



June 26, 2017

Jefferson County Board of Education
c/o Angie Gilpin, Board Secretary
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Via first class and electronic mail

RE: Proposal for "Males of Color Academy"

Dear Members of the Board:

We write to express our concerns regarding the proposal to found a new middle school for boys of color, to open in the fall of 2018. We strongly urge the Board to reconsider its approach. We fully support efforts to eliminate educational disparities, to provide new educational opportunities, and to improve life outcomes for children of color in Louisville. Indeed, the provision of new educational options, including institution of a school using a more culturally responsive curriculum, is a promising step. However, providing such a new opportunity in the context of a school open to *boys only* is not the right solution, and raises significant legal and policy concerns. As a national leader on the issue of single-sex education with considerable expertise on the law in this area, we write to share our concerns with you today in the hopes that the Board will rethink its approach.

The Board's focus on addressing the severe and deplorable educational situation facing Black and Latino youth in Louisville is commendable. The ACLU of Kentucky decries the racial disparities in educational outcomes, in Louisville and across the state. And we support and advocate for efforts both to stem the school-to-prison pipeline that results in students of color being disproportionately funneled into the criminal justice system, with often devastating long-term consequences to their life prospects, and to combat the overrepresentation of young men of color in our jails and prisons.

However, despite the proposal's commendable attempt to tackle these critical problems, it suffers from a fatal flaw: it leaves girls of color behind. Black and Latina girls live in the same neighborhoods, attend the same schools, and share many of the same struggles as their male counterparts, while also facing unique

circumstances and obstacles to academic success.¹ Girls as well as boys of color in Louisville are in need of improved educational options. There is no justification for making this new opportunity available only to their brothers, on the basis of their sex, rather than based on young people's actual need. Moreover, single-gender education has not been proven to be any more effective than coeducation in improving student outcomes, and risks promoting harmful gender stereotypes.

In addition to these policy concerns, approval of the proposal would raise significant legal issues under Federal law, including Title IX of the Education Amendments of 1972 and the U.S. Constitution. Each of these sources of law broadly prohibits legal distinctions based on sex—including the formation of all-male or all-female schools—with few narrow exceptions that require rigorous justification. These legal and policy concerns are outlined for the Board's benefit below.

I. The Proposal's Exclusive Focus on Boys Overlooks the Problems Facing Girls.

This proposal is part of a nationwide trend seizing on single-gender education to tackle what are, at their root, racial and economic inequalities. Unfortunately, in the process, the needs of girls of color are too often made invisible.

For example, an analysis by the Institute for Women's Policy Research of the report that initially made the case for the My Brother's Keeper initiative, a national program aimed at boys of color, found that of the 114 statements making the case for such a boy-targeted program, 89 pertained equally to both boys and girls of color—undifferentiated by gender. The analysis goes on to say, "Of the 25 statements in the . . . report that do pertain to boys and young men of color, for 5 of them the data do not show that males of color are worse off than females of color. In addition 11 of the 'male' statements actually pertain to data or studies that were not gender differentiated and are mislabeled . . . as pertaining specifically to boys or young men."²

¹ See generally Kimberle Crenshaw, *Black Girls Matter: Pushed Out, Over Policed, and Under Protected*, African American Policy Forum, http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/54dcc1ece4b001c03e323448/1423753708557/AAPF_BlackGirlsMatterReport.pdf [hereinafter Crenshaw, *Black Girls Matter*].

² Institute for Women's Policy Research, *Toward Our Children's Keeper: A Data-Driven Analysis of the Interim Report of the My Brother's Keeper Initiative Shows the Shared Fate of Boys and Girls of Color*, (2015), <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/I927-Toward%20Our%20Childrens%20Keeper-5.28.2015.pdf>.

