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Students & Parents for Privacy v. United States Dep't of Educ.

United States District Court for the Northern District of Illinois, Eastern Division

October 18, 2016, Decided; October 18, 2016, Filed

No. 16-cv-4945

Reporter

2016 U.S. Dist. LEXIS 150011 *

STUDENTS AND PARENTS FOR PRIVACY, a voluntary unincorporated association; C.A., a minor, by and through her parent and guardian, N.A.; A.M., a minor, by and through her parents and guardians, S.M. and R.M.; N.G., a minor, by and through her parent and guardian, R.G.; A.V., a minor, by and through her parents and guardians, T.V. and A.T.V.; and B.W., a minor, by and through his parents and guardians, D.W. and V.W., Plaintiffs, v. UNITED STATES DEPARTMENT OF EDUCATION; JOHN B. KING, JR., in his official capacity as United States Secretary of Education; UNITED STATES DEPARTMENT OF JUSTICE; LORETTA E. LYNCH, in her official capacity as United States Attorney General; and SCHOOL DIRECTORS OF TOWNSHIP HIGH SCHOOL DISTRICT 211, COUNTY OF COOK AND STATE OF ILLINOIS, Defendants, and STUDENTS A, B, and C, by and through their parents and guardians, Parents A, B, and C; and the ILLINOIS SAFE SCHOOLS ALLIANCE, Intervenor-Defendants.

Prior History: *Students & Parents for Privacy v. United States Dep't of Educ.*, 2016 U.S. Dist. LEXIS 77728 (N.D. Ill., June 15, 2016)

Core Terms

locker room, restrooms, Girl, sex, transgender, gender, facilities, privacy, preliminary injunction, biological, female, boys', male, schools, stalls, merits, agency's action, sexual, likelihood of success, violating, shower, irreparable harm, high school, Declaration, provides, clothes, Defendants', hostile environment, alternatives, exposure

Case Summary

Overview

HOLDINGS: [1]-Plaintiffs failed to show a likelihood of success on the merits of their claim that the Department of Education violated the Administrative Procedure Act by promulgating a rule that interpreted Title IX to require that

schools permit transgender students to use restrooms and locker rooms consistent with their gender identity; [2]-Plaintiffs also failed to show a likelihood of success on the merits of their claim that students' constitutional right to privacy would be violated to the extent that transgender students were permitted to use restrooms or locker rooms consistent with their gender identity; [3]-Sharing a restroom or locker room with a transgender student did not create a severe, pervasive, or objectively offensive hostile environment under Title IX given the privacy protections the school district put in place in this case.

Outcome

Recommended that plaintiffs' motion for preliminary injunction be denied.

LexisNexis® Headnotes

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HNI A preliminary injunction is an extraordinary remedy. Preliminary injunctive relief is granted only when the moving parties make a clear showing that they have a likelihood of success on the merits of their claims, they likely will suffer irreparable harm if an injunction is not issued pending a final determination of the matters at issue, and they lack an adequate remedy at law. If the moving parties make these three threshold showings, then they still must show, on balance, that they will suffer more harm if an injunction is not issued than the non-moving parties will suffer if it is issued, and that the public interest would be served by the issuance of an injunction.

Constitutional Law > Substantive Due Process > Privacy

HN2 High school students do not have a constitutional

right not to share restrooms or locker rooms with transgender students whose sex assigned at birth is different than theirs. In addition, sharing a restroom or locker room with a transgender student does not create a severe, pervasive, or objectively offensive hostile environment under Title IX where privacy protections have been put in place in those facilities and there are alternative facilities available to students who do not want to share a restroom or locker room with a transgender student.

