



October 26, 2012

Randy Nelson, Superintendent
La Crosse School District
807 East Avenue South
La Crosse, WI 54601

Transmitted electronically only: ranelson@lacrosseschools.org

Re: Sex separation in La Crosse School District

Dear Superintendent Nelson:

We appreciate your response to our Open Records Act request. We are writing to alert you that our review of the records strongly suggests that the single-sex program operating at Central High School violates federal law, including Title IX of the Education Amendments of 1972, and the United States Constitution.

The documents you produced in November, 2011, confirmed that Central High School operates girls-only classrooms in its ninth grade English and Algebra I classes.¹ This program appears to be unlawful because it articulates no specific government interest that justifies the program. Instead, the documents put forward the vague goals of improving the educational environment and meeting the “different learning styles”² of girls, which is a legally impermissible goal in that it rests on overbroad generalizations about the purportedly different learning styles and development of male and female students. Such stereotypes limit educational opportunities for both boys and girls, and are unlawful in public schools. In addition, the program appears to violate Title IX and its implementing regulations.³

1. The Central High School program appears to violate the Constitution because it lacks a permissible justification and is based in large part on “overbroad generalizations about the different talents, capacities, [and] preferences” of boys and girls.

¹ Email from Jeffrey Fleig, Associate Principal of Central High School, to Troy Harcey, Associate Superintendent of Instruction, School District of La Crosse (Nov. 13, 2011) [All documents referenced herein on file with the ACLU of Wisconsin].

² *Id.*; Letter from [author unknown] to parents of incoming 9th grade students (date unknown).

³ We do not object to single-sex programs and activities permitted by Title IX, 20 U.S.C. § 1681(a)(6-9), and by 34 C.F.R. § 106.34(a).

The Equal Protection Clause of the U.S. Constitution prohibits sex separation in education unless the government has an “exceedingly persuasive justification” for the sex separation, and only permits it where the sex separation is “substantially related to the achievement” of important educational needs. *United States v. Virginia*, 518 U.S. 515, 531, 533 (1996) (“*VMI*”). The Court made clear that the justification for single-sex education “must be genuine, not hypothesized or invented post hoc in response to litigation.” *VMI*, 518 U.S. at 533.

Moreover, the Supreme Court has held that the Constitution does not permit single-sex education to be based on “overbroad generalizations about the different talents, capacities, or preferences of males and females.” *VMI*, 518 U.S. at 533. Despite claims that the form and structure of the male only program at VMI was “‘justified pedagogically,’ based on ‘important differences between men and women in learning and developmental needs,’ [and] ‘psychological and sociological differences,’” the Court held that generalizations about a “typical” woman (or man), are not constitutionally adequate to justify a single-sex program. *See id.* at 549-50. Unproven theories of learning style differences between boys and girls are, therefore, an impermissible basis to support sex separation.

Documents produced in response to our Open Records Act request of November 11, 2011 do not indicate an adequate justification or government interest for the single-sex program at Central High School. Your response to our request for “records relating to the decision or rationale for creating single-sex education programs” consisted of ten pages of documents. The justification for the program was contained in a single paragraph in a letter to parents stating that its goal was “to provide a better learning environment for the student.”⁴ The same letter and additional communications discussing the single-sex classes stated that in order “for teachers to provide a more meaningful education to the student,” the teachers in single-sex classes will “adapt the instruction to meet the different learning styles of boys and girls.”⁵ These justifications fail to satisfy the burden of demonstrating an “exceedingly persuasive justification” because they are either too vague or are impermissible as a matter of law.

The articulated mission of the program to meet “different learning styles of boys and girls” is an impermissible basis for sex separation as a matter of law. As the Supreme Court has made clear, the provision of single-sex education cannot itself provide the justification for or objective of a single-sex program, as this confuses the “means” with the “end,” and constitutes a “notably circular” argument that distorts the applicable constitutional test. *VMI*, 518 U.S. at 545. Nor may single-sex programs use different teaching methods based on “generalizations about ‘the way women are.’” *Id.* at 550.