When such data are considered, the outlook for girls of color is often equally bleak. For example, CRDC data from the 2011-12 school year shows that both black boys and black girls have higher suspension rates than any of their peers (at 20% and 12%, respectively);³ a report by the African American Policy Forum pointed out that during the same reporting period, these data showed that “while Black males were suspended more than three times as often as their white counterparts, Black girls were suspended six times as often.”⁴

Similarly, statewide National Assessment of Educational Progress (NAEP) proficiency assessments for 4th grade math for 2015 show Black girls in Kentucky performing at the *exact same level* as Black boys, with Latina girls performing only two points higher and eleven points below Hispanic boys. In reading, while Black and Latina girls slightly higher than Black boys, their scores were below those of Hispanic boys.⁵ In other words, in both reading and math, Black and Latina girls were either at the lowest or the second-lowest level of proficiency of all categories across the state of Kentucky.

Therefore, when cross-tabulated data are considered, the results lead to the inescapable conclusion that girls of color suffer from many of the same poor outcomes as boys of color—and have the same need for improved opportunities. Proposals to achieve racial justice in education should be about addressing systemic inequalities and lifting up all students to close the opportunity gap, regardless of gender. The Board should therefore focus on proposals that aim to implement these solutions in a coeducational setting, rather than offering new opportunities only to boys.

II. Single-Gender Education Does Not Lead to Better Educational Outcomes.

The exclusion of girls from new educational opportunities is not only problematic in and of itself, but is also unlikely to lead to the results that purport to justify the exclusion: improved outcomes for boys. Every large-scale survey of the

³ U.S. Dep’t of Educ., Office for Civil Rights, *Civil Rights Data Collection Data Snapshot: School Discipline* (March 2014), <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

⁴ Crenshaw, *Black Girls Matter*, *supra*, at 16.

⁵ See Institute of Education Sciences, Nat’l Ctr. For Educ. Statistics, *NAEP Data Explorer*, <https://nces.ed.gov/nationsreportcard/naepdata/dataset.aspx> (data files selected on file with ACLU and available upon request).

existing educational research on single-sex education has concluded that there is a lack of evidence that students are more likely to succeed in single-sex schools and programs. Indeed, the use of single-sex education as a tool for improving educational or life outcomes for minority boys has been called “a solution in search of a problem.”

For example, in 2005, the U.S. Department of Education undertook an extensive review of the data on single-sex education and concluded that the results were “equivocal.”⁶ A 2011 examination of the existing research on single-sex education, published in *Science* magazine, concluded that single-sex education was “deeply misguided,” and unsupported by existing data on what works in education.⁷ A 2014 meta-analysis conducted by independent researchers of 184 studies on the outcomes of single-sex education found that when factors such as study design and selection bias are properly controlled for, there is no statistically significant difference between outcomes for students at single-sex and coeducational institutions.⁸ Notably, the authors rejected the theory, apparently underlying this proposal, that single-sex education has particular advantages for African-American and Latino male students; the authors concluded that there were “insufficient numbers of controlled studies conducted with ethnic minority youth,” and noted that even the uncontrolled studies “fail to find substantial advantages of single-sex schooling for African Americans and Latinos.”⁹ The lack of evidence has led leading scholars on education for boys of color—including Pedro Noguera, one of the preeminent thought-leaders on improving educational opportunities for boys of color—to caution that single-sex schooling is not a “magic bullet,” and to counsel against its adoption in urban school districts.¹⁰

⁶ Fred Mael, et al., U.S. Dep’t of Educ., *Single-Sex Versus Coeducational Schooling: A Systematic Review* x, xv (2005).

⁷ Diane Halpern, et al., *The Pseudoscience of Single-Sex Schooling*, 333 *Science* 1706 (2011) [hereinafter Halpern, *Pseudoscience of Single-Sex Schooling*].

⁸ Pahlke, Hyde & Allison, *The Effects of Single-Sex Compared with Coeducational Schooling on Students’ Performance and Attitudes: A Meta-Analysis*, 140 *Psychological Bulletin* 1042-1072, 1064-1065 (2014).

⁹ *Id.* at 1065.

