



**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
ADMINISTRATIVE COMPLAINT**

May 13, 2014

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The American Civil Liberties Union is a nationwide, non-profit, non-partisan organization of more than 500,000 members that is dedicated to preserving the Bill of Rights.

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PRELIMINARY STATEMENT

1. This Complaint is filed by the American Civil Liberties Union and the ACLU Foundation of Florida, Inc. (jointly “The ACLU”) pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated thereunder by the U.S. Department of Education (“ED”). *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities.
2. Records obtained by The ACLU from Hillsborough County Public Schools (“the District” or “HCPS”), pursuant to the Florida Public Records Act, Fla. Stat. § 119.01 *et seq.*,¹ indicate that the District has violated Title IX by instituting single-sex classrooms in both the District’s coed public schools and its single-sex sex schools based on the discredited notion that boys and girls learn and develop so differently that they should be separated and taught differently, and by employing teaching methods, environments, and curricula that differed drastically for boys and girls at numerous schools at the K-12 levels within the District. This type of intentional disparate treatment of boys and girls violates the core principle of equality embodied in Title IX.
3. By training teachers that boys and girls learn differently, and teaching girls and boys differently based on expectations about the talents, capacities and preferences of each sex, the District has created a hidden curriculum that is harmful to all students. Girls are encouraged to work quietly and discuss their feelings and personal problems. They’re expected to be cooperative and noncompetitive. Boys are encouraged to move around, compete and are not encouraged to discuss their feelings. Girls are taught mathematics in a way that makes it less abstract and consequently gives girls the message that they are not good at abstract mathematics. Boys are taught literature in a way that makes stories highly concrete and fact-based and does not encourage them to connect with characters’ emotions. These sex stereotypes limit opportunities for boys and girls alike.
4. Despite teaching students based upon claimed inherent sex differences, the reality is that “Neuroscientists have found few sex differences in children’s brains beyond the larger volume of boys’ brains and the earlier completion of girls’ brain growth, neither of which is known to relate to learning.”²
5. As detailed further in the Factual and Legal Allegations below, the District is operating sex-segregated classrooms in numerous coeducational schools that discriminate amongst students based solely on their sex and violate 34 C.F.R. § 106.34 in the following ways:
 - (a) Classifying their students by sex without adequate justification, specifically:

¹ The ACLU’s records requests are attached hereto as **Exhibits A and B**.

² Diane Halpern et al., *The Pseudoscience of Single-Sex Schooling*, 333 Science 1706, 1706 (2011). Neuroscientist Lise Eliot has stated that “The notion that sex differences in the brain, because they are biological, are necessarily innate or fixed is perhaps the most insidious of the many public misunderstandings on this topic. Neuroscientists know that, in the absence of proof of genetic or hormonal influence, any sex difference in adult neural structure or function could be shaped through experience, practice and neural plasticity.” Lise Eliot, *The Trouble with Sex Differences*, 72 Neuron 895, 897 (2011).

- (i) Classifying their students by sex based upon overly broad generalizations concerning the interests, talents, capacities and abilities of boys and girls; and
 - (ii) Failing to ensure that offering single-sex classes was substantially related to the achievement of the program's stated objectives;
 - (b) Employing different teaching methods for boys and girls that are premised upon, and reinforce, impermissible, overly broad stereotypes concerning the interests and abilities of boys and girls, resulting in significantly different learning environments for boys and girls;
 - (c) Failing to ensure that enrollment in the single-sex classes is truly voluntary by providing parents with inaccurate, unsubstantiated and materially misleading information about purported sex-based differences in learning and the effects of sex segregation on academic achievement, discipline, and sex-stereotyped thinking to induce parents to enroll their children in single-sex classes; and
 - (d) Failing to conduct evaluations to ensure that each of its single-sex classes does not rely on overly broad generalizations about the different talents, capacities, and preferences of either sex, or that the operation of each of the District's single-sex classes is substantially related to the achievement of its stated objectives.
6. As detailed in the Factual and Legal Allegations below, the District is operating single-sex magnet middle schools, Ferrell Girls Preparatory Academy ("GPA") and Franklin Boys Preparatory Academy ("BPA"), that discriminate against students on the basis of sex and violate 34 C.F.R. § 106.34(a), (b), and (c) and § 106.35 in the following ways:
- (a) By structuring the schools, classes, and extracurricular activities using sex stereotypes and unsubstantiated pseudoscientific brain-based theories regarding the presumedly different talents, capacities and preferences of each sex, and teaching students in accordance with these sex stereotypes, resulting in qualitatively different environments in the two schools;
 - (b) By providing parents and students with inaccurate, unsubstantiated and materially misleading information about purported sex-based differences in learning and the effects of sex segregation on academic achievement, discipline, and sex-stereotyped thinking to induce parents to enroll their children in single-sex schools;
 - (c) By offering single-sex Career and Technical Education ("CTE") courses that lead to industry certification; and
 - (d) By jointly offering a summer school at GPA that is sex-separated without justification, without parental consent, and without coeducational alternatives.
7. The ACLU requests that the Office for Civil Rights ("OCR") investigate the District to determine whether the single-sex classrooms in its coed public schools and its single-sex schools are in compliance with Title IX, and remedy any unlawful conduct.

JURISDICTION

8. OCR is responsible for ensuring compliance with Title IX and receiving information about, investigating, and remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.
9. The ACLU has not filed this complaint with any other agency or institution.
10. The single-sex programs and activities documented herein are ongoing and the number of schools instituting single-sex classes is expanding, thus this complaint is timely.
11. Hillsborough County School District receives federal financial assistance, including funds directly from ED and ED funds passed through the Florida Department of Education (“FLDOE”), and is therefore prohibited by Title IX from discriminating on the basis of sex and must comply with ED regulations.

OPERATIVE LAW

12. Title IX provides in relevant part that:

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.

20 U.S.C. §1681(a).

13. ED’s Title IX regulations generally prohibit sex separation of students:

[A] recipient shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex.

34 C.F.R. §106.34(a).

14. ED’s Title IX regulations currently provide a narrowly-crafted exception that allows limited implementation of single-sex classes in nonvocational coeducational schools and require that:

Each nonvocational single-sex class or extracurricular activity is based on the recipient’s important objective

(A) To improve educational achievement of its students, through a recipient’s overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective; or

(B) To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective.

34 C.F.R. § 106.34(b)(1)(i); *see* 71 Fed. Reg. 62,530, 62,534-62,535 (Oct. 25, 2006).

15. Justifications for single-sex classes may not “rely on overly broad generalizations about the different talents, capacities, or preferences of either sex.” 34 C.F.R. § 106.34(b)(4)(i); 71 Fed. Reg. 62,530, 62,539 (Oct. 25, 2006).
16. ED and the Department of Justice have specified that the ED regulations “make clear that single-sex classes are the exception rather than the rule and place the burden on recipients wishing to establish such classes to show that they have met the criteria specified in the regulations.” They have further clarified that “the School Board is required to determine that *each* single-sex class is based on one of the two objectives set forth in the regulations, and that the single-sex nature of each class is substantially related to achieving that objective. This determination must be made *prior* to determining whether the class complies with any of the other requirements in ED’s regulations for implementing single-sex classes.”³
17. Enrollment in a nonvocational single-sex class or extracurricular activity must be “completely voluntarily.” 34 C.F.R. §106.34(b)(iii). “In order to ensure that participation in any single-sex class is completely voluntary, if a single-sex class is offered, the recipient is strongly encouraged to notify parents, guardians, and students about their option to enroll in either a single-sex or coeducational class and receive authorization from parents or guardians to enroll their children in a single-sex class.” 71 Fed. Reg. 62,530, 62,537 (Oct. 25, 2006). “[T]he Department of Education regulations require an affirmative assent by parents or guardians before placing children in single-sex classrooms. Such affirmative assent would preferably come in the form of a written, signed agreement by the parent explicitly opting into a single-sex program.” *Doe v. Wood County Bd. of Educ.*, 888 F. Supp. 2d 771, 776 (W.D.W.V. 2013).
18. A “recipient must conduct periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities.” These evaluations must be conducted at least every two years. 34 C.F.R. §106.34(b)(4).
19. Vocational (or CTE) classes, extracurricular activities, and schools may not be sex-separated as they are governed by the general prohibition on sex separation of §106.34(a) and the separate, explicit prohibition on single-sex vocational programs of §106.35. *See id.* (“A recipient shall not on the basis of sex exclude any person from admission to any institution of vocational education operated by that recipient.”).

³ Brief for the United States as Amicus Curiae Supporting Appellants at 15, *Doe v. Vermilion Parish Sch. Bd.*, 421 F. App’x 366 (5th Cir. 2011) (No. 10-30378), available at http://www.justice.gov/crt/about/app/briefs/vermillion_brief.pdf.

FACTUAL ALLEGATIONS

*General Allegations*⁴

20. The ACLU submitted a request for records under the Florida Public Records Law on December 22, 2011 (FPRL 2011) and received the District's response on February 15, 2012. The ACLU submitted an additional request for records under the Florida Public Records Law on June 11, 2013 and received the District's response on August 15, 2013 and October 1, 2013. (FPRL 2013).
21. The records indicate that, beginning in 2009, the District has conducted sex-segregated classes in at least sixteen coeducational schools, including one high school and fifteen elementary schools, as well as operating two single-sex middle schools.⁵ According to documents submitted in response to the FPRL 2013, the following coeducational schools are operating or were approved to operate single-sex classes in the 2013-14 school year:
 - (a) Blake High School has sex-segregated instruction in grades nine through eleven for the classes Read 180, English I Honors, English II Honors, Geometry, Algebra II and American History Honors.⁶
 - (b) Forest Hills Elementary conducts sex-segregated classes in fifth grade core subjects, including reading, writing, math and science.⁷
 - (c) Hugo Schmidt Elementary conducts sex-segregated classes in fifth grade. In prior years, Schmidt Elementary provided single-sex classes in fourth grade.⁸
 - (d) James Elementary School ("The Single Gender Academy of Excellence") conducts sex-segregated classes in all grades (K-5).⁹ James had twenty-six sex-segregated classrooms 2011-12.¹⁰

⁴ Unless otherwise indicated, documents cited herein are contained in the document production produced by the District in response to the ACLU of Florida's open records request, which was provided in full to the Department in digital format on a CD-Rom along with the paper copy of this Complaint, and are referenced by their Bates stamp page number (designated as "ACLU FL #_") as well as the section number provided by the District. Those produced in 2012 are designated Production 1 ("Prod. 1"); those produced in August 2013 are designated Production 2 ("Prod. 2"); and those produced in October 2013 are designated Production 3 ("Prod. 3"). Several documents of particular interest are also attached hereto as Exhibits.

⁵ Hillsborough County Public Schools, *Single-Gender Sites 2009-10* [Prod. 1 § 1-6; ACLU FL #82] [hereinafter "*Sites 2009-10*"]; HCPS, *Single-Gender Programs 2010-11* [Prod. 1 § 1-7; ACLU FL #83] [hereinafter "*Sites 2010-11*"]; HCPS, *Single-Gender Programs 2011-12* [Prod. 1 § 1-8; ACLU FL #84] [hereinafter "*Sites 2011-12*"].

⁶ HCPS, *Single Gender Programs Approved 2012-2013* (With notation of 2013-14 implementation plans) [Prod. 1 § 1-4; ACLU FL #6434] [hereinafter "*Programs Approved 2012-2013*"].

⁷ *Id.*; HCPS, *Single-Gender Program Proposal: Forest Hills Elementary Sch. 2* [Prod. 1 § 3-4; ACLU FL #271] [hereinafter "*Forest Hills Proposal*"].

⁸ *Programs Approved 2012-2013*, *supra* note 6 [Prod. 2 § 1-4; ACLU FL #6434]; HCPS, *Single-Gender Program Proposal 2011-2012: Hugo Schmidt Elementary Sch. 2* [Prod. 1 § 3-13; ACLU FL #316]; Theodore J. Dwyer & Freda S. Watson, HCPS, *Evaluation of Single Gender Education 4* (July 2012) [Prod. 2 § 11-2; ACLU FL #7562] [hereinafter "*Single Gender Evaluation 2012*"].

