Ronald Duerring, Superintendent

c/o James Withrow, Esq.
Kanawha County Schools
200 Elizabeth Street
Charleston, WV 25311

May 21, 2012

Re: Sex segregation in Kanawha County Schools

Dear Superintendent Duerring:

Thank you for responding to our recent Freedom of Information Act (FOIA) request regarding single-sex education programs in Kanawha County Schools. We are writing to alert you that our analysis of the records produced strongly suggests that the single-sex programs operated at Stonewall Jackson Middle School and Anne Bailey Elementary School violated numerous provisions of federal law, including Title IX of the Education Amendments of 1972 and the United States Constitution. We are particularly troubled by the lack of written policy or articulated justification for the programs, or of information regarding how single-sex classes operated and what options were available to students who did not wish to attend sex-segregated classes.

We have received reports that Stonewall Jackson Middle School has been separating boys and girls in core classes in the sixth, seventh, and eighth grades since 2004 and that Anne Bailey Elementary has been separating boys and girls in core classes in grades pre-Kindergarten through the fifth grade since 2006. Because your initial FOIA response on January 13, 2012 contained only secondary sources, we sent an additional letter to confirm that your response was complete. We had requested all records relating to the single-sex educational programs in Kanawha County Schools and found it difficult to believe that there were no documents specifically addressing the long-established programs at Stonewall Jackson Middle School and Anne Bailey Elementary. Mr. James Withrow confirmed in his April 25, 2012 letter that he performed a diligent search for all records responsive to our FOIA request and that he was “advised that there [were] no additional documents that [were] responsive to [our] request.” During a recent phone conversation, Mr. Withrow informed us that Anne Bailey Elementary would no longer be operating single-sex classes during the 2012-2013 school year. However, it appears that the single-sex program at Stonewall Jackson Middle School is still in operation and plans to continue next year.

Your response therefore establishes that there is not a single written policy regarding single-sex educational programs in Kanawha County Schools, no record of an educational need or justification
for such programs, no record of coeducational alternatives to the single-sex educational programs (including the option for parents to opt into or out of participating in such programs), and no record of periodic evaluations of the programs. Our analysis demonstrates that the two programs are therefore out of compliance with numerous provisions of federal law, including the requirements that single-sex programs be adequately justified, that they be completely voluntary, and that students be offered a substantially equal coeducational alternative. Moreover, the documents you provided, along with publicly available reports, strongly suggest that these programs were likely based in large part on harmful stereotypes about boys’ and girls’ purportedly different learning styles and development, and that such stereotypes were incorporated into the classroom through the use of different teaching methods for the boys’ and girls’ classes. Such stereotypes limit educational opportunities for both boys and girls, and are legally impermissible in public schools.

Because your response raises grave and pervasive legal concerns regarding the operation of these programs in the past, we request that Kanawha County Schools enter into an agreement with the ACLU of West Virginia, a copy of which is enclosed, to cease all single-sex (and gender-specific) programs or activities District-wide, effective at the start of the next school year, and to cease all gender-specific instruction, effective immediately.¹

1. The Stonewall Jackson Middle School and the Anne Bailey Elementary programs violated the Constitution because they lacked sufficient justification, and appear to have been based in large part on impermissible “overbroad generalizations about the different talents, capacities, [and] preferences” of boys and girls.

The Equal Protection Clause of the U.S. Constitution prohibits sex segregation in education unless the government has an “exceedingly persuasive justification” for the sex segregation, and only permits it where the sex segregation is “substantially related to the achievement” of important educational needs. United States v. Virginia, 518 U.S. 515, 531 (1996) (“VMI”).

Moreover, the Supreme Court has held that the Constitution does not permit single-sex education to be based on “overbroad generalizations about the different talents, capacities, or preferences of males and females.” VMI, 518 U.S. at 533. Despite claims that the form and structure of the sex-segregated program at VMI was “justified pedagogically,” based on ‘important differences between men and women in learning and developmental needs,’ [and] ‘psychological and sociological differences,’” the Court held that generalizations about a “typical” woman (or man), are not constitutionally adequate to justify a sex-segregated program. See id. at 549-50. Unproven theories of learning style differences between boys and girls are, therefore, an impermissible basis to support sex segregation.

