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RE: Unlawful Sex Discrimination in Florida's Public Schools

Dear Sir and Madam:

Thank you for your response to our request for public records concerning sex segregated educational programs in the State of Florida. We have closely examined the documents you provided and we now write with a summary of our findings.

Our findings raise grave concerns: Based on the data you provided, it appears that many single-sex educational programs:

- fail to comply with stringent federal and state laws governing such programs;
- are based on discredited theories and stereotypes about how girls and boys learn, thereby depriving children of their right to be treated as individuals and limiting children's opportunities and future prospects; and
- are not subject to adequate monitoring and enforcement of state and federal civil rights laws by the Florida Department of Education.

The Department of Education (DOE) has a legal obligation to the children of this state to eradicate sex discrimination in educational programs. We therefore call upon the DOE to: (1) investigate whether unlawful single-sex programs that were in place during the 2010-2011 school year have continued into the current 2011-2012 school year; (2) take every available action to reform these unlawful programs, and sanction schools that fail to comply with the law; and (3) going forward, insist on a full, periodic accounting of single-sex programs from each and every Florida school district, and thoroughly investigate and rectify every instance of illegality.¹

To Be Lawful, Sex Segregated Programs Must Meet Stringent Requirements

Florida's schools are obligated to comply with federal constitutional and statutory law prohibiting sex discrimination, including the Equal Protection Clause of the U.S. Constitution,² Title IX of the Education Amendments of 1972,³ and regulations promulgated by the U.S. Department of Education and other federal agencies from which the schools accept funding.⁴ Title IX states, "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[.]"⁵ The statute then sets out certain limited exemptions to this far-reaching policy.⁶ The broadness of Title IX's ban on sex discrimination, and the specificity and narrowness of the exemptions, clearly indicate the intent of Congress broadly to abolish sex segregation in education within coeducational institutions.

¹ This letter primarily concerns single-sex programs and activities within coeducational schools. Our investigation of unlawful sex segregated programs in Florida is ongoing, and we are currently scrutinizing sex segregated schools in Florida – the so-called "dual academy" structure – an experiment that has received much national attention but often violates nondiscrimination law and fails to deliver academic results. We will communicate with you and/or individual school districts as findings from that phase of our investigation emerge.

² U.S. CONST. amend. XIV, §1.

³ 20 U.S.C. § 1681 (2006).

⁴ 45 C.F.R. § 86.34 (2011) (DHHS); 7 C.F.R. § 15a.34 (2012) (USDA); 6 C.F.R. § 17.415(a) (2012) (DHS).

⁵ 20 U.S.C. § 1681(a).

⁶ These exceptions cover some institutions' admissions policies, social fraternities and sororities, youth service organizations such as Girl Scouts and Boy Scouts, specified American Legion-sponsored events, some mother-daughter and father-son activities, and some beauty pageants. *Id.* Title IX also permits sex segregated living facilities. *Id.* § 1686.

Among the numerous federal regulations implementing Title IX, some, like those issued by the United States Department of Agriculture (USDA), flatly prohibit single-sex educational programs and schools.⁷ Although Department of Education regulations implementing Title IX were amended in 2006 to allow schools to offer single-sex programs under certain limited circumstances, the regulations tolerate sex segregation only where “[e]ach single-sex class” satisfies several critical safeguards, including that the program be justified at its inception by one of two specific “important objective[s],” and be “substantially related” to achieving that objective; enrollment in the classes be “completely voluntary”; and the program offer a substantially equal coeducational alternative.⁸ As explained in an *amicus curiae* brief filed on behalf of the U.S. Department of Justice and Department of Education in *Doe v. Vermillion Parish School Board*,⁹ the Department of Education’s regulations “make clear that single-sex classes are the exception rather than the rule and place the burden on recipients wishing to establish such classes to show that they have met the criteria specified in the regulations.”¹⁰

The United States Supreme Court’s interpretation of the Constitution’s Equal Protection Clause also demands that single-sex programs be rigorously supported by specific and concrete reasons.¹¹ To satisfy the U.S. Constitution, schools must demonstrate an “exceedingly persuasive justification” for any program that excludes students on the basis of their sex, and such justification cannot be based on “overly broad generalizations about the different talents, capacities, and preferences” of boys and girls.¹² As detailed below, it does not appear that a single Florida school has provided anything approaching such a rigorous justification.

⁷ 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 Florida’s public schools as a result of their participation in the USDA-funded school lunch program.

⁸ 34 C.F.R. § 106.34(b)(1) (2011); *Id.* § 106.34(b)(1)(i) (requiring that schools justify the adoption of segregated programs by demonstrating a substantial relationship between the single-sex nature of the program and improvement in student achievement, or by describing particular, identified educational needs of the district’s students).

