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

March 28, 2013

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COMPLAINANTS¹

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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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The ACLU of Wisconsin is the ACLU's Wisconsin affiliate. With approximately 6,741 members, the ACLU of Wisconsin has worked consistently to protect the civil liberties guaranteed Wisconsin residents under state and federal law including the right of women and girls to equality.



¹ The ACLU and the ACLU of Wisconsin are herein collectively termed "the ACLU."

RECIPIENT

Shannon Scharmer
Board President
Beloit School District
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Beloit, Wisconsin, 53511

PRELIMINARY STATEMENT

1. This Complaint is filed by 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. *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. As detailed in the Factual and Legal Allegations below, data obtained by the ACLU from Beloit Area School District pursuant to an open records request² indicate that the District approved, and Robinson and McLenegan Elementary schools operated, single-sex classes that violated 34 C.F.R. § 106.34(b) in the following ways:
 - a. Classifying their students by sex without adequate justification; specifically:
 - i. Classifying their students by sex based upon impermissible stereotypes concerning the interests and abilities of boys and girls; and
 - ii. Failing to articulate an important objective of either improving educational achievement of its students through an overall established policy to provide diverse educational opportunities, or of meeting the particular, identified educational needs of its students; and
 - iii. Failing to ensure that offering single-sex classes was substantially related to the achievement of the program’s objectives;
 - b. Employing different teaching methods for boys and girls that promoted impermissible, overly broad stereotypes concerning the interests and abilities of boys and girls;
 - c. Failing to ensure that participation in the single-sex classes was truly voluntary;
 - d. Failing to provide a substantially equal coeducational alternative to the single sex classes; and
 - e. Failing to conduct an evaluation to ensure that the program does not rely on overly broad generalizations about the different talents, capacities, and preferences of either sex, or that the separation of students by sex is substantially related to the achievement of the program’s objective.

² Letter from Karyn Rotker, Senior Staff Attorney, ACLU-WI to Steve McNeal, Superintendent, Beloit Sch. Dist. (Nov. 11, 2011). (Attached hereto as **Exhibit A**).

3. The ACLU requests that the Office for Civil Rights (“OCR”) investigate Beloit Area School District to determine whether the single-sex classrooms at Robinson and McLenegan Elementary Schools are in compliance with Title IX, and remedy any unlawful conduct.

JURISDICTION

4. 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.
5. The ACLU has not filed this complaint with any other agency or institution.
6. The problems documented are ongoing, thus this complaint is timely.
7. Beloit Area School District receives federal financial assistance, including funds directly from the United States Department of Education (“ED”) and ED funds passed through the Wisconsin Department of Education, and is therefore prohibited from discriminating on the basis of sex by Title IX and must comply with ED regulations.

OPERATIVE LAW

8. 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).

9. ED’s Title IX regulations require with respect to single-sex class assignments in a coeducational school that:

Each 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 [of which single-sex education cannot be the sole example], 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).

10. 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.

11. Whichever of these objectives is selected, the program must be implemented evenhandedly, enrollment in single-sex classes must be “completely voluntary,” and the program must offer a substantially equal coeducational alternative. 34 C.F.R. § 106.34(b)(1). “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. at 62537. “[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.*, 2012 WL 3731518 at *4 (S.D. W.Va. Aug. 29, 2012).
12. Additionally, any program involving single-sex classes must be evaluated by the recipient at least every two years “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)(4).

FACTUAL ALLEGATIONS

General Allegations

13. Robinson Elementary School, located in Beloit, Wisconsin, covers kindergarten through fifth grades. Upon information and belief, it educates approximately 378 students.³
14. The program at Robinson Elementary was first proposed in or around the winter of 2007, was initiated in certain classrooms in the fourth grade in the 2007-2008 school year,⁴ expanded to the third and fifth grades in the 2009-2010 school year, and operated in the third, fourth, and fifth grades for the 2010-2011 year.⁵ The students were separated by sex in many, if not all, subjects, and may also have been separated for non-academic periods like lunch and recess.⁶

³ See Wisconsin Dept. of Pub. Instruction, *Enrollment Statistics for Robinson Elementary in the 2011-2012 School Year*, <http://data.dpi.state.wi.us/data/GroupEnroll.aspx?GraphFile=BlankPageUrl&SCounty=47&SAthleticConf=45&SCE SA=05&FULLKEY=020413040260&SN=Robinson+El&DN=Beloit&OrgLevel=sc&Quad=demographics.aspx> (last visited Feb. 6, 2013).

