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001. email	Goodwin Liu to Ann O'Leary re: New York all-girls school [partial] (1 page)	12/14/1999	b(6)
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COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Ann O'Leary
OA/Box Number: 19578

FOLDER TITLE:

Single Sex [1]

2013-0436-S

rc1276

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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SINGLE SEX PROPOSED REGULATION

Background

In August of 1996, the New York chapters of the National Organization for Women and the American Civil Liberties Union filed a complaint with U.S. Department of Education's Office of Civil Rights. The complaint asserted that the Young Women's Leadership Academy, a public single-sex school for girls located in Harlem, violates Title IX. During 1997 and 1998, OCR conducted numerous discussions to try to reach a voluntary agreement between the New York City School Board and the organizations filing the complaint. Within the context of these negotiations, OCR suggested that the school board create new and similar opportunities for boys in the district. The School Board was not willing to create any new opportunities for boys and OCR found that unacceptable under the current regulations.

This case, in combination with the increase in public single sex schools and classrooms, led OCR to propose a regulation change that would provide for greater flexibility in interpreting Title IX. The goal of the proposed regulation is to assist school districts in responding to the diverse educational needs of their students, while safeguarding against discrimination.

The need for clarification is great. In the last three years, 27 independent and public schools for girls have been established, and more than a dozen school districts have begun offering single-sex classes. This year, the Chicago School Board, for example, approved the first all-girls charter school focusing on mathematics, science, and technology to open next fall on the city's South Side. In addition, the issue of the YWLA in Harlem continues to be unresolved as the school district awaits guidance from the proposed regulation change. The YWLA expanded this year from 210 to 400 students and, in doing so, contacted both ED and DOJ to request an explanation for the delay in the new regulations or any guidance.

Legislative Action and Anticipated Leg Action

In addition to action in school districts across the country, several times over the past two years Senator Kay Bailey-Hutchinson has put forth a proposal to amend ESEA in order to provide funding for single sex schools and classrooms. During the FY 1999 and the FY 2000 appropriations debates, the Senator introduced an amendment that would have permitted ESEA Title VI funds (flexible block grants to States for general education reform) to be spent on "educational reform projects that provide same gender schools or classrooms, as long as comparable educational opportunities are offered for students of both sexes."

The Administration did not take a position on this amendment. Instead, we argued on procedural grounds that it should be considered within the context of the reauthorization of ESEA and that the Department of Education would soon be releasing guidance to offer greater flexibility in developing single sex classrooms and schools. ESEA is now being considered in the Senate. It will be marked up by the Senate HELP Committee on Wednesday, March 1st and will be on the floor shortly thereafter. Senate Bailey-Hutchinson is expected to offer her amendment and we will need to be prepared to take a position on it.

The women's groups have opposed the amendment in the past on two grounds: (1) concerned that we do not have the research to support single-sex education in elementary and secondary education (2) concerned that "comparability" will not be monitored or implemented effectively.

The Committee on Human Resources recommends the consideration of six new policy positions; amendments to twelve existing policy positions, two in the form of substitutes; and the reaffirmation of five existing policy positions, three with technical amendments. Policy proposals are time-limited to two years, unless otherwise noted. Background information and fiscal impact data follow.

1. Governors' Principles to Ensure Workforce Excellence (Amendments to HR-1)

This policy is amended to reflect passage of the Workforce Investment Act. In addition, the policy's sunset date is extended for two years.

2. Immigration and Refugee Policy (Amendments to HR-2)

The policy is amended with language stating that Governors believe that the State Criminal Alien Assistance Program should be reauthorized, and the federal government should fairly reimburse states for the expense of incarcerating illegal criminal aliens.

In addition, the entire text of policy EC-4, Health Care for Undocumented Immigrants, (which is scheduled to sunset) has been moved into HR-2 as a new section (2.2.6). Existing language stresses that since the federal government sets immigration policy, it should be responsible for the associated costs. Requiring states to fully fund health care for undocumented immigrants represents an unfunded mandate on the states.

3. Child Support Financing (Amendment in the form of a substitute to HR-14)

This policy reiterates the Governors' concern that the federal government must maintain its commitment to funding for child support enforcement. In addition, it acknowledges that because of the financial instability and changing mission of the child support enforcement system, it may be appropriate to consider system reform at this time. As an option for reform, the policy suggests allowing states to pass through to families a greater share of child support collections. Any programmatic or financing changes in the child support system will have an impact on many related human service programs administered by the states.

4. Children's Health (Amendments to HR-15)

The current policy is amended to add two new sections: one to stress state flexibility in regard to cost sharing for Native American children in S-CHIP; and one to acknowledge and reward innovative states that have already moved to cover families in S-CHIP. These proposals could lead to cost savings for states.

5. Medicaid (Amendments to HR-16)

The Medicaid policy is amended to add a new section on the Drug Rebate Program (DRP). There are concerns that the DRP is not flexible enough to adequately help states as the nature of the pharmaceutical business changes and that the high cost of Medicaid prescription drugs is overwhelming state budgets. The proposals in this policy could result in significant savings for Medicaid programs.

Historically, the groups have also been concerned that schools would promote sex-based policies, programs, and classes based on out-dated and stereotyped notions of the differences between the sexes and of the limited abilities of girls and women.

Title IX Regulation on Single Sex Education

Current

Under the current regulation, single sex classes and programs in coeducational schools are generally forbidden. Single sex schools, however, are not forbidden provided that if a school district establishes a single sex school it must provide comparable opportunities for the excluded sex. OCR has generally interpreted “comparable” opportunity to mean a “comparable” single sex school, rather than a comparable opportunity in a coed school.

Proposed

The goal of the proposed regulation is to provide greater flexibility to school districts in developing programs and policies that support the diverse educational needs of their students in aiming to reach high academic standards. The proposed regulation makes three major changes to meet this goal: (1) provides for single sex classes, programs, or activities in a coeducational school (2) clarifies how school districts that operate single-sex schools under the existing regulation can provide equal educational opportunity to both sexes (3) defines “equivalence” and deletes reference to “comparable” educational opportunities.

Single Sex Classes, Programs, or Activities: The proposed regulation would allow school districts to provide single sex classes, programs, or activities in coeducational schools if the school district is “even-handedly” providing a diverse array of educational opportunities to improve educational achievement of students of both sexes. The standard of “even handed diversity” could be met in two ways: (1) voluntary choice of equivalent single sex programs for students of both sexes (2) addressing specific educational needs of one sex through a single sex class or program provided that the excluded sex is provided with an opportunity to meet their needs (class could be different in subject matter, approach, or emphasis), but, if one or more member of the excluded sex had the same need they would have to be provided with an equivalent program.

Single Sex Schools: The proposed regulation does not change the fundamental principle that if a school district offers a single sex school to one sex it must provide equal educational opportunities to the other sex. The proposed regulation clarifies “equal education opportunity” through the lens of “even handed diversity” meaning that a school district that operates a single sex school provides equal educational opportunity for the excluded sex where it evenhandedly supports diverse educational opportunities.

Definition of “Equivalence”: The proposed change from “comparable” to “equivalent” does not alter the intent of the regulation, but rather clarifies that “equivalent” programs need not be identical, that the differences in programs or schools cannot be based on stereotypes about the sexes, and that such programs and schools must be equal in all fundamental respects. It urges school districts to consider the following factors in determining whether a class or program is equivalent: policies and criteria for admission; the quality, range, and availability of facilities,

10. Paternal Involvement in Child Rearing (Amendments to HR-28)

This policy recognizes that in families in which fathers do not contribute their time and support, children are subject to a number of risk factors. In addition, it outlines a number of options for government involvement in encouraging fathers' participation in their children's lives. The policy is amended to say that any new federal funding stream to support fatherhood initiatives should be coordinated with, and supportive of, existing programs, and should not be funded at the expense of another vital human service program. Several Members of Congress and the administration have proposed establishing a new federal fatherhood program that would provide additional funding to states, local governments, and nonprofit organizations.

11. Public Safety, Crime Control, and Prevention (Amendments to HR-29)

This policy is amended with a section that urges the continuation of the Byrne program with more flexibility; a section that urges reauthorization and continuation of the state prison grants program with reduced requirements; and a section urging support for improvement of forensic science laboratories. The Byrne grant program is a block grant to states with a 10 percent match; the prison grants program was initiated in the 1994 crime bill, with states receiving funds only if they require prisoners to serve 85 percent of their sentence (some 30 states currently participate in the program); and the proposed fiscal 2001 budget has \$15 million for forensic labs to reduce their offender DNA backlog.

12. Indian Health Services (Amendments to HR-31)

The policy reiterates the Governors' position that the Indian Health Service and other treaty-based trust issues with Native Americans are a federal responsibility and should not be shifted to the states. The policy is amended to stress that Governors remain willing to work closely with the federal government on improving Indian health through joint federal-state programs such as Medicaid and SCHIP. In addition, the policy's sunset date is extended for two years. There are no fiscal impacts of the revised policy language.

13. Low-Income Home Energy Assistance Program (Amendments to HR-33)

The Low-Income Home Energy Assistance Program (LIHEAP) provides funds to states to assist low-income individuals in meeting their heating and cooling needs. The proposed amendments reflect support for increased flexibility between LIHEAP and other related federal programs in light of a new state match requirement in the weatherization program. In addition, the policy's sunset date is extended for two years. Because LIHEAP is a federally-funded program, cuts in funding would result in a cost-shift to states.

14. Synar Statute (New Policy Position, HR-34)

The Synar statute of the Substance Abuse and Mental Health Services Administration requires states to pass and enforce laws regarding the sale of tobacco products to minors. Failure to attain certain levels of vendor compliance results in a massive penalty to a state's Substance Abuse Prevention and Treatment (SAPT) block grant. This proposed new policy states that a series of changes to the administration of Synar or to the Synar statute itself must occur in close consultation with the states. If enacted, these policies could prevent states from facing a 40 percent cut in their SAPT block grant.

services, resources, financial aid, and other benefits; and the qualifications and distribution of faculty and staff.

Possible Difference between the Departments of Education and Justice

In developing the proposed regulation the Department of Education worked to ensure that the proposed Title IX regulation adhered to the standards set forth by the Constitution's Equal Protection Clause. The Department of Justice has expressed concern that the proposed regulation could be in violation of the Constitution. The basic difference between the two Departments seems to stem from differing interpretations of the Supreme Court's VMI decision. The two main differences that will need to be resolved are: (1) whether VMI should be interpreted to mean that a school district must provide both the "exceedingly persuasive justification" and an "equal" opportunity for the excluded sex and (2) the definition of "equal" opportunity.

The VMI decision establishes that gender classifications must be based on an "exceedingly persuasive justification." The Department of Justice interprets this to mean that there must be both an exceedingly persuasive justification for excluding one sex and there must be equal opportunities for the excluded sex. While the Department of Justice has not submitted any written response to the proposed regulation, it is unclear how Justice would be satisfied with a definition of equality other than as "identical" educational opportunities. The Department of Education, on the other hand, believes that under VMI a school may offer single-sex classes or programs to address the legitimate, demonstrated educational needs of one sex, as long as it ensures "evenhanded diversity" or "substantial equality in the separate educational opportunities." This interpretation leads the Department of Education to outline one option for providing a single sex classroom or program that does not require an "equal" educational opportunity for the excluded sex. If a school district can establish that members of one sex have an identified education need and that excluding members of the opposite sex will help to address that educational need, the school district can offer the program or class as long as it is effectively serving members of the excluded sex who have the same or similar learning needs. The Education Department does not determine that the program or class for the excluded sex need to be the same, rather the educational strategies used for both sexes need to be based on educational research, good practice, and expert judgement.

Next Steps

- (1) Resolve differences between DOJ and ED that ensures resolution of constitutional concerns, but also ensures the promotion of flexibility for school districts to develop and implement single sex schools or classes to meet the educational needs of their students
- (2) Begin to meet with stakeholder groups to ensure that they are comfortable with proposed regulation before it is formally submitted to the Federal Register
- (3) Formally submit to Federal Register for comment
- (4) Develop a position on the Senator Bailey-Hutchinson Amendment that is consistent with proposed regulations

HR-1. GOVERNORS' PRINCIPLES TO ENSURE WORKFORCE EXCELLENCE

The Governors are vitally concerned with the competitive ~~economic~~ position of our states and the nation IN ADDRESSING THE CHALLENGES OF THE NEW ECONOMY, WHICH INCREASINGLY REQUIRE ~~A world-class economy requires~~ both high-performance firms and workers. U.S. firms must upgrade production processes, improve products, seek new markets, and invest in workforce skills to compete successfully. Government should support these private sector modernization and quality improvement efforts and must radically restructure its own strategies for delivering education and training services in order to build a world-class workforce. To ensure that these efforts succeed, we must strengthen partnerships among business, labor, education, and all levels of government and make workforce development an integral component of national, state, and local economic development policies. The Governors recommend the following principles to help ensure workforce excellence.

- States and the federal government should promote the development of high-performance work organizations by providing technical, financial, and training assistance to firms seeking to implement quality management improvement and modernization initiatives. Firms and workers negatively affected by federal policy decisions, including defense downsizing and trade policy, should receive adjustment assistance faster and in a more flexible manner. Federal assistance should be provided through state-based networks AND INITIATIVES and SHOULD build on existing state and local programs.
- FURTHER ~~Wholesale~~ change in the nation's approaches to workforce development is needed in order to create a coherent, customer-driven, results-oriented workforce development system. This system should be understandable, accessible, and responsive to the needs of local and regional businesses, workers, job seekers, and students. Customers should be able to receive information about the full array of services available and be able to easily enter and re-enter the system at any point. This state-based system should be comprehensive, flexible, accountable, and designed to build on current strengths, and it should be managed at the local level to achieve desired results. A comprehensive national human investment policy should BE DEVELOPED TO guide and support state and local efforts to implement such a system.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

MEMORANDUM

Date: December 13, 1999

To: Randy Moss
Acting Assistant Attorney General for Legal Counsel

Bill Lann Lee
Acting Assistant Attorney General for Civil Rights

Peter Rundlet
Associate Counsel to the President

From: Judith A. Winston *JAW*

Subject: Draft Proposed Amendments to Title IX regulations concerning single sex schools and programs

For
Ann O'Leary
Fr: Peter Rundlet

Attached, for your review, is a draft of proposed amendments to Title IX regulations concerning single sex schools and programs. To assist in your review, I have also attached a summary of the proposal that was used in briefing Secretary Riley. We would be happy to meet to discuss the proposal and to answer any questions that you may have.

Please note that the preamble to the regulations is not in the proper Federal Register format and does not include all the required boilerplate language that must be included in a notice of proposed rule making. We are prepared to make those changes once there is clearance of the substantive approach.

In addition to discussing the substance of the document, we also need to discuss how best to vet the proposal with appropriate stakeholders before it is published as a proposed regulation. We would appreciate it if, in distributing this draft within the White House and the Department of Justice for review, you emphasize that it should neither be shared nor even discussed with persons outside our agencies until we have agreement on both the substance and the vetting strategy.

Previous guidance that we received from you has been very helpful in preparing this draft, and we greatly appreciate your review of this draft. As you know, the issues are very difficult, and it has taken us considerable time to formulate an approach that we

believe is both legally defensible and consistent with good educational practice. We look forward to an early discussion so that we can move forward on this project.

Thank you.

Attachments

cc: Mike Smith
Leslie Thornton
Norma Cantu
Art Coleman

PREAMBLE

I. Purpose of the Proposed Regulatory Amendments

*Just
writing?
your
comment?*

The Department proposes to amend its existing Title IX regulation regarding single-sex programs and activities, consistent with the purposes of the Title IX statute and subject to appropriate safeguards against discrimination, to assist school districts in responding to important and legitimate educational needs of students. The proposed amendments are intended to support efforts of schools and school districts to improve educational outcomes for children, and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children.

II. Background

Title IX of the Education Amendments of 1972 prohibits sex-based discrimination in education programs or activities receiving federal financial assistance. 20 U.S.C. § 1681. The Title IX statute specifically exempts from its coverage admissions policies of non-vocational elementary and secondary schools, private undergraduate postsecondary institutions, and public undergraduate postsecondary institutions that traditionally and continually from their establishment have had a policy of admitting only students of one sex. The statute does not specifically prohibit single-sex classes or programs in coeducational schools.

Title IX is implemented by rules promulgated by agencies providing federal assistance to education programs and activities. 20 U.S.C. § 1682. The Department's current regulation issued by its predecessor agency, the Department of Health, Education, and Welfare (HEW), became effective July 21, 1975. See 34 CFR Part 106.

The regulation does not apply to the single-sex admission policies of non-vocational elementary and secondary schools, among other institutions exempted by the statute. 34 CFR 106.15. Accordingly, recipients can operate single-sex elementary and secondary schools consistent with Title IX. However, the regulation requires that where a local educational agency (LEA) operates a school for one sex, it must provide the other sex, pursuant to the same policies and criteria of admission, with comparable courses, services, and facilities. 34 CFR 106.35.

With limited exceptions, the existing regulation prohibits recipients that operate coeducational schools from conducting single-sex classes, programs, or activities.¹ The regulation reflects

¹ The exceptions are if separation based on sex (1) results from the application of objective standards of physical ability, or vocal range or ability, 34 CFR 106.34(b), (d), and (f); (2) is in a physical education class involving contact sports or is in a class involving human sexuality, 106 CFR 106.34(c) and (e); (3) involves a program offered to pregnant students on a voluntary basis that is comparable to that offered non-pregnant students, 34 CFR

congressional concerns that coeducational institutions were using sex-based policies and practices that reflected out-dated and stereotyped notions of the differences between the sexes and of the limited abilities of girls and women. }

III. Summary of Proposed Changes to the Department's Title IX Regulation

The proposed regulation is intended to increase the ability of school districts to respond to educational needs and problems in their schools consistent with the intent and purpose of Title IX. Recent attempts by some school districts to experiment with single-sex programs, as well as recent congressional proposals regarding single-sex programs, reflect important and legitimate efforts to improve educational outcomes for all students. These programs generally are not based on outdated notions regarding the limitations or limited goals of members of one sex. Rather, they aim to provide new and better ways to help all students learn and succeed to high standards.

The three major proposed changes to the regulation can be summarized as follows –

✓ The first and most significant change relates to single-sex classes, programs, or activities in coeducational schools. The proposed regulation permits non-vocational elementary and secondary schools to operate single-sex classes, programs, or activities, in addition to those situations permitted by the existing regulation, if a school can meet the constitutional standard used by the federal courts to review gender classifications. Under this standard, a school must demonstrate an "exceedingly persuasive justification" for the single-sex class, program, or activity. The proposed regulation identifies "even-handed diversity" as a justification that can meet this standard. It also describes two ways that a school can demonstrate "evenhandedness."

✓ Second, the proposed regulation clarifies how LEAs that operate single-sex schools under the existing regulation can provide equal educational opportunity to both sexes.

✓ Third, as discussed in more detail below, there are situations where either evenhandedly providing classes or programs, or ensuring equal educational opportunity in schools, will require "equivalent" programs or schools. The proposed regulation defines "equivalence" and deletes the word "comparable" found in the existing regulation. This change does not alter the intent of the existing regulation, but clarifies that "equivalent" programs and schools under this regulation need not be identical, and that differences between programs and schools cannot be based on stereotypes about the sexes, and such programs and schools must be equal in all fundamental respects. These include admissions criteria, the quality, range, and availability of curriculum, facilities, services, and other benefits, and the qualifications and distribution of staff and faculty. }

✓ Equivalence will be determined on a case-by-case basis.

106.40(b); or (4) constitutes remedial or affirmative action. 34 CFR 106.3. In addition, pursuant to an OCR policy determination, recipients may offer sex-segregated classes for students who object to coeducational classes on religious grounds. 43 Fed. Reg. No 84 (May 1, 1978).

The proposed changes only apply to elementary and secondary schools, classes and programs. This is where the need for flexibility to respond to students' diverse educational needs is most prevalent, and where the current Title IX regulation limits the discretion of educators to provide single-sex program choices.

IV. Constitutional Standards

The Supreme Court has determined that the Constitution requires equal educational opportunity for men and women. However, sex is not a prohibited classification. For instance, sex classifications may be used "to compensate women 'for particular economic disabilities [they have] suffered,' 'to promot[e] equal employment opportunity,' [and] 'to advance full development of the talent and capacities of our Nation's people.'" United States v. Virginia (VMI), 116 S. Ct. 2264, 2276 (1996) (citations omitted). See also Mississippi Univ. for Women v. Hogan, 102 S. Ct. 3331, 3338 (1982) (holding that in limited circumstance, gender-based classifications can be justified).

