UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

A.N.A., by and through her parent and next friend, S.F.A.; S.E.A., by and through her parent and next friend, S.F.A.; Z.H.S., by and through his parent and next friend, S.S.; J.D., by and through his parent and next friend, S.D.; L.D., by and through her parent and next friend, S.D.; G.J., by and through his parent and next friend, L.J.; S.L., by and through her parent and next friend, C.L.; J.J.N., by and through his parent and next friend, J.J.N; K.A.S., by and through her guardian and next friend, J.J.N; on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF EDUCATION; MARGARET SPELLINGS, Secretary of Education, in her official capacity; BRECKINRIDGE COUNTY (KY) BOARD OF EDUCATION; BRECKINRIDGE COUNTY MIDDLE SCHOOL SITE BASED COUNCIL; EVELYN NEELY, Superintendent of Breckinridge County, in her official and individual capacity; KATHY GEDLING, Principal of Breckinridge County Middle School and Chairperson of Breckinridge County Middle School Site Based Council, in her official and individual capacity; LISA CHANDLER, Member of Breckinridge County Middle School Site Based Council, in her official and individual capacity; ALBERT HOLTZMAN, Member of Breckinridge County Middle School Site Based Council, in his official and individual capacity; ANN O'CONNELL, Member of Breckinridge County Middle School Site Based Council, in her official and individual capacity; TARA

Civil Action No. 3:08-cv-00004-CRS

Electronically filed

HINTON, Member of Breckinridge County Middle School Site Based Council, in her official and individual capacity; and DEBORAH ANTHONY, Member of Breckinridge County Middle School Site Based Council, in her official and individual capacity,

Defendants.

FIRST AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

1. This is an action under 42 U.S.C. § 1983 and federal and state statutes, challenging unlawful sex discrimination in the Breckinridge County Middle School. The Plaintiffs — middle school students by and through their parents — allege that the Board of Education, the Breckenridge County Middle School Site Based Council, Superintendent Evelyn Neely, Principal and Site Based Council Chairperson Kathy Gedling, Site Based Council Member Lisa Chandler, Site Based Council Member Albert Holtzman, Site Based Council Member Ann O'Connell, Site Based Council Member Tara Hinton, and Site Based Council Member Deborah Anthony (collectively, the "Breckinridge County Defendants"), have unlawfully segregated girls and boys attending Breckinridge County Middle School and have provided an education to the students in these sex-segregated classes that is fundamentally unequal, in violation of the Fourteenth Amendment's equal protection clause, Title IX of the Education Amendments of 1972

("Title IX"), the Equal Educational Opportunities Act, and Kentucky's sex equity in education law.

2. This action further challenges the unlawful behavior of Defendants United States Department of Education and Margaret Spellings, Secretary of Education (collectively, the "Federal Defendants"), in promulgating regulations purporting to interpret Title IX to permit sex-segregation in otherwise coeducational institutions, like Breckinridge County Middle School, in violation of the Administrative Procedures Act and the antidiscrimination guarantees of Title IX and the Fifth Amendment of the United States Constitution.

3. The named Plaintiffs object to the sex segregation and gender-stereotyped educational policies of the Breckinridge County Defendants, whether enacted on their own or in reliance upon the Federal Defendants' actions, as a violation of their rights to enjoy equal educational opportunities without discrimination on the basis of sex. They seek to ensure that they and all students at Breckinridge County Middle School have the equal opportunity to participate in the school's academic offerings without regard to their sex and to receive instruction based on their individual strengths and needs, rather than stereotypes about the education that the "average boy" or "average girl" wants or requires.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343, because this action raises federal questions and seeks to redress the deprivation of equal rights under Title IX, 20 U.S.C. §§ 1681 – 1688; the Equal Educational

Opportunities Act, 20 U.S.C. § 1701 – 1758; the Fourteenth Amendment of the U.S. Constitution, pursuant to 42 U.S.C. § 1983, and the Fifth Amendment of the U.S. Constitution. The Court has jurisdiction over Plaintiffs' state law claim under 28 U.S.C. § 1367(a), because the state law claim is so related to the federal claims that they form part of the same case or controversy for Article III purposes.

5. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims took place in this district and because some of the Defendants reside in this district.

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

III. PARTIES

7. Plantiff A.N.A., a female, attends eighth grade in Breckinridge County Middle School. On or about August 3, 2007, the first day of the school year, she was assigned to sex-segregated classes without her or her parents' consent. She has remained in sex-segregated classes because of the absence of a substantially equal coeducational option.

8. Plaintiff S.E.A., a female, attends sixth grade in Breckinridge County Middle School.

9. Plaintiff Z.H.S., a male, attends eighth grade in Breckinridge County Middle School. On or about August 3, 2007, the first day of the school year, he was assigned to sex-segregated classes without his or his parents' consent. He has remained

in sex-segregated classes because of the absence of a substantially equal coeducational option.

10. Plaintiff J.D., a male, attends eighth grade in Breckinridge County Middle School. On or about August 3, 2007, the first day of the school year, he was assigned to a sex-segregated physical education class without his or his parents' consent.

11. Plaintiff L.D., a female, attends seventh grade in Breckinridge County Middle School. On or about August 3, 2007, the first day of the school year, she was assigned to sex-segregated classes without her or her parents' consent. Neither she nor her parents were ever offered an option to transfer to coeducational classes.

12. Plaintiff G.J., a male, attends sixth grade in Breckinridge County Middle School. On or about August 3, 2007, the first day of the school year, he was assigned to sex-segregated classes without his or his parents' consent. Neither he nor his parents were ever offered an option to transfer to coeducational classes.

13. Plaintiff S.L., a female, attends eighth grade in Breckinridge County Middle School.

14. Plaintiff J.J.N., a male, attends seventh grade at Breckinridge County Middle School. On or about August 3, 2007, the first day of the school year, J.J.N. was assigned to sex-segregated classes without his or his parents' consent. J.J.N., a gifted and talented student, was only allowed to transfer to coeducational classes after this lawsuit was filed, and the assignment to sex-segregated classes adversely affected his grades, his grade point average, and his standing. J.J.N.'s grades improved after his move to a coeducational option.

15. Plaintiff K.A.S., a female, attends seventh grade at Breckinridge County Middle School. During the course of the school year, K.A.S. was assigned to a sex-segregated skills class without her consent or her guardians' consent. K.A.S.'s assignment in the sex-segregated skills class ended when the rotation schedule caused the class to end on its own terms.

16. Defendant U.S. Department of Education is an agency of the United States Government, headquartered in the District of Columbia. Congress has empowered the Department of Education to extend federal financial assistance to educational programs and activities and to promulgate regulations effectuating the guarantees of Title IX as to its funding recipients.

