

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

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JANE DOE, individually and as next friend to her Civil Action No:  
minor daughters, ANNE DOE, BETH DOE and ECF Case  
CAROL DOE, :  
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Plaintiffs, : Honorable  
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v. :  
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WOOD COUNTY BOARD OF EDUCATION, :  
J. PATRICK LAW, Superintendent, in his Official :  
Capacity, STEPHEN TAYLOR, Principal, Van :  
Devender Middle School, in his Official and Individual :  
Capacity, and PENNY TONELLI COLEMAN, Former :  
Assistant Principal of Van Devender Middle School, :  
in her Individual Capacity, :  
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Defendants. :  
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**COMPLAINT**

1. This is an action under the Fourteenth Amendment’s Equal Protection Clause (pursuant to 42 U.S.C. § 1983), Title IX of the Education Amendments of 1972 (“Title IX”) and the Title IX implementing regulations of the United States Departments of Education and Agriculture challenging unlawful sex discrimination at the Van Devender Middle School (“Van Devender”) in Parkersburg, West Virginia.
2. The Plaintiffs are a mother and her three daughters. The daughters are rising seventh grade students at Van Devender Middle School in Parkersburg, West Virginia. The three minors are acting by and through their mother. Plaintiffs bring this

action because the Defendants, from 2010 through 2012, have unlawfully separated girls and boys attending Van Devender for reading, math, social studies and science in certain grades.

3. Defendants implemented the sex separation program at Van Devender based on impermissible and inaccurate stereotypes about purportedly different learning capacities and preferences of boys and girls, and, specifically, the theory that boys' and girls' brains develop so differently that they are best taught separately, using teaching methods that are tailored to those presumed differences.

4. Upon information and belief, Defendants intend to continue to separate students on the basis of sex in core subjects and to expand the scope of the sex separation during the 2012-2013 school year, which begins on August 29, 2012.

#### **JURISDICTION AND VENUE**

5. 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 rights under Title IX, 20 U.S.C. §§ 1681–1688, and the Fourteenth Amendment to the U.S. Constitution, pursuant to 42 U.S.C. § 1983.

6. 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.

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

## PARTIES

8. Plaintiff JANE DOE is a Resident of Parkersburg, West Virginia. Doe is the mother of five children who have attended, currently attend, or will in the future attend Van Devender Middle School. Plaintiff Jane Doe will have at least one child attending Van Devender until 2014. As a result of the sex separation policies implemented at Van Devender, three of her daughters have already been discriminated against on the basis of sex and have been denied educational opportunities, in violation of the law.

9. Based on the Wood County School Board's past actions and its members' stated intention to continue sex separation in the future, Jane Doe expects that her three daughters who are currently enrolled at Van Devender as well as her youngest child who will attend Van Devender in the future will face discrimination on the basis of sex and the denial of educational opportunities, in violation of the law, unless the sex separation policies at Van Devender are permanently enjoined.

10. Jane Doe has no intention of moving to another home outside of Parkersburg prior to all of her children graduating from Van Devender.

11. Plaintiff ANNE DOE is a minor child who attended the sixth grade at Van Devender for the 2011-2012 school year. Because she is a minor, Anne Doe appears through her mother Jane Doe. Plaintiff Anne Doe intends to enter the seventh grade at Van Devender for the 2012-2013 school year, which commences on August 23, 2012.

12. Plaintiff BETH DOE is a minor child who attended the sixth grade at Van Devender for the 2011-2012 school year. Because she is a minor, Beth Doe appears through her mother Jane Doe. Plaintiff Beth Doe intends to enter the seventh

grade at Van Devender for the 2012-2013 school year, which commences on August 23, 2012.

13. Plaintiff CAROL DOE is a minor child who attended the sixth grade at Van Devender for the 2011-2012 school year. Because she is a minor, Carol Doe appears through her mother Jane Doe. Plaintiff Carol Doe intends to enter the seventh grade at Van Devender for the 2012-2013 school year, which commences on August 23, 2012.

14. Defendant WOOD COUNTY BOARD OF EDUCATION (“WCBE”) is the entity responsible for the administration of public schools within Wood County, West Virginia, including Van Devender, the school which the WCBE has designated as the middle school for the Doe family based on the location of their home. At all relevant times, the WCBE has overseen and approved the implementation of sex separated classes at Van Devender. The WCBE is a political entity capable of suing and being sued.