- (e) Just Elementary School conducts sex-segregated classes in all K-5 grades except second grade.¹¹
 - (f) Lanier Elementary School conducts sex-segregated classes in second and third grade.¹²
 - (g) Philip Shore Elementary School, a magnet school for Visual, Performing and Communication Arts, created sex-segregated classrooms for fourth and fifth graders in all core subjects, including math, reading, writing, science, and social studies.¹³
 - (h) Robles Elementary School conducts sex-segregated classes in second through fifth grades in all curriculum areas.¹⁴
 - (i) Woodbridge Elementary School established sex-segregated classrooms for all subjects in K-5 except fourth grade.¹⁵ In prior years there were sex-segregated fourth grade classes.¹⁶
 - (j) B.T. Washington Elementary intended to conduct sex-segregated classes in grades K-2 for this year.¹⁷
 - (k) Dunbar Elementary School intended to conduct sex-segregated classes in all grades, K-5, for this year.¹⁸
22. According to the Tampa Bay Times, the District intends to operate sex-segregated classes in at least two additional elementary schools, Sessums Elementary and Sheehy Elementary, next year.¹⁹ It appears that sex-segregated classes have previously been

⁹ *Programs Approved 2012-2013*, *supra* note 6 [Prod. 2 § 1-4; ACLU FL #6434]; HCPS, *Single-Gender Program Proposal 2011-2012: James Elementary Sch.* 2 [Prod. 1 § 3-8, ACLU FL #296].

¹⁰ *Letter to Parents*, Eye of the Jaguar! (James Elementary Sch., Tampa, Fla.), Oct. 24, 2011 [Prod. 1 § 8-10; ACLU FL #2081]. The District reported a slightly lower number of single-sex classes at James (22) to the FLDOE (HCPS, *2011-2012 Annual Equity Update Shell 3* [Prod. 2 § 4-5; ACLU FL #6460]).

¹¹ *Programs Approved 2012-2013*, *supra* note 6 [Prod. 2 § 1-4; ACLU FL #6434].

¹² *Id.*; HCPS, *Single-Gender Program Proposal 2011-2012, Lanier Elementary Sch.* 1 [Prod. 1 § 3-10; ACLU FL #307].

¹³ *Programs Approved 2012-2013*, *supra* note 6 [Prod. 2 § 1-4; ACLU FL #6434]; HCPS, *Single-Gender Program Proposal 2011-2012: Philip Shore Elementary Sch.* 2 [Prod. 1 § 3-14; ACLU FL #319].

¹⁴ *Programs Approved 2012-2013*, *supra* note 6 [Prod. 2 § 1-4; ACLU FL #6434]; HCPS, *Single-Gender Program Proposal 2011-2012: Robles Elementary Sch.* 2 [Prod. 1 § 3-12; ACLU FL #312] [hereinafter “*Robles Proposal 2011-12*”].

¹⁵ *Programs Approved 2012-2013*, *supra* note 6 [Prod. 2 § 1-4; ACLU FL #6434].

¹⁶ HCPS, *Single-Gender Program Proposal 2011-2012: Woodbridge Elementary Sch.* 1 [Prod. 1 § 3-15; ACLU FL #329].

¹⁷ *Programs Approved 2012-2013*, *supra* note 6 [Prod. 2 § 1-4; ACLU FL #6434].

¹⁸ *Id.*

¹⁹ Ernest Hooper, *Sessums Elementary Becomes First South Shore School to Offer Single-Gender Classes*, Tampa Bay Times, Apr. 2, 2014, www.tampabay.com/news/education/k12/sessums-

conducted and since abandoned at Carrollwood, Turner, Lockhart, Heritage, and Dowdell Elementary Schools.²⁰

23. An indeterminate number of schools are engaging in sex discrimination in the form of “gender differentiated strategies in co-ed classrooms.”²¹

Lack of Adequate Justification for Classification by Sex Or Use of Sex Stereotypes in Teaching

24. The District has asserted that “[f]irst and foremost, the purpose for separating boys and girls is to increase academic achievement,” and to close the gender achievement gap in reading, science and math between boys and girls.²² In submissions to the Florida Department of Education, the District has annually repeated the statement that its single-sex programs are justified “as a method to increase student achievement, and to decrease incidents of discipline referrals.”²³ While these are laudable (if extraordinarily vague) goals, **the District’s documents reveal that the actual basis for the extensive sex separation in the District is the pseudoscientific, gender essentialist theory that boys’ and girls’ brains are different from birth and develop differently and that those differences mean that they should be taught separately using radically different teaching methods.**
25. Numerous documents developed and disseminated throughout the life-span of the District’s single-sex program as well as materials used in training teachers demonstrate that the program is premised upon, and promotes, harmful stereotypes concerning asserted biological differences in brain structure and development and physiological differences between boys and girls that purportedly manifest in differences in intellectual capabilities and learning preferences.

elementary-becomes-first-southshore-school-to-offer-single-gender/2173160 (Attached hereto as **Exhibit C**).

²⁰ *Sites 2009-10*, *supra* note 5 [Prod. 1 § 1-6; ACLU FL #82]; *Sites 2010-11*, *supra* note 5 [Prod. 1 § 1-7; ACLU FL #83]; *Sites 2011-12*, *supra* note 5 [Prod. 1 § 1-8; ACLU FL #84].

²¹ *Request for Professional Development Funds: Single Gender Classroom Training 5* (Dates of training marked “TBD”) [hereinafter “*Request for Funds – Single Gender Classroom Training Dates TBD*”] [Prod. 1 § 9-3; ACLU FL #2195].

²² Morley, PowerPoint, *Working with Girls: Instructional Strategies, Learning Context, Stereotyping*, Slide 5 (2010) [Prod. 1 § 10-4; ACLU FL #3126]. *See also* HCPS, *Why Choose Single Gender?* (Undated) [Prod. 1 § 1-10; ACLU FL #87] [hereinafter “*Why Choose Single Gender*”] (“Studies have found students in single gender classrooms: scored 15–22% higher academically than students in co-ed classrooms...[and] closed the gender achievement gap.”).

²³ HCPS, *2010-11 Annual Equity Update Shell* (Undated) [Prod. 2 § 4-4; ACLU FL #6455]; HCPS, *2011-12 Annual Equity Update Shell* (Undated) [Prod. 2 § 4-5; ACLU FL #6458] [hereinafter “*2011-12 Equity Update*”]; HCPS, *2012-13 Annual Equity Update Shell* (Undated) [Prod. 2 4-6; ACLU FL #6462] [hereinafter “*2012-13 Equity Update*”].

26. The District’s undated documents “Single Gender Education Legal and Educational Rationale Brief”²⁴ [Exhibit D hereto] and “Single Gender Programs – Educational Rationale”²⁵ [Exhibit E] are derived almost exclusively from the mid-2000’s work of Leonard Sax and the NASSPE website, www.singlesexschools.org – or, more precisely, that website as it existed about six years ago. The longer document, Exhibit D, cites only the NASSPE website to support its substance. Exhibit E includes a lengthy list of citations, but the materials cited do not support the content in the body of the document, which once again is from the NASSPE website.
27. Numerous scholarly articles and research have rejected Sax’s theories about the neurological, developmental and other physiological differences between boys and girls as pseudoscience.²⁶
28. Among the statements made in the District’s Single Gender Education Legal and Educational Rationale Brief [Exhibit D], which articulates the basis for all sex separation in the District, are:
- (a) “Brains of girls and boys develop along different trajectories. Some differences are genetically programmed at birth and other differences are manifested later.”
 - (b) [An NIH neuroscientist published a study] “demonstrating no overlap in the trajectories of brain development in girls and boys.”
 - (c) “The areas of the brain involved in language and fine motor skills mature about six years earlier in girls than in boys.”
 - (d) “Boys tend to prefer non-fiction over fiction. Boys like to read descriptions of real events or illustrated accounts of the way things work, like spaceships, bombs, or volcanoes.”
 - (e) “Girls tend to prefer books where they can be analytical about a character’s motives and behaviors. Girls like stories about experiences that might happen over one summer and the emotional agonies that a character endures.”
 - (f) “Story problems are a good way to teach algebra to girls. Putting the question in story format makes it easier for girls to understand, and more interesting as well.”
 - (g) “With boys, you can stimulate their interest by focusing on the properties of numbers per se.”

²⁴ HCPS, *Single Gender Education Legal and Educational Rationale* (Undated) [Prod. 1 § 2-3; ACLU FL #156 - 60] [hereinafter “*Legal Rationale*”] (Produced in response to a request for documents reflecting “any policies or rules governing any single-sex program,”) (Attached hereto as **Exhibit D**).

²⁵ HCPS, *Single Gender Programs – Educational Rationale* (Undated) [Prod. 1 § 2-11; ACLU FL #259–60] [hereinafter “*Educational Rationale*”] (Produced in response to the request for documents reflecting “any policies or rules governing any single-sex program.”) (Attached hereto as **Exhibit E**).

²⁶ See Halpern et al., *supra* note 2; Lise Eliot, *Pink Brain, Blue Brain: How Small Differences Grow Into Troublesome Gaps and What We Can Do About It* (2009) [hereinafter Eliot, *Pink Brain, Blue Brain*].

- (h) “For boys, embedding the algebra question in a linguistic context makes the problem more difficult. The boy has to use the cerebral cortex to decode the story; then translate the question into a format suitable for processing by the hippocampus; and then re-translate the solution back into the format required by the question.”
- (i) “The most basic difference in teaching style for girls vs. boys is that you want to encourage the girls, build them up, while you give the boys a reality check: make them realize they’re not as brilliant as they think they are, and challenge them to do better.”²⁷

29. The District’s “Single Gender Programs – Educational Rationale” [Exhibit E] states:

[T]here are biological differences in boys and girls that affect learning. According to researchers in brain-based sex differences, there are several profound educational reasons why boys and girls should be separated in classrooms:

- Sequence of brain development
- Biological differences in vision and hearing
- Learning style differences
- Single sex classes and schools demonstrate benefit for the students in many areas – academics, attendance, discipline and attitude
- Self-efficacy and self-esteem
- Effects on educational aspirations, locus of control and self-concept

...

Girls have better hearing, which enables girls to pay attention more easily to a softer voice ... boys are less sensitive to color and more sensitive to movement.

As far as learning styles, girls learn in context, while boys respond to fact-oriented instruction. This is especially important when teaching math. Boys engage with non-fiction and stories with action or “blood and guts.” Girls more readily respond to simulations, discussions, and analyzing characters and relationships.

Girls see teachers as allies and want to please; boys do not, but instead focus more when their interest in the content increases.²⁸

30. In addition to the documents establishing the District-wide rationale for single-sex education, individual schools have been required to provide the District with an “educational rationale” for the program at the school level. None of these school-level rationales disowned the sex stereotyped theories articulated in the District level documents and most parrot the District documents or otherwise rely on brain-based theories of sex differences, primarily those put forth by Leonard Sax/NASSPE. For example:

²⁷ Exhibit D at 2-4 (*Legal Rationale*, *supra* note 24 [Prod. 1 § 2-3; ACLU FL #157-9]).

²⁸ Exhibit E at 1 (*Educational Rationale*, *supra* note 25 [Prod. 1 § 2-11; ACLU FL #259]).