Nevertheless, gender classifications require an "exceedingly persuasive justification." VMI, 116 S. Ct. at 2275. Gender classifications are permissible if they serve important governmental goals and if the means employed are substantially related to those goals. Id. This is a "demanding" legal hurdle for a school. Id. The governmental justification "must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." Id. See also Hogan, 102 S. Ct. at 3337 (holding that sex-based classifications must be based on "reasoned analysis" rather than through the application of "traditional and often inaccurate assumptions" about the roles of men and women). Because courts will take a "hard look" at the rationales for single-sex programs, schools that establish such programs must make sure they are not relying on generalizations and "tendencies" of girls and boys that are likely to perpetuate patterns of discrimination. VMI, 116 S. Ct. at 2280.

Importantly, the court in VMI suggested a rationale for single-sex schools and programs that may meet the "exceedingly persuasive justification" test: "We do not question the State's prerogative evenhandedly to support diverse educational opportunities." Id. at 2276. Consistent with its mission "to ensure equal access to education and to promote educational excellence throughout the nation," the Department encourages educators to investigate disparities in educational attainment between boys and girls, and to develop and allow parents to choose among a broad array of educational strategies capable of meeting the potentially different learning needs of many boys and girls.

Yet whatever educational opportunities schools or school districts offer to boys and girls, they must offer such opportunities "evenhandedly." Id. In VMI, not only did the State offer "no persuasive evidence that VMI's male-only admissions policy [furthers] a state policy of 'diversity,'" id. at 2279 (internal quotation marks omitted), but the State also failed to show "evenhandedness" in the educational opportunities it did offer to men and women. Indeed, the

everyday choices
of programs for both sexes

core of the equal protection violation was the State's failure to provide VMI-type adversative military training "to women ready, willing, and able to benefit" from such training. Id. at 2283. Thus, under VMI, where a school or school district operates a single-sex program or school, it must ensure "substantial equality in the ... educational opportunities" it offers not simply to members of the excluded sex who have the same educational need addressed by the school or program, but specifically to members of the excluded sex who are "ready, willing, and able to benefit from educational opportunities of the kind [the State] offers" to the included sex. Id. at 2286, 2283; see id. at 2284 ("[G]eneralizations about 'the way women are,' estimates of what is appropriate for most women, no longer justify denying opportunity to those women whose talent and capacity place them outside the average description."). "Evenhandedness," so construed, reflects the basic principle that equal protection is a constitutional right held by individuals, not by groups.

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V. Application of constitutional standards to the proposed regulation

The proposed regulatory language continues to treat schools and classes differently because of the Title IX statutory exemption for elementary and secondary school admissions.

A. Single-sex classes and programs

Single-sex classes and programs are not exempt from the Title IX statute. Thus, Title IX requires schools and school districts to justify single-sex classes and programs in coeducational elementary and secondary schools. The Department's proposed regulation would permit single-sex classes, programs, or activities under Title IX to the full extent permissible under the Equal Protection Clause.

Accordingly, the Department will examine on a case-by-case basis whether the school provides single-sex classes or programs in coeducational schools "evenhandedly to support diverse educational opportunities." Id. at 2276 n. 7. The following discussion describes situations in which a school demonstrates an evenhanded use of single-sex classes or programs:

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(1) Voluntary choice among equivalent educational options

The Department encourages educators to investigate disparities in educational attainment between girls and boys and to attempt innovative educational methods to improve student achievement. The Department recognizes that to promote educational excellence it is important that educators have an array of educational options to meet the diverse needs of this nation's students. An array of educational opportunities including single-sex educational options can promote greater choice for parents and students within the public school system. Such opportunities may encourage the consideration and adoption of innovative teaching practices to improve the academic achievement of all students.

The Department believes that the requirements of VMI leave public schools and school districts with sufficient flexibility to offer the option of single-sex education programs. These options would be based on judgments, supported by research or other reliable evidence, that providing such options would improve educational outcomes for their students. These judgments, for example, could be based on evidence that some students in some circumstances will do better in a single-sex environment, and evidence that students within the attendance area are leaving the public schools to attend private single-sex schools within the district. The Department believes that the school clearly indicates its interest in "evenhandedly ... support[ing] diverse educational opportunities," VMI, 116 S. Ct. at 2276 n.7, when it offers choice among educational options that include equivalent single-sex classes or programs for each sex as well as an equivalent coeducational class or program. Equivalence is a rigorous standard that requires the school or district to offer substantially equivalent curriculum, teaching methods, teacher quality, facilities, and services through each educational option. This standard ensures that the exclusion of one sex from a particular class or program does not deny equal protection to members of that sex, given the other educational opportunities that the school has made available. Moreover, voluntary admissions to each class or program ensures that students are not placed in single-sex programs based on overbroad generalizations about the needs, abilities, or interests of either sex. (b) (c)

(2) Addressing specific educational needs of boys and girls

Educational research suggests that boys and girls may have different learning needs that single-sex educational strategies may effectively address. The Department believes that under VMI, a school may offer single-sex classes or programs to address the legitimate, demonstrated educational needs of one sex, as long as it ensures "evenhanded[ness]," 116 S. Ct. 2276 n.7, or "substantial equality in the separate educational opportunities," id. at 2286, it offers to the other sex. Three points are relevant to meeting this standard.

First, the school must demonstrate that members of one sex (the included sex) have an identified educational need, that the class or program must be targeted to members of the included sex with that need, and that exclusion of members of the other sex (the excluded sex) substantially enhances the effectiveness of the class or program in meeting the need of the included sex.

Second, Title IX and the Constitution require "evenhandedness." This means that where a school has identified and documented specific learning needs of members of one sex that may effectively be addressed through single-sex education, the school must demonstrate that it is effectively serving members of the excluded sex who have the same or similar learning needs. The program offered to the similarly situated members of the excluded sex does not have to be the same as that offered the included sex, nor does it have to be offered in a single-sex environment. Rather, the educational strategies used to address the learning needs of the excluded sex should turn on educational research, good practice, and expert judgment. Strategies that effectively address a particular learning need for most students of one sex may or may not resemble strategies that effectively address the same need for most students of the other sex.

Finally, evenhandedness requires that if a school properly justifies a single-sex program offered to members of one sex, but some members of the excluded sex can benefit from and are willing and able to participate in the program offered the included sex, the school ~~must~~ provide the excluded sex with a class or program that is equivalent to that program. Equal opportunity does not necessarily mean that the single-sex program must be opened up to the excluded sex. Nor does it mean that the program offered the excluded sex must be offered in a single-sex environment, if a coeducational environment is effective for members of the excluded sex. The school would also have flexibility to offer the program to members of the excluded sex in a somewhat different format based on the difference in numbers of students that would benefit from the program, as long as the program is equivalent in fundamental respects.

Schools should monitor and evaluate their classes and programs under this regulation, including those offered to the included sex and the excluded sex, to ensure that the class or program continues to effectively meet the need identified by the school.

Example of evenhanded response to the needs of both sexes:

Example 1 -- A school demonstrates that its female students are not participating or achieving in advance level mathematics classes to the same degree as boys. It also provides evidence of studies from similarly situated schools or school districts showing that girls do better in these classes if they are single-sex. Based on this evidence, it offers a single-sex mathematics class that is open to girls who have the prerequisites to take upper level classes but who are not taking such classes, or who are taking such classes but getting low grades. Enrollment is voluntary. The class uses a traditional teaching method and covers the same core material taught in other upper level mathematics courses. For boys, as well as girls who chose not to enroll in the single-sex class, the school offers advance level math in coeducational classes with substantially equal class size, curriculum, and teacher quality. The school also demonstrates that the best way to increase boys' participation and achievement in upper level mathematics courses is to provide tutoring sessions. It provides these services to any student, boy or girl, who has the prerequisites to take upper level classes but who is not taking such classes, or who is taking such classes but getting low grades. In addition, the school monitors the effectiveness of both the all-girls class and the tutoring sessions in raising the mathematics achievement of the students served. It does not offer a single-sex upper level mathematics class for boys. The excluded sex is being provided equal educational opportunities.

Example 2 -- An urban high school serving primarily African-American students demonstrates a serious dropout problem among its male students. The school does an assessment and learns that boys are dropping out because of peer pressure on them to follow "codes of masculinity" which emphasize hiding one's feelings, experimenting with violence and drugs, and doing poorly in school rather than being labeled a "nerd." The

school also has evidence from a program offered at a school district with similar demographics that boys respond effectively to an intensive counseling and mentoring program to address these issues. The evidence also shows that boys are much more likely to sign-up for and remain in the program if it is single-sex. In response, the school establishes an intensive after-school mentoring and counseling program for boys. The school also has done an assessment that shows that most girls who drop out do so due to heavy family obligations, and that providing a more flexible schedule as well as a one-on-one program advisor for girls at risk of dropping out to work with the family in coordinating school and family obligations is effective in keeping such girls in school. Accordingly, it has established a flexible schedule option and a program advisor program for at-risk high school girls. A small number of girls with serious drug and discipline problems that put them at risk for dropping out are also interested in the intensive mentoring and counseling program offered the boys. There is no evidence that these girls do not effectively respond in a coeducational environment, so the school district offers a smaller, but in other ways identical, coeducational mentoring program. The school monitors the effectiveness of its dropout prevention strategies for both boys and girls. The school offers the excluded sex equal educational opportunity.

B. Single-sex schools

Because of the exemption in 20 U.S.C. 1681(a)(1), Title IX does not apply to the single-sex admissions policies of nonvocational elementary and secondary schools. This precludes the Department from regulating a school's justification for offering a single-sex school. On the other hand, the Department has consistently interpreted Title IX to require that an LEA ensure that when it chooses to offer single-sex schools to one sex – absent a remedial basis – it is providing equal educational opportunities to the other sex.² The proposed regulation does not change this fundamental principle.

The Department believes that in practice similar legal standards apply both to single-sex schools and to single-sex classes or programs. Because of the exemption for admissions to nonvocational elementary and secondary schools, the district does not have to justify establishment of this single-sex school under Title IX. (It will have to do so under the Constitution if it is challenged in court.) However, the justification for and nature of the single sex school shapes the extent of the obligation of the LEA to provide equal educational opportunity for the excluded sex. The Department cannot determine whether similarly situated members of the excluded sex are being provided equal educational opportunity without understanding what need or problem the LEA seeks to address in establishing the single-sex school. In this sense, the focus and goal of the Constitution and Title IX are the same: evenhandedness. Where a school or LEA pursues a single-sex educational strategy, the equality analysis focuses on what educational opportunities the school or LEA is providing to members of the excluded sex. And the goal is to ensure substantial equality in the educational opportunities offered to those members of the excluded

² Moreover, Congress deferred to federal agencies further to determine through regulations the meaning of an equal educational opportunity when an LEA chooses to establish one or more single-sex schools. 20 U.S.C. § 1682

sex who have the same or similar needs to those addressed for the students served by the single-sex school.

Thus, the proposed regulatory language clarifies that a LEA that operates a single-sex school provides equal educational opportunity for the excluded sex where it evenhandedly supports diverse educational opportunities. As with single-sex classes and programs, evenhandedness can be satisfied by providing equivalent single-sex schools as well as an equivalent coeducational school. As discussed above and demonstrated below, equivalence is rigorously defined in order to ensure equal educational opportunity:

Example of nonequivalent schools

A school district establishes single-sex academies for grades 10-12 in addition to offering coeducational schools for students at these grade levels. Admission is voluntary. The schools are given identical resources and facilities, equivalent quality teachers and administrators, and offer an identical curriculum based on core courses in mathematics, science, English, and history. At this point, the school district has evenhandedly supported diverse educational opportunities. However, after several years, the girls' academy develops a close relationship with local business and community leaders. Over time, these outside groups increasingly offer significant mentoring services to the students at the girls academy, such as putting on educational programs for the students, and using their contacts to help the students obtain summer jobs, internships, and interviews with alumni of highly competitive colleges. The groups also joined together to raise and donate money to build a new sports complex at the girls academy. The school district no longer offers equivalent educational opportunities for boys and girls.

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As with single sex classes or programs, evenhandedness alternatively may be satisfied where an LEA uses a single-sex school to address a specific educational need affecting members of one sex, as long as the school district provides a school or program that effectively serves members of the excluded sex with the same educational need, and provides an equivalent program to that offered the included sex to those members of the excluded sex who would benefit from and seek this opportunity. LEAs should monitor and evaluate schools and programs offered to both the included and excluded sex to ensure that these LEAs continue to effectively meet the needs identified.

Example of evenhanded response to the needs of both sexes:

An LEA establishes a single-sex leadership high school for girls. The school employs a curriculum and pedagogical and counseling approaches designed to develop leaders. Because of the Title IX statutory exemption for admissions to nonvocational elementary and secondary schools, the LEA does not have to justify establishment of this single sex school under Title IX. (It will have to do so under the Constitution if it is challenged in court.) Nevertheless, the LEA would have to show that it is providing for boys with the

same need or problem addressed in the girls school a program that is effective in addressing that need. Thus, the LEA demonstrates that it offers the leadership school because most girls in its school district are not assuming or even trying for leadership positions in the schools that would prepare them to be leaders in their adult lives. For several years they have been significantly under-represented in school government positions and other extracurricular programs such as the editorial boards of school newspapers. In assessing the needs of boys, the LEA shows evidence that boys avoid leadership positions, not because of anything girls do, but because they lack public speaking skills and role models. Thus, the school district offers a mentoring program at the coeducational high school. Its assessment also showed that a small number of non-leader boys would be interested in the intensive curriculum and counseling program found at the girls school. Thus, the school district offers a smaller, but otherwise equivalent, coeducational program with curriculum and pedagogical and counseling approaches designed to develop leaders in one of its coeducational high schools. The school monitors the effectiveness of its leadership programs for both boys and girls.

VI. The Department seeks comments on other examples of exceedingly persuasive justifications

The Department welcomes educators and others to share their expertise and insight regarding other possible examples of the evenhanded use of single-sex programs and schools, or examples of other "exceedingly persuasive justifications" for single-sex programs or schools. It is important that suggested justifications are consistent with the rigorous legal standards set out above. Depending on comments received during the public comment process, the Department may conclude that there are other examples of justifications that are sufficient to include in the final regulation as categorical types of permissible single-sex programs.

VII. Additional aspects of the proposed regulation

The proposed regulation also retains two longstanding regulatory exceptions that permit single-sex programs and schools consistent with constitutional standards:

Section 106.3 permits single-sex schools, programs and activities that are undertaken to overcome the effects of sex-based-discrimination and to overcome the effects of conditions that have resulted in limited participation by members of one sex. 34 CFR Part 106.3. See e.g. VMI, 116 S. Ct 2276 ("sex classifications may be used to compensate women 'for particular economic disabilities [they have] suffered,") citing Califano v. Webster, 430 U.S. 313,320 (1977); Hogan, 102 S. Ct. 3338 ("a gender-based classification favoring one sex can be justified if it intentionally and directly assists members of the sex that is disproportionately burdened"). Because programs under § 106.3 are intended to remedy existing inequities in a program for one sex, it is not necessary to evaluate whether equivalent opportunities are provided to members of the other sex.

Section 106.34 permits physical education classes involving contact sports, and sex-segregated classes involving human sexuality, as long as equivalent opportunities are provided to members of both sexes. Sex-segregation in these circumstances is based on real differences between the sexes and on compelling issues of privacy. See e.g., VMI, 116 S. Ct. at 2276 (noting that there are enduring physical differences between men and women). Moreover, neither sex is denied equal educational opportunity.

The proposed regulation also retains the existing regulatory provisions that explicitly permit grouping students based on: ability in physical education classes, 34 CFR § 106.34(b), vocal range or quality, 34 CFR § 106.34(f), or pregnancy. 34 CFR § 106.4(b). These provisions and/or classifications are not based on sex and, thus, are not affected by the "exceedingly persuasive justification" standard.

As discussed above, the proposed regulation retains the permissibility of separating students by sex within physical education classes during participation in contact sports. The proposed regulation would not, however, otherwise permit sex-segregated physical education activities. The provision requiring coeducational physical education classes was the subject of thorough debate at the time when the Title IX regulations were promulgated, see 108 Fed. Reg. 24133 (June 4, 1975) and stereotyping in physical education classes was a particular concern of Congress when it enacted Title IX. Nor does the proposed regulation permit sex-segregated vocational education classes. Congress was also specifically concerned with gender-based stereotyping in this area. See 118 Cong. Rec. 5806. To permit single-sex vocational education classes, programs, or activities would be inconsistent with congressional intent since Congress did not permit single-sex vocational education schools at the elementary and secondary level.

PROPOSED REGULATORY LANGUAGE

Replace existing sections 106.34 and 106.35 with the following:

106.34 Access to course offerings

- (a) Except as provided in paragraphs (b) and (c) of this section, a recipient that operates a non-vocational elementary or secondary school may provide or carry out courses, programs, or activities (referred to in this section as "classes or programs") separately on the basis of sex:
- (1) Remedial basis. As part of a program to redress sex-based discrimination or to overcome the effects of conditions that resulted in limited participation by members of one sex under §106.3;
 - (2) Even-handed diversity to enhance educational achievement. If the school is even-handedly supporting a diverse array of educational opportunities to enhance educational achievement for students of both sexes at the same ages or grade levels. A school meets this standard if the recipient demonstrates that –

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(i) Voluntary choice among equivalent programs. (A) The school is providing for voluntary choice among equivalent single sex classes or programs to students of both sexes, as well as an equivalent coeducational class or program at the same ages or grade levels;

(B) These options are provided based on the recipient's educational judgment, supported by research or other reliable evidence, that voluntary choice will enhance the educational achievement of students served by these classes or programs; or

(ii) Addressing specific educational needs. (A) The single sex class or program is demonstrably responsive to a significant educational need affecting members of the sex included in the class or program (the "included sex"); the class or program is targeted to students with this need; exclusion of members of the other sex (the "excluded sex") substantially enhances the effectiveness of the class or program in meeting that need for the included sex; and the school is providing for members of the excluded sex with the same educational need, a class or program that is effective in addressing that need.

(B) Subject to sub-clauses (C) and (D), the class or program provided for members of the excluded sex, under this clause—

(I) May be different in subject matter, approach, or emphasis from the class or program for the included sex, depending upon the recipient's educational judgment of how best to serve most members of the excluded sex experiencing the same educational need as the included sex; and

(II) May be a coeducational class or program if that is effective in meeting that need.

(C) The recipient's justification of a single sex class or program under clause (A), and its judgment under clause (B) of how best to meet the same educational need for members of the excluded sex must be based on educational research or other reliable evidence of both the needs of students served by the school and the effectiveness of the education approach used to meet these needs, and may not be based on gender-based stereotypes.

(D) (I) If one or more members of the excluded sex (with the need) identified under this clause would benefit from, and seeks the opportunity to participate in, the type of program offered the included sex, they must be given an equivalent class or program--subject to appropriate adjustments in format if only a few students would benefit from and are interested in the program.

(II) The equivalent class or program may be coeducational if such a class or program effectively meets the need of the members of the excluded class described in subclause (I).

(3) Body-contact physical education and human sexuality. Within physical education classes or activities while participating in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact, or during portions of classes that deal exclusively with human sexuality.

(b) Physical education. Except as provided in paragraph (a)(3), a recipient may not offer sex-segregated physical education classes or programs.

(1) This paragraph does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance and applied without regard to sex.

(2) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such an effect.

(c) Vocational, home economics, and business education. A recipient may not offer sex-segregated vocational, technical, home economics, industrial, or business classes or programs.

(d) Chorus. Recipients may impose requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

(e) Equivalence. Factors to consider in determining whether a class or program is equivalent under this section include whether there is equivalence in the policies and criteria of admissions (excluding a policy to restrict admissions based on sex); the quality, range, and availability of curriculum; the quality, range and availability of facilities, services, resources, financial aid, and other benefits; and the qualifications and distribution of faculty and staff.

106.35 Access to schools operated by local educational agencies

A local educational agency that operates a non-vocational, single sex elementary or secondary school for members of one sex does not discriminate against students of the excluded sex if --

(a) Remedial basis. The school is part of a program to redress sex-based discrimination or to overcome the effects of conditions that resulted in limited participation by members of one sex under §106.3; or

(b) Even-handed diversity. The local educational agency evenhandedly supports diverse educational opportunities for students of both sexes at the same age or grade level in the same geographic area. A recipient meets this standard if it demonstrates that--

Summary of Proposed Regulations on Single Sex Education

Purpose -- To amend the Title IX regulations to provide more flexibility to LEA's to establish single sex elementary and secondary schools and programs that respond to the needs of their students, based on educational judgments of how best to meet those needs and subject to safeguards against discrimination and stereotyping.

Current Title IX Regulations

- Generally forbid single sex classes and programs in coed schools. Based on Title IX statutory exemption for non-vocational school admissions, the regulations do not forbid single sex schools but provide that if an LEA establishes one, it must provide comparable opportunities for the excluded sex.
- Absent this provision, an LEA could, for example, establish its only advanced math/science program as a boys school and thereby deny access to advanced math/science instruction for girls. The regulations are ambiguous as to whether comparable opportunities mean the excluded sex may receive comparable programs in a coed school, although OCR's view has been that they require a comparable single sex school.

