



November 7, 2011

Daniel Nerad, Superintendent  
James Howard, School Board President  
School Board Members  
Madison Metropolitan School District  
545 W. Dayton St.  
Madison WI 53703-1967

Dear Superintendent Nerad, President Howard, and Members of the Board,

We write to provide our analysis of the Business and Education Plans submitted to the School Board on October 28, 2011 by the Urban League of Greater Madison for final approval of the Madison Preparatory Academy.<sup>1</sup> As we have stated in previous communications with the Board, we support efforts in Madison to improve educational opportunities for disadvantaged students and to reduce racial disparities in education. However, coeducational classes are not the cause of the racial achievement gap, and schools and programs that segregate boys and girls are not the answer.

Therefore, while we would otherwise applaud a proposal to institute an International Baccalaureate (IB) program within Madison public schools, we reiterate our opposition to the aspect of the Urban League's proposal that would institute "single-gender" education at Madison Preparatory Academy. The backers of the Madison Preparatory Academy Proposal have presented the School Board and the public with a false choice: to institute a sex-segregated school with an IB program, or offer no IB program at all. There is no reason the School Board could not approve the Madison Prep Proposal on the condition that it be changed to a coeducational IB school, and no evidence that a coeducational model would be any less effective. As we have previously mentioned, a compelling alternative exists in the state of Wisconsin: Rufus King International School, a successful coeducational IB school within the Milwaukee Public School system with consistently high graduation rates and excellent outcomes, including for students of color.<sup>2</sup>

The Madison Prep Proposal fails to explain why or how sex segregation will close the racial achievement gap, raises serious questions about the equality of opportunities to be offered to boys and girls, and fails to satisfy the requirements of federal law. We therefore urge you to condition the approval of the Madison

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<sup>1</sup> See Urban League of Greater Madison, *Madison Preparatory Academy Business Plan* (October 28, 2011) (hereinafter "Business Plan"); Urban League of Greater Madison, *Madison Preparatory Academy Education Plan* (October 28, 2011) (hereinafter "Education Plan"). These documents will hereinafter be referred to collectively as "the Madison Prep Proposal" or "the Proposal."

<sup>2</sup> See, Department of Public Instruction, Wisconsin Information Network for Successful Schools (WINSS) website at <http://data.dpi.state.wi.us/data/HSCompletionPage.aspx?GraphFile=HIGHSCHOOLCOMPLETION&SCounty=47&SAthleticConf=45&SCESA=05&FULLKEY=013619040020&SN=King+International&DN=Milwaukee&OrgLevel=sc&Qquad=performance.aspx&Group=RaceEthnicity>.

Prep Proposal on the elimination of sex segregation and the integration of the school into a fully coeducational institution when you vote on November 28.

### **1. The Madison Prep Proposal Fails to Explain Why or How Sex Segregation Will Close the Racial Achievement Gap**

The stated goal and mission of the Madison Prep Proposal, to reduce the gap in academic performance and graduation rates of minority students, is one that the ACLU of Wisconsin shares and supports. Improving educational options for children of color has long been central to our work on education issues across the state, and is without a doubt an important and compelling goal. However, from the moment it put its initial proposal before the Board until it submitted its final Business and Education Plans, the Urban League has presented no valid justification for why single-sex education is a necessary or significant component for achieving that goal. Simply put, the latest Madison Prep Proposal still fails to explain why or how separating the girls from the boys bears a substantial relationship to reducing the racial achievement gap.<sup>3</sup>

The various news articles and few studies cited in the Business Plan fail to provide a legally adequate explanation. Instead, those materials uniformly fail to meet standards for educational research, and are therefore not a sound basis for educational policy. Instead, they are anecdotal, not peer-reviewed, out of date, not comparable, fail to control for factors such as income-level or selection bias, or a combination of the above. A more in-depth analysis of these sources, conducted by Janet Hyde, Professor of Psychology and Women's Studies at the University of Wisconsin, is attached hereto.

The necessity of using valid educational data and research cannot be overstated. As the "What Works Clearinghouse" (a project of the United States Department of Education, Institute of Education Sciences) has explained, in evaluating whether to use a particular educational intervention, use of properly designed educational research is necessary to ensure that "the effect [of an educational intervention] can be attributed solely to the intervention rather than to the many other factors that are at play in schools and in the lives of students."<sup>4</sup> While there may be some existing single-sex programs that have reported some success, there is no research to support a conclusion that it was the single-sex aspect of those programs, as opposed to other educational strategies and interventions, that led to any improvements.

In fact, every large-scale survey of the existing educational research on single-sex education has concluded that there is no definitive benefit from single-sex instruction. For example, a 2005 study by the federal government found the literature on the topic to show that the effects of single-sex education are "equivocal."<sup>5</sup> And recent studies analyzing outcomes at single-sex institutions have shown that when factors such as selection bias are properly controlled for,

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<sup>3</sup> See, e.g., *Garrett v. Bd. of Educ.*, 775 F. Supp. 1004, 1008 (E.D. Mich. 1991) (granting a preliminary injunction against the operation of boys-only schools in Detroit, where the School Board had failed to demonstrate "how the exclusion of females ... is necessary to combat unemployment, dropout and homicide rates among urban males. There is no evidence that the educational system is failing urban males because females attend schools with males. In fact, the educational system is also failing females").