15. DEFENDANT J. PATRICK LAW is Superintendent of the Wood County Schools. Defendant Law is responsible for administration of all schools within the Wood County School District, including Van Devender. He is sued in his official capacity.

16. DEFENDANT STEPHEN TAYLOR is the Principal of Van Devender. He reports directly to Superintendent Law. At all relevant times, Defendant Taylor has directly overseen and implemented sex separated classes at Van Devender. He is sued in his individual and official capacity.

17. DEFENDANT PENNY TONELLI COLEMAN was the Assistant Principal of Curriculum and Instruction of Van Devender at the time the single-sex program was conceived and planned. At the time she was known as Penny Tonelli. She reported directly to Principal Taylor. She is sued in her individual capacity.

### **FACTUAL ALLEGATIONS**

#### **A. The WCBE's Approval of Single-Sex Classes at Van Devender**

18. Van Devender is one of five public middle schools in Parkersburg, West Virginia. Students attend Van Devender for grades six through eight. Students are assigned to middle schools by WCBE based on the location of their residence.

19. The separation of students on the basis of sex at Van Devender Middle School was first proposed in 2008, when the school received a private grant for "Student Educational and Economic Development Success."

20. Defendants Taylor and Tonelli Coleman worked together on planning the single-sex program through the course of the 2008-2009 and 2009-2010 school years.

21. In January 2009, Defendant Tonelli Coleman invited Leonard Sax, a private consultant and nationally known proponent of single-sex education, to submit a proposal for a two-day workshop for teachers who were or soon would be leading single-sex middle school classrooms.

22. Sax is an author and former family physician, and is the founder and Executive Director of the National Association for Single-Sex Public Education ("NASSPE").

23. On March 5, 2009, in response to a phone call from Defendant Tonelli Coleman, Sax sent an email to Defendant Tonelli Coleman with the subject

“checklist for LAUNCHING a gender-separate program” in which he advised that Tonelli Coleman arrange for a two-day workshop to train teachers and warned that “[i]f teachers don’t have this training or comparable training, then the success of your program is just a roll of the dice, and you’re building on sand.”

24. On June 16, 2009, Sax sent an email to Defendant Tonelli Coleman regarding upcoming plans for a two-day workshop to be held on August 17 and 18, including a training session for teachers and a parent information session, and attaching a “checklist” for public schools preparing to launch single-sex classrooms.

25. On August 17 and 18, 2009, the school held two days of training and information sessions for teachers, administrators, and parents with Sax.

26. In March 2010, Defendants Tonelli Coleman and Taylor prepared to present a proposal to the WCBE seeking approval to institute single-sex classes for all incoming sixth graders at Van Devender Middle School for reading, math, social studies and science starting at the beginning of the 2010-2011 school year.

27. The WCBE formally approved the proposal at its regularly scheduled meeting on or around March 9, 2010.

28. The program was initiated at the start of the 2010-2011 school year for all incoming sixth graders for reading, math, social studies and science.

**B. The Lack of an Adequate Justification for the Single-Sex Education Program at Van Devender**

29. The stated justification for the single-sex education program at Van Devender, as presented to the WCBE, was that students of both sexes were lagging behind their peers in Wood County based on the percentage of boys and girls testing as

“proficient” on the state standardized WESTEST assessment exam. The program’s stated “mission” was to “deliver a learning experience based on gender diversity.”

30. The sex separation at Van Devender was explicitly premised on generalizations about the supposedly different brains and learning styles of boys and girls.

31. In the March 2010 presentation to the WCBE seeking approval for the single-sex program in the sixth grade for the 2010-2011 school year, Van Devender officials presented PowerPoint slides including claims that “[r]esearchers at the National Institute of Mental Health found that the various regions of the brain develop in a different sequence and tempo in girls compared with boys” and that “[t]he areas of the brain involved in language, spatial memory, motor coordination, and in getting along with other people, develop in a different time, order, and rate in girls compared with boys.”

32. Defendants Tonelli Coleman and Taylor presented information to the WCBE stating that boys’ and girls’ brains were “hard-wired” to learn and develop differently, and that different teaching strategies worked better for boys than for girls, and vice versa.

33. The WCBE was informed that Van Devender teachers and administrators intended to tailor the teaching methods used in the boys’ and girls’ classes to these purportedly different learning capacities through the use of gender-differentiated instructional techniques.

