UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MICHELLE SELDEN, by and through her next friends, DARREN SELDEN and RHONDA SELDEN, Plaintiff, – against – LIVINGSTON PARISH SCHOOL BOARD, *et al.*, Defendants.	Civil Case No.:

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiff Michelle Selden, a student at Southside Junior High School ("Southside"), seeks an order from this Court enjoining Defendants from instituting sex segregation in violation of Title IX and the Equal Protection Clause when Southside opens to students on August 9, 2006. Ms. Selden is entitled to such an order because (1) the proposed sex segregation clearly violates the prohibition on sex discrimination set out in Title IX and the Equal Protection Clause of the Constitution, (2) Ms. Selden will suffer irreparable harm by being forced to attend sex-segregated classes taught according to broad gender stereotypes about psychological differences between boys and girls should the order not issue, (3) enjoining the institution of sex segregation would not substantially harm Defendants or others, and (4) the public interest would be served by such an injunction.

STATEMENT OF FACTS[1]

This action arises out of the unlawful sex discrimination of Defendants Livingston Parish School Board, Superintendent Randy Pope, School Board President Malcolm Sibley, School Board member Jeffrey Cox, School Board member Louis Carlisle, School Board member Milton Hughes, School Board member Alton Leggette, School Board member Keith Martin, School Board member Claire Peak-Coburn, School Board member Julius Prokop, and Principal Alan Joe Murphy in seeking to craft separate spheres for girls and boys attending Southside. Southside is a public school comprising grades six through eight to which students are assigned based on their place of residence. In the 2006-2007 academic year, which begins on August 9, 2006, Defendants plan to offer only sex-segregated classes at Southside. Moreover, Defendants plan to provide instruction in these sex-segregated classes tailored to reflect overbroad stereotypes and generalizations about differences between the genders. For instance, while girls will be taught "good character," boys will be taught about "heroic" behavior and what it means to be a man. Students and parents will be offered no coeducational alternative to this program, which was instituted without input from students or parents. Instead, they will be required to participate as the price of receiving a public education.

Plaintiff Michelle Selden will be entering the eighth grade at Southside on August 9, 2006. She objects to this mandatory sex-segregation and gender-stereotyped pedagogy as a violation of her right to enjoy equal educational opportunities without discrimination on the basis of sex. (M. Selden Decl. at ¶¶ 5-10.) She believes that she should have the equal opportunity to participate in the school's academic offerings without regard to her gender and to receive

[1] Unless otherwise indicated, all facts are drawn from the Declaration of Rhonda Selden in Support of a Temporary Restraining Order and accompanying exhibits.

instruction based on her individual strengths and needs, rather than on stereotypes about the sort of education the "average girl" wants or requires. (*Id.*)

Livingston Parish School Board and Southside Junior High School receive federal financial assistance. (Martin Decl. at ¶ 5.) Southside enrolls approximately 900 students in Denham Springs, Louisiana. Students assigned to Southside do not have the option of attending another public junior high school in the district. Approximately half of the student body at Southside is female and approximately half is male. (M. Selden Decl. at ¶ 3.) Through its history, Southside has been fully coeducational in its academic offerings. Coeducation has served Southside well: on average its students have performed well above state and national averages on standardized tests. Indeed, Michelle Selden's parents, Rhonda and Darren Selden, chose to move to Livingston Parrish in 2000 specifically because its public schools were among the best in the state.

In mid-May 2006, Southside hosted a meeting for parents of current and incoming students, which Rhonda Selden attended. At that meeting, the principal of Southside, Defendant Alan Joe Murphy, informed the parents in attendance that beginning in the fall, Southside would segregate its students by sex in all classes. He stated that the decision had already been made and that Defendant Livingston Parish School Board backed this decision.