<sup>4</sup> What Works Clearinghouse, *Procedures and Standards Handbook* v.2.1, at 1 (2011).

<sup>5</sup> See Mael et al., American Institutes for Research, U.S. Department of Education, *Single-Sex Versus Coeducational Schooling: A Systematic Review* x (2005).

there is no statistically significant difference between outcomes for students at single-sex and coeducational institutions.<sup>6</sup> Therefore, while closing the achievement gap is doubtless an extremely important goal, the Madison Prep Proposal has failed to demonstrate that its plan to segregate students on the basis of sex is substantially related to achieving that goal.

## **2. Serious Questions Remain as to the Equality of Educational Opportunities to Be Offered**

The Urban League's initial proposal was focused entirely on improving education for young men.<sup>7</sup> Although it has since altered the proposal, apparently in light of the gender equality concerns raised by the ACLU and others because the original proposal ignored the needs of young women – too many of whom are also failing in Madison schools – significant questions still remain about whether or not the school will truly ensure ALL students with equal educational opportunities, regardless of their sex.

Although the Proposal now asserts it is incorporating “two schools,” one for boys and one for girls, Madison Prep has from the outset been focused on the achievement gap for minority boys, and still places a disproportionate emphasis on their needs compared to those of girls. For example, the section on why the program is needed still focuses exclusively on boys, stating:

Low graduation rates and poor achievement on standardized tests among young men, along with a disproportionate number of Black males being placed in special education and disciplined or suspended from school. Madison Prep will address the needs of its young men by providing them with an exceptional education that helps them build college-ready academic skills, self-confidence and self-efficacy, positive peer-to-peer and peer-to-adult relationships and important life skills. They will develop these skills, mindsets and habits within the context of a fun, academically challenging and intellectually stimulating male-focused learning environment. (Business Plan at page 31).

While there is no doubt that Madison's education system is failing far too many boys of color, Madison Prep's own Proposal concedes that significant racial achievement gaps exist for African-American and Latino girls as well as for African-American and Latino boys. For example, 10<sup>th</sup> Grade proficiency statistics show that the racial achievement gap is even greater for girls than for boys in almost all subjects.<sup>8</sup> These disparities thus clearly face many African-American and Latino children in Madison (and many other parts of Wisconsin), girls as well as boys. And that crisis will only be remedied when the Madison district does a better job of meeting the educational needs of all students of color, girls as well as boys.

Furthermore, although the current Proposal states that “the educational philosophy, goals and program will be the same” at the boys' and girls' schools, and insists that differentiation in instruction “will never be based on gender

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<sup>6</sup> See, e.g., Amy Roberson Hayes et al., *The Efficacy of Single-Sex Education: Testing for Selection and Peer Quality Effects*, Sex Roles (2011).

<sup>7</sup> See Urban League of Greater Madison, *Madison Preparatory Academy for Young Men, Initial Proposal to Establish a Charter School* (Dec. 6, 2010).

<sup>8</sup> See generally, Business Plan at 3-5.

stereotypes,”<sup>9</sup> statements made by the school’s proponents during the course of the Proposal’s evolution leave significant doubts as to whether instruction at the school will truly be equal, or whether different teaching styles will be used for boys and girls. For example, a draft version of the Business Plan dated October 7, 2011 – after the school’s proponents had already promised the school would serve girls as well as boys – stated that instruction would be “tailored to the learning styles and educational interests of boys.”<sup>10</sup> While this language has since been changed to substitute the words “young men and women” for the word “boys,”<sup>11</sup> its meaning remains both ambiguous and troubling, and leaves open the distinct possibility that the Proposal’s backers still intend to apply different teaching methods at the boys’ and girls’ schools.

Statements about the supposedly distinct learning styles or development of boys and girls have no scientific basis, and are based on “overbroad generalizations about the different talents, capacities, or preferences of males and females.”<sup>12</sup> As such they are constitutionally impermissible. While the Urban League may have deemphasized this particular teaching philosophy in the final Business and Education Plan, when the Proposal is viewed in the context of its previous iterations, it is clear that gender-differentiated instruction has been a motivating force behind the Proposal from the outset, and there remains a strong suggestion that it will remain in play. Disavowing gender stereotypes at the last minute in an apparent effort to obtain final approval of the Proposal will not eradicate such biases from the school’s programming or instruction. To safeguard against the use of such unconstitutional methods, the School Board should insist that students be offered instruction that is based on their individual needs – and not their sex – in a coeducational environment.

