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ADMINISTRATIVE COMPLAINT

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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.

American Civil Liberties Union of Idaho
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The ACLU of Idaho is the ACLU's Idaho affiliate. With approximately 1,200 members, the ACLU of Idaho has worked consistently to protect the civil liberties guaranteed Idahoans under state and federal law including the right of women and girls to equality.

RECIPIENT
Dr. Richard H. Bauscher
Superintendent of Schools
Middleton County School District #134

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

5 South Third Ave. West
Middleton, ID 83644

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 Middleton County School District #134 pursuant to an open records request indicate that Middleton Heights Elementary School 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 Middleton County School District #134 to determine whether they are operating their 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. Middleton County School District #134 receives federal financial assistance, including U.S. Department of Education (ED) funds passed through the Idaho Department of Education, and is therefore prohibited from discriminating on the basis of sex by Title IX.
8. The ACLU submitted requests for records under Idaho’s Public Records Law to Middleton County School District #134 on May 7, 2012.
9. Records provided to the ACLU by Middleton County School District #134 in response to this request indicate that Middleton Heights Elementary School 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. Middleton Heights Elementary School, located in Middleton, Idaho, covers kindergarten to the fifth grade.² Upon information and belief, it educates approximately 450 students.
11. Middleton Heights Elementary School has operated single-sex classes within a coeducational facility since 2006.³ According to the most recent information available, it currently offers single-sex and coeducational classes in every grade except kindergarten.⁴ Since 2006, it appears that students have been separated by sex in every academic subject⁵ and sometimes in non-academic subjects as well.⁶

Lack of Adequate Justification for Classification by Sex

12. A federal funding recipient “that operates a nonvocational coeducational elementary or secondary school may provide nonvocational single-sex classes or extracurricular activities, if,” among other requirements, “[e]ach single-sex class or extracurricular activity is based on the recipient's important objective . . . [t]o improve educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities . . . or . . . [t]o meet the particular, identified educational needs of its students,” so long as “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) (emphasis added). “A recipient’s justification, i.e., an important objective and a substantial relationship between the important objective and the sex-based means to further the objective, must be genuine.” 71 Fed. Reg. 62,530, 62,535 (Oct. 25, 2006).

² See *Enrolling Your Student at Middleton Heights Elementary*, Middleton Heights Elementary, <http://hts.msd134.org/default.asp?pageName=Custom1> (last visited Nov. 27, 2012).

³ Christin Runkle, *Students Succeed in Gender-Separate Classrooms*, Idaho Press-Tribune, June 18, 2007, <http://www.idahopress.com/articles/2007/06/18/news/news1.prt>.

⁴ Gender Class Parent Meeting (May 3, 2012) (Unsigned meeting agenda) at 2.

⁵ Of all the documentation produced by the School District, only one document suggests that students in single-sex classes were *not* separated in every subject; in that case, it was reported that the “fifth grade would like to have gender separate classes for homeroom placement and then blend students from all three rooms for science, social studies and/or art.” Letter from Robin K. Gilbert, Principal, Middleton Heights Elementary Sch., to Richard Bauscher, Superintendent Middleton Sch. District (May 6, 2008).

⁶ Presentation by Middleton Heights Elementary Sch. Students to Middleton Sch. Board: Middleton School Board Report (Jan. 9, 2007) at 6; Letter from Robin K. Gilbert, Principal, Middleton Heights Elementary Sch., to Richard Bauscher, Superintendent, Middleton Sch. District (May 6, 2008).

