



December 16, 2010

Superintendent Daniel Nerad
School Board President Maya Cole
School Board Members Ed Hughes, James Howard, Lucy Matthiak,
Beth Moss, Marjorie Passman & Arlene Silveira, and
Student Representative Wyeth Jackson
Madison Metropolitan School District
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Madison WI 53703-1967

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RE: Opposition to Single Sex Charter School

Dear Superintendent Nerad, President Cole, and School Board Members:

We are writing on behalf of the ACLU of Wisconsin to oppose the proposal for an all-male charter school in Madison. Single sex education is inadvisable as a policy matter, and it also raises significant legal concerns.

The performance problems for children of color in Madison public schools cross gender lines: it is not only African-American and Latino *boys* who are being failed by the system. Many students of color and low income students – girls as well as boys – are losing out. Further, there is no proof that separating girls from boys results in better-educated children. What's more, perpetuating gender stereotypes can do nothing more than short-change our children, limiting options for boys and girls alike. For these reasons, the ACLU of Wisconsin opposes the effort to open a single-sex, publicly-funded charter school in Madison.

To be clear: the ACLU does not oppose the idea of providing a public charter school with a rigorous academic program and supplemental resources as an alternative to existing school programs in the Madison district. And we strongly encourage efforts to ensure that programming is available to children in underserved communities. Were this an effort to provide an International Baccalaureate program to both boys and girls in Madison – such as the highly-rated, coeducational Rufus King High School in Milwaukee, whose students are predominantly low-income children of color – we would likely be applauding it.



However, we object to the theory that improvement will occur by segregating boys from girls, and by providing boys different opportunities from what the district provides to girls. While there is much rhetoric about the purported benefits of sex segregation, that rhetoric lacks a scientific basis. To the contrary, a U.S. Department of Education extensive review of the research and data concluded that there is no clear evidence that students are more likely to succeed in single sex schools.¹

The reality is that all students learn differently. These differences are based on many factors, and do not break down simply along gender lines. A school program or teaching strategy that helps one girl may not help another, and an approach to which one boy responds well may not work for another boy. Sex segregation is based on unproven theories of gender differences about the ways boys and girls learn, and it wrongly encourages educators to oversimplify issues of learning style differences and ignore the more nuanced needs of both girls and boys. The better solution is to ensure that all students are given meaningful educational opportunities to reach their full potentials, and that all teachers are given the training and resources to reach students with a variety of learning styles, regardless of their students' gender.

In trying to decide whether to approve a sex-segregated publicly funded school, we also urge decision makers and community members to look closely at the influential theories of leading sex-segregation proponents Leonard Sax and Michael Gurian. Sax is a psychologist; Gurian is a corporate consultant, novelist, and counselor. Neither performs his own scientific research. Both of them train teachers in public school districts experimenting with sex segregation, and both rely on unsubstantiated theories of sex differences that reflect and reinforce gender stereotypes. An organization Sax founded, the National Association for Single Sex Public Education, and Gurian, were both identified in the Initial Proposal to establish this charter school.² Decision makers should also critically evaluate the data in the Proposal that, it is asserted, supports single sex education.³

¹U. S. Dept. of Education, *Single-Sex Versus Coeducation Schooling: A Systematic Review—Final Report* (2005). It should also be noted that most of the research on single-sex education focused on girls' schools, not boys' schools.

²Sax's organization and Gurian's institute also were identified as resources by the school's proponent, Email of Oct. 8, 2010 by Kaleem Caire, referencing the National Association for Single Sex Public Education and the Gurian Institute, viewed on Dec. 8, 2010 at: http://www.schoolinfosystem.org/archives/2010/10/an_updated_on_m.php

³The examples cited at p. 46 of the Initial Proposal for the Madison single sex charter school do not appear to have been subjected to peer review or other rigorous analysis. The references for all but one are from the conservative Eagle Forum organization, from a university newsletter, and from a newspaper article. It is unclear whether the Australian report cited in the Initial Proposal at p. 46 and n. xi was subjected to such analysis, but it should be noted that this report explicitly states: "Several former all-boys schools in Australia have chosen to become coeducational, and some coeducational schools have adopted single-sex class groupings. However, it is important not to over-interpret the 'importance' of these gender and gender/class/schoolgrouping effects, since they are not as significant as class/teacher effects – regardless of student gender . . . Caution is also needed in interpreting results related to single-sex school and class effects because background factors, such as socioeconomic status need

These are examples of Sax' theories⁴:

- Teachers should smile at girls and look them in the eye. However, teachers must not look boys directly in the eye or smile at them.
- Boys do well under stress, and girls do badly, so girls should never be given time limits on a test.
- Girls should take their shoes off in class because this helps them relax and think better.
- Literature teachers should not ask boys about characters' emotions, and should only focus on what the characters actually did. But teachers should focus on characters' emotions in teaching literature to girls.
- Boys should receive strict discipline based on asserting power over them. Young boys can be spanked. Girls must never be spanked. Girls should be disciplined by appealing to their empathy.
- A boy who likes to read, who does not enjoy contact sports, and who does not have a lot of close male friends has a problem, even if he thinks he is happy. He should be firmly disciplined, required to spend time with "normal males," and made to play sports.