Education Law > Discrimination in Schools > Gender & Sex
Discrimination > Title IX

HN3 [↓] Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C.S. § 1681 et seq., prohibits recipients of "Federal financial assistance" from discriminating on the basis of sex in education programs and activities. 20 U.S.C.S. § 1681(a). Regulations implementing Title IX provide that no person 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 operated by a recipient which receives Federal financial assistance. 34 C.F.R. § 106.31(a). The regulations permit recipients to provide sex-segregated toilet, locker room, and shower facilities, so long as facilities provided for students of one sex are comparable to such facilities for students of the other sex. 34 C.F.R. § 106.33. Recipients of Federal financial assistance from the Department of Education are subject to Title IX. e 20 U.S.C.S. § 1681(a).

Civil Procedure > ... > Pleadings > Complaints > Requirements for Complaint

HN4 [↓] There is no requirement in the Federal Rules of Civil Procedure that a complaint must be verified unless a rule or statute specifically states otherwise. Fed. R. Civ. P. 11(a). Although a verified complaint may be treated as an affidavit when filed in support of a motion seeking an injunction, a party's verification of a pleading that need not have been verified does not give the pleading any added weight or importance in the eyes of the district court.

Civil Procedure > Remedies > Injunctions > Grounds for Injunctions

HN5 [↓] A preliminary injunction is an extraordinary and drastic remedy. In the Seventh Circuit, the court analyzes a request for such relief in two distinct phases: a threshold

phase and a balancing phase. During both phases, movants bear the burden of proving by a clear showing that a preliminary injunction should be granted. During the first phase, the movant must make three threshold showings. They must show they have a likelihood of success on the merits. They must show, absent preliminary injunctive relief, they will suffer irreparable harm in the interim prior to a final resolution. And they must show there is no adequate remedy at law. If movants fail to make any of these showings, the court must deny injunctive relief.

Civil Procedure > Remedies > Injunctions > Grounds for Injunctions

Evidence > Burdens of Proof > Allocation

HN6 [↓] With respect to a motion for a preliminary injunction, if the movants carry their burden in the threshold phase, the court then proceeds to the balancing phase. During this stage of the analysis, the court first weighs the irreparable harm that the moving parties would endure without the protection of the preliminary injunction against any irreparable harm the nonmoving parties would suffer if the court were to grant the requested relief. Then the court considers how granting or denying the injunction would affect the interests of non-parties—commonly called the public interest. During the balancing phase, the court weighs the balance of potential harms on a sliding scale against the movants' likelihood of success.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Likelihood of Success


HN7 [↓] To satisfy the first threshold requirement for a preliminary injunction, movants must show they have a likelihood of success on the merits. This likelihood standard requires more than a mere possibility of relief and more than a better than negligible showing.

Administrative Law > Judicial Review > Reviewability > Reviewable Agency Action


HN8 [↓] The Administrative Procedure Act (APA) vests the courts with the power to interpret statutory provisions and overturn agency action inconsistent with those interpretations. 5 U.S.C.S. § 706. But the APA limits judicial review to final agency action for which there is no other adequate remedy in a court. 5 U.S.C.S. § 704. Therefore, whether there has been

agency action or final agency action within the meaning of the APA are threshold questions; if these requirements are not met, the action is not reviewable.


Administrative Law > Judicial
Review > Reviewability > Reviewable Agency Action

[HN9](#) The Administrative Procedure Act (APA) defines "agency action" to include the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act. 5 U.S.C.S. § 551(13). A sanction is, in pertinent part, the whole or a part of an agency prohibition, requirement, limitation, or other condition affecting the freedom of a person. 5 U.S.C.S. § 551(10). And a "rule" is, again in pertinent part, the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy. 5 U.S.C.S. § 551(4).


Administrative Law > Judicial
Review > Reviewability > Reviewable Agency Action

[HN10](#) Generally, an agency action is final when the action marks the consummation of the agency's decision-making process, and has legal consequences or, phrased another way, directly affects a party. Under this standard, an agency's behavior may indicate that an action is final even when the agency has not observed the conventional procedural accoutrements of finality. In the end, the finality requirement must be interpreted pragmatically.