17. Defendant Margaret Spellings is Secretary of the U.S. Department of Education and is responsible for developing and implementing U.S. Department of Education policy. She is sued in her official capacity.

18. Defendant Breckinridge County Board of Education is a local political subdivision, organized pursuant to Ky. Rev. Stat. § ("KRS") 160.160(1) for the purpose of providing public education to the school children of Breckinridge County, including Plaintiffs. 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 state and federal law. Breckinridge County Middle School is one of the schools under the control and supervision of Breckinridge County Board of Education.

19. Defendant Breckinridge County Middle School Site Based Council, organized pursuant to KRS 160.345(2), has the right and power to sue and be sued and is responsible for setting Breckinridge County Middle School policy, consistent with district

policy, including policy addressing curriculum, instructional practices, and class assignment.

20. Defendant Evelyn Neely is Superintendent of Breckinridge County School District. She is appointed by the Breckinridge County School Board and is the chief educational officer charged with supervising all schools within the School District (including Breckinridge County Middle School). Superintendent Neely is responsible for ensuring that all schools within the district comply with state and federal law. She is sued in her individual and official capacities.

21. Defendant Kathy Gedling is Principal of Breckinridge County Middle School. She is charged with day-to-day supervision and management of the school and its educational programs. Ms. Gedling is responsible for ensuring that Breckinridge County Middle School complies with state and federal law. Ms. Gedling is also Chairperson of the Breckinridge County Middle School Site Based Council, which is responsible for setting school policy, consistent with district policy, including policy addressing curriculum, instructional practices, and class assignment. She is sued in her individual and official capacities.

22. Defendant Lisa Chandler is a member of the Breckinridge County Middle School Site Based Council, which is responsible for setting school policy, consistent with district policy, including policy addressing curriculum, instructional practices, and class assignment. She is sued in her individual and official capacities.

23. Defendant Albert Holtzman is a member of the Breckinridge County Middle School Site Based Council, which is responsible for setting school policy,

consistent with district policy, including policy addressing curriculum, instructional practices, and class assignment. He is sued in his individual and official capacities.

24. Defendant Ann O'Connell is a member of the Breckinridge County Middle School Site Based Council, which is responsible for setting school policy, consistent with district policy, including policy addressing curriculum, instructional practices, and class assignment. She is sued in her individual and official capacities.

25. Defendant Tara Hinton is a member of the Breckinridge County Middle School Site Based Council, which is responsible for setting school policy, consistent with district policy, including policy addressing curriculum, instructional practices, and class assignment. She is sued in her individual and official capacities.

26. Defendant Deborah Anthony is a member of the Breckinridge County Middle School Site Based Council, which is responsible for setting school policy, consistent with district policy, including policy addressing curriculum, instructional practices, and class assignment. She is sued in her individual and official capacities.

IV. CLASS ACTION ALLEGATIONS

27. The named Plaintiffs bring this action on behalf of themselves and all others similarly situated under Fed. R. Civ. P. 23(a) and (b)(2). The class consists of all present and future students at Breckinridge Middle School who are or will be subject to and affected by Breckinridge Middle School's sex segregation policies and practices, whether or not those students are enrolled in sex-segregated classes.

28. The size of the class is indeterminate. It includes approximately six hundred five (605) students currently enrolled at the Middle School, plus an indefinite

number of future and potential Middle School students who will be subject to Breckinridge County Middle School's sex segregation policies and practices, so long as those policies and practices continue.

29. The named Plaintiffs will represent fairly and adequately the interests of the class defined above. Plaintiffs' attorneys are experienced civil rights counsel, who have litigated federal class actions and education law cases, including cases that involve the educational rights of students who have been discriminated against on the basis of sex or other protected characteristics.

30. The case involves common questions of law and fact affecting the class, because the Breckinridge County Defendants have applied or will apply their sex-segregation policies and practices to all class members.

31. The named Plaintiffs' claims are typical of the class claims as a whole. The named Plaintiffs are members of the defined class, are enrolled as students in the Middle School, and have been subjected to and affected by, and will continue to be subjected to and affected by, Defendants' sex-segregation policies and practices. The named Plaintiffs allege that they and other class members they seek to represent are and will be subject to discrimination based on sex as a result of the policies and practices complained of in this action.

32. 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.

V. STATUTORY AND CONSTITUTIONAL FRAMEWORK

A. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*)

33. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, prohibits schools receiving federal funding from excluding individuals from any educational program or activity based on their sex.

34. Specifically, 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[.]" 20 U.S.C. § 1681(a) (emphasis added).

35. The statute sets out various limited exceptions from this broad nondiscrimination rule, permitting rules or policies creating single-sex educational programs or activities in specific, limited contexts. No such exception applies to sex-segregated classrooms in coeducational schools.

36. Title IX provides that each agency empowered to extend financial assistance to any educational program or activity is authorized and obligated to issue regulations interpreting and enforcing Title IX's nondiscrimination mandate with respect to that program or activity. 20 U.S.C. § 1682.

37. Despite Title IX's clear statutory prohibition against sex segregation in coeducational schools such as Breckinridge County Middle School, recent amendments to Title IX regulations promulgated by Defendant U.S. Department of Education purport to interpret the statute to permit recipients of U.S. Department of Education funding to operate sex-segregated classes in a variety of circumstances. *See* 34 C.F.R. § 106.34(b).

38. Even these Department of Education regulations make clear that, to be lawful, enrollment in a single-sex class or activity must be "completely voluntary." 34 C.F.R. § 106.34(b)(1)(iii). A "substantially equal" coeducational class in the same subject or activity must be made available to all students. 34 C.F.R. § 106.34(b)(1)(iv). Any sex-segregated classes must also be based on one of two enumerated objectives and implemented in "an even-handed manner." 34 C.F.R. § 106.34(b)(1)(i), (ii).

39. The Department of Education's 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).

40. The Department of Education's Title IX regulations also state, "[A] recipient shall not, on the basis of sex . . . deny any person any such aid, benefit, or service." 34 C.F.R. § 106.31(c).

41. By their own terms, the Title IX regulations promulgated by the U.S. Department of Education do not alter obligations not to discriminate on the basis of sex imposed by other federal regulations. 34 C.F.R. § 106.6.

42. The U.S. Department of Health and Human Services interprets Title IX differently from the U.S. Department of Education regarding sex-segregated classes. U.S. Department of Health and Human Services regulations explicitly prohibit U.S. Department of Health and Human Services funding recipients from instituting sex-segregated classes, stating, "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 . . . ." 45 C.F.R. § 86.34.