⁴ Letter from Goldy “Trey” Brown, Principal, Robinson Elementary Sch., to Third Grade Parents, Robinson Elementary Sch. (Feb. 20, 2007) (Attached hereto as **Exhibit B**); Letter from unknown, Robinson Elementary Sch., to Third Grade Parents, Robinson Elementary Sch. (Mar. 10, 2008) (Attached hereto as **Exhibit C**).

⁵ Email from Sam Carter, Principal, Robinson Elementary Sch., to Chris Wesling (Jan. 28, 2010) (Attached hereto as **Exhibit D**); Letter from Sam Carter, Principal, Robinson Elementary Sch., to Second Grade Parents (Mar. 23, 2009) (Attached hereto as **Exhibit E**).

⁶ Exhibit B (Letter from Goldy “Trey” Brown to Third Grade Parents, *supra* note 4); Exhibit C (Letter from unknown to Third Grade Parents, *supra* note 4); *Same Gender Classrooms*, Informational Newsletter (Robinson Elementary Sch., Beloit, WI), May 12, 2009 (Attached hereto as **Exhibit F**).

15. McLenegan Elementary School, located in Beloit, Wisconsin, covers kindergarten through fifth grades. Upon information and belief, it educates approximately 258 students.⁷
16. McLenegan Elementary School operated single sex classes in the fourth and fifth grade in the 2011-2012 school year.⁸

Lack of Justification for Classification by Sex

17. The documents provided in response to the ACLU's November 11, 2011 Open Records Act request, which sought "policies governing any single-sex education program or activity" and "records relating to the decision or rationale for creating single-sex education programs or activities," do not indicate an adequate justification for the sex separation program at either Robinson Elementary or McLenegan Elementary school.
18. The District produced no documents explaining the rationale, goals, or justification for separating boys and girls throughout the fourth and fifth grades at McLenegan Elementary. On the contrary, it appears that the decision to institute this program was taken without any articulated mission, goal, or justification, and with little deliberation, public participation, or oversight by the District.
19. The sole justification and primary goal of the program at Robinson Elementary was to create an "optimum environment where girls and boys feel comfortable participating in the learning process" by catering to presumed gender differences in learning styles.⁹ An informational packet created by Robinson asserted that separating students by gender is essential to this goal because "boys and girls learn differently and more productively in different classroom environments."¹⁰
20. There is clear evidence that Robinson Elementary explicitly designed its program on the basis of impermissible generalizations—namely, discredited theories about the supposedly "different" brains and learning styles of boys and girls. In a letter sent to parents of rising fourth graders, Robinson presented "brain-based research. . . [on] developmental differences between boys and girls."¹¹ The letter asserted that "[b]oys and girls brains are wired differently" so that "[g]irls hear seven times better than boys" and "[i]n girls, emotion is processed in the same area of the brain that processes language, while in boys the brain regions involved in talking are separate from those involved in emotion."¹² Robinson explicitly linked these differences in "wiring" to the "advantages same gender classrooms

⁷ See Wisconsin Dept. of Pub. Instruction, *Enrollment Statistics for McLenegan Elementary in the 2011-2012 School Year*,

<http://data.dpi.state.wi.us/data/GroupEnroll.aspx?GraphFile=BlankPageUrl&SCounty=47&SAthleticConf=45&SCE SA=05&FULLKEY=020413040160&SN=McLenegan+El&DN=Beloit&OrgLevel=sc&Qquad=demographics.aspx> (last visited Feb. 6, 2013).