- (a) The **Blake H.S.** “rationale” for establishing single-sex classes refers to decreased performance by the students in the bottom quartile at the school, but does not link that decrease to coeducation; indeed, the higher performing classes were coeducational as well. The “rationale” cites numerous disciplinary actions, but does not connect those disciplinary actions to academic performance.²⁹ Rather, the rationale relies entirely on a reading of Leonard Sax’s *Why Gender Matters*: “Based on research (*Why Gender Matters*, Leonard Sax), girls and boys [*sic*] education problems are due to the large number of misbehaviors in the class, as well as other factors. We believe that our girls and boys conduct and student achievement will increase if they are separate by gender.”³⁰ Despite Blake’s asserted “rationale” for single-sex classes being poor performance in the lower quartile of the school, the District has approved single-sex Honors courses at Blake in English I, English II and American History.³¹
- (b) The **Forest Hills Elementary** “rationale” is: “By creating these classrooms, we will meet the learning styles and needs specific to boys and girls. For the boy’s [*sic*] class, the set up will implement a lot of movement and hands-on activities. We will incorporate sports and competition in learning and classroom management. There will be a tolerance for behaviors such as humming, tapping, standing, etc... For the girl’s [*sic*] class, the set up will implement a calmer environment that appeals to girls.”³²
- (c) The **Just Elementary** Single-Gender Proposal relies on Leonard Sax’s book *Why Gender Matters* for its justification: “Research shows that single-gender classrooms result in a decrease in negative behaviors and an increase in engagement (Sax, 2006).”³³
- (d) The **Robles Elementary** rationale for its sex separation starts with the premise: “Based [on] research, boys and girls have different learning styles.”³⁴
- (e) The **Philip Shore Elementary** rationale asserts that: “Educational research like that completed by Gurian shows that single gender classes can reduce discipline problems, especially for boys.”³⁵

²⁹ HCPS, *Single-Gender Program Proposal: Blake High Sch.* 1 [Prod. 1 § 3-2; ACLU FL #265] [hereinafter “*Blake Proposal*”].

³⁰ *Id.* at 2 [ACLU FL #266].

³¹ *Programs Approved 2012-2013*, *supra* note 6 [Prod. 2 § 1-4; ACLU FL #6434].

³² *Forest Hills Proposal*, *supra* note 7, at 1 [Prod. 1 § 3-4; #270].

³³ HCPS, *Single-Gender Program Proposal 2011-12: Just Elementary Sch.* 1 [Prod. 1 § 3-9; ACLU FL #303].

³⁴ *Robles Proposal 2011-12*, *supra* note 14, at 1 [Prod. 1 § 3-12; ACLU FL #311]; HCPS, *Single-Gender Program Proposal 2010-2011: Robles Elementary Sch.* 1 [Prod. 1 § 3-12; ACLU FL #314].

³⁵ HCPS, *Single-Gender Program Proposal 2010-11: Philip Shore Elementary Sch.* 1 [Prod. 1 § 3-14; ACLU FL #321] [hereinafter “*Shore Proposal 2010-11*”].

31. Documents sent to parents explaining the reasons the schools are providing single-sex classes echo these pseudoscientific theories that purported differences in the male and female brains or learning styles justify separating students by sex. For example:

- (a) In October, 2012, The Principal's column in the **Forest Hills Elementary School** newsletter³⁶ informed parents that:

Brain-based research has shown that [the Single Gender] model has the potential to close the achievement gap between boys and girls. ... single gender opens up new avenues for information for both parents and teachers, making them aware of the uniqueness of boys and girls, as it refers to their achievement differences and learning style. During this school year, we will continue to explore and implement learning strategies that are unique to boys and girls...

- (b) The November 4, 2011 newsletter for **Lanier Elementary** recommended that parents "find research on the internet regarding gender based instruction by searching Dr. Leonard Sax."³⁷

- (c) In a letter to parents from Principal Mercer at **Philip Shore Elementary School of the Arts**, Principal Mercer explains that, "male brains and female brains are organized differently; with functions more compartmentalized in male brains and more globally distributed in female brains."³⁸ In an informational meeting about single-sex instruction, educators at Philip Shore Elementary explained to parents that "in the 1960's and 1970's it was 'fashionable' to assume that gender differences in personality were 'socially constructed' by societal practices," but "cross-cultural studies over the past thirty years...support[] the idea that many gender traits are innate."³⁹

- (d) A recent brochure for **James Elementary's** Single Gender Classrooms [Exhibit F] states:

The single gender class concept is based on scientific research where teaching strategies are geared towards meeting the unique needs of boys and girls.

Research shows the most profound difference between girls and boys is the sequence in development of the brain regions. Language and fine motor skills mature about six years earlier in girls than in boys. The area of the brain involved in targeting and spatial memory mature about four years earlier in boys than in girls. The brain involved in language, in spatial memory, in

³⁶ Letter from Principal to Parents, Forest Hills Braves Newsletter (Forest Hills Elementary Sch., Tampa, Fla.), Oct. 2012 [Prod. 2 § 7-2; ACLU FL #6516].

³⁷ Dolphin Splash Newsletter (Lanier Elementary Sch., Tampa, Fla.), Nov. 4, 2011 [Prod. 2 § 7-2; ACLU FL #6524].

³⁸ Note From the Principal, Parent Paw Prints (Philip Shore Elementary Sch., Tampa, Fla.), Oct. 17-21, 2011 [Prod. 1 § 8-16; ACLU FL #2126].

³⁹ Philip Shore Elementary Sch., Powerpoint, *Single-Gender Classrooms*, Slide 5 (2009-2010, 2010-2011) [Prod. 1 § 8-16; ACLU FL #2142].

motor coordination, and in getting along with other people, develops in a 'different order, time, and rate' in girls compared with boys.⁴⁰

- (e) Educators at **Woodbridge Elementary**, citing *Boys and Girls Learn Differently* by Michael Gurian, explained to parents that:

Girls take on more sensory data than boys. On average, they hear better, smell better and take in more information through fingertips and skin. Females tend often to be better than males at controlling impulsive behavior. Males tend to have more development in certain areas of the right hemisphere, which provides them with better special abilities, such as measuring, mechanical design and geography and map reading. When female estrogen is high, a girl scores higher on both standardized and in-class tests than when it is low. When male testosterone is high, a boy performs better in spatial exams like math tests, but worse on verbal tests.⁴¹

- (f) Virtually identical letters were sent to the parents of students in **Just Elementary**,⁴² **Lanier Elementary**,⁴³ **Forest Hills Elementary**,⁴⁴ **Blake High**,⁴⁵ **Robles Elementary**,⁴⁶ and **Schmidt Elementary**⁴⁷ Schools informing them, with minor language variations, that:

Research shows that there are significant learning differences between boys and girls. Scientists and educators are creating powerful ways to help students reach their highest potential through addressing those differences in classroom instruction.

We will continue to make available the program at our school that will separate girls and boys in classrooms. Teachers will use different types of teaching strategies, based on research. These strategies will enable students to achieve at higher levels, and will also reduce discipline problems in schools.

⁴⁰ James Elementary Sch., Brochure, *Single Gender Classrooms* (2012-2013 School Year) [Prod. 2 § 7-2; ACLU FL #6518-19] (Attached hereto as **Exhibit F**).

⁴¹ Woodbridge Elementary Sch., Brochure, *Single Gender 4th and 5th Grade Classrooms* (Undated) [Prod. 1 § 8-17; ACLU FL #2172-3].

⁴² Letter from Carolyn P. Hill to Families, Just Elementary Sch. (Jul. 7, 2012) [Prod. 2 § 7-2; ACLU FL #6523].

⁴³ Letter from Rebecca L. Sargable to Families, Lanier Elementary Sch. (Undated) [Prod. 2 § 7-2; ACLU FL #6526].

⁴⁴ Letter from Krystal Carson to Families, Forest Hills Elementary Sch. (Aug. 1, 2012) [Prod. 2 § 7-2; #6517].

⁴⁵ Letter from Principal to Families, Blake High Sch. (Undated) [Prod. 2 § 7-2; ACLU FL #6515].

⁴⁶ Letter from Beatrice McDaniel to Families, Robles Elementary Sch. (Apr. 13, 2012) [Prod. 2 § 7-2; ACLU FL #6529].

⁴⁷ Letter from Cindy Malone to Families, Schmidt Elementary Sch. (May 7, 2013) [Prod. 2 § 7-2; ACLU FL #6531].

- (g) Relying on the work of Leonard Sax, the principal of **Philip Shore Magnet School for the Arts** wrote to parents:⁴⁸

Research on the male brain and the female brain started in 1964 and continued on for two more decades. What they found is that male brains and female brains are organized differently; with functions more compartmentalized in male brains and more globally distributed in female brains. This difference in anatomy matters because it also means that there are significant differences in function as well. Thus, research indicates that there *are* differences in the way that girls and boys hear and see, and there *are* differences in how they learn.

...

Girls need more real-world applications for the learning of math. Teachers need to start with something that girls can see and touch before they can learn the concept. For girls, the use of manipulatives and small group activities is ideal. They must see the relevance of the activity to the real world in order to understand it. For boys, small group activities with manipulatives are less effective. Boys need to work with “numbers.” They enjoy computational skills and learning numerical principles. Word problems are often difficult for boys because in math they are using the less-developed hippocampus part of the brain while girls use the cerebral cortex part of the brain for learning...Boys prefer activities that require more competition, such as speed drills and numerical problems.

Not surprisingly, Dr. Sax pointed out that there are also classroom management differences between girls and boys as well. Girls look at each [other] when talking and try to find points of agreement in their conversations. Boys do *not* look at each other and often disagree as a way of establishing an “alpha” relationship with their peers. They prefer not to talk about relationships and would rather focus on such neutral topics as politics and weather. Thus, girls can be seated in groups where they are face-to-face, but boys need to be seated in rows where they are shoulder-to-shoulder and don’t have to make eye-contact with anyone. Additionally, girls thrive in classrooms where teachers can provide them with unconditional positive regard. The teacher is seen as an ally and girls want help from the teacher at the first encounter of difficulty. On the other hand, boys thrive in classrooms where the teacher allows them to solve problems on their own (only helping as a last resort).

Based on this research, many schools are now realizing the benefit of starting up single-gender classrooms as one way of reducing the achievement gap amongst its subgroups.

32. The District’s goals to increase student achievement and reduce discipline are not aimed at meeting the particular identified educational needs of its students. ED has explained

⁴⁸ Letter from Barbara A. Mercer to Parent or Guardian, Philip Shore Elementary Sch. (Feb. 2012) [Prod. 2 § 7-2; ACLU FL #6533-4].

that “[a] student’s particular, identified educational need is evidenced by limited or deficient educational achievement.” 71 Fed. Reg. 62,530, 62,535 (Oct. 25, 2006). However, neither the District nor the individual schools conducted any class-, grade-, school-, or even district-wide assessment of student needs, or put forward any basis for the placement of a student in any such class. Rather, single-sex classes within the District are largely created and abolished depending on the interest of individual school administrators, not the needs of individual students.⁴⁹

33. Although the District’s promotion of sex-segregated programming does take place within the context of an overall established District-wide program of school choice, that justification is nonetheless insufficient for the reasons discussed further in the following paragraphs.

Lack of Substantial Relationship Between Sex Segregation and the Achievement of the District’s Other Stated Goals:

34. Even assuming that some of the District’s goals, such as increasing student achievement or decreasing incidents of discipline, are considered valid, the District failed to ensure that any of its single-sex classes was substantially related to the achievement of those goals.
35. Although the District appears to have an overall established policy of offering a diversity of educational opportunities, the District at no time established that the single-sex nature of any of its classes was substantially related to achieving the educational achievement of its students. Most importantly, each of the single-sex classes within the District is premised on overly broad generalizations about the different talents, capacities or preferences of both sexes.
36. The District’s assertion that separation of students on the basis of sex would decrease discipline referrals and that academic achievement is tied to the amount of misbehavior in class is overly vague and unsupported by either education data or the district’s own data.⁵⁰ A general flyer about the District-wide single-gender programming reads, “Studies have found students in single gender classrooms...received fewer discipline referrals (boys).”⁵¹ And Carrollwood Elementary, for example, stated: “We feel the girls’ education may be interfered with by the huge number of boy misbehaviors. We feel that the girls may do better if the boys are not with them, and the boys may do

⁴⁹ See, e.g., *2011-2012 Equity Update*, *supra* note 23, at 2 [Prod. 2 § 4-5; ACLU #6459] (“Carrollwood Elementary School discontinued its single gender program for 2011-12 due to changes in administrative leadership and instructional personnel at the school.”).