43. The U.S. Department of Agriculture interprets Title IX differently from the U.S. Department of Education regarding sex-segregated classes. U.S. Department of Agriculture regulations explicitly prohibit U.S. Department of Agriculture funding recipients from instituting sex-segregated classes, stating, "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 . . . ." 7 C.F.R. § 15a.34.

44. Other federal agencies also interpret Title IX differently from the U.S. Department of Education regarding sex-segregated classes. The U.S. Department of Homeland Security, the U.S. Nuclear Regulatory Commission, the U.S. Department of Energy, the U.S. Small Business Administration, the National Aeronautics and Space Administration, the U.S. Department of Commerce, the Tennessee Valley Authority, the U.S. State Department, the U.S. Agency for International Development, the U.S. Department of Housing and Urban Development, the U.S. Department of Justice, the U.S. Department of Labor, the U.S. Department of the Treasury, the U.S. Department of Defense, the National Archives, the U.S. Department of Veterans Affairs, the U.S. Environmental Protection Agency, the U.S. Department of Interior, the Federal Emergency Management Agency, the National Science Foundation, the Corporation for National and Community Service, and the U.S. Department of Transportation all have promulgated regulations prohibiting sex-segregated course offerings in terms identical to those used by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. 6 C.F.R. § 17.415; 10 C.F.R. § 5.415; 10 C.F.R. § 1042.415; 13 C.F.R. § 113.415; 14 C.F.R. § 1253.415; 18 C.F.R. § 1317.415; 22 C.F.R. § 146.415;

22 C.F.R. § 229.415; 22 C.F.R. § 3.415; 28 C.F.R. § 54.415; 29 C.F.R. § 36.415; 31 C.F.R. § 28.415; 32 C.F.R. 196.415; 36 C.F.R. § 1211.415; 38 C.F.R. § 23.415; 40 C.F.R. § 5.415; 43 C.F.R. § 41.415; 44 C.F.R. § 19.415; 45 C.F.R. § 618.415; 45 C.F.R. § 2555.415; 49 C.F.R. § 25.415.

B. The Equal Educational Opportunities Act (20 U.S.C. § 1701 *et seq.*)

45. The Equal Educational Opportunities Act, 20 U.S.C. § 1701 *et seq.*, prohibits assignment of students to a school for the purpose of segregating students on the basis of sex. 20 U.S.C. § 1705.

C. Equal Protection Guarantees of the Fifth and Fourteenth Amendments

46. The Fourteenth Amendment to the United States Constitution mandates that no State shall ". . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV.

47. The Due Process Clause of the Fifth Amendment to the United States Constitution incorporates the guarantee of equal protection of the law as applied to the federal government.

D. Kentucky's sex equity in education law (KRS 344.550 *et seq.*)

48. Kentucky's sex equity in education law, KRS 344.550 *et seq.*, prohibits schools receiving state funding from excluding individuals from any educational program or activity on the basis of their sex.

49. More specifically, the law states, "No person 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 state financial assistance[.]" KRS 344.555(1) (emphasis added).

50. The statute sets out various limited exceptions from this broad nondiscrimination rule, permitting rules or policies creating single-sex educational programs or activities in specific, limited contexts. No such exception applies to sex-segregated classrooms in coeducational schools.

VI. FACTUAL ALLEGATIONS

A. The Federal Defendants' Promulgation of the Challenged Regulations

51. Title IX authorizes and directs "each Federal department and agency . . . empowered to extend Federal financial assistance . . . to effectuate the provisions of [the statute's nondiscrimination mandate] . . . by issuing rules, regulations, or orders of general applicability." 20 U.S.C. § 1682.

52. Under the General Education Provisions Act in effect at the time of the initial promulgation of regulations pursuant to Title IX, all agency regulations under Title IX were required to be "laid before" Congress before they became effective, so that Congress might disapprove any regulations "inconsistent with the Act." Pub. L. No. 93-380, 88 Stat. 567, 20 U.S.C. § 1232 (d)(1) (1970 & Supp. IV 1974).

53. On June 4, 1975, the U.S. Department of Health, Education, and Welfare (HEW), the predecessor to Defendant U.S. Department of Education and to the U.S. Department of Health and Human Services, issued regulations implementing Title IX and

submitted them to Congress for review. 40 Fed. Reg. 24138 (June 4, 1975). These regulations provided that a recipient of HEW funding "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," with narrow exceptions for contact sports and portions of classes in elementary and secondary schools that deal exclusively with human sexuality. *Id.* at 24141.

54. Congressional review was limited to considering whether the promulgated 1975 regulations were consistent with Title IX and Congressional intent in enacting Title IX.

55. At Congressional hearings addressing whether the 1975 regulations were consistent with Congressional intent, some witnesses testified that the proposed regulations improperly restricted schools' abilities to offer single-sex classes and activities.

56. Nevertheless, following this review, none of the 1975 regulations was disapproved, and thus all became effective, including the sharp restriction on single-sex classes and educational activities. 45 C.F.R. § 86.34 (1976).

57. This Congressional review process for the 1975 regulations "strongly implies that the regulations accurately reflect congressional intent." *Grove City v. Bell*, 465 U.S. 555, 568 (1984).

58. Since enactment of Title IX in 1972, Congress has repeatedly amended the statute to carve out certain narrow, specified sex-segregated activities as exempt from the requirements of Title IX. But Congress has not amended Title IX to permit federally funded coeducational institutions to create single-sex classes.

59. The Department of Education Organization Act of 1979, Pub. L. No. 96-88, 93 Stat. 668 (Oct. 17, 1979), created Defendant U.S. Department of Education. After its creation as a separate agency, Defendant U.S. Department of Education promulgated the education-related regulations previously issued by HEW and other agencies as a new title of the Code of Federal Regulations, 45 Fed. Reg. 3082 (May 9, 1980). The HEW regulation addressing access to course offerings previously codified as 45 C.F.R. § 86.34 was recodified as U.S. Department of Education regulation 34 C.F.R. § 106.34, without substantive change.

60. The HEW regulation codified at 45 C.F.R. § 86.34 became a U.S. Department of Health and Human Services regulation at the same location.

61. Other federal agencies providing funding to educational programs and activities, including the U.S. Department of Agriculture, adopted this regulatory language addressing access to court offerings as part of their obligation to interpret and enforce Title IX.

62. The No Child Left Behind Act (NCLB), signed into law in January 2002, authorized grants for certain "Innovative Programs," including "[p]rovid[ing] same-gender schools and classrooms (consistent with applicable law)." 20 U.S.C. § 7215(a)(23) (parenthetical in original). "Applicable law" at that time included, but was not limited to, the U.S. Constitution, the Equal Educational Opportunities Act, Title IX, and Title IX's 1975 implementing regulations. NCLB required Defendant U.S. Department of Education to issue guidelines for local educational agencies that sought funding to implement same-gender schools and classrooms. 20 U.S.C. § 7215(c).

