

**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;
RANDY POPE, Superintendent of
Livingston Parish School District, in his
official capacity; MALCOLM SIBLEY,
President of Livingston Parish School Board,
in his official capacity; JEFFREY COX,
Member of Livingston Parish School Board,
in his official capacity; LOUIS CARLISLE,
Member of Livingston Parish School Board,
in his official capacity; MILTON HUGHES,
Member of Livingston Parish School Board,
in his official capacity; ALTON
LEGGETTE, Member of Livingston Parish
School Board, in his official capacity; KEITH
MARTIN, Member of Livingston Parish
School Board, in his official capacity;
CLAIRE PEAK-COBURN, Member of
Livingston Parish School Board, in her
official capacity; JULIUS PROKOP, Member
of Livingston Parish School Board, in his
official capacity; and ALAN JOE
MURPHY, Principal of Southside Junior
High School, in his official capacity,
Defendants.

Civil Case No.:

**COMPLAINT AND
JURY DEMAND**

**PROPOSED CLASS
ACTION**

PRELIMINARY STATEMENT

1. This action arises out of the unlawful sex discrimination of Defendants Livingston Parish School Board, Superintendent Randy Pope, Livingston Parish School Board President Malcolm Sibley, Livingston Parish School Board member Jeffrey Cox, Livingston Parish School Board member Louis Carlisle, Livingston Parish School Board member Milton Hughes, Livingston Parish School Board member Alton Leggette, Livingston Parish School Board member Keith Martin, Livingston Parish School Board member Claire Peak-Coburn, Livingston Parish School Board member Julius Prokop, and Principal Alan Joe Murphy in seeking to craft separate spheres for girls and boys attending Southside Junior High School, a public school to which students are assigned based on their place of residence. In the 2006-2007 academic year, Defendants plan to offer only sex-segregated classes at Southside Junior High School. Moreover, Defendants plan to provide classroom 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.

2. Plaintiff Michelle Selden, who is entering eighth grade at Southside Junior High School, objects to this mandatory sex segregation and gender-stereotyped educational strategy as a violation of her right to enjoy equal educational opportunities without discrimination on the basis of sex.

3. Plaintiff seeks declaratory and injunctive relief to end the unlawful and discriminatory treatment of herself and all others similarly situated. She also seeks to ensure that she and all students at Southside Junior High School have the equal opportunity to participate in the school's academic offerings without regard to their gender and to receive instruction based on their individual strengths and needs, rather than stereotypes about the sort of education the "average boy" or the "average girl" wants or requires.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 20 U.S.C. §§ 1681 – 1688 and 28 U.S.C. §§ 1331 and 1343. The Court has jurisdiction over Plaintiff's state law claim pursuant to 28 U.S.C. § 1367(a).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because, upon information and belief, all parties are residents of the Middle District of Louisiana and because all or a substantial part of the events giving rise to the claims in this action took place in the Middle District of Louisiana.

6. Declaratory relief is authorized pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 2202. A declaration of the law is necessary and appropriate to determine the respective rights and duties of the parties to this action.

PARTIES

7. Plaintiff Michelle Selden has attended public schools in Livingston Parish School District since 2000 and will be an eighth grade student at Southside Junior High

in the 2006-2007 school year. At that time, she will be assigned to all-female classes based on her sex and will be subject to gender-stereotyped educational techniques based on broad generalizations about girls' psychological and developmental capacities. She wishes to attend a public school where her educational experience is not determined by her sex.

8. Defendant Livingston Parish School Board is a political subdivision of the State of Louisiana, organized pursuant to L.S.A. R.S. § 7:51 *et seq.* for the purpose of providing public education to the school children of Livingston Parish, including Plaintiff. The School Board has the right and power to sue and be sued and is responsible for ensuring that the School District's programs comply with the United States and Louisiana Constitutions and federal law.

9. Defendant Randy Pope is Superintendent of Livingston Parish School District. He is the chief educational officer charged with supervision of all schools within the School District. Superintendent Pope is responsible for ensuring that all schools within the district comply with the United States and Louisiana Constitutions and federal law. He is sued in his official capacity.