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Legal Landscape

- The cases in this area generally interpret the Constitution's Equal Protection Clause rather than Title IX. To the extent possible, we believe that Title IX regulations should adhere to the constitutional standards to avoid the anomaly that the government may be applying standards that fall short of constitutional requirements.
- The Supreme Court's VMI decision and other cases create a presumption against government classifications or decisions based on gender. While not as tough as the strict scrutiny standard that applies to racial classifications, gender classifications also require heightened scrutiny. They must be based on an "exceedingly persuasive justification." The Department of Justice has advised us that to have a single sex school or program under the Constitution, there must be both an exceedingly persuasive justification for excluding one sex and there must be equal opportunities for the excluded sex.
- VMI clearly holds that equal educational opportunity is an individual right, and a student who is otherwise qualified for and interested in a type of program cannot be denied that opportunity because the program is targeted to address the needs of the other sex. In VMI itself, the Court found that VMI was unique, so the only solution was to admit young women to VMI. However, where a single-sex program is not unique, we do not read VMI to compel admission of qualified members of the other sex, thereby undermining its single sexness, but rather to compel the school to

do it with the LEA or program

However, the justification for and nature of the single sex school shapes the extent of the obligation of the LEA to provide equal educational opportunity for the excluded sex. In this hypothetical, the LEA would have to show that it is providing for boys with the same non-leadership problem as the girls a program that is effective in addressing that need. That program could be a whole school, a school within a school, or a set of programs or classes; it could be different in emphasis or approach from the school for the included sex, depending on the LEA's judgment, based on research or other reliable evidence, of how best to meet the same educational need for most boys; and it may be a co-educational program if that is effective in meeting that need. If one or more boys would benefit from and were interested in the very same type of leadership program that is provided for the girls, they would have to be given an equivalent school, or if their numbers do not justify a school, an equivalent program, which could be coeducational if that were effective in meeting their need.

Special Rules -- The proposed regulations would retain special rules in the existing Title IX regulations barring single sex classes in vocational schools; barring single sex physical education classes, apart from activities involving body contact; and permitting classes involving discussion of human sexuality.

Continuing Problem -- Because of the school admissions exemption in Title IX, OCR could find a school in compliance with Title IX or potentially even enter a compliance agreement, where the school (or agreement) is in conflict with the Constitution. The single-sexness of the school may not be adequately justified under the Constitution, but that is an issue we are foreclosed from addressing under Title IX.

provide them an equivalent program. We also do not read VMI to compel that the equivalent program be single sex. If a coeducational program is effective in meeting the need of members of the excluded sex, they can be provided an equivalent program in a coeducational setting.

The Proposed Regulations -- Even-Handed Diversity. In addition to citing existing Title IX regulations that already permit single sex schools and programs to remedy discrimination, the proposed regulations would provide that **single sex classes and programs** are permissible if the justification is even-handedly providing a diverse array of educational opportunities to improve educational achievement of students of both sexes. This standard--which appears to be supported in a footnote in the VMI case--would be met in one of two ways--

(a) Voluntary Choice of Equivalent Programs. A school provides for voluntary choice of equivalent single sex classes for students of both sexes, as well as an equivalent coeducational class; and an educational judgment has been made by the school, supported by research or other reliable evidence, that voluntary choice will enhance educational achievement of students served by these classes (the proposed regulations would define "equivalent" as essentially the same in quality and range of curriculum, and quality of teaching staff and other inputs); or

(b) Addressing Specific Educational Needs -- Classes and Programs in Coed Schools

- A school provides a single sex class that is responsive to a significant educational need affecting members of the sex included in the class; the class is targeted to students with this need; exclusion of members of the other sex substantially enhances the effectiveness of the class in meeting that need for the included sex; and the school provides for members of the excluded sex who have the same educational need a class that is effective in addressing that need. The class for the excluded sex may be different in subject matter, approach, or emphasis from the class or program for the included sex, depending on the educational judgment of how best to serve most members of the excluded sex with that same educational need, and it could be a coeducational class if that is effective in meeting that need.
- However, if one or more members of the excluded sex who have the same need as the included sex and would benefit from and seek the opportunity to participate in the type of program given to the included sex, they would have to be given an equivalent program. It could be coeducational if a coeducational program is effective in meeting their need, and there may be adjustments in the format of the program if only a few students would benefit from and are interested in the program.

Schools -- Because admissions to schools are exempt from coverage under the Title IX statute, an LEA would not need to justify how the single sex school addresses specific educational needs and the basis for excluding the other sex. However, the same proposed

principles described above for applying the concept of even-handed diversity to classes would also apply to schools.

Examples of Permissible Single Sex Programs (These examples are in addition to the case where a school district or school provides for voluntary choices among equivalent single sex classes or schools for boys and girls, as well as an equivalent coeducational class or school, in order to enhance academic achievement.)

(a) Drop-outs of Boys -- A school is experiencing a serious drop-out problem among its students. The school does an assessment and makes an educational judgment that boys are dropping out because of peer pressure on them to follow "codes of masculinity" which emphasize hiding one's feelings, experimenting with violence and drugs, and doing poorly in school rather than being labeled a nerd. The school also makes an educational judgment that it needs an intensive counseling and mentoring program to address these issues and that the presence of girls in the program would undercut its effectiveness for many boys at risk of dropping out. Girls may be excluded from the program. But the school also has an obligation to provide equal opportunity for girls. Its assessment shows that most girls who drop-out do so not because of the same problems that boys have, but rather due to heavy family obligations. So the school establishes a separate program addressed to this need. That program could be coeducational if that would be effective in meeting this need. In addition, under VMI, if there are some girls who are at risk of dropping out for the same reasons as boys, and they wish the same type of counseling and mentoring program as the boys, the school would have to provide it. However, the scale and format of the program could be reasonably designed to reflect the smaller numbers of such girls as compared to boys who would benefit from this program. Also, if a coeducational program would be effective for these girls, the program would not need to be single sex.

(b) Math/Science for Girls -- A school demonstrates that girls are not participating or achieving in advance level math to the same degree as boys, and it provides evidence that girls' success in advanced math is negatively affected by the presence of boys. It may offer a single sex, advanced math class for girls. If there were boys with similar needs, the school would need to devise a program or instructional strategy that is effective in addressing their needs. It might be a different program from that for the girls, such as an intensive tutoring program. The program for the boys could be coeducational if that were effective in meeting their needs.

(c) Leadership School for Girls -- By comparison to boys, most girls in a school district are not assuming or even trying for leadership positions in the schools that would prepare them to be leaders in their adult lives. They are underrepresented in school government positions and other extracurricular programs. The district concludes that a single sex school for girls is needed to address this issue, with a curriculum and pedagogical and counseling approaches designed to develop leaders. Because of the Title IX statutory exemption for admissions to nonvocational elementary and secondary schools, the district does not have to justify establishment of this single sex school under Title IX. (It will have to do so under the Constitution if it is challenged in court.)

(1) Voluntary choice among equivalent programs. (i) It is providing for voluntary choice among equivalent single sex schools to students of both sexes, as well as an equivalent coeducational school; or

(2) Equal opportunity for the excluded sex in addressing specific educational needs.
In a situation where the single sex school is designed to address an educational need affecting members of the sex included in the school (the "included sex"), the recipient is providing for members of the excluded sex with the same educational need, a program that is effective in addressing that need.

(A) Subject to clauses (B) and (C), the educational program for the excluded sex may be a separate school, a school within a school, or one or more programs or classes; it may be different in subject matter, approach, or emphasis from the school for the included sex, depending on the recipient's educational judgment of how best to meet the same educational need for most members of the excluded sex; and it may be a coeducational program if that is effective in meeting that need.

(B) The recipient's judgment of how best to meet the same educational need for members of the excluded sex must be based on educational research or other reliable evidence of both the needs of students served by the LEA and the effectiveness of the education approach used to meet those needs, and may not be based on gender-based stereotypes.

(C) If one or more members of the excluded sex with the need identified under this subparagraph would benefit from and seeks this opportunity, they must be given a school or, if their numbers do not justify a whole school, a school within a school or one or more programs or classes equivalent to the single sex school for the included sex. The equivalent school, class, or program may be coeducational if such school, class, or program effectively meets the needs of the members of the excluded sex described in this clause.

(c) Equivalence. Factors to consider in determining whether a school is equivalent under this section include whether the schools being compared are offered to students in the same geographic area, and whether there is equivalence in the policies and criteria of admissions (excluding a policy to restrict admissions based on sex); the quality, range, and availability of curricular and extracurricular activities; the quality, range and availability of facilities, services, resources, financial aid, and other benefits; and the qualifications and distribution of faculty and staff.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

MEMORANDUM

Date: December 13, 1999

To: Randy Moss
Acting Assistant Attorney General for Legal Counsel

Bill Lann Lee
Acting Assistant Attorney General for Civil Rights

Peter Rundlet
Associate Counsel to the President

From: Judith A. Winston *JAW*

Subject: Draft Proposed Amendments to Title IX regulations concerning single sex schools and programs

Attached, for your review, is a draft of proposed amendments to Title IX regulations concerning single sex schools and programs. To assist in your review, I have also attached a summary of the proposal that was used in briefing Secretary Riley. We would be happy to meet to discuss the proposal and to answer any questions that you may have.

Please note that the preamble to the regulations is not in the proper Federal Register format and does not include all the required boilerplate language that must be included in a notice of proposed rule making. We are prepared to make those changes once there is clearance of the substantive approach.

In addition to discussing the substance of the document, we also need to discuss how best to vet the proposal with appropriate stakeholders before it is published as a proposed regulation. We would appreciate it if, in distributing this draft within the White House and the Department of Justice for review, you emphasize that it should neither be shared nor even discussed with persons outside our agencies until we have agreement on both the substance and the vetting strategy.

Previous guidance that we received from you has been very helpful in preparing this draft, and we greatly appreciate your review of this draft. As you know, the issues are very difficult, and it has taken us considerable time to formulate an approach that we

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believe is both legally defensible and consistent with good educational practice. We look forward to an early discussion so that we can move forward on this project.

Thank you.

Attachments

cc: Mike Smith
Leslie Thornton
Norma Cantu
Art Coleman

12/13/99 DRAFT ---- Single Sex Regulation ---- For Discussion Purposes Only

PREAMBLE

I. Purpose of the Proposed Regulatory Amendments

The Department proposes to amend its existing Title IX regulation regarding single-sex programs and activities, consistent with the purposes of the Title IX statute and subject to appropriate safeguards against discrimination, to assist school districts in responding to important and legitimate educational needs of students. The proposed amendments are intended to support efforts of schools and school districts to improve educational outcomes for children, and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children.

II. Background

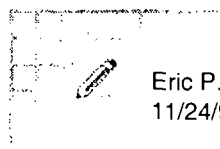
Title IX of the Education Amendments of 1972 prohibits sex-based discrimination in education programs or activities receiving federal financial assistance. 20 U.S.C. § 1681. The Title IX statute specifically exempts from its coverage admissions policies of non-vocational elementary and secondary schools, private undergraduate postsecondary institutions, and public undergraduate postsecondary institutions that traditionally and continually from their establishment have had a policy of admitting only students of one sex. The statute does not specifically prohibit single-sex classes or programs in coeducational schools.

Title IX is implemented by rules promulgated by agencies providing federal assistance to education programs and activities. 20 U.S.C. § 1682. The Department's current regulation issued by its predecessor agency, the Department of Health, Education, and Welfare (HEW), became effective July 21, 1975. See 34 CFR Part 106.

The regulation does not apply to the single-sex admission policies of non-vocational elementary and secondary schools, among other institutions exempted by the statute. 34 CFR 106.15. Accordingly, recipients can operate single-sex elementary and secondary schools consistent with Title IX. However, the regulation requires that where a local educational agency (LEA) operates a school for one sex, it must provide the other sex, pursuant to the same policies and criteria of admission, with comparable courses, services, and facilities. 34 CFR 106.35.

With limited exceptions, the existing regulation prohibits recipients that operate coeducational schools from conducting single-sex classes, programs, or activities.¹ The regulation reflects

¹ The exceptions are if separation based on sex (1) results from the application of objective standards of physical ability, or vocal range or ability, 34 CFR 106.34(b), (d), and (f); (2) is in a physical education class involving contact sports or is in a class involving human sexuality, 106 CFR 106.34(c) and (e); (3) involves a program offered to pregnant students on a voluntary basis that is comparable to that offered non-pregnant students, 34 CFR

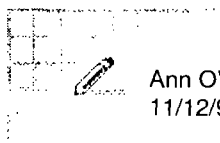


Eric P. Liu
11/24/99 02:41:33 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP
cc:
bcc:
Subject: Re: Single Sex regs

are the regs back?
Ann O'Leary



Ann O'Leary
11/12/99 03:22:06 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP, Bethany Little/OPD/EOP@EOP
cc: Anna Richter/OPD/EOP@EOP, Nicole R. Rabner/WHO/EOP@EOP
Subject: Single Sex regs

Eric -

Given that our schedules have not yet permitted us to catch up on single sex, I thought I would give you an update on email and suggest that we meet when some of these issues are closer to resolution.

Status of Title XI regs:

The Dept. of ED has informally shared the latest draft of the regs. In reviewing them, I have been reacting to them with both a policy lense and a political lense. On the policy side, I have tried to ensure that the regs are responsive to the Administration's desire to support the movement in the education field to offer greater choice and flexibility for single sex classes and schools where such programs can be justified due to the educational needs of one gender.

To date, the regs argue for three major changes: (1) permits single sex classes or programs in a co-educational school if the school can demonstrate an "exceedingly persuasive justification" for the class (standard set by the VMI case) (2) Clarifies that if a school district operates a single sex school, it must provide "equal" educational opportunity to both sexes (rather than the standard of comparable as now outlined in the 1975 regulation) (3) Clarifies the options for providing such "equal opportunities," by outlining three possibilities: district offers equivalent single sex schools for each sex and an equivalent co-ed school - all voluntary; school district offers equivalent single sex schools for each sex, but no co-ed school; or, district offers a voluntary enrollment single sex school for one sex and provides an equivalent co-ed school.

In terms of a pure policy perspective, I am very fearful that this latest draft of regs will have the unintended consequence of further restricting single sex programs rather than encouraging them to blossom. The reason that I predict this will happen is that I fear that districts will conservatively interpret the regs to mean that they must have equal resources and inputs for programs that serve each sex rather than evaluating the different educational needs of the sexes and determining differential resources based on these needs. For example, the regs narrowly define an "exceedingly persuasive justification" by stating that schools can show three basic underlying reasons as part of a justification: compensation for effects of sex-based discrimination, real differences in terms of physical education, or as part of goal of offering diverse array of educational opportunities (but in doing so must offer "equal" opportunities both sexes). The concern here is that I do not believe that the argument for differing educational needs is being addressed -- two prominent examples are schools in which girls are performing far below boys in math/science achievement tests and the school develops a voluntary separate math/science class for girls or school districts have an exceedingly high dropout rate for boys and offer a mentoring program for boys. Under these regs, I fear that schools will feel that they must offer "equivalent" classes or programs for the other sex even without the educational need.

I have discussed these concerns with Goodwin Liu who is handling the issue in Mike Smith, the Deputy Secretary's office. He is shepherding these concerns through the process now and they hope to have a draft over to us in a week or so. In the meantime, I will send an email directly to Mike urging him to push this process along to get us regs for official review.

Other Considerations:

DOJ Constitutionality issues: Due to the fact that the regs as currently drafted very conservatively interpret VMI, I predict that DOJ is going to be fine with the regs in terms of constitutionality. Once they have a draft closer to final, they expect to send them over to DOJ.

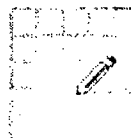
Women's groups: We are, unfortunately, in a fundamentally different place than the women's groups and this issue is one that we will need to grapple with the most. The groups would probably appreciate the draft as now written -- it pushes for "equality" of opportunity under nearly every scenario. The problem, however, is that "equality" may be far too restricting and does not adequately take into account differing educational needs.

Timing: The groups, the Hill, and the field have been waiting for these regs for over a year. We must get them up before ESEA hits full steam in the early spring. Bethany and I spoke about timing and both agreed that we should push ED to get us a final draft for clearance by Monday, Nov. 22nd. Once we have the draft regs and they are sent through the OMB process to DOJ, we might want to consider sharing the content behind the regs with the women's groups.

Let us know your thoughts and if you would like to meet later today or wait until the regs get back to us (and I get back from Italy) on the week of Thanksgiving.

Thanks.

-Ann

 Eric P. Liu
11/02/99 07:05:08 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP
cc: Andy Rotherham/OPD/EOP@EOP, Anna Richter/OPD/EOP@EOP
bcc:
Subject: Re: single-sex reg 

Ann -- Thanks. Goodwin's memo was very helpful, though, as he says, it does not get to the main issue of how the regs themselves should be interpreted. We do need to be clear on where the regs are headed and keep them on course with potus and flotus positions -- let's you, Andy and I sit down next week; it might also be useful for you two to huddle on this while I'm gone -- and then we'll map out our strategy with the groups.

Ann O'Leary

 Ann O'Leary
10/28/99 09:51:33 AM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP, Peter Rundlet/WHO/EOP@EOP, Andy Rotherham/OPD/EOP@EOP
cc:
Subject: single-sex reg

All -

In our effort to understand and push the single sex regulations, I thought it would be helpful to share this email from Goodwin Liu who raises some of the concerns and questions regarding the interpretation of the VMI case.

The Department plans to have revised regs available for us in the next few days. Once we get the revisions, I think it would be helpful to have an internal discussion to determine how we can push this process to get some resolution between ED and DOJ in order to get these regs out.

I will forward copies of the draft regs as soon as I get them.

Thanks.

-Ann

----- Forwarded by Ann O'Leary/OPD/EOP on 10/28/99 09:47 AM -----



goodwin@stanfordalumni.org

10/14/99 08:28:14 PM

Record Type: Record

To: lisa_anthony@ed.gov

cc: mike_cohen@ed.gov, steve_winnick@ed.gov, mike_smith@ed.gov, judith_winston@ed.gov

Subject: single-sex reg

My principal comment on the draft single-sex reg is that the legal framework it sets forth does not accurately reflect the equal protection framework established by VMI. The ideas I'll put down here only have to do with the Constitution. I must confess that I know very little about Title IX law, but I assume that our general thrust is to harmonize our reading of Title IX with the Constitution. Seems to me that this is the approach DOJ would take to reviewing our reg in any case.

As you know, VMI has a two-part holding: (1) Virginia failed too supply an "exceedingly persuasive justification" for including men while excluding women in the "adversative," military educational method offered at VMI. See 518 U.S. at 546. (2) Having failed to supply an "exceedingly persuasive justification," and having thus violated the Equal Protection Clause, Virginia further failed to implement an adequate remedy because it "has not shown substantial equality in the separate educational opportunities the Commonwealth supports at VWIL and VMI." Id. at 554.

I read VMI to say that under the Equal Protection Clause, the "exceedingly persuasive justification" analysis is separate from - and occurs prior to - the "substantial equality" analysis. In other words, if Virginia had shown an "exceedingly persuasive justification" for including men while excluding women from VMI, then that would be the end of the analysis. VMI would be a constitutional program, regardless of whether Virginia offered "substantially equal" (or, in our language, "equivalent") opportunities for women. It was only because Virginia had not supplied an "exceedingly persuasive justification" that the Court went further to examine whether Virginia provided "substantially equal" opportunities for women. Put another way, the "exceedingly persuasive justification" analysis serves to resolve whether there is a good reason for different treatment of the sexes. When no good (enough) reason exists, different treatment is impermissible -- and the state must then show how it provides "substantially e

Our draft reg requires schools and districts to show both an "exceedingly persuasive justification" for single-sex classes, programs, or schools, and "substantial equality" or "equivalence" in the educational opportunities offered to both sexes. I find this hard to square with VMI. In fact, VMI seems to say that schools or district must either offer an "exceedingly persuasive justification" or else show "substantial equality." The draft reg puts schools and districts into the dilemma of explaining why the educational needs of one sex are so special that single-sex education is justified, while also explaining how alternative methods (including co-ed methods) might meet the same needs equally well. I'm not sure it makes sense that schools and district should have to walk such a fine line.

