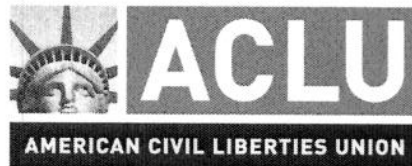


**AMERICAN CIVIL
LIBERTIES UNION
of ALABAMA**
207 Montgomery St., Suite 910
Montgomery, Alabama 36104
334-262-0304
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U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
ADMINISTRATIVE COMPLAINT

Office for Civil Rights, Atlanta Office
U.S. Department of Education
61 Forsyth St. SW, Suite 19T70
Atlanta, GA 30303-8927
Telephone: 404-974-9406
Fax: 404-974-9471
E-mail: OCR.Atlanta@ed.gov

COMPLAINANTS¹

American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
(212) 519-7848

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.

American Civil Liberties Union of Alabama
207 Montgomery Street, Suite 910
Montgomery, AL 36104
(334) 265-2754

The ACLU of Alabama is the ACLU's Alabama affiliate. With approximately 1,500 members, the ACLU of Alabama has worked consistently to protect the civil liberties guaranteed Alabamians under state and federal law including the right of women and girls to equality.

RECIPIENT

Birmingham City Schools

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

P.O. Box 10007
Birmingham, AL 35202

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 Birmingham City Schools pursuant to an open records request indicate that Birmingham City Schools is classifying its students by sex without an adequate justification, in violation of Title IX.
3. To address these disparities, the ACLU requests that the Office for Civil Rights (“OCR”) investigate Birmingham City Schools to determine whether it is operating its single-sex classrooms in compliance with Title IX, and remedy any unlawful conduct.

JURISDICTION

4. The 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.

FACTUAL ALLEGATIONS

7. Birmingham City Schools receives federal financial assistance, including funds directly from the federal Department of Education (“ED”) and ED funds passed through the Alabama Department of Education, and is therefore prohibited from discriminating on the basis of sex by Title IX and must comply with ED regulations.
8. The ACLU submitted requests for records under Alabama’s Open Records Act (ORA) to Birmingham City Schools on October 3, 2011.
9. Records provided to the ACLU by Birmingham City Schools in response to this request indicate that the District is separating students by sex on the basis of impermissible stereotypes concerning the interests and abilities of boys and girls, and is further subjecting students to instruction and a school environment pervaded by sex stereotypes in violation of Title IX and 34 C.F.R. § 106.34(b) (see Legal Allegations below).

General Allegations

10. Huffman Middle School, located in Birmingham, Alabama, covers the sixth to eighth grades.² Upon information and belief, it educates approximately 300 students. Although Birmingham City Schools has run other single-sex educational programs at other schools in the past five years, the program at Huffman Middle School appears to be the only program still in operation, and therefore is the sole subject of this Complaint.
11. Huffman Middle School has operated single-sex classes within a coeducational facility since at least 2010. All students enrolled in Huffman are separated by sex for all academic classes and integrated for gym and related arts classes. Even during lunch, boys and girls are required to sit by homeroom, resulting in sex-separated seating.³

Lack of Justification for Classification by Sex

12. Birmingham City Schools provided no documents in response to our open records request containing any pre-implementation evaluation of school- or district-specific student performance or need, nor any data or argumentation suggesting that the educational needs of Huffman Middle School students necessitated the separation of students by sex.⁴
13. No evidence was produced suggesting that permission was ever obtained from the Birmingham Board of Education for instituting single-sex classes.
14. No evidence was produced suggesting that Birmingham City Schools had an established policy to improve educational achievement by offering a diversity of educational options.
15. It therefore appears that the decision to institute these programs was made by the school without any articulated goal or justification, and with no deliberation, public participation, or oversight by the Birmingham Board of Education.

Impermissible Sex Stereotypes in the Educational Environment

16. To the extent that any records exist reflecting what might have motivated Huffman to implement and maintain a single-sex program, records authored by Birmingham City Schools, Huffman Middle School, and their employees and agents date only from after the initial implementation of the program. Records authored by sources external to Birmingham City Schools suggest that the program is premised upon and likely promotes harmful stereotypes about asserted differences in the brain development, intellectual capabilities, and learning preferences of boys and girls.

