



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310  
SEATTLE, WA 98174-1099

November 14, 2016

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Ms. Lenora M. Lapidus  
Director, Women's Rights Project  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, New York 10004

Re: Middleton School District 134  
OCR Reference No. 10131040

Dear Ms. Lapidus:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of your complaint against Middleton School District 134. Your complaint alleged that the District discriminated against female students, on the basis of sex. Specifically, the complaint alleged that the District discriminated against female students on the basis of sex by operating single-sex classes and extracurricular activities at Middleton Heights Elementary School (MHES).

OCR conducted its investigation under the authority of title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (Title IX), and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance from the Department. The District receives federal financial assistance from the Department and is therefore subject to Title IX.

OCR investigated whether the District operates single-sex classrooms at MHES in a manner that is inconsistent with the requirements of Title IX. As discussed below, OCR determined that the District failed to comply with the requirements of Title IX. In conducting its investigation, OCR considered information provided by you and the District, including interviews with District staff and administrators. OCR's findings are set forth below.

### Legal Standards

A recipient that operates a nonvocational coeducational elementary or secondary school may provide nonvocational single-sex classes or extracurricular activities only under certain circumstances. See 34 C.F.R. §106.34(b). Specifically, a recipient may not offer a single-sex class unless it is "based on the recipient's important objective." Further, a

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

recipient must implement an important objective in “an evenhanded manner,” with enrollment or participation “completely voluntary,” and with all other students provided a “substantially equal” coeducational class or activity in the same subject or activity. See 34 C.F.R. §106.34(b)(1)(ii)-(iv).

An important objective is necessary for “each single-sex class or extracurricular activity” and must be established prior to offering the single-sex class. See 34 C.F.R. §106.34(b)(1)(i); *see United States v. Virginia*, 518 U.S. 515, 533 (1996)(in context of sex-separate admissions policy for public postsecondary undergraduate institution, requiring genuine justification that is not hypothetical or invented *post hoc* in response to litigation). At the elementary school level, where a class typically covers many subjects, the recipient must separately justify the use of single-sex classes for each subject.

The regulations on single-sex classes describe the following two important objectives, one of which must be the basis for offering a single-sex class:

1. Diversity Objective: “To improve educational achievement of its students, through a recipient’s overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective.” See 34 C.F.R. §106.34(b)(1)(i)(A). To meet this objective, a recipient must first identify the educational achievement it seeks to improve through the diverse educational opportunities it offers and the proposed single-sex class. The regulation refers to an offering of “opportunities,” so recipients may not rely on the diversity objective if the only type of nontraditional class offered is a single-sex class. Rather, the recipient must offer a range of diverse educational opportunities beyond single-sex and coeducational classes.

2. Needs Objective: “To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective.” 34 C.F.R. §106.34(b)(1)(i)(B). Unlike the diversity objective, to meet the needs objective, the recipient must identify a particular educational need in its student body, evidenced by limited or deficient educational achievement, which is not being met by coeducational classes. The needs objective also encompasses certain social needs that students may have. OCR recognizes that a school’s educational mission may extend beyond strictly academic objectives, and that classes and activities may provide

social benefits that can have a positive effect on students' educational outcomes.<sup>1</sup>

Regardless of which objective it chooses, the recipient must show that the single-sex nature of the class is “substantially related” to meeting the identified objective. See 34 C.F.R. §106.34(b)(1)(A) and (B). To satisfy the substantial relationship requirement, OCR will accept a research study that employs a rigorous research design for causal inference, demonstrates the effectiveness of the single-sex nature of the class with respect to the specific important objective at issue, and includes a sample that overlaps with the proposed populations or settings that the recipient is targeting. Claims that a certain strategy (such as a teaching method or a specific learning environment) is more effective for most members of one sex will not be sufficient, standing alone, to show a substantial relationship between the single-sex nature of a class and the important objective. Rather, the recipient needs further evidence showing that the exclusion of the other sex is necessary to make the strategy effective or, at the least, substantially more effective.

A recipient must evaluate its single-sex programs at least every two years, ensuring that its single-sex classes or activities are based on “genuine justifications” and do not “not rely on overbroad generalizations about the different talents, capacities, or preferences of” either sex. See 34 C.F.R. §106.34(b)(4).

### Background Information

During the 2014-2015 school year, the District enrolled 3,768 students in 6 schools (3 elementary schools, 1 middle school, 1 high school, and 1 alternative high school). MHES reported an enrollment of 541 students in kindergarten through 5th grade.