⁸ McLenegan Elementary Sch., *Invitation to Single Gender Classes Informational Meeting* (Flyer) (Attached hereto as **Exhibit G**).

⁹ Exhibit F (*Same Gender Classrooms*, *supra* note 6).

¹⁰ *Id.*

¹¹ Exhibit C (Letter from unknown to Third Grade Parents, *supra* note 4).

¹² *Id.*

can offer,” proffering these generalizations about brain development as a justification for its single-sex program.¹³

21. The documents that Robinson distributed to parents also suggest that the single-sex program was heavily informed by the work of Dr. Leonard Sax, a popular author and consultant who propounds the theory that hardwired differences between boys and girls necessitate the use of single-sex classrooms and the employment of different teaching methods for boys and girls.¹⁴
22. In one document on the topic “Why Have Same Gender Classrooms?” the school cites Dr. Sax to claim that “boys and girls learn differently and more productively in different classroom environments,” and goes on to assert that:

Girls are born with a sense of hearing seven times that of boys and therefore learn in a quieter atmosphere. Boys in general learn better in an environment where they are able to move around and respond to louder voices. Studies have shown that overall girls learn better in warmer classrooms and boys in cooler ones.¹⁵

Another communication with parents refers those seeking more information to the website of the National Association for Single-Sex Public Education (“NASSPE”), the organization of which Sax is the founder and director; the document demonstrates apparent endorsement of NASSPE’s views, characterizing the website as “great.”¹⁶

23. The goal of offering an “optimum learning environment for boys and girls” is far too vague to be considered an important objective. Even if it were considered as such, which it should not be, the District produced no valid evidence supporting any relationship, substantial or otherwise, between the use of “gender-based” instruction and the achievement of that objective. The documents show no analysis of existing measures of student achievement or performance within the third, fourth or fifth grades before the same gender program was imposed at Robinson. No documents were produced quantifying the extent of any envisaged academic or behavioral improvements at Robinson, and no further studies or educational data were produced showing any link between single-sex education and any improved academic or behavioral outcomes elsewhere. In fact, there was no evidence to suggest that school or district officials considered *any* valid scientific research, or *any* school- or county-specific data in support of their decisions.
24. Furthermore, Robinson presented no substantial state interest to support the program’s complete sex separation, which included all academic classes in all subjects, and may also have included non-academic periods like lunch and recess.
25. No evidence was produced suggesting that Beloit School District had an established policy to improve educational achievement by offering a diversity of educational options.

Impermissible Sex Stereotypes in the Educational Environment

¹³ *Id.*

¹⁴ See Leonard Sax, *Why Gender Matters: What Parents and Teachers Need to Know About the Emerging Science of Sex Differences* 4, 18, 86-92, 108-112 (2005).

¹⁵ Exhibit F (*Same Gender Classrooms*, *supra* note 6).

¹⁶ Exhibit B (Letter from Goldy “Trey” Brown to Third Grade Parents, *supra* note 4).

26. Records produced by Beloit School District suggest that the sex separation within the District likely promoted harmful stereotypes about asserted differences in the brain development, intellectual capabilities, and learning preferences of boys and girls.
27. The theory of gender-differentiated teaching underlying Robinson’s program was explicitly emphasized in information provided by the school to parents and the public, including a letter to parents discussing how the teaching in single-sex programs could be tailored to accommodate the purported “developmental differences” in boys and girls:
- Girls, for the most part, learn better sitting down. However, when a young boy sits down, his brain turns off.
 - Creating a less structured environment is important for boys. Activities where boys can move around are the best way to approach their learning styles.
 - Creating a quiet, calm classroom environment is important for most girls. They tend to be more sensitive to sounds and are generally distracted by extraneous noise and movement in the classroom.”¹⁷

The letter concludes: “this is just a sampling of the differences between boys and girls, which same gender classrooms address to increase student achievement,” and invites parents to attend an information session to learn more about the program.¹⁸