Although the goal of improving the learning environment for students is a legitimate governmental interest, that generalized statement is not sufficiently specific to justify a sex-based classification such as the offering of English and algebra courses only for girls and using “gender-based instruction.” Moreover, the District did not satisfy the burden of demonstrating a

⁴ Letter from [author unknown] to parents of incoming 9th grade students *supra* note 2.

⁵ *Id.*; *See also* Flyer, Gender Specific Course Offerings for 9th Grade Students (date unknown).

substantial relationship between the sex separation and the achievement of that goal. Central High School provided no basis to support its claims that single-sex classes improve the learning environment for girls, or about the purported differences between boys and girls on which the decision was apparently based. Central also failed to produce any documents quantifying the particular need for altering the learning environment for its students in the particular classes in question. No documents were produced demonstrating that Central considered *any* specific data, at the course, grade, school, or district level, in support of its decision. Nor were any valid studies or educational data produced demonstrating any link between single-sex education and any improved academic or behavioral outcomes elsewhere.

Though Central High School did not detail the specific differences in the learning styles of boys and girls that it aimed to address, the evidence suggests that its program was premised on overly broad generalizations and discredited theories about the supposedly different brains and development of boys and girls. Letters inviting parents of Central students to sign up for single-sex classes instructed those who would like to “find out more information” to visit the website of the National Association for Single Sex Public Education (NASSPE), the key advocacy group that promotes single-sex classes and instruction based on presumed, stereotypical gender differences.⁶ The reliance on NASSPE literature as information for parents also indicates that the program at Central was likely informed by the work of Dr. Leonard Sax, the director of NASSPE, who has argued, among other things, that because of purported physiological differences in how boys and girls hear sounds, teachers should speak loudly and directly to boys, but softly to girls, using terms of endearment; that because of differences in the ways boys and girls process emotion, English teachers should not ask boys about characters’ emotions, but should only focus on what the characters actually did, while they should focus on characters’ relationships and emotions when teaching girls; and that boys do well under stress, and girls do badly, so girls should not be given time limits on tests.⁷ Central’s reliance on these sources suggests that the school may well have implemented sex-specific instruction techniques such as these, based upon stereotypical assumptions about learning differences.

It therefore appears that the program was instituted with no justification beyond vague and unsubstantiated claims about gendered differences in learning and the potential for general improved outcomes from single-sex education, with no consideration of valid scientific data, no examination of data on the particular need to institute such a program in the ninth grade Algebra I or English classes at Central, and no input or oversight from the School District. The letters sent home describing the classes moreover suggest that the single-sex education program at Central High School was rooted in impermissible sex stereotypes about the purportedly different learning styles of boys and girls, and that those stereotypes permeated classroom instruction. While there may be biological and developmental differences between boys and girls, those differences cannot be translated into the need for different teaching methods in single-sex classrooms. See Diane Halpern, et al., *The Pseudoscience of Single-Sex Schooling*, 333 *Science*

⁶ Letter from [author unknown] to parents of incoming 9th grade students *supra* note 2; Flyer, Gender Specific Course Offerings for 9th Grade Students, *supra* note 5.

⁷ See Leonard Sax, Why Gender Matters: What Parents and Teachers Need to Know About the Emerging Science of Sex Differences 86, 88-92, 108-112 (2005); Leonard Sax, *Six Degrees of Separation: What Teachers Need to Know about the Emerging Science of Sex Differences*, *Educ. Horizons* 190, 195 (2006).

1706 (2011). These flawed educational theories have been widely discredited by reputable scientific research, and have been definitively foreclosed in public schools by the Supreme Court in *VMI*. The school’s justification falls far short of what would be necessary to demonstrate that the decision to segregate students on the basis of sex for certain academic subjects was “substantially related” to the goal of improving the learning environment for students. The program thus fails to satisfy the demands of the Constitution.

2. The Central High School program appears to violate the statutory prohibition in Title IX against separation on the basis of sex within coeducational institutions, as well as the implementing regulations of numerous regulatory agencies from which La Crosse School Department receives federal funds.