This leads me to think that our draft reg should be based on a legal framework with two parts that are applied sequentially, not simultaneously:

1. "Exceedingly persuasive justification"

In assessing the constitutionality of single-sex programs, courts will first ask whether the school or district has supplied an "exceedingly persuasive justification" for the sex classification. There seem to be two

parts to this inquiry under VMI: (a) Are there good reasons for educating one sex separately (e.g., responding to special needs of one sex, providing a diversity of learning options)? (b) Are there good reasons for excluding the other sex (e.g., the educational method is inappropriate for the other sex or meets no real need of the other sex)? For both questions, the answers must be based on the school's or district's actual reasons, not simply what it proffers in litigation. Indeed, I'd like to see our reg say more about the need for schools and districts to compile a careful and substantial record of its justification for single-sex programs. In VMI, Virginia failed both questions: (a) The Court found the state's diversity justification for serving only men at VMI to be a total smokescre

Our reg should clarify that this first analytic step, especially (b), may be difficult for schools and districts to meet. Schools may have good reasons for education a particular sex separately, but less good reasons for excluding all members of the other sex. VMI seems to say that even if one member of the excluded sex is capable of taking advantage of the opportunities offered to the included sex, then there is no "exceedingly persuasive justification" for including one while excluding the other. (Though faithful to its language, this reading of VMI seems too rigorous, and I wonder whether we might discuss with DOJ a less restrictive interpretation.)

In any case, if a school or district can supply an "exceedingly persuasive justification," then that is the end of the analysis. No further demonstration of "equivalence" is required, because the school or district has shown (for constitutional purposes) that non-equivalence is justified. If the school or district cannot supply an "exceedingly persuasive justification," then it violates equal protection unless it can demonstrate "equivalence" or "substantial equality" in the opportunities offered to the included and excluded sex.

2. "Substantial equality"

At this point in the analysis, the school or district with a single-sex program has conceded that it cannot justify excluding all members of the other sex (even if it can justify excluding most). It must now demonstrate that it is providing the other sex with "substantially equal" or "equivalent" educational benefits or opportunities as it is providing the included sex through the single-sex program. It must establish an "equivalent" co-ed program, an "equivalent" single-sex program for the other sex, or both. This parallels the three-option framework in the draft reg. But analytically, this framework only comes into play after the "exceedingly persuasive justification" requirement has not been satisfied.

Hope these thoughts are helpful. I haven't thought through all the implications of these ideas for our reg. Nor have I figured out how Title IX plays into all of this - e.g., whether we want to interpret Title IX to require more or less than the Equal Protection Clause. If you'd like to discuss this further before the draft goes to the Secretary, I'm happy to talk Friday or over the weekend.

Goodwin
205-9895
h (703) 685-0532

E-mail@stanfordalumni.org is brought to you by
the Stanford Alumni Association and Critical Path.



"Liu, Goodwin" <Goodwin_Liu@ed.gov>

10/28/99 05:09:20 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP

cc:

Subject: RE: PG Talking Points

You know, I'm not sure. Seems like the new reg is stuck on a rather bizarre notion of "comparability" or (as we now call it, "equivalence." On the one hand, we say that schools or districts, in order to operate a single-sex program, must come forward with either "reputable studies show[ing] that a single-sex educational format ... offers exceptional benefits" or "the district is working to improve the educational achievements of students of students of one sex who have not been achieving well due to certain obstacles, e.g., high drop-out rates, teen pregnancy, or classroom distractions by students of the other sex." (This is from a recent internal memo, which I can fax you, if you'd like.) On the other hand, we say that "the district must also demonstrate that it will provide both sexes with an equivalent educational program." Well, if the predicate for having a single-sex program is non-equivalence between the sexes, then why insist that districts "provide both sexes with an equivalent educational program"? Interestingly, the memo I'm quoting from identifies precisely this issue: "Does the requirement for 'equivalent' programs ... drive educationally unsound practices by requiring equivalent programs even when there are not equivalent needs?" Based on what I've seen so far, I'd have to say yes.

This goes back to what I was trying to say two weeks ago about VMI: There shouldn't be an equivalence requirement if a school or district has an "exceedingly persuasive justification" for treating the sexes differently. If there is no "exceedingly persuasive justification," as VMI defines it, then an equivalence requirement would kick in.

Oh, Ann, you've gotten me on the soap box! You may be the only person who will listen to me on this issue. I have more ideas on this -- I'll write more later.

> -----Original Message-----

> From: Ann_O'Leary@opd.eop.gov [SMTP:Ann_O'Leary@opd.eop.gov]

> Sent: Thursday, October 28, 1999 4:15 PM

> To: Liu, Goodwin

> Subject: RE: PG Talking Points

>

> Don't you think the revised reg would allow for this type of educational

> opportunity without the back and forth that went on over the last 4 years?

> Or do you still think that we would interpret in a manner that would

> require PG to change practices before determining the impact? My initial

> enthusiasm was based on an assumption that this case is exactly what we
> are
> trying to rectify under the new regs. Do you think OCR would have made
> the
> same call under the new regs?
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> image moved "Liu, Goodwin" <Goodwin_Liu@ed.gov>
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> PIC15194.PCX)
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> Record Type: Record
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>
> To: Ann O'Leary/OPD/EOP
>
> cc:
> Subject: RE: PG Talking Points
>
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>
>
> Hadn't seen this, so thanks. Looks fine, except that I think this case
> illustrates how our approach to this issue has tried to put square pegs
> (single-sex educational programs) into a round hole (Title IX legal
> framework). Conceptually, it's hard for me to understand how the PG case
> qualifies as "voluntary affirmative action to overcome the effect of
> conditions that have limited participation by gender". In this case, what
> historic conditions limited the participation of boys in what programs?
> There seems to be no explanation of how PG met what OCR describes as the
> first element of the voluntary affirmative action paradigm: "1) the
> beneficiaries of the single-sex classes or programs (girls or boys,
> depending on the group for whom the classes or programs have been
> instituted) have had limited opportunities to participate in a school's
> programs or activities due to their sex". Were boys in PG county ever
> denied any opportunities "due to their sex"? I doubt it.
> Instead, what seems to be going on here is that boys in PG County, for
> some
> reason (likely not sex discrimination), demonstrate disproportionately low
> achievement compared to girls. And educators, using their expert
> judgment,
> determined that intensive mentoring opportunities focused on boys --
> taking
> into account their specific needs, their social dynamics, etc. -- would
> help
> boost their achievement. If no comparable need existed for girls, why did

> our Title IX approach compel PG County to go back to the drawing board,
> experiment for four years (from 1995 to 1999) with a co-ed program,
> observe
> a "significant decline in male participation," and then come up with a
> rationale uncomfortably dressed as "voluntary affirmative action"?
> Please send this on to Peter R. if you think appropriate. I don't know
> how
> OCR would handle this case under our revised reg, but I'm afraid our reg
> will end up punting on this very paradigmatic case.
> > -----Original Message-----
> > From: Ann_O'Leary@opd.eop.gov [SMTP:Ann_O'Leary@opd.eop.gov]
> > Sent: Thursday, October 28, 1999 3:45 PM
> > To: goodwin_liu@ed.gov
> > Subject: FW: PG Talking Points
> >
> > Hopefully you have seen these talking points....they look good to me
> >
> > ----- Forwarded by Ann O'Leary/OPD/EOP on 10/28/99
> 03:44
> > PM -----
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> >
> >
> > Peter Rundlet
> > 10/28/99 03:40:41 PM
> >
> > Record Type: Record
> >
> >
> > To: Eric P. Liu/OPD/EOP@EOP, Andy Rotherham/OPD/EOP@EOP, Adam H.
> > Magnus/WHO/EOP@EOP, Ann O'Leary/OPD/EOP@EOP
> >
> > cc:
> > Subject: FW: PG Talking Points
> >
> > FYI, on another single sex case.
> > ----- Forwarded by Peter Rundlet/WHO/EOP on 10/28/99
> > 03:39
> > PM -----
> >
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> >
> > (Embedded
> > image moved "Bowers, Susan" <Susan_Bowers@ed.gov>
> > to file: 10/28/99 12:35:39 PM
> > PIC06285.PCX)
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> > Record Type: Record
> >
> >

> > To: Peter Rundlet/WHO/EOP
> >
> > cc:
> > Subject: FW: PG Talking Points
> >
> >
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> >
> > Hi Peter,
> > Art and Raymond suggested that I share these with you. If you have any
> > questions, please feel free to call me at 205-5596 or email.
> > Sue Bowers/OCR
> > > -----Original Message-----
> > > From: Bowers, Susan
> > > Sent: Wednesday, October 27, 1999 6:39 PM
> > > To: Murphey, Rodger; Rairdin, Kae
> > > Cc: Pierce, Raymond; Winnick, Steve; Dorka, Lilian; Fox, Wendella
> > > Subject: FW: PG Talking Points
> > > Importance: High
> > >
> > > Hi folks,
> > >
> > > Please see attached talking points. The new PG resolution will be
> > > presented to the Board tomorrow night so there may be some press
> > > attention
> > > Friday am.
> > >
> > > This is a success story of how we are "flexible" in our approach to
> > > single
> > > sex programs.
> > >
> > > If you need further information, feel free to give me, Lilian, or
> > > Wendella
> > > a call.
> > >
> > > Sue
> > >
> > >
> > >
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1ST STORY of Level 1 printed in FULL format.

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September 30, 1999 Thursday, CHICAGO SPORTS FINAL EDITION

SECTION: NEWS; Pg. 1; ZONE: N

LENGTH: 1202 words

HEADLINE: BOYS AND GIRLS IN A CLASS APART;
AMID EVIDENCE THAT MALES AND FEMALES LEARN DIFFERENTLY, MORE EDUCATORS ARE
EMBRACING THE IDEA OF SEPARATE BUT EQUAL.

BYLINE: By V. Dion Haynes, Tribune Staff Writer.

DATELINE: LONG BEACH, Calif.

BODY:

After reading an Indian legend on the origins of the Snake River, language arts teacher Duane Youngbar assigned his 8th-grade boys to write their own mythical tales.

Two hours later, he was teaching the same lesson, this time to 8th-grade girls.

Welcome to Jefferson Leadership Academies, where teachers are conducting an elaborate experiment to determine whether adolescent boys and girls learn better if separated from one another. This autumn, education experts say, Jefferson became the first public school in the nation to segregate its entire student body, all 1,100 students, by sex.

The single-sex movement has gained momentum in the last few years in light of research showing that adolescent girls and boys in general learn differently. In the last three years, 27 independent and public schools for girls have been established, and more than a dozen school districts have begun offering single-sex classes. ✓✓

Joining Long Beach in the foray into single-sex education are some business people in Chicago who aim to launch a charter school for 450 6th- to 12th-grade girls on the campus of the Illinois Institute of Technology by autumn 2000. . The group expects to file an application with the Chicago Public Schools next month.

"Math and science are areas girls struggle most in and show up least in as adults. A single-sex environment will help girls not turn away from those subjects in their pivotal middle-school grades," said Jeanne Nowaczewski, director of public education projects for Chicago-based Business and Professional People for the Public Interest and one of the applicants.

"We have studied the issue (of girls lagging in math and science) . . . and decided we would like to do something here in Chicago," Nowaczewski said. "There are a lot of parents and girls already expressing interest."

Chicago Tribune, September 30, 1999

As the theory goes, boys at this age tend to outshine girls in math and science, while girls outperform boys in reading. Separating them, educators say, cuts down on hormone-driven distractions with the opposite sex and allows teachers to focus better on each group's deficiencies.

Research has long held that boys generally develop more quickly in kinesthetic skills, while girls are more adept at language skills. Boys tend to be more competitive, raising their hands in class, while girls tend to hold back for fear of having the wrong answer.

While the movement largely was started to help girls, educators in California are using it as a way to help boys cope with the kind of inner turmoil that spilled out in the recent school shootings in Littleton, Colo., Springfield, Ore., and elsewhere.

"Even though the hype is that (schools) are failing girls, I think we're failing both sexes equally in a different regard," said Jefferson Leadership Academies principal Jill Rojas.

"The focus of single-gender education has been on girls, girls, girls," Rojas said. "I don't remember seeing girls being the culprits in any of the school shootings. . . . Nobody has focused on the boys."

Because Jefferson has chose to provide the same academic program and teachers for boys and girls, officials believe they can avoid much of the controversy that has plagued other single-sex schools serving only boys or only girls.

The New York chapters of the National Organization for Women and the American Civil Liberties Union have filed a complaint with the U.S. Department of Education's Office of Civil Rights about the Young Women's Leadership Academy in Harlem, asserting that it violates equal-protection guarantees of the Constitution. The Education Department has yet to rule on the complaint.

Facing similar complaints, Paul Robeson Academy for boys in Detroit opted to admit girls.

"Our concern is that (New York's Young Women's Leadership Academy) is discriminatory because it doesn't let in boys," said Galen Sherwin, president of the New York City chapter of NOW. The school, she asserted, violates Title IX, a federal law that requires public schools to provide equal access to girls and boys in all academic and athletic programs.

"Generally, segregating students by sex is not the answer to sex discrimination in the schools," she said. "It's telling girls they have to be taken out of the system and dealt with separately. Any differences (between the sexes) should be addressed in a coed setting."

Nevertheless, interest in the single-sex movement continues.

This fall, officials at Mountain View Middle School in Rio Rancho, N.M., began experimenting with educating the sexes separately. School officials put more than a hundred 7th-graders, about half the class, in single-sex classes.

"By grouping the kids this way, we find that they're focusing more on academics, so the gender issues don't arise," said Alexis Chavez, one of the

ANALYSIS OF PROPOSED HUTCHISON
“SAME GENDER” AMENDMENT

The Amendment

“Nothing in Public Law 93-318, as amended, shall be construed to prohibit the use of funds made available under this title for education reform projects that provide same gender schools or classrooms, as long as comparable educational opportunities are offered for students of both sexes.”

Overview of Proposed Amendment

1. Such a Significant Proposal Warrants Careful Consideration.
 - Proposal could have significant implications for Title IX, and raises issues that are too important to be attached merely as a rider to an appropriations bill.
2. The Proposal Does Not Provide For Evaluation of Project Results.
3. The Proposal Applies Only to Title VI ESEA Funds Appropriated in this Appropriations Act—Not to Other Federal Funds or State and Local Funds.
4. The Scope of the Amendment is Unclear.
 - The Hutchison amendment purports to permit school systems to use Federal funds to support “education reform projects” that involve single sex classrooms, but provides no definition of an “education reform project,” leaving the scope of the authority unclear for local, State, and Federal administrators.

Strategic Options

1. Oppose the amendment.
 - Inappropriately attached to an appropriations bill
 - Insufficient time for thoughtful debate and consideration
2. Support the amendment.
 - Provides for limited experimentation with single-sex programs
3. Substitute legislation that would establish funding for research and a pilot program under ED programs.
 - Provides for experimentation with single-sex programs under controlled circumstances with opportunity to evaluate effectiveness of programs
4. Substitute legislation that would modify Title IX and import constitutional protections.
 - Addresses the issue forthrightly, and establishes a comprehensive legislative standard to address an emerging issue

The Framework for this amendment

The amendment is intended to apply only to Title VI, ESEA funds, even though the ultimate effect would alter Title IX law.

■ Use of Title VI ESEA funds.

■ Advantages:

- Would allow schools to experiment with single sex education in a more limited manner.

■ Disadvantages:

- Would create an anomaly in which schools could use Title VI federal, but not other federal or state and local funds for such purposes; could raise questions about the use of Title VI funds (which were intended only for supplementary activities).
- Questionable in light of Administration position that Title VI program should terminate.
- Would create significant administrative burdens on courts and ED OCR to “trace” funds as a condition of determining whether schools implementing such programs were in compliance with Title IX.

- It is not clear how useful the authority would be to school districts because of the statutory prohibition on “supplanting.” Title VI funds may be used only for “supplementary” activities and services, and it is not clear that merely educating boys and girls in separate programs is supplementary to the school system’s obligation to educate them in the first place.

- Title VI—a state-administered block grant—is not an appropriate vehicle for establishing a program to experiment and study single-sex education.

- Amending Title IX.

- Advantages:

- Would provide maximum flexibility for experimentation by authorizing schools to use state and local funds (and other federal funds) as well.

- Analytically, the cleanest and easiest to understand. Avoids difficult interpretive issues that amending Title VI would present.

- Eliminates a Title IX interpretation that (as to classes) is believed by some to be breached, causing disrespect for the law.

- Eliminates across-the-board prohibitions (as to classes) that prevent the examination of a particular situation and decisions about the legal sufficiency of such programs.

- Disadvantages:

- Would constitute a sweeping change in the meaning of Title IX; could pose the risk of opening up Title IX to further amendment in less constructive ways.

Funding Research and Limited Pilot Projects

- Advantages:

- Conveys interest in pursuing single-sex education opportunities, while ensuring a more deliberative approach in resolving the issue.

- Disadvantages:

- Unlikely to arrive at one comprehensive research-based answer to the question about the value of single-sex education. Existing research is

mixed, and the fact-specific contexts in which the issue arises suggests the difficulty of arriving at any one conclusion for all circumstances.

Specifications for Alternative Language:

Possible language to amend Title IX:

A single sex program may be offered by any public elementary or secondary school, except for vocational classes, if:

[a] It is not based on and does not further stereotyping based on sex and does not stigmatize students of either gender; and

- [b] It is:

1. part of diverse educational programs, and school/district provides opportunity for comparable single-sex programs for the other gender; or

6. there are educational needs/problems particular to students of one gender in the school/district, the single-sex program is designed to address those needs/problems, and the single-sex program does not adversely affect the educational opportunities of students of the excluded gender.



- Under [b][1], the school's offering of equal options to promote diversity would provide the basis for establishing "an exceedingly persuasive justification."

- Under [b][2], the school must be able to show that it has "an exceedingly persuasive justification" for setting up single-sex programs and that the separation by sex was "substantially related" to achieving the educational objectives. E.g., school would have to demonstrate that one sex was performing poorly when compared to the other sex or otherwise had particular needs not experienced by the other sex ; that the school tried or considered other educational options to address the unequal learning; and that establishing a single-sex classroom does not have an adverse effect on students of the other sex .

Students have the option of a co-ed program.

Parents must provide authorization for their children to be placed in a single-sex program.

Any school offering single-sex programs must evaluate the effectiveness of the program.

Bill Summary & Status for the 105th Congress

Item 2 of 13

PREVIOUS BILL | NEXT BILL
NEW SEARCH | HOME | HELP

S.AMDT.2291

AMENDS: H.R.2646

SPONSOR: Sen Hutchison, (introduced 04/20/98)

To establish education reform projects that provide same gender schools and classrooms, as long as comparable educational opportunities are offered for students of both sexes.

TEXT OF AMENDMENT: CR S3299

STATUS:

Apr 20, 98 Proposed by Senator Coverdell for Senator Hutchison.

Apr 21, 98 Considered by Senate.

Apr 21, 98 Amendment SP 2291 agreed to in Senate by Yea-Nay Vote. 69-29. Record Vote No: 89.

Amendment perched on Calvert

*Rule 16 7 Cent authorize amendments
 non-genuine can
 can't be brought up*

*debate will come upon ES&A -
 pro's argument 7 ES&A will come up
 OR - guidelines will come up
 "comparing" "syntactic glue"*

Mikulski + Feinstein for single sex

weak teaching that, despite good intentions, can result from a teacher's lack of opportunity to acquire the knowledge and skill needed to help students master the curriculum.

(4) The Federal Government established the Dwight D. Eisenhower Professional Development Program in 1985 to ensure that teachers and other educational staff have access to sustained and high-quality professional development. This ongoing development must include the ability to demonstrate and judge the performance of teachers and other instructional staff.

(5) States should evaluate their teachers on the basis of demonstrated ability, including tests of subject matter knowledge, teaching knowledge, and teaching skill. States should develop a test for their teachers and other instructional staff with respect to the subjects taught by the teachers and staff, and should administer the test every 3 to 5 years.

(6) Evaluating and rewarding teachers with a compensation system that supports teachers who become increasingly expert in a subject area, are proficient in meeting the needs of students and schools, and demonstrate high levels of performance measured against professional teaching standards, will encourage teachers to continue to learn needed skills and broaden teachers' expertise, thereby enhancing education for all students.

(c) PURPOSES.—The purposes of this section are as follows:

(1) To provide incentives for States to establish and administer periodic teacher testing and merit pay programs for elementary school and secondary school teachers.

(2) To encourage States to establish merit pay programs that have a significant impact on teacher salary scales.

(3) To encourage programs that recognize and reward the best teachers, and encourage those teachers that need to do better.

(d) STATE INCENTIVES FOR TEACHER TESTING AND MERIT PAY.—

(1) AMENDMENTS.—Title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.) is amended—

(A) by redesignating part D as part E;

(B) by redesignating sections 2401 and 2402 as sections 2501 and 2502, respectively; and

(C) by inserting after part C the following:

"PART D—STATE INCENTIVES FOR TEACHER TESTING AND MERIT PAY

"SEC. 2401. STATE INCENTIVES FOR TEACHER TESTING AND MERIT PAY.