63. On May 8, 2002, Defendant U.S. Department of Education responded to this NCLB mandate by publishing guidelines setting out the current law sharply limiting sex segregation in classes and schools, including the 1975 Title IX regulations prohibiting sex-segregated classes with the narrow exceptions described above. 67 Fed. Reg. 31102 (May 8, 2002).

64. On May 8, 2002, Defendant U.S. Department of Education also published a Notice of Intent to Regulate, stating that the Secretary intended to propose amendments to the 1975 Title IX regulations permitting more latitude to establish sex-segregated schools and classes at the elementary and secondary levels. 67 Fed. Reg. 31098 (May 8, 2002).

65. On March 9, 2004, Defendant U.S. Department of Education published a notice of proposed rulemaking for public comment. 69 Fed. Reg. 11276 (March 9, 2004). The proposed regulations sought to amend the 1975 regulations pertaining to the provision of sex-segregated classes and to permit otherwise coeducational schools to institute these classes in specified circumstances. The preamble to the proposed regulations asserted, "[E]ducational research has suggested that in certain circumstances, single-sex education provides educational benefits for some students." *Id.* at 11276. The preamble asserted that amending the regulations was appropriate, because when the regulations were first promulgated, "discriminatory practices were still prevalent," in contrast to the current environment. *Id.* at 11276-11277.

66. On information and belief, of the over 5000 comments received by Defendant U.S. Department of Education in response to the March 9, 2004, notice of

proposed rulemaking, approximately 96 percent opposed any change to the relevant 1975 regulations as unnecessary.

67. In September 2005, Defendant U.S. Department of Education published a review of existing data on the efficacy of single-sex education. U.S. Department of Education, *Single-Sex Versus Coeducational Schooling: A Systematic Review* (2005). According to this review, the existing data were equivocal, with some data suggesting single-sex education could be helpful, much data showing no evidence of benefit or harm, and some data suggesting single-sex education could be harmful. *Id.* at x.

68. On October 25, 2006, Defendant U.S. Department of Education issued final regulations implementing the vast majority of its proposed amendments pertaining to the provision of sex-segregated classes and schools, effective November 24, 2006, despite the public comments in overwhelming opposition to the amendments and despite its own review of data finding no exceedingly persuasive evidence demonstrating the efficacy of single-sex education. 71 Fed. Reg. 62530 (Oct. 25, 2006), codified at 34 C.F.R. § 106.34 (2007).

69. In response to comments proposing that Defendant U.S. Department of Education defer any amendments until data demonstrated the efficacy of single-sex education, Defendant U.S. Department of Education acknowledged, "[T]here is a debate among educators on the effectiveness of single-sex education," but concluded that "the final regulations permit each recipient to make an individualized decision about whether single-sex educational opportunities will achieve the recipient's important objective and whether the single-sex nature of those opportunities is substantially related to achievement of that important objective . . . ." *Id.* at 62532.

70. As a result of the Federal Defendants' actions, otherwise coeducational public schools across the country, including Breckinridge County Middle School, have implemented and continue to implement sex-segregated classes.

B. *Sex Segregation in Breckinridge County Middle School*

71. Breckinridge County School District and Breckinridge County Middle School receive federal and state funding and are subject to the requirements of Title IX and the Kentucky Sex Equity in Education Act.

72. The federal funding received by Breckinridge County School District includes not only funding from the U.S. Department of Education but also funding from other federal agencies, including Head Start funding from the U.S. Department of Health and Human Services and National School Lunch Program funding from the U.S. Department of Agriculture. Thus, Breckinridge County School District and Breckinridge County Middle School are subject to the Title IX regulations promulgated by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture, as well as the Title IX regulations promulgated by the U.S. Department of Education.

73. Breckinridge County Middle School is a public neighborhood school of approximately 605 students in grades six through eight, located in Harned, Kentucky. Students are assigned to Breckinridge County Middle School based on their place of residence. It is the only middle school in the school district. The student body of Breckinridge County Middle School comprises both males and females.

74. The Breckinridge County Defendants have implemented and utilize sex-segregated, "sex-based" classes in required academic subjects. These classes provide

"differentiated instruction" to address alleged differences in learning styles, capacities, preferences, and interests between boys and girls.

75. At all relevant times, the Breckinridge County Defendants have acted under color of state law.

76. The Breckinridge County Defendants' sex segregation policies and practices constitute official policy, and/or were authorized by officials with final policy-making authority, and/or resulted from a policy of inadequate training or supervision, and/or resulted from a custom of tolerance or acquiescence of unlawful behavior.

C. *Creation of Segregated, Sex-Based Classes in Breckinridge County Middle School*

77. Beginning in or about Fall 2003, shortly after the Federal Defendants published the Notice of Intent to loosen then-existing U.S. Department of Education regulatory prohibitions on sex-segregated classes under Title IX, the Breckinridge County Defendants implemented segregated, sex-based classes in required academic subjects at Breckinridge County Middle School.

78. According to a contemporaneous published report, Breckinridge County Middle School first created segregated, sex-based math and science classes. These classes were intended to offer "differentiated instruction" to address alleged differences in learning styles, capacities, preferences, and interests between boys and girls.

79. According to this published report, a Breckinridge County Middle School math teacher explained that he used softer light in the girls' classrooms and brighter light in the boys' classrooms. He played soft music in the girls' classrooms and only occasionally in the boys'.

80. According to this published report, in discussing the differences between boys' classes and girls' classes, a male Breckinridge County Middle School math teacher explained that boys are capable of higher thought processes, "so if I can give them a tough problem, then they can really challenge one another. As the Bible says, 'Iron sharpens iron,' so our minds are going to go ahead and sharpen one another."

81. According to this published report, in discussing the differences between boys' classes and girls' classes, a Breckinridge County Middle School math teacher explained that "the boys, generally, are capable of abstract thought," while girls in most cases needed hands-on demonstrative props to understand the same mathematical concepts.

82. According to this published report, in discussing the differences between boys' classes and girls' classes, a Breckinridge County Middle School science teacher explained, "I play lots of review games with my boys so they can get up and move, where the girls would rather I just ask questions and they can write down the answers."

83. On information and belief, the Breckinridge County Defendants did not identify any important governmental objective substantially furthered by the sex segregation when they began the sex-segregated classes or at any later time.

D. *Expansion of Segregated, Sex-Based Classes*

84. Since 2003, the Breckinridge County Defendants have expanded the use of segregated, sex-based classes at Breckinridge County Middle School. On information and belief, the Breckinridge County Defendants have continued to provide "differentiated instruction" in those classes, thus purposefully creating disparate and unequal educational

experiences for girls and boys in Breckinridge County Middle School and limiting students' access to unique educational opportunities based on students' sex.