13. In documents created in 2006 and 2007, the school claims to have initiated the program in 2006 in response to concerns about reading proficiency gaps between boys and girls.⁷
14. Dividing students by sex for all academic subjects is not “substantially related” to the stated objective of closing reading score gaps for boys, as it is overinclusive of course subjects.
15. Offering single-sex classes to girls⁸ is not “substantially related” to the stated objective of closing reading score gaps for low-performing boys, as high-performing boys would presumably remain in coeducational classes with girls.
16. In a recent letter, the school suggested that it “later” implemented single-sex classes for girls “to . . . improve math and science interest and proficiency among girls, where nationally the trend is for girls to have less interest.”⁹ Developing this reasoning *after* the school had already been offering all-girls’ classes demonstrates that this was not the genuine reason for separating girls.
17. Dividing students by sex for all academic subjects is not “substantially related” to the stated objective of closing a purported gap in math and science proficiency, as it is overinclusive of course subjects.
18. A PowerPoint presentation authored by a local graduate student regarding her research on girls and math at the school states that “[r]esearch confirms no or small gender gaps [in math] in elementary schools nation-wide.”¹⁰ The school may attempt to “meet the particular, identified educational needs of its students,” but a national gap, much less one for a different age group, is not an adequate justification for these classes under 34 C.F.R. § 106.34(b)(1)(i)(B).

⁷ Robin Gilbert, Principal, Middleton Heights Elementary Sch., Just Don’t Say S-E-X: How to Implement Single-Sex Classrooms in a Conservative Rural District, Presentation Delivered at 2009 Conference of the National Association for Single-Sex Public Education (2009); Christin Runkle. *Students Succeed in Gender-Separate Classrooms*, Idaho Press-Tribune, June 18, 2007, <http://www.idahopress.com/articles/2007/06/18/news/news1.prt>; Gender Separate Classes Continue (Unattributed, undated memorandum “submitted to the local paper”) (on file with the ACLU); PowerPoint presentation, Girls & Math, at 2 (Unattributed); Vickie D. Ashwill, *School tries single-sex classes*, Idaho Statesman, Dec. 24, 2006; Letter from Robin Gilbert, Principal, Middleton Heights Elementary Sch., to Parents, Middleton Heights Elementary Sch. (Apr. 3, 2006); Middleton Heights Elementary Sch., Draft Brochure, *Single Gender Classrooms*; Presentation by Middleton Heights Elementary Sch. Students to Middleton Sch. Board: Middleton School Board Report (Jan. 9, 2007) at 4.

⁸ See, e.g., Letter from Dr. Richard Bauscher, Superintendent, Middleton Heights Sch. District, to Mr. and Mrs. Okamura (Jan. 10, 2007) (congratulating parents on their daughter’s presentation to the School Board on her participation in the first year of the single-sex program).

⁹ Letter from Brian K. Julian, Founding Partner, Anderson, Julian & Hull LLP, to Monica Hopkins, Exec. Dir., ACLU of Idaho, at 2 (Oct. 19, 2012).

¹⁰ PowerPoint presentation, Girls & Math, at 6 (Unattributed).

19. In fact, the school's testing showed that girls generally outperformed boys on the math portion of the Idaho Standards Achievement Tests from fall 2003 to fall 2004, and also did so in two out of three grades in spring 2008.¹¹ Regarding the 2003-2004 numbers, an internal memorandum produced by the school admits that "male and female math scores do not illustrate a significant achievement gap."¹²
20. In a 2007 presentation to the School Board, the school stated that one of the "things we have learned" from its single-sex classes thus far was that "[b]oys and girls are less inhibited in music, art and dance in gender separate classes."¹³ This is not an important educational objective, especially when compared with the important social benefits of coeducational schooling. This statement also demonstrates that the school was separating students by sex for its own sake because it believed that doing so would be a general educational panacea, rather than meeting particular, identified educational needs of particular students.
21. Several documents demonstrate that the single-sex program at Middleton Heights Elementary School is premised upon "difference[s] in male/female brains"¹⁴ and "gender differences in learning"¹⁵ between boys and girls.¹⁶ Justifications for single-sex classes may not rely on these "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. *See also infra* ¶¶ 25-35.
22. The school's recent communications to parents state that "[i]ssues of gender matter in coed classes as well as single-gender classes and should be addressed in

¹¹ Charts of Middleton Heights Elementary School Idaho Standards Achievement Tests Scores for Fall 2003 to Fall 2004; PowerPoint presentation, Girls & Math, at 7 (Unattributed).

¹² Available Data from Last Three Years (Unsigned, undated memorandum).

¹³ Presentation by Middleton Heights Elementary Sch. Students to Middleton Sch. Board: Middleton School Board Report (Jan. 9, 2007) at 6.

