

**AMERICAN CIVIL
LIBERTIES UNION
of ALABAMA**

207 Montgomery St., Suite 910
Montgomery, Alabama 36104
334-262-0304
www.aclualabama.org



November 12, 2008

Superintendent Roy D. Nichols
Mobile County Public School System
1 Magnum Pass
Mobile, AL 36618

Dear Superintendent Nichols:

We have recently received reports from concerned parents that Hankins Middle School has segregated all students by sex for the 2008-2009 school year. Specifically, we understand that all Hankins Middle School students have been assigned exclusively to single-sex classes and prohibited from interacting with students of the other sex outside of class. We are writing to seek additional information about the program and to alert you to the ACLU's grave concerns regarding this arrangement's legality. Based on the reports we have received, the segregation appears to violate Title IX and its implementing regulations, the Equal Educational Opportunities Act (EEOA), and the Constitution. We hope that upon further consideration of the relevant federal law, this unlawful sex segregation will be promptly abandoned, thus avoiding litigation.

Title IX of the Education Amendments of 1972 provides "No person in the United States shall, on the basis of sex, be excluded from participation in . . . *any* education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a) (emphasis added). The Supreme Court has repeatedly held that this prohibition must be given "a sweep as broad as its language." *E.g., North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1983). We understand Hankins Middle School not only excludes students from federally-funded education programs and activities on the basis of their sex, it provides *only* sex-segregated education, with no coeducational alternative. While in 2006 the U.S. Department of Education revised Title IX regulations addressing sex-segregated classes in coeducational schools, the revised regulations explicitly state that a coeducational school may only offer sex-segregated classes or activities when "[s]tudent enrollment in a single-sex class or activity is *completely voluntary*" and when the school "provides to all other students, including students of the excluded sex, a *substantially equal coeducational class or extracurricular activity in the same subject or activity.*" 34 C.F.R. § 106.34 (emphasis added). Any mandatory assignment of students to single-sex classes without a substantially equal coeducational alternative thus would clearly run afoul of law. Moreover, Title IX regulations issued by the United States Department of Agriculture and applicable to Hankins Middle School and the Mobile County Public School System as a result of its participation in the USDA-funded school lunch program flatly prohibit single-sex classes, even if participation in such classes is voluntary. 7 C.F.R. § 15a.34 ("A [USDA funding] recipient shall not provide any

So long as we have enough people in this country willing to fight for their rights, we'll be called a democracy
Roger Baldwin, ACLU Founder

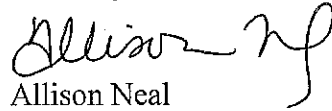
course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis”) These are only the most obvious examples of Hankins Middle School’s failure to conform to Title IX.

Moreover, the EEOA states, “[T]he assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws *unless such assignment is for the purpose of segregating students on the basis of . . . sex*” 20 U.S.C. § 1705 (emphasis added). The EEOA thus prohibits a school district from assigning students to sex-segregated schools. *See United States v. Hinds County Sch. Bd.*, 560 F.2d 619 (5th Cir. 1977) (holding that assigning students to single-sex schools violates EEOA). If the Mobile County Public School System is assigning students to Hankins Middle School, it has violated and continues to violate the EEOA.

The sex segregation at Hankins Middle School also appears to violate the United States Constitution. In *United States v. Virginia*, a case challenging the all-male admission policy at the Virginia Military Institute (VMI), the United States Supreme Court made clear that to comply with the Equal Protection Clause, a governmental actor must demonstrate an “exceedingly persuasive justification” for instituting single-sex education. *Virginia*, 518 U.S. 515, 540-42 (1996). According to statements made by principal Cheryl Wittner in response to parental complaints, the sex segregation at Hankins Middle School has been implemented to address supposed learning differences between boys and girls. But the Supreme Court has held that the Constitution does not permit single-sex education based on “gender-based developmental differences” or evidence of male and female “tendencies.” *Id.* at 516-17. As the Court explained in response to VMI’s argument that single-sex education was necessary because of “important differences between men and women in learning and developmental needs[,] . . . generalizations about the ‘way women are,’ estimates of what is appropriate for *most women*, no longer justify denying opportunity to women whose talent and capacity place them outside the average description.” 518 U.S. at 550. The Constitution guarantees that a student’s education will not be limited by anybody’s ideas about what a male or female student “typically” needs.

