

order at the status conference, Third-Party Plaintiff Jane Doe and Third-Party Defendants Highland, Dodds, and Winkelfoos further briefed this issue and ultimately all parties agreed that an evidentiary hearing is unnecessary. In the interest of thoroughness, however, the Court will set forth its reasons for determining that it need not conduct an evidentiary hearing and will hear only oral argument on the two motions for preliminary injunction.

Highland asserted in its response to Doe's preliminary-injunction motion that the following factual disputes are relevant to an assessment of Doe's harm:

(1) whether Doe has been or may be psychologically harmed by Highland's restroom policy or other conduct alleged by Doe, (2) the causes and extent of Doe's psychological distress and past suicidal behaviors, (3) whether affirming Doe's gender identity as a female and allowing Doe to use the girls' restroom would alleviate or exacerbate Doe's psychological distress and any risk of suicide, and (4) whether Doe has been subjected to bullying or harassment, and whether any such incidents were properly handled by Highland.

(Doc. 61 at 31.) Highland initially argued that Doe cannot show irreparable harm—the second prong of the preliminary injunction test²—based on uncontroverted facts and thus Highland is entitled to an evidentiary hearing before the Court could issue any injunction against it.

The Sixth Circuit has held that “if the allegations of a complaint are denied by a defendant,” a court may not grant a preliminary injunction absent a hearing, “which includes the right to offer evidence in support of . . . factual claims.” *Carpenters' Dist. Council, Detroit*,

motion is unnecessary. Both Highland and the federal Defendants have maintained this position as to Highland's motion since the outset of this case and, accordingly, asked the Court not to schedule an evidentiary hearing at the Court's initial telephonic status conference. The Court, therefore, scheduled oral argument instead of an evidentiary hearing. At that time, however, Jane Doe had not yet intervened in the suit or filed her own motion for preliminary injunction and thus the issue of an evidentiary hearing only recently arose.

² The four-factor balancing test to determine whether a preliminary injunction should issue requires courts to weigh: (1) whether the movant has a substantial likelihood of success on the merits; (2) whether there is a threat of irreparable injury to the movant without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of the injunction. *Winnett v. Caterpillar, Inc.*, 609 F.3d 404, 408 (6th Cir. 2010).

Wayne and Oakland Cntys. and Vicinity, of United Bhd. of Carpenters and Joiners of Am., AFL-CIO v. Cicci, 261 F.2d 5, 8 (6th Cir. 1958). *See also County Sec. Agency v. Ohio Dep't of Commerce*, 296 F.3d 477, 484 (6th Cir. 2002). If the relevant issues to be decided in resolving the motion “are primarily questions of law,” however, an evidentiary hearing need not be held. *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 246 (6th Cir. 2011); *see also Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 552-53 (6th Cir. 2007).

Third-Party Plaintiff and Third-Party Defendants agree that irreparable harm is presumed as a matter of law when a moving party shows “that a constitutional right is being threatened or impaired.” *Am. Civil Liberties Union of Ky. v. McCreary Cnty., Ky.*, 354 F.3d 438, 445 (6th Cir. 2003). Therefore, if the Court found that Doe is likely to succeed on the merits of her constitutional claim, it would also make a finding of irreparable harm without weighing the disputed facts regarding other harm to Doe. The parties do dispute, however, whether a plaintiff is entitled to such a presumption of irreparable harm if she shows a likelihood of success on the merits of a Title IX claim. The Court need not decide this question at this time because, even if Third-Party Defendants are correct that there is no such presumption, the Court agrees with the parties that there are “many avenues this Court can take to resolve [Doe’s] motion solely on the law.” (Doc 79 at 3; Doc. 75 at 1.) As Third-Party Defendants point out, the question of irreparable harm, which focuses on whether the “remedies available at law, such as monetary damages, are inadequate to compensate” the moving party for her injury, is an objective and legal one. *Salinger v. Colting*, 607 F.3d 68, 80 (2d Cir. 2010) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 338, 391 (2006)). An evidentiary hearing is not necessary to resolve Doe’s preliminary-injunction motion because the relevant issues to be decided are questions of law. *Hunter*, 635 F.3d at 246.

In light of the fact that the Court will not conduct an evidentiary hearing, the telephonic status conference scheduled for Tuesday, September 13, 2016 at 12:30 p.m. is **VACATED**. The oral argument on the two preliminary-injunction motions will proceed as previously scheduled on September 20, 2016 at 2:00 p.m. No evidentiary hearing will be held at that time, although the Court reserves the right to conduct one if it becomes necessary in the future.

IT IS SO ORDERED.

s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: September 12, 2016