⁵⁰ See *Blake Proposal*, *supra* note 29, at 1 [Prod. 1 § 3-2; ACLU FL #265]; *Shore Proposal* 2010-11, *supra* note 35, at 1 [Prod. 1 § 3-14; ACLU FL #321] (“Data show that as the grade level increases, the number of discipline referrals increase.”); *Forest Hills Proposal*, *supra* note 7, at 1 [Prod. 1 § 3-4; ACLU FL #270] (alleging that as a result of single-gender classrooms, discipline referrals will drop, which will benefit the entire school).

⁵¹ *Why Choose Single Gender*, *supra* note 22 [Prod. 1 § 1-10; ACLU FL #87].

better if the girls are not present.”⁵² However, the District produced no valid study demonstrating improved behavior as a result of single-sex classes. Several schools in the District produced documents stating that boys receive the vast majority of discipline referrals.⁵³ However, both boys and girls are separated into special classrooms. In addition, there is no evidence that the schools specifically targeted the students with a high number discipline referrals for the sex segregated classrooms; nor is there any evidence that the misbehavior was caused by the presence of the opposite sex.

37. The District contends that grouping students by gender allows teachers to tailor classroom environments, apply teaching strategies and provide learning experiences appropriate for each gender. The District produced no valid evidence supporting any relationship, substantial or otherwise, between instruction based on sex stereotypes and academic or behavioral improvements. It is well-established that there is greater variation in abilities amongst girls or amongst boys than there is between boys and girls.⁵⁴ One cannot predict based solely on sex whether a particular individual will outperform another in any academic area. Consequently the District is simply stating that it intends to teach based on overly broad sex-based generalizations about the talents, capacities and preferences of students.
38. Justifications for single-sex classes may not rely on these “overly broad generalizations about different talents, capacities, or preferences of either sex.” 34 C.F.R. § 106.34(b)(4)(i); 71 Fed. Reg. 62,530, 62,535 (Oct. 25, 2006).

Teachers Instructed to Teach Girls and Boys Differently Based on Sex Stereotypes

39. The fundamental premise of the District’s program of promoting single-sex classrooms is that there are innate or “hardwired” differences between boys’ and girls’ brains that necessitate the use of different teaching methods for boys and girls in separate classrooms. Accordingly, sex stereotypes permeate the educational environment at schools across the District, as reflected in the lessons used to instruct teachers on why and how they should teach boys and girls differently.
40. In District-run Hillsborough Single Gender Summer Institute/Symposium trainings, teachers have been instructed that:
 - The amygdala is bigger in boys, so males remember central aspects of the situation, where women remember details. The hippocampus is larger in women, and so they are better with memory.⁵⁵

⁵² HCPS, *Single-Gender Program Proposal: Carrollwood Elementary Sch.* 1 [Prod. 1 § 3-3; ACLU FL #268].

⁵³ See, e.g., *id.* (demonstrating that of the forty discipline referrals among fifth graders, only five were for girls).

⁵⁴ See Eliot, *Pink Brain, Blue Brain*, *supra* note 26, at 11-13.

⁵⁵ See David Chadwell, Powerpoint Presented at HCPS Summer Institute, *Gender in the Classroom*, Slide 73 (July 20-21, 2011) [Prod. 1 § 10-5; ACLU FL #3586] [hereinafter “Chadwell, *Gender in the Classroom*”]; Amanda Sheets et al., Powerpoint, *What’s So Different About a Single Gender*

- Physiological differences between boys and girls, particularly in terms of vision and hearing, warrant different teaching strategies and classroom environments. Generally, because women hear better, they do not like loud noises. Men spot movement better than women and girls, because they have more M-cells in their retinas.⁵⁶
 - “The engagement of boys tends to be more influenced by the sympathetic nervous system (known as the fight or flight system)” but “the engagement of girls tends to be more influenced by the parasympathetic nervous system (known as the rest and digest system).”⁵⁷
41. At a recent session of the District’s Single-Gender Summer Symposium presented by Carla Sparks, Supervisor of the District’s Choice and Magnet Programs and a “Gurian Institute Certified Trainer,” materials describe boys as “smart” and “arrogant” and girls as “careful,” “focused on what the teacher wants,” and “insecure.”⁵⁸ Her presentation, entitled “Brain Research and Classroom Strategies for Single-Gender Education” states “Research studies using MRIs on male and female brains have shown that the female brain at rest is equally active to the male brain when fully engaged.” This presentation describes boys and girls as “seeing differently,” “engaging differently,” and “processing differently,” and asserts that a newborn girl is the physiological equivalent of a three-month old boy.⁵⁹ The District appears to require all new teachers of single-gender classes to attend this session.⁶⁰
42. In addition, the District trainings relied heavily on stereotypical emotional differences between boys and girls, including generalized statements such as:
- Girls do not like to take risks and believe success is from hard work.⁶¹

Classroom?: Boys and Girls Learn Differently 4 (Oct. 3, 2011) [Prod. 1 § 10-5; ACLU FL #3334] [hereinafter “Sheets, *What’s So Different*”].

⁵⁶ David Chadwell, Powerpoint, *A Gendered Classroom: Gender Differences and Classroom Implications*, Slides 88, 94-95 (Undated) [Prod. 1 § 10-4; ACLU FL #3015, #301-22] [hereinafter “Chadwell, *A Gendered Classroom*”]; Chadwell, *Gender in the Classroom*, *supra* note 55, at Slide 62 [Prod. 1 § 10-5; ACLU FL #3580] (asserting that men spot movement better than girls and women).

⁵⁷ David Chadwell, Powerpoint, *Top 10 Strategies for Teaching Girls and Boys*, Slide 15 [Prod. 1 § 10-4; ACLU FL #2896] [hereinafter “Chadwell, *Strategies*”].

⁵⁸ Carla Sparks, Powerpoint, *Brain Research and Classroom Strategies for Single Gender Education* Slide 13 (Undated) [Prod. 2 § 9; ACLU FL #6718] [hereinafter “Sparks, *Brain Research*”].

⁵⁹ *Id.* at Slides 9-16 [ACLU FL #6714-21].

⁶⁰ HCPS, Program for Hillsborough Single Gender Education Summer Symposium 4 (July 23-26, 2012) [Prod. 2 § 8-7; ACLU FL #6668] [hereinafter “*Summer Symposium Program 2012*”] (listing “Gender Differentiation: Boys & Girls Learn Differently” as “REQUIRED FOR NEW TEACHERS OF SINGLE GENDER EDUCATION”); HCPS, Program for Hillsborough Single Gender Education Summer Symposium 5 (July 8-10, 2013) [Prod. 2 § 8-8; ACLU FL #6689] [hereinafter “*Summer Symposium Program 2013*”] (listing “Understanding the Minds of Boys & Girls” as “REQUIRED FOR NEW TEACHERS OF SINGLE GENDER EDUCATION”).

⁶¹ Chadwell, *A Gendered Classroom*, *supra* note 56, at Slide 106 [Prod. 1 § 10-4; ACLU FL #3034].

- Girls like to know that there is one right answer, have strict social hierarchies and tend to use relationships as weapons.⁶²
 - Boys are less motivated to learn unless the material itself motivates them and they tend to overestimate their abilities.⁶³
 - Boys show love through aggression (Gurian calls this “aggression nurturance”).⁶⁴
 - Boys like to take risks and believe success is from being smart.⁶⁵
43. The District encouraged teachers to base instruction strategies in sex-segregated classrooms on these and other stereotypes. For example, slides instructed that boys-only classrooms:
- Are “LOUD” and have “more physical movement,”⁶⁶ utilize music to increase energy,⁶⁷ and provide standing stations.⁶⁸
 - “Boys learn best using diagrams, graphs, and pictures.”⁶⁹
 - Boys should be grouped side-by-side.⁷⁰
 - Teachers should implement “ball toss discussions.”⁷¹
 - Teachers should use surnames to add formality.⁷²
 - Teachers should move around during lectures and talk louder.⁷³

By contrast, slides suggested that in the girls-only classrooms:

- Teachers should institute more “talk time” and connect math and science to real life, because girls struggle with abstract thinking.⁷⁴

⁶² David Chadwell, Powerpoint, *Moving Beyond Ball Toss*, Slide 86 (Undated) [Prod 1 § 10-4; ACLU FL #3205].

⁶³ Chadwell, *A Gendered Classroom*, *supra* note 56, at Slide 106 [Prod. 1 § 10-4; ACLU FL #3034].

⁶⁴ Sheets, *What’s So Different*, *supra* note 55, at 7 [Prod. 1 § 10-5; ACLU FL #3337].

⁶⁵ Chadwell, *A Gendered Classroom*, *supra* note 56, at Slide 106 [Prod. 1 § 10-4; ACLU FL #3034].

⁶⁶ Denise Scott, James Elementary Sch., Powerpoint, *Single Gender: A Different World Beyond Pink & Blue*, Slide 14 (Undated) [Prod. 1 § 10-4; ACLU FL #3282] [hereinafter “Scott, *Beyond Pink & Blue*”].

⁶⁷ Denise Scott, James Elementary Sch., Powerpoint, *Creative Writing: “Jazzy and Hip,”* Slide 5 (Feb. 2, 2012) [Prod. 1 § 10-4; #3309].

⁶⁸ HCPS, Franklin Preparatory Acad. Implementation Progress Report 2011-2012, at 5 [Prod. 1 § 12-6; ACLU FL #4927].

⁶⁹ Florida Department of Education: School Improvement Plan (SIP), Woodbridge Elementary 8 (Revised Feb. 8, 2012) [Prod. 1 § 11-7; ACLU FL #4437].

⁷⁰ Chadwell, *Strategies*, *supra* note 57, at Slide 39 [Prod. 1 § 10-4; ACLU FL #2920].

⁷¹ *Id.* at Slide 26 [ACLU FL #2907].

⁷² Chadwell, *A Gendered Classroom*, *supra* note 56, at Slide 119 [Prod. 1 § 10-4; ACLU FL #3047].

⁷³ Chadwell, *A Gendered Classroom*, *supra* note 56, at Slide 134 [Prod. 1 § 10-4; ACLU FL #3062].

⁷⁴ Scott, *Beyond Pink and Blue*, *supra* note 66, at Slide 6 [Prod. 1 § 10-4; ACLU FL #3274].

- Girls should discuss issues one-on-one and face-to-face.⁷⁵
 - Teachers should not move around a lot. They should monitor their volume.⁷⁶
 - Girls should be encouraged to express themselves and share their experiences relating to a concept, while the teacher should use stories that relate a concept to the girls' lives...⁷⁷
44. Last summer, teachers of boys, but not girls, were invited to a program entitled "Engaging Students with Debate and Discussion," described as:⁷⁸
- How can we engage students in higher level discourse? ...See firsthand how to implement Socratic Seminars, Philosophical Chairs, and other student centered activities.
- Teachers of girls, by contrast, were invited to a program called "Creating Connections with Girls," described as:⁷⁹
- Girls will learn better if they believe a teacher cares about them and the subject being taught. This workshop will give teachers specific strategies that will help foster a classroom environment that develops personal connections with girls.
45. Recent presentations at the District's single-gender trainings, conducted by three District teachers who are "Gurian Certified," recommend different physical arrangements for All-Boy and All-Girl classrooms, including suggesting that:⁸⁰
- In an All-Boys Classroom desks should be arranged in rows or side by side, but in an All-Girls Classroom, "Community and relationships are key to a successful girls' classroom" and "Collaboration, Collaboration, Collaboration – whether in pairs or groups of four."
 - Boys' classrooms should provide "Comfortable seating; bean bags, pillows, camping chairs, stools"
 - Girls' classrooms may have dimmer lighting or natural light rather than overhead light.
 - Photographs show boys sitting at individual desks facing the front of the classroom, while girls' classrooms are arranged so that girls face each other.
 - "Classroom design uses all the senses" because girls (but, by implication, not boys) "use all senses to process information – scent, visuals, music/auditory cues, etc."