28. An informational packet that Robinson Elementary distributed to parents at one such session included teacher development materials that discussed “Tips to Keep in Mind When Teaching Boys.” It directed teachers to “[e]nsure ample opportunity for movement... [not] routinely take away recess as a punishment for boys, use only as a last resort... [r]emember that girls tend to ‘**whisper**’ while boys tend to ‘**shout**’... [and to k]eep in mind that boys typically have a shorter attention span than girls.”¹⁹
29. An excerpt from another document included in the informational packet gave specific suggestions for how to engage boys in reading:

The action-oriented, competitive learning style of many boys works against them with literacy learning. Boys need more male role models for literacy, in order to see reading as a masculine activity. Boys aren’t motivated to read many of the books given to them, as they’re unappealing... Most of what they read don’t [*sic*] deal with the real problems and fears of boys.²⁰

The document goes on to encourage using male role models to show boys how to make themselves “vulnerable to a book” and connect to characters so that boys won’t be afraid and think this is unmanly.²¹

30. Recommended gender-based instruction techniques were also pervasive in teacher-training materials from a Single Gender Conference in Madison, WI, in June 2011, presumably

¹⁷ Exhibit C (Letter from unknown to Third Grade Parents, *supra* note 4).

¹⁸ *Id.*

¹⁹ *Staff Development for Educators, Interesting Factoids: Tips to Keep in Mind When Teaching Boys* (Flyer) (date unknown) (Attached hereto as **Exhibit H**).

²⁰ Author unknown, *Boys and Literacy: What Can We Do?* (Flyer) (date unknown) (Attached hereto as **Exhibit I**).

²¹ *Id.*

attended by staff from McLenegan, Robinson, or both. One presentation on the topic of “Gender Differences that Make a Difference in the Classroom”²² outlined different “pedagogy implications” of presumed gender differences and advised teachers to adapt their teaching methods accordingly.

31. For example: The document states that “[b]oys read emotions and are INSTINCTIVE/impulsive ... [while g]irls read emotions and analyze the emotion”²³; teachers were thus advised to “[a]ccess Boys’ work from a Boys’ Perspective: MOVEMENT/ACTION. Access Girls’ work from a Girls’ perspective: COLOR/TEXTURE”²⁴; the presentation recommends that sitting should be required for girls, but not for boys, and prescribes different light/sound requirements for boys and girls classrooms²⁵; teachers for boys should “[u]se a loud voice. Frequently interrupt yourself – ‘shooting questions,’” while for girls they should “[u]se a regular voice. Make eye contact and SMILE.”²⁶

32. The document also made subject-specific recommendations for boys and girls based on these presumed sex differences in learning.²⁷ For literature it suggested different questions for boys and girls:

Literature Questions [for boys]:

‘What would you DO if...?’

In Medias Res... Begin in the Middle.... Favorite character...

...make a picture in your mind...

‘Technical details’...

...like maps...

Boys’ stories – Action/Movement/”Violent”

Literature Questions [for girls]:

“How might/would you FEEL if...?”

“If you could change something...”

“What do you like about...?? Not

like...??”

... like Role Playing...

Girls’ stories – Color/Texture/Light²⁸

33. The materials also suggested different pedagogy for boys and girls in math:

Pedagogy for boys:

-**Math:** Start with a Riddle! ☺

-Do NUMBERS for numbers sake...

-WHO was first to recognize this formula - Return to REAL World as often as

...ratio...??

-Manipulatives-Computation Drills... Speed...

subjects²⁹

Pedagogy for Girls:

-**Math:** Begin with the Real World!

-Demonstrate RELEVANCE to the real world...

Possible...

-Link/Integrate with other

²² Unknown author, *Gender Differences that Make a Difference in the Classroom* (June 2011) (Presentation at a Single Gender Conference in Madison, Wis.) (Attached hereto as **Exhibit J**).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

34. In social studies the materials also suggested different teaching techniques for boys and girls:

[For boys]

-In Medias Res - Start w/most exciting event...
work backwards...