"(a) STATE AWARDS.—Notwithstanding any other provision of this title, from funds described in subsection (b) that are made available for a fiscal year, the Secretary shall make an award to each State that—

"(1) administers a test to each elementary school and secondary school teacher in the State, with respect to the subjects taught by the teacher, every 3 to 5 years; and

"(2) has an elementary school and secondary school teacher compensation system that is based on merit.

"(b) AVAILABLE FUNDING.—The amount of funds referred to in subsection (a) that are available to carry out this section for a fiscal year is 50 percent of the amount of funds appropriated to carry out this title that are in excess of the amount so appropriated for fiscal year 1999, except that no funds shall be available to carry out this section for any fiscal year for which—

"(1) the amount appropriated to carry out this title exceeds \$600,000,000; or

"(2) each of the several States is eligible to receive an award under this section.

"(c) AWARD AMOUNT.—A State shall receive an award under this section in an amount that bears the same relation to the total amount available for awards under this sec-

tion for a fiscal year as the number of States that are eligible to receive such an award for the fiscal year bears to the total number of all States so eligible for the fiscal year.

"(d) USE OF FUNDS.—Funds provided under this section may be used by States to carry out the activities described in section 2207.

"(e) DEFINITION OF STATE.—For the purpose of this section, the term 'State' means each of the 50 States and the District of Columbia."

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on October 2, 1999.

(c) TEACHER TESTING AND MERIT PAY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a State may use Federal education funds—

(A) to carry out a test of each elementary school or secondary school teacher in the State with respect to the subjects taught by the teacher; or

(B) to establish a merit pay program for the teachers.

(2) DEFINITIONS.—In this subsection, the terms "elementary school" and "secondary school" have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

HUTCHISON AMENDMENT NO. 2291

Mr. COVERDELL (for Mrs. HUTCHISON) proposed an amendment to the bill, H.R. 2646, *supra*; as follows:

At the end, add the following:

TITLE —EQUAL EDUCATIONAL OPPORTUNITY

SEC. —01. EQUAL EDUCATIONAL OPPORTUNITY.

Subsection (b) of section 6301 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7351) is amended—

(1) in paragraph (7), by striking "and" after the semicolon;

(2) in paragraph (8), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(9) education reform projects that provide same gender schools and classrooms, as long as comparable educational opportunities are offered for students of both sexes."

NOTICES OF HEARINGS

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. JEFFORDS. Mr. President, I would like to announce for information of the Senate and the public that a joint hearing of the Senate Committee on Labor and Human Resources and the House Committee on Education and the Workforce will be held on Wednesday, April 22, 1998, 10:30 a.m., in SD-106 of the Senate Dirksen Building. The subject of the hearing is "Proposed Individuals With Disabilities Education Act Regulations." For further information, please call the committee, (202) 224-5375.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. JEFFORDS. Mr. President, I would like to announce for information of the Senate and the public that a joint hearing of the Subcommittee on Public Health and Safety, Senate Committee on Labor and Human Resources and Subcommittee on Health and Environment, House Committee on Commerce will be held on Thursday, April 23, 1998, 2:30 p.m., in SH-216 of the Senate Hart Building. The subject of the hearing is The Gift of Life: Increasing

Bone Marrow Donation and Transplantation. For further information, please call the committee, (202) 224-5375.

AUTHORITY FOR COMMITTEE TO MEET

SUBCOMMITTEE ON YOUTH VIOLENCE

Mr. COVERDELL. Mr. President, I ask unanimous consent that the Subcommittee on Youth Violence, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Monday, April 20, 1998, at 10:30 a.m. to hold a field hearing at the Court of Common Pleas, Juvenile Court, 16th floor, 800 Broadway, Cincinnati, OH 45020 on: "Juvenile Courts of the 21st Century: Violent & Repeat Offenders."

The Presiding Officer. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

FROSTBURG STATE UNIVERSITY'S CENTENNIAL ANNIVERSARY

• Mr. SARBANES. Mr. President, I rise today to commemorate one of Maryland's finest state institutions, Frostburg State University, on the occasion of its Centennial Anniversary.

Since its founding in 1898, Frostburg State University has been a primary component of the greater Frostburg community. Although small towns are often identified merely as extensions of the school in their midst, it is more the case that Frostburg State is a true extension of the town of Frostburg. In fact, the people of Frostburg themselves raised the funds that were used to buy the land on which the institution is located. This symbiotic relationship is one in which the Frostburg community provides the support system for the school and in turn, is enriched by the school and its students.

This unique relationship dates back to when the University was a small local teacher training institution named the State Normal School at Frostburg. Upon completing their training, students often stayed in the area and taught at regional elementary schools. This tradition of community participation continued as the school evolved into a State Teachers College in 1935 and finally, a multipurpose institution, Frostburg State University, in July of 1987, becoming a member of the University of Maryland System the following year.

While the commitment to teacher training remains at the core of Frostburg State's mission, the University has expanded its curriculum significantly to include the arts and sciences, professional and pre-professional programs, and graduate programs including business, psychology and biology training. Enrollment has grown from an initial class of 57 to over 5,200, and the University's degree program now requires four years of study.

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Congressional Record article 3 of 6 *[Full Display](#)* - 852 bytes.[\[Help\]](#)

HUTCHISON AMENDMENT NO. 2291 (Senate - April 20, 1998)

[Page: S3299] [GPO's PDF](#)

Mr. COVERDELL (for Mrs. **Hutchison**) proposed an amendment to the bill, H.R. 2646, supra; as follows:

At the end, add the following:

TITLE XX--EQUAL EDUCATIONAL OPPORTUNITY

SEC. XX01. EQUAL EDUCATIONAL OPPORTUNITY.

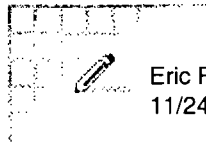
Subsection (b) of section 6301 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7351) is amended--

(1) in paragraph (7), by striking 'and' after the semicolon;

(2) in paragraph (8), by striking the period and inserting '; and'; and

(3) by adding at the end the following:

'(9) education reform projects that provide same gender schools and classrooms, as long as comparable educational opportunities are offered for students of both sexes.'

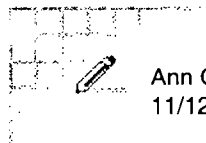


Eric P. Liu
11/24/99 02:41:33 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP
cc:
bcc:
Subject: Re: Single Sex regs

are the regs back?
Ann O'Leary



Ann O'Leary
11/12/99 03:22:06 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP, Bethany Little/OPD/EOP@EOP
cc: Anna Richter/OPD/EOP@EOP, Nicole R. Rabner/WHO/EOP@EOP
Subject: Single Sex regs

Eric -

Given that our schedules have not yet permitted us to catch up on single sex, I thought I would give you an update on email and suggest that we meet when some of these issues are closer to resolution.

Status of Title XI regs:

The Dept. of ED has informally shared the latest draft of the regs. In reviewing them, I have been reacting to them with both a policy lense and a political lense. On the policy side, I have tried to ensure that the regs are responsive to the Administration's desire to support the movement in the education field to offer greater choice and flexibility for single sex classes and schools where such programs can be justified due to the educational needs of one gender.

To date, the regs argue for three major changes: (1) permits single sex classes or programs in a co-educational school if the school can demonstrate an "exceedingly persuasive justification" for the class (standard set by the VMI case) (2) Clarifies that if a school district operates a single sex school, it must provide "equal" educational opportunity to both sexes (rather than the standard of comparable as now outlined in the 1975 regulation) (3) Clarifies the options for providing such "equal opportunities," by outlining three possibilities: district offers equivalent single sex schools for each sex and an equivalent co-ed school - all voluntary; school district offers equivalent single sex schools for each sex, but no co-ed school; or, district offers a voluntary enrollment single sex school for one sex and provides an equivalent co-ed school.

In terms of a pure policy perspective, I am very fearful that this latest draft of regs will have the unintended consequence of further restricting single sex programs rather than encouraging them to blossom. The reason that I predict this will happen is that I fear that districts will conservatively interpret the regs to mean that they must have equal resources and inputs for programs that serve each sex rather than evaluating the different educational needs of the sexes and determining differential resources based on these needs. For example, the regs narrowly define an "exceedingly persuasive justification" by stating that schools can show three basic underlying reasons as part of a justification: compensation for effects of sex-based discrimination, real differences in terms of physical education, or as part of goal of offering diverse array of educational opportunities (but in doing so must offer "equal" opportunities both sexes). The concern here is that I do not believe that the argument for differing educational needs is being addressed -- two prominent examples are schools in which girls are performing far below boys in math/science achievement tests and the school develops a voluntary separate math/science class for girls or school districts have an exceedingly high dropout rate for boys and offer a mentoring program for boys. Under these regs, I fear that schools will feel that they must offer "equivalent" classes or programs for the other sex even without the educational need.

I have discussed these concerns with Goodwin Liu who is handling the issue in Mike Smith, the Deputy Secretary's office. He is shepherding these concerns through the process now and they hope to have a draft over to us in a week or so. In the meantime, I will send an email directly to Mike urging him to push this process along to get us regs for official review.

Other Considerations:

DOJ Constitutionality issues: Due to the fact that the regs as currently drafted very conservatively interpret VMI, I predict that DOJ is going to be fine with the regs in terms of constitutionality. Once they have a draft closer to final, they expect to send them over to DOJ.

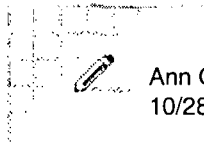
Women's groups: We are, unfortunately, in a fundamentally different place than the women's groups and this issue is one that we will need to grapple with the most. The groups would probably appreciate the draft as now written -- it pushes for "equality" of opportunity under nearly every scenario. The problem, however, is that "equality" may be far too restricting and does not adequately take into account differing educational needs.

Timing: The groups, the Hill, and the field have been waiting for these regs for over a year. We must get them up before ESEA hits full steam in the early spring. Bethany and I spoke about timing and both agreed that we should push ED to get us a final draft for clearance by Monday, Nov. 22nd. Once we have the draft regs and they are sent through the OMB process to DOJ, we might want to consider sharing the content behind the regs with the women's groups.

Let us know your thoughts and if you would like to meet later today or wait until the regs get back to us (and I get back from Italy) on the week of Thanksgiving.

Thanks.

-Ann



Ann O'Leary
10/28/99 10:14:36 AM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP, Katharine Button/WHO/EOP@EOP
cc: Ruby Shamir/OPD/EOP@EOP
Subject: Single Sex Education

Nicole and Katy -

The issue of single sex education continues to float just beneath the radar screen. The Dept. of ED is working with DOJ to put out regulations in an effort to provide clarity and guidance on the interpretation of Title IX in respect to single sex educational opportunities.

This issue is expected to receive quite a bit of attention once the Dept. releases the draft regulations. In the past, the President and First Lady have been very out front on supporting single sex opportunities. We are trying to push the draft regs to allow for a more flexible interpretation of Title IX that would support single sex opportunities. The women's groups, however, would like a much stricter interpretation of the regs that would essentially read that there would need to be "equal" opportunities for the other gender rather than just "comparable."

Once the regs are released, OCR will then evaluate the case that sparked much of the recent debate -- an all-girls school in Harlem (see more detailed note that was included in the issues update two weeks ago). The national women's groups are expected to coalesce around this issue and invigorate the debate through their NY chapters b/c of the school in Harlem.

Eric Liu and Karen Tramantano would like to bring in the national women's groups to meet on this issue once we have draft regs, but prior to doing so want to make sure that the First Lady is still in the same position on this issue. I assume that she is in the same position, but think it would be helpful to raise it to her attention. Do you agree? If so, shall I wait until I get the draft regs and write a memo or should Melanne raise it with her more informally?

Please advise.

Thanks.

-Ann

*will it prompt you
Ann -*

*Chavez
MI*

*See re memo on p. 1
"excellent planning job done"
to @ even-holding Fed. ops
b*

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. email	Goodwin Liu to Ann O'Leary re: New York all-girls school [partial] (1 page)	12/14/1999	b(6)
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COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Ann O'Leary
OA/Box Number: 19578

FOLDER TITLE:

Single Sex [1]

2013-0436-S

rc1276

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



"Liu, Goodwin" <Goodwin_Liu@ed.gov>
12/14/99 12:01:58 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP
cc:
Subject: New York all-girls school

[001]

(b)(6) the status update on the Young Women's Leadership School in New York. I called Judy's office again this morning to get her to clear the reg, and will send you a copy asap.

> -----Original Message-----

> From: Dorka, Lilian
> Sent: Tuesday, December 14, 1999 11:10 AM
> To: Liu, Goodwin
> Cc: Bowers, Susan; Palmer, Scott; Coleman, Arthur; Pierce, Raymond;
> Whitney, Helen
> Subject: RE: single sex regulations

> Hi Goodwin-- per your request, attached is a summary/update on the NY
> Young Women's Leadership School case that you can share with Ann O'Leary.
> Sorry for not getting it to you last night as I'd expected. Please let me
> know if you have any questions. Thanks - Lilian

> <<YMLS-TP-1213.doc>>

> -----Original Message-----

> From: Liu, Goodwin
> Sent: Monday, December 13, 1999 4:45 PM
> To: Dorka, Lilian
> Subject: RE: single sex regulations

> Thanks much.

> -----Original Message-----

> From: Dorka, Lilian
> Sent: Monday, December 13, 1999 4:32 PM
> To: Liu, Goodwin; Bowers, Susan
> Subject: RE: single sex regulations

> Hi Goodwin - I'm working on a write up of the YWLS case and will
> send it to you within the next hour. Lilian

> -----Original Message-----

> From: Liu, Goodwin
> Sent: Monday, December 13, 1999 11:13 AM
> To: Bowers, Susan; Dorka, Lilian

> Subject:RE: single sex regulations

>
> Sue -- I spoke with Ann O'Leary at the White House, who
> asked me about the single-sex reg. I told her we're almost done with it
> and that we'll send it to the White House and DOJ in short order. She
> wondered if we have a short write-up of the status of the Young Women's
> Leadership School in New York. Could you please send me a short paragraph
> of the history when you have a chance?

> -----Original Message-----

> From: Bowers, Susan
> Sent: Sunday, December 12, 1999 11:10 AM
> To: Winnick, Steve; Winston, Judith; Wolff,
> Brenda; Liu, Goodwin; Coleman, Arthur; Gray, Jan; Craig, Susan; Lahring,
> Karl; Anthony, Lisa; Jenkins, Kimberly
> Cc: Dorka, Lilian
> Subject:RE: single sex regulations

> Hi folks,

> I looked at some real life examples that were cited
> in the GAO report:

> Conn: Issue of a new introductory technology course
> to be offered in two formats: one all girls, one coed.

> PS 137K: Separate boys third grade class for "at
> risk" boys.

> Dade County: Kindergarten and first grade all boys
> classes with male teacher (as role model/mentor).

> Under the present single sex regulations, we didn't
> allow any of the above. Under the proposed, I believe we could.

> Of course, the rape aggression classes. While
> those, factually, occurred in post-secondary settings, they could have
> played out in the hs setting.

> We presently have the Pellston case that is
> experimenting with male, female, and coed classes in elementary schools, I
> think.

> If you need information or a write up of these,
> please call Lilian.

> Sue

> -----Original Message-----

> From: Winnick, Steve
> Sent: Friday, December 10, 1999 5:06 PM
> To: Winston, Judith; Wolff, Brenda; Liu,
> Goodwin; Coleman, Arthur; Bowers, Susan; Gray, Jan; Craig, Susan; Lahring,
> Karl; Anthony, Lisa; Jenkins, Kimberly

> Subject:RE: single sex regulations

> Yup, for me.

> -----Original Message-----

> From: Winston, Judith

> Sent: Friday, December 10, 1999 4:46 PM

> To: Wolff, Brenda; Winnick, Steve; Liu, Goodwin;

> Coleman, Arthur; Bowers, Susan; Gray, Jan; Craig, Susan; Lahring, Karl;

> Anthony, Lisa; Jenkins, Kimberly

> Subject:RE: single sex regulations

> I agree that the justification should include
> evidence that references the particular circumstances of the students in
> the LEA. It may be, however, that the evidence will demonstrate that the
> LEA's students are similarly situated (i.e. share the same demographic,
> educational, socio-economic,.etc. status of students in a prototype
> single-sex program which proved beneficial or effective met the
> educational need identified in the LEA). In addition, direct evidence
> from the LEA should be sought. Steve, Brenda: does this capture, at least
> in part, your position?

> -----Original Message-----

> From: Wolff, Brenda

> Sent: Friday, December 10, 1999 4:16 PM

> To: Winnick, Steve; Liu, Goodwin; Coleman,

> Arthur; Bowers, Susan; Gray, Jan; Craig, Susan; Lahring, Karl; Anthony,

> Lisa; Jenkins, Kimberly

> Cc: Winston, Judith

> Subject:RE: single sex regulations

> Steve, I agree. This is the exact point that I
> spoke to Lisa about on the phone. Maybe I was not as articulate, but I
> felt that what was not coming through for me was the notion that the
> justification had to be based on their own situations and that they could
> not rely on societal data. I agree that models that work can be part of
> the solution, but the problem has to really exist for them.

> Brenda L. Wolff
> Special Assistant for Equity

> -----Original Message-----

> From: Winnick, Steve

> Sent: Friday, December 10, 1999 4:01 PM

> To: Liu, Goodwin; Coleman, Arthur; Bowers,

> Susan; Gray, Jan; Wolff, Brenda; Craig, Susan; Lahring, Karl; Anthony,

> Lisa; Jenkins, Kimberly

> Cc: Winston, Judith

> Subject:single sex regulations

> Attached are a cleaned up version of the final
> regulations; a red-line version that shows changes from the version that

> Lisa sent yesterday (Goodwin, I think Lisa intended to send that to you,
> but I don't think you got it, so if that's the case, the red-line version
> does not capture all the changes since the last version you saw); and a
> revised summary. I am sending the summary because I thought it might be
> useful to send it to the WH and Justice along with the regulations. Please
> tell me if you disagree.
>
> We would like to send this to Justice and the WH on
> Monday, so please let me have your comments by Monday morning. Also, Sue
> B., if you have any real life OCR examples to add, we would appreciate
> them by that time.
>
> Goodwin, one point that Lisa and I disagreed with
> you on that I'll mention here so others can also weigh in. You suggested
> we not require LEA's or schools to produce evidence based on the needs of
> their own students, but rather they should be able to import models that
> have been shown to work in other places with similar students. We agree
> that schools should be able to use models from other places, and evidence
> that the models worked with similar students can be part of their
> justification. However, we think they need to justify single sex based on
> the needs of their own students, not some notion that girls or boys
> elsewhere or everywhere have certain educational needs, which is an
> invitation to stereotyping. So we've retained the language on meeting the
> needs of their students. I think the examples make it very clear they can
> look at and use research and experience from other places in justifying
> their solution for those needs, but please, any of you, << File:
> singles16.doc >> << File: single-sex-reg-final.doc >> suggest some
> additional language for the regulation if you think it is needed to
> clarify that point.
>
> Thanks,
>
> Steve W. << File:
> single-sex-reg-final II.doc >>



- YMLS-TP-1213.doc

Brief Summary
OCR Complaint Against the New York City Board of Education, Young Women's Leadership School – OCR Case No.: 02-96-1184

12/13/99

Background on the OCR Complaint

On August 22, 1996, The NY OCR received a complaint from three civil rights organizations alleging that the creation of the New York City Young Women's Leadership School (YWLS,) a public school that will serve girls from grades 7 through 12, is a violation of Title IX. *3 yrs!!*

The Leadership School is an all-girls public school located in Community School District 4 in Manhattan, a school district with many small alternative schools. It was opened in September 1996. The Leadership School was intended to provide girls at the 7-12 grade level with a traditional, academically focused "college-prep" program with small class sizes. At the time the OCR complaint was filed, the Leadership School served grades 7-8 and enrolled approximately 210 girls. This district serves a predominantly minority population (97%)(60.7% Hispanic, 36.1% black, 9% other and 2.3% white.)

During 1997 and 1998, OCR had numerous conversations with the District in attempts to reach a voluntary resolution of the complaint allegations. OCR's efforts to resolve this complaint focused on the objectives of: allowing the New York City Board of Education (the Board) the broadest flexibility for experimentation with innovative educational methodology; preserving the Board's ability to choose, assess and implement any and all viable options for providing high quality educational opportunity to its students; and ensuring that the Board's determinations meet Title IX and 14th Amendment standards. However, OCR was unable to obtain a mutually agreeable resolution.

The School Board's position was that it wanted to maintain the single sex YMLS without having to create any new opportunities for boys in the District. That approach was not acceptable to OCR at the time, given the evidence and support provided by the Board for its position.

OCR has not had resolution conversations with the District since August of 1998. Negotiations were postponed in order to conduct interagency consultations to ensure that all resolution options being considered are legally sufficient in light of Title IX, and consistent with any new proposed Title IX regulations and the 14th Amendment. Over the past several months, the Department of Education has been in consultation with the Department of Justice and the White House on the issue of single sex education generally, which impact this case.

