AMERICAN CIVIL LIBERTIES UNION of LOUISIANA FOUNDATION

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July 25, 2006

Livingston Parish School Board
13909 Florida Blvd.
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Via: U.S. Mail and Facsimile to (225) 686-4321
Re: Single-Sex Classes at Southside Junior High School

To Whom It May Concern:

It has come to our attention that Southside Junior High School, a public school in Livingston Parish School District, has announced its intention to assign all students to single-gender classrooms in the 2006-2007 school year. We are writing to alert you to our concerns regarding this arrangement and the serious legal problems it raises. We hope that upon consideration of the relevant federal law, the current plan for Southside Junior High will be abandoned. Otherwise, given the imminence of the new school year, we will be forced to seek immediate judicial intervention.

The proposed mandatory sex segregation blatantly violates Title IX and its implementing regulations. Title IX of the Education Amendments of 1972 provides "No person in the United States shall, on the basis of sex, be excluded from participation in . . . *any* education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a) (emphasis added). The Supreme Court has held that this prohibition must be given "a sweep as broad as its language." *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1983).

The current Title IX regulations are consistent with this statutory command: they make explicitly clear that Title IX permits sex-segregated classes in coeducational schools *only* for contact sports and portions of classes in elementary and secondary schools that deal exclusively with human sexuality. 34 C.F.R. § 106.34. In 2004, the U.S. Department of Education proposed amendments to the Title IX regulations that purport to loosen Title IX's prohibition on sex-segregated classes. These regulations have been submitted for notice and comment, but have not been finalized by the Department of Education. Thus, they do not have the force of law, just as a bill that has been proposed in Congress but has not been passed is not a law.

Moreover and crucially, even these proposed permissive regulations would prohibit Southside Junior High's proposed single-sex arrangement. We understand Southside Junior High plans to provide *only* single-sex classes, with no coeducational alternative. But the proposed regulations state, "[A] recipient that operates a nonvocational coeducational elementary or secondary school may provide nonvocational single-sex classes, *if* . . . the recipient provides a substantially equal coeducational class in the same subject." 69 Fed. Reg. at 11284 (emphasis added). In short, the only way to reconcile the Southside Junior High program with either the current or the proposed Title IX regulations is to assume that the regulations mean the opposite of what they explicitly say they mean. This would seem to be a high-risk legal strategy.

The proposed sex segregation at Southside Junior High also violates the Constitution. In *United States v. Virginia*, a case challenging the all-male admission policy at the Virginia Military Institute (VMI), the United States Supreme Court made clear that to comply with the Equal Protection Clause, a governmental actor must demonstrate an "exceedingly persuasive justification" for instituting single-sex education. *Virginia*, 518 U.S. 515, 540-42 (1996). According to the materials posted on Southside Junior High's website, sex segregation is being adopted to address supposed neurological, developmental, and hormonal differences between boys and girls. But the Supreme Court has held that single-sex education cannot be justified by reliance on "gender-based developmental differences" or evidence of male and female "tendencies." *Id.* at 516-17. As the Court explained in response to the argument that single-sex education was necessary because of "important differences between men and women in learning and developmental needs[,] . . . generalizations about the 'way women are,' estimates of what is appropriate for *most women*, no longer justify denying opportunity to women whose talent and capacity place them outside the average description." 518 U.S. at 550. The promise of the Equal Protection Clause is that individual men and women, and individual boys and girls, will not be forced to conform to generalized understandings of what is essentially "male" or essentially "female," whether those generalizations are accurate on average or not.

Ensuring equal educational opportunity should be a core principle for every community, and schools must be given the tools necessary to allow all students to succeed, regardless of their gender, race, or background. The ACLU is committed to promoting such equal opportunity. But sex segregation is not the way to achieve these shared goals. Southside Junior High has achieved a record of success by educating boys and girls together. It should not turn its back on this success. Should Southside Junior High and the Livingston Parish School Board continue to pursue this illegal and unconstitutional plan, we will be forced to commence litigation without delay. We look forward to speaking to you about how to avoid this result.

Sincerely,

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