OCR received a complaint about the District's single-sex class offerings on December 6, 2012. Specifically, the complaint alleged that MHES failed to meet the requirements of Title IX for offering single-sex classes, including failing to adequately notify parents and guardians that enrollment in single-sex classes and activities was completely voluntary and failing to obtain affirmative consent before assigning students to a single-sex class.

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<sup>1</sup> Administrative convenience will never be sufficient to justify the offering of single-sex classes.

### Findings of Fact

During the 2006-2007 school year, the District began offering single-sex classrooms as a pilot program to boys and girls at MHES in 2<sup>nd</sup> through 4<sup>th</sup> grades. MHES was the only school in the District that established single-sex classrooms. During the 2007-2008 through 2015-2016 school years, the District continued to offer the single-sex programs. In each year in which the District offered the single-sex program, the District provided one boys' classroom, one girls' classroom, and at least one coed classroom for the grade level with the single-sex class option.

The District's stated objectives for having single-sex instruction for was to improve their reading proficiency and to increase the diversity of educational opportunities for all students. These objectives were identified prior to the implementation of the single-sex boys' classrooms and were based on data collected by the District showing that male students at MHES were reading below expectations on state-mandated standardized reading tests. The test scores showed that boys were consistently scoring lower than girls. The District selected single-sex education based on a determination that the best means for eliminating the achievement gap was to focus on boys in a classroom setting that allowed the teaching of reading to be tailored to boys. The District maintains that it expanded the program based on information indicating that the program was having positive results in eliminating the reading achievement gap.<sup>2</sup> The District did not provide a justification for providing single-sex instruction to boys in subjects other than reading, nor for providing single-sex instruction to boys in each of the grade levels for which single-sex instruction was provided at MHES.

The District's stated objective for single-sex instruction for girls was to "improve math and science interest and proficiency among girls, where nationally the trend is for girls to have less interest." This objective was established after implementation of the single-sex girls' classrooms. The District established this objective based on national trends regarding girls' achievement and interest in math and science. The District provided no data showing that girls attending MHES were underachieving in math or science or that girls' interest in science and math at MHES was lower than expectations. The District offered OCR no justification for providing single-sex instruction for girls in subjects other than math and science, nor for providing single-sex instruction to girls in each of the grade levels in which single-sex instruction was provided at MHES.

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<sup>2</sup> The District's program evaluation is discussed below, under the findings applicable to both boys' and girls' classrooms.

The District maintained that it based its single-sex classroom educational models on neuroscience and applied research. The District primarily cited research that was conducted by a single institution (The Gurian Institute) and that focused on the topic of how boys and girls learn differently. The District informed OCR that it reviewed multiple books and articles when making the decision to establish single-sex classrooms. Aside from single-sex classrooms, the District offered no other nontraditional classes at MHES.

Each spring, MHES makes classroom assignment decisions for the upcoming school year. In the spring of 2010 and 2011, when making assignment decisions for the 2010-2011 and 2011-2012 school years, respectively, MHES used a process whereby it would request from parents their preference and MHES would honor that preference. If a parent did not indicate a preference for their child, the District would make the decision of whether to assign the child to a single-sex or coed classroom. Once MHES had notified parents of their child's classroom assignment, parents could request a change and could opt to have their child moved into or out of their assigned classroom. MHES did not document written consent for students' placement in single-sex classrooms prior to the 2012-2013 school year.

In the spring of 2012, MHES implemented a new process for opting into the single-sex classrooms. Parents were provided a form with the option to have their child placed into one of the single-sex classrooms. The form also clearly stated that parents could ask, in writing, to have their child removed from the single-sex classroom at any time during the school year and that the student would be moved within 3 days of the request. The District provided OCR with documents showing that parents provided opt-in consent for all of the students enrolled in single-sex classrooms in the 2012-2013 and 2013-2014 school years.

In years prior to 2013-2014, the students who were assigned to single-sex classrooms at MHES received all content instruction within that classroom and were not integrated with students of the other sex for instruction in special classes, such as art, music, computer, library, and physical education. Students of both sexes mixed for lunch and recess.

Beginning in 2013-2014, MHES began combining all grade level classrooms for health, media, computer, music, and character education. In addition, in 2013-2014, each grade level was assigned a specific time during the day where all students from each grade level classroom were combined into coeducational groups for reading and math instruction based on their proficiency level.