34. Professional development for teachers on gender-differentiated instruction was a central feature of the “Business Plan” Defendants Tonelli Coleman and

Taylor presented to the WCBE on the proposed roll-out of the single-sex education program at Van Devender.

35. Defendants Tonelli Coleman and Taylor did not present, and the WCBE did not consider, any valid evidence demonstrating a relationship between the goal of raising student achievement and the proposed separation of students on the basis of sex at Van Devender.

36. In instituting the single-sex classes at Van Devender, Defendants Tonelli Coleman and Taylor and the WCBE relied on faulty research, including numerous articles espousing the view that hard-wired differences between boys and girls necessitate the use of different teaching methods in single-sex classrooms.

37. These materials included the writings of Leonard Sax, numerous articles printed on the NASSPE website, and materials generated by David Chadwell, a member of the NASSPE Advisory Board. Both Sax and Chadwell offer their services for a fee to consult with school districts regarding single-sex education.

38. For example, in one article from the NASSPE website on which Defendants relied, Sax claims that:

- “Sex differences in learning may derive in part from basic physiological differences, such as differences in the ability to hear, and also from differences in higher-level cortical functions.”
- These differences have “major implications for best practices for teaching girls vs. teaching boys.” For example, “you want to encourage the girls, build them up, while you give the boys a reality check: make them realize they’re not as brilliant as they think they are, and challenge them to do better.”
- “A girl-friendly classroom is a safe, comfortable, welcoming place. Forget hard plastic chairs: put in a sofa and some comfortable bean bags. Let the girls address their teacher by her (or his) first name.”
- Use story problems and concrete object examples, like pine cones, for girls, but not boys when teaching Mathematics. “‘Story problems’

are a complete flop with boys,” and “if you bring in pinecones for the boys, many of the boys will snicker and start throwing the pinecones around like hand grenades.”

- “‘Gross,’ slimy, dangerous or poisonous things are also a hit with most boys, especially younger boys. Girls, on the other hand, usually prefer books which focus on dyadic or triadic relationships. . . . ‘Girls like stories about experiences that might happen over one summer and the emotional agonies that a character endures. Boys want stories with male protagonists that are exciting.’”
- Consider role-playing for girls (e.g. acting out “Are You There, God? It’s Me Margaret”) and “objective and fact-oriented” assignments for boys.

39. In another published article that was relied upon in the

development and implementation of sex separation at Van Devender, Sax claims that:

For the single-sex format to lead to improvements in academic performance, teachers must understand the hard-wired differences in how girls and boys learn. In particular, teachers need to understand the importance of differences in how girls and boys hear, see, and respond to different learning styles, as well as the differences in autonomic function. . . .

Leonard Sax, *Six Degrees of Separation: What Teachers Need to Know about the*

*Emerging Science of Sex Differences*, Educational Horizons, Spring 2006, at 190, 195.

In this article, Sax recommends that “ambient room temperature” should be six degrees colder in boys’ classrooms, and that teachers in boys’ classrooms should “speak loudly and in short, direct sentences with clear instructions: ‘Put down your papers. Open your books. Let’s get to work! Mr. Jefferson, that includes you,’” while in the girls’ classrooms, they should “speak much more softly, using more first names with more terms of endearment and fewer direct commands: ‘Lisa, sweetie, it’s time to open your book. Emily, darling, would you please sit down for me and join this exercise?’”

40. These claims are consistent with those Sax makes in his book, *Why*

*Gender Matters: What Parents and Teachers Need to Know About the Emerging Science*

*of Sex Differences* (2005), which is referenced in the school’s presentations and on which Defendants relied in the formation and execution of the program.

41. In *Why Gender Matters*, Sax asserts, for example, that because of differences in the ways boys and girls process emotion, teachers of literature should not ask boys about characters’ emotions, but should only focus on objective facts in the text, while they should focus on characters’ relationships and emotions when teaching girls; and that boys do well under stress and girls do badly, so girls should not be given time limits on tests; and that boys are engaged by abstract mathematics while girls need to be given tactile objects or word problems.

42. Defendants fully embraced the theory of gender-differentiated teaching set forth in paragraphs 37 – 41, and made it central to their proposals, promotional materials, and communications with parents and the public.

43. The single-sex education program is referred to as “gender-based,” and the motto of the school, reflected in presentations to the public and to various oversight bodies was “Van Devender Middle School: Where Gender Matters.”