85. According to a document entitled "Gap Reduction Strategies for Breckinridge County Middle School" dated March 21, 2005, "Gender classes are offered at each grade level and each subject. The scheduling committee and the SISI Review Team ha[ve] recommended that all classes be gender specific next year."

86. The document entitled "Gap Reduction Strategies for Breckinridge County Middle School" and dated March 21, 2005 was the only document provided by the Breckinridge County Defendants in response to an August 2007 request by S.F.A., parent and next friend of A.N.A. and S.E.A., for documentation of gender-based policies at Breckinridge County Middle School.

87. The document entitled "Gap Reduction Strategies for Breckinridge County Middle School" and dated March 21, 2005, does not indicate any important objective served by the sex-segregation program at Breckinridge County Middle School or set out how or whether sex-segregated course offerings at Breckinridge County Middle School were part of an established policy of providing diverse educational opportunities.

88. On information and belief, the Breckinridge County Defendants implemented and expanded their sex-segregated policies and programs as a result of the rulemaking proposals and final regulations addressing sex-segregated classes promulgated by the Federal Defendants.

E. *The 2007-2008 School Year*

89. Each school year prior to 2007-2008, parents were given an option before the school year began to choose whether to participate in sex-segregated classes at Breckinridge County Middle School.

90. Immediately before the 2007-2008 school year began, the Breckinridge County Defendants assigned students at Breckinridge County Middle School to either all-female, all-male, or coeducational classes for the 2007-2008 school year, without input from students or parents.

91. At the time of this assignment, students and parents were not given a choice as to whether to participate in sex-segregated classes.

92. On or about August 6, 2007, when he learned that the Breckinridge County Defendants had unilaterally assigned one of his daughters to sex-segregated classes for the 2007-2008 school year, S.F.A., father and next friend of plaintiffs A.N.A. and S.E.A., promptly complained to Defendants Principal Kathy Gedling and Superintendent Evelyn Neely, and to Assistant Superintendent Janet Meeks, as well as Defendant members of the Defendant Site Based Council and members of the Defendant School Board.

93. During the week of August 6, 2007, S.F.A. delivered letters complaining of A.N.A.'s assignment to single-sex classes to each member of the Defendant School Board.

94. On or about August 13, 2007, S.F.A. spoke with Defendant Superintendent Evelyn Neely and to Assistant Superintendent Janet Meeks and informed them that he believed the single-sex classes were illegal and violated Title IX.

95. On or about August 14, 2007, Defendant Superintendent Evelyn Neely wrote to the Kentucky Department of Education inquiring as to "the legality of gender-based classes" and whether it was necessary to provide an opt out. She stated that Breckinridge County Middle School had been providing such classes for at least three years, that in the past the Breckinridge County Defendants had sent a letter to parents asking their preference for their child, and that this year because of the success of the program the Breckinridge County Defendants did not send a letter to parents.

96. On or about August 14, 2007, a representative of the Kentucky Department of Education referred Defendant Superintendent Evelyn Neely to the relevant U.S. Department of Education Title IX regulations, as amended in October 2006. On or about August 21, 2007, a representative of the Kentucky Department of Education referred Defendant Superintendent Evelyn Neely to the regional Office of Civil Rights of Defendant U.S. Department of Education.

97. On or about August 21, 2007, approximately three weeks after the school year began, Defendant Kathy Gedling sent a letter to some of the Breckinridge County Middle School parents with children who had been enrolled in sex-segregated classes. The letter asserted, "BCMS has seen progress in a variety of ways with students in these classes," but offered parents "the opportunity to request that your child no longer continue in gender classes, except for related arts."

98. Not all parents received this letter.

99. L.J., mother and next friend of plaintiff G.J., never received notice of any opportunity to remove G.J. from the sex-segregated classes to which he had been assigned.

100. S.D., mother and next friend of plaintiffs L.D. and J.D., never received notice of any opportunity to remove L.D. from the sex-segregated classes to which she had been assigned.

101. J.J.N., father and next friend of J.J.N. and legal guardian of K.A.S., never received notice of any opportunity to remove J.J.N. or K.A.S. from the sex-segregated classes to which they had been assigned or to which they were to be assigned during the course of the school year.

102. The letter offered no opportunity to opt out of sex-segregated related arts classes.

103. The letter made no assurances that the available coeducational classes were equal or substantially equal to the sex-segregated classes to which the students had been assigned.

104. The coeducational classes to which some students assigned to sex-segregated classes were given the opportunity to transfer approximately three weeks into the school year were not equal or substantially equal to the sex-segregated classes and the Breckinridge County Defendants did not seek to ensure equality or substantial equality.

105. On information and belief, in many instances the coeducational classes used different textbooks. As a result, the classes were not equal or substantially equal to each other.

106. On information and belief, in many instances the coeducational classes used different pedagogical methods from the sex-segregated classes. As a result, the classes were not equal or substantially equal to each other.

107. On information and belief, in many instances the coeducational classes covered the relevant course material at a different pace from the sex-segregated classes. As a result, the classes were not equal or substantially equal to each other.

108. On information and belief, in many instances the boys' classes used different textbooks from the girls' classes. As a result, the classes were not equal or substantially equal to each other.

109. On information and belief, in many instances the boys' classes used different pedagogical techniques from the girls' classes. As a result, the classes were not equal or substantially equal to each other.

110. On information and belief, in many instances the boys' classes covered the relevant course material at a different pace from the girls' classes. As a result, the classes were not equal or substantially equal to each other.

111. On information and belief, in many instances the boys' classes had significant discipline problems. These disciplinary problems compromised the educational experience for boys enrolled in these classes and, as a result, the classes were not equal or substantially equal to the relevant coeducational classes or the girls' classes at Breckinridge County Middle School. On information and belief, these disciplinary problems also compromised the willingness of teachers to teach the all-boys' classes.

112. S.F.A. did not remove his daughter A.N.A. from the sex-segregated classes to which she had been assigned because he wished to ensure that she, a talented mathematics student, had the best instruction available. She had been assigned to a single-sex Algebra course, and, on information and belief, the coeducational math class to

which she would have been transferred was a Pre-Algebra class moving at a significantly slower pace.

113. Because no equal or substantially equal coeducational option was available to her, A.N.A.'s participation in the sex-segregated program was not completely voluntary.

114. S.S., parent and next friend of plaintiff Z.S., did not remove her son Z.S. from the sex-segregated classes to which he had been assigned because she wished to ensure that he, a talented mathematics student, had the best instruction available. He had been assigned to a single-sex Algebra course, and on information and belief, the coeducational math class to which he would have been transferred was a Pre-Algebra class.