10. Defendant Malcolm Sibley is President of Livingston Parish School Board. As President of the School Board, Mr. Sibley is responsible for ensuring that the educational programs provided in schools within the district comply with United States and Louisiana Constitutions and federal law. He is sued in his official capacity.

11. Defendant Jeffrey Cox is a member of Livingston Parish School Board. As a School Board member, Mr. Cox is responsible for ensuring that the educational

programs provided in schools within the district comply with United States and Louisiana Constitutions and federal law. He is sued in his official capacity.

12. Defendant Louis Carlisle is a member of Livingston Parish School Board. As a School Board member, Mr. Carlisle is responsible for ensuring that the educational programs provided in schools within the district comply with United States and Louisiana Constitutions and federal law. He is sued in his official capacity.

13. Defendant Milton Hughes is a member of Livingston Parish School Board. As a School Board member, Mr. Hughes is responsible for ensuring that the educational programs provided in schools within the district comply with United States and Louisiana Constitutions and federal law. He is sued in his official capacity.

14. Defendant Alton Leggette is a member of Livingston Parish School Board. As a School Board member, Mr. Leggette is responsible for ensuring that the educational programs provided in schools within the district comply with United States and Louisiana Constitutions and federal law. He is sued in his official capacity.

15. Defendant Keith Martin is a member of Livingston Parish School Board. As a School Board member, Mr. Martin is responsible for ensuring that the educational programs provided in schools within the district comply with United States and Louisiana Constitutions and federal law. He is sued in his official capacity.

16. Defendant Claire Peak-Coburn is a member of Livingston Parish School Board. As a School Board member, Ms. Peak-Coburn is responsible for ensuring that the educational programs provided in schools within the district comply with United States and Louisiana Constitutions and federal law. She is sued in her official capacity.

17. Defendant Julius Prokop is a member of Livingston Parish School Board. As a School Board member, Mr. Prokop is responsible for ensuring that the educational programs provided in schools within the district comply with United States and Louisiana Constitutions and federal law. He is sued in his official capacity.

18. Defendant Alan Joe Murphy is Principal of Southside Junior High School. He is charged with supervision and management of the school and its educational programs. Principal Murphy is responsible for ensuring that Southside Junior High School complies with the United States and Louisiana Constitutions and federal law.

CLASS ACTION ALLEGATIONS

19. The named individual Plaintiff brings this action on behalf of herself and the Plaintiff class pursuant to Fed. R. Civ. P. Rules 23(a) and (b)(2). The class consists of all present, potential, and future students at Southside Junior High School whose rights to equal educational opportunity without discrimination on the basis of sex are violated by the mandatory single-sex instruction based on overbroad gender stereotypes proposed for Southside Junior High School.

20. Numerosity. The size of the class is indefinite, and includes the approximately nine hundred (900) students currently enrolled at Southside Junior High School. In addition, an indefinite number of future and potential Southside Junior High School will be the victims of discrimination based on their sex so long as Defendants' current sex segregation policies continue.

21. Adequacy of Representation. The named Plaintiff will represent fairly and adequately the interests of the class defined above. Plaintiff's attorneys include

experienced civil rights counsel who have litigated cases, including class actions, involving similar issues and claims.

22. Common Questions of Law and Fact. Common questions of law and fact affecting the class are involved, including but not limited to actions and omissions by Defendants, who have denied the Plaintiff class equal access to educational opportunities on the basis of sex.

23. Typicality of the Claims of Class Representatives. The claims of the named Plaintiff are typical of the claims of the class as a whole. The named Plaintiff is a member of the class defined herein and has suffered, and will continue to suffer, discriminatory denial of equal access to educational opportunities. The named Plaintiff alleges that she and the members of the class she seeks to represent is and will be subject to discrimination based on sex due to the discrimination complained of in this action.

24. Injunctive and Declaratory Relief. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate preliminary and permanent injunctive relief and corresponding declaratory relief with respect to the class as a whole.

STATUTORY FRAMEWORK

25. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, and federal regulations interpreting and implementing Title IX, 34 C.F.R. § 106.31 *et seq.*, prohibit schools receiving federal funding from excluding individuals from any educational program or activity based on their sex.