⁹ 421 Fed. App’x 366 (5th Cir. 2011).

¹⁰ Brief for the United States as Amicus Curiae Supporting Appellants at 16, *Doe v. Vermilion Parish Sch. Bd.*, 421 Fed. App’x 366 (5th Cir. 2011) (No. 10-30378).

¹¹ *United States v. Virginia*, 518 U.S. 515, 540-42 (1996).

¹² *Id.* at 531, 533.

Similarly, Florida law broadly guarantees Florida's schoolchildren the right to an education free from sex discrimination, providing only a narrow exception for single-sex programs schools if such programs meet specific requirements. Florida law and regulations establish the right of all students, regardless of sex, to equality of access to educational programs free from discrimination.¹³ State regulation defines "discrimination" to include "*unnecessarily* separate educational programs or activities" on the basis of an individual's sex.¹⁴ This definition underlines the demanding standard to which justifications for sex segregated programs are to be held: Any segregation must not merely be potentially advantageous or preferred by school administrators, but must in fact be *necessary*.

The 2008 state law authorizing certain sex segregated programs parallels the 2006 federal regulations, confirming that sex segregated programs are to be a small and tightly controlled subset of a generally coeducational system.¹⁵ The law requires that all sex segregated programs be completely voluntary, paralleled by comparable co-educational programs, and that they be evaluated biannually to ensure their effectiveness.¹⁶ In addition, the law requires that for every single-sex program offered to students of one gender, an equivalent program must be offered to students of the other gender.¹⁷ Moreover, the statute did not alter the bulk of Florida's extensive and detailed law prohibiting discrimination in schools. The authorization is limited to certain "class[es], extracurricular activit[ies], and school[s]" meeting defined criteria.¹⁸ It therefore remains the law in Florida that, even where classes, extracurricular activities, and schools are segregated, all other aspects of the educational experience – including guidance services, counseling services, financial assistance, and promotional efforts such as career awareness activities, open houses, parent programs, shop and laboratory demonstrations, and summer camps – must remain available to all students equally.¹⁹

¹³ FLA. STAT. § 1000.05 (2011).

¹⁴ FLA. ADMIN. CODE ANN. 6A-19.001(4)(a)(4) (1985) (implementing FLA. STAT. § 1000.05 (2011)) (emphasis added).

¹⁵ FLA. STAT. § 1002.311 (2011).

¹⁶ *Id.* §§ 1002.311(1)(b), (2).

¹⁷ *Id.* § 1002.311(a).

¹⁸ *Id.* § 1002.311.

¹⁹ FLA. STAT. § 1000.05(2)(e) (2011); FLA. ADMIN. CODE ANN. 6A-19.001(4)(a)(4) (1985).

Many of Florida's Sex Segregated Educational Programs Are Likely Unlawful

Sex segregated educational programs are fairly widespread in Florida, although the number of schools with single-sex classes has decreased in recent years from forty-two schools in nineteen districts in the 2008-2009 school year, to thirty-two schools in sixteen districts in 2010-2011. Of these programs, data provided by the schools to the Department of Education for the 2010-2011 school year indicates that several violate federal and/or state law as follows:²⁰

- assignment to single-sex programs is compulsory, or virtually compulsory;
- schools fail to offer a co-educational alternative;
- schools offer a single-sex program to students of one gender, but not the other;
- single-sex programs are not adequately justified at their inception;
- programs are not adequately evaluated at two-year intervals; and/or
- impermissible sex stereotypes appear in the purported justification for, or in the implementation of, single-sex programs.

Some examples should suffice to demonstrate the potentially widespread nature of these violations. First, several schools admitted to the DOE that their sex segregated programs are not voluntary, violating the plain language of federal and state law.²¹ For example, in the 2010-2011 school year, Highlands Middle School (MS) in Duval County, required students wishing to opt out of its single-sex program to withdraw from the school entirely and enroll in another school.²² Similarly, in the same year, Bok Academy and Hartridge Elementary School (ES) in Polk County offered no co-ed alternatives nor opt-out options, simply stating that dissenting students must choose another school.²³ At Lake Shore MS in Palm Beach County, where many classes were segregated, the school reported no notice to parents of an

²⁰ 2010-2011 is the most recent school year for which you provided records to the ACLU.

²¹ 34 C.F.R. § 106.34(b)(1)(iii); FLA. STAT. § 1002.311(2)(a) (2011).

²² DUVAL DIST., RESPONSE OF DUVAL DIST. TO THE ANNUAL EQUITY UPDATE 2010-11. This and all similar documents are on file with the ACLU.