115. Because no equal or substantially equal coeducational option was available to him, Z.S.'s participation in the sex-segregated program was not completely voluntary.

116. On information and belief, the coeducational eighth-grade math classes and the all-boys' eighth-grade math class moved at a slower pace than the all-girls' eighth-grade math class and used a less advanced textbook. Eighth-grade boys thus were denied participation in the most advanced math class offered by Breckinridge County Middle School solely on the basis of their sex.

117. The sex-segregated classes affected the education of those students in coeducational classes at Breckinridge County Middle School. Because the Breckinridge County Defendants assigned many of the most motivated and talented students in the school to sex-segregated classes, the coeducational classes moved more slowly than they

otherwise would have and lost the academic leadership that these students had provided. The affected coeducational classes thus were not equal to or substantially equal to the comparable sex-segregated classes.

118. Because, on information and belief, the sex-segregated eighth-grade math classes were the most advanced math classes offered by Breckinridge County Middle School, students who sought to be educated in a coeducational environment were denied access to the most advanced match classes in the school.

119. On information and belief, in an apparent attempt by Breckinridge County Defendants to equalize outcomes across the sex-segregated classes, in Spring 2008, the all-girls' eighth-grade math class began to be sent to the computer lab several days a week, rather than being taught math, while the all-boys' eighth-grade math class began to meet more frequently each week. As a result, girls in the all-girls' math class are being denied educational opportunities solely on the basis of their sex.

120. No reasonable school official could have believed the sex-segregation program implemented in the 2007-2008 school year at Breckinridge County Middle School complied with the requirements of the law.

121. On August 23, 2007, S.F.A. filed a complaint with the Office of Civil Rights of Defendant U.S. Department of Education, alleging that the sex segregation program at Breckinridge County Middle School violated Title IX.

122. In late October 2007, S.F.A. received a letter from the Office of Civil Rights informing him that his complaint was entering the Resolution and Completion Phase.

123. In January 2008, S.F.A. received a letter from the Office of Civil Rights informing him that because he had filed a lawsuit regarding the subject of his August 23, 2007, complaint, the investigation of that complaint would be suspended.

F. *The Proposed 2008-2009 Sex Segregation Plan*

124. During the 2007-2008 school year, the Breckinridge County Defendants retained David Chadwell as a consultant on development and implementation of sex-segregated classes for the 2008-2009 school year.

125. Mr. Chadwell is employed by the South Carolina Department of Education as the Director of Single-Sex Initiatives and is a board member of the National Association for Single-Sex Public Education. Mr. Chadwell also operates his own consulting business, through which he provides teacher training in sex-segregated education and assistance in designing sex-segregated programs. He is a vocal advocate for sex segregation in public schools.

126. Mr. Chadwell advocates that teachers treat boys and girls very differently in the classroom.

127. For example, Mr. Chadwell's published writings urge teachers to allow boys to talk loudly in class and to insist that girls' classes remain quiet.

128. For example, Mr. Chadwell's published writings suggest that boys (and not girls) should toss balls while answering questions in class and that girls (and not boys) should be encouraged to color and decorate their assignments before handing them in.

129. For example, Mr. Chadwell's published writings advocate giving boys, but not girls, time limits for academic tasks.

130. For example, Mr. Chadwell's published writings suggest that boys should spend classroom time standing up, while girls should spend classroom time sitting in a circle.

131. For example, Mr. Chadwell's published writings encourage teachers to craft lesson plans for girls on the meaning of friendship and lesson plans for boys on what it means to be a man.

132. The National Association for Single-Sex Public Education, on the board of which Mr. Chadwell serves, similarly advocates providing boys and girls with markedly disparate classroom experiences based on alleged neurological differences between boys and girls.

133. In or about February 2008, the Breckinridge County Defendants produced a document entitled "Breckinridge County Middle School Single-Sex Education Plan" created in consultation with Mr. Chadwell. The plan stated Defendants' intent to implement sex-segregated classes at each grade level in the 2008-2009 school year, to survey all parents regarding their preferences as to whether their children should be enrolled in sex-segregated or coeducational classes or various specified combinations of sex-segregated and coeducational classes, and to enroll in sex-segregated classes only those students whose parents specify a preference for such classes.

134. The "Breckinridge County Middle School Single-Sex Education Plan" states that Defendants will "network with schools that are currently associated with the National Association of Single Sex Public Education and attend the NASSPE

conference[,] which features gender education strategies and issues." As set out above, NASSPE advocates treating boys and girls very differently in the classroom based solely on the students' sex.

135. The "Breckinridge County Middle School Single-Sex Education Plan" states that "[t]rainings for strategies in single-sex education will occur at no fewer than two faculty meetings a year" and that "[t]he staff's professional library will be updated each year to reflect current literature on single-sex education."

136. The Plan nowhere specifies the content of those trainings or of the literature that will be made available.

137. The "Breckinridge County Middle School Single-Sex Education Plan" states that all teachers, regardless of class make-up, will have access to the same quality and quantity of textbooks, instructional materials, facilities and technology. The Plan further states, however, that each teacher may decide whether or how to make use of the available resources at his or her discretion.

138. Nowhere does the Plan indicate that any oversight of the relevant classrooms will occur to ensure equality of resources actually provided to students.

139. Nowhere does the Plan indicate that any oversight will occur to ensure that the sex-segregated classes and the comparable coeducational classes are equal or substantially equal.

140. Nowhere does the Plan indicate that any oversight will occur to ensure that the boys' classes and the comparable girls' classes are equal or substantially equal.

141. Nowhere does the Plan indicate that any oversight will occur to ensure that the proposed sex segregation does not rely on or promote overbroad, imprecise and/or inaccurate gender stereotypes.

142. On information and belief, in the 2008-2009 school year, Defendants intend to implement "differentiated instruction" in the sex-segregated classes based on overbroad, imprecise, and/or inaccurate gender stereotypes, thus purposefully treating boys and girls differently, creating disparate educational experiences for girls and boys, and limiting students' access to unique educational opportunities based on students' sex.

143. On information and belief, as a result of Plaintiffs' complaints and the allegations made in this litigation, the Breckinridge County Defendants have decided not to offer Algebra to any eighth grade students in the 2008-2009 school year, thus denying Plaintiffs educational opportunities in retaliation for Plaintiffs' attempts to enforce their rights under Title IX.

144. On information and belief, since the beginning of sex-segregated classes in or about 2003, there has never been any formal evaluation of the success or failure of sex segregation at Breckinridge County Middle School in substantially furthering any important governmental objective.

G. *Additional Background*

145. 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.

146. 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.

