Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Fourth Circuit: District Court May Hear Schools' Challenge to Education Department's Title IX Funding Decision

November 19, 2026

Disputes over the federal government's management of grants, including terminating and/or pausing grants for failing to align with administration priorities, have been the subject of significant litigation in recent years. In turn, interim docket decisions from the Supreme Court have raised questions about the proper forum in which to challenge federal agency grant decisions. While these questions can implicate government actions across numerous policy areas, one recurring area of disagreement concerns agency funding and grant decisions tethered to civil rights requirements in laws predicated on the Spending Clause. These laws prohibit different types of discrimination in programs that receive federal funding. They contain "elaborate restrictions on agency enforcement": the laws require agencies distributing funding to seek to achieve compliance with their nondiscrimination terms voluntarily, establish specific procedures for agencies to use when deciding to terminate funding for noncompliance, and provide for judicial review to challenge agency termination decisions. (For a more in-depth treatment of these requirements, see this Legal Sidebar.)

One developing question in federal courts sits at the intersection of the Supreme Court's interim docket decisions on challenges to grant terminations generally and the civil rights spending laws in particular: When a federal agency makes a funding or grant decision based on a recipient's alleged noncompliance with a civil rights spending law—without first following the statutory procedural provisions applicable to funding terminations under those laws—can a recipient challenge that decision in court, and if so, where?

The U.S. Court of Appeals for the Fourth Circuit recently issued a decision in *Fairfax County School Board v. McMahon* addressing this question. As explained below, the circuit court ruled that school districts placed on "high-risk" status for funding by the Department of Education (ED) due to compliance issues arising under Title IX of the Education Amendments of 1972 (Title IX) can bring at least some of their claims challenging that decision under the Administrative Procedure Act (APA) in federal district court, rather than the Court of Federal Claims (CFC) under the Tucker Act.

This Sidebar begins with a brief description of the civil rights law at issue in *Fairfax County*, Title IX, and how the law is enforced by federal agencies. It continues with a discussion of recent interim docket Supreme Court decisions regarding review of federal agency grant decisions, which implicate both the

Congressional Research Service
https://crsreports.congress.gov
LSB11501

APA and the Tucker Act. The Sidebar then describes the Fourth Circuit's decision, including majority and dissenting opinions, and places that decision in the larger context of several analogous district court decisions. The Sidebar concludes with considerations for Congress.

Title IX

Title IX prohibits sex discrimination in federally funded education programs. All K-12 public school districts, and almost all colleges and universities, receive federal funding and must comply with Title IX's requirements. Title IX is generally enforced in two ways: (1) through private lawsuits brought directly against funding recipients in federal court, and (2) by the federal agencies that distribute funding to recipients. Individuals subjected to sex discrimination in federally funded education programs may bring complaints to the relevant funding agency, which can investigate a recipient for noncompliance. Agencies also sometimes conduct investigations without first receiving a complaint when reports emerge of discrimination that violates the law.

In the administrative enforcement context, the ultimate sanction for a recipient's refusal to come into compliance with Title IX is suspension or termination of federal funding, although agencies seeking to impose such a sanction must comply with what the Supreme Court has described as "elaborate restrictions." Section 902 of the law provides that before an agency begins proceedings to terminate funding for noncompliance with Title IX, it must first provide the recipient with notice that it is violating Title IX and determine that compliance cannot be reached voluntarily. The law provides that an agency has two enforcement options once it has given notice and determined that compliance cannot be achieved voluntarily. First, it can terminate funding following "an express finding on the record, after opportunity for hearing," of noncompliance, although termination "shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found." Second, Section 902 provides that when an agency determines compliance cannot be reached voluntarily, compliance can be effected "by any other means authorized by law." Courts and agency regulations have interpreted this language to allow referral of the case to the Department of Justice, which can bring a lawsuit in federal court to require recipients to comply with the law's antidiscrimination mandate.

Finally, Title IX provides that any agency action taken under Section 902 is subject to judicial review "as may otherwise be provided by law for similar action taken by such department or agency on other grounds." In addition, for agency actions terminating assistance "not otherwise subject to judicial review," review is available under the APA. These procedural requirements for enforcement of Title IX are essentially the same as those of several other civil rights laws also based on the Spending Clause. Title IX was expressly modeled on Title VI of the Civil Rights Act of 1964, which bars race discrimination in federally funded programs, and some other civil rights spending laws expressly invoke Title VI's enforcement scheme.

The APA and the Tucker Act

While Title IX provides for judicial review of agency actions to enforce its terms, a threshold question is what forum should hear claims challenging funding decisions. The APA waives the federal government's sovereign immunity by allowing individuals aggrieved by final agency action to bring suit in federal court to challenge the lawfulness of the action. This statutory waiver, however, does not authorize money damages as a remedy. By contrast, another federal statute funnels review of specific agency decisions to a particular forum, the CFC. The Tucker Act provides the CFC with jurisdiction over claims against the United States when founded on (among other things) a government contract if the damages exceed $10,000, unless Congress has granted a different court authority to hear the suit. In contrast to the powers of a district court reviewing claims brought under the APA, the CFC may render money judgments but

does not possess general equitable powers to issue injunctions or other prospective relief. Thus, whether a challenge to a particular agency action to enforce Title IX is properly considered a contract claim under the Tucker Act or a challenge to a final agency action under the APA may be dispositive as to which forum can hear a challenge to the agency decision, and accordingly what kind of relief is available.