26. More specifically, Title IX regulations 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 (emphasis added).

27. Title IX regulations also state, “[A] recipient shall not, on the basis of sex . . . [p]rovide different aid, benefits, or services *or provide aid, benefits, or services in a different manner.*” 34 C.F.R. § 106.31(b)(2) (emphasis added).

28. Title IX regulations also state, “[A] recipient shall not, on the basis of sex . . . deny and person any such aid, benefit, or service.” 34 C.F.R. § 106.31(c).

JURY DEMAND

29. Plaintiffs demand a trial by jury on each and every claim to which they are so entitled.

FACTUAL ALLEGATIONS

30. Defendants and Southside Junior High School receive federal financial assistance and are subject to the requirements of Title IX.

31. Southside Junior High School is a public neighborhood school of approximately 900 students in grades six through eight in Denham Springs, Louisiana. Students are assigned to Southside Junior High School based on their place of residence. Students assigned to Southside Junior High School do not have the option of attending another public junior high school in the district. Approximately half of the student body at Southside Junior High School is female and approximately half is male.

32. During the 2004-2005 school year, the Louisiana Department of Education's School Accountability System determined that Southside Junior High School demonstrated "Recognized Academic Growth."

33. During the 2004-2005 school year, Southside Junior High School received a Three Star Performance Level out of a possible five stars under the Louisiana Department of Education's School Accountability System.

34. During the 2004-2005 school year, Southside Junior High School students on average performed well above state and national averages on standardized tests.

35. Prior to the 2006-2007 school year, Southside Junior High School has been fully coeducational, offering exclusively coeducational classes and activities.

36. Michelle Selden has attended Southside Junior High School since she was in the sixth grade.

37. Michelle Selden does not have the option to attend any other public high school for eighth grade.

38. The first day of school for the 2006-2007 school year at Southside Junior High School is August 9, 2006.

Southside Junior High School's Sex Segregation

39. In mid-May 2006, Southside Junior High School hosted a meeting for parents of current and incoming students, which Rhonda Selden, mother and next friend of Michelle Selden, attended. At that meeting, the principal of Southside Junior High School, Defendant Alan Joe Murphy, informed the parents in attendance that in the 2006-2007 school year, Southside Junior High School would segregate its students by sex. He

stated that the decision had already been made and that Defendant Livingston Parish School Board backed this decision.

40. 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 Junior High School. This presentation included a discussion of the different ways that boys and girls “process” information and differences in boys’ and girls’ brain structure and brain maturation.

41. According to the PowerPoint slide show presentation by Mr. Murphy that evening, 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 explained that instruction in the single-sex classrooms would be “based on quantifiable differences between male and female adolescents supported by scientific educational research.”

42. Mr. Murphy also asserted that sex segregation would remove “unnecessary stressors” from students’ classroom experience.

43. According to Mr. Murphy, students could interact with members of the other sex at home, at church, and in school clubs and extracurricular activities.

44. Mr. Murphy briefly outlined the differences in the instruction that would be given to girls and to boys.

45. For instance, 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 act as mentors for elementary school girls.

46. On the other hand, 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.

47. Mr. Murphy explained that the approaches that Southside Junior High School would utilize were based on the work of Leonard Sax and Michael Gurian, two popular writers on gender difference.

48. Mr. Murphy stated that Southside Junior High School 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 Junior High School teachers on the different teaching methods necessary for boys and girls.

49. When a parent who was disturbed by the description of the program that Southside Junior High School would be undertaking stated at the May 2006 meeting that she would like to send her child to a different school in Livingston Parish, where students were not segregated by sex, Mr. Murphy responded that no such transfers would be permitted by Defendant Livingston Parish School Board.

50. Michelle Selden's parents and next friends, Rhonda Selden and Darren Selden, had not heard about Southside Junior High School's plan to institute all single-sex classes prior to the May 2006 meeting. Other than a brief mention of the planned program at a school assembly shortly before the May 2006 meeting, Michelle Selden also had not heard about the plan to institute sex segregation prior to this date.

51. On information and belief, Defendants decided to segregate Southside Junior High by sex without consulting with students or parents about this approach.

