

# Women's Law Project

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January 11, 2006

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School Reform Commission  
School District of Philadelphia  
440 N. Broad St.  
Philadelphia, PA 19130

Re: *Southwest Philadelphia Academy for Boys – Charter Application*

EXECUTIVE DIRECTOR  
Carol E. Tracy

Dear School Reform Commissioners:

MANAGING ATTORNEY  
Terry L. Fromson

An application for a charter school for boys is scheduled to be voted on at the January 18, 2006, meeting of the School Reform Commission (SRC). The Women's Law Project, Education Law Center, Public Interest Law Center of Philadelphia, and American Civil Liberties Union of Pennsylvania join together to urge the SRC to reject the charter application for the Southwest Philadelphia Academy for Boys because it would violate multiple statutory and constitutional provisions of law.

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We have previously communicated our concerns to counsel for the School District and submit this letter to you with the full knowledge and permission of Dena Lefkowitz, who is responsible for legal matters pertaining to the district's charter schools. She is copied on this letter as well.

## **Approval of a Single Sex Charter School Violates Pennsylvania Charter School Law.**

The Pennsylvania Charter School Law states that “[a]ll resident children in this Commonwealth qualify for admission to a charter school within the provisions of subsection (b).” 24 P.S. § 17-1723-A(a). While §

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17-1723-A(b) permits a charter school to limit admission to "a targeted population group composed of at-risk students," there is no legal or factual basis for concluding that male students, as a group and to the exclusion of female students, are "at-risk."

Nor would such a construction be consistent with other provisions of the Charter School Law, one of which expressly provides that charter schools will be subject to the Pennsylvania Fair Educational Opportunities Act. 24 P.S. § 17-1732-A(b). That statute makes it an unfair educational practice to "exclude or limit, or otherwise discriminate, because of race, religion, color, ancestry, national origin, sex, handicap or disability, against any student or students seeking admission as students to such institutions." 24 P.S. § 5004(a)(1). The Charter School Law, at § 17-1723-A(b), also subjects charter schools to 22 Pa. Code § 5.4 (subsequently recodified as § 4.4), which states that "[a]ccess to educational programs shall be provided without discrimination on the basis of a student's race, sex, color, religion, disability, sexual orientation or national origin." 22 Pa. Code § 4.4(c).

### **Approval of a Single Sex Charter School Violates the U.S. and Pennsylvania Constitutions**

The Pennsylvania Equal Rights Amendment (ERA) provides: "Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual." Pa. Const. art. I, § 28. Applying the ERA's strict scrutiny test to single sex schooling in the Philadelphia School District in 1983, the Court of Common Pleas ruled that the denial of admission of girls to Central High School in Philadelphia violated the Pennsylvania ERA. *Newburg v. Bd. of Educ.*, 26 Pa. D. & C. 3d 682, 710-11 (Ct. Com. Pl. 1983), *appeal quashed* 478 A.2d 1352 (Pa. Super. 1984). The court rejected single sex schooling as neither supported by a compelling government interest nor substantially related to the vague interest proffered by the School District of offering students the option to improve the quality of their education. *Id.*

The Equal Protection Clause of the U.S. Constitution prohibits sex segregation in education unless the government has an "exceedingly persuasive justification" for the sex segregation and only where the sex segregation is "substantially related to the achievement" of important educational needs. *United States v. Virginia*, 518 U.S. 515, 531 (1996). Neither "overbroad generalizations about the different talents, capacities, or preferences of males and females" nor premises that serve to "perpetuate the legal, social, and economic inferiority of women" provide valid justification. *Id.* at 531, 533, 534.

Based on the Fourteenth Amendment prohibition against sex discrimination, the creation of three male-only academies in Detroit was enjoined in 1991. *Garrett v. Bd. of Educ.*, 775 F. Supp. 1004 (E.D. Mich. 1991). The district court rejected the school board's argument that male-only academies were permissible because African-American males were facing a crisis of high homicide, unemployment and drop-out rates and co-educational programs aimed at improving male performance were failing. *Id.* at 1007. The court

provided several bases for its conclusion: the justification applied equally to female students; the proposed curriculum did not face issues solely confronting male students; the board failed to show that the co-educational factor was the reason for the decline in male performance (as opposed to other educational factors, such as poor funding, overcrowding, etc.); and the board was using sex as a proxy for "at risk" students. *Id.* In the absence of evidence that the educational system was failing urban males as a result of female students attending school with the males, the court determined that such academies would likely be unconstitutional and granted the plaintiffs' motion for a preliminary injunction enjoining the opening of such schools. *Id.* at 1008.