¹⁰ Pedro Noguera, *Saving Black and Latino Boys*, *Education Week*, Oct. 2, 2013; see also Edward Fergus, Pedro Noguera & Margary Martin, *Schooling for Resilience: Improving the Life Trajectory of Black and Latino Boys* 197, 203 (2014) [hereinafter Fergus, Noguera & Martin, *Schooling for Resilience*].

The proposal also reportedly relies in large part on a perceived record of success achieved by another all-male school, Fayette County's Carter G. Woodson Academy.¹¹ While it can seem tempting to look to other schools that have enjoyed successes, there is no evidence that whatever positive outcomes that school may have achieved are due to the fact that it is single-sex, rather than to other aspects of its program or curriculum. Indeed, the U.S. Department of Education has warned that reliance on comparisons such as this does not comport with best practices in assessing the efficacy of educational interventions.¹² The Board should not allow anecdotes to substitute for scientifically-controlled, trial-based studies or the rigorous meta-analyses concluding that single-sex models produce no positive effects.

Finally, studies have shown that single-sex programs often reflect and reinforce harmful sex stereotypes. For example, a common theory underlying single-sex education is the notion that boys and girls have distinct educational needs and learning styles.¹³ But a 2011 review published in the journal *Science* by an interdisciplinary panel of experts characterized that theory as "pseudoscience" that had been "justified by weak, cherry-picked, or misconstrued scientific claims rather than by valid scientific evidence."¹⁴ And social scientists have emphasized the potentially harmful impacts of employing teaching methods premised on such minor differences—particularly on lesbian/gay/bisexual/transgender (LGBT) and gender-nonconforming youth.¹⁵ Such stereotypes have no place in our public schools.

¹¹ See Allison Ross, *JCPS Pitches Academy Targeted to 'Males of Color,'* Courier-Journal, Aug. 23, 2016, <http://www.courier-journal.com/story/news/education/2016/08/23/jcps-pitches-academy-targeted-males-color/89115430/>.

¹² See What Works Clearinghouse, *Procedures and Standards Handbook* (v. 3.0), https://ies.ed.gov/ncee/wwc/Docs/referenceresources/wwc_procedures_v3_0_standards_handbook.pdf (last visited June 26, 2017).

¹³ See Galen Sherwin & Christina Brandt-Young, ACLU, *Preliminary Findings of ACLU "Teach Kids, Not Stereotypes" Campaign* 3-5 (August 20, 2012), https://www.aclu.org/files/assets/doe_ocr_report2_0.pdf.

¹⁴ Halpern, *The Pseudoscience of Single-Sex Schooling*, *supra*, at 1706 (2011).

¹⁵ Michael Kimmel, *Don't Segregate Boys and Girls in Classrooms*, CNN.com, Feb. 3, 2014, <http://www.cnn.com/2013/08/09/opinion/kimmel-single-sex-classes/>; Fergus, Noguera, & Martin, *Schooling for Resilience*, *supra*, at 159-160 ("The overall culture at all seven schools [studied] could be characterized as 'hetero-normative,' meaning that any student who was gay, bisexual, transgendered, or in the least bit uncertain about his sexual identity was likely to feel out of place.").

III. Approval of the Proposal Raises Significant Concerns Regarding Compliance with Federal Law.

In addition to the policy concerns addressed above, the Board should adopt a different approach in light of the significant legal issues related to single-gender education.

A. The Equal Protection Clause of the U.S. Constitution

Public schools may not maintain any stand-alone single-sex school or single-sex educational program or activity that fails to meet federal constitutional standards. In *United States v. Virginia*, the United States Supreme Court made clear that to comply with the Equal Protection Clause, a governmental actor instituting an education program that categorically excludes members of one sex must demonstrate an “exceedingly persuasive justification,” and the single-sex nature of the program must be substantially related to the achievement of that governmental objective.¹⁶ Further, the justification for offering single-sex education may not be based on “overbroad generalizations about the different talents, capacities, or preferences of males and females.”¹⁷