**C. Teacher Training on Gender-Differentiated Teaching Methods at Van Devender**

44. In preparation for the proposal and launch of the program, from 2009 through the initiation of the single-sex classes at Van Devender at the beginning of the 2010-2011 school year, Defendants Tonelli Coleman and Taylor began training teachers on gender-differentiated instruction techniques.

45. From 2009 through at least 2011, Defendants Tonelli Coleman and Taylor arranged for Van Devender teaching staff to attend training sessions conducted by

proponents of gender-differentiated teaching, including the national conference of NASSPE.

46. At those training sessions, attendees were advised to use “gender specific strategies” in their teaching.

47. For example, one presentation at the 2009 NASSPE conference, which was attended by Van Devender staff, covered “Essential teaching for *Boys*” advising teachers to:

- Use cool colors . . .
- Go down with your tone
- Provide movement to keep attention . . .
- Use surname
- Be clear and direct with rules and consequences
- No second chances (do not argue)
- Do and then talk!
- In rows or stations
- Ideal temperature 69°F
- Whole to parts

The parallel “Essentials for teaching *Girls*” advised teachers to:

- Use warm colors . . .
- Interpret loud or deep voices as “yelling” at them
- Illustrations are colored (do not emphasize color over content)
- Use surname
- More time for activities . . .
- Build Community
- Bond through face-to-face communication
- Warmer room
- Parts to whole

48. The presentation instructed that boys were to be taught “[i]n pairs (side by side)” and girls “[i]n pairs (face-to-face)”; boys were to be allowed to stand while girls’ movement was to be limited, with “noise distractions [kept] to a minimum.”

49. PowerPoint presentations used at the training contain numerous generalizations about boys' and girls' purportedly different capacities in the areas of perception, learning and development. For example, another presentation at the 2009 NASSPE conference, given by Skyles Calhoun, a member of the Advisory Board of NASSPE, included slides containing the following claims:

**The Brain Develops Differently**

GIRLS—the language areas of the brain develop before the areas used for spatial relations and for geometry.

BOYS—it is the other way around.

Teaching that ignores this difference will produce boys who can't write and girls who think they're "dumb at math".

**The Brain is Wired Differently**

GIRLS—emotion is processed in the same area of the brain that possesses language. So, it's easier for most girls to talk about their emotions.

BOYS—The brain regions involved in talking are separate from the regions involved in feeling. The hardest question for a boy to answer is, "Tell me how you feel."

**Girls Hear Better**

The typical teenage girl has a sense of hearing seven times more acute than a teenage boy

That's why daughters complain that their fathers are shouting at them.

That's why the boy in the back of the classroom whose soft-spoken teacher calls on him responds by saying, "Huh?"

**Girls and Boys Respond Differently to Stress**

GIRLS—Stress impairs learning

BOYS—Stress enhances learning. *This is true in every mammal that scientists have studied.*

50. Training on gender-differentiated instruction continued during the 2011-2012 school year.

51. In January 2011, Defendant Taylor hired David Chadwell to conduct classroom visits and a parent workshop, and provide training sessions to teachers and administrators at Van Devender.

52. Chadwell held a teacher training and parent workshop on January 19 and 20, 2011.

53. Chadwell's training sessions included generalizations about boys' and girls' purportedly different brains and learning styles.

54. For example, a Chadwell presentation provided to Van Devender teachers includes the claim that boys and girls "deal with stress differently," and goes on to assert: "Stress tends to decrease the blood flow to the brain of a girl. It goes to the 'gut.' Stress tends to increase the blood flow to the brain of a male and helps him remain alert and focused."

55. Chadwell's presentation also contained tips for tailoring instructional techniques to these presumed differences, advising, for example, that "Teachers may use rapid-fire questions with the boys. Teachers will take time to answer questions of the girls and explain directions upfront. Activities may be broken into timed segments for the boys. Girls may participate in partner or group reviews and discussion often."

**D. Assignment of Students to Single-Sex Classes at Van Devender**

56. Van Devender has assigned all students in the relevant grades to single-sex classes for reading, math, social studies and science.

57. At no time were parents of students assigned to the Van Devender single-sex classes asked to choose whether or not to enroll their children in a single-sex or a coeducational class for each of the core subjects of reading, math, social studies and science.

58. Defendants Tonelli Coleman and Taylor and members of the WCBE were aware of the legal requirement that participation in the single-sex classes be voluntary.

59. Nonetheless, Defendants did not provide the opportunity to participate in coeducational classes at Van Devender Middle School as an alternative to the single-sex classes.