Administrative Law > Judicial
Review > Reviewability > Reviewable Agency Action

[HN11](#) Clear precedent holds that interpretive rules and guidance documents may be subject to judicial review. An agency may not avoid judicial review merely by choosing the form of a guidance document to express its definitive position on a general question of statutory interpretation. Once an agency publicly articulates an unequivocal position and expects regulated entities to alter their primary conduct to conform to that position, the agency has voluntarily relinquished the benefit of postponed judicial review.


Education Law > ... > Gender & Sex Discrimination > Title IX > Scope of Title IX

[HN12](#) The better reasoned recent decisions hold that the term "sex" in Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C.S. § 1681 et seq., can be interpreted to encompass gender identity as the Department of Education has recently interpreted it.


Administrative Law > Judicial Review > Standards of Review

[HN13](#) Under the Administrative Procedure Act (APA), a court must hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C.S. § 706(2)(A). The APA also says a court must hold unlawful and set aside agency action that is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. 5 U.S.C.S. § 706(2)(C).


Administrative Law > Agency Rulemaking > Rule Application & Interpretation

[HN14](#) A rule is not legislative simply because it reflects a new position of the agency. Rather, the Administrative Procedure Act (APA) permits agencies to promulgate freely interpretive rules—whether or not they are consistent with earlier interpretations of the agency's regulations.

Administrative Law > Agency Rulemaking > Rule Application & Interpretation

[HN15](#) An interpretive rule may have a substantial impact on the rights of individuals because the impact of a rule has no bearing on whether it is legislative or interpretative; interpretative rules may have a substantial impact on the rights of individuals. If a rule cannot be independently legally enforced because there must be some external legal basis supporting its implementation, than it is interpretive. The critical feature of interpretive rules is that they are issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers.

Civil Procedure > Pleading & Practice > Motion Practice > Content & Form

[HN16](#) Perfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are waived (even where those arguments raise constitutional issues).

Constitutional Law > Substantive Due Process > Scope

Education Law > ... > Gender & Sex Discrimination > Title IX > Scope of Title IX

HN17 [v] Title IX of the Education Amendments of 1972 (Title IX), *20 U.S.C.S. § 1681 et seq.*, does not explicitly state that a school may lose its federal funding if it does not take adequate steps to stop discrimination against transgender students. But a spending condition is not unconstitutional simply because its application may be unclear in certain contexts. Moreover, Congress need not specifically identify and prescribe each condition in the legislation. Simply put, it does not matter that the manner of that discrimination can vary widely.

Constitutional Law > Substantive Due Process

HN18 [v] There is a basic framework for evaluating substantive due process claims. The analysis begins with a careful description of the right said to have been violated. Then the inquiry turns to whether that right is "fundamental." If it is, the question becomes whether there is a "direct" and "substantial" interference with a fundamental right. Even if there is such an interference, the challenged action still must shock the conscience for there to be a constitutional violation.

Constitutional Law > Substantive Due Process > Privacy

HN19 [v] The Supreme Court never has recognized a generalized right to privacy in the substantive due process context. Instead, it has extended substantive due process protection to privacy interests only in limited circumstances.

Constitutional Law > Substantive Due Process > Scope

HN20 [v] The Supreme Court always has been reluctant to expand the concept of substantive due process because guide posts for responsible decision making in this area are scarce and open-ended. The doctrine of judicial self-restraint requires courts to exercise the utmost care whenever they are asked to break new ground in this field. Accordingly, the Supreme Court of the United States has made clear, and the Seventh Circuit similarly cautioned, that the scope of substantive due process is very limited.

HN21 [v] The first step in the substantive due process analysis is to define carefully the right (or rights) at issue in the case. As the Seventh Circuit has observed, the definition of a substantive due process right is constrained by the factual record before the court, which sets the boundaries of the liberty interests truly at issue in the case. The definition must be specific and concrete, avoiding sweeping abstractions and generalities. Crafting a narrow, focused definition ensures that courts do not stray into broader constitutional vistas than are called for by the facts of the case at hand. This in turn tends to rein in the subjective elements that are necessarily present in due-process judicial review.