At this meeting, Mr. Murphy made a presentation on the differences between boys and girls and the rationale for adopting sex-segregated education at Southside. This presentation included a "PowerPoint" slide show on the different ways that boys and girls "process" information based on alleged differences in boys' and girls' brain structure and brain maturation. According to Mr. Murphy's slide show, the purpose of sex segregation at Southside was to help "teachers and parents understand the neurological, developmental, and hormonal

differences/similarities by gender in order to identify strengths and weaknesses of boys and girls." Mr. Murphy asserted that instruction in the single-sex classrooms would be "based on quantifiable differences between male and female adolescents supported by scientific educational research." He also claimed that sex segregation would remove "unnecessary stressors" from students' classroom experience. According to Mr. Murphy, students could continue to interact with members of the other sex at home, at church, and in school clubs and extracurricular activities.

Mr. Murphy briefly outlined the differences in the instruction that would be given to girls and to boys. He explained that girls would receive character education and be subject to high expectations both academically and socially. Girls would be taught math through "hands-on" approaches. Field trips, physical movement, and multisensory strategies would be incorporated into girls' classes. Girls would also act as mentors for elementary school girls.

On the other hand, according to Mr. Murphy, boys' teachers would teach and discuss "heroic" behavior and ideas "that show adolescents what it means to truly 'be a man.'" Boys' classes would include consistently applied discipline systems and offer tension release strategies. Boys' classes would also feature more group work assignments.

Mr. Murphy explained that the approaches that Southside would utilize were based on the work of Dr. Leonard Sax and Michael Gurian, two popular writers on gender difference. Indeed, he stated that some Southside staff would attend a summer training by Michael Gurian in Colorado, addressing gender differences in how boys and girls learn. These staff would in turn instruct Southside teachers on the different teaching methods necessary for boys and girls.

Specifically, Mr. Murphy referred to Dr. Leonard Sax's book *Why Gender Matters* as a resource on which Defendants are relying in developing Southside's sex-segregated program.

The book was also recommended as a resource to parents. Dr. Sax is a medical doctor with a Ph.D. in psychology who has styled himself an expert on and advocate for single-sex education. (Martin Decl. at ¶ 2.) In *Why Gender Matters*, Dr. Sax puts forward various theories of gender difference, based on research performed by others. (*Id.*) For instance, according to Dr. Sax:

- Girls have more sensitive hearing than boys. Thus, teachers should not raise their voices at girls and must maintain quiet classrooms, as girls are easily distracted by noises. Conversely, teachers should yell at boys, because of their lack of hearing sensitivity. (Martin Decl. Ex. A, at 15-18, 87-89.)

- Because of biological differences in the brain, boys need to practice pursuing and killing prey, while girls need to practice taking care of babies. As a result, boys should be permitted to roughhouse during recess and to play contact sports, to learn the rules of aggression. Such play is more dangerous for girls, because girls don't know how to manage aggression. (*Id.* at 58-65.)

- Teachers should smile at girls and look them in the eye. However, teachers should not look boys directly in the eye and should not smile. (*Id.* at 86.)

- Boys should be taught in competitive, high-energy teams. In contrast, teachers should assure that girls are relaxed in class and should not give girls time limits to complete tasks. Stress makes boys perform better and girls perform worse. Having girls take off their shoes in class is a good way to keep stress from impairing girls' performance. (*Id.* at 88-92.)

- Girls need real world applications to understand math, while boys understand and enjoy math theory. Girls understand number theory better when they can count flower petals or segments of artichokes, for instance, to make the theory concrete. (*Id.* at 101-106.)

- Literature teachers should not ask boys about emotions in literature, but should simply focus on what actually happened in the story. In contrast, teacher should focus on emotions rather than action in teaching literature to girls. (*Id.* at 106-112.)

- Boys should receive strict, authoritarian discipline, and boys respond best to power assertion. Boys can be spanked. Girls must never be spanked. Girls should be disciplined by appeals to their empathy. (*Id.* at 181-83, 188.)

- "Anomalous males"—boys who like to read, who do not enjoy competitive sports or rough-and-tumble play, and who do not have a lot of close male friends—should be firmly disciplined, should spend time with "normal males," and should be made to play competitive sports. (*Id.* at 223-28.)