No records were produced that would support the conclusion that single-sex education is substantially related to any important or even legitimate educational interest at Stonewall Jackson

¹ We exempt from this request single-sex programs and activities permitted by Title IX, 20 U.S.C. § 1681(a)(6-9), and by 34 C.F.R. § 106.34(a)(1)-(a)(4).
Middle School or Anne Bailey Elementary. Our FOIA request of December 2, 2011 sought “documents relied upon by Kanawha County or its officials in choosing to institute single-sex educational programs” and “documents presenting results or successes of single-sex instruction in a public school system used by Kanawha County Schools either for public education or internal decision-making.” Your response does not indicate any governmental interest, “substantial” or otherwise, that the Kanawha County School District aimed to serve in implementing the sex segregation programs at either school. On the contrary, it appears that the decision to institute these programs was taken without any articulated mission, goal, or justification, and with little or no meaningful deliberation, public participation, or oversight by the School District. Because we presume that your search for records was diligent, we presume that there has been no ongoing inquiry or evaluation regarding the purpose, need for, or effectiveness of single-sex classes in Kanawha County Schools, as there is no record of such.

Even had any important governmental interest been articulated as a justification for instituting these programs, the various sources you produced would be insufficient to satisfy the burden of demonstrating a substantial relationship between the sex segregation and the achievement of that justification. Your response consisted almost entirely of secondary sources that the school District purportedly relied upon in instituting the programs at Stonewall Jackson and Anne Bailey Elementary. Most of the documents are newspaper articles, press releases, opinion pieces, or non-scholarly advocacy pieces containing purely anecdotal information, including numerous citations to the website of the National Association for Single-Sex Public Education (NASSPE), the chief advocacy organization that promotes single-sex education. In addition, the sources included literature surveys and articles on the effects of single-sex education which warn that single-sex education has not been proven to improve academic outcomes. Only one of the sources produced, a graduate student study on the single-sex educational program at Stonewall Jackson during the 2004-2005 school year, constitutes primary research within the relevant community, and that report does not appear to have been subject to publication or peer review. The few research studies you produced purporting to establish the efficacy of single-sex education in other communities fail to meet accepted standards for valid educational research (because, for example, they are outdated, anecdotal, or fail to control for factors such as income-level or selection bias), and are therefore not a sound basis for educational policy. Such sources are categorically insufficient to justify the wholesale segregation of students on the basis of sex within entire schools.

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2 See Jesse J. Logan, Separate and Unequal?, 34:6 Psychology Today (2001); Debra Viadero, Evidence on Single-Sex Schooling Is Mixed, 21 EDUCATION WEEK 8 (2002) (presenting data suggesting that having higher numbers of boys in a classroom was associated with lower achievement for both girls and boys).


4 See Carolyn Jackson, Can Single-Sex Classes in Co-educational Schools Enhance the Learning Experiences of Girls and/or Boys? An Exploration of Pupil’s Perceptions, 28 BRITISH EDUCATIONAL RESEARCH JOURNAL 37-48 (2002); Caitlin Kelleher, Barriers to Program Engagement Advances in Gender Education, 1 ADVANCES IN GENDER AND EDUCATION 5-10 (2009); Lesley H. Parker and Leonie J. Rennie, Teachers’ Implementation of Gender-Inclusive Instructional Strategies in Single-Sex and Mixed-Sex Science Classroom, 24:9 INTERNATIONAL JOURNAL OF SCIENCE EDUCATION 881-897 (2002); Lake Olympia Middle School, Same-Gender Classes, 2004-2005 Pilot Study (on file with the ACLU).
Moreover, the secondary sources you produced strongly suggest that the decision to initiate these programs, and the programs themselves, were based in large part on unproven and impermissible theories about the supposedly “different” brains and learning styles of boys and girls. For example, among the documents you provided as informing the decision to institute single-sex core classes in Kanawha County Schools were numerous citations and references to the NASSPE website, Leonard Sax’s *Why Gender Matters*, and Michael Gurian’s *Teaching to the Minds of Boys*. These sources espouse the view that boys and girls learn and develop so differently that they should be educated using radically different teaching techniques. For example, Leonard Sax has argued that because of physiological differences in how boys and girls hear sounds, teachers should speak loudly and directly to boys, but softly to girls, using terms of endearment; that because of differences in the ways boys and girls process emotion, English teachers should not ask boys about characters’ emotions, but should only focus on what the characters actually did, while they should focus on characters’ relationships and emotions when teaching girls; and that boys do well under stress, and girls do badly, so girls should not be given time limits on tests. Michael Gurian has claimed that boys are better than girls in math because their bodies receive daily surges of testosterone, while girls have similar skills only during the few days in their menstrual cycle when they have an estrogen surge; that boys are abstract thinkers, and so are naturally good at things like philosophy and engineering, while girls are concrete thinkers and do better in math and science if teachers give them objects that they can touch; and that boys should be given Nerf baseball bats with which to hit things so they can release tensions during class.

