75] These disparities leave vulnerable populations without consistent legal recourse and create confusion for institutions operating across multiple states. The situation in Kansas underscores these gaps by showing how even a state

Notification, CAL. DEP'T OF EDUC. (Apr. 28, 2021), https://www.cde.ca.gov/re/di/eo/sb1375crnt.asp [https://perma.cc/6Y6E-N47G] (noting that "California Education Code Section 221.61 strengthens and expands upon Title IX and state sex equity in education requirements").

[73] Florida enforces compliance with both Title IX and its own Florida Educational Equity Act by imposing penalties, such as withholding state funds, on institutions that fail to comply. FLA. STAT. §§ 1000.05, 1006.71 (2025).

[74] *See* IDAHO CODE § 33-3732 (effective July 1, 2025) (requiring annual reporting by higher education institutions on Title IX compliance, including data on complaints, investigations, and corrective actions).

[75] *Safe School Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/safe_school_laws (last updated Sept. 1, 2025) [https://perma.cc/7S5C-HFEV] (noting 25 states do not have laws that protect LGBTQ students in schools).

with general anti-discrimination laws can leave education-specific protections undefined.[76]

Kansas illustrates this problem of ambiguity and jurisdictional gaps. Unlike many states, Kansas has not enacted statutes directed specifically at schools, leaving students and institutions to navigate how general civil rights provisions apply in the educational context. That ambiguity becomes a practical barrier because, although the Kansas Human Rights Commission is empowered to investigate discrimination under the Kansas Act Against Discrimination,[77] the Kansas Supreme Court has held that its jurisdiction does not extend to public schools, which are not "public accommodations" within the meaning of the statute.[78] At the same time, the Kansas State Department of Education exercises general supervisory authority but lacks investigatory power over discrimination complaints.[79] The result is that Kansas students facing sex-based discrimination in public schools have no state agency with clear statutory authority to investigate their claims. Taken together, examples like Kansas highlight why federal law — and Title IX in particular — remains indispensable.

The Spending Clause further underscores the federal government's unique enforcement capacity.[80] By tying compliance to federal funding, Congress gave Title IX real coercive power — a mechanism that states cannot replicate. The statute was designed to do more than signal disapproval of discrimination; it was built to ensure that recipients of public funds meet enforceable standards of equality.[81] Only the federal

[76] Kansas Act Against Discrimination, KAN. STAT. ANN. §§ 44-1001 to -1044 (2024).

[77] KAN. STAT. ANN. § 44-1004 (2024).

[78] Kan. Comm'n on C.R. v. Topeka Unified Sch. Dist., 755 P.2d 539 (1988) (holding that the predecessor to the Kansas Human Rights Commission exceeded its statutory authority by investigating discrimination in public schools); Seabourn v. Coronado Area Council, 891 P.2d 385 (1995) (noting that schools are not "public accommodation" under the Kansas Act Against Discrimination).

[79] *See* KAN. STAT. ANN. §§ 44-1003 to -1004 (2024) (creating and empowering the state human rights commission with no mention of the Kansas State Board of Education's role in addressing discrimination beyond providing education about the origin and effects of prejudice).

[80] *See* U.S. CONST. art. I, § 8, cl. 1.

[81] *See generally* South Dakota v. Dole, 483 U.S. 203 (1987) (outlining the main limits on Congress's use of its Spending Clause power).

government can condition billions of dollars in funding on adherence to civil rights requirements and compel nationwide compliance through uniform rules and regulatory oversight.

Relying on the states to enforce Title IX risks reintroducing the very inequities the statute was intended to eliminate. Local political variation, uneven resources, and a lack of uniform interpretation all contribute to a patchwork approach that undermines national civil rights goals. In such an environment, students' access to protection depends not on the severity of discrimination they face, but on where they happen to live.

Equity, as envisioned by Title IX, was never simply about numerical parity or formal symmetry. It was about ensuring meaningful access to educational opportunities, particularly for those historically excluded or disadvantaged. The statute aimed to remove structural barriers, shift institutional cultures, and build systems that respond to real-world inequalities — not just tally equal numbers.[82] That vision demands not only enforcement power, but also interpretive clarity, responsiveness, and sustained oversight. When civil rights are reduced to paperwork compliance or stripped of their context, they lose their substantive power. The disintegration of Title IX's federal infrastructure threatens the statute's ability to deliver real protections rather than merely formal guarantees.

CONCLUSION

The disintegration of Title IX's federal infrastructure represents more than a procedural shift. It threatens the substantive rights that generations of students have relied upon. As enforcement moves from accessible administrative channels to costly litigation, from proactive agency guidance to reactive court decisions, and from federal consistency to state-by-state variation, the statute's core commitment to educational equity begins to lose its practical force. Students facing discrimination will encounter higher barriers to relief, narrower

[82] Margaret E. Juliano, *Forty Years of Title IX: History and New Applications*, 14 DEL. L. REV. 83, 84 (2013); Nayoung Rim, *The Effect of Title IX on Gender Disparity in Graduate Education*, 40 J. POL'Y ANALYSIS & MGMT. 521, 523-25 (2021).

definitions of protected conduct, and outcomes shaped more by geography than by justice.

This transformation marks a strategic shift away from the structural commitments that have historically made civil rights laws enforceable. Title IX was deliberately designed with interpretive flexibility, reflecting the recognition that civil rights statutes must remain responsive to evolving forms of discrimination. Its effectiveness has always depended on a strong administrative framework — one capable of responding to emerging challenges, providing clarity for institutions, and ensuring accountability beyond the courtroom. Without that structure in place, the law becomes frozen in time, incapable of addressing new forms of harm and inaccessible to many who need its protections most.

The path forward will depend on congressional action. While litigation may continue to shape Title IX's contours at the margins, restoring its coherence and accessibility requires federal legislative intervention. Congress is uniquely positioned to clarify the statute's scope, authorize broader administrative enforcement, and establish more durable protections against regulatory dismantling. This is not without precedent. When the Supreme Court narrowed Title IX's reach in *Grove City College v. Bell*,[83] Congress responded with the Civil Rights Restoration Act of 1987 to reaffirm and expand its protections.[84] A similar response may now be necessary — not only to restore what has been lost, but to insulate future enforcement from executive instability and judicial minimalism.

Sustained state-level efforts may help build momentum for federal reform. Several states have expanded civil rights protections in recent years, often in response to perceived federal retrenchment. But those efforts, while commendable, are uneven and inherently limited. They cannot guarantee national consistency or ensure the accountability of federally funded institutions. Title IX's core purpose has always been to

[83] *See generally* 465 U.S. 555 (1984) (holding that Title IX's nondiscrimination requirements apply to any specific program or activity receiving federal financial assistance, even if the overall institution does not receive such funding directly).

[84] *See* Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28, 28-29 (codified in scattered sections of 20 U.S.C., 29 U.S.C., and 42 U.S.C.) (clarifying that Title IX and other civil rights statutes apply institution-wide when any part of an institution receives federal financial assistance).

create enforceable, uniform rights across jurisdictions. Without renewed congressional engagement, that foundation will continue to deteriorate, leaving Title IX as a formal guarantee, detached from the mechanisms necessary to make its protections real.