In 2025, two interim docket Supreme Court decisions addressed when challenges to agency grant decisions in general must go to the CFC rather than proceed under the APA in federal district court. These interim decisions, in other words, did not resolve the merits of the cases, but rather the jurisdictional question of which forum the cases must go to. In *Department of Education v. California*, the Supreme Court stayed a temporary restraining order that would have barred ED from canceling various teacher-development grant awards and required it to pay past-due obligations as well as new obligations as they accrued. The Court ruled that the government was "likely to succeed in showing the District Court lacked jurisdiction to order the payment of money under the APA." The Court reasoned that the APA's limited waiver of the federal government's sovereign immunity did not allow for orders to enforce contractual obligations, such as grant award terms, "along the lines of what the District Court ordered here."

Subsequently, in *National Institutes of Health v. American Public Health Association* (*NIH*), the Court reviewed a district court's decision that set aside both an agency's termination of grants and the agency's guidance documents setting forth a new grant policy. The Court granted a stay of the decision as to the grant termination, explaining that the APA's sovereign immunity waiver did not extend to claims "based on the research-related grants or to order relief designed to enforce any obligation to pay money pursuant to those grants." However, the Court denied a stay as to the order vacating the agency guidance. Justice Barrett wrote a controlling concurrence for the Court, explaining that the claims were "legally distinct." Thus, according to the concurrence, the grant termination challenge belonged in the CFC while the APA challenge to the agency guidance belonged in district court, and the fact that the guidance documents pertained to grant policy did not "transform a challenge" of them into one predicated on a contract that only the CFC could entertain.

Fourth Circuit Decision

Background

The dispute in *Fairfax County* stemmed from two Virginia school districts' policies regarding transgender students. Both districts required that schools allow access to restrooms and locker rooms corresponding with a student's gender identity; as well as room assignments for school activities requiring overnight accommodations. ED's Office for Civil Rights (OCR) investigated a complaint about these policies and determined that they violated Title IX, reasoning that allowing access according to gender identity "requires students to use these intimate facilities in the presence of members of the opposite sex … facilitating the significant deleterious effects … that Title IX seeks to prevent." OCR sent the school districts a resolution agreement outlining what they should do to come into compliance with ED's interpretation of the law, but the districts refused. In turn, ED designated them as "high-risk," which places them on a "reimbursement method of payment" for certain grants, requiring districts to submit requests for particular obligations with accompanying documentation.

The school districts brought complaints against ED under the APA in federal district court. They argued that ED's decision conflicted with the Fourth Circuit's precedential decision in *Grimm v. Gloucester County School Board*. In that case, the Fourth Circuit ruled that application of a School Board policy *barring* a student from bathroom access consistent with that student's gender identity violated Title IX; thus, the school districts argued that Fourth Circuit precedent required their bathroom policy. Accordingly, they asked the court to declare that they were in compliance with Title IX, to set aside their designation as high-risk, and to enjoin future enforcement actions on that basis. In *Fairfax County*, the district court

initially dismissed the case, concluding that the school districts were essentially asking for the payment of money, and under the Supreme Court's decisions in *California* and *NIH*, the district court lacked jurisdiction to hear such claims. Instead, the district court held that the Tucker Act gave the CFC jurisdiction to hear complaints like those pressed by the school districts, seeking to enforce a federal contractual obligation to pay out money. The court also rejected the argument that Title IX's judicial review provision applied to authorize jurisdiction under the APA; the court observed that that provision applies to claims "not otherwise subject to judicial review" and reasoned that the claims in *Fairfax County* were reviewable in the CFC, rending the Title IX provision inapplicable.

Fourth Circuit Majority Opinion

The Fourth Circuit vacated and remanded. The circuit court first turned to Title IX's provision that agency actions under the statute are "subject to such judicial review as may otherwise be provided by law." The panel reasoned that at least in some situations, this can include review of agency enforcement actions under the APA. Here, the school districts wanted a court to "set aside" ED's determination that the districts are violating Title IX and their designation as high-risk on that basis, as well as an injunction stopping ED from further enforcement actions. For the Fourth Circuit, the APA waived the government's sovereign immunity to hear those kinds of claims in district court.