At the May 2006 meeting, Mr. Murphy also referred to Michael Gurian's *Boys and Girls Learn Differently* and his *The Boys and Girls Learn Differently Action Guide for Teachers* as resources on which Defendants are relying in developing Southside's sex-segregated program. The former was also recommended as a resource to parents. In addition, Southside staff apparently attended the Gurian Institute's 2006 Summer Institute from July 11-15, 2006, in Colorado Springs, Colorado, for education in these methods. (Martin Decl. at ¶ 4.) Mr. Gurian is a therapist, corporate consultant, and novelist. (*Id.* at ¶ 3.) He has written several popular books asserting brain differences between males and females. For instance, according to Mr. Gurian:

- Differences in brain development and hormone secretion between boys and girls explain why gender stereotypes about differences in intelligence and learning style actually reflect real biological differences. (Martin Decl. Ex. B, at 8-13.)

- Boys face the most gender-based disadvantage in schools. Earlier writers and researchers who believed that girls were the targets of gender bias in schools failed to take account of biological differences between boys and girls or were motivated by an outside agenda. (*Id.* at 27-28.)

- Boys are more likely to play sports than girls because of differences between male and female brains. Full female participation in athletics is not neurologically or hormonally realistic. (*Id.* at 27.)

- Boys in middle school should be provided with "quick tension release strategies, both inside and outside the classroom," such as being given Nerf baseball bats with which to hit things. (*Id.* at 75.)

- When young male elephants are brought up without parents, they begin killing rhinoceroses and trying to mate inappropriately, until alpha male elephants are introduced into their group. Thus, "alphas" must be brought in to manage students seeking to dominate. (*Id.* at 76.)

- Boys excel at abstract arguments, philosophical conundrums, and moral debates about abstract principles, because of their brain structure. Thus the male brain gravitates toward engineering, for example. Female brains favor concrete thinking. (*Id.* at 17.)

- Boys still do better than girls at high-level math and physics, and this is unlikely to change because of differences in male and female brains. Boys are better than girls in math because their bodies receive daily surges of testosterone, which increases their spatial skills. Girls, who experience surges in estrogen during the menstrual cycle, experience an increase in their spatial skills only during the few days in their menstrual cycle when they have this estrogen surge. Because of this estrogen surge, "an adolescent girl may perform well on any test, including math, a few days a month." Boys, on the other hand, have a consistent natural adeptness at abstract math. (*Id.* at 94, 100.)

- Girls do better in math and science if teachers give them real objects to manipulate to illustrate the lesson and make it concrete, such as dried beans, buttons, or coins. This is less necessary for boys given their natural adeptness at math and science. (*Id.* at 90-92.)

- Middle school girls and boys should be taught in separate-sex institutions or single-sex classes. Boys need to be separated from girls to learn how to manage the new increase in testosterone in their bodies, which increases their desire for sex and aggression; girls need to be separated from boys to learn how to develop proper self-esteem and body image. (*Id.* at 171-73.)

When a parent who was disturbed by the description of the program that Southside would be undertaking stated at the May 2006 meeting that she would prefer to send her child to a different school in Livingston Parish, where students were not segregated by sex, Mr. Murphy responded that Livingston Parish School Board would not permit such transfers.

Defendants told neither Michelle Selden nor her parents about Southside's plan to institute all single-sex classes prior to May 2006. (M. Selden Decl. at ¶ 4.) Apparently, administrators decided to segregate Southside Junior High by sex without consulting with students or parents about this approach.

ARGUMENT

Preliminary relief is appropriate when a movant demonstrates "(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction

is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest." *Speaks v. Kruse*, 445 F.3d 396, 399- 400 (5th Cir. 2006). "When analyzing the degree of 'success on the merits' that a movant must demonstrate to justify injunctive relief, the Fifth Circuit employs a sliding scale involving the balancing the hardships associated with the issuance or denial of a preliminary injunction with the degree of likelihood of success on the merits." *McWaters v. Federal Emergency Mgmt. Agency*, 408 F. Supp. 2d 221, 228 (E.D. La. 2006). "Moreover, when the other factors weigh in favor of an injunction, a showing of *some* likelihood of success on the merits will justify temporary injunctive relief." *Id.* As set out below, Ms. Selden easily meets the relevant standard.