¹⁴ Gender Class Parent Meeting (May 3, 2012) (Unsigned meeting agenda) at 1; Gender Separate Classes Continue (Unattributed, undated memorandum "submitted to the local paper") (on file with the ACLU).

¹⁵ Available Data from Last Three Years (Unsigned, undated memorandum); Statesman Staff, *Middleton Heights tries putting boys, girls in separate classrooms*, Idaho Statesman (Undated); Letter from Robin Gilbert, Principal, Middleton Heights Elementary Sch., to Parents, Middleton Heights Elementary Sch. (Apr. 3, 2006); Vickie D. Ashwill, *School tries single-sex classes*, Idaho Statesman, Dec. 24, 2006; Gender Separate Classes Continue (Unattributed, undated memorandum "submitted to the local paper"); Middleton Heights Elementary Sch., Draft Brochure, *Single Gender Classrooms*; Presentation by Middleton Heights Elementary Sch. Students to Middleton Sch. Board: Middleton School Board Report (Jan. 9, 2007) at 3; Gender Class Parent Meeting (May 3, 2012) (Unsigned meeting agenda) at 1-2.

¹⁶ As a recent article in the prestigious journal *Science* noted, "[a]lthough scientists have debunked many such claims as 'pseudoscience,' this message has yet to reach many educators who are implementing such recommendations in [single-sex] classes within coeducational schools." Diane Halpern et al., *The Pseudoscience of Single-Sex Schooling*, 333 *Science* 1706, 1707 (2011).

all types of classrooms. Gender is one of many aspects of a person that affect their learning: learning style, previous experience, multiple intelligence, culture, socio-economic status, etc. all are a part of a person's learning influences. 'Gendered strategies' are really another way to differentiate instruction. There is no such thing as a strategy that is only good for boys or only good for girls. There may be strategies to which boys tend to have a positive reaction and girls tend to have a positive reaction, but that does NOT mean that these strategies are 'bad' for the opposite sex."¹⁷ In other words, the school's teaching techniques can be used successfully on both boys and girls, and can be used in both coeducational and single-sex settings. This being the case, there is no "substantial relationship between the important objective [of improving educational achievement] and the sex-based means to further the objective" [here, single-sex classes]. 71 Fed. Reg. at 62,535.

23. No evidence was produced suggesting that Middleton Heights Elementary School or Middleton County School District #134 had an established policy to improve educational achievement by offering a diversity of educational options under 34 C.F.R. § 106.34(b)(1)(i)(A). "A school or school district may not simply establish a single-sex class and declare that the class by definition promotes diversity [of educational options] and is therefore consistent with these regulations." 71 Fed. Reg. at 62,535.
24. Nonetheless, the agenda for a meeting with parents states that "[s]ingle-gender classes are choices for parents and opportunities to meet the needs of children in a different learning environment."¹⁸ In the absence of an actual diversity of educational options or particular, identified educational needs of students, the desire to provide "choices" is not an adequate justification for classification and separation of students by sex.

Impermissible Sex Stereotypes in the Educational Environment

25. Numerous documents developed throughout the lifespan of the single-sex program at Middleton Heights Elementary School demonstrate 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.
26. Principal Gilbert informed the ACLU in an email that "some staff have read the Michael Gurian book, *The Minds of Boys* . . . We have used the Leonard Sax book, *Why Gender Matters* as a starting point of research reading. Some teachers

¹⁷ Gender Class Parent Meeting (May 3, 2012) (Unsigned meeting agenda) at 1-2.