Update on the YMLS and Current Status of OCR Complaint

*will document needs?
help w/ similar needs
transfer program?*

For academic years 1999-2000, the Board voted to expand the YWLS to grades 7-10. The YWLS now serves 400 female students, almost double its original enrollment.

The complainants who filed the OCR complaint have become increasingly dissatisfied with the delay in obtaining a resolution to their complaint. They have written several letters to OCR and recently they wrote to the Department of Justices requesting an explanation for the delay, especially in light of the Board's decision to expand the YWLS from 210 to 400 slots. *// need copies*

Next Steps

OCR is awaiting feedback from DOJ on the revised Title IX regulatory proposal in order to resume resolution conversations with the District.

(If you have any questions, please contact Susan Bowers or Lilian Dorka at 205-8217.)

Single Sex Education. As part of the Senate's consideration of the Labor-HHS-ED appropriations bill, Senator Kay Bailey-Hutchinson was expected to bring up her single sex education amendment. The amendment would permit ESEA Title VI funds to be spent on "educational reform projects that provide same gender schools or classrooms, as long as comparable educational opportunities are offered for students of both sexes." She was not able to bring up the amendment, but the proposed amendment led to a number of the women's groups contacting the White House (American Association of University Women, the Women's Legal Defense Fund, and the Women's Law Center) to urge the Administration to take a public position on single sex education which is expected to come up next in the context of ESEA reauthorization. The women's group have opposed the amendment in the past on two grounds: (1) concerned that we do not have the research to support single-sex education in elementary and secondary education (2) concerned that "comparability" will not be monitored or implemented effectively. Last year when the amendment was proposed, the Administration did not take a position. Instead, we argued on procedural grounds that it should be considered as part of the reauthorization of ESEA and that it was already permissible under Title IX. Furthermore, the Department of Education's Office of Civil Rights was in the process of developing regulations on single sex classrooms and schools that would provide for some flexibility in allowing for such classrooms and schools. The Department of Justice has, throughout the debate, raised constitutionality concerns, but OCR is working with DOJ on the draft regulations. The regulations are expected to be shared with the White House next week. The women's groups are very concerned about the regulations and the possible ESEA amendment. Karen Tramontano has been fielding calls from the groups and would like to convene them after we have a better sense of the content of the regulations.

Note: The impetus to put out regulations on single sex education stem from a complaint by the New York chapters of the National Organization for Women and the American Civil Liberties Union filed with the U.S. Department of Education's Office of Civil Rights. The complaint asserts that the Young Women's Leadership Academy, a public school in Harlem, violates equal-protection guarantees of the Constitution. OCR has not yet ruled on this case and plans to do so in the context of releasing the Title IX regulations.



AMERICAN
ASSOCIATION OF
UNIVERSITY
WOMEN

A A U W F A X

TO: Ann O'Leary

ORGANIZATION:

FAX NUMBER: 202/456-2878

PHONE:

DATE: October 6, 1999

FROM: Emma Peat, Legislative Assistant

at the

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN
1111 SIXTEENTH STREET, NW
WASHINGTON, DC 20036-4873

FAX NO: 202/466-7618

PHONE NUMBER: (202) 785-7793

NUMBER OF PAGES SENT (including cover sheet): 4

COMMENTS:

As per your conversation with Nancy Zirkin, attached are documents on Sen. Kay Bailey Hutchison's single-sex education amendment.

ACCOUNT/PURCHASE ORDER NUMBER: 2750

**THE HUTCHISON AMENDMENT: AN ATTACK ON TITLE IX
AND A RETURN TO SEPARATE AND UNEQUAL**



At Issue: Senator Kay Bailey Hutchison (R-TX) is expected to offer an amendment to the FY 2000 Labor, Health and Human Services, and Education (Labor/HHS) Appropriations bill to allow local education agencies (LEAs) to spend federal dollars to "provide same-gender schools or classrooms."

Policy changes to Title IX should be carefully considered during the reauthorization of the Elementary and Secondary Education Act (ESEA). It is inappropriate for the Senate to consider the implementation of changes to Title IX during the appropriations process. Any substantive changes made to Title IX should be thoroughly and thoughtfully considered during ESEA reauthorization, which will begin next month in the Senate.

The U.S. Department of Education is finalizing new Title IX regulations for single-sex education. On February 12, 1999, at the request of the U.S. Senate, the U.S. Department of Education submitted a report on single-sex education to the Senate Subcommittee on Labor, Health and Human Services, and Education Appropriations. The report provides the process that the Department of Education is currently undergoing to determine the correct legal basis under Title IX for permitting single-sex classrooms and schools. The Department of Education should be allowed to continue to consider this issue through its processes, including, if necessary, publishing a notice of proposed rulemaking in the Federal Register for public comment.

Title IX already allows for same-sex programming under certain circumstances. Regulations under Title IX allow for single-sex programming as long as there are protections against sex discrimination. For example, if an all-girl science class addressed past or present inequities that discouraged girls from pursuing science, then the class might be permissible under current regulations. However, if the class were based on the stereotypes that girls do not like physics or find science difficult, then it would not be permissible under Title IX.

The data on the benefits of single-sex education is inconclusive. The 1998 AAUW Educational Foundation report, *Separated by Sex: A Critical Look at Single-Sex Education for Girls*, analyzed more than 100 studies since 1980 on single-sex education in the United States and abroad and found that, at best, the research is inconsistent. Further, it challenges the idea that single-sex education works or is better for girls than coeducation.

Qualities for a good education, not a sex-segregated environment, make the difference in student achievement. While single-sex education experiments do produce some positive results for some students in some cases, much of the research indicates that it is the properties of a good education, not a sex-segregated environment, that make the difference. These properties include: small classes, a rigorous curriculum, high standards, discipline, good teachers, and attention to eliminating gender bias.

Contact: Nancy Zirkin, Director of Government Relations, 202/785-7720
Lisa Levine, Government Relations Manager, 202/785-7730

September 28, 1999

OPPOSE SINGLE-SEX EDUCATION POLICY CHANGES TO TITLE IX IN LHHS/EDUCATION APPROPRIATIONS

September 28, 1999



Dear Senator:

On behalf of the 150,000 members of the American Association of University Women (AAUW), I urge you to oppose Senator Kay Bailey Hutchison's (R-TX) amendment to the FY 2000 Labor, Health and Human Services, and Education (Labor/HHS) Appropriations bill which would allow local education agencies (LEAs) to offer single-sex schools or classes. AAUW opposes this amendment because any education policy amendment should be thoroughly and thoughtfully reviewed by the Senate Health, Education, Labor, and Pensions Committee during consideration of the Elementary and Secondary Education Act (ESEA) reauthorization next month. In addition, any amendment regarding single-sex education must be considered in the context of the new Title IX regulations on single-sex education that are being finalized by the U.S. Department of Education.

Policy changes regarding single-sex programming could have far reaching implications and should be carefully considered during the reauthorization of ESEA. For example, unless single-sex programs are carefully designed to remedy particular sex-based disadvantages, such programs can deny equal educational opportunities and reinforce harmful stereotypes. For example, in the mid-1980s, Philadelphia's two sex-segregated magnet schools were found to shortchange girls in everything from course offerings and faculty credentials to recreation facilities and library resources. "Separate but equal" has often meant separate and unequal for girls and women, just as it has for African-Americans.

Further, there is little research that examines the effectiveness of single-sex schools and classes. In 1997, the AAUW Educational Foundation released the first compilation of research, *Separated by Sex*, which challenges the popular generalization that single-sex education is better for girls than coeducation. The report indicates that elements of a good education, such as smaller classes; attention to eliminating gender bias; focus on core curriculum; and discipline, can lead to the success of all public schools and not just sex-segregated classes and schools.

The U.S. Department of Education is finalizing new Title IX regulations for single-sex education. On February 12, 1999, at the request of the U.S. Senate, the U.S. Department of Education submitted a report on single-sex education to the Senate Subcommittee on Labor, Health and Human Services, and Education Appropriations. The report provides the process that the Department of Education is currently undergoing to determine the correct legal basis under Title IX for permitting single-sex classrooms and schools. The U.S. Department of Education should be allowed to continue to consider this issue through its processes; including, if necessary, publishing a notice of proposed rulemaking in the Federal Register for public comment.

Again, I urge you to oppose the Hutchison Amendment because any substantive changes to Title IX should be thoroughly and thoughtfully considered during ESEA reauthorization and in the context of the U.S. Department of Education's new regulations, which will begin next month in the Senate. If you have any questions, please contact Nancy Zirkin, Director of Government Relations, at 202/785-7720, or Lisa Levine, Government Relations Manager, at 202/785-7730.

Sincerely,



Sandy Bernard
President

NCWGE

NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

OPPOSE SEN. HUTCHISON'S SINGLE-SEX EDUCATION AMENDMENT IN LABOR/HHS/EDUCATION APPROPRIATIONS

September 29, 1999

Dear Senator:

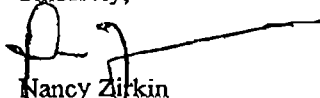
The National Coalition for Women and Girls in Education (NCWGE) is a nonprofit organization of more than 50 organizations dedicated to improving educational opportunities and equality for women. We are writing to urge you to oppose Senator Kay Bailey Hutchison's (R-TX) amendment to the FY 2000 Labor, Health and Human Services, and Education (Labor/HHS) Appropriations bill which would allow local education agencies (LEAs) to offer single-sex schools or classes. NCWGE opposes this amendment because any such education policy amendment should be thoroughly and thoughtfully reviewed by the Senate Health, Education, Labor, and Pensions Committee during consideration of the Elementary and Secondary Education Act (ESEA) reauthorization next month. In addition, any amendment regarding single-sex education must be considered in the context of the process that the U.S. Department of Education is currently undergoing to examine whether there is a legal basis for interpreting Title IX to permit single-sex classrooms as well as schools.

First, policy changes regarding single-sex programming could have far reaching implications and should be carefully considered during the reauthorization of ESEA. Unless single-sex programs are carefully designed to remedy particular sex-based barriers, such programs can deny equal educational opportunities and reinforce harmful stereotypes. An amendment that requires only "comparable" educational opportunities would permit a return to separate and unequal programs to which women and girls have often been relegated. For example, in the mid-1980s, Philadelphia's two sex-segregated magnet schools were found to shortchange girls in everything from course offerings and faculty credentials to recreation facilities and library resources. Further, there is little research that examines the effectiveness of single-sex schools and classes. A 1997 AAUW Educational Foundation report on single-sex education indicates that elements of a good education, such as smaller classes, attention to eliminating gender bias, focus on core curriculum, and discipline can lead to success for all public schools. Thus, it is critical that an education policy such as single-sex programming be considered deliberately.

Second, the U.S. Department of Education is considering changes to the Title IX regulations regarding single-sex education programming. On February 12, 1999, at the request of the U.S. Senate, the U.S. Department of Education submitted to the Senate Subcommittee on Labor, Health and Human Services, and Education Appropriations, a report on its review of the Title IX regulations and policies regarding sex-single education programs. The report provides the process that the Department of Education is currently undergoing to determine the correct legal basis under Title IX for permitting single-sex classrooms and schools. The U.S. Department of Education's careful examination and analysis of this issue will assist policymakers in crafting legislative language that can meet constitutional scrutiny.

Again, NCWGE urges you to oppose the Hutchison Amendment because any such education policy change should be thoroughly and thoughtfully considered during ESEA reauthorization, which will begin next month in the Senate, and in the context of the U.S. Department of Education's process for examining whether changes should be made to the Title IX regulations regarding single-sex education programming. If you have any questions, please contact Nancy Zirkin at the American Association of University Women, 202/785-7720, or Leslie Annexstein at the National Women's Law Center, 202/588-5180.

Sincerely,



Nancy Zirkin
Chair



Leslie T. Annexstein
Vice Chair

PRINT DOC REQUESTED: OCTOBER 8, 1999
5 DOCUMENTS PRINTED
17 PRINTED PAGES

104PK2

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YOUR SEARCH REQUEST IS:
WOMEN'S LEADERSHIP ACADEMY AND HARLEM

NUMBER OF STORIES FOUND WITH YOUR REQUEST THROUGH:
LEVEL 1... 18

Chicago Tribune, September 30, 1999

7th-grade teachers involved in the experiment.

With a growing awareness in recent years of a so-called sex bias toward boys, schools have introduced learning strategies to help boost the math and science achievement of girls. As a result, according to experts, girls have closed the gap.

Yet boys in general lag behind girls in reading and writing, according to William Pollack, director of the Center for Men and Young Men at Harvard University Medical School. Eighth-grade boys are more likely to repeat a grade than girls, and boys represent 71 percent of school suspensions and two-thirds of special education classes. Boys also are 10 times more likely to be diagnosed with attention-deficit disorder than girls.

"While we were helping girls over the past 10 years we have wrongly assumed that boys have been doing fine," said Pollack, who examined the issue in "Real Boys," a current best-seller.

"By middle school, the boys begin to hate their school environment and . . . (their) self-esteem drops," he said. "There is a boy code that you're not supposed to talk about these feelings. For some boys, it bursts out in violent ways."

Research, mainly centering on private schools, is mixed on whether single-sex education works.

A recent study by the Collegiate School in Manhattan showed that boys at single-sex schools had higher self-esteem and better study skills than boys in coed settings. Moreover, the study showed that boys in single-sex schools had fewer negative attitudes about women than their peers in coeducational settings.

But a study last year by the American Association of University Women showed that, while girls' performance improved in a single-sex setting, the gains could not be attributed to that one factor. That's because the single-sex schools often had better textbooks and a more rigorous curriculum. //4-

Officials at Jefferson Leadership Academies in Long Beach will be watching the students' academic and behavioral performance closely as they assess the merits of their experiment.

Comments about the program by Jefferson students for the most part vary by sex.

"I like this better because you don't have to worry about boys thinking bad things about you," said Latasha Mitchell, 13. "You don't have to worry about them passing notes asking you to be their boyfriend."

But Girardo Martinez, 14, said, "It was better when we had the girls in here. It was fun. It's boring now."

GRAPHIC: PHOTOS 2PHOTO (color): Theoretically better able to learn in the absence of girls, 8th-graders take notes in an all-boys humanities class at Jefferson Leadership Academies in Long Beach, Calif.; PHOTO (color): In a same-sex math and science class at Jefferson, 8th-grade girls feel more free to participate, advocates say. Photos for the Tribune by David McNew.

LANGUAGE: ENGLISH

LOAD-DATE: September 30, 1999

3RD STORY of Level 1 printed in FULL format.

Copyright 1998 The New York Times Company
The New York Times

December 13, 1998, Sunday, Late Edition - Final

SECTION: Section 4; Page 3; Column 1; Week in Review Desk

LENGTH: 1258 words

HEADLINE: Ideas & Trends;
How Boys Lost Out To Girl Power

BYLINE: By TAMAR LEWIN

BODY:

NO one's calling for affirmative action for boys just yet.

But given the fact that girls are becoming an ever larger majority at most American colleges, many educators are beginning to think boys should get more attention.

For several years, the conventional wisdom -- reinforced by a steady drumbeat of stories stressing female victimhood -- has been that girls are shortchanged in school, getting less attention from their teachers than boys and gradually losing their self-esteem as they enter adolescence.

By all kinds of measures, though, girls rule in school. They have better grades, higher reading and writing scores, higher class ranks and more school honors, and they are more likely than boys to take Advanced Placement exams in English, social studies and foreign languages. }

Boys are more likely to repeat a grade, drop out, be put in special education, be diagnosed with learning disabilities and be put on behavior-modifying medication like Ritalin. As teen-agers, they are also far more likely than girls to commit suicide.

"The myth that the schools shortchange girls is dangerously wrong because it has diverted policy attention from the group at genuine education risk -- African-American boys," said Judith S. Kleinfeld, a University of Alaska professor, in a paper earlier this year that found that schools put boys at more of a disadvantage than girls. "This is the group that scores lowest on virtually every educational measure. This is the group where an enormous gap does exist between males and females. But the African-American gender gap favors females."

The idea that boys need more help than girls do is slowly gaining currency nationally. "Something is changing," Ms. Kleinfeld said. "Just recently, people are beginning to be willing to think about boys' problems."

No one denies that the status of women remains a real issue in society. Despite the flood of women into business and the professions over the last two decades, women are underrepresented in corporate boardrooms, science labs and partnerships at law firms. And even in school, sexual harassment remains a problem.

The New York Times, December 13, 1998

Boys still dominate the nation's technical and engineering schools, and obtain higher scores on many standardized tests -- although those gaps are narrowing.

But some educators say the boys-versus-girls bean-counting has gone too far, that those gaps have become small enough that they are unimportant, especially when measured against the very large racial differences in educational achievement.

"They're saying that more girls take biology and chemistry, but uh-oh, there's more boys in physics," said Diane Ravitch, a senior fellow at the Brookings Institution.

"This is not an alarm bell ringing in the night," she said. "What we should be concerned about is the racial disparities. There's a four-year gap between blacks and whites on the national tests. The average black 17-year-old scores the same as the average white 13-year-old. That's a crisis, not gender." ✓

Arthur Levine, president of Columbia University's Teachers College, takes a middle road, stressing that both sexes have unique problems that schools should address.

"It's not either-or, and we shouldn't always see things as the crisis du jour," he said. "We can do better by boys. We need to do a lot better with regard to racial and socioeconomic differences, and that doesn't mean we shouldn't pay attention to the special needs of girls." ||

THE furor over gender equity was kindled in 1992 by the release of a study by the American Association of University Women, "How Schools Shortchange Girls," which declared that girls face bias from preschool through high school in textbooks, tests and teachers.

The association presented the situation as dire. "This report brings to light the pervasive inequalities that have made girls second-class students in America's schools," said Alice McKee, the A.A.U.W. Educational Foundation President at the time. "Girls and boys enter school roughly equal in ability. Twelve years later, girls have fallen behind in key areas. Whether one looks at achievement scores, curriculum design or teacher-student interaction, it's clear that our schools are shortchanging America's girls."

The report stimulated debate on teacher training and gender equity, experiments with single-sex math and science classes and new interest in girls' schools, including new efforts like the Young Women's Leadership Academy in Harlem.

But based on extensive re-examination of the A.A.U.W. data and findings, Ms. Kleinfeld's paper found the report shoddy, biased and simply incorrect. She wrote: "In the view of elementary and high school students, the young people who sit in the classroom year after year and observe what is going on, both boys and girls agree: Schools favor girls. Teachers think girls are smarter, like being around them more and hold higher expectations for them."

Ms. Ravitch also believes that the A.A.U.W. report was grounded more in gender politics than educational reality. ✓

The New York Times, December 13, 1998

"That first A.A.U.W. report was just completely wrong," she said. "What was so bizarre is that it came out right at the time that girls had just overtaken boys in almost every area. It might have been the right story 20 years earlier, but coming out when it did, it was like calling a wedding a funeral. It was phony, it dominated the news for years and it was harmful. There were all these special programs put in place for girls, and no one paid any attention to boys." }

JANICE WEINMAN, executive director of the A.A.U.W., defends the report. " 'How Schools Shortchange Girls' was a wake-up call," she said. "I think it's because of that report that girls made progress in math and science."

Others have also found it valuable.

"To my mind, it was a good thing that the A.A.U.W. got us to worry about girls, because there is no question in my mind that women in classrooms were treated with less respect and interest than boys," said Frank Newman, president of the Education Commission of the States, a policy group in Colorado. "The boy-girl problem is much deeper than education, it's a civic responsibility problem. When I was a university president, dealing with discipline cases where someone was being expelled or suspended, it was always boys. I don't remember a single girl. We need to teach boys responsibility. That's why sexual harassment is still a problem. Boy-girl differences are still important, but they pale in comparison to the big differences in education, which are due to race and class."

This fall, the A.A.U.W. issued a follow-up report, talking about girls' gains, as well as the areas where boys lag.

"I agree, the issue shouldn't be boys versus girls," Ms. Weinman said. "It should be equity and excellence for everyone. And we're not stuck in the same groove, singing the same song. Our follow-up report said number one, that girls had made real progress; number two, that boys had not made that kind of progress in the fields where they lag, and number three, that we should look at subgroups, like Hispanic girls or African-American boys, to determine where there are particular needs." *

But even the new report emphasized a growing technology gap that leaves girls less equipped for skilled computer jobs, calling technology the new boy's club.

"It's a significant problem, and we're very concerned about it," Ms. Weinman said. "And it's true, we're the American Association of University Women, and our mission is to look at education for girls and women."

GRAPHIC: Photo: Some educators now wonder whether schools are shortchanging boys. A bilingual class in Queens. (Suzanne DeChillo/The New York Times)

LANGUAGE: ENGLISH

LOAD-DATE: December 13, 1998

4TH STORY of Level 1 printed in FULL format.