Leonard Sax's Theories of Gender Difference

52. Defendants have referred to Dr. Leonard Sax's book *Why Gender Matters* as a resource on which they are relying in developing Southside Junior High School's sex-segregated program. They have also recommended it as a resource to parents.

53. 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. He does not perform scientific research and he does not have training in education.

54. In *Why Gender Matters*, Dr. Sax states that girls have more sensitive hearing than boys. Thus, he concludes, teachers should not raise their voices in talking to girls and must maintain quiet classrooms, as girls are easily distracted by noises. Conversely, teachers should yell at boys, because of boys' lack of hearing sensitivity.

55. In *Why Gender Matters*, Dr. Sax states that 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 play contact sports, to learn the rules of aggression. Such play is more dangerous for girls, because girls are less biologically able to manage aggression.

56. In *Why Gender Matters*, Dr. Sax states that teachers should smile at girls and look them in the eye. However, teachers should not look boys directly in the eye.

57. In *Why Gender Matters*, Dr. Sax urges that boys be taught in competitive, high-energy teams. In contrast, teachers should assure that girls are relaxed in class. For

instance, girls should be encouraged to take their shoes off. Also, girls should never be given strict time limits to complete tasks. Stress makes boys perform better and girls perform worse, according to Dr. Sax.

58. In *Why Gender Matters*, Dr. Sax explains that because of sex differences in the brain, girls need real world applications to understand math, while boys naturally understand math theory. For instance, girls understand number theory better when they can count flower petals or segments of artichokes to make the theory concrete.

59. In *Why Gender Matters*, Dr. Sax explains that literature teachers should not ask boys about emotions in literature, but should simply focus on what actually happened in the story. In contrast, teachers should focus on emotions rather than action in teaching literature to girls.

60. In *Why Gender Matters*, Dr. Sax argues that boys should receive strict, authoritarian discipline and that boys respond best to power assertion. Girls should be disciplined by appeals to their empathy.

61. In *Why Gender Matters*, Dr. Sax explains that most boys enjoy taking risks, and most girls do not.

62. In *Why Gender Matters*, Dr. Sax explains that “anomalous males”—boys who like to read, who don’t enjoy competitive sports or rough-and-tumble play, and who don’t have a lot of close male friends—should be firmly disciplined, should spend as much time as possible with “normal males,” and should be made to play competitive sports.

Michael Gurian's Theories of Gender Difference

63. Defendants have referred to Michael Gurian's *Boys and Girls Learn Differently!* and his *The Boys and Girls Learn Differently Action Guide for Teachers* ("*Action Guide*") as resources on which they are relying in developing Southside Junior High School's sex-segregated program. They have also recommended the former as a resource to parents.

64. On information and belief, Southside Junior High School staff attended the Gurian Institute's 2006 Summer Institute from July 11-15, 2006, in Colorado Springs, Colorado.

65. Michael Gurian is a therapist, corporate consultant, and novelist. He does not perform scientific research. He has written several popular books asserting brain differences between males and females.

66. In the *Action Guide*, Mr. Gurian repeatedly asserts that 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.

67. In the *Action Guide*, Mr. Gurian explains that boys face the most gender-based disadvantage in schools and that 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.

68. In the *Action Guide*, Mr. Gurian asserts that boys are more likely to play sports than girls because of differences between male and female brains and that 100 percent female participation in athletics isn't neurologically or hormonally realistic.

69. In the *Action Guide*, Mr. Gurian states that 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.

70. In the *Action Guide*, Mr. Gurian explains that 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. Mr. Gurian concludes that “alphas” must be brought in to manage students seeking to dominate.

71. In the *Action Guide*, Mr. Gurian explains that 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.

72. In the *Action Guide*, Mr. Gurian explains that boys do better than girls at high level math and physics and this is unlikely to change because of differences in male and female brains. According to Mr. Gurian, 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, Mr. Gurian explains, “[A]n adolescent girl may perform well on any test, including math, a few days a month.” Boys, on the other hand, always have a natural adeptness at abstract math.

73. In the *Action Guide*, Mr. Gurian explains that 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.

74. In the *Action Guide*, Mr. Gurian recommends separating middle school girls and boys into separate-sex institutions or single-sex classes. He explains that 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. Mr. Gurian does not explain why boys and girls cannot learn to manage their emotions associated with growth and development in a coeducational class.