While schools must be given the tools necessary to allow all students to succeed, sex segregation—and the litigation that will inevitably follow should Mobile County Public School Systems fail to dismantle this clearly unlawful program—represent a wasteful diversion of energy and resources that would be better invested in proven methods of improving education, such as better teacher training, smaller classes, and greater parental involvement. Because of our grave concerns about the Hankins Middle School program, we seek additional information about its design, rationale, and implementation, as set out in the appended Open Records Act request. We request that you contact us immediately to discuss the method by which Mobile County Public School System will abandon this illegal and misguided experiment. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Allison Neal". The signature is written in a cursive style with a large, stylized initial "A" and "N".

Allison Neal
ACLU of Alabama

Emily J. Martin
ACLU Women's Rights Project

**MOBILE COUNTY PUBLIC SCHOOL SYSTEMS OPEN RECORDS ACT REQUEST
NOVEMBER 12, 2008**

Pursuant to Alabama open records law, Ala. Code § 36-12-40 to § 36-12-41, the American Civil Liberties Union of Alabama and the national American Civil Liberties Union Women's Rights Project request within 30 days the Mobile County Public School System produce and permit inspection and copying of the following documents.¹ Specifically we seek all policies, memoranda, letters, emails, directives, minutes, handbooks, and all other documents within your possession from the past two years addressing sex segregation in the Mobile County Public School System including:

- a) Any and all documents reflecting the classes and schools segregated by sex;
- b) Any and all documents concerning the planning, analysis, implementation and/or assessment of sex-segregated education, including but not limited to materials provided to and materials prepared by any employee of the Mobile County Public School System;
- c) Any and all documents setting forth the basis or rationale for any sex-segregated education program;
- d) Any and all documents setting forth the methods by which students have been assigned or by which students or parents have chosen to participate in any sex-segregated education;
- e) Any and all documents concerning the decision to institute sex-segregated education;
- f) Any and all documents setting out feedback from parents, students, teachers, or others addressing sex-segregated education;
- g) Any and all complaints regarding sex-segregated education, whether from parents, students, teachers, or any other individual;
- h) Any and all documents setting out the data and studies relied on in instituting sex-segregated education;
- i) Any and all documents reflecting any differences in teaching methods for girls and boys in sex-segregated education;
- j) Any and all documents reflecting any differences in curricula for girls and boys in sex-segregated education;
- k) Any and all documents reflecting any differences in curricula or teaching methods for

¹ The term "documents" is to be construed in its broadest sense to include anything upon which information is recorded.

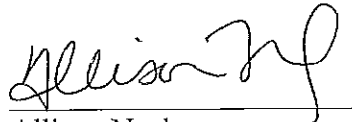
sex-segregated classes/schools in comparison to curricula or teaching methods used in coeducational classes/schools;

- l) Any and all documents that explain the method that will be used to evaluate the success or failure of sex-segregated education;
- m) Any and all educator training materials addressing sex-segregated education;
- n) Any and all notes from any trainings addressing sex-segregated education.

If this request is denied in whole or part, the ACLU asks that you justify all denials or deletions by reference to specific exemptions of the Open Records Act. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any requested information.

Responsive documents should be sent to the following address:

ACLU of Alabama
207 Montgomery Street, Suite 910
Montgomery, AL 36104



Allison Neal
ACLU of Alabama
207 Montgomery Street, Suite 910
Montgomery, AL 36104
(p) (334) 265-2754, 203
(f) (334) 269-5666

Emily J. Martin
ACLU Women's Rights Project
125 Broad St., 18th Fl.
New York, NY 10004
(p) (212) 549-2615
(f) (212) 549-2580