Publicly available documents, such as press accounts, also suggest that gender stereotypes were the actual justification for, and were incorporated into the curriculum of, the single-sex classes at both schools. For example, the former principle of Anne Bailey Elementary informed the media that he implemented single-sex classes after hearing Leonard Sax speak at a conference, based on the reasoning that “[t]he way you teach girls and boys is totally different.” Jackie Ayres, *Gender-based classes begin today for Independence 6th-graders*, THE REGISTER-HERALD (Beckley, WV), August 26, 2009, http://www.register-herald.com/local/x46855932/Gender-based-classes-begin-today-for-Independence-6th-graders/print. Members of the faculty at Stonewall Jackson Middle school informed the media that “[t]he way boys and girls interpret things and learn things are different” [...][g]irls are more sensitive, boys are more concrete.” Jessica Karmasek, *Seperating the Boys from the Girls*, CHARLESTON DAILY MAIL, November 7, 2006. One teacher described the different teaching approaches she used for girls and boys: “With the girls, you can ask what they’re thinking and how they feel. With the boys, you ask more practical questions. They want to grill you. They want more factual answers, but the girls appreciate the human interest more.” *Id.*

While there are unquestionably biological and developmental differences between boys and girls, those differences cannot be translated into the need for different teaching methods in sex segregated classrooms. *See* Diane Halpern, et al., *The Pseudoscience of Single-Sex Schooling*, 333 Science 1706 (2011). These flawed educational theories have been widely discredited by reputable

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scientific research, and have been definitively foreclosed in public schools by the Supreme Court in
\textit{VMI}.

2. The Stonewall Jackson Middle School and Anne Bailey Elementary programs violated
the statutory prohibition in Title IX on segregation on the basis of sex within
coeducational institutions, as well as the implementing regulations of numerous
regulatory agencies from which Kanawha County Schools receives federal funds.

Under Title IX, "No person in the United States shall, on the basis of sex, be excluded from
participation in . . . any education program or activity receiving Federal financial assistance." 20
U.S.C. § 1681(a). Separation of students by sex within coeducational institutions violates this
prohibition on discrimination. Accordingly, numerous federal agencies have promulgated regulations
to implement this Title IX mandate. For example, regulations issued by the United States Department
of Agriculture (USDA) flatly prohibit single-sex classes. 7 C.F.R. § 15a.34 ("A [USDA funding]
recipient shall not provide any course or otherwise carry out any of its education program or activity
separately on the basis of sex, or require or refuse participation therein by any of its students on such
basis . . ."). USDA regulations apply to all West Virginia schools as a result of their participation in the
USDA-funded school lunch program.

Moreover, while Title IX regulations promulgated by the United States Department of
Education permit sex segregation under certain limited circumstances as a matter of federal
enforcement, its regulations require at a minimum that any single-sex class within a coeducational
school must be based on specific, identified objectives; must be completely voluntary; must ensure that
a substantially equal coeducational option is available;\textsuperscript{7} and must be periodically evaluated "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." 34 C.F.R. §106.34(b)(1),(4).

Once again, the total absence of records from your FOIA response that specifically address
single-sex education policies in Kanawha County Schools establishes that those programs were almost
certainly unlawful. For example, you provided no forms, whether "opt-in" or "opt-out," for parents to
fill out if they did not wish for their child to participate in the single-sex classes. There was also no
record of a "substantially equal coeducational" option available to students who chose not to
participate in single-sex classes. Thus, we must conclude that Kanawha County Schools engaged in the

\textsuperscript{7} "Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether
classes or extracurricular activities are substantially equal include, but are not limited to, the following: the policies and
criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other
services and the quality and availability of books, instructional materials, and technology, the qualifications of faculty and
staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class,
and intangible features, such as reputation of faculty." 34 C.F.R. §106.34(b)(3).
wholesale and effectively mandatory separation of students by sex within entire schools, which blatantly violates federal statute and regulations.

In addition, the literature on single-sex education that you provided to us did not provide a justification for the single-sex education programs at Kanawha County Schools adequate to satisfy the Title IX Education Department regulations (either by demonstrating an assessment of individual student need, or by showing the existence of an established policy to improve educational outcomes by offering diverse educational options). Because we presume that you performed a good faith, diligent search of records in response to our FOIA, we also conclude that there have been no periodic evaluations of the effectiveness of single-sex education in Kanawha County Schools, nor any assessment of whether the programs perpetuated sex stereotypes. These significant shortcomings render both programs unlawful under the regulations of the Department of Education.

In light of these serious legal concerns, we respectfully request that Kanawha County Schools agree to cease all single-sex programs and activities with the exception of those permitted under Title IX by the start of the next school year. A proposed agreement is enclosed for your consideration. Should the Board fail to agree to take the steps outlined therein, the ACLU will consider pursuing legal action, including the filing of a lawsuit and/or an administrative complaint with the pertinent federal agency or agencies.

We expect your response no later than June 4, 2012.

Very truly yours,

Brenda Lee Green  
Executive Director, ACLU of West Virginia Foundation

Galen Sherwin,  
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ENCLOSURE