In order to justify offering the proposed school only to boys, the Board would have to show that the exclusion of girls from this school is substantially related to achieving the Board’s goals of improving educational outcomes for boys of color. They will not be able to do so, because as discussed above, there is no solid evidence that single-sex education improves academic outcomes—for boys of color in particular or more generally.¹⁸ Moreover, statewide data make abundantly clear that Black and Latina girls are suffering from the same poor academic outcomes as boys of color. Therefore, the Board would lack sufficient justification to target this school only to boys, as a significant numbers of girls in Louisville would benefit equally from the opportunity to attend a college preparatory school with an Afro-centric curriculum. As one court noted in granting a preliminary injunction against

¹⁶ *United States v. Virginia*, 518 U.S. 515, 540-42 (1996); accord *Doe v. Vermilion Parish School Board*, 421 Fed. Appx. 366, 372 (5th Cir. 2011).

¹⁷ *Virginia*, 518 U.S. at 533.

¹⁸ See *Virginia*, 518 U.S. at 533; *Garrett v. Board of Education*, 775 F. Supp. 1004, 1007-08, 1010 (E.D. Mich. 1991) (granting preliminary injunction against public all-male academy, justified on the grounds of high drop-out and homicide rates for African American males, because “[t]here is no evidence that the educational system is failing urban males because females attend schools with males. In fact, the educational system is also failing females”).

a similar proposal to establish single-sex school for boys in Detroit: “There is no evidence that the educational system is failing urban males because females attend schools with males. In fact, the educational system is also failing females.”¹⁹

B. Title IX of the Education Amendments of 1972

Approval of the proposed school raises additional concerns under Title IX, the landmark law enacted to prevent gender discrimination in education. Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in ... or subject to discrimination under any education program or activity receiving Federal financial assistance.”²⁰ Although the law contains an exception that permits the operation of single-sex schools, federal regulations require that a school district that establishes a single-sex school must ensure that students of the excluded sex have the opportunity to attend a substantially equal single-sex school or coeducational school.²¹ Factors to be considered when determining whether schools are “substantially equal” include but are not limited to: policies and criteria of admission; the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology; the quality and range of extracurricular offerings; the qualifications of faculty and staff; geographic accessibility; the quality, accessibility, and availability of facilities and resources; and intangible features, such as reputation of faculty.²² This hurdle is extremely high, in accordance with Title IX’s purpose of preventing educational inequities.

Before approving this application (or any application for a single-sex school), the Board would therefore be required to exhaustively research the existing opportunities in the relevant local area and conclude, based on the factors enumerated above, that a substantially equal coeducational or single-sex alternative exists. Given the unique contours of this proposal, it is highly doubtful that any existing middle schools in Jefferson County could currently satisfy the requirement to ensure a substantially equal educational opportunity. Moreover, if

¹⁹ *Garrett*, 775 F. Supp. at 1008.

²⁰ 20 U.S.C. § 1681(a).

²¹ 34 C.F.R. § 106.34(c)(1).

²² 34 C.F.R. § 106(c)(3); *see also* Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* 17-18, <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

the school is in fact modeled on the Carter G. Woodson Academy, that school appears to offer unique resources as well, including individual mentoring, after-school and evening tutoring, optional Saturday programming, and college, cultural, and abroad field trips.²³ In the absence of such an analysis and conclusion, approval of the proposal would raise additional questions regarding Title IX compliance.

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We hope our comments demonstrate why the Board should rethink its approach. While it is vitally important that the Board address the critical need to improve educational offerings for students and families of color in Louisville, this proposal should not be permitted to move forward in its current form, but should be altered to provide for a coeducational school. Toward that end, we will be submitting an Open Records Act for public records relating to the development of this program. Moreover, we would welcome the opportunity to discuss our concerns with the Board in greater detail.

Sincerely,



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²³ Carter G. Woodson Academy, "About Us," *What Makes our School Special*, <http://www.fcps.net/schools/others/carter-g-woodson-academy> (last visited June 26, 2017).