¹⁸ Gender Class Parent Meeting (May 3, 2012) (Unsigned meeting agenda) at 2.

have started the book, *Boys Adrift*.”¹⁹ Principal Gilbert further informed us that she reviewed David Chadwell’s *A Gendered Choice* prior to its publication and keeps it as a reference.²⁰ She also stated that Abigail Norfleet James’s *Teaching the Male Brain* and *Teaching the Female Brain* are available in the school to teachers.²¹

27. These texts espouse the stereotypical view that boys and girls learn and develop so differently that they should be educated using radically different teaching techniques. For instance, Sax claims in the introduction to *Why Gender Matters* that there are “hardwired differences in how girls and boys learn”; Michael Gurian claims in *The Minds of Boys* that “[o]ur parental instinct at the playground is now validated by scientific findings regarding fundamental differences in male and female hardwiring. . . .”²² David Chadwell notes that the “hard-wiring” theory is controversial, then concludes that teachers who reflect on their experience cannot help but see their students through the “hard-wiring” prism, which will “possibly” help them better to meet the needs of their students.²³ These and similar statements about the allegedly different brains of boys and girls are echoed throughout the School’s internally produced materials,²⁴ and in the training presentations that teachers gave in the school after attending National Association for Single-Sex Public Education conferences in 2006, 2008, 2009, and 2010.²⁵
28. “Neuroscientists have found few sex differences in children’s brains beyond the larger volume of boys’ brains and the earlier completion of girls’ brain growth, neither of which is known to relate to learning.”²⁶ “The notion that sex

¹⁹ E-mail from Robin Gilbert, Principal, Middleton Heights Elementary Sch., to Ritchie Eppink, Legal Dir., ACLU of Idaho (July 3, 2012) (on file with the ACLU).

²⁰ *Id.*

²¹ *Id.*

²² Leonard Sax, *Why Gender Matters: What Parents and Teachers Need to Know About the Emerging Science of Sex Differences* 4 (2005); Michael Gurian and Kathy Stevens, *The Minds of Boys: Saving our Sons from Falling Behind in School and Life* 41 (2005).

²³ David Chadwell, *A Gendered Choice* 18-20 (2010).

²⁴ *See, e.g.*, Gender Class Parent Meeting (May 3, 2012) (Unsigned meeting agenda); PowerPoint presentation, Single Gender Classrooms (Unattributed, undated) at 16.

²⁵ Expense Reports for Middleton Heights Elementary Sch. Staff Attendees at National Association for Single-Sex Public Education Conferences (2006, 2008, 2009, 2010); Abigail Norfleet James, Presentation, *Teaching the Female Brain: Especially Math and Science* (Oct. 2008); David Chadwell, Presentation at 2009 National Association for Single-Sex Public Education Conference, *Implementing a Single-Gender Program in Your School*, (Oct. 10, 2009).

²⁶ Diane Halpern et al., *The Pseudoscience of Single-Sex Schooling*, 333 *Science* 1706, 1706 (2011).

differences in the brain, because they are biological, are necessarily innate or fixed is perhaps the most insidious of the many public misunderstandings on this topic. Neuroscientists know that, in the absence of proof of genetic or hormonal influence, any sex difference in adult neural structure or function could be shaped through experience, practice, and neural plasticity.”²⁷

29. Nonetheless, Middleton Heights Elementary has undertaken to implement Sax, Gurian, and Chadwell’s sex-stereotyped instructional methods. The school reported to the School Board in 2007 that its program is based on the “premise that boys and girls learn differently, [and the] [p]urpose [is] to educate according to those differences.”²⁸
30. Accordingly, in a letter to parents in April 2006, Principal Gilbert explained that “[w]hen working in small groups or one-on-one we try to sit beside boys, shoulder to shoulder rather than making direct eye contact as preferred by girls. Boys tend to need a greater amount of personal space, so in some classrooms the desks have been moved apart to allow that space.”²⁹ She further explained that “[t]here are some additional adjustments that we would like to try that cannot be made in the interest of boys without jeopardizing the preferences of girls. Some of these changes include adjusting the temperature of the classroom, controlling the degree of light in the room, and adjusting the tone to a lower frequency on our classroom PA systems. Therefore we are looking at trying gender separate classes on a limited basis during the 06-07 school year to measure the impact.”³⁰
31. Noting that these recommendations are “[e]xtrapolat[ed] from research on adults’ cardiovascular regulation,” scholars have observed that “[i]n his books, Web site, and teacher-training programs, Sax rationalizes different educational experiences for boys and girls by using obscure and isolated findings about brain maturation, hearing, vision, and temperature sensitivity. Although scientists have debunked many such claims as ‘pseudoscience,’ this message has yet to reach many educators who are implementing such recommendations in single-sex classes within coeducational schools.”³¹
32. According to media reports on Middleton Heights, some of the differences between classes include stereotyped instruction techniques. For instance, drawing

²⁷ Lise Eliot, *The Trouble with Sex Differences*, 72 *Neuron* 895, 897 (2011).