I. MS. SELDEN IS EXTREMELY LIKELY TO PREVAIL ON HER CLAIM THAT DEFENDANTS' PROPOSED SEX SEGREGATION CONSTITUTES UNLAWFUL SEX DISCRIMINATION.

A. Defendants' Proposed Sex Segregation Violates Title IX.

Defendants' decision to segregate all classes at Southside by sex is in blatant violation of Title IX of the Education Amendments of 1972. Title IX provides, "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) (emphasis added). More specifically, Title IX regulations interpreting this prohibition clearly state, "A 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 . . . ." 34 C.F.R. § 106.34. Southside Junior High School receives federal financial assistance. Obviously, by proposing to provide *all* of Southside's courses and education programs separately on the basis of sex, Defendants propose to violate this provision of federal civil rights law.

The Supreme Court has held that Title IX's prohibition on excluding students from any educational program or activity based on their sex must be given "a sweep as broad as its language." *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1983). Indeed, in introducing the legislation, Title IX's sponsor, Senator Birch Bayh, specifically criticized single-sex classrooms and explained that Title IX would prohibit such segregation.[2] "Senator Bayh's remarks, as those of the sponsor of the language ultimately enacted, are an authoritative guide to the statute's construction." *North Haven*, 456 U.S. at 527.

Moreover, in those instances where Congress wished to permit traditions of sex segregation in educational settings to continue, it spoke clearly and specifically to exempt particular activities from the sweeping language of Title IX. For instance, Congress crafted particular exemptions from Title IX to permit beauty pageants that award scholarships to exclude men and to allow Girl Scouts to continue to have an all-female membership. 20 U.S.C. § 1681(a)(6), (9). The maxim "*expressio unius est exclusio alterius*" controls here. *See generally Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002); *see also Christensen v. Harris Co.*, 529 U.S. 576, 583 (2000) ("We accept the proposition that when a statute limits a thing to be done in a particular mode, it includes a negative of any other mode.").

The current Title IX regulations are consistent with Title IX's statutory command, in that they prohibit sex segregation in course offerings, with only very narrow exceptions for contact

[2] 118 Cong. Rec. 5806 (Feb. 28, 1972) ("Unfortunately, the Office of Education does not keep complete statistics on the number of programs or classes which are restricted in terms of sex; however, a survey of city boards of education indicated that sex separation is the rule rather than the exception."); 118 Cong. Rec. 5807 ("This portion of the amendment covers discrimination in all areas where abuse has been mentioned . . . [including] access to programs within the institution such as vocational education classes, and so forth."). *See also Sex Discrimination Regulations: Hearings before the Subcommittee on Postsecondary Education of the House Committee on Education and Labor*, 94th Congress, 1st Sess. 172 (1975) (statement of Sen. Bayh that Title IX was passed to rectify "discriminatory course offerings," among other purposes).

sports and portions of classes in elementary and secondary schools that deal exclusively with human sexuality. 34 C.F.R. § 106.34(c), (e). Indeed, we can be confident that the current regulations accurately reflect Congress' intent because Congress reviewed these very regulations. Under the General Education Provisions Act, all Title IX regulations were required to be "laid before" Congress before they became effective, giving Congress the opportunity to disapprove any regulations "inconsistent with the Act." Pub. L. No. 93-380, 88 Stat. 567, 20 U.S.C. § 1232 (d)(1) (1970 & Supp. IV 1974). In 1975, the Title IX regulations, including the prohibition on single-sex classes, were submitted to Congress. 40 Fed. Reg. 24137 (1975). No regulation was disapproved, and thus all became effective, including the current regulation's sharp restriction on single-sex classes and educational activities. The Supreme Court has held that "Congress' failure to disapprove the [Title IX] regulations . . . strongly implies that the regulations accurately reflect congressional intent." *Grove City v. Bell*, 465 U.S. 555, 568 (1984).[3]

In 2004, despite Title IX's clear statutory prohibition on sex segregration, the U.S. Department of Education proposed amendments to the Title IX regulations that would permit single-sex classes in a much wider range of circumstances. 69 Fed. Reg. 11276 (March 9, 2004). These regulations, however, have never been finalized. *Moreover and crucially, even these proposed permissive regulations would prohibit Southside's sex segregation.* Southside