### **3. Madison Prep is One School and Should Be Held to Strict Standards for Segregation of Classes Within Coeducational Schools Under Title IX**

The Urban League has stated that Madison Prep will be two separate schools, rather than a single coeducational school that is segregated on the basis of sex. This characterization is belied by the Business Plan and Budget,<sup>13</sup> which reveal that Madison Prep is a single school in all but name – albeit a school in which the student body is to be entirely segregated on the basis of sex. For example, the “boys’ school” and “girls’ school” will operate in the same building, under a single, shared Board of Directors, with a single Business Manager, Dean of Students, Director of Teaching and Learning, and Grants and Development Manager. The “separate” schools also have shared finances and a finance department, and shared teaching and support staff. The Business Plan itself even refers to the schools in the singular in most instances. Based on these details of the final proposal, Madison Prep is clearly a single coeducational school seeking to operate sex-segregated programs, which, for the reasons discussed below, violates federal law.

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<sup>9</sup> Education Plan at 3.

<sup>10</sup> See Urban League of Greater Madison, *Madison Preparatory Academy Draft Business Plan* 16 (Oct. 7, 2011).

<sup>11</sup> Business Plan at 25 (Oct. 28, 2011).

<sup>12</sup> See *United States v. Virginia*, 518 U.S. 515, 532-34 (1996).

<sup>13</sup> See Urban League of Greater Madison, *Final Budget* (Sept. 30, 2011).

Title IX of the Education Amendments of 1972 permits the operation of single-sex education institutions by specifying that the admissions policies of such schools do not violate the law,<sup>14</sup> but that applies only when there is a single sex school that is legally and administratively separate from any other schools. As noted above, Madison Prep does not meet that standard: the girls' and boys' schools are clearly not separate entities. And when, as here, a coeducational school exists, Title IX prohibits sex segregation except under certain limited circumstances (none of which is applicable).<sup>15</sup> The regulations of numerous federal agencies likewise flatly prohibit single-sex programs and activities within coeducational schools.<sup>16</sup>

Moreover, while regulations the Department of Education issued in 2006 permit, as a matter of the Department's Title IX enforcement, the development of single-sex classes in coed schools,<sup>17</sup> they impose tighter restrictions upon coeducational institutions that wish to institute single-sex programming or activities than they do upon stand-alone, single-sex schools. Specifically, these regulations require, among other things, that schools provide a legally adequate justification for single-sex instruction that is specific to each class and grade in which the single-sex instruction is offered, and that the schools provide a substantially equal coeducational alternative for each such course or program.<sup>18</sup> The Madison Prep Proposal fails to meet both of these requirements: as noted above, the justification for any single-sex programming is thin and not research-based, and no coeducational IB program is available.

The "Academies" at Madison Prep are two separate schools in name only; as such, they must be held to the federal standards embodied in Title IX and its implementing regulations strictly limiting sex segregation within in coed schools. Under those standards, they are unlawful.

## Conclusion

In light of the lack of a demonstrated relationship between single-sex instruction and the Proposal's stated goal of reducing the racial achievement gap, as well as the other significant legal concerns raised by the sex segregation of the student body, we therefore restate our opposition to that aspect of the Madison Prep Proposal. However, we reiterate our desire to see improved educational options for children of color, and urge the Board to find a solution that will

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<sup>14</sup> 20 U.S.C. § 1681 *et seq.*

<sup>15</sup> *See id.* § 1681(a).

<sup>16</sup> *See, e.g.*, 7 C.F.R. § 15a.34 (U.S.D.A. regulation) ("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 . . ."). Most schools, including Madison Prep, are subject to U.S.D.A. regulations by virtue of their participation in the free or reduced-price school lunch program.

<sup>17</sup> The Business Plan also misrepresents the impact of the enactment of a provision of No Child Left Behind that authorizes funding for "Innovative Programs" including programs using "same-gender" instruction. *See* Business Plan at 32. That provision explicitly states that such funded programs must be "consistent with applicable law." 20 U.S.C. § 7215(a)(23). As such, it was not intended to nor did it amend Title IX.

<sup>18</sup> *See* 34 C.F.R. § 106.34(a), (b); *see also Doe v. Vermilion Parish Sch. Bd.*, No. No. 10-30378, Brief for the United States as Amicus Curiae on behalf of Petitioners 17-19 (June 6, 2010), <http://www.aclu.org/files/assets/2010-6-4-DoeVermilion-DOJAmicusbrief.pdf>. (arguing that decision to separate entire middle school for all core academic subjects failed to satisfy requirements of Education Department regulations that each program or activity be justified or that a substantially equal educational opportunity be offered).

accomplish our mutually shared goals. For these reasons, we urge you to condition the approval of the Madison Prep Proposal on its integration into a unified and fully coeducational institution when you issue your vote on November 28.

Sincerely,

Karyn Rotker/Chris Ahmuty

Galen Sherwin

Enclosure

CC: Robert A. Soldner, Director  
School Management Services  
Wisconsin Department of Public Instruction