²⁸ Presentation by Middleton Heights Elementary Sch. Students to Middleton Sch. Board: Middleton School Board Report (Jan. 9, 2007).

²⁹ Letter from Robin Gilbert, Principal, Middleton Heights Elementary Sch., to Parents, Middleton Heights Elementary Sch. (Apr. 3, 2006).

³⁰ *Id.*; see also Middleton Heights Elementary Sch., Draft Brochure, *Single Gender Classrooms*.

³¹ Diane Halpern et al., *The Pseudoscience of Single-Sex Schooling*, 333 *Science* 1706, 1707 (2011).

on the stereotypes that men are logical and competitive while women are emotional and cooperative, in literature classes the school asks boys what a character might do, but asks girls how a character feels.³² The school believes that “males work best in a more competitive setting” with “individual activities” while “females work best in a cooperative learning setting or in groups.”³³ The school reports that the all-girls’ classrooms naturally result in girls being “more responsive to others’ feelings, . . . encouraging and supporting each other in their efforts,” while boys have to be “instruct[ed] . . . in respect for others[] and how to behave like gentlemen.”³⁴

33. Drawing on the stereotype that men are active and independent while women are passive and dependent, the school plans the boys’ day to include exercise and movement throughout the day, while the girls were provided with a “quieter environment.”³⁵ The school reports that it provides girls “[a]n environment with a soft, soothing voice” and “large amounts of explanations for assignments,” while boys receive “[a]n environment with a strong, lower toned, direct voice from the diaphragm” and “lessons designed around discovery with limited teacher explanation.”³⁶
34. Apparently assuming that female teachers suffer deficits when teaching boys, the school expressed difficulty in learning to teach boys “partly because the school has no male teachers, and the boys’ teachers have to be trained to think from a male perspective.”³⁷ After the first year of the single-sex program, the school put out a call for “more male volunteers to work with our boys. If you know of a responsible male who could volunteer an hour or two a week, we would love to have them join us. Grandpas, uncles, business men, retired golfers . . . we need great role models to read and work with our young men.”³⁸ No similar request was made for female volunteers or role models.

³² Christin Runkle. *Students Succeed in Gender-Separate Classrooms*, Idaho Press-Tribune, June 18, 2007, <http://www.idahopress.com/articles/2007/06/18/news/news1.prt>.

³³ Middleton Heights Elementary Sch., Draft Brochure, *Single Gender Classrooms*.

³⁴ Boys and Girls Learns Differently (Unsigned, undated memorandum).

³⁵ Christin Runkle. *Students Succeed in Gender-Separate Classrooms*, Idaho Press-Tribune, June 18, 2007, <http://www.idahopress.com/articles/2007/06/18/news/news1.prt>; Boys and Girls Learn Differently (Unsigned, undated memorandum); see also Robin Gilbert, Principal, Middleton Heights Elementary Sch., Just Don’t Say S-E-X: How to Implement Single-Sex Classrooms in a Conservative Rural District, Presentation Delivered at 2009 Conference of the National Association for Single-Sex Public Education (2009) (stating that boys were provided with headphones, pillows, squishy balls).

³⁶ Middleton Heights Elementary Sch., Draft Brochure, *Single Gender Classrooms*.

³⁷ Christin Runkle. *Students Succeed in Gender-Separate Classrooms*, Idaho Press-Tribune, June 18, 2007, <http://www.idahopress.com/articles/2007/06/18/news/news1.prt>.

³⁸ Boys and Girls Learn Differently (Unsigned, undated memorandum).