[3] Nor does the No Child Left Behind Act (NCLB) of 2002 mandate or authorize single-sex classes. Among its provisions is authorization of grants for certain "Innovative Programs," including "[p]rovid[ing] same-gender schools and classrooms (consistent with applicable law)." 20 U.S.C. § 7215(a)(23). Of course, "applicable law" includes Title IX and Title IX's implementing regulations. NCLB tasked the U.S. Department of Education with issuing guidelines for local educational agencies that sought funding to implement same-gender schools and classrooms. 20 U.S.C. § 7215(c). Accordingly, the Department issued guidelines explaining the prohibitions Title IX imposes on sex-segregated education. *See* Guidelines on Current Title IX Requirements Related to Single-Sex Classes and Schools, 67 Fed. Reg. 31102 (May 8, 2002).

proposes to offer only single-sex classes, with no coeducational alternative. The proposed regulations make clear that schools can provide single-sex classes only if they are provided on "a voluntary basis," 69 Fed. Reg. at 11279—that is, only "*if* . . . the recipient provides a substantially equal coeducational class in the same subject." 69 Fed. Reg. at 11284 (emphasis added). In short, the only way to reconcile the Southside program with the language of Title IX, the current Title IX regulations, or the proposed Title IX regulations is to assume that each means the opposite of what it explicitly says it means. No court has ever so held.

For these reasons, Ms. Selden is extremely likely to succeed in her claim that Title IX prohibits the proposed sex segregation at Southside.

B. Defendants' Proposed Sex Segregation Violates the Equal Protection Clause.

The proposed sex segregation at Southside also violates the U.S. Constitution. In *United States v. Virginia*, a case challenging the males-only admission policy at the Virginia Military Institute (VMI), the United States Supreme Court made clear that to comply with the Equal Protection Clause, a governmental actor must demonstrate an "exceedingly persuasive justification" for instituting single-sex education. *Virginia*, 518 U.S. 515, 540-42 (1996). In demonstrating this exceedingly persuasive justification, the school has the burden of showing "at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are closely related to the achievement of those objectives." *Id.* at 524 (internal quotation marks omitted). In other words, the school must prove that the discrimination is "substantially and directly related" to an important objective. *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 730 (1982). Moreover, "if the . . . objective is to exclude or 'protect' members of one gender because they are presumed to suffer from an inherent handicap or be innately inferior, the objective itself is illegitimate." *Id.* at 725.

The Supreme Court has expressly held that a state actor instituting single-sex education cannot meet this heavy burden of justification by pointing to "gender-based developmental differences" or evidence of male and female "tendencies." *Virginia*, 518 U.S. at 516-17. In *United States v. Virginia*, VMI argued that its all-male policy was justified by the unsuitability of its highly confrontational and militaristic educational methods for the average woman. According to VMI, the "adversative" method it used was incompatible with coeducation, because, as expert witnesses had attested in unchallenged testimony, "males tend to need an atmosphere of adversativeness, while females tend to thrive in a cooperative atmosphere." *Id.* at 541 (internal quotation marks omitted). Thus, VMI asserted, the educational benefits offered by a VMI education were in a real sense simply unavailable to the average woman. *Id.* at 540. The Supreme Court concluded, however, that even assuming these statements of the average capacities and preferences of men and women were accurate, they were an impermissible basis for VMI's discriminatory policy. In response to VMI's argument about "important differences between men and women in learning and developmental needs," the Court pointedly explained that "generalizations about the 'way women are,' estimates of what is appropriate for *most women*, no longer justify denying opportunity to women whose talent and capacity place them outside the average description." *Id.* at 550; *see also, e.g*, *Adams v. Baker*, 919 F. Supp. 1496, 1504 (D. Kan. 1996) (rejecting school district's argument that preventing girls from wrestling was substantially related to student safety, because it was based on generalization about average differences between male and female physical strength and ignored the fact that some females are stronger than some males).