60. Van Devender is not a school in which enrollment was optional from the outset, but, rather, a school to which students are automatically assigned based on their residence in a particular geographic area.

**E. Expansion of the Single-Sex Education Program at Van Devender**

61. At a WCBE meeting in March 2011, WCBE voted to continue the sex separation of the sixth-grade class of Van Devender students as they rose into the seventh grade and to continue to mandate it for the incoming sixth-grade class of Van Devender students for the 2011-2012 school year.

**F. Gender-Differentiated Teaching at Van Devender**

62. The gender-differentiated teaching techniques on which the single-sex program at Van Devender was premised, and on which Van Devender teachers and administrators had been trained, were employed in the boys' and the girls' classrooms at Van Devender once the program commenced.

63. The boys' and girls' classrooms differ in their physical configuration in numerous ways.

64. In the boys' classrooms, the lights are brighter, the rooms are kept cooler, the desks are arranged side-by side, and the boys have bean bag chairs in which they are allowed to sit during classes.

65. The girls' classrooms are more dimly lit, the rooms are kept warmer, the desks are arranged face-to-face, and the girls do not have bean bag chairs.

66. In the boys' classes, students are allowed to move around during class. The girls are expected to sit still during class.

67. On occasion, teachers have conducted the boys' classes outdoors so the students can be permitted to exercise and blow off steam. The girls' classes have not been provided with this opportunity.

68. Defendant Taylor described some of the reasoning behind the different techniques used for boys and girls in a YouTube video:

[A]nyone who's had children, both a boy and a girl, know that they're different. And so what we've done is we've done a lot of research in the differences of how boys' and girls' brains are made up, what their interests are, what motivates them. So what we did was, we have taken those strategies and we have developed them into boys' classes and to girls' classes. We know that boys have a much shorter attention span than girls have so we have set the boys' classrooms up so they can get up and move around and lay on the floor if they want, whatever, while girls are much more organized; they sit at . . . round tables, facing each other, sharing things, doing that sort of thing. We know that boys like brighter lights, so we have the boys' rooms lit a little differently than we do the girls' rooms. Boys, we sit them side-by-side, because when they look each other in the eye it becomes more of a confrontational type thing. Girls, again, sit around tables, where they can make eye contact, where they can make relationships, and that sort of thing.

**G. The Does' Experience in Single-Sex Classes at Van Devender**

69. As of the beginning of the 2011-2012 school year, Anne, Beth and Carol Doe were assigned to Van Devender based on the location of their residence in Wood County and automatically enrolled in the incoming sixth-grade class.

70. Jane Doe never received any notification informing her of the opportunity for her children to participate in any coeducational classes at Van Devender for the 2011-2012 school year.

71. Jane Doe never received any notification that her daughters would be placed in single-sex classes in the sixth grade at Van Devender prior to the commencement of the 2011-2012 school year.

72. Jane Doe believes that sending her children to a different school at this point in time would be academically and psychologically detrimental. Jane Doe and her children moved to a new home with a new school during the summer when the girls were between third and fourth grade, which was hard on them. Furthermore, Anne and Carol are involved in many extracurricular activities and, upon information and belief, Plaintiff's daughters would be ineligible to participate in athletic activities for one year after transferring to another school.

73. Beth Doe has been diagnosed with Attention Deficit Hyperactivity Disorder and sometimes has trouble sitting still in class. She is not permitted to move around freely during classes in the girls' classrooms to which she is assigned, and as a result, she is frequently reprimanded in class. Upon information and belief, similar movement in the boys' classroom is tolerated and not reprimanded.

74. On numerous occasions, Beth has been sent to the boys' classroom because she was "acting up." As the only girl in the class, and deprived of the companionship of her regular classmates, she felt intimidated. She experienced this as a form of punishment, and upon information and belief, it was intended as a punishment. When Beth was sent to the boys' classroom, she missed out on the lessons being conducted in the girls' classroom, and she was not allowed to participate in the physical learning activities that were part of the boys' curriculum; instead, she was required to sit

at a desk facing the wall. Beth's grades have dropped substantially since she entered gender-based classes.

75. Beth Doe has experienced difficulty learning in the girls' classes, as she learns best through the type of visual and physical learning activities she witnessed in the boys' classes.