²³ POLK DIST., RESPONSE OF POLK DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 59, 61.

opportunity to opt in or out of single-sex, stating only that such a request “would be honored,” if it were made.²⁴ Finally, in 2010-2011, certain boys in Riverdale ES in Orange County were placed by the school, acting unilaterally, into single-sex classes, and the boys’ parents were only informed after the fact and given the option of removing the boys from those classes.²⁵ In many schools, moreover, enrollment numbers provided for all-boy, all-girl, and co-educational classes were so evenly distributed that they strongly suggest mandatory assignment.²⁶

Other school districts made statements to the DOE that, while unclear, suggest that co-educational alternatives are not provided.²⁷ This itself violates federal and state requirements, and in addition means that choice by parents and students cannot freely or fully be exercised. For example, Jean Ribault MS in Duval County and Edward Bok Academy in Polk County both reported that for the 2010-2011 school year many classes were offered in single-sex format only.²⁸ The administrators of Jean Ribault MS took the position that any child seeking a co-ed class would have to request reassignment to another school.²⁹ In the same year, Spanish and Algebra classes at Matthew Gilbert MS, in Duval County, were offered only in single-sex format, with no coeducational alternative.³⁰ Similarly, William Dwyer HS in Palm Beach County offered no co-ed alternative for ninth and tenth grade reading.³¹ In other cases, the school’s response suggests, but does not definitively state, that co-ed classes were not uniformly offered.³²

²⁴ PALM BEACH DIST., RESPONSE OF PALM BEACH DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 87.

²⁵ ORANGE DIST., RESPONSE OF ORANGE DIST. TO THE ANNUAL EQUITY UPDATE 2010-11.

²⁶ E.g. FLA. DEP’T. OF EDUC., 2010-11 SINGLE-SEX CLASSES AND SCHOOLS 1 (Immokalee MS in Collier Dist.); *Id.* at 4, INDIAN RIVER DIST., RESPONSE OF THE INDIAN RIVER DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 (Fellsmere ES in Indian River Dist.); MANATEE DIST., RESPONSE OF THE MANATEE DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 (Oneco ES).

²⁷ COLUMBIA DIST., RESPONSE OF COLUMBIA DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 19 (stating in regard to single-sex classes at Richardson MS that “[p]arents are made aware of the gender same classes at the summer orientation.”); HERNANDO DIST., RESPONSE OF HERNANDO DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 (Westside ES in Hernando District states that core subjects are “strictly single-gender”). *C.f.* FLA. STAT. § 1002.311(1)(b) (2011) (requiring schools maintaining a segregated “class, extracurricular activity, or school” to provide a coeducational “class, extracurricular activity, or school” to all students).

²⁸ FLA. DEP’T. OF EDUC., 2010-11 SINGLE-SEX CLASSES AND SCHOOLS 2, 6.

²⁹ DUVAL DIST., RESPONSE OF DUVAL DIST. TO THE ANNUAL EQUITY UPDATE 2010-11.

³⁰ FLA. DEP’T. OF EDUC., 2010-11 SINGLE-SEX CLASSES AND SCHOOLS 1-2.

³¹ PALM BEACH DIST., RESPONSE OF PALM BEACH DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 90.

³² For example, Hillsborough stated that co-ed options exist at “every site,” not for every class. HILLSBOROUGH DIST., RESPONSE OF HILLSBOROUGH DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 44.

In addition to demonstrating failure to ensure voluntariness and the provision of co-educational alternatives, school self-report data also makes plain that some single-sex classes offered to students of one gender are not paralleled by an equivalent class offered to students of the other gender, as explicitly required by state statute.³³ For instance, as recently as the 2010-2011 academic year, Duval County reported that Matthew Gilbert MS offered single gender journalism and critical thinking classes to boys, but not to girls.³⁴ In the same year, Highlands MS, North ES in Okeechobee County, and Lake Wales HS in Polk County all offered several single-sex classes to boys, with no equivalent class offered to girls.³⁵

Several programs also exhibit highly problematic features relating to their justification. In fact, multiple districts provided no specific justification for their single-sex programs. For example, when asked specifically “How is single-gender education being justified?” the response of administrators at Jean Ribault MS was both a *non sequitur* and impermissibly vague: “[S]ingle-gender based classes are justified by providing gender specific instructions [sic] based on learning styles to increase grades and test scores while expanding educational opportunities for boys and girls.”³⁶ When justifications are provided, all are extremely cursory and non-specific,³⁷ failing to demonstrate any substantial relationship between the single-sex nature of the program and improvement in student achievement, and failing to describe particular, identified educational needs of the district’s students, as required by federal regulations.³⁸

Moreover, some justifications embody illegal sex stereotypes. For example, Orange County defended its single-sex program based on asserted “specific brain difference between boys and girls,” and further asserted that “[c]ognitive processes, especially in the area of reading, are different for males and females.”³⁹ These assertions of typically female and male

³³ FLA. STAT. § 1002.311(1)(a) (2011).