The District explained that the student-teacher ratios in the boys', girls', and the coeducational classrooms varied because MHES was honoring parental requests. OCR determined, however, that the boys' classrooms had a lower ratio of students to teacher than the ratio in the girls' and coeducational classrooms in every instance except one.

The District maintained that it evaluated its single-sex program at MHES every 2 years to determine whether it was achieving its goals, and provided information regarding its evaluation of the program, including surveys of parents and teachers. The District's evaluation materials included MHES data for the 2007-2008 and 2008-2009 school years regarding reading, math, and language assessment scores, and the data was disaggregated by sex, socio-economics, ethnicity, disability status, and grade. The District's evaluation included a statement indicating that boys' overall reading scores at MHES increased due to recently implementing a new reading program that was offered to all students in all grades. The District's evaluation did not credit the single-sex classroom model or disaggregate data regarding single-sex and coeducational programs. The evaluation did not include a written analysis of any data regarding single-sex programs or any conclusion indicating whether or not the single-sex classrooms for either boys or girls were achieving the District's stated objectives, i.e., improving reading scores for boys and increasing interest and proficiency in math and science for girls. It also did not include any analysis of whether the single-sex classrooms were relying on classroom methods or strategies that reverted to sex stereotypes. With respect to instruction, teachers of single-sex classrooms told OCR that they used the same methodologies in their single-sex classroom that they did when they taught in a coed classroom.

#### Analysis and Determination

In this case, the District indicated that its single-sex classes would address both the diversity and needs objectives. However, the District was unable to demonstrate that single-sex classrooms satisfied a "diversity objective," because it did not offer a range of diverse educational opportunities at MHES, as Title IX requires. See 34 C.F.R. §106.34(b)(1)(i)(A). Rather, the single-sex classrooms were the only type of nontraditional classes that the District offered at MHES. Accordingly, the District could not meet the Title IX standard for a diversity objective.

With respect to the "needs objective," the District identified low reading achievement by MHES boys as a need that was going unmet prior to creating single-sex classes, but it was unable to demonstrate a substantial relationship between the single-sex nature of the classrooms at MHES and the District's alleged "needs objective." The District did not

identify any evidence, other than MHES boys' reading test scores, that was gathered to establish its objective and could not explain how that objective was specifically evaluated to reach the determination that offering a single-sex classroom for boys, and excluding girls, would improve boys' reading scores. Further, the District had no information about what specific evidence was considered or what evaluation took place at MHES to determine that single-sex classrooms for girls would improve girls' interest in math and science, and the evidence indicated that the District established this objective after it created the single-sex classrooms for girls. The research the District utilized to support the establishment of single-sex education was general in nature, focusing on books and articles that identified how research indicates that boys and girls learn differently, and was not specific about how the educational model would address the specific needs of the MHES population.

Additionally, the District was not able to demonstrate that, with respect to either boys' or girls' alleged needs at MHES, such needs could not be addressed in coeducational classes. The information provided by the District demonstrated that beginning in 2013-2014 reading instruction at MHES was often provided in a coeducational setting while maintaining single-sex instruction in other content areas and that all of the specific educational strategies utilized in single-sex classrooms to differentiate instruction could also be incorporated into a coeducational setting. The District operated single-sex classes from the beginning of the 2006-2007 school year until the end of the 2015-2016. No rationale was provided as to why the students assigned to single-sex classrooms at MHES were also segregated in single-sex classes for subjects other than reading (for boys) or math and science (for girls).

Based on the above, OCR concludes that the District was unable to identify an important objective that was substantially related to the single-sex classrooms offered at MHES. Therefore, the District's single-sex classroom program did not meet the requirements of 34 C.F.R. §106.34(b)(1)(i)(A) or (B).

OCR determined that the District's offering of single-sex classes could not meet other requirements of Title IX as well. For instance, prior to the 2012-2013 school year, the District used an opt-out process with respect to student assignment to single-sex classrooms that violated Title IX's voluntariness requirement. See 34 C.F.R. §106.34(b)(1)(iii). OCR recognizes that this particular violation was remedied by the District for the 2012-2013 and later school years. The student-teacher ratio that favored the boys' classrooms, however, persisted throughout the years the District offered single-sex classrooms and raised concern the District was not providing a substantially equal opportunity to the coeducational classes (as well as to the girls' classes), as required by

Title IX. See 34 C.F.R. §106.34(b)(1)(iv). Finally, the District's periodic evaluations were deficient because the District focused on school-wide achievement and did not focus on the efficacy of the single-sex classrooms, as required. See 34 C.F.R. §106.34(b)(4).