-Focus on REAL men.

-Highlight Technical Details and Use maps...

[For girls]

-“How would you feel if you were a ...and
girl your age...?”

... and connect with the content

-Integrate with other disciplines...
art/music/literature³⁰

35. Finally the materials outlined different presumed differences in motivation and competition:

-Motivating Boys

-LOVE hierarchy!!! Competition!!!

-Form Teams

-Elect Captain/Lieutenant

-Competition

Being ‘On Top’ ... Being a Winner!!

-Motivating Girls:

- Get girls to ‘care’

- Like Girl vs. Boy competition

-Competition

Being ‘Accepted’, liked, loved!!!³¹

36. This presentation did not include or reference a single scientifically valid study or piece of primary research to link these techniques specifically, or single-sex education in general, with improved academic outcomes.

37. Viewed together, the evidence suggests that the single-sex classes and activities within the Beloit School District employed different teaching methods for boys and girls that were premised upon and promoted impermissible sex stereotypes.

a. The teacher training, the promotional materials sent to parents, and the literature that influenced school administrators and formed the basis for the single-sex program at Robinson Elementary strongly suggest that teachers used gender-differentiated teaching in the boys’ and girls’ classrooms at Robinson that was based upon and promoted sex stereotypes.

b. Based on the scant records produced by the District related to McLenagan Elementary, it is not possible to determine with certainty how the program was implemented. However, given the prevalence of the theory of hard-wired learning differences and gender-differentiated teaching within the District, a thorough investigation should be conducted to determine whether gender-differentiated teaching was employed in the single-sex classrooms there as well.

Voluntariness, Coeducational Option, and Evenhandedness

38. While the documents indicate that coeducational alternatives were offered at both schools, information provided to parents provided no information about the content or resources of the co-ed classes as compared to the single-sex classes, or about the method of selection of students for inclusion in the program once parental preferences had been submitted.³² For example, it was not clear whether parental preferences would be honored if an insufficient

³⁰ *Id.*

³¹ *Id.*

³² Letter from Carole Campbell, Principal, McLenagan Elementary Sch., to McLenagan, Merrill, and Robinson Families re: *Single Gender Preference Survey* (2011) (Attached hereto as **Exhibit K**).

number of students signed up to fill the single-sex or coeducational classes, or how students would be selected should the number of students who signed up exceed the number of available slots.

39. Little or no written information on the single-sex classes or the availability of a coeducational alternative was provided to students at McLenegan Elementary.
40. The written information that was provided to parents entering Robinson Elementary was biased and misleading, containing unsupported and one-sided statements touting the benefits of single-sex education, and including pseudoscientific claims about purported differences in boys' and girls' learning and development.³³
41. At Robinson Elementary, student assignment to the single-sex classrooms appears to have varied from year to year, but it does not appear that an opt-out or a coeducational option was available to all students each year. For example, when Robinson announced the expansion of the same sex education program to third and fifth grades in 2009-2010, the school informed parents of rising third graders that they would be able to opt out, but a coeducational option does not appear to have been contemplated for parents of students entering the fourth or fifth grades, and parents of rising fourth and fifth graders did not receive an opt-in/opt-out form.³⁴
42. There may have been differences between the single-sex and coeducational classes at Robinson Elementary, raising questions as to whether the coeducational alternative offered was substantially equal. For example, for the 2008-2009 school year, school officials informed third grade parents who did not wish to participate in the single-sex pilot classes that they would be required to "open enroll their students to a different building"³⁵; the Principal later raised concerns about whether there was sufficient space to operate a coeducational classroom in the fourth grade³⁶.
43. There may have been differences between the boys' and girls' classes at Robinson Elementary in class size, facilities, and teacher support that raise questions as to whether the classes were implemented in an evenhanded manner. School officials suggested making the boys classes smaller during the 2010-2011 school year and placing additional staff in the boys classrooms, which would have resulted in unequal resources and opportunities between the boys' and the girls' single-sex classes.³⁷

Evaluations

44. There is no evidence that the single-sex classes and activities at Robinson³⁸ were evaluated, as required by the Title IX regulations, 34 C.F.R. § 106.34(b)(4), to ensure they did not perpetuate sex stereotypes.

