

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CIVIL APPEAL STATEMENT OF PARTIES AND ISSUES**

Case No: 16-4107 Case Manager: _____

Case Name: Board of Education of the Highland Local School District v. U.S. Department of Education, et al.

Is this case a cross appeal? Yes No

Has this case or a related one been before this court previously? Yes No

If yes, state:

Case Name: _____ Citation: _____

Was that case mediated through the court's program? Yes No

Please Identify the Parties Against Whom this Appeal is Being Taken and the Specific Issues You Propose to Raise:

See Attached.

This is to certify that a copy of this statement was served on opposing counsel of record this 12 day of

October, 2016.

/s/ Steven O'Ban

Name of Counsel for Appellant

Civil Appeal Statement of Parties and Issues

Case No. 16-4107

Plaintiff-Appellant Board of Education of Highland Local School District (“Highland”) is appealing an Order of the U.S. District Court for the Southern District of Ohio (J. Marbley) denying its Motion for Preliminary Injunction. The District Court denied Plaintiff-Appellant’s Motion for Preliminary Injunction because it concluded that the Court lacks jurisdiction over Plaintiff’s complaint.

This appeal is being taken against the following Defendants: 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 Vanita Gupta, in her official capacity as Principal Deputy Assistant Attorney General.

At this time, Plaintiff-Appellant expects to raise the following issues on appeal:

- (1) Whether a federal district court may conclude that it lacks subject-matter jurisdiction over a pre-enforcement claim under Section 704 of the Administrative Procedures Act challenging agency guidance that constitutes a final, legislative rule when the statute under which the rule was promulgated does not provide a comprehensive enforcement scheme that applies to all statutory violations.
- (2) Whether a federal district court may conclude that it lacks jurisdiction over claims challenging the constitutionality of agency action under the Spending Clause when the agency has publicly articulated an unequivocal decision expecting regulated entities to alter their conduct or lose substantial federal payments, and when postponing judicial review until after the conclusion of enforcement proceedings deprives a political subdivision of a state of its right to enact policy free from unconstitutional federal interference or coercion.
- (3) Whether a party’s ability to seek judicial review in the Court of Appeals after the conclusion of anticipated future enforcement proceedings constitutes an adequate remedy in court pursuant to Section 704 of the Administrative Procedures Act, overcoming the Act’s general presumption in favor of reviewability, when postponing review causes irreparable harm.
- (4) Whether the Department of Education’s and the Department of Justice’s guidance requiring school districts that receive federal funding to allow access to sex-separated facilities based on students’ gender identity is *ultra vires*, arbitrary and capricious, and in violation of the Spending Clause, thus requiring the issuance of a preliminary injunction in favor of Highland to prevent irreparable harm.