Based on the above, OCR has determined that the District violated Title IX with regard to its single-sex classrooms at MHES.

### Resolution Agreement

On May 10, 2016, the District's attorney notified OCR that MHES would be eliminating its single-sex classrooms effective for the 2016-2017 school year. Subsequently, the District and OCR entered into discussions regarding the Title IX issues identified by OCR during the investigation. The District signed the enclosed resolution agreement on October 31, 2016, which, when fully implemented, will address the violations of Title IX identified by OCR.

Under this agreement, the District agrees to provide OCR with documentation demonstrating that it has eliminated the single-sex program at MHES as represented. The District will also provide notice on its website that the programs have been eliminated, provide notice to relevant MHES and District administrators, board members, and staff about the requirements of Title IX with respect to single-sex programs, and provide OCR with annual updates through the 2019-2020 school year on whether or not the District intends to implement a single-sex program. In the event the District determines it wishes to implement a single-sex program in the future, it agrees to conduct training and align its program with the requirements of Title IX in advance of offering any single-sex classes. OCR will monitor the District's implementation of the agreement.

### Conclusion

This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the District's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.



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This concludes OCR's investigation of the complaint. You may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, you may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for bringing these concerns to our attention. If you have any questions, please contact Mark Farr, special projects coordinator, at (206) 607-1607 or at [mark.farr@ed.gov](mailto:mark.farr@ed.gov).

Sincerely,

A handwritten signature in cursive script that reads "Paul Goodwin".

Paul Goodwin  
Supervisory Attorney

Enclosure: Resolution Agreement

**Resolution Agreement  
Middleton School District 134  
OCR Complaint No. 10131040**

The U.S. Department of Education (Department), Office for Civil Rights (OCR), initiated an investigation of the above-referenced complaint filed against the Middleton School District 134 (District), pursuant to Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. Sections 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any educational program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to the provisions of Title IX. Accordingly, to ensure compliance with the above-referenced statute and to resolve this complaint, the District voluntarily agrees to take the following actions:

**1. ACTION ITEM: Supporting Documentation**

The District commits to documenting its decision to discontinue offering single-sex classes at Middleton Heights Elementary School (MHES) for the 2016-2017 school year. The District further commits that if it implements single-sex classes or activities during the monitoring of this Agreement, those classes and activities will be developed in accordance with the requirements of the Title IX regulation at 34 C.F.R. § 106.34(b).

**REPORTING REQUIREMENT: By November 30, 2016**, the District will provide OCR with documentation, satisfactory to OCR, that shows that the District has discontinued its single-sex classes at MHES for the 2016-2017 school year, such as a copy of the official minutes of the school board meeting approving the change, other official record to indicate the change has been implemented, and any formal notification that went to parents regarding the change. OCR will notify the District if it requires additional documentation to confirm that the District eliminated the single-sex classes, and the District will provide the documentation within 14 days of OCR's request.

**By October 15, 2017, 2018 and 2019**, the District will provide OCR with a report indicating whether the District determined to offer single-sex classes during that school year (2017-2018, 2018-2019 and 2019-2020, respectively). If it determined not to offer single-sex classes or activities during that school year, the report will indicate such. If the District determined to offer single-sex classes during that school year, the report will provide to OCR the information and documentation the District relied on in making the determination that the program was in compliance with the requirements of the Title IX regulation at 34 C.F.R. § 106.34(b), as well as all communications with parents regarding the implementation of and student assignment to single-sex classes. OCR will review the materials for compliance with Title IX requirements. If OCR determines that the materials do not support each single-sex classroom or activity program, then within 60 days of receiving notice from OCR, the District will provide additional information and documentation that addresses the concerns identified by OCR. If the District does not address all of OCR's concerns by the end of that school year, the District will discontinue the program and not offer single-sex classes in the following school year unless it undertakes wholly new efforts to comply with Title IX regulations.

**2. ACTION ITEM: Notice**

a. Website Notice: The District will provide notice on its publicly accessible website that it has discontinued offering single-sex classes at MHES for the 2016-2017 school year, and that if it determines to offer single-sex classes in the future, it will ensure that the classes meet the legal requirements of the Title IX regulation at 34 C.F.R. § 106.34(b).