⁷⁵ Chadwell, *A Gendered Classroom*, *supra* note 56, at Slide 124 [Prod. 1 § 10-4; ACLU FL #3052].

⁷⁶ *Id.* at Slide 144 [ACLU FL #3072].

⁷⁷ *Id.* at Slide 146 [ACLU FL #3074].

⁷⁸ *Summer Symposium Program 2013*, *supra* note 60, at 12 [Prod. 2 § 8-8; ACLU FL #6696].

⁷⁹ *Id.* at 10 [ACLU FL #6694].

⁸⁰ Sparks, *Brain Research*, *supra* note 58, at Slides 36-7 [Prod. 2 § 9; ACLU FL #6741-2].

- “Décor/wall decorations should have women role models in that specific subject” (while boys apparently do not need to be aware of the achievements of women).

46. With regard to engaging students in learning, the same presentation⁸¹ stated that:

- “A well run boys classroom is LOUD!”
- “More physical movement occurs”
- “Some males will tap, wiggle, and hum”
- “Some prefer to stand instead of sit”
- “Others like lying down with a clipboard”
- “Stress balls, pipe cleaners, and similar objects help with fidgeting or tapping”
- **“More boy friendly books are read”**

However, to engage girls in learning, the presenters recommended:

- Making it Real (real world connections) are more important for girls (than boys) to understand concepts
- Group or partner work
- Time to write responses before verbally responding

47. Additional slides inform teachers that “Movement Increases Learning In An All-Boys Classroom,” with no parallel encouragement for movement in all-girls classrooms.⁸²

- Brain Development In An All-Boys Classroom⁸³
 - Boys have more dopamine in their bloodstream which increases impulsive behavior
 - Movement is crucial to male brain learning
 - Boys need a rest state to renew, recharge and reorient their brains between tasks
 - Boys need more tactile experiences for the brain to light up in learning
 - Boys need more time to memorize items, especially written items
- Brain Boosters In An All-Boys Room⁸⁴

⁸¹ *Id.* at Slides 39-40 [ACLU FL #6744-5].

⁸² *Id.* at Slide 45 [ACLU FL #6750]. Multiple versions of this presentation have been used in District trainings over the years. *See, e.g.,* Sheets, *What’s So Different*, *supra* note 55, at 21 [Prod. 1 § 10-5; ACLU FL #3351] (This presentation was also produced by the District in 2013. *See* Prod. 2 § 9; ACLU FL #6797).

⁸³ Sparks, *Brain Research*, *supra* note 58, at Slide 46 [Prod. 2 § 9; ACLU FL #6751]; *See also* Sheets, *What’s So Different*, *supra* note 55, at 21 [Prod. 1 § 10-5; ACLU FL #3351] (*See supra* text accompanying note 82).

- Boys generally do not like to sit for extended periods
- Boys need to increase oxygen to the brain
- Brain breaks increase attention level
- Brain breaks increase energy in the class

District Teachers Received Extensive Training in Gender-Differentiated Teaching Methods Over Many Years

48. The District has invested substantial time and money in “single gender” trainings and conferences offered by groups promoting the concept that boys’ and girls’ brains are inherently different in ways that warrant teaching them separately. For example:
- Seven teachers, two principals and one supervisor attended the Summer Training at the Gurian Institute (July 10, 2011).
 - Over fifty educators attended the National Association for Single Sex Public Education (NASSPE) conference in 2011-12.⁸⁵
49. The District itself has run several four-day Single-Gender Symposia/Hillsborough Single-Gender Summer Institutes at which all District teachers new to single-sex classes have been required to attend sessions such as “Gender Differentiation: Boys and Girls Learn Differently,” which is taught by two Gurian Institute-certified teachers.⁸⁶ The presentation provides “an overview of current research on brain development and the implications on learning. It also offers practical strategies for implementation that provide differentiated instruction by gender.”⁸⁷ Another available session is “Busy Boys, Little Ladies,” taught by teachers of single-sex Kindergarten classes in the District’s Woodbridge Elementary School, which discusses “Common Core Concepts with gender differentiation” and “how to increase student engagement by gearing toward gender.”⁸⁸ Hundreds of District staff attended these trainings. For example:
- 112 educators attended the Hillsborough’s Single Gender Summer Institute (July 18–21, 2011).⁸⁹
 - Sixty-five educators attended “Differentiated Instruction by Gender for Peer Evaluators,” presented by Gurian-certified teachers (Sept. 22, 2011 and Oct. 5, 2011).⁹⁰

⁸⁴ Sparks, *Brain Research*, *supra* note 58, at Slide 47 [Prod. 2 § 9; ACLU FL #6752]; *See also* Sheets, *What’s So Different*, *supra* note 55, at 22 [Prod. 1 § 10-5; ACLU FL #3352] (*See supra* text accompanying note 82).

⁸⁵ HCPS, *Training Opportunities for Single Gender Educators 2011-12*, at 1-2 [Prod. 1 § 9-2; ACLU FL #2188–89] [hereinafter “*Training Opportunities 2011-12*”].

⁸⁶ *Summer Symposium Program 2012*, *supra* note 60, at 4, 10, 13 [Prod. 2 § 8-7; ACLU FL #6668, #6674, #6677].

⁸⁷ *Id.* at 13 [ACLU FL #6677].

⁸⁸ *Id.* at 10 [ACLU FL #6674].

⁸⁹ *Training Opportunities 2011-12*, *supra* note 85, at 1 [Prod. 1 § 9-2; ACLU FL #2188].

- 160 Hillsborough teachers attended the four-day 2012 Single-Gender Summer Symposium.⁹¹
 - 63 attended monthly single-sex seminars during the 2012-13 school year.⁹²
 - 69 attended a presentation by David Chadwell on “Managing a Single-Gender Classroom” in April, 2013.⁹³
 - Approximately 120 attended the 2013 Summer Symposium.⁹⁴
50. Training extended to teachers and others who work in coed environments. For example, two “Gurian-Certified Trainers” employed by the District gave a presentation entitled “Single Gender Research and Strategies for Classroom Implementation” to approximately 100 instructors in the Hillsborough Out of School Time (“HOST”) program even though that program is apparently not single-sex.⁹⁵
51. A six-hour program for peer evaluators entitled “Differentiated Instruction by Gender for Peer Evaluators” was attended by 42 “Peer Evaluators” for “training on gender strategies and the impact on the EET [Empowering Effective Teachers] evaluation rubric.”⁹⁶ The logical inference is that teachers of single-sex classes were to be evaluated using standards different from those used to judge teachers of coed classes.
52. The District has paid almost \$100,000 to outside consultants who promote the concept that boys’ and girls’ brains are inherently different and that those differences mean that boys and girls should be taught in separate classrooms using radically different teaching methods.
- The National Association for Single-Sex Public Education, run by Dr. Leonard Sax, has been paid approximately \$32,600 for Dr. Sax’s consultation and speaking fees and for teachers attending NASSPE conferences.⁹⁷
 - David Chadwell, a South Carolina middle school teacher who was for many years a member of the NASSPE Advisory Board has received almost \$50,000 in speaking and consulting fees, with possibly thousands more in travel expenses.⁹⁸

⁹⁰ *Id.*

⁹¹ HCPS, *Training Opportunities for Single Gender Educators, April 2012- Present 1* [Prod. 2 § 8-3; ACLU FL #6547] [hereinafter “*Training Opportunities April 2012 – Present*”]; HCPS, Sign-In Sheet for Single Gender Education Symposium (July 23-26, 2012) [Prod. 2 § 8-5; ACLU FL #6578-6604].

⁹² *Training Opportunities April 2012- Present, supra* note 91, at 2 [ACLU FL #6548].

⁹³ *Id.* at 2-3 [ACLU FL #6548-9].

⁹⁴ *Id.* at 3 [ACLU FL #6549]. The District reported in a professional development memorandum that over 100 teachers attended the 2013 Symposium, but sign-in sheets produced by the District indicate that approximately 120 teachers attended. HCPS, Sign-In Sheet for Single Gender Education Symposium (July 7-10, 2013) [Prod. 2 § 8-5; ACLU FL #6640-61].

⁹⁵ *Training Opportunities April 2012 – Present, supra* note 91, at 2 [#6548].

⁹⁶ *Id.*

⁹⁷ Contracts and Invoices for Nat’l Ass’n for Single-Sex Public Education [Prod. 2 § 16-3; ACLU FL #7722-36].

- Joanne Deak, a Gurian-certified teacher on the NASSPE Advisory Board, received \$3,000.⁹⁹
- The Gurian Institute has been paid approximately \$11,000 for training and almost 500 copies of the Gurian training manual have been purchased for Hillsborough teachers.¹⁰⁰

This of course doesn't include the far larger sums collectively paid to teachers to attend these various programs.

53. It appears that most, if not all, of these payments to outside speakers have been made using funds provided directly to the District by the U.S. Department of Education as Voluntary Public School Choice and Magnet School Assistance Program grants.¹⁰¹

Sex Differentiated Methods Observed in the Classrooms

54. That these sex-differentiated teaching methods are actually employed in classrooms across the District is beyond doubt. In its 2009 Evaluation of the District's single-gender program, numerous differences between boys' and girls' classrooms were observed:
 - Different approach to lessons (girls do better w/math if the lesson begins with a personal experience)¹⁰²
 - Boys had freedom to sit wherever they liked when reading. Girls were allowed to talk a while in the morning.¹⁰³
 - Classes with all boys are allowed to "move and play" more.¹⁰⁴
 - More written expression with girls; more independent reading for boys¹⁰⁵

⁹⁸ Contracts and Invoices for Chadwell Consulting [Prod. 2 § 16-1; ACLU FL #7666-7703].

⁹⁹ Contracts and Invoices for The Deak Grp. [Prod. 2 § 16-4; ACLU FL #7737-40].

¹⁰⁰ Contracts and Invoices for the Gurian Inst. [Prod. 2 § 16-2; ACLU FL #7704-21].

¹⁰¹ *Request for Funds – Single Gender Classroom Training Dates TBD*, *supra* note 21 [Prod. 1 § 9-3; ACLU FL #2195] ("Magnet School Assistance Program (MSAP) grant funds will pay for trainers and national presenters."); HCPS, *Request for Staff Development Funds: Single Gender Classroom Training* (June 2010) [Prod. 1 § 9-3; ACLU FL #2196] ("Voluntary Public School Choice (VPSC) grant funds will pay for both local and nationally recognized presenters."); HCPS, *Request for Professional Development Funds: Single Gender (SG) Summer Institute 2011* [Prod. 1 § 9-3; ACLU FL #2197] (both MSAP AND VPSC grant funds used to pay for presenters); HCPS, *Request for Professional Development Funds: Single Gender (SG) Classroom Training* (Jan. & June 2011) [Prod. 1 § 9-3; ACLU FL #2198].

¹⁰² Freda S. Watson, HCPS, *Formative Evaluation of Single Gender Instruction* 10 (Oct. 2009) [Prod. 1 § 12-12; ACLU FL #6000] [hereinafter "*Single Gender Education Evaluation 2009*"].

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 12 [ACLU FL #6002].