² See *School Directory*, Birmingham City Schools, <http://www.bhamcityschools.org/domain/138> (last visited Nov. 27, 2012).

³ Telephone conversation with Afrika Parchman, General Counsel, Birmingham City Sch. (Feb. 9, 2012).

⁴ The school's General Counsel informed us that the documents provided pursuant to our ORA request are the only responsive documents in existence. *Id.*

17. Documents provided by the school district that were used to develop and/or implement its single-sex programs included Michael Gurian's book *Boys and Girls Learn Differently: A Guide for Teachers and Parents* and an article quoting a training director for the Gurian Institute.⁵ In a telephone conversation of February 9, 2012, school representatives confirmed that a "book by Gurian" is "likely" used in teacher trainings, is in the possession of school principals, and is possibly also circulated to teachers in single-sex classrooms.⁶
18. Gurian's work generally asserts that "hard-wired" differences between boys' and girls' brains result in gender-specific learning capacities and interests, and that boys and girls learn and develop so differently that they should be educated using radically different teaching techniques.⁷ In the above-mentioned article, Gurian's training director stated "girls have brains that must look in more than one location for stored information and skills, while the male brain generally only has to look in one location."⁸
19. Birmingham City Schools also produced guidelines for classroom instruction which included the admonition that teachers of boys, but not girls, should "talk about and model 'heroic' behavior, ideas, and stories that show adolescents what it means to truly 'be a man,' that is, an adult male who is essential to his community's care and development."⁹

Evaluations of Sex Separated Classes at Huffman Middle School

20. A review of four single-sex programs in Birmingham conducted by Birmingham City Schools' testing department showed decidedly unimpressive results for Huffman as well as the other schools maintaining sex separated programs. Student test results in the areas of reading and mathematics showed no clear pattern of improvement after the initiation of single-sex programs, and the study concluded: "There is no definitive

⁵ Michael Gurian, *Boys and Girls Learn Differently: A Guide for Teachers and Parents* (2001); Jennifer Swain, *Boys are from One Side of the Brain, Girls are from the Other Side*, Coastal Courier (Hinesville, GA), Aug. 1, 2004.

⁶ Telephone conversation with Afrika Parchman, General Counsel, Birmingham City Sch. (Feb. 9, 2012).

⁷ See, e.g., Michael Gurian & Arlette Ballew, *The Boys and Girls Learn Differently Action Guide for Teachers* 17, 75, 90-92, 100 (2003) (arguing that boys are better than girls in math because their bodies receive daily surges of testosterone, while girls have similar skills only "a few days per month" when they experience "increased estrogen during the menstrual cycle"; that boys are abstract thinkers and so are naturally good at things like philosophy and engineering, while girls are concrete thinkers and should be given objects that they can touch to learn about math and science; and that boys should be given Nerf baseball bats with which to hit things so they can release tensions during class.)

⁸ Jennifer Swain, *Boys are from One Side of the Brain, Girls are from the Other Side*, Coastal Courier (Hinesville, GA), Aug. 1, 2004. Such claims have been debunked by neuroscientists. See, e.g., Lise Eliot, *The Trouble with Sex Differences*, 72 *Neuron* 895, 897 (2011).

⁹ *The Ultimate Middle School Classroom for Both Boys and Girls*. This appears to be excerpted from Michael Gurian, *Boys and Girls Learn Differently: A Guide for Teachers and Parents* (2001).

proof that the percentage of students scoring proficient is significantly impacted by students being taught in same gender classroom settings.”¹⁰

21. Although Birmingham City Schools affirmatively concluded that sex separation is unjustified in terms of educational outcomes for children, the program at Huffman continues to the present day.
22. Although the above evaluation was provided, no further evaluations were provided suggesting that Birmingham City Schools had ever evaluated Huffman Middle School’s program to ensure that its single-sex classes were based on genuine justifications and did not rely on overly broad generalizations about boys and girls, or that its single-sex classes were substantially related to any important educational objective.