**REPORTING REQUIREMENT: By November 30, 2016**, the District will provide OCR, for its review and approval, a draft of the proposed notice to be posted on the District's publicly accessible website. OCR will review the notice and notify the District whether the notice is approved. If OCR requires revisions, then within 14 days of receiving such notice from OCR, the District will make the revisions and will provide the revised draft notice to OCR. The District and OCR will repeat this procedure until OCR approves the notice. Within 14 days of receiving OCR's approval, the District will post the notice on its website.

b. Written Notice: The District will provide written notice of the requirements that must be met in order to offer single-sex classrooms, as outlined in the Title IX regulation at 34 C.F.R. §106.34(b), to the Superintendent, Director of Instruction and Student Achievement, District Title IX coordinators, Board of Trustees, and all MHES administrators and teaching staff. Specifically, the notice will address the following requirements for offering single-sex classes or extracurricular activities:

- Identify beforehand, for each class or activity, an important educational objective to be achieved (such as improving academic achievement);
- Demonstrate beforehand, for each class or activity, that the single-sex nature of the class or activity is substantially related to achieving the specified objective;
- Ensure that enrollment in the single-sex class is completely voluntary (through an opt-in, rather than an opt-out, process);
- Offer a substantially equal coed class in the same subject;
- Offer single-sex classes evenhandedly to male and female students;
- Conduct periodic evaluations at least every two years to ensure that the classes continue to comply with Title IX;
- Avoid relying on gender stereotypes;
- Provide equitable access to single-sex classes to students with disabilities and English language learners; and
- Avoid discriminating against faculty members based on gender when assigning educators to single-sex classrooms.

**REPORTING REQUIREMENT: By November 30, 2016**, the District will provide OCR, for its review and approval, a draft of the proposed notice to be sent to staff. OCR will review the notice and notify the District whether the notice is approved. If OCR

requires revisions, then within 14 days of receiving such notice from OCR, the District will make the revisions and will provide the revised draft notice to OCR. The District and OCR will repeat this procedure until OCR approves the notice. Within 14 days of receiving OCR's approval, the District will send the notice to the individuals listed in item 2.b above.

**3. ACTION ITEM: Training**

If the district decides to consider adding any single-sex classes or activities, the District will provide training to the Superintendent, Director of Instruction and Student Achievement, District Title IX coordinators, Board of Trustees, and all administrators and teaching staff at the school(s) for which single-sex classes and activities are being considered on the requirements that must be met in order to offer single-sex classrooms, as outlined in the Title IX regulation at 34 C.F.R. §106.34(b). Specifically, the training will address the following requirements for offering single-sex classes or extracurricular activities:

- Identify beforehand, for each class or activity, an important educational objective to be achieved (such as improving academic achievement);
- Demonstrate beforehand, for each class or activity, that the single-sex nature of the class or activity is substantially related to achieving the specified objective;
- Ensure that enrollment in the single-sex class is completely voluntary (through an opt-in, rather than an opt-out, process);
- Offer a substantially equal coed class in the same subject;
- Offer single-sex classes evenhandedly to male and female students;
- Conduct periodic evaluations at least every two years to ensure that the classes continue to comply with Title IX;
- Avoid relying on gender stereotypes;
- Provide equitable access to single-sex classes to students with disabilities and English language learners; and
- Avoid discriminating against faculty members based on gender when assigning educators to single-sex classrooms.

The district will provide the training no less than four months in advance of taking any steps to implement single-sex classes, including steps to conduct a study or otherwise determine whether the single-sex nature of a class or activity is substantially related to achieving a specified objective.

**REPORTING REQUIREMENT:** By June 15, 2017, 2018, and 2019, the District will provide OCR with a report indicating whether the District plans to offer single-sex classes during the upcoming school year (2017-2018, 2018-2019 and 2019-2020, respectively), as stated in the reporting for Action Item 1, above. If the District plans to offer single-sex classes or activities during the upcoming school year, the report will include information demonstrating that the District has completed the above training

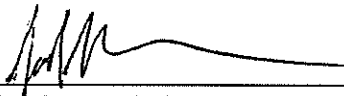
regarding single-sex classes. The report will include the date(s) of the training, a sign-in sheet listing the attendees by name and position, a copy of the training agenda, a copy of the training materials, and the name, title and qualifications of the trainer(s).

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that, during the monitoring of this Agreement, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the Title IX implementing regulation at 34 C.F.R. § 106.34 that was at issue in this case.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the Title IX implementing regulation at 34 C.F.R. § 106.34 that was at issue in this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the Superintendent or his designee below.

  
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**Dr. Josh J. Middleton**  
**Superintendent**  
**Middleton School District 134**

Oct 31 2016  
**Date**