¹⁰⁵ *Id.*

- Boys had an electronics day, where they could bring in all their electronics and play them if they behaved.¹⁰⁶
- Teachers encouraged group work for girls, especially in science and math, where girls lacked confidence.¹⁰⁷
- Teachers encouraged and comforted girls when they made a mistake.¹⁰⁸
- Teachers spoke in a firmer and more authoritative and loud voice with the boys.¹⁰⁹
- Boys were instructed to do jumping jacks before math.¹¹⁰
- In one classroom, the teacher gave each girl a dab of perfume on her wrist for doing a task correctly.¹¹¹

Teachers Assigned to Classes Based on Sex Stereotypes

55. The District has intended to assign teachers to classes based on sex stereotypes about the learning styles of boys and girls, stating:¹¹²
- [Biological sex-based] differences strongly affect what kind of personality traits make successful teachers in a single gender classroom.
- **Teachers of boys** – lively, energetic, move around a lot and have a loud voice; like to use games and hands-on activities; encourage competition; can work in “organized chaos.”
 - **Teachers of girls** – calm, organized, orderly; use “how do you feel” and cooperative group or partner activities; have a very structured classroom.
56. The District’s own self-evaluation document explains: “Teachers volunteered to teach single gender classes, and principals make their selections from the volunteers, based primarily on the match between teaching styles and the gender to be taught. Research has shown, for example, that teachers who are structured in their approach are a good fit for an all boys classroom whereas those individuals who emphasize collaboration enjoy an all girls class.”¹¹³

¹⁰⁶ Id. at 13 [ACLU FL #6003].

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Id. at 14 [ACLU FL #6004].

¹¹² Exhibit E at 1 (*Educational Rationale*, *supra* note 25) [Prod. 1 § 2-11; ACLU FL #259]).

¹¹³ *Single Gender Evaluation 2012*, *supra* note 8, at 8 [Prod. 2 § 11-2; ACLU FL #7566]; *See also Single Gender Evaluation 2009*, *supra* note 102, at 29 [Prod. 1 § 12-12; ACLU FL #6019] (“It is important to have the teacher’s personality match with the gender they teach.”...“From the training she received, the principal ... had learned that teachers who tend to be firm, talk louder, are abstract

57. A 2008 document the District relied on in structuring its single-sex program¹¹⁴ urged:
- Teachers in boys' classrooms should be louder and able to tolerate loudness; enjoy movement and chaos; speak directly and have high expectations.
 - Teachers in girls' classrooms should be calmer, patient and good listeners; more supportive and less critical; have high expectations; create community of learners.
58. In March 2011, the District had Leonard Sax and NASSPE Board member Margaret Ferrara lead a full-day professional development program on Same Gender Classrooms and Schools. Ferrara's topic was "Making a Match: Your Teaching Style and Your Students."¹¹⁵ While we do not have notes from that presentation, Ferrara's 2009 article in *Advances in Gender and Education*, published by Sax's Montgomery Center for Research in Child & Adolescent Development, includes a "Teaching Styles Survey," which lists instructional strategies conducive to boys or girls, intended to determine whether an individual teacher is better suited to teaching boys or girls.¹¹⁶ They include:
- I encourage students to use their own initiative in completing assignments (Boys)
 - I make certain that my students are given complete instructions and answer any questions they may have before classroom activities begin (Girls)
 - I promote and enjoy high levels of student competition (Boys)
 - I can characterize my classrooms as having a lot of group work (Girls)
 - I support my students but refrain from asking them personal questions (Boys)
 - I have no qualms about asking a student what is going on in his/her life (Girls)
 - I prefer my students to be highly energetic while learning in my classroom (Boys)
 - I prefer that my students stay in one place instead of moving around in the classroom (Girls)
 - I don't mind a high student "noise" level in my classroom (Boys)
 - I promote and enjoy high levels of team competition (Boys)
 - I can characterize my classrooms as social groups (Girls)
59. Assigning teachers to classrooms based on sex-based generalizations about learning styles or emotional needs of students and the teacher's classroom management style creates very different learning environments based solely on the sex of the students. While every classroom and teacher is unique, assigning only teachers who like their

random, not very structured or emotional and who are comfortable having students out of their seats tend to be better with boys.").

¹¹⁴ David Chadwell, Powerpoint, *Launching a Single-Gender Program*, Slide 15 (Oct. 10-11, 2008) [Prod. 1 § 2-4; ACLU FL #166].

¹¹⁵ HCPS, Agenda, *Same Gender Classrooms and Schools Professional Development* (Mar. 26, 2011) [Prod. 1 § 9-6; ACLU FL #2265].

¹¹⁶ Margaret M. Ferrara, *The Student and the Teacher – Making a Match in a Single-Gender Classroom*, 1 *Advances Gender & Educ.* 14, 19-21 (2009).

students to compete or who don't engage on a personal level to all-boys' classrooms while doing the opposite for girls' classrooms conveys the messages that boys should be active and girls should stay in their place and that boys should not articulate their feelings or their problems while girls are obligated to do so.

Lack of Voluntariness

60. ED regulations require that any single-sex class within a coeducational school be completely voluntary. 34 C.F.R. § 106.34(b)(1)(iii).
61. Hillsborough administrators have asserted that the single-sex classes are completely voluntary and opt-in as of 2012-13.¹¹⁷ However, according to the District's Equity Shell Update filed with the Florida Department of Education, single-sex classes are provided on an "opt-in *or* opt-out" basis.¹¹⁸
62. Regardless of whether the classes are opt-in or opt-out, however, it is clear that parents are being given misinformation about purported brain and learning differences between the sexes and any "consent" based on that misinformation cannot be informed.
63. The information the principals, teachers and administrators—trusted education professionals—provided to parents was one-sided and misstated the advantages of single-sex education. For example, a typical letter provided to parents stated, "Research has proven that there are structural, developmental and performance differences between male and female brains.... Grouping males and females in separate classrooms enables the teacher to create a learning environment tailored to their differences.... Schools across the nation...have seen marked improvement not only in test scores but also in behavior."¹¹⁹
64. Several schools have invited parents to informational meetings about the advantages of single-sex education. These informational meetings also appear to have been one-sided and promoted overly-broad generalizations about the capacities and preferences of girls and boys. For example, a PowerPoint presentation given to parents at Heritage Elementary stated that, "[Brain] differences are 'hard wired' so that girls and boys play differently, fight differently, hear differently, see the world differently; [and] and learn differently,"¹²⁰ girls have trouble understanding abstract concepts in math,¹²¹ and "Boys tend to need more movement to stimulate their brains; movement to boys is natural."¹²²
65. Because these letters and presentations relied on purported neuroscience and even showed photographs of brains, it is likely that many parents would be unable to evaluate

¹¹⁷ *Single Gender Evaluation 2012*, *supra* note 8, at 7 [Prod. 2 § 11-2; ACLU FL #7565].

¹¹⁸ *2012-13 Equity Update*, *supra* note 23, at 1 (emphasis added) [Prod. 2 § 4-6; #6462].

¹¹⁹ Letter from MaryJo C. Stover, Principal, to Parents, Heritage Elementary Sch. (May 11, 2011) [Prod. 1 § 8-9; ACLU FL #2059]; *See also supra* paragraph 31.

¹²⁰ Heritage Elementary Sch., Powerpoint Presented to Parents, Slides 4-5 [Prod. 1 § 8-9; ACLU FL #2074].

¹²¹ *Id.* at Slide 20 [ACLU FL #2077].

¹²² *Id.* at Slide 25 [ACLU FL #2078].

the correctness of the neuroscience assertions and more likely to accept the conclusions that boys and girls learn differently and should be taught separately using different teaching methods.¹²³ The District thereby misled the parents into selecting single-sex classes despite the lack of scientific basis for their claims and the lack of evidence that single-sex classes are superior to coed classes.

Failure to Evaluate Single-Sex Classes in Accordance with ED Regulations

66. Documents provided by the District to the Florida DoE annually give the appearance that a thorough evaluation of the single-sex classes has been conducted. However, on closer examination, the evaluations were grossly inadequate.
67. The District's Department of Assessment and Accountability has published documents purporting to evaluate single-sex classes in the District in 2009, 2011 and 2012¹²⁴ (Generally, "District Evaluation"). The 2009 District Evaluation was largely anecdotal and the document stated "Quantifiable, easily-measured effects on achievement, discipline, and attendance were mixed..."¹²⁵
68. However, 2011 and 2012 District Evaluations did not even attempt to address the efficacy of single-sex classes in the District. Rather, the purpose of those so-called "evaluations" "is to document the compliance of HCPS with federal regulations in implementing its single gender classes."¹²⁶ Separate analyses of the efficacy of single-sex education were supposed to be prepared by the Anchin Center of the University of South Florida.¹²⁷ No such analysis by the Anchin Center has been provided to the ACLU and no such analysis appears to exist; rather, a random assortment of limited comparisons has been provided.
69. The District Evaluation assumes that "instructional styles" may vary between classes for girls and classes for boys but that policies, procedures and grades may not vary. Consequently, the evaluation does not look at the teacher training materials or classroom practices in single-sex classes or consider the very different ways in which

¹²³ See Deena S. Weisberg et al., *The Seductive Allure of Neuroscience Explanations*, 20 J. Cogn. Neurosci. 470, 470-477 (Mar. 2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2778755/pdf/nihms91893.pdf>; see also David McCabe & Alan Castel, *Seeing is Believing: The Effect of Brain Images on Judgments of Scientific Reasoning*, 107 Cognition 343, 343-352 (2008).

¹²⁴ *Single Gender Evaluation 2012*, *supra* note 8 [Prod. 3; ACLU FL #7557-70]; Theodore J. Dwyer & Freda S. Watson, HCPS, *Evaluation of Single Gender Classes* (July 2011) [Prod. 1 § 12-11; ACLU FL #4975-5981] [hereinafter "*Single Gender Evaluation 2011*"]; *Single Gender Evaluation 2009*, *supra* note 102 [Prod. 1 § 12-12; ACLU FL #5982-6105].

¹²⁵ *Single Gender Evaluation 2009*, *supra* note 102, at I [Prod. 1 § 12-12; ACLU FL #5984].

¹²⁶ *Single Gender Evaluation 2012*, *supra* note 8, at 3 [Prod. 2 § 11-2; ACLU FL #7561].

¹²⁷ *Id.* ("This report is limited in that its sole purpose and focus is documentation of compliance with federal regulations. The Office of School Choice collaborates with the Anchin Center of the University of South Florida, Tampa, Florida, to conduct quantitative analysis of the impact of single gender instruction on achievement and related factors and to assist with identifying research on best practices and information on legal issues.").

girls and boys are treated and taught. Instead, the evaluators merely reviewed the HCPS Student Handbook and determined that the only official gender differences throughout the District involve dress code and sports.¹²⁸

70. The 2011 and 2012 District Evaluations address the question of whether the qualifications of faculty and staff are equivalent by pointing out the intentional selection of teachers for boys' and girls' classes based on the teachers' personalities. Rather than treating this as a potentially discriminatory difference, the difference was considered necessary to the program.¹²⁹
71. None of the District Evaluations consider whether the information given to parents regarding the efficacy of single-sex classes is accurate so that parents can make an informed decision about enrollment.
72. In considering the educational benefits provided in single-sex classes, the District Evaluation looks only to the district's curriculum guides and curriculum maps and asserts that all classes follow the same curriculum. The District Evaluation fails to consider the significant differences in the manner of providing instruction in boys' and girls' classroom and it makes no attempt to determine if boys' and girls' classrooms are provided with the same reading materials, homework, and class assignments. These activities all fall within HCPS's own definition of "curriculum" as "all the planned activities of the school, including formal classroom instruction and out-of-class activity, both individual and group, necessary to accomplish the educational goals of the District."¹³⁰
73. With regard to evaluating whether single-sex classes are based upon "genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes [are] substantially related to the achievement of the important objective for the classes," in recent years the District Evaluation has merely pointed out that principals had to submit proposals when planning to implement single gender classes and concluded that "[i]n all cases, the proposals complied with the requirements listed above. Furthermore, personnel from the Office of School Choice monitored implementation via school visits."¹³¹ Each District Evaluation uncritically accepts the very sex stereotypes that were the driving force behind sex separation in the District. Indeed, each evaluation cites Leonard Sax's NASSPE website for support.¹³²

¹²⁸ The ACLU has not attempted to determine if the District is in compliance with ED regulations regarding sex discrimination in physical education or team sports or whether the dress code is discriminatory.

¹²⁹ See *supra* paragraph 56 and note 113.