³⁴ FLA. DEP’T. OF EDUC., 2010-11 SINGLE-SEX CLASSES AND SCHOOLS 2.

³⁵ *Id.* at 3 (no girls’ section at Highlands MS for several classes); OKEECHOBEE DIST., RESPONSE OF OKEECHOBEE DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 (single-sex classes offered to boys but not girls at N. ES); POLK DIST., RESPONSE OF POLK DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 62 (single-sex class offered to boys only at Lake Wales HS).

³⁶ DUVAL DIST., RESPONSE OF DUVAL DIST. TO THE ANNUAL EQUITY UPDATE 2010-11.

³⁷ *See, e.g.* PALM BEACH DIST., RESPONSE OF PALM BEACH DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 87; DUVAL DIST., RESPONSE OF DUVAL DIST. TO THE ANNUAL EQUITY UPDATE 2010-11.

³⁸ 34 C.F.R. § 106.34(b)(1)(i) (2011).

³⁹ ORANGE DIST., RESPONSE OF ORANGE DIST. TO THE ANNUAL EQUITY UPDATE 2010-11. *See also* BREVARD DIST., RESPONSE OF BREVARD DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 87 (citing intentions to provide learning opportunities geared toward “brain-based learning preferences”); DUVAL DIST., RESPONSE OF DUVAL DIST. TO THE ANNUAL EQUITY

tendencies in learning are legally impermissible as bases for a single-sex program,⁴⁰ and are just the sort of generalizations that the Constitution rejects as a basis for sex classifications, because they obscure and ignore individual students' capacities and needs.⁴¹ Orange County further stated that it teaches boys and girls differently, using different materials for boys and girls, with the aim of teaching girls "confidence," and boys "integrity."⁴²

The sex segregated programs in Polk County and other districts are, moreover, informed by the work of Leonard Sax, a single-sex education consultant whose advice to teachers is pervaded by archaic gender stereotypes.⁴³ For example, Sax instructs that teachers should smile at girls and look them in the eye, but must never look boys directly in the eye or smile at them; that boys do well under stress, and girls do badly, so girls should never be given time limits on a test; that literature teachers should discuss characters' emotions with girls but not boys; and that boys should receive strict discipline based on asserting power over them, including spankings, but that girls must never be spanked.⁴⁴ Sax further instructs that a boy who likes to read, does not enjoy contact sports, and does not have many close male friends has a problem, even if he thinks he is happy, and that such a boy should be firmly disciplined, required to spend time with "normal males," and made to play sports.⁴⁵ Such outlandish pedagogical methods, reflecting and reinforcing gender stereotypes, violate the equal protection guarantees of the U.S. Constitution.⁴⁶

UPDATE 2010-11 (justifying single-sex classes "based on learning styles"); HERNANDO DIST., RESPONSE OF HERNANDO DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 (stating intentions "to create learning environments conducive to gender learning differences"); PALM BEACH DIST., RESPONSE OF PALM BEACH DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 89 (citing intentions to provide for "differing learning styles of males and females").

⁴⁰ 34 C.F.R. 106.34(b)(4)(i) (2011).

⁴¹ *United States v. Virginia*, 518 U.S. 515, 540-42 (1996).

⁴² ORANGE DIST., RESPONSE OF ORANGE DIST. TO THE ANNUAL EQUITY UPDATE 2010-11.

⁴³ POLK DIST., RESPONSE OF POLK DIST. TO THE ANNUAL EQUITY UPDATE 2010-11 60, 63.

⁴⁴ LEONARD SAX, *WHY GENDER MATTERS: WHAT PARENTS AND TEACHERS NEED TO KNOW ABOUT THE EMERGING SCIENCE OF SEX DIFFERENCES* 86, 88-92, 108-12, 179-83, 188 (2005).

⁴⁵ *Id.* at 218-28.

⁴⁶ In the VMI case, the Supreme Court made clear that pedagogical methods can be key to determining whether the educational opportunities offered to the sexes are truly equal, when it rejected arguments that a women's school focusing on a cooperative method of education that reinforced self-esteem was substantially equal to VMI's confrontational style of education. *Virginia*, 518 U.S. at 547-51.