Voluntariness

23. While Title IX regulations promulgated by ED permit sex separation under certain limited circumstances, ED regulations require at a minimum that any single-sex class within a coeducational school be completely voluntary, and be paralleled by a substantially equal coeducational option. 34 C.F.R. § 106.34(b)(1)(iii), (iv).
24. Birmingham City Schools provided no forms notifying parents of the existence of single-sex programs at Huffman or providing them an opportunity to opt in or opt out on behalf of their children.
25. There was also no record of a “substantially equal coeducational” option available to students who chose not to participate in single-sex classes. 34 C.F.R. § 106.34(b)(1)(iv).
26. It appears that all core academic classes provided at Huffman are sex separated, and no coed alternative whatsoever is available. During our February 2012 telephone conversation, Birmingham City Schools confirmed that a child who does not wish to participate in the single sex program would likely have to leave the school entirely, and transfer to another school.¹¹

LEGAL ALLEGATIONS

27. 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.

¹⁰ Summary of Findings: Same-Gender Classrooms at 15 of 15 (undated study of reading and mathematics scores at four Birmingham City schools: Central Park Elementary, Glen Iris Elementary, Wenonah K-8, and Huffman Middle School).

¹¹ Telephone conversation with Afrika Parchman, General Counsel, Birmingham City Sch. (Feb. 9, 2012).

20 U.S.C. § 1681(a).

28. 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 [established at the program's inception]

- (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). 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). 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. at 62,535.

29. Additionally, any program involving single-sex classes must be evaluated by the funding 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).
30. Birmingham City Schools' records, as outlined in ¶¶ 12-15 of the Factual Allegations above, demonstrate that Huffman Middle School is not in compliance with ED's Title IX regulations, in that neither the school nor the school board developed any justification for its single-sex academic classes, and that the sex separation is not part of an overall established policy to improve academic achievement through provision of diverse educational opportunities or to meet the particular, identified educational needs of its students.
31. Birmingham City Schools' records, as outlined in ¶¶ 16-20 of the Factual Allegations above, further demonstrate that Huffman Middle School is not in compliance with ED's Title IX regulations, in that the justification for and instruction in its single-sex

classes appear to be premised on overly broad generalizations about the different talents, capacities, or preferences of boys and girls.

32. Birmingham City Schools' records, as outlined in ¶¶ 23-26 of the Factual Allegations above, further demonstrate that Huffman Middle School is not in compliance with ED's Title IX regulations, in that its single-sex classes are not voluntary, and no substantially equal coeducational alternative is made available.
33. Birmingham City Schools' records, as outlined in ¶¶ 20-22 of the Factual Allegations above, further demonstrate that Huffman Middle School may be out of compliance with ED's Title IX regulations, in that the program has continued despite internal evaluations concluding that there is "no definitive proof that the percentage of students scoring proficient is significantly impacted by students being taught in same gender classroom settings,"¹² and in that evaluation failed to analyze whether the program was based on stereotypes about boys and girls.

RELIEF REQUESTED

34. The ACLU requests that:

- a. The OCR investigate Huffman Middle School and Birmingham City Schools to determine whether Birmingham City Schools is in compliance with Title IX and its implementing regulations.
- b. The OCR order Birmingham City Schools 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 Birmingham City Schools.
- d. The OCR monitor any resulting agreements with Birmingham City Schools and/or individual schools to ensure that full compliance with Title IX is achieved.

Respectfully submitted,

Olivia Turner /cv

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Christina Brandt-Young

Christina Brandt-Young
Attorney
ACLU Women's Rights Project

¹² Summary of Findings: Same-Gender Classrooms at 15 of 15 (undated study of reading and mathematics scores at four Birmingham City schools: Central Park Elementary, Glen Iris Elementary, Wenonah K-8, and Huffman Middle School).

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