Constitutional Law > Substantive Due Process > Privacy

HN22 [v] Generally speaking, the penumbral rights of privacy the Supreme Court has recognized in other contexts protect certain aspects of a person's private space and decision-making from governmental intrusion. Even in the context of the right to privacy in one's own body, the cases deal with compelled intrusion into or with respect to a person's intimate space or exposed body. No case recognizes a right to privacy that insulates a person from coming into contact with someone who is different than they are, or who they fear will act in a way that causes them to be embarrassed or uncomfortable, when there are alternative means for both individuals to protect themselves from such contact, embarrassment, or discomfort.

Constitutional Law > Substantive Due Process > Privacy

HN23 [v] Courts are very careful in extending constitutional protection in the area of personal privacy. Although the Supreme Court has recognized fundamental rights in regard to some special privacy interests, it has not created a broad category where any alleged infringement on privacy will be subject to substantive due process protection. In other words, "privacy" is not a magic term that automatically triggers constitutional protection. Instead, the same rules that govern every other substantive due process analysis apply in the privacy context. That means an asserted privacy right is not fundamental unless it is deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if it was sacrificed. The list of rights that rise to this level is a short one. This list for the most part has been limited to matters relating to marriage, family, procreation, and the right to

bodily integrity.

Education Law > Administration & Operation

Education Law > Immunities From Liability

HN24[↓] Schools have the difficult task of teaching the shared values of a civilized social order. Our public education system has evolved to rely necessarily upon the discretion and judgment of school administrators and school board members. The Supreme Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.

Education Law > Immunities From Liability

Education Law > Administration & Operation

HN25[↓] Our Nation's deeply rooted history and tradition of protecting school administrators' discretion require that courts not unduly constrain schools from fulfilling their role as a principal instrument in awakening the child to cultural values, in preparing him or her for later professional training, and in helping him or her to adjust normally to his or her environment.

Constitutional Law > Substantive Due Process > Privacy

Education Law > Students

HN26[↓] Constitutional privacy rights, whether rooted in the Fourth Amendment or the Fourteenth Amendment, are different in public schools than elsewhere. It is well established that public school students enjoy a reduced expectation of privacy in comparison to the public at large. Public school locker rooms in this country traditionally have been and remain not notable for the privacy they afford.

Constitutional Law > Substantive Due Process > Privacy

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

HN27[↓] While the Fourth Amendment generally requires that a government's intrusion on privacy through a search or a seizure must be reasonable, substantive due process does not impose a similar restriction. Instead, substantive due process

applies in very limited circumstances when fundamental rights are implicated.

Education Law > ... > Gender & Sex Discrimination > Title IX > Proof of Discrimination

HN28[↓] There is a threshold question under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C.S. § 1681 et seq. To be actionable under Title IX, the offensive behavior must be "on the basis of sex."

Education Law > ... > Gender & Sex Discrimination > Title IX > Proof of Discrimination

HN29[↓] To establish a hostile environment under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C.S. § 1681 et seq., a plaintiff must establish sexual harassment that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities.

Education Law > ... > Gender & Sex Discrimination > Title IX > Proof of Discrimination

HN30[↓] Generalized statements of fear and humiliation are not enough to establish severe, pervasive or objectively offensive conduct. General allegations have been held to be insufficient to establish a violation under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C.S. § 1681 et seq.

Education Law > ... > Gender & Sex Discrimination > Title IX > Scope of Title IX

HN31[↓] Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C.S. § 1681 et seq., does not say schools cannot allow males and females to use the same restrooms or locker rooms under any circumstances. Title IX is a broadly written general prohibition on sex discrimination, followed by specific, narrow exceptions to that broad prohibition. One of those exceptions says that a school may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex. 34 C.F.R. § 106.33. Nowhere does Title IX or its

regulations say that schools must provide single-sex facilities.