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Time

October 19, 1998

SECTION: SPECIAL REPORT/HOW TO MAKE A BETTER STUDENT; Pg. 90

LENGTH: 1404 words

HEADLINE: Beyond The Gender Myths;
First girls, then boys had "special needs." The better way: treat them all as individuals

BYLINE: Margot Hornblower

BODY:

Girls today are in trouble. They lose confidence in early adolescence. Their grades plummet, and, following sexual stereotypes, their interest in math and science flags. They are plagued by eating disorders, suffer depression, get pregnant, attempt suicide. And it all makes headlines, spawns research projects and prompts calls for single-sex education.

Boys today are in trouble too. They are locked into rigid classroom routines before they are ready; their rambunctious behavior, once thought normal, is now labeled pathological, with such diagnoses as attention-deficit disorder and hyperactivity. They lose self-esteem and lag behind girls in reading and writing--erupting in violent behavior, killing themselves more often than girls. It all makes headlines, spawns research projects and prompts calls for remedial measures.

What's a parent to think?

Mired in the sociology, education theory and hype surrounding "gender equity," we sometimes overlook the common humanity of children: what they share and how they differ, regardless of gender. "The focus on girls has translated into the notion that somehow if you help girls, you hurt boys," says Susan Bailey, executive director of the Wellesley Centers for Women. "People want a quick fix, but there is no one-size-fits-all solution for either girls or boys."

It was Bailey's 1992 report, How Schools Shortchange Girls, that sparked a national hand-wringing epidemic over the plight of adolescent girls--especially their loss of interest in math and science. Financed by the American Association of University Women, the report surveyed a decade of research and concluded that teachers paid less attention to girls than boys, that textbooks reinforced sexual stereotypes and that college-entrance tests favored boys. A year later, another study documented widespread sexual harassment in schools.

A spate of books such as Peggy Orenstein's Schoolgirls: Young Women, Self-Esteem and the Confidence Gap and Mary Pipher's Reviving Ophelia, which spent nearly three years on best-seller lists, triggered a surge of creative solutions. A corporate-sponsored program, Take Our Daughters to Work Day, spread across the U.S. in an effort to encourage girls to examine varied careers. In Lincoln, Neb., teacher Jane Edwards partners with a local architectural firm

Time, October 19, 1998

to challenge high school girls to use technology, math and science to solve design problems. In Aurora, Colo., middle school teacher Pam Schmidt has created Eocene Park, a paleontology field school that encourages girls to explore this traditionally male-dominated science.

More controversial has been a renewed interest in segregation. Enrollment in private and religious schools for girls rose more than 15% between 1991 and 1997. New girls' schools were founded, including the public Young Women's Leadership Academy in New York City's Harlem, which is currently under challenge as unconstitutional in a complaint lodged with the U.S. Department of Education. In California, Massachusetts, Virginia, Nebraska and Oklahoma, local school districts began experimenting with single-sex classrooms.

Predictably, the renewed attention to girls has sparked a backlash. Parents are demanding that their sons be included in Take Our Daughters to Work Day. A surge of new books, such as Michael Gurian's A Fine Young Man and William Pollack's Real Boys, focuses on boys' emotional crises and academic problems in reading and writing. Researchers are exploring not just sexual harassment of girls but bullying and teasing of boys. A rash of school shootings by boys has brought calls to cut back on violent video games and provide more in-school counseling. And parents are objecting to certain excesses: "Is it really fair," wrote Kathleen Parker, a columnist for the Orlando Sentinel, "that one of [my son's] feminist teachers refuses even to use male pronouns, referring to all students as 'shes' and all work as 'hers'?"

Pollack, a clinical psychologist who teaches at Harvard Medical School, says most schools are failing boys by forcing them into an "educational straitjacket." Elementary schools lack male teachers, "sending a message to boys that learning is primarily for girls." Young boys, he claims, learn at different tempos, and perhaps the cutoff birth month for starting school should be later for boys than for girls. Once there, boys should be allowed to move around more, taking short recesses when they are restless. They should be able to use computers rather than be forced to write by hand before their small-motor skills are developed. Noting that boys constitute 71% of school suspensions and are less likely to go to college than girls (58% vs. 67%), he says, "Boys' self-esteem as learners is more at risk than that of girls."

Are things as bad as some say? Or has the emotionally charged rhetoric used by gender-equity theorists overstated the problem? A report last March found no evidence that girls improve their academic performance or their emotional health in single-sex settings. What helps girls is what helps boys: smaller classes, a demanding curriculum and encouragement regardless of gender. In the past decade, the gender gap for math and science, such as it was, has narrowed to the point of statistical irrelevance. Overall, males have somewhat higher standardized math and science test scores, while females have slightly higher school grades. Girls and boys are taking about the same math and science courses in high school, but boys are more likely to take advanced-placement courses in chemistry and physics. Girls are slightly more likely to take AP biology. Patricia Campbell, an education researcher in Groton, Mass., scoffs at the notion of "opposite" sexes with different learning styles. "When you just know somebody's gender, you don't know anything about their academic skills or interests," she says. "The stereotypes of girls being collaborative and boys competitive, of girls being into relationships and boys into numbers--that's laughable."

Time, October 19, 1998

Campbell researched the techniques of math and science teachers in three states and found that those who were successful with both boys and girls shared common traits:

--They allowed no disrespect: teachers did not put down students, and students did not make fun of one another.

--They used more than one instruction method--lectures, small-group work, diagrams, peer tutoring--so that kids who learn better with one strategy rather than another were not left behind.

--They divided their attention equally among students, refusing to let a small group monopolize discussion. "Research shows that unless specific action is taken, four to seven people tend to dominate any group," she says. "In a coed class, more of the attention getters may be boys, but a lot of boys, as well as girls, are left out. A single-sex class does not change the pattern--only deliberate inclusiveness works for everyone."

Gurian, a Spokane, Wash., therapist who has written two books on boys, notes that four adolescent males drop out of school for every one adolescent female. Among his prescriptions for helping our sons: provide them with mentors; provide twice as much emotional nurturing--spending time with them, developing family rituals, giving them new freedoms and responsibilities; restrict TV, video games and movies. Strikingly, these recommendations are precisely what our daughters need too.

Where boys' and girls' advocates generally agree is on the destructive nature of gender stereotyping. If girls are urged to catch up in math and join ice-hockey teams, boys should be encouraged to write poetry and take dance classes without being labeled sissies. Parents can enhance gender-neutral self-esteem by suggesting that a daughter help fix a leaky pipe--or a son whip up an omelet. "A little girl who says she wants to be a doctor gets a lot of support," says Bailey, whose Wellesley Centers are devoting their next gender-equity conference to boys. "But if a boy talks about wanting to be a nurse, the reaction is that it doesn't fit a masculine image. Parents and teachers need to foster an environment where sexual stereotypes don't shape education."

If that ever happens, headline writers and social scientists can stop arguing about which sex is least favored, and teachers can concentrate on paying more nuanced attention to our children as individuals, for that is what they are.

GRAPHIC: COLOR PHOTO: ROSEANNE OLSON--TONY STONE, [Frowning boy]; COLOR PHOTO: JADE ALBERT, GENERIC ADVICE: Smaller classes and an unbiased focus on the individual child [Girl]

LANGUAGE: ENGLISH

LOAD-DATE: October 13, 1998

5TH STORY of Level 1 printed in FULL format.

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NPR

SHOW: NPR WEEKEND SATURDAY (NPR 12:00 am ET)

MAY 9, 1998, SATURDAY

Transcript # 98050912-214

TYPE: PACKAGE

SECTION: News; Domestic

LENGTH: 950 words

HEADLINE: Single-Sex Education

BYLINE: Anthony Brooks, Boston; Brooke Gladstone, Washington, DC

HIGHLIGHT:

NPR's Anthony Brooks examines the arguments for and against single-sex education.

BODY:

BROOKE GLADSTONE, HOST: This is WEEKEND EDITION. I'm Brooke Gladstone.

This week in Washington, an international conference on educating girls made what seemed a simple but elegant point. Access to education should be a basic human right.

A small but growing movement in the United States says a return to single-sex education is the key to better learning, especially for girls.

From Boston, NPR's Anthony Brooks reports.

ANTHONY BROOKS, NPR REPORTER: This is the Windsor School in Boston where the choral group is practicing for graduation ceremonies next month.

SOUNDBITE OF WINDSOR SCHOOL GIRLS' CHORAL GROUP

CHORAL GROUP: Let us celebrate Let us celebrate Let us celebrate our happy, happy...

BROOKS: Many students here tell you they're glad this private school is for girls only. Among them is Desiree Allen (ph), a senior who says when her mother first told her she was going to Windsor, she was horrified.

DESIREE ALLEN, STUDENT AT WINDSOR SCHOOL, BOSTON: Wait. That's all girls. And she said, "Yes." I was like, "Oh, dear God, do you know what you're doing to me?"

NPR WEEKEND SATURDAY (NPR), MAY 9, 1998

LAUGHTER

And I was like -- I quickly learned that it allowed me to explore my identity more as a human being. And I also got to establish my identity separate from that of males. And so I could explore what it was like to be a woman without having to explore it in the context of a boy. And I think that's something that a lot of girls that I know who go to coed schools, they don't have that opportunity.

BROOKS: Tiffarette Levine (ph) is a senior who came here from public school and says she's relieved to be free of a coed environment.

TIFFARETTE LEVINE, STUDENT AT WINDSOR SCHOOL, BOSTON: Your rule is decided by other people. You know, if a boy likes you, and he's

popular you're expected to go out with him. You're expected to look as pretty as you can whether or not it interests you. You're expected to be interested in certain subjects more than in other subjects.

BROOKS: Most single-sex schools are private like Windsor, but in recent years, public schools in a few states have started to experiment with girls only classrooms, and all girls schools like the Young Women's Leadership Academy in Harlem.

And the most ambitious experiment is underway in California which has approved 12 single-sex schools. Much of the impetus for all this comes from concerns that girls fall behind boys in high school, especially in math and science.

A report several years ago from the American Association of University Women fueled that concern, saying girls are cheated by inequitable conditions in public schools. But just a few weeks ago, a new report by the organization concluded all-girl programs don't necessarily produce better academic results.

JANICE WEINMAN (ph), EXECUTIVE DIRECTOR, THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN. Single-sex education is not the silver the bullet.

BROOKS: Janice Weinman is the executive director of the American Association of University Women.

WEINMAN: Clearly, some single-sex programs work for some girls as evidenced by many private girls' schools. However, it is the components of those good education that they receive, that makes the real difference for students, rather than separating by sex.

BROOKS: Weinman says those components of good education include small classes, high standards, and parental involvement. But others say many girls fall behind because boys are usually more assertive, quicker to demand attention in the classroom and quicker to get it.

That's one reason Whitney Ransom (ph), who heads the National Coalition of Girls' Schools, embraces single-sex education.

WHITNEY RANSOM, DIRECTOR, THE NATIONAL COALITION FOR GIRLS' SCHOOLS: We find that there is significant value and life-changing experiences for girls when they go to all-girl schools. Their self confidence increases. They

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participate in math and science courses for longer times than you might find in other school settings.

BROOKS: At the Windsor School in Boston, girls are pushed to excel in science and math. History classes often focus on the role of women. And students like Tiffarette Levine say they're given the space to speak up.

LEVINE: I don't speak as much as I don't speak as freely when I'm in a coed environment. But I think the difference, the lasting difference that Windsor has made, is that if I hadn't come here, I wouldn't have known that I was -- that there was anything wrong with my not feeling comfortable speaking elsewhere. And I would have just assumed I have nothing to say.

And now I know I have something to say. And I know I need to work on having the courage to say it.

BROOKS: But some students here complain about the absence of boys, and ask if they're really being prepared for a world beyond Windsor. Critics of expanding single-sex public education argue girls should learn how to compete with boys in a fair coed environment.

But proponents say single-sex education offers as valuable choice, one that should be more widely available and not limited to a privileged few.

Anthony Brooks, NPR News, Boston.

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March 13, 1998, Friday, City Edition

SECTION: METRO/REGION; Pg. B3

LENGTH: 863 words

HEADLINE: All-girl school movement questioned;
Approach helps but is no cure-all, US group says

BYLINE: By Jordana Hart, Globe Staff

BODY:

Single-sex education for girls is blossoming nationwide, with teachers, parents, and students embracing these schools and classes as havens where girls can build self-esteem, achieve in mathematics and science, and develop new interests.

Armed with research, proponents are crusading in California, New York, and other states to open all-girl public schools, while single-sex classes are springing up in public schools in most states. Enrollment at the 84 member schools of the National Coalition of Girls' Schools, based in Concord, has grown by more than 15 percent since 1991.

But now, one of the country's leading advocates for equity in girls education is questioning whether the movement is the answer to the academic problems girls face when learning alongside boys. The American Association of University Women argues in its latest report that single-sex schools are not necessarily better for girls.

"We do know that single-sex education works for some students some of the time," said Janice Weinman, executive director of the association. "But we also know that when we see higher self-esteem, that doesn't necessarily translate into higher academic achievement."

Among the findings of the report, titled "Separated by Sex" and released yesterday, is that girls cannot always escape sexist attitudes by teachers in all-girl classes, and such classes and schools tend to distort the gender ratio in coed public schools.

The report acknowledges the benefits of all-girl schooling that have been highlighted in previous research: a heightened regard by girls for math and science, more risk-taking, and more self-confidence gained from academic competence. ||

However, the report noted that researchers are debating whether these benefits derive from factors unique to single-sex education or from the fact that such schools tend to have smaller classes, an intensive academic curriculum and strong discipline - all ingredients for any successful school.

The Boston Globe, March 13, 1998

Weinman agrees with research showing that low-income African-American and Hispanic girls, as well as boys, benefit more than any other students from single-sex schools.

Since 1991, applications to members of the National Coalition of Girls' Schools, including Catholic as well as private schools, have increased by 21 percent, according to the coalition.

Meg Milne Moulton, one of the coalition's two directors, said that at least 16 new girls schools have opened nationwide in the past three years, an unprecedented number in such a short time.

Moulton said she was dismayed by the new report, which seems to "discount an option without offering a constructive path. We should look at girls' schools as laboratories for what works well for girls."

Principals of all-girl schools in Boston interviewed about the report said that equitable teaching and other ingredients that go into making a great school simply don't exist in enough mixed-sex classrooms.

"The way the school situation is, separate is the way to go right now, especially in the cities," said Sister Frances Butler, principal of Mother Caroline Academy in Dorchester, a school of 60 black and Hispanic girls in grades five through eight. "Until things are as they should be in mixed classes, our schools give girls a chance to assume leadership and excel."

Ironically, it was a 1992 report by the American Association of University Women that proponents of all-girl education used to bolster their argument for more single-sex schools. Titled "How Schools Shortchange Girls," the report described how widespread gender inequities in mixed-sex middle and high schools hamper the ability of girls to learn.

But Weinman said the 1992 research did not conclude that separating girls from boys would help girls. Instead, it stressed a need for smaller classrooms, more rigorous academics, and, most importantly, more efforts to train teachers to identify gender bias in their own methods and rid themselves of it.

Weinman and others are concerned that too many educators and parents view single-sex education as a cure-all, which distracts from the work needed to reform education for all students.

Nonetheless, the push for more single-sex schools continues, even in the face of legal challenges from civil liberty and feminist groups.

In New York City, for example, the public school system has established the Young Women's Leadership Academy in East Harlem. But the popular school, now in its second year, is the focus of a federal investigation into whether it discriminates against boys.

There are no plans to open any publicly funded single-sex schools in Massachusetts, state officials said, although several districts, including Boston, have single-sex classes.

Susan McGee Bailey, director of the Wellesley Center for Research on Women, said many parents and educators seem to automatically equate single-sex

The Boston Globe, March 13, 1998

education with academic equity.

"Simply because an environment is all girls does not mean it offers a better education," Bailey said. "The question is, what is actually happening in those classrooms? There has been this assumption that if you put girls together, you're doing something for them."

GRAPHIC: PHOTO, 'We do know that single-sex education works for some students some of the time. But we also know that when we see higher self-esteem, that doesn't necessarily translate into higher academic achievement.' JANICE WEINMAN (above) American Association of University Women GLOBE PHOTO/BILL POLO

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 WASHINGTON, DISTRICT OF COLUMBIA 20502-0308

MEMORANDUM

TO: Mike Smith

FROM: Goodwin Liu

RE: Draft single-sex regulation

DATE: November 12, 1999

After reading the latest draft, I must confess a continuing uneasiness about our substantive approach on this topic. My primary concern, which I may not have made clear in my comments some weeks ago, is that the proposed guidance does not adequately treat the *educational needs* that parents and educators seek to meet through single-sex schooling as its conceptual foundation. As I understand it, we are revising the existing single-sex regulation because we recognize that educators across the country are implementing single-sex schooling as a strategy for improving educational outcomes and because we want to support such efforts to the extent the law will allow. Our task, then, is to develop a legal framework that—within the confines of applicable statutes and judicial precedents—evaluates the permissibility of single-sex schooling based on the degree to which it is motivated by and responsive to educational needs.

Let me explain my concern by focusing on one paradigmatic single-sex schooling scenario to which our regulation should be responsive: all-girls classes or schools designed to improve academic achievement, advanced course-taking, self-confidence, or leadership abilities. Many schools nationwide have implemented all-girls math or science classes, and the Young Women's Leadership School in Harlem has drawn national attention to all-girls schools. As familiar as these initiatives are, it is unclear how the draft regulation would evaluate their legality.

All-girls math or science classes are not motivated by the diversity rationale described in the draft regulation (p. 4). Nor can they be easily justified as remedies to overcome the effects of sex-based discrimination (absent evidence, perhaps, that teachers systematically favor boys over girls in coed math or science classes). The current draft is

The AAUW publication, *Separated by Sex: A Critical Look at Single-Sex Education for Girls* (1998), states: "Published studies that use subject preferences and girls' attitudes toward math and science as indicators have concluded uniformly that single-sex environments have a positive effect for girls" (p. 18). However, the report also notes: "Although research finds that girls tend to view the single-sex classroom as more conducive to learning, and express greater confidence in this environment, research has also demonstrated consistently that girls' math and science achievement, measured by a variety of means, has not shown statistically significant gains in the single-sex classroom" (p. 34).

silent on what rationales might qualify as “exceedingly persuasive justifications” for such classes under VMI. Nor does the draft say what evidence is needed to meet this standard. These are difficult questions of law. But I see little sense in avoiding them. If we find them difficult to answer now, we will only find them more difficult to answer 90 or 120 days from now, given the evolving political context. D

Furthermore, if a school can provide an “exceedingly persuasive justification” for an all-girls class, must it go further to develop an “equivalent” class for boys? As I argued in an earlier memo, I think VMI makes clear that the Equal Protection Clause does not require “equivalence” once the “exceedingly persuasive justification” test is met. As for Title IX, I think the answer is that it depends on educational need. If boys as a group do not have special needs in math or science, then it makes no sense to require an “equivalent” program. If they do have such needs, then it would make sense to require schools to devote equal attention to those needs, whether through an all-boys class or through a coed program. The same analysis applies to single-sex schools under Title IX. Even though New York City offers girls the Young Women’s Leadership School, why should we require the City to provide an “equivalent” program for boys if boys do not have equivalent needs? In the current draft, Example 1 (p. 5) and Example 1 (p. 7) do not address these issues. Indeed, the concept of “equivalent educational opportunity” in all of the draft’s examples appears to demand some type of formal equality—an equality of resources and inputs that takes no account of the potentially different educational needs of boys and girls. I think this is a mistake: Equivalence of educational opportunity cannot be defined formally. It must be understood in relation to particular educational needs. # - 71

The analytic pattern sketched above would likewise apply to another paradigmatic single-sex scenario—all-boys mentoring, dropout prevention, or academic enrichment programs. In recent years, urban schools and school districts have developed such programs to address the educational needs of African American males. Our regulation should clarify what types of justifications and what evidence of those justifications would be “exceedingly persuasive” under VMI. Title IX equivalence analysis should ask whether girls are provided “equivalent educational opportunities” not in the abstract, but rather in relation to their educational needs. Example 2 (p. 6) does not follow this approach. After comparing mentoring resources and opportunities for boys and girls in Middle School B, Example 2 (p. 6) reaches the conclusion that “[t]he school is not providing equal educational opportunities for boys and girls”—without any inquiry into whether boys and girls have equivalent needs for mentoring. good

→ VMI?

OGC flagged this issue in notes circulated at the long meeting several weeks ago in Judy Winston’s office. The notes identified the following “difficult issue for discussion”: “Does the requirement for ‘equivalent’ programs ... drive educationally unsound practices by requiring equivalent programs even when there are not equivalent needs?”