¹³⁰ *Single Gender Evaluation 2011*, *supra* note 124, at 7 [Prod. 1 § 12-11; ACLU FL #7983]; *Single Gender Evaluation 2012*, *supra* note 8, at 8 [Prod. 2 § 11-2; ACLU FL #7566].

¹³¹ *Single Gender Evaluation 2012*, *supra* note 8, at 10 [Prod. 2 § 11-2; ACLU FL #7568].

¹³² *Id.* at 12 [ACLU FL #7570]; *Single Gender Evaluation 2009*, *supra* note 102, at 43 [Prod. 1 § 12-12; ACLU FL #6033]; *Single Gender Evaluation 2011*, *supra* note 124, at 11 [Prod. 1 § 12-11; ACLU FL #4987].

74. The District Evaluation does not address the justification for or efficacy of any particular single-sex class in the District even though ED regulations require EACH single-sex class to be justified and evaluated. There is not even aggregated data evaluating the efficacy of the single-sex classes overall.
75. The open-ended comments submitted in response to a survey of parents with students in single gender classes, included in what seems to be the first District evaluation of single-sex classes, raise obvious questions about sex stereotyping, which should have prompted further evaluation. For example, some comments in that survey include:
- “They can do a little more girly things and decorate the classroom for girls only.”
 - “The girls can see how young girls supposed to act.” [sic]
 - “They will learn more about their gender. They will learn the difference between what boys and girls do in life.”
 - “You learn at your own gender’s rate.”¹³³
76. The limited data analysis conducted by the District seemed to show some benefit for reading proficiency for boys in single-sex classes in the first year of analysis. However, few students were in single-sex classes that year, and no analysis was done to consider the impact of confounding variables, the failure to account for selection bias, teacher expectations, parental expectations, or the “Hawthorne” effect, which would predict a positive boost in student performance because of their awareness that they are part of an experiment. Those first-year results have not been replicated.
77. As the number of students participating in single-sex classes in the District has risen, the achievement data, limited though it is, does not appear to reveal any advantage for single-sex education. Single-sex student performance on Florida standardized achievement tests (FCAT) at best moves in parallel to coed student performance and sometimes underperforms them. (The comparisons are of changes in performance from year to year; not comparisons of absolute performance. In absolute terms, the single-sex students have performed less well than the coed students in every year for which we have seen data.)¹³⁴
78. With respect to the District’s stated goal of reducing disciplinary referrals, the District has apparently failed to systematically evaluate the efficacy of sex separation on discipline referrals in recent years and has not reported the rate of referrals in single-sex vs. coed classrooms since 2008-9 when sex separation in the District was just beginning and improvements in discipline would be expected due to experiment effects. (Even then, evaluators noted that “based on teacher, student, and parent survey data, principal interviews and research, however, more of a difference was expected.”)¹³⁵ Neither has the District determined if any disparate rates of referrals are reflective of different

¹³³ *Single Gender Evaluation 2009*, *supra* note 102, at 109-111 [Prod 1 § 12-12; ACLU FL #6099-101].

¹³⁴ HCPS, *Single Gender Classroom Analysis* (2008-2009, 2009-10, and 2010-11) (Submission 4 to Dept. of Educ., June 2012) [Prod. 3; ACLU FL #7950-60].

¹³⁵ *Single Gender Evaluation 2009*, *supra* note 102, at 18 [Prod. 1 § 12-12; ACLU FL #6008].

practices within the single-sex classrooms, although the 2009 District Evaluation did observe that “[i]t is possible that some of the desirable effects of SGI classes are due to the extra effort that is focused on building a sense of team work among the teachers and a sense of community among the students or else to SGI students feeling they were being given special treatment.”¹³⁶

Single Sex Middle Magnet Schools

79. Hillsborough County established two single-sex magnet middle schools (grades 6–8) in 2011: Ferrell Girls Preparatory Academy (GPA) and Franklin Boys Preparatory Academy (BPA).¹³⁷
80. The District asserted that BPA and GPA are substantially equal. However, it appears that differences in teaching styles and strategies based on gender stereotypes are fundamental to the philosophy of the two schools. Moreover, the teachers at BPA and GPA participate in the District’s single-sex symposia, which are replete with generalizations about the talents, capacities and preferences of students based solely on their sex.¹³⁸
81. This has resulted in significant differences between the schools. For example, in both schools the students are divided into “houses.” At BPA the houses compete against each other in the House Cup Competition, where houses earn points in four areas: attendance, “tardies,” academics and athletics.¹³⁹ At GPA, the girls are separated into houses, but there is no equivalent House Cup Competition; instead “The Houses are designed to encourage connections and meetings are designed to create a family atmosphere.”¹⁴⁰
82. At GPA, teachers were encouraged to implement “Girl Circle Character Curriculum,” focused on character education, self-esteem, and team building.” The Girls Circle provides an emotionally safe setting where girls take turns listening to one another

¹³⁶ *Id.* at 39 [Prod. 1 § 12-12; ACLU FL #6029].

¹³⁷ Maree Sneed on behalf of HCPS, *Response to Office of Civil Rights 1* (Oct. 25, 2011) [Prod. 1 § 11-3; ACLU FL #3692].

¹³⁸ HCPS, *Ferrell Preparatory Acad. Implementation Progress Report 2012-13*, at 6 [Prod. 2 § 11-4; ACLU FL #7600] (“All [GPA] Instructional staff attended the Hillsborough County Single Gender Summer Symposium for four days of training under the instruction of district single gender experts.”); HCPS, *Franklin Preparatory Acad. Implementation Progress Report 2012-13*, at 10 [Prod. 2 § 11-3; ACLU FL #7580] (“All 38 instructional staff members were in attendance for at least 1 of the 4 days of training [at the Summer Symposium].”).

¹³⁹ Boys Prep Acad. at Franklin Middle Magnet Sch., *House Handbook 3-10* (2011-2) [Prod. 1 § 6-2; ACLU FL #803-810].

¹⁴⁰ *See* HCPS, *Ferrell Preparatory Acad. Implementation Progress Report 2012-13*, at 8 [Prod. 2 § 11-4; ACLU FL #7602] [hereinafter “*Ferrell Progress Report*”]; *See also* Girls Prep Acad. at Ferrell Middle Magnet Sch., *House Handbook 3-9* (2011-2) [Prod. 1 § 6-2; ACLU FL #816-22].

respectfully about their concerns and interests.¹⁴¹ Even though One Circle Foundation provides a parallel curriculum for boys,¹⁴² it has not been implemented at BPA.

83. The District has not only made unproven brain-based differences part of the hidden curricula at GPA and BPA, but it has also enlisted its *students* to articulate these supposed differences. Videos on the GPA and BPA websites, which are designed to induce parents to enroll their children in these schools, include multiple **students** reciting the following:

(Girls) Science shows us that there are basic biological and neurological differences in males and females. It makes sense for a school to focus on how girls learn and provide an experience just for them. We tend to process more sensory data. We have strong senses of smell and hearing, tend to adapt to more kinds of light and take in information tactilely. Our classrooms are designed to help support learning using all of our senses. Color, music, scents are incorporated to help facilitate our learning. We're usually able to read facial expressions and body language well. We use this information to help us understand the information while it's being taught. We work and play well in face-to-face situations. Our frontal cortex matures early which means we are less likely to be impulsive. We tend to take a very personal approach to learning.¹⁴³

(Boys) Teaching is tailored to the ways we learn. Boys generally have strong development in certain areas of the right hemisphere of the brain providing them with heightened spatial skills such as map reading, mechanical skills and measuring. Boys rely more heavily on nonverbal communication rather than on verbalizing feelings and responses. Music is a whole brain activity, engaging both hemispheres at once. It can help wake up the brain. Research shows that boys tend to respond to louder voices or sounds. Boys also tend to hear better with their right ear. The composition of the male eye makes it attuned to motion and directions. Boys interpret the world as objects moving through space. Boys tend to create pictures of moving objects like space ships, cars and trucks. The male eye is drawn to cooler colors like silver, blue, black, grey and brown. A boy's autonomic nervous system causes him to be more alert when standing or moving.¹⁴⁴

84. Documents provided to OCR by the District and its legal counsel in response to an OCR inquiry regarding Magnet School funding failed to disclose that the schools' justification is the theory that boys' and girls' brains are hardwired differently and in a manner that warrants teaching them differently.¹⁴⁵

¹⁴¹ *Ferrell Progress Report*, *supra* note 140, at 2 [Prod. 2 § 11-4; ACLU FL #7596].

¹⁴² See One Circle Foundation, <http://onecirclefoundation.org/> (last visited May 5, 2014).

¹⁴³ Girls Preparatory Acad. (video), *available at* <http://ferrell.mysdhc.org/> (Last visited May 6, 2014) (Transcribed by ACLU).

¹⁴⁴ Boys Preparatory Acad. (video), *available at* <http://franklin.mysdhc.org/> (Last visited May 6, 2014) (Transcribed by ACLU).

¹⁴⁵ OCR already possesses those many submissions, but to the extent that they were given to ACLU by the District they are included in the documents provided on CD at Production 1 § 11-3 (ACLU FL #3692) and Production 3 (ACLU FL #7810-7969).

85. Although GPA and BPA are theoretically offered only as opt-in schools, it is not clear that students have the option of attending a co-ed institution that is substantially equivalent to the preparatory academies. GPA and BPA both embrace a college prep theme and have resources, including technology, that many of the co-ed students did not have. For example, they provide personal iPads to each student to use on a day-to-day basis while in school.¹⁴⁶ In 2012-3, they were also the only middle schools in the District that offer a law studies curriculum.¹⁴⁷
86. In 2013, GPA and BPA jointly offered a summer camp at GPA. That camp sex separated students for many activities. All GPA and BPA students could sign up for Golf Education or “CSI Camp” exploring “the different aspects of law studies, public service jobs, and the science behind solving crime scenes” or receive golf lessons. However, the girls and the boys were separated for these classes. The District did not assert any justification for sex separation of these classes and did not offer the students coed class in these subjects.¹⁴⁸
87. BPA and GPA both offer a sequence of Business Technology courses leading to Microsoft certification which are offered in sex segregated settings. These included Business Keyboarding, Computer Applications in Business, Exploring IT Careers, and Computing for College and Careers, which bears high school credit.¹⁴⁹

LEGAL ARGUMENT

88. The District has violated the core non-discrimination principle of Title IX and its implementing regulations by separating boys and girls based on broad stereotypes about purported differences in their learning styles, brains, and development; by widely training teachers and school administrators in those purported differences; and by

¹⁴⁶ *Our College Prep Scholar Profile*, Journey to Distinction Family Newsletter (Boys Preparatory Academy, Tampa, FL), Mar. 21, 2014, at 2, *available at* <http://franklin.mysdhc.org/2014%20BPA%20Welcome%20Newsletter.pdf>; *Our College Prep Scholar Profile*, Tiger Times Family Newsletter (Girls Preparatory Academy, Tampa, FL), Feb. 27, 2014, at 2, *available at* <http://ferrell.mysdhc.org/Newsletters/2014-15%20GPA%20welcome%20newsletter.pdf>; *Apple Demonstration School Tour* (2012), *available at* <http://franklin.mysdhc.org/bpa%20apple.pdf>.

¹⁴⁷ *HOST Summer Camp*, Journey to Distinction Family Newsletter (Boys Preparatory Academy, Tampa, FL), 2012-13, at 2, *available at* <http://franklin.mysdhc.org/BPA%20New%20Family%20Newsletter.pdf>.

¹⁴⁸ *Id.*; *Summer Camp*, Journey to Distinction Family Newsletter (Boys Preparatory Academy, Tampa, FL), Mar. 21, 2014, at 5, *available at* <http://franklin.mysdhc.org/2014%20BPA%20Welcome%20Newsletter.pdf>; *Summer Camp*, Tiger Times Family Newsletter (Girls Preparatory Academy, Tampa, FL), Feb. 27, 2014, at 6, *available at* <http://ferrell.mysdhc.org/Newsletters/2014-15%20GPA%20welcome%20newsletter.pdf>.