The rationale for the creation of a boys-only charter school in Philadelphia, as enunciated by its proponents at the November 15, 2005, expert panel hearing, are almost identical to the reasons rejected in the above cases: the failure of the existing public schools to serve children and "research" that boys will flourish in a sex-segregated environment. Under the applicable constitutional standards, these reasons are insufficient to support the approval of a boys' charter school in Philadelphia. The failure of existing Philadelphia schools adversely affects girls as well as boys. Moreover, while the school's proponents did not specify the research upon which it relies, research does not exist that could be considered a persuasive basis to justify sex segregation as a means for achieving male student achievement. Due to the lack of quality experimental research, the long-awaited and recently published systematic review of the research in this area by the U.S. Department of Education was unable to reach a conclusion for or against single-sex schooling for any population. U.S. Dep't of Educ., *Single-Sex Versus Coeducation Schooling: A Systematic Review* 87 (2005).<sup>1</sup>

Interestingly, the proponents of the Southwest Philadelphia Academy for Boys charter school cited Boston Boys Latin as a model for the instant application. However, Boys Latin has not existed as a boys' school since 1972 and was renamed Boston Latin when it became coed at that time. The then Headmaster testified at the trial in *Newburg* that coeducation not only did not cause the school to regress academically but also improved it in countless ways, including increased involvement in activities, leadership and excellence achieved by students of both sexes and a heightened degree of respect for both sexes. *Newburg*, 26 Pa. D. & C. 3d at 694-96. The court found this empirical evidence more compelling than the "tentative predictions and opinions of theorists." *Id.* at 696.

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<sup>1</sup> The reviewers had to relax the selection standards for the study because use of the chosen criteria would have eliminated virtually all of the studies from their review; ultimately, they were able to include only 40 studies out of the 2,221 studies initially identified as pertinent. Furthermore, these 40 studies suffered from many deficiencies: not all of them controlled for all of the potential alternate variables that could explain the outcomes, such as socioeconomic status, ethnic or racial minority status, grade level, and age; some variables that are clearly relevant but non-observable, such as motivation, could not be controlled for; and the studies used different criteria and statistical controls and did not always report descriptive statistics or effect size. U.S. Dep't of Educ., *Single-Sex Versus Coeducation Schooling: A Systematic Review* 87 (2005). As there were only three boys-only studies in the review, the reviewers could make no generalizations for or against boys-only schools. *Id.*

## Sex Segregated Classes Are Unlawful

At the November 15, 2005, hearing on this application, two members of the panel specifically questioned David Hardy, the primary sponsor of the application, on how his proposal complied with sex equity laws. In response, Mr. Hardy did not address the applicable sex equity laws other than to state that his lawyer disagreed with a reading of the law that would render his proposal illegal. Instead, he explained the origins of the application and stated that he would be willing to operate the same type of program for girls as long as the sexes were housed separately within the school. He also said he preferred to start the boys' school first. Such a modification of the proposal would not render it lawful; rather, a public school, including a public charter school, is prohibited from segregating students on the basis of sex under both the Pennsylvania and United States Constitutions as well as under Title IX of the Education Amendments of 1972.

The Pennsylvania ERA does not countenance the "separate-but-equal concept." *Newburg*, 26 Pa. D. & C. 3d at 709. The purpose of the Equal Rights Amendment is to ensure the legal equality of rights and to eliminate sex as a permissible factor in the determination of citizens' legal rights and benefit entitlements. *Id.* at 708 (citing *Henderson v. Henderson*, 327 A.2d 60, 62 (Pa. 1974)). The Commonwealth Court specifically rejected the segregation of boys and girls based on generalizations as to their differing abilities when it struck down a Pennsylvania Interscholastic Athletic Association bylaw prohibiting girls from competing or practicing against boys in any athletic contest. *Commw. v. Pa. Interscholastic Athletic Ass'n*, 334 A.2d 839 (Pa. Commw. Ct. 1975). Segregating students into same-sex classrooms based on similar generalizations about differences between boys and girls likewise fails under the ERA.

In addition, based on the lack of research supporting different outcomes in segregated education, the charter school cannot present an "exceedingly persuasive" rationale for segregating classrooms by sex, the standard under the Equal Protection Clause of the U.S. Constitution.

Title IX of the Education Amendments of 1972 also prohibits single-sex classrooms except under very limited circumstances not applicable to this charter school application. 20 U.S.C. § 1681(a); 34 CFR § 106.34 (prohibiting courses and educational programming or activities "separately on the basis of sex," including in its courses in health, physical education, industrial, business vocational, technical, home economics, music, and adult education).<sup>2</sup>

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<sup>2</sup> While the Department of Education issued for comment proposed changes to these regulations in March, 2004, the regulations have never been adopted, are not in effect, and are not applicable.

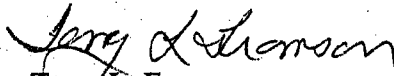
We respectfully urge the SRC to reject the charter application for the Southwest Philadelphia Academy for Boys based on its being contrary to state and federal statutory and constitutional law.

Thank you for your consideration.

Very truly yours,



Carol E. Tracy  
Executive Director



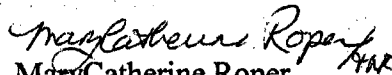
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cc: Dena Lefkowitz  
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