Additional Background

75. Michelle Selden has grown up with role models that have shown her that females need not behave according to gender stereotypes. For instance, both her father and her mother have served in the military. Both her father and her mother are volunteer firefighters. As a result, she understands that girls, as well as boys, can excel at activities that require physical exertion, strict discipline, performance under stress, quick decisions, and risk-taking.

76. Michelle Selden herself has sought out activities that require physical exertion, strict discipline, performance under stress, quick decisions, and risk-taking. For instance, she has a purple belt in Shaolin Kung Fu. She is a certified scuba diver. She is a volunteer firefighter cadet. She is comfortable interacting with both boys and girls.

77. All girls are not alike. Research demonstrates that the psychological differences between individual girls are far larger than any average psychological differences between girls and boys.

78. All boys are not alike. Research demonstrates that the psychological differences between individual boys are far larger than any average psychological differences between boys and girls.

79. Psychological research demonstrates that on average, boys and girls are psychologically more alike than different.

80. Gender is an imprecise proxy for psychological, emotional, and developmental differences in adolescents.

FIRST CLAIM FOR RELIEF
(Violation of Title IX of the Education Amendment Act of 1972, 20 U.S.C. § 1681(a)
and 34 C.F.R. §§ 106.31, 106.34.)

81. Plaintiff realleges and incorporates, as though fully set forth herein, each and every allegation contained above.

82. By segregating all classes at Southside Junior High School by sex, Defendants have discriminated against Plaintiff and the proposed Plaintiff class on the basis of their sex in violation of Title IX.

83. Defendants engaged in such conduct intentionally, willfully, and in disregard of the rights of Plaintiff and the proposed Plaintiff class.

84. Plaintiff and the proposed Plaintiff class will suffer injury as a result of Defendants' illegal conduct.

SECOND CLAIM FOR RELIEF
(Violation of Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, 42 U.S.C. § 1983)

85. Plaintiff realleges and incorporates, as though fully set forth herein, each and every allegation contained above.

86. By segregating all classes at Southside Junior High School by sex on the basis of overbroad and inaccurate generalizations about gender differences, Defendants have intentionally discriminated against Plaintiff and the proposed Plaintiff class on the basis of their sex in violation of their rights to equal protection of the laws, secured by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

87. Defendants engaged in such conduct intentionally, willfully, and in disregard of the rights of Plaintiff and the proposed Plaintiff class.

88. Plaintiff and the proposed Plaintiff class will suffer injury as a result of Defendants' illegal conduct.

THIRD CLAIM FOR RELIEF
(Violation of Right to Individual Dignity; Louisiana State Constitution, Article 1, § 3)

89. Plaintiff realleges and incorporates, as though fully set forth herein, each and every allegation contained above.

90. By segregating all classes at Southside Junior High School by sex on the basis of overbroad and inaccurate generalizations about gender difference, Defendants have discriminated against Plaintiff and the proposed Plaintiff class on the basis of their sex arbitrarily, capriciously, and unreasonably, in violation of their rights to individual dignity, secured by Article 1, Section 3 of the Louisiana State Constitution.

91. Defendants engaged in such conduct intentionally, willfully, and in disregard of the rights of Plaintiff and the proposed Plaintiff class.

92. Plaintiff and the proposed Plaintiff class will suffer injury as a result of Defendants' illegal conduct.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself and the proposed Plaintiff class, respectfully requests that this Court enter judgment in her favor:

- (1) Certifying the proposed class of Plaintiffs;
- (2) Enjoining Defendants from segregating any class or educational program by sex;
- (3) Permanently enjoining all Defendants, their agents and employees, and all persons in concert or participation with them, including any successors and assigns, to take all affirmative steps necessary to remedy the past and present effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future.
- (4) Declaring that the actions of Defendants described above constitute discrimination on the basis of sex in violation of Plaintiffs' rights under federal and state law;
- (5) Awarding Plaintiffs their expenses, costs, and fees associated with the filing and maintenance of this action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable provision of law; and
- (6) Awarding other equitable and further relief as the Court deems just and proper.

Dated: August 2, 2006

Respectfully submitted,

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