35. Sex-stereotyped instruction of this type is prohibited by Title IX.

Evenhandedness

36. A federal funding recipient that operates single-sex classes must “implement[] its [educational] objective in an evenhanded manner.” 34 C.F.R. § 106.34(b)(1)(ii).
37. A memorandum that the school provided to the press in the second year of the program (2008) states that “Middleton Heights began the year with smaller class loads for the all boys’ rooms, allowing them greater space and more time to develop self control and body awareness.”³⁹ Smaller class sizes have been proven to improve academic achievement, especially in early grades,⁴⁰ making this an educational advantage that was afforded only to boys.
38. A student presentation made to the School Board in January 2007 stated that “[b]oys make more noise, but we get headphones to concentrate. . . . Boys like to move. We get pillows and squishy balls.”⁴¹ News reports from the first year of the program (2007) note that the boys were provided with opportunities to exercise throughout the day, to sit on bouncy balls, and to play with stress balls, while the girls were provided with (and presumably had to maintain) a “quiet environment.”⁴² No indications were made in the documents that any girls were similarly allowed to move, make noise, or be insulated from the movement or noise of others.
39. The student presentation made to the School Board also stated that one of the “things we have learned” is that “[g]irls and boys demonstrate a different sense of fairness, resulting in a need for different types of management and discipline.”⁴³
40. No documentation provided by the School or the School Board demonstrated that there had been any individualized assessment of the students inquiring as to whether they could benefit from smaller class sizes, opportunities for movement in the classroom, or equipment to facilitate movement or reduce distractions.

³⁹ Gender Separate Classes Continue (Unattributed, undated memorandum) (on file with the ACLU).

⁴⁰ J.D. Finn et al., *Small Classes in the Early Grades, Academic Achievement, and Graduating From High School*, 97 *Journal of Educational Psychology* 214-215 (2005).

⁴¹ Presentation by Middleton Heights Elementary Sch. Students to Middleton Sch. Board: Middleton School Board Report (Jan. 9, 2007) at 9; *see also* Vickie D. Ashwill, *School tries single-sex classes*, *Idaho Statesman*, Dec. 24, 2006 (depicting a boys’ class using headphones to block out sound during a test).

⁴² Christin Runkle. *Students Succeed in Gender-Separate Classrooms*, *Idaho Press-Tribune*, June 18, 2007, <http://www.idahopress.com/articles/2007/06/18/news/news1.prt>.

⁴³ Presentation by Middleton Heights Elementary Sch. Students to Middleton Sch. Board: Middleton School Board Report (Jan. 9, 2007) at 8.

Therefore, these uneven educational opportunities, as well as uneven disciplinary regimes, appear to have been offered to students on the basis of sex alone, according to sex stereotypes.

Evaluations of Sex Separated Classes at Middleton Heights Elementary School

41. There is no evidence that the programs were evaluated every two years, as required by the Title IX regulations, 34 C.F.R. § 106.34(b)(4), to ensure they did not perpetuate sex stereotypes; rather, those stereotypes were the driving force behind the program.

Voluntariness

42. While Title IX regulations promulgated by the United States Department of Education (“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. 34 C.F.R. § 106.34(b)(1)(iii). “In order to ensure that participation in any single-sex class is completely voluntary, if a single-sex class is offered, the recipient is strongly encouraged to notify parents, guardians, and students about their option to enroll in either a single-sex or coeducational class and receive authorization from parents or guardians to enroll their children in a single-sex class.” 71 Fed. Reg. 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).
43. Whatever efforts were made by Middleton Heights Elementary School to inform parents of their rights to opt into or out of the single-sex program, they were not made in writing. Principal Gilbert explicitly informed the ACLU of Idaho that “I do not have any documents that explain how children are assigned to classrooms. I do not have any opt-out/opt-in forms.”⁴⁴
44. Parents who wanted to request specific teachers or to opt in or out of single-sex classes had to make the request in writing on their own initiative.⁴⁵ No documents aimed at parents explaining this process were provided; none of the documents

⁴⁴ E-mail from Robin Gilbert, Principal, Middleton Heights Elementary Sch., to Ritchie Eppink, Legal Dir., ACLU of Idaho (July 3, 2012) (on file with the ACLU).