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

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

149. Plaintiffs and the proposed Plaintiff class have suffered irreparable injury and will continue to suffer irreparable injury as a result of Defendants' illegal conduct.

150. The Defendants' discriminatory policies and practices have harmed the dignity interests of Plaintiffs and the Plaintiff class.

151. The Defendants' discriminatory policies and practices have deprived Plaintiffs and the Plaintiff class of unique educational opportunities on the basis of their sex.

VII. CLAIMS FOR RELIEF

A. FIRST CAUSE OF ACTION: Title IX (Breckinridge County Defendants)

152. By providing classes separately at Breckinridge County Middle School on the basis of sex and by requiring and refusing student participation in classes on the basis of the students' sex, Defendants have discriminated against Plaintiffs and the proposed Plaintiff class on the basis of their sex, in violation of Title IX, 20 U.S.C. § 1681(a), as interpreted by the U.S. Department of Health and Human Services, 45 C.F.R. § 86.34, and the U.S. Department of Agriculture, 7 C.F.R. § 15a.34.

153. Defendants engaged in such conduct intentionally, willfully, and in disregard of the rights of Plaintiffs and the proposed Plaintiff class and/or with actual notice of and deliberate indifference to the rights of Plaintiffs and the proposed Plaintiff class.

B. SECOND CAUSE OF ACTION: Title IX (Breckinridge County Defendants)

154. By instituting sex-segregated classes at Breckinridge County Middle School, Defendants have discriminated against Plaintiffs and the proposed Plaintiff class on the basis of their sex, in violation of Title IX, 20 U.S.C. § 1681(a), as interpreted by the U.S. Department of Education, 34 C.F.R. §§ 106.31, 106.34.

155. Defendants' sex segregation has not substantially furthered and does not substantially further an important governmental objective, as set out in and required by 34 C.F.R. § 106.34(b)(1)(i).

156. Defendants have failed and continue to fail to implement any objectives allegedly furthered by sex-segregated education in an even-handed manner, as required by 34 C.F.R. § 106.34(b)(1)(ii), (b)(2).

157. Defendants have failed and continue to fail to ensure that enrollment in any sex-segregated course at Breckinridge County Middle School is completely voluntary, as required by 34 C.F.R. § 106.34(b)(1)(iii).

158. Defendants have failed and continue to fail to provide all students, including students of the excluded sex, substantially equal coeducational classes in the same subjects as the sex-segregated classes, as required by 34 C.F.R. § 106.34(b)(1)(iv).

159. Defendants have provided and continue to provide different educational aid, benefits, or services on the basis of sex and/or provide aid, benefits, or services in a different manner on the basis of sex, in violation of 34 C.F.R. § 106.31(b)(2).

160. Defendants have denied and continue to deny educational aid, benefits, or services on the basis of sex, in violation of 34 C.F.R. § 106.31(c).

161. Defendants engaged in such conduct intentionally, willfully, and in disregard of the rights of Plaintiffs and the proposed Plaintiff class and/or with actual notice of and deliberate indifference to the rights of Plaintiffs and the proposed Plaintiff class.

C. THIRD CAUSE OF ACTION: Title IX (Breckinrige County Defendants)

162. By instituting sex-segregated classes at Breckinridge County Middle School, Defendants have excluded and continue to exclude Plaintiffs and the proposed Plaintiff class from educational programs and activities on the basis of their sex and have otherwise discriminated against and continue to discriminate against Plaintiffs and the proposed Plaintiff class on the basis of their sex, in violation of Title IX, 20 U.S.C. § 1681(a).

163. Defendants have violated Title IX and continue to violate Title IX regardless of whether they have complied with the requirements set out in 34 C.F.R. § 106.34(b), as 34 C.F.R. § 106.34(b) represents an unreasonable, unconstitutional, arbitrary, and capricious interpretation of Title IX and thus is not entitled to deference and is without the force of law.

164. Defendants engaged in such conduct intentionally, willfully, and in disregard of the rights of Plaintiffs and the proposed Plaintiff class and/or with actual notice of and deliberate indifference to the rights of Plaintiffs and the proposed Plaintiff class.

D. FOURTH CAUSE OF ACTION: Title IX (Breckinrige County Defendants)

165. By ceasing to offer Algebra in the 2008-2009 school year as a result of Plaintiffs' complaints of sex discrimination in violation of Title IX in the implementation of eighth grade math classes during the 2007-2008 school year, Defendants have discriminatorily denied Plaintiffs and the proposed Plaintiff class educational opportunities in retaliation for Plaintiffs' attempts to enforce their rights under Title IX, 20 U.S.C. § 1681(a).

166. Defendants engaged in such conduct intentionally, willfully, and in disregard of the rights of Plaintiffs and the proposed Plaintiff class and/or with actual notice of and deliberate indifference to the rights of Plaintiffs and the proposed Plaintiff class.

E. FIFTH CAUSE OF ACTION: Equal Educational Opportunities Act (Breckinridge County Defendants)

167. Defendants have assigned Plaintiffs and the proposed Plaintiff class to Breckinridge County Middle School for the purpose of segregating students on the basis of sex, in violation of the Equal Educational Opportunities Act, 20 U.S.C. § 1705.

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

F. SIXTH CAUSE OF ACTION: Equal Protection (Breckinridge County Defendants)

169. By segregating classes by sex at Breckinridge County Middle School on the basis of overbroad, imprecise, and/or inaccurate gender stereotypes and generalizations about gender differences and by treating boys and girls differently and unequally, Defendants have intentionally discriminated against Plaintiffs and the proposed Plaintiff class on the basis of their sex. Such discrimination is not based on an exceedingly persuasive justification or substantially related to an important state interest and thus violates Plaintiffs' right to equal protection of the laws, secured by the Fourteenth Amendment to the United States Constitution.

170. Defendants have violated Plaintiffs' right to equal protection of the laws and continue to violate Plaintiffs' right to equal protection of the laws regardless of whether they have complied with the requirements set out in 34 C.F.R. § 106.34(b), as the conduct that 34 C.F.R. § 106.34(b) purports to authorize constitutes intentional discrimination on the basis of sex that is not based on an exceedingly persuasive justification or substantially related to an important state interest, in violation of the right to equal protection of the laws, secured by the Fourteenth Amendment of the United States Constitution.

171. Defendants acted intentionally, willfully, and in disregard of the rights of Plaintiffs and the proposed Plaintiff class.

G. SEVENTH CAUSE OF ACTION: Kentucky sex equity in education law (Breckinridge County Defendants)

172. By instituting sex-segregated classes at Breckinridge County Middle School, Defendants have excluded and continue to exclude Plaintiffs and the proposed Plaintiff class from educational programs and activities on the basis of their sex and have otherwise discriminated against and continue to discriminate against Plaintiffs and the proposed Plaintiff class on the basis of their sex, in violation of KRS 344.555.