¹⁴⁹ Email from Christopher Jargo to Carla Sparks (Jun. 26, 2013) (Regarding Course Recommendations for 2013-14 Business Tech at Franklin/Ferrell MS) [Prod. 2 § 18-C-2; ACLU FL #7773]; 2013-14 School Year Planned Courses in Two Single Gender Middle Schools (as of Jun. 2, 2013) [Prod. 2 § 18-C-4; ACLU FL #7781].

implementing different teaching methods, curricula, and physical environments in single-sex classrooms and schools across the District.

89. In providing both ED and the Florida Department of Education with documents that failed to mention that different teaching methods would be used for boys and girls based on theories of sex-based brain development or that teacher trainings would be conducted advocating the use of different teaching methods based solely on a student's sex, the District materially misled both the state and federal entities primarily responsible for overseeing the District's Title IX compliance about the nature of its single-sex classes and schools and the reason for implementing those classes and schools.
90. The District's actual justification for its single-sex programs is inadequate as a matter of law because it relies on impermissible sex stereotypes and pseudoscience. Justifications for single-sex classes may not "rely on overly broad generalizations about the different talents, capacities, or preferences of either sex." 34 C.F.R. § 106.34(b)(4)(i); 71 Fed. Reg. 62,530, 62,535 (Oct. 25, 2006). The Supreme Court has similarly rejected the use of generalizations about the differences between males and females in learning and developmental needs as a justification for single-sex education. *See United States v. Virginia*, 518 U.S. 515, 549-50 (1996) ["VMF"].
91. In issuing a preliminary injunction against a similar program of sex separation in West Virginia, one Federal district court noted "that the science behind single-sex education appears to be, at best, inconclusive, and certain gender-based teaching techniques based on stereotypes and lacking any scientific basis may very well be harmful to students. Even Professor Salomone, the expert witness called by the defense, agreed with the ACLU on the issue of brain research—that it's based on the rationale of pseudoscience—and suggested that many schools were 'led astray' by the teachings of Dr. Leonard Sax." *Doe v. Wood County Bd. of Educ.*, 888 F. Supp. 2d 771, 779 (W.D.W.V. 2013). In Hillsborough, the work of Professor Salomone has been repeatedly cited in documents provided to ED, but the District failed to disclose that, in reality, the theories of Leonard Sax, Michael Gurian and others who expound a theory of brain-based sex differences has been used to instruct teachers and to guide the implementation of single-sex classes throughout the District.
92. The District is not in compliance with 34 C.F.R. §§ 106.34(b)(1)(i) and 106.34(b)(4) because there was no evidence that the institution of single-sex classes or the use of gender-based instruction was substantially related to the objectives of increasing academic achievement, closing the achievement gap in reading, science and math between boys and girls, or reducing discipline referrals in any particular class or subject. "[T]he School Board is required to determine that *each* single-sex class is based on one of the two objectives set forth in the regulations, and that the single-sex nature of each class is substantially related to achieving that objective." Brief for the United States as Amicus Curiae Supporting Appellants at 15, *Doe v. Vermilion Parish Sch. Bd.*, 421 F. App'x 366 (5th Cir. 2011) (No. 10-30378), *available at* http://www.justice.gov/crt/about/app/briefs/vermillion_brief.pdf. The District cited no valid evidence that the use of gender-differentiated instruction (or the use of sex

segregated education in general) would bring about any of these academic or behavioral improvements, and no such evidence exists.

93. The District is not in compliance with 34 C.F.R. §§ 106.34(b)(1)(i)(A) because, although the District had an overall established policy of offering a diversity of educational options, the District produced no valid evidence that offering “gender-based” (i.e. stereotype-based) instruction (or the use of sex segregated education in general) as an educational option would improve educational achievement of its students, and no such evidence exists.
94. The District is not in compliance with 34 C.F.R. § 106.34(b)(1)(i)(B) because it has not established that the single-sex classes meet the particular, identified educational needs of its students as evidenced by individual students’ limited or deficient educational achievement. ED and the Department of Justice have made clear that there is no demonstrated superiority of single-sex over coeducational classes or schools and, even if there were, the District has not conducted any particularized class-, grade-, school-, or even district-wide assessment of student needs, or put forward a basis for the placement of a student in any particular class. Rather, the classes are generally instituted in a wholesale fashion across an entire grade for all academic subjects, or even across an entire school, and individual schools within the District offer (and terminate) single-sex classes based on the preferences of school-level administrators rather than on the identified needs of any particular student or group of students.
95. Should OCR determine that the District lacked an adequate justification for its single-sex classes, no further inquiry is needed and the District is irremediably out of compliance with ED regulations. *See* Brief for the United States as Amicus Curiae Supporting Appellants at 15, *Doe v. Vermilion Parish Sch. Bd.*, 421 F. App’x 366 (5th Cir. 2011) (No. 10-30378) (“[D]etermination [of the justification for each single-sex class] must be made *prior* to determining whether the class complies with any of the other requirements in ED’s regulations for implementing single-sex classes.”), *available at* http://www.justice.gov/crt/about/app/briefs/vermillion_brief.pdf. The District cannot assert a *post hoc* justification. *Id.* at 17; *see also* 71 Fed. Reg. 62,530, 62,533 (Oct. 25, 2006) (“[T]he ‘justification must be genuine, not hypothesized or invented *post hoc* in response to litigation.’” (citing *VMI*, 518 U.S. at 533)).
96. The District is not in compliance with Title IX, 34 C.F.R. § 106.34, or 34 C.F.R. §§ 106.31(b)(1), (b)(4), and §§ 106.34(b)(1)(i) and 106.34(b)(4) because teachers in single-sex classrooms have been trained to employ, and reportedly have employed, significantly different teaching methods in the boys’ and girls’ classrooms based on overly broad generalizations about the different talents, capacities, or preferences of boys and girls. This violates the core prohibition of Title IX that students not be subject to discrimination – i.e. different treatment – on the basis of sex in federally funded programs and activities.
97. The District is not in compliance with Title IX or with 34 C.F.R. § 106.51 because it assigns teachers to single-sex classes based on overly broad generalizations about student behavior based on sex and about the personalities of teachers who are best suited to teach boys or girls, resulting in materially different learning environments for boys and girls. This violates the core prohibition of Title IX that students not be subject

to discrimination – i.e. different treatment – on the basis of sex in federally funded programs and activities.

98. The District is out of compliance with 34 C.F.R. § 106.34(b)(1)(iii) because participation in the single-sex classes was not completely voluntary.
- (a) The information provided to parents was biased and misleading, and included unsubstantiated claims purporting to be based on neuroscience but in fact based on overly broad generalizations about the supposedly different talents, capacities, or preferences of boys and girls.
 - (b) The cloaking of overly broad sex stereotypes in the terms of purported sex-based brain differences makes it far more likely that teachers and parents, who are not neuroscientists, will accept as valid any argument allegedly supported by these “brain differences.”¹⁵⁰ The parents could not give informed consent based on these documents.
99. The District is out of compliance with 34 C.F.R. § 106.34(b)(4) because: it has failed to conduct a methodologically sound evaluation of whether the single-sex classes throughout the District are meeting its stated objectives; it has failed to conduct any assessment of whether each of the single-sex classes throughout the District was based on genuine justifications and did not rely on overly-broad generalizations about the talents, capacities and preferences of either sex; and it has failed to ensure that any single-sex classes are substantially related to the achievement of its objectives. The evaluation conducted rested on the premise that boys and girls would be taught using different methods, and failed to investigate whether the schools’ or the District’s own justifications for the sex separation satisfied the requirements of the law. The little data analysis that exists in the District documents comparing single-sex to coed classes suggests that, after modest initial gains in some subject areas, there has been no longer-term benefit from single-sex education in the District.
100. The District is out of compliance with 34 C.F.R. § 106.34 (c) because:
- (a) The different teaching methods and strategies used in BPA and GPA result in qualitatively different learning environments based on these sex stereotypes. These differences in the methods – competitive for boys and cooperative for girls – mirror the differences between the teaching methods at the all-male Virginia Military Institute and all-female Virginia Women’s Institute for Leadership that the Supreme Court found to be discriminatory in *VMI*, 518 U.S. at 533, 540-43, and result in the educational opportunities offered at the two schools not meeting the requirement that they be substantially equal; and
 - (b) There is not a substantially equal coeducational alternative within the district because the resources, opportunities, and curricula offered at the two schools are unique within the district, particularly with respect to the college preparatory focus and the iPads provided to students for personal use throughout the school day.

¹⁵⁰ See Weisberg, *supra* note 123; See also McCabe & Castel, *supra* note 123.

101. The District is out of compliance with 34 C.F.R. §106.35 because BPA and GPA are operated as single-sex schools despite the fact that they each offer vocational classes that lead to industry certification in sex segregated settings.
102. The District is out of compliance with 34 C.F.R. §106.34(a) and (b) because it operates a coed summer camp that separates students by sex for its activities, including, at a minimum, golf and the vocationally-oriented CSI without justification and without express parental consent.

RELIEF REQUESTED

103. The ACLU requests that:

- (a) The OCR investigate all schools in Hillsborough County Public Schools that have instituted sex-segregated classrooms, to determine whether they are in compliance with Title IX and its implementing regulations.
- (b) The OCR order Hillsborough County Public School District to take all necessary steps to remedy any unlawful conduct identified in its investigation, as required by Title IX and its implementing regulations. 34 C.F.R §§106.3(a) and 34 C.F.R. Part 100, Appendix B.
- (c) If any violations are found, the OCR secure assurances of compliance with Title IX from all schools administered by Hillsborough County Public School District.
- (d) The OCR monitor any resulting agreements with Hillsborough County Public School District and/or individual schools to ensure that full compliance with Title IX is achieved.

104. If OCR's investigation substantiates that, as herein alleged, sex separation in the District is indeed premised on unlawful sex stereotypes, and that different teaching methods and program structures were indeed employed in the boys' and girls' classrooms, then these defects cannot be cured. The District is not permitted to invent new objectives for the program *post hoc* in order to justify its continuation, or attempt to merely restructure the program to remove overt evidence of sex discrimination. Nor can it undo the damage of having repeatedly trained hundreds of teachers and administrators, at significant cost, on pseudoscientific claims and overly broad generalizations about sex difference. The only sufficient remedy would be to cease the sex separation altogether and revert to a fully coeducational structure.

105. In addition, because the District has trained hundreds of administrators and teachers of both single-sex and coed classes for many years about inaccurate, overly broad and pseudoscientific theories of brain-based sex differences and instructed these same teachers and administrators to teach boys and girls using different methods and strategies, the District has become infected with overly-broad sex-based generalizations about the talents, capacities and preferences of students based solely on their sex. The District should therefore be required to conduct remedial training for all administrative and teaching staff on gender equality in education that comports with the requirements of Title IX and the Constitution. That training should be provided by a professional development provider approved by OCR, and must only promote methods that: (1) are

supported by valid, scientifically-based research;¹⁵¹ and (2) do not rely on or promote the concept of inherent differences between boys' and girls' brain structure or development, or on generalizations about their purportedly different learning styles, preferences, abilities, or interests.

106. The District should also be required to publish and widely distribute a full retraction of any misleading or discriminatory information that was previously provided to parents regarding purported neurological or developmental differences between boys and girls and to provide information to parents regarding the non-discrimination mandate of Title IX.

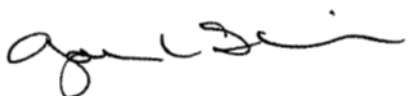
Respectfully submitted,



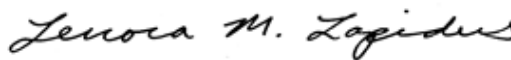
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¹⁵¹ The OCR should define "scientific research" to mean research that: (a) involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs and employs systematic, empirical methods that draw on observation or experiment; (2) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (3) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (4) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest; (5) random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls, are preferred; (6) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (7) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.