Education Law > ... > Gender & Sex Discrimination > Title IX > Proof of Discrimination

HN32 [↓] The mere presence of a transgender student in a restroom or locker room does not rise to the level of conduct that has been found to be objectively offensive, and therefore hostile, in caselaw.

Education Law > ... > Gender & Sex Discrimination > Title IX > Proof of Discrimination

HN33 [↓] An action under Title IX of the Education Amendments of 1972 (Title IX), *20 U.S.C.S. § 1681 et seq.*, lies only when the behavior at issue denies a victim equal access to education. The harassment must have a concrete, negative effect on the victim's education. Examples of a negative impact on access to education may include dropping grades, becoming homebound or hospitalized due to harassment, and suffering physical violence.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

HN34 [↓] To satisfy the second threshold requirement for a preliminary injunction, movants must show there is a likelihood—more than a mere possibility—they will suffer irreparable harm. Harm is irreparable where it cannot be prevented or fully rectified by the final judgment after trial. Phrased another way, harm is irreparable when it is difficult—if not impossible—to reverse.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

HN35 [↓] For purposes of an injunction, sometimes, emotional harm can be serious enough to rise to the level of irreparable harm. But emotional suffering is commonly compensated by monetary awards in our legal system. It is the extraordinary circumstance when emotional harm, standing alone, is so severe that money damages cannot rectify the harm after a final judgment.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

HN36 [↓] As a general rule, a district court should be wary of issuing an injunction based solely upon allegations and conclusory affidavits submitted by plaintiff. Further, harm is not irreparable if the moving parties fail to take advantage of readily available alternatives and thereby effectively inflict the harm on themselves.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

HN37 [↓] The mere inconvenience of walking to a facility that is farther away does not constitute irreparable harm.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN38 [↓] To satisfy the third threshold showing for a preliminary injunction, movants must show they do not have an adequate remedy at law. In other words, they must show money damages would be inadequate compensation for the harm they have suffered if they win the lawsuit. They need not show traditional legal remedies would be wholly ineffectual, but, rather, that they would be seriously deficient as compared to the harm suffered. Showing irreparable harm is probably the most common method of demonstrating that there is no adequate legal remedy. Emotional suffering is commonly compensated by monetary awards in our legal system.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Balance of Hardships

HN39 [↓] When the parties seeking a preliminary injunction have not made any one of the three threshold showings—likelihood of success on the merits, likelihood of irreparable harm, and inadequate remedy at law—the court must deny the injunction. In such cases, the court need not address the balancing phase of the preliminary injunction analysis.

Counsel: [*1] For *Students and Parents for Privacy*, a

voluntary unincorporated association, C. A., a minor, by and through her parent and guardian, N. A., A. M., a minor, by and through her parents and guardians, S. M., R. M., N. G., a minor, by and through her parent and guardian, R. G., A. V., a minor, by and through her parents and guardians, T. V., A. T. V., B. W., a minor, by and through his parents and guardians, D. W., V. W., Plaintiffs: Gary S. McCaleb, LEAD ATTORNEY, PRO HAC VICE, Alliance Defense Fund, Scottsdale, AZ; Douglas G. Wardlow, Jeana Hallock, Alliance Defending Freedom, Scottsdale, AZ; Jeremy David Tedesco, PRO HAC VICE, Alliance Defense Fund, Scottsdale, AZ; John Matthew Sharp, PRO HAC VICE, Alliance Defending Freedom, Lawrenceville, GA; Joseph E La Rue, PRO HAC VICE, Alliance Defending Freedom, Scottsdale, AZ; Peter Christopher Breen, Thomas L. Brejcha, Jr., Jocelyn Floyd, Thomas More Society, Chicago, IL.