173. Defendants engaged in such conduct intentionally, willfully, and in disregard of the rights of Plaintiffs and the proposed Plaintiff class and/or with actual notice of and deliberate indifference to the rights of Plaintiffs and the proposed Plaintiff class.

H. EIGHTH CAUSE OF ACTION: Title IX (Federal Defendants)

174. The Federal Defendants' promulgation of the revised sex segregation regulations, on October 25, 2006, is final agency action reviewable under 20 U.S.C. § 1683 and 5 U.S.C. § 706.

175. The revised sex-segregation regulations are not a permissible construction of Title IX, because they purport to interpret the statute's ban on sex-based exclusion from educational opportunities to permit programs predicated on exclusion from educational opportunities on the basis of sex

176. By purporting to authorize exclusion on the basis of sex, the Federal Defendants violated Title IX's antidiscrimination mandate.

177. The Federal Defendants engaged in this conduct intentionally, willfully, and in disregard of the rights of Plaintiffs and the proposed Plaintiff class and/or with actual notice of and deliberate indifference to the rights of Plaintiffs and the proposed Plaintiff class.

I. NINTH CAUSE OF ACTION: Administrative Procedure Act (Federal Defendants)

178. The Federal Defendants' promulgation of the revised sex segregation regulations, on October 25, 2006, is final agency action reviewable under 20 U.S.C. § 1683 and 5 U.S.C. § 706.

179. The revised sex-segregation regulations are arbitrary and capricious, an abuse of discretion, and otherwise contrary to law, in that they are counter to the evidence that was before the Federal Defendants, fail to consider important aspects of the problem, and otherwise are not based on informed judgment and reasoned analysis.

180. By purporting to authorize exclusion on the basis of sex, the Federal Defendants engaged in an unreasonable interpretation of Title IX's antidiscrimination mandate.

181. The Federal Defendants engaged in their unlawful conduct intentionally, willfully, and in disregard of the rights of Plaintiffs and the proposed Plaintiff class.

J. TENTH CAUSE OF ACTION: Equal Protection (Federal Defendants)

182. The revised sex-segregation regulations, as promulgated by the Federal Defendants, purport to authorize educational institutions to intentionally discriminate on

the basis of sex without an exceedingly persuasive justification or substantial relationship to an important state interest, in violation of the right to equal protection of the laws secured by the Fifth Amendment to the United States Constitution.

183. By purporting to authorize exclusion on the basis of sex, the Federal Defendants violated the equal protection guarantee of the Fifth Amendment.

184. The Federal Defendants engaged in their unlawful conduct intentionally, willfully, and in disregard of the rights of Plaintiffs and the proposed Plaintiff class.

REQUEST FOR RELIEF

Plaintiffs, on behalf of themselves and the proposed Plaintiff class, respectfully request that this Court:

(1) Certify this case as a class action under Fed. R. Civ. P. 23(a) and (b)(2);

(2) Preliminarily and permanently enjoin the Breckinridge County Defendants from segregating any class or educational program by sex;

(3) Permanently enjoin all Defendants, their agents and employees, and all persons acting 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 in this complaint and to prevent similar future occurrences;

(4) Declare that the actions of all Defendants described above constitute discrimination on the basis of sex, in violation of Plaintiffs' rights under federal and state law;

(5) Declare 34 C.F.R. § 106.34(b) to be an unreasonable, arbitrary, and capricious interpretation of Title IX, and in violation of Title IX, the Administrative Procedure Act, and the equal protection guarantee of the Fifth Amendment of the United States Constitution, and strike it down as void;

(6) Award Plaintiffs monetary damages against all the Breckinridge County Defendants to fairly and reasonably compensate Plaintiffs for the deprivation of their rights in the 2007-2008 school year;

(7) Award Plaintiffs their expenses, costs, and reasonable attorneys' fees under 42 U.S.C. § 1988 and any other applicable provision of law; and

(8) Award other equitable and monetary relief as the Court deems just and proper.

Dated:

Respectfully Submitted

By: *s/ Emily J. Martin*

Emily J. Martin, Esq. (*p.h.v.*)
Lenora M. Lapidus, Esq. (*p.h.v.*)
Araceli Martinez-Olguin, Esq. (*p.h.v.*)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION—WOMEN'S RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10005
phone: (212) 549-2615
fax: (212) 549-2580
emartin@aclu.org
llapidus@aclu.org
amartinez-olguin@aclu.org

-and-

David A. Friedman, Esq.
William E. Sharp, Esq.
AMERICAN CIVIL LIBERTIES UNION OF KENTUCKY FOUNDATION

315 Guthrie Street, Suite 399
Louisville, KY 40202
phone: (502) 581-1181
fax: (502) 589-9687
dfriedman@ffgklaw.com
sharp@aclu-ky.org

Counsel for Plaintiffs A.N.A., by and through S.F.A.; S.E.A., by and through S.F.A.; Z.H.S., by and through S.S.; J.D., by and through his parent and next friend, S.D.; L.D., by and through her parent and next friend, S.D.; G.J., by and through his parent and next friend, L.J.; on behalf of themselves and all others similarly situated.

By: *s/ Ninamary Buba Maginnis (by EJM with permission)*

Ninamary Buba Maginnis
Maginnis Law Office
2212 Bradford Drive, Suite 102
Louisville, Kentucky 40218
Telephone: (502) 458-5875
Facsimile: (502) 458-4790
email: ninamary@maginnislawoffice.com
maginnislaw@yahoo.com

Counsel for Plaintiffs J.J.N., by and through his parent and next friend, J.J.N.; and K.A.S., by and through her legal guardian, J.J.N., on behalf of themselves and all others similarly situated.

CERTIFICATE OF SERVICE

I, Emily J. Martin, hereby certify that on May 19, 2008, a true and accurate copy of the foregoing Amended Complaint was served via ECF to counsel of record as follows:

Mark S. Fenzel — mfenzel@middreut.com
Dana L. Collins — dcollins@middreut.com
Rebecca G. Jennings — rjennings@middreut.com
Middleton Reutlinger
2500 Brown & Williamson Tower
Louisville, KY 40202

David T. Wilson, II — david.wilson@sbw-law.com
Skeeters, Bennett, Wilson & Pike
550 West Lincoln Trail Blvd.
Radcliff, KY 40160

Ninamary B. Maginnis — ninamary@maginnislaw.com
Maginnis Law Office
2212 Bradford Drive, Suite 102
Louisville, KY 40218

/s Emily J. Martin
Emily J. Martin
Women's Rights Project
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2615
emartin@aclu.org