The Florida State Department of Education Has Failed to Enforce Nondiscrimination Laws against Sex Segregated Programs

Florida law imposes affirmative obligations on the State Department of Education, and particularly on the DOE's Office of Equal Educational Opportunity (OEEO), to implement nondiscrimination laws through monitoring, investigation, and enforcement.⁴⁷ Specifically, the OEEO must enforce Title IX,⁴⁸ and state nondiscrimination law.⁴⁹ It must require the submission of compliance data by school boards, and after one warning, impose monetary sanctions on any board that does not comply.⁵⁰ Where the OEEO finds failures by school boards to comply with Title IX, it must report those failures to the Commissioner of Education, upon which the State Board of Education is to declare noncompliant school boards ineligible to receive monetary grants from the state.⁵¹ In cases where schools violate state nondiscrimination laws, the OEEO must prescribe remedies to the schools.⁵² The state is also responsible for increasing the participation of girls in programs and courses in which they are traditionally underrepresented, such as mathematics, science, computer technology, electronics, and engineering.⁵³ By implication, to the extent that girls' participation in these areas is hampered by sex segregated programs, the OEEO must take corrective action.

Based on documents provided to the ACLU by the Florida Department of Education, it appears that the OEEO does monitor sex segregated educational programs by requiring self-reporting by districts on their current and former single-sex programs. There is, however, no indication that the OEEO enforces the reporting requirement when a district fails to comply in full, such as by failing to answer important questions regarding observance of nondiscrimination law. For example, for the 2010-2011 school year, Hillsborough County provided no information in its self-report about individual schools,⁵⁴ while Indian River County simply provided no answer to the OEEO's questions regarding Title IX compliance.⁵⁵ There is no

⁴⁷ FLA. STAT. § 1000.05(6) (2011).

⁴⁸ *Id.* § 1000.05(6)(f).

⁴⁹ *Id.* § 1000.05(6)(g).

⁵⁰ *Id.* § 1000.05(6)(e).

⁵¹ *Id.* § 1000.05(6)(g).

⁵² *Id.* §§ 1000.05(6)(b), (c).

⁵³ *Id.* § 1000.05(4).

⁵⁴ HILLSBOROUGH DIST., RESPONSE OF THE HILLSBOROUGH DIST. TO THE ANNUAL EQUITY UPDATE 2010-11.

⁵⁵ INDIAN RIVER DIST., RESPONSE OF THE INDIAN RIVER DIST. TO THE ANNUAL EQUITY UPDATE 2010-11.

evidence of any effort by the OEEEO to compel these districts to provide the missing information. Yet more troublingly, even though district self-report data strongly suggest many instances of single-sex programs violating state and federal law and regulations, there is no evidence of any investigation by the OEEEO, nor of any actions taken to stop the violations, nor of reporting to other government bodies as required by law.⁵⁶

In sum, there appears to be widespread failure to comply with federal and state anti-discrimination laws and regulations among single-sex programs in Florida's public schools. Despite having received notice of these failures through its yearly collection of data from school districts, the Florida Department of Education, and in particular its Office of Equal Educational Opportunity, has failed to adequately investigate violations or probable violations, and appears to have taken no steps whatsoever toward rectifying violations or punishing offenders, as required by law.

We therefore call upon the DOE act immediately to come into compliance with its statutory obligations to investigate school districts and enforce the law in all cases. Where the 2010-2011 data provided to the ACLU indicates that programs are unlawful, we demand that that the DOE investigate to determine whether these programs have continued into the present school year. The DOE must take immediate and unequivocal action to remedy any situation where Florida's students are being denied their right to an education free from sex stereotypes and other forms of sex discrimination.

Please do not hesitate to contact us to discuss these findings and recommendations further. We look forward to working with you to ensure that all of Florida's schoolchildren enjoy equal access to public educational resources in an environment free from discrimination.

Sincerely,

/s/ Maria Kayanan

Maria Kayanan
Associate Legal Director
ACLU of Florida



Mie Lewis
Senior Staff Attorney
ACLU Women's Rights Project

⁵⁶ The ACLU's records request provided multiple opportunities for the disclosure of such records. See, item 4 (requesting training and technical assistance materials), and item 5 (requesting records reflecting monitoring, evaluation, and/or review of single-sex programs).

Attachments:

Exhibit 1: ACLU request for records pertaining to single-sex educational programs (Dec. 22, 2011)

Exhibit 2: Cover letter accompanying Florida DOE response to ACLU records request (Feb. 8, 2012)

Exhibit 3: Referenced pages from Florida DOE response to ACLU records request.

Exhibit 4: DOJ *Amicus* Brief in *Doe v. Vermillion Parish School Board*.