The promise of the Equal Protection Clause is that individual men and women, and individual boys and girls, will not be forced to conform to generalized understandings of what is

essentially "male" or essentially "female," whether those generalizations are accurate on average or not. *See, e.g., Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 151-52 (1980); *Weinberger v. Wiesenfeld*, 420 U.S. 636, 645 (1975); *Frontiero v. Richardson*, 411 U.S. 677, 688-89 (1973). In order to provide equal educational opportunities to all students, schools should, of course, ensure that options exist for students of different learning styles and that classroom experiences are structured to give both boys and girls ample opportunities to succeed. Indeed, the principles of gender equality enshrined in the Constitution and Title IX demand no less. What the Constitution forbids, however, is excluding all students of one sex from an educational opportunity, or requiring all students of one sex to participate in a particular educational program, based on conclusions about what is appropriate for the average male or female student. Even if these assumptions contain a kernel of accuracy, such a rationale, the Supreme Court has stated, "cannot rank as 'exceedingly persuasive' as we have explained and applied that standard." *Virginia*, 518 U.S. at 542.

Southside's proposed sex segregation relies on the latest iteration of theories about "important differences between men and women in learning and developmental needs" that the Supreme Court has explicitly rejected as a permissible justification for sex segregation in public education. *Id.* at 550. Just as in the VMI case, Defendants here rely on theorists who assert that girls thrive on nurturing education, while boys succeed in competitive environments. Defendants plan to teach boys "how to be a man," while teaching girls "good character." Girls will be given math classes that focus on practical applications, while boys presumably will receive more theoretical instruction. Boys' classes will emphasize discipline, while girls will simply be expected to conform to the high expectations for success that their teachers bring. By assuming that all boys have the same learning and developmental needs as the "average" male, while all

girls will have the same learning and developmental needs as the "average" female, Defendants have "relied upon the simplistic, outdated assumption that gender could be used as a 'proxy for other, more germane bases of classification,' to establish a link between [an important governmental] objective and [sex] classification." *Mississippi Univ. for Women*, 458 U.S. at 726 (quoting *Craig v. Boren*, 429 U.S. 190, 198 (1976)). Even if it is the case that, for instance, girls on average respond better to hands-on instruction in math while boys respond better to instruction that emphasizes theory, not *all* girls and not *all* boys will so respond; because gender is an imperfect proxy for mathematical ability, sex segregation is not substantially related to any important state interest in improving students' math performance. *E.g.*, *Weinberger*, 420 U.S. at 645 (finding Social Security classification that used gender as a proxy for determining whether deceased worker was a primary source of financial support for family violated the Equal Protection Clause, because while women were less likely than men to provide such support, some women did so). "The purpose of requiring that close relationship [between an important state interest and a gender classification] is to assure that the validity of the classification is determined through reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions about the proper roles of men and women." *Id.* at 725-36. Just such stereotyped and often inaccurate assumptions underlie Southside's proposed sex segregation.

For these reasons, Ms. Selden is likely to succeed in her claim that the sex segregation violates the Equal Protection Clause of the Constitution.

II. SHOULD AN INJUNCTION NOT ISSUE, MS. SELDEN FACES A SUBSTANTIAL THREAT OF IRREPARABLE HARM.

"It has been repeatedly recognized by the federal courts that violation of constitutional rights constitutes irreparable injury as a matter of law." *Springtree Apartments, ALPIC v.*

Livingston Parish Council, 207 F. Supp. 2d 507, 515 (M.D. La. 2001). As the Supreme Court has held, the loss of a constitutional right "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *see also Deerfield Medical Ctr. v. City of Deerfield Beach*, 661 F.2d 328 (5th Cir. 1981) ("We have already determined that the constitutional right of privacy is either threatened or is in fact being impaired and this conclusion mandates a finding of irreparable injury."); *Killebrew v. City of Greenwood*, 988 F. Supp. 1014, 1016 (N.D. Miss. 1997) ("Plaintiffs' claims are primarily based upon violation of their constitutional rights under the Equal Protection Clause of the Fourteenth Amendment, and thus, the threat of irreparable injury is present as a matter of law."); *Murillo v. Musegades*, 809 F. Supp. 487, 497 (W.D. Tex. 1992) ("Irreparable injury is established upon movants showing constitutionally protected rights have been violated."); *Wiggins v. Stone*, 570 F. Supp. 1451, 1453 (M.D. La. 1983) ("[I]t is well established that deprivation of a constitutionally protected right constitutes irreparable injury[.]"); 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed.1995) ("When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