These are examples of Gurian's theories⁵:

- Boys are better than girls in math because boys' bodies receive daily surges of testosterone. Girls have similar skills only during the few days in their menstrual cycle when they have an estrogen surge. Because of this estrogen surge, "an adolescent girl may perform well on any test, including math, a few days a month." Boys can do well any day.
- Boys are abstract thinkers, and so are naturally good at things like philosophy and engineering. Girls are concrete thinkers and do better in math and science if teachers give them objects that they can touch, such as beans or buttons, to illustrate the lesson.

to be taken into account. In addition, much of the research has been based on cognitive achievements in school settings, without a broader consideration of long term social outcomes and attitudes that students take into their adult lives." Cresswell, J., Rowe, J.K., & Withers, G. *Boys in School and Society*, 2002 Australian Council for Educational Research, ISBN 0-86431-433-7, p. 23.

⁴Leonard Sax, *Why Gender Matters: What Parents and Teachers Need to Know About the Emerging Science of Sex Differences* (2005) at pp. 86-92, 108-112, 179-83, 188, 218-228.

⁵Michael Gurian, *The Boys and Girls Learn Differently Action Guide for Teachers* (2003) at pp. 17, 75, 90-92, 100; Gurian Institute, Teacher Training Materials, "How Boys and Girls Learn Differently" (2006).

- Boys should be given Nerf baseball bats with which to hit things so they can release tension during class.
- “Pursuit of power is a universal male trait. Pursuit of a comfortable environment is a universal female trait.”

In addition to these policy concerns, providing the kind of specialized programming proposed here⁶ to students of only one sex would likely violate state and federal non-discrimination laws and the Constitution. In *United States v. Virginia*, a case challenging the all-male admission policy at the Virginia Military Institute, the United States Supreme Court made clear that to comply with the Equal Protection Clause, a governmental actor instituting a single sex education program must demonstrate an “exceedingly persuasive justification,” and the single sex nature of the program must be substantially related to the achievement of that justification. *Virginia*, 518 U.S. 515, 540-42 (1996). This is a difficult standard to meet. The justification that is asserted is the improvement of academic achievement for boys of color in the Madison schools. However, as noted above, the U.S. Department of Education has found little evidence linking single sex education to improved academic outcomes. Further, many girls of color are also underperforming in the district and likely could benefit from the kind of rigorous programming that is proposed. Thus, the proposed sex segregation is not sufficiently related to the goal of improving academic outcomes to justify its adoption.

As also discussed above, many single sex programs are justified based on presumed differences in learning styles between boys and girls. However, the Court has clearly held that the Constitution does not permit single sex education to be based on “overbroad generalizations about the different talents, capacities, or preferences of males and females.” *Virginia*, 518 U.S. at 533. “State actors controlling gates to opportunity . . . may not exclude qualified individuals based on ‘fixed notions concerning the roles and abilities of males and females.’” *Id.* at 541 (citations omitted). Further, despite claims that the form and structure of the segregated program was “justified pedagogically” based on “important differences between men and women in learning and developmental needs” [and] “psychological and sociological differences” generalizations about what “most women” need, *i.e.*, generalizations about a “typical” woman (or man), are not constitutionally adequate to permit a sex-segregated program. *Id.* at 550-51. Thus, unproven theories of learning style differences are an impermissible basis to support sex segregation.

Finally, the proposal would also appear to violate Title IX and state non-discrimination law. Under Title IX, “No person in the United States shall, on the basis of sex, be excluded from participation in . . . any education program or activity receiving Federal financial assistance.” 20

⁶In addition to operating the school as an IB school, the plan includes, among other proposals, “Harkness” (seminar-style) teaching; an extended school day and extended school year; multiple forms of mentoring; and small class sizes.

U.S.C. § 1681(a). While there are some exceptions in Title IX for admissions to single-sex schools, Title IX regulations specify that “a recipient that operates a public nonvocational elementary or secondary school that excludes from admission any students, on the basis of sex, must provide students of the excluded sex a substantially equal single-sex school or coeducational school.” 34 C.F.R. § 106.34(b)(2). Similarly, Wis. Stat. § 120.13(37m) prohibits the establishment of a single-sex school or course unless “the school board makes available to the opposite sex, under the same policies and criteria of admission, schools or courses that are comparable to each such school or course.” The current Proposal, however, is not simply for an all-male school, but for an all-male school that would include the only IB programming (as well as other supplemental programming and practices) in the Madison district. No equivalent program will be made available to students in either a coeducational setting, or to girls in any setting, at any specified time, and certainly there will be no equivalent programming available at the time the all-male school would begin operating. Even assuming that a coeducational or all-girls component would comply with the Constitutional requirements set forth above – which we do not believe - the failure to include such a program thus fails to meet even the minimum requirements set out in Title IX and Wisconsin state law.

While it is clear that too many Madison schools fail too many children, especially children of color, segregating students and perpetuating gender stereotypes will not turn a struggling educational system around. Every child deserves to be educated in a safe, challenging, and respectful environment where harmful stereotypes are not used to limit opportunities and diminish individual achievements. Providing an IB school available to underserved girls as well as boys could well be a step in the right direction. Providing that opportunity only to boys, in a segregated environment, would move education backwards – likely in violation of federal and state laws and the Constitution. We urge the district to ensure that does not occur.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Ahmuty". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chris Ahmuty
Executive Director