Even so, the Fourth Circuit explained, plaintiffs whose claims are "essentially contractual" may not avoid the jurisdictional requirements of the Tucker Act by simply describing their claims in a way that triggers APA review. For the court, whether claims should go to the CFC or instead remain in district court turned on whether they were contractual or statutory in nature—the former belong with the CFC, but the latter may proceed to district court under the APA. According to the Fourth Circuit, this inquiry required it to assess (1) the source of rights that claims were based on, and (2) the type of relief sought. The Fourth Circuit determined that the school districts sought a declaration that their policies did not violate Title IX and that ED may not penalize them for those policies. In the court's view, their claims thus arose under Title IX, as interpreted by the precedential decision in *Grimm*, rather than any contract or grant term. Even though the plaintiffs' claims might "presuppose" a contract under which they received federal funding, the Fourth Circuit reasoned that their claims did not seek to enforce any particular contract or grant term. Instead, the school districts' claim was that ED may not punish them for violating Title IX when they have not done so. In other words, the Fourth Circuit determined that the source of the asserted right was statutory, rather than contractual. Further, the circuit court observed that at least some of the types of relief sought by the school districts were not contractual in nature. Specifically, the panel indicated that a declaration that the plaintiffs were complying with Title IX and an injunction against ED were not the kinds of relief rooted in contract (such as money damages).

The panel also distinguished the Supreme Court's decisions in *California* and *NIH* staying lower court injunctions. In these cases, plaintiffs sued under the APA, challenging the government's termination of a grant and asking for payment under the grant to restart. The question in the cases was thus whether a district court had jurisdiction to order enforcement of a contractual requirement to pay money. Here, however, the Fourth Circuit explained that plaintiffs sought various relief beyond enforcement of a contract's terms. In addition, the circuit court indicated that the Supreme Court cases did not arise from a Title IX enforcement action. Instead of being premised on a contractual obligation, the Fourth Circuit determined that the school districts' claim was that ED was unlawfully enforcing Title IX against them.

The panel concluded by pointing to Justice Barrett's "controlling opinion" in *NIH*, in which she distinguished between an APA claim that could go to district court and another contractual claim that must go to the CFC. In *Fairfax County*, because the school districts asserted some claims that were not contractual in nature, the Fourth Circuit concluded that the district court should not have dismissed them in their entirety.

Dissent

One judge on the panel dissented. For the dissent, the essence of the school districts' claims was a demand to restore advance payments of their federal grant money, and the Tucker Act assigns those types of claims to the CFC. The dissent reasoned that while Title IX provides the reason why ED changed its method of payment to the school districts, it was the grants themselves that generated the right the plaintiffs sought to enforce—the right to be paid in advance of incurring obligations under a grant. Because that claim was based on a contract, the dissent believed that it must go to the CFC.

Analogous Decisions in District Courts

The Fourth Circuit's decision aligns with the approach of a number of federal district courts in somewhat analogous contexts when it comes to determining whether grant-related claims that involve alleged discriminatory conduct on the part of recipients belong in federal district court or in the CFC. In the *Fairfax County* case, ED designated the school districts as "high-risk" for compliance concerns under Title IX, and the plaintiffs argued this determination violated the meaning of the statute under Fourth Circuit precedent. During the second Trump Administration, federal agencies have also suspended, terminated, or threatened to stop grant payments to a number of other recipients based on compliance concerns under Title IX and/or Title VI. In some of these cases, federal agencies have done so without first following the "elaborate" procedural requirements for terminating assistance outlined in those laws. Like the Fourth Circuit in *Fairfax County*, district courts have allowed APA claims challenging these agency actions to proceed in federal district court, rejecting the argument that the Tucker Act divests them of jurisdiction to hear these claims.

At least one of these cases is currently on appeal. On October 5, 2026, the First Circuit heard oral argument in a case brought by Harvard University against federal agencies for terminating numerous grants to the school. In that case, Harvard argued (among other things) that the government terminated funding based on Title VI compliance concerns without following the requisite statutory procedures. The district court granted summary judgment to Harvard in part. The court reasoned that the Title VI claims did not belong in the CFC, as those claims were statutory, rather than contractual, in nature. (The court also concluded that the government failed to follow Title VI's requirements when terminating grants.)

Considerations for Congress

Both the APA and the Tucker Act waive the government's sovereign immunity and allow for lawsuits in different contexts. For now, under Justice Barrett's controlling concurrence in *NIH*, plaintiffs challenging agency grant decisions may need to pursue claims in separate forums: those predicated on enforcing contracts belong in the CFC, while traditional APA claims proceed in federal district courts. Congress may alter this bifurcated process. For example, it could narrow or eliminate the CFC's jurisdiction while simultaneously allowing more claims to go to federal district courts. Alternatively, it could widen the CFC's purview, channeling claims with a broader scope to that forum instead of district courts.

Congress could also alter the statutory procedural requirements that agencies must follow to terminate funding under the civil rights spending laws such as Title IX and Title VI. Legislation could amend those procedures, such as by making it easier to halt funding or by authorizing the imposition of monetary penalties for violations, as some other statutes do. Congress could also address the dispute in the Fourth Circuit case and amend the judicial review provisions of Title IX specifically. One option would be to make explicit where challenges to certain agency actions should be heard. Alternatively, another option might be to allow the judicial process to sort out these issues.

Author Information

Jared P. Cole
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.