⁴⁵ *Id.*; Teacher and Class Requests from Middleton Heights Elementary Sch. Parents for 2012-2013 School Year (Spring/Summer 2012) (on file with ACLU).

provided that were aimed at parents even explained that parents could do anything to influence which classes their children were in.⁴⁶

45. Although the school reports that participation in its single-sex programs is voluntary, internal polling of parents in 2012 demonstrated that many parents were unaware of this fact. Of the parents who responded to an online survey (no information was provided as to how many of the parents of students at the school actually participated in this survey), 36.9% of parents did not feel “informed of the single-sex program prior to making my decision to place my child in a SS or mixed classroom,” and 48.6% of parents thought they did not have a choice about the type of classroom into which their child was placed.⁴⁷

46. If parents are not aware of the voluntariness of the program, it is effectively not voluntary, and violates the Education Department’s regulations under Title IX.

Physical Education Classes

47. In a 2007 presentation to the School Board, the school stated that it had separated students by sex in physical education classes because “[g]irls and boys perform better in P.E. when separated according to gender.”⁴⁸

48. Uniform separation of students by sex in physical education classes, with no regard to the degree of physical contact or ability grouping, violates 34 C.F.R. § 106.34(a)(1) and (2).

LEGAL ALLEGATIONS

49. 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).

⁴⁶ Letter from Robin Gilbert, Principal, Middleton Heights Elementary Sch., to Parents, Middleton Heights Elementary Sch. (Apr. 3, 2006); Gender Class Parent Meeting (May 3, 2012) (Unsigned meeting agenda); Middleton Heights Elementary Sch., Draft Brochure, *Single Gender Classrooms*.

⁴⁷ Survey Completed by the Middleton Heights Elementary Sch. Parents: Middleton Heights Parent Survey (2012) at 1, 2.

⁴⁸ Presentation by Middleton Heights Elementary Sch. Students to Middleton Sch. Board: Middleton School Board Report (Jan. 9, 2007) at 6.

50. The 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. at 62,534-62,535. 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.

51. Additionally, any program involving single-sex classes must be evaluated by the funder 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).

52. Middleton County School District #134’s own records, as outlined in ¶¶ 12-24 of the Factual Allegations above, demonstrate that Middleton Heights Elementary School is not in compliance with Title IX, in that neither the school nor the school board developed any adequate justification for its single-sex academic classes, either via an overall established policy to provide diverse educational opportunities or to meet the particular, identified educational needs of its students.


53. Middleton County School District #134’s records, as outlined in ¶¶ 25-35 of the Factual Allegations above, further demonstrate that Middleton Heights Elementary School is not in compliance with Title IX, 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.

54. Middleton County School District #134's records, as outlined in ¶¶ 36-40 of the Factual Allegations above, further demonstrate that Middleton Heights Elementary School is out of compliance with Title IX, in that the program has not been implemented evenhandedly between boys and girls.
55. Middleton County School District #134's records, as outlined in ¶ 41 of the Factual Allegations above, further demonstrate that Middleton Heights Elementary School is out of compliance with Title IX, in that the program has failed to evaluate whether it is conveying stereotypes about boys and girls.
56. Middleton County School District #134's records, as outlined in ¶¶ 42-46 of the Factual Allegations above, further demonstrate that Middleton Heights Elementary School is not in compliance with Title IX, in that its single-sex classes are not voluntary.
57. Middleton County School District #134's records, as outlined in ¶¶ 47-48 of the Factual Allegations above, demonstrate that Middleton Heights Elementary School is not in compliance with Title IX, in that neither it is separating students by sex in physical education classes without regard to ability level or the nature of any physical contact in those classes.

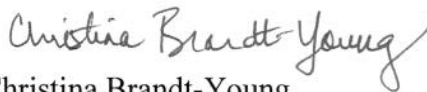
RELIEF REQUESTED

58. The ACLU requests that:
 - a. The OCR investigate Middleton Heights Elementary School and Middleton County School District #134 to determine whether Middleton County School District #134 is in compliance with Title IX and its implementing regulations.
 - b. The OCR order Middleton County School District #134 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 Middleton County School District #134.
 - d. The OCR monitor any resulting agreements with Middleton County School District #134 and/or individual schools to ensure that full compliance with Title IX is achieved.

Respectfully submitted,



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cc:

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