³³ See, e.g., Exhibit F (*Same Gender Classrooms*, *supra* note 6).

³⁴ Exhibit F (*Same Gender Classrooms*, *supra* note 6 (stating that "[t]hird grade will have an 'opt out' classroom that will be heterogeneous. 4th and 5th grade classes will be one of each gender").

³⁵ Exhibit C (Letter from unknown to Third Grade Parents, *supra* note 4).

³⁶ See Exhibit D (Email from Sam Carter to Chris Wesling, *supra* note 5).

³⁷ *Id.*

³⁸ Because the single-sex classes at McLenegan have only been operating since 2011, they are not yet due to have completed the evaluation mandated by 34 C.F.R. § 106.34(b)(4).

45. Robinson officials apparently periodically presented data to the District on outcomes of the single-sex classes; however, the ACLU has been unable to evaluate these data because they were not produced pursuant to its public records request.
46. While it appears that the District attempted to conduct an assessment of student satisfaction with the program at Robinson through a survey, the survey instrument used was marred by numerous methodological shortcomings. For example, the survey inquired only into the subjective experiences of students, rather than examining any objective measures of their achievement; it was administered only to students in the single-sex programs and thus lacked a control group against whom the benefits of the program could be measured; the students surveyed were the ones whose parents chose to enroll them in the program and thus were more likely to have been pleased with its results; questions were leading (e.g. asking students to self-report whether their abilities and comfort in class have improved in a number of areas and failing to inquire about any negative effects of the program); the possible answers did not include a “no change” option, simply asking whether they “agree” or “disagree” with the statement about their improvement.³⁹ The survey thus contained significant flaws that limit its application as an evaluation tool.⁴⁰

LEGAL ARGUMENT

47. As outlined in ¶¶ 1-46 of the Factual Allegations above, the Beloit School District is not in compliance with 34 C.F.R. § 106.34(b)(1)(i)(A) because the justification for the single-sex classes and activities within the District was not part of an overall established policy to provide diverse educational opportunities. The District had no established policy to provide diverse educational opportunities.
48. As outlined in ¶¶ 1-46 of the Factual Allegations above, the Beloit School District is not in compliance with 34 C.F.R. § 106.34(b)(1)(i)(B) because the justification for its single-sex classes and activities at Robinson and McLenegan Elementary was not to meet the particular, identified educational needs of their students. The District conducted no assessment of the individualized educational needs of its students prior to implementing the single-sex classes and activities at either school.
49. As outlined in ¶¶ 1-46 of the Factual Allegations above, the Beloit School District is not in compliance with 34 C.F.R. §§ 106.34(b)(1)(i) and 106.34(b)(4) with respect to McLenegan Elementary because the District articulated no justification or government purpose whatsoever before implementing the single-sex classes and activities.
50. As outlined in ¶¶ 1-46 of the Factual Allegations above, the Beloit School District is not in compliance with 34 C.F.R. §§ 106.34(b)(1)(i) and 106.34(b)(4) with respect to Robinson Elementary because the primary articulated mission of the single-sex classes and activities at Robinson was to create an “optimum learning environment where girls and boys feel comfortable participating in the learning process” because “boys and girls learn differently

³⁹ Institution unknown, *Student Survey* (date unknown) (Attached hereto as **Exhibit L**).