76. Anne Doe is legally blind and has difficulty reading in the girls' classroom, which is kept dimmer than the boys' classroom. Anne would benefit from brighter lights to enable her to read more easily during class, but she has not been permitted that option. When Anne asked her teachers to brighten the lights to accommodate her vision problems, her teachers refused and told her to move closer to the window.

77. Carol Doe also has poor eyesight and requires strong contact lenses and prescription glasses. Carol has difficulty reading her assignments in the all girls' classes at Van Devender Middle School, because she cannot see well in the dimly lit girls' classrooms. When she has requested brighter lighting in the classroom, teachers instructed her to sit near the window. After spending a year in the dimmer girls' classrooms, Carol required stronger prescriptions for glasses and contact lenses. Carol feels uncomfortable and experiences headaches in her classrooms because her teachers maintain a warm temperature and dim lights in the girls' classrooms as part of the gender-based program.

78. Carol Doe learns and retains information most effectively when she takes notes during teachers' visual presentations. When Carol requested more time to take notes on individual slides during her teachers' PowerPoint presentations, her

requests were denied based on the theory that girls learn better from auditory rather than visual input.

79. In addition, Anne often studies by reading and repeating her work out loud. This can be disruptive to other students because the desks in the girls' classrooms are positioned face-to-face, and Anne's voice sometimes disturbs the student at the desk opposite her. In some of her classes, when Anne has asked to study in a different part of the classroom so she would not disturb her classmates, the teacher has denied her request and forced her to continue sitting in the face-to-face configuration, which has hampered her ability to study and learn. Upon information and belief, in the boys' classroom a similarly situated student would be seated beside, not facing, other students and would be allowed to move away and sit on a beanbag or elsewhere in the classroom to work. Anne has received lower grades in English this year because she has not been able to study in the way that teachers in mixed gender classrooms had previously accommodated.

#### **H. The Harms of Sex Separated Classes**

80. Not all girls are alike. Research demonstrates that the psychological and learning differences between individual girls are far larger than the average psychological or learning differences between girls and boys.

81. Not all boys are alike. Research demonstrates that the psychological and learning differences between individual boys are far larger than the average psychological or learning differences between boys and girls.

82. Sex is an imprecise proxy for psychological, learning, emotional and developmental differences in adolescents. Psychological research demonstrates that, on average, boys and girls are psychologically more alike than different.

83. Plaintiffs have suffered and will continue to suffer concrete and irreparable injury as a result of Defendants' illegal conduct.

84. For example, Plaintiffs are subjected to increased sex role stereotyping, which psychological research demonstrates results in anxiety that impairs functioning on tests.

85. Sex separation and gender-differentiated teaching methods like those employed at Van Devender also harm children who do not conform to the gender stereotypes advanced in these classes, such as boys who would happily engage in a conversation about literary characters' emotions or girls who need to move around. Separation and different teaching methods tells these children that they are not "normal."

86. Monetary damages cannot remedy the irreparable injury suffered by Plaintiffs.

87. The Defendants' discriminatory policies and practices threaten harm to the dignity interests of Plaintiffs.

88. The Defendants' discriminatory policies and practices have deprived and continue to threaten to deprive Plaintiffs of unique educational opportunities – including the benefits of a fully coeducational school, and of a school free from stereotypes about the way boys and girls learn and behave. The girls have been denied opportunities available only to the boys. For example, the girls are obligated to sit still in class while the boys are not and the girls are punished by reprimand or temporary expulsion from the classroom for behaving in a manner for which the boys are not punished.

89. These policies and practices have also deprived and threaten to continue to deprive Plaintiffs of the unique educational experiences and opportunities afforded in the single-sex classes from which they are excluded on the basis of their sex.

**I. Continued Expansion of the Single-Sex Education Program at Van Devender in 2012-2013**

90. On December 2, 2011, the American Civil Liberties Union of West Virginia sent a request under the West Virginia Freedom of Information Law seeking documents and records related to the single-sex education program operated at Van Devender Middle School.

91. On May 21, 2012, the American Civil Liberties Union of West Virginia sent a letter to the WCBE identifying legal violations relating to the single-sex education program at Van Devender Middle School and requesting that the program be terminated as of the start of the 2012-2013 school year.

92. At a school board meeting on July 2, 2012, the WCBE voted to continue the single-sex education program in the sixth and seventh grades, and to expand it into the eighth grade, for the 2012-2013 school year.

**J. Federal Funding**

93. Wood County Schools, including Van Devender, receive federal funding and are subject to the requirements of Title IX.