Under Title IX, “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). Separating students by sex within coeducational institutions, including separating students during academic classes, violates this prohibition on discrimination. Accordingly, numerous federal agencies have promulgated regulations to implement this Title IX mandate. For example, regulations issued by the United States Department of Agriculture (USDA) flatly prohibit single-sex classes. 7 C.F.R. § 15a.34 (“A [USDA funding] 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 . . .”). USDA regulations apply to all Wisconsin schools as a result of their participation in the USDA-funded school lunch program.

Moreover, while Title IX regulations promulgated by the United States Department of Education permit sex separation under certain limited circumstances as a matter of federal enforcement, its regulations require that any single-sex class within a coeducational school must be based on specific, identified objectives; must be implemented in an evenhanded manner; must be completely voluntary; must ensure that a substantially equal coeducational option is available;⁸ and must be periodically evaluated “*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)(1), (4) (emphasis added).

The girls-only classes at Central High School violate the regulations of the Department of Education for substantially the same reasons they violate the Constitution. The documents produced do not indicate that the single-sex program at Central is based on either of the two permissible justifications identified by the Department of Education: an assessment of individual

⁸“Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include, but are not limited to, the following: the policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.” 34 C.F.R. §106.34(b)(3).

student need or an established policy to improve educational outcomes by offering diverse educational options. First, as discussed above, there is no evidence that school administrators conducted any individualized assessment of students' educational needs (as evidenced by limited or deficient educational achievement, *see* 71 Fed. Reg. 62,530, at 62,535) relating to English and Algebra I before implementing the program. On the contrary, it appears that neither the school nor the school board conducted any evaluation of student grades or other performance indicators in the grades or classes in question, or of any other school or district specific data. Rather, the decision appears based on vague and unsupported beliefs that boys' and girls' learning styles are different, and that improvements in the learning environment could be achieved by gender-specific instruction.

Second, the documents do not suggest that La Crosse School District has any established policy of offering diverse educational options to parents, or that the implementation of the program was aimed at improving student achievement through offering such options. *See* 71 Fed. Reg. at 62,534 (explaining that in order for "diversity" justification to be valid under the regulation, there must actually be a diversity of educational options of which single-sex classes is only one).

Moreover, the lack of documentation associated with the program raises significant questions regarding its compliance with other Department of Education requirements, including whether the coeducational alternative offered is substantially equal and whether the program was completely voluntary. While the documents indicate that "mixed-gender classes" were offered in addition to the single-sex classes in English and Algebra I and that the program was optional, no information was provided about how the coed classes compare to the girls-only classes, other than to state they used the same curricula but different instructional techniques.⁹ The documents also fail to provide any information about the method of selection of students for inclusion in the program once parental preferences had been submitted.¹⁰ For example, it is not clear how students would be selected should the number of students who sign up exceed the number of available slots.

Finally, while the documents do not indicate whether the required bi-annual analysis of the program took place, it is apparent that the program could not meet the requirement to ensure that it not be based on "overly broad generalizations about the different talents, capacities, or preferences of either sex," 34 C.F.R. § 106.34(b)(4)(i), in light of its explicit premise that boys and girls have different learning styles and require the use of different teaching techniques, and its likely employment of those different techniques in the classroom.

In light of these serious legal concerns, we respectfully request that the LaCrosse School District agree to cease all single-sex classrooms by the start of the next school year, at the latest. Should the schools refuse this request, the ACLU will consider pursuing additional legal action. We anticipate your prompt response.

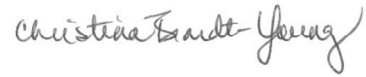
⁹ Letter from [author unknown] to parents of incoming 9th grade students *supra* note 2; Flyer, Gender Specific Course Offerings for 9th Grade Students, *supra* note 5.

¹⁰ *Id.*

Sincerely,



Karyn L. Rotker
Senior Staff Attorney
ACLU of Wisconsin
krotker@aclu-wi.org



Christina Brandt-Young
Attorney
ACLU Women's Rights Project
wrp_cby@aclu.org

electronic copy:

Troy D. Harcey, Associate Superintendent of Instruction
Robert Soldner, Wisconsin Dept. of Public Instruction