⁴⁰ See Diane Halpern & Lise Eliot, *The Single Sex Trick: The flaws in a new survey that praises girls-only and boys-only classes*, Slate.com (Dec. 15, 2010), http://www.slate.com/articles/double_x/doublex/2010/12/the_singlesex_trick.html (critiquing similar survey conducted in South Carolina).

and more productively in different classroom environments.”⁴¹ This is an invalid justification for sex-based classifications as a matter of law, for at least two reasons:

- a. As the Supreme Court has held, the provision of single-sex education cannot be itself used as a justification for a sex-based classification because this confuses the “means” with the “end.” Such a justification constitutes a “notably circular” argument that distorts the applicable test to determine the constitutionality of sex-based classifications (like the decision to institute single-sex classes). See *United States v. Virginia*, 518 U.S. 516, 545 (1996) (“*VMF*”).
- b. The Supreme Court has similarly rejected the use of generalizations about the differences between males and females in learning and developmental needs – which are the basis of the program at Robinson Elementary – as a justification for single-sex education. See *VMI*, 518 U.S. at 549-50.

51. As outlined in ¶¶ 1-46 of the Factual Allegations above, the Beloit School 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 at Robinson Elementary was substantially related to the objective of optimizing the learning environment for boys and girls. The District cited no valid evidence that the use of gender-differentiated instruction (or the use of single-sex education in general) would bring about any academic or behavioral improvements.

52. As outlined in ¶¶ 1-46 of the Factual Allegations above, the Beloit School District is not in compliance with Title IX or with 34 C.F.R. §§ 106.34(b)(1)(i) and 106.34(b)(4) because teachers at Robinson and McLenegan likely employed 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.

53. As outlined in ¶¶ 1-46 of the Factual Allegations above, the Beloit School 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. Little or no information was provided to parents of McLenegan students regarding the single-sex classes or the coeducational alternatives available.
- b. The information provided to parents of Robinson students was biased and misleading, and included unsubstantiated claims based on overly broad generalizations about the purportedly different talents, capacities, or preferences of boys and girls.
- c. Although participation in the single-sex classes at Robinson appears to have been structured on an opt-in/opt-out basis for students entering the third grade, it does not appear that parents of fourth or fifth graders were given the option to opt into or out of the single-sex classes every year.
- d. At both schools, parents were provided no information about the content or resources of the co-ed classes as compared to the single-sex classes, or about the method of

⁴¹ Exhibit F (*Same Gender Classrooms*, *supra* note 6).

selection of students for inclusion in the program once parental preferences had been submitted.⁴²

54. As outlined in ¶¶ 1-46 of the Factual Allegations above, the District may be out of compliance with 34 C.F.R. § 106.34(b)(1)(iv) because it is unclear whether the coeducational alternative offered was substantially equal to the single-sex classes, or whether a coeducational alternative was made available each year.
55. As outlined in ¶¶ 1-46 of the Factual Allegations above, the District may have been out of compliance with 34 C.F.R. § 106.34(b)(1)(ii) because it is unclear whether the single-sex classes at Robinson or McLenegan were implemented in an evenhanded manner.
56. As outlined in ¶¶ 1-46 of the Factual Allegations above, the District is out of compliance with 34 C.F.R. § 106.34(b)(4) because it failed to conduct a methodologically sound evaluation of whether the program was meeting its stated objectives, and because there is no evidence that it conducted any assessment of whether the single-sex classes at Robinson relied on overly broad generalizations about the different talents, capacities, or preferences of either sex.

RELIEF REQUESTED

57. The ACLU requests that:

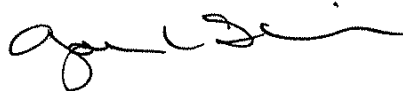
- a. The OCR investigate Beloit Area School District, and Robinson and McLenegan Elementary schools, to determine whether they are in compliance with Title IX and its implementing regulations.
- b. The OCR order Beloit Area School District to take all necessary steps to remedy any unlawful conduct identified in its investigation, as required by Title IX and its implementing regulations. 34 C.F.R §§106.34 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 Beloit Area School District.
- d. The OCR monitor any resulting agreements with Beloit Area School District and/or individual schools to ensure that full compliance with Title IX is achieved.

⁴² Exhibit K (*Single Gender Preference Survey*, *supra* note 32).

Respectfully submitted,



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Enclosures

cc:

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