The presumption of irreparable harm entitling a movant to injunctive relief arises in these circumstances because monetary damages do not provide an adequate remedy here. Ms. Selden will only be an eighth-grader once. If the opportunity to attend eighth grade absent unlawful discrimination on the basis of her sex is denied to her now, it is denied to her for all time. She will lose educational experiences and opportunities on the basis of her sex as a result of Defendants' conclusion that certain educational approaches are simply inappropriate for girls. In addition, the classroom diversity that the Supreme Court has recognized serves a compelling

educational interest, given that interaction with diverse people, cultures, and viewpoints prepares students for participation in diverse workforces and society, will be greatly diminished. *See Grutter v. Bollinger*, 539 U.S. 306, 325-33 (2003). "'The two sexes are not fungible; a community made up entirely of one is different from a community composed of both.'" *Virginia*, 518 U.S. at 533 (quoting *Ballard v. United States*, 329 U.S. 187, 193 (1946)). Monetary damages will not remedy the loss Ms. Selden will experience as the result of being relegated to a single-sex community.

III. THIS THREATENED INJURY FAR OUTWEIGHS ANY HARM THAT WILL RESULT IF THE INJUNCTION IS GRANTED.

Southside has long operated successfully as a fully coeducational high school offering gender-integrated classrooms. Indeed, in a gender-integrated environment, its students have achieved test scores far higher than average in Louisiana or the United States. (R. Selden Decl. Ex. A at 3.) During the 2004-2005 school year (the most recent year for which information is available), the Louisiana Department of Education's School Accountability System determined that Southside Junior High School demonstrated "Recognized Academic Growth." (*Id.*) Rhonda and Darren Selden chose to move to Livingston Parish in 2000 specifically because of the quality of the education offered in the then fully coeducational public schools. (R. Selden Decl. ¶ 3.) Should Southside be ordered to continue to operate gender-integrated classrooms, there is every reason to assume that its success would continue. The only harm to Defendants would be the minor administrative inconvenience of revising students' course schedules to assure integrated classes. The threatened harm to Ms. Selden's right to be free from sex discrimination and to her interest in the educational benefits that flow from a diverse classroom far outweighs such an inconvenience. *See Frontiero v. Richardson*, 411 U.S. 677, 690-91 (1973) (holding that

discrimination on the basis of sex for the sake of administrative convenience is forbidden by the Constitution).

IV. THE PUBLIC INTEREST WILL BE SERVED BY GRANTING THE REQUESTED RELIEF.

An injunction preventing Defendants from discriminating against Ms. Selden by enforcing sex segregation based on gender stereotypes will serve the public interest. Of course, the public interest is always served by ensuring compliance with the Constitution and civil rights law. *See, e.g., Valley v. Rapides Parish School Board*, 118 F.3d 1047, 1056 (5th Cir. 1997) (finding that public interest would be undermined if unconstitutional actions of a school board were permitted to stand); *G&V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (holding that it is always in the public interest to prevent violation of constitutional rights). Further, the public has a substantial interest in promoting the well-being of youth in the community and eliminating the stigmatizing effects of gender discrimination and gender stereotyping. An injunction would eliminate Defendants' unmistakable and destructive message that girls and boys are irreconcilably different in their capacities, skills, and abilities and would advance the public interest in equal educational opportunity. As the Fifth Circuit has held, any public interest in allowing local officials discretion in developing and administering local policies "does not extend so far as to allow arbitrary and capricious actions that interfere with the exercise of" rights protected by the Constitution. *Deerfield Med. Ctr.*, 661 F.2d at 338-39.

CONCLUSION

For the reasons set out above, this Court should issue an order prohibiting Defendants from segregating Southside Junior High School by sex or implementing any single-sex class, course, or academic program during the 2006-2007 school year.

Dated: August 2, 2006

Respectfully submitted,

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