For United States Department of Education, John B. King, Jr., in his official capacity as United States Secretary of Education, United States Department of Justice, Loretta E. Lynch, in her official capacity as United States Attorney General, Defendant: Benjamin Leon Berwick, [*2] LEAD ATTORNEY, U.S. Department of Justice, Boston, MA; Megan Anne Crowley, LEAD ATTORNEY, United States Department of Justice, Civil Division, Federal, Washington, DC; Sheila M. Lieber, LEAD ATTORNEY, United States Department of Justice, Washington, DC.

For School Directors of Township High School District 211, County of Cook and State of Illinois, Defendant: Jennifer Ann Smith, Michael A. Warner, Jr., Erin D. Fowler, Patrick M. DePoy, LEAD ATTORNEYS, Franczek Radelet PC, Chicago, IL; Sally J. Scott, LEAD ATTORNEY, Franczek Radelet, Chicago, IL.

For Student A, Student B, Student C, Illinois Safe Schools Alliance, Intervenor Defendants: Britt Marie Miller, LEAD ATTORNEY, Catherine Anna Bernard, Timothy Simon Bishop, Laura Rose Hammargren, Linda Xuemeng Shi, Mayer Brown LLP, Chicago, IL; John A. Knight, LEAD ATTORNEY, Roger Baldwin Foundation of ACLU, Inc., Chicago, IL; Ria Tabacco Mar, PRO HAC VICE, American Civil Liberties Union Foundation, New York, NY.

Judges: Jeffrey T. Gilbert, United States Magistrate Judge.

Opinion by: Jeffrey T. Gilbert

Opinion

REPORT AND RECOMMENDATION

I. EXECUTIVE SUMMARY

Plaintiffs *Students and Parents for Privacy*, an unincorporated association, and five current or prospective high school [*3] students who live in suburban Cook County, Illinois, by and through their parents and legal guardians, (collectively, "Plaintiffs") have filed a Motion for Preliminary Injunction that, if granted, would require Defendant School Directors of Township High School District 211 ("District 211" or "the District") to segregate restrooms and locker rooms on the basis of students' biological sex (which Plaintiffs consider to be sex assigned at birth). Plaintiffs also seek to enjoin a rule, adopted by Defendant United States Department of Education ("DOE") and enforced in conjunction with Defendant United States Department of Justice ("DOJ") (together with the Secretary of Education and the Attorney General, collectively "the Federal Defendants"), that requires all schools in the United States to allow students to use restrooms and locker rooms consistent with their gender identity. Last, Plaintiffs seek to enjoin the District's policy, implemented in August 2013, allowing transgender students to use restrooms consistent with their gender identity, and an agreement DOE entered into with District 211 in December 2015 in which the District agreed to allow Student A, a transgender girl, to use [*4] the girls' locker rooms at William Fremd High School ("Fremd High School"), a public high school in Palatine, Illinois.

District Judge Jorge Alonso referred Plaintiffs' Motion for Preliminary Injunction to this Magistrate Judge for a Report and Recommendation as to whether it should be granted or denied. HNI[*] A preliminary injunction is an extraordinary remedy. Granting a preliminary injunction in this case would change the status quo before a full determination on the merits of the claims and defenses raised in the lawsuit. Preliminary injunctive relief is granted only when the moving parties—here, Plaintiffs—make a clear showing that they have a likelihood of success on the merits of their claims, they likely will suffer irreparable harm if an injunction is not issued pending a final determination of the matters at issue, and they lack an adequate remedy at law. If the moving parties make these three threshold showings, then they still must show, on balance, that they will suffer more harm if an injunction is not issued than the non-moving parties will suffer if it is issued, and that the public interest would be served by the issuance of an injunction.

The Court finds Plaintiffs have not [*5] shown they have a likelihood of success on the merits of their claim that DOE violated the Administrative Procedure Act ("APA"), 5 U.S.C. § 500 et seq., by promulgating a rule that interprets Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. § 1681 et seq., to require that schools permit transgender