94. The federal funding received by the WCBE consists of funding from the U.S. Departments of Education and Agriculture.

95. The WCBE and all of its operations, including Van Devender are, therefore, subject to the Title IX regulations promulgated by the U.S. Departments of

Education and Agriculture. Upon information and belief, the WCBE has specifically agreed to comply with those regulations.

**K. Defendants' Conduct**

96. Defendants have acted and engaged in conduct as set forth in paragraphs 1 through 95 above intentionally, willfully, and in disregard of the rights of Plaintiffs.

97. Defendants have acted and engaged in conduct as set forth in paragraphs 1 through 95 above with actual notice of and deliberate indifference to the rights of Plaintiffs.

**CLAIMS FOR RELIEF**

**FIRST CAUSE OF ACTION: Equal Protection**

**(against WCBE and Defendant Law in his Official Capacity, Defendant Taylor in his Individual and Official Capacity, and Defendant Tonelli Coleman in her Individual Capacity)**

98. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 97 above.

99. By separating classes at Van Devender by sex, Defendants have intentionally classified students by sex and discriminated amongst them on the basis of sex in violation of Plaintiffs' right to equal protection of the laws, secured (pursuant to 42 U.S.C. § 1983) by the Fourteenth Amendment to the United States Constitution.

**SECOND CAUSE OF ACTION: Title IX, against WCBE**

100. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 97 above.

101. By instituting sex separated classes at Van Devender, Defendant WCBE (i) has excluded Plaintiffs from educational programs and activities on the basis of their sex, (ii) has denied Plaintiffs the benefits of educational programs and activities on the basis of their sex; and (iii) has subjected Plaintiffs to discrimination on the basis of their sex, in violation of Title IX, 20 U.S.C. § 1681(a).

102. By providing classes separately at Van Devender on the basis of sex, requiring or refusing student participation in classes on the basis of the students' sex, and subjecting Plaintiffs to discrimination on the basis of their sex, Defendant WCBE has violated Title IX as interpreted by the implementing regulations of the United States Department of Agriculture, 7 C.F.R. §§ 15a.31, 15a.34.

103. By providing different educational aid, benefits or services on the basis of sex, and/or providing aid, benefits or services in a different manner on the basis of sex, Defendant WCBE has violated Title IX as interpreted by the implementing regulations of the U.S. Department of Education in 34 C.F.R. § 106.31(b)(2).

104. By denying educational aid, benefits or services on the basis of sex, Defendant WCBE has violated Title IX as interpreted by the U.S. Department of Education in 34 C.F.R. § 106.31(b)(3).

105. By providing classes separately at Van Devender on the basis of sex, requiring or refusing student participation in classes on the basis of the students' sex, and subjecting Plaintiffs to discrimination on the basis of their sex, Defendant WCBE has violated Title IX as interpreted by the Department of Education in 34 C.F.R. § 106.34

(1) By failing to ensure that enrollment in any sex separated course at Van Devender is substantially related to either of two objectives specified

by the U.S. Department of Education's regulations, Defendant WCBE has violated the requirements of 34 C.F.R. § 106.34(b)(1)(i).

(2) By failing to ensure that enrollment in any sex separated course at Van Devender is completely voluntary, Defendant WCBE has violated 34 C.F.R. § 106.34(b)(1)(iii).

(3) By failing to provide all students, including students of the excluded sex, substantially equal coeducational classes in the same subjects as the sex separated classes, Defendant WCBE has violated 34 C.F.R. § 106.34(b)(1)(iv).

### **REQUEST FOR RELIEF**

Plaintiffs respectfully request that this Court:

- (1) Permanently enjoin Defendants from separating any class or educational program by sex;
- (2) 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 effects of the illegal, discriminatory conduct described in this complaint and to prevent similar future occurrences;
- (3) Declare that the actions of Defendants violate Plaintiffs' rights under
  - (i) The Fourteenth Amendment of the United States Constitution; and
  - (ii) Title IX of the Education Amendments of 1972;

- (4) Award Plaintiffs monetary and nominal damages to fairly and reasonably compensate Plaintiffs for any deprivation of their rights;
- (5) Award Plaintiffs their expenses, costs, and reasonable attorneys' fees under 42 U.S.C. § 1988 and any other applicable provision of law;
- and
- (6) Award other equitable and monetary relief as the Court deems just and proper.

Dated: August 15, 2012

Respectfully Submitted,

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