Perhaps the most notable example is Detroit’s Malcolm X Academy, which began as an all-male, all-African American school. In August 1991, however, the Academy began admitting girls after a federal court found that the all-male admissions policy likely violates the Constitution and Title IX. See Garrett v. Board of Educ. of Detroit Sch. Dist., 775 F. Supp. 1004 (E.D. Mich. 1991).

According to the draft regulation, the one categorical situation that would survive VMI's "exceedingly persuasive justification" test is where schools offer equivalent single-sex classes, programs, or activities for each sex, plus equivalent coed classes, programs, or activities, in order to achieve "an actual and demonstrated goal of offering a diverse array of educational options" (p. 4). Although I agree that the goal of "evenhandedly" providing diverse educational opportunities passes constitutional muster under VMI, the concept of "evenhandedness" must be fleshed out not in terms of formal equivalence among all-boys, all-girls, and coed options, but rather in terms of how well each of these options responds to the educational needs of the students it serves. In other words, the diversity of educational programming that justifies single-sex schooling under the Constitution and Title IX cannot simply be diversity for diversity's sake. It must be diversity for the sake of meeting particular, identified educational needs of both boys and girls. The draft's discussion of diversity (p. 4) does not relativize the concepts of "equivalence" or "evenhandedness" to boys' and girls' educational needs.

A different approach?

In light of these concerns, let me offer a few thoughts on how we might interpret VMI and Title IX to better align this regulation with our educational policy goals. At the core of my suggestions are four main ideas:

VMI's "exceedingly persuasive justification" test requires a school that operates a single-sex program to show not only why it makes sense to provide the educational opportunities offered in the single-sex class to the included sex, but also why it makes sense not to provide those opportunities to any member of the excluded sex.

If a school meets the "exceedingly persuasive justification" test, that is the end of the analysis. No further "equivalence" inquiry is required.

If a school cannot meet the "exceedingly persuasive justification" test, it can still defend its single-sex program by showing "substantial equality" in the educational opportunities it offers to boys and girls.

Inquiry into "substantial equality" under the Constitution or "equivalence" under Title IX must be informed by, not abstracted from, the particular, identified educational needs of boys and girls.

The discussion below attempts to place these ideas within an analytic framework.

Single-sex classes. I agree that we should interpret Title IX to allow single-sex classes, programs, and activities within a school to the extent allowable under the Constitution. Under VMI, the Constitution requires schools with single-sex classes to offer an "exceedingly persuasive justification"—but an "exceedingly persuasive justification" for what? For (a) offering a particular educational opportunity to the included sex? For (b) denying that opportunity to the excluded sex? Or for (c) both? This is an important question, and the current draft does not address it. A school may

have sound educational reasons for providing a particular instructional program to one sex without having sound reasons for denying access to the other sex. Indeed, this was the constitutional problem in VMI. The Court observed that although Virginia had good reasons for providing the adversative training model to qualified men, it did not have good reasons for *not* providing such training to qualified women. See 518 U.S. 515, 545, 547-48, 550 (1996). VMI made clear that “the question is whether the Commonwealth can constitutionally deny to women who have the will and capacity, the training and attendant opportunities that VMI uniquely affords.” Id. at 542. This suggests that the “exceedingly persuasive justification” test requires schools with single-sex classes to show not only why such opportunities should be provided to the included sex, but also why they should not or need not be provided to any member of the excluded sex. Our regulation ought to state this clearly. *one example, e.g. no women need*

too strong If a school can make this showing, then that is the end of the analysis. No further “equivalence” analysis is required—and for good reason. Satisfying the “exceedingly persuasive justification” test means showing that *no* member of the excluded sex is qualified, interested, or “ready, willing, and able to benefit from educational opportunities” offered in the single-sex environment. Id. at 547-48. By making this showing, a school has demonstrated that the two sexes are so differently situated educationally that different treatment is justified. It makes no sense to insist on “equivalence” in such a context.

But because such a showing is difficult to make, the question inevitably arises: If a school has no “exceedingly persuasive justification” for its single-sex classes, programs, or activities—i.e., the school cannot justify denying those opportunities to *every* member of the excluded sex—then what consequences follow? Perhaps the most interesting aspect of VMI is that the Court did not answer this question by immediately requiring VMI to admit women. Instead, it reached that remedy only after an extensive factual analysis of the differences between the educational opportunities offered to men at VMI and those offered to women through Mary Baldwin’s VWIL program. See id. at 551-54. Based on that analysis, the Court concluded that “Virginia has not shown substantial equality in the separate educational opportunities the Commonwealth supports at VWIL and VMI.” Id. at 554. The inescapable inference that arises from the Court’s reasoning is that had Virginia shown “substantial equality in the separate educational opportunities” it offered to men and women, then it could have maintained VMI as an all-male institution. Were this not so, then the Court would have had no reason to undertake its lengthy factual inquiry into the differences between VMI and VWIL once it had determined that Virginia failed to satisfy the “exceedingly persuasive justification” test.

From this analysis of VMI, I draw the following conclusion: Even if a school with a single-sex class fails to make the “least restrictive means” type of showing that the “exceedingly persuasive justification” test requires, it still may maintain the single-sex class if it can show substantial equality in the educational opportunities afforded to each sex. “Substantial equality” in VMI would have required strict equality in resources and inputs at VMI and VWIL, see id. at 551-54, because Virginia provided no legitimate

reason why women “ready, willing, and able to benefit from educational opportunities of the kind VMI offers” should not have the same educational opportunities that men at VMI have. Id. at 547-48. Yet VMI provides no guidance on what “substantial equality” means when men and women are not so similarly situated. Here again, I return to my earlier point: What constitutes “substantial equality” (or “equivalence” under Title IX) in educational opportunity cannot be determined in the abstract. It must be calibrated to the educational needs of the groups being compared.

Thus, once a school with a single-sex class has failed the “exceedingly persuasive justification” test, it has effectively conceded that some members of the excluded sex could benefit from the types of educational opportunities that the single-sex class provides to the included sex. Its obligation is to demonstrate how it is providing such benefits to the excluded sex. ~~Whether the school uses coed or single-sex strategies to do so is irrelevant.~~ The only question is whether the school is meeting the educational needs of the excluded sex to the same extent as its single-sex class is meeting the educational needs of the included sex.

The examples in our regulation should reflect this analytic approach. Below are two examples that, when compared, might help explain this approach and its policy objectives:

Example 1. Upon reviewing achievement data and course-taking patterns over the past four years, High School A discovered that boys achieve higher levels of proficiency and take more advanced courses in math and science in their junior and senior years than girls. Based on research showing that single-sex classes can strengthen girls’ confidence in math and science, as well as increase their preference for these subjects, the school offers several single-sex math and science classes for freshman and sophomore girls. The classes are voluntary and open to all girls who wish to enroll. Boys, as well as girls who choose not to enroll in single-sex classes, take math and science in coed classes with substantially equal class size, curriculum, and teacher quality. The school offers after-school tutoring for any students, boys or girls, who need extra help in math or science. In addition, the school monitors the math and science achievement not only of girls, but also of the lowest-achieving boys, and uses such information to inform instructional strategies in both single-sex and coed classes.

Analysis: To the extent that some boys at High School A might benefit from the types of educational opportunities that girls receive in single-sex classes (e.g., positive learning environment), the school has no “exceedingly persuasive justification” for denying such benefits to those boys. However, if the school can show that its coed math and science classes, along with its tutoring program and instructional monitoring efforts, provide boys (especially low-achieving boys) with “substantially equal” opportunities to learn math and science to high standards, then the single-sex classes for girls would pass muster under the Constitution and Title IX.

Example 2. Upon reading recent research indicating that single-sex math and science classes improve girls' confidence with and preferences for these subjects, officials in High School B initiated several single-sex math and science classes for freshman and sophomore girls. The classes are voluntary and open to all girls who wish to enroll. Boys, as well as girls who choose not to enroll in single-sex classes, take math and science in coed classes with substantially equal class size, curriculum, and teacher quality.

Analysis: Nothing in the scenario indicates that High School B has assessed the educational needs of its boys and girls. Thus, it is unclear what specific needs of girls at High School B the single-sex classes are addressing, making it unlikely that the school can "persuasively" show why it makes sense to teach girls through single-sex classes. Moreover, to the extent that some boys at High School A might benefit from the types of educational opportunities that girls receive in single-sex classes (e.g., positive learning environment), the school has no "exceedingly persuasive justification" for denying such benefits to those boys. In order to show "substantial equality" in educational opportunities offered to boys and girls, the school must explain how it provides substantially equal learning opportunities not merely to boys overall, but specifically to those boys who could benefit from the types of opportunities girls receive through single-sex classes. Whether coed classes substantially equal to single-sex classes in size, curriculum, and teacher quality adequately serve those boys is unclear, especially in the absence of efforts by the school to continuously monitor the math and science achievement of boys and girls.

Single-sex schools. The same analytic approach would apply to single-sex schools if challenged in court. As the current draft explains, however, OCR has no authority under Title IX to regulate the admissions policies of single-sex schools. OCR only has authority to demand that school districts provide the excluded sex with equal educational opportunities. As currently written, the three programming options (pp. 6-7) and the four examples (pp. 7-8) reflect once again a rather sterile or formal notion of equality, uninformed by any inquiry into the concrete educational needs of boys and girls. Without an understanding of particular educational needs, I fail to see how we can make sensible judgments about the relative quality of educational opportunities provided to boys and girls.

Our policy should make clear that a school district's compliance with Title IX's equality mandate depends not simply on its adherence to one of three programming options, but more fundamentally on its understanding of and responsiveness to the respective, identified learning needs of boys and girls. Specifically, our guidance should encourage schools and school districts to conduct needs assessments or otherwise collect evidence of learning differences or gaps between boys and girls, to show how instructional strategies are tailored to meet boys' and girls' particular educational needs, and to explain how the efficacy of those instructional strategies is monitored and evaluated. Our examples likewise should calibrate judgments about equal opportunity according to how well schools and school districts identify and respond to the respective

educational needs of boys and girls.

* * *

I know these thoughts further muddy the waters, but I thought it important that I share with you my reservations about the current draft from a legal and policy perspective. Please let me know what you think of these ideas and how you would like to proceed.

educational benefit merely because most members of that sex would not benefit from or want to participate in a particular program.

The Department has identified three categorical situations that meet these standards. The first category relates to the longstanding regulatory exception for programs and activities that are undertaken to overcome the effects of sex-based-discrimination and to overcome the effects of conditions that have resulted in limited participation by members of one sex. 34 CFR Part 106.3. Because programs under § 106.3 are intended to remedy existing inequities in a program for one sex, it is not necessary to evaluate whether equivalent opportunities are provided to members of the other sex.

The second category relates to the longstanding regulatory exception for sex-segregated physical education classes involving contact sports, 34 CFR Part 106.34(c), and for sex-segregated classes involving human sexuality, 34 CFR Part 106.34(e), as long as equivalent opportunities are provided to members of both sexes. Sex-segregation in these circumstances is based on real differences between the sexes and on compelling issues of privacy. Moreover, neither sex is denied equal educational opportunity.

The third category involves schools that offer all of the following as part of an actual and demonstrated goal of offering a diverse array of educational options: an equivalent single-sex class, program, or activity for each sex, and an equivalent coeducational class, program, or activity. Admission to all three programs must be voluntary.

The Department believes this latter situation is permissible because the Supreme Court has expressly stated that it "do[es] not question the State's prerogative evenhandedly to support diverse educational opportunities." See VMI, 116 S. Ct. at 2276 & n. 7. As the Court noted: "It is not disputed that diversity among public educational institutions can serve the public good." Id. at 2277. The goal of providing a diverse array of educational options is not an effort to limit the opportunities of a particular sex. Instead, it is intended to improve education choices and outcomes for all students, by providing diverse options to meet the different needs of students.

* Research on single-sex education programs has demonstrated that single-sex programs produce positive results for some students in some settings. See Separated by Sex: A Critical Look at Single-sex Education for Girls, American Association of University Women (AAUW) Educational Foundation (March 12, 1998). See also Single-Sex Schooling: Perspectives from Practice and Research, Office of Research, U.S. Department of Education (Dec. 1993) (concluding that single-sex schools may provide benefits to a range of students who choose to attend them, and that single-sex schools produce noteworthy achievement, particularly for women and minority students).

Because a diversity rationale requires even-handed application, the proposed regulation requires that each of the three programs must be equivalent. This also ensures that programs are not based on impermissible stereotypes, and that no one is denied equal educational opportunity. Moreover, voluntary admissions to the programs, as well as the availability of single-sex and

single sex
separate
voluntary
admission
to
single sex
schools

10/1/98

→ Need to be responsive
to children's needs

PREAMBLE

Purpose of the Proposed Regulatory Amendments

The Department proposes to amend its existing Title IX regulation, consistent with the purposes of the Title IX statute and subject to appropriate safeguards against discrimination, to provide greater flexibility to school districts and greater choice to elementary and secondary school parents regarding single-sex programs and activities. The proposed amendments are intended to support efforts of schools and school districts to improve educational outcomes for children, to assist school districts in responding to parents' desires for different pedagogical methods, and to provide public school parents with a diverse array of educational options.

Background

Title IX of the Education Amendments of 1972 prohibits sex-based discrimination in education programs or activities receiving federal financial assistance. 20 U.S.C. § 1681. The Title IX statute specifically exempts from its coverage admissions policies of non-vocational elementary and secondary schools, private undergraduate postsecondary institutions, and public undergraduate postsecondary institutions that traditionally and continually from their establishment have had a policy of admitting only students of one sex. The statute does not specifically prohibit single-sex classes or programs in coeducational schools.

Title IX is implemented by rules promulgated by agencies providing federal assistance to education programs and activities. 20 U.S.C. § 1682. The Department's current regulation issued by its predecessor agency the Department of Health, Education, and Welfare (HEW) became effective July 21, 1975.

The regulation does not apply to the single-sex admission policies of non-vocational elementary and secondary schools, among other institutions exempted by the statute. 34 CFR 106.15. Accordingly, recipients can operate single-sex elementary and secondary schools consistent with Title IX. However, the regulation requires that where a local educational agency (LEA) operates a school for one sex, it must provide the other sex, pursuant to the same policies and criteria of admission, with comparable courses, services, and facilities. 34 CFR 106.35.

With limited exceptions, the existing regulation prohibits recipients that operate coeducational schools from conducting single-sex classes, programs, or activities. The regulation reflects

The exceptions are if separation based on sex (1) results from the application of objective standards of physical ability, or vocal range or ability, 34 CFR 106.34(b), (d), and (f); (2) is in a physical education class involving contact sports or is in a class involving human sexuality, 106 CFR 106.34(c) and (e); (3) involves a program offered to

congressional concerns that coeducational institutions were using sex-based policies and practices that reflected out-dated and stereotyped notions of the differences between the sexes and of the limited abilities of girls and women.

Summary of proposed changes to the Department's Title IX regulation

The proposed regulation is intended to increase flexibility, diversity, and choice consistent with the intent and purpose of Title IX. Recent attempts by some school districts to experiment with single-sex programs, as well as recent congressional proposals regarding single-sex programs, reflect important and legitimate efforts to improve educational outcomes for all students. The purposes behind these programs generally are not based on outdated notions regarding the limitations, or limited goals, of members of one sex. Rather the goal is to find new and better ways to help all students learn and succeed to high standards.

The proposed regulatory changes continue to treat schools and classes differently because of the statutory exemption for single-sex schools. The three major proposed changes to the regulation can be summarized as follows –

① The first, and most significant, change, relates to single-sex classes, programs, or activities in coeducational schools. The proposed regulation permits non-vocational elementary and secondary schools to operate single-sex classes, programs, or activities, in addition to those situations permitted by the existing regulation, if a school can meet the constitutional standard used by the federal courts to review gender classifications. Under this standard, a school must demonstrate an exceedingly persuasive justification for the single-sex class, program, or activity. Whether a school's particular goals and factual circumstances satisfy the requirements of the regulation will need to be decided on a case-by-case basis.

② Second, the proposed regulation clarifies the options available to school districts, that operate single-sex schools, to provide equal educational opportunity to both sexes. → how does it change

③ Third, the proposed regulation clarifies a requirement that school districts operating single-sex schools provide equal educational opportunity. The language in the regulation has been revised to require that educational programs for both sexes must be "equivalent," rather than "comparable." This change does not alter the intent of the existing regulation, but clarifies that, while schools for both sexes need not be identical, they must be equal in key aspects. – ?

Equivalence will be determined on a case-by-case basis. Determinations regarding equivalence will take into account the purpose and justification for the program, will look at both inputs and

pregnant students on a voluntary basis that is comparable to that offered non-pregnant students, 34 CFR 106.40(b); or (4) constitutes remedial or affirmative action. 34 CFR 106.3. In addition, pursuant to an OCR policy determination, recipients may offer sex-segregated classes for students who object to coeducational classes on religious grounds. 43 Fed. Reg. No 84 (May 1, 1978).

outcomes, as appropriate, and will consider sound professional assessments of whether the programs are equivalent. However, differences between programs cannot be based on stereotypes about the sexes, and programs must be equal in all fundamental respects. These include admissions criteria, the quality and availability of curriculum, facilities, services and other benefits, and the qualifications and distribution of staff and faculty.

The proposed changes only apply to elementary and secondary schools, classes and programs. It is at these levels that the issues of flexibility, diversity, and choice are most prevalent, and where the current Title IX regulation unduly limits the discretion of educators to provide single-sex program choices.

Single-sex classes

Title IX applies to class and program selections and assignments in coeducational elementary and secondary schools. Thus, schools must adequately justify the creation of a single-sex program to comply with Title IX. To ensure an interpretation of Title IX that is consistent with the Constitution, the Department proposes to permit single-sex classes, programs, or activities under standards that would satisfy the Equal Protection Clause. This means that when investigating Title IX complaints, OCR would evaluate, on a case-by-case basis, whether the recipient demonstrates an exceedingly persuasive justification for the single-sex class, program or activity. The framework for OCR's legal analysis would be as follows:

The Supreme Court has determined that the Constitution requires equal educational opportunity for men and women. However, sex is not a prohibited classification. For instance, sex classifications may be used "to compensate women 'for particular economic disabilities [they have] suffered,' 'to promot[e] equal employment opportunity,' [and] 'to advance full development of the talent and capacities of our Nation's people.'" United States v. Virginia (VMI), 116 S. Ct. 2264, 2276 (1996) (citations omitted). See also, Mississippi for Women v. Hogan, 102 S. Ct. 3331, 3338 (1982) (holding that in limited circumstance, gender-based classifications can be justified).

Nevertheless, gender classifications require an exceedingly persuasive justification. VMI, 116 S. Ct. at 2275. Gender classifications are permissible if they serve important governmental goals, and the means employed are substantially related to those goals. Id. This is a "demanding" legal hurdle for a school. Id. The governmental justification must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females. Id. See also Hogan, 102 S. Ct. 3337 (holding that sex-based classifications must be based on "reasoned analysis" rather than through the application of "traditional and often inaccurate assumptions" about the roles of men and women). Before establishing single-sex programs, a school must take a "hard look" at its reasons for establishing the single-sex program(s), and the school must make sure it is not relying on generalizations and "tendencies" of girls and boys that are likely to perpetuate patterns of discrimination. VMI, 116 S. Ct. at 2280. Thus, schools cannot deny one sex an

coeducational programs, ensures that students are not placed in single-sex programs based on overbroad generalizations about the needs or interests of members of one sex or the other.

The Department has not identified other situations or justifications for a categorical regulation allowing the operation of a single-sex program. The Department welcomes educators and others to share their expertise and insight regarding other possible exceedingly persuasive educational justifications that would support categorical authority to offer, not only the scenario discussed above, but also perhaps only single-sex programs, or a single-sex program only to one sex. The Department is also interested in receiving input on whether proposed justifications would encompass the need to provide equivalent opportunities for the excluded sex, and ways in which the availability of equivalent opportunities, in either a single-sex or coeducational setting, affects the analysis of the justification needed for the single-sex program.

Depending on comments received during the public comment process, the Department may conclude that sufficient justifications do not exist to incorporate additional, specific categories of permissible single-sex programs in the final regulation. However, the Department's proposed regulation would permit it to consider exceedingly persuasive justifications offered by schools in support of particular single-sex programs on a case-by-case basis. These case-by-case determinations will be informed by the analysis and educational expertise that hopefully will be shared with the Department by commenters through the public comment process.

The proposed regulation retains the existing regulatory provisions that explicitly permits grouping students based on: ability in physical education classes, 34 CFR § 106.34(b), vocal range or quality, 34 CFR § 106.34(f), or pregnancy. 34 CFR § 106.4(b). These provisions and/or classifications are not based on sex and, thus, are not affected by the exceedingly persuasive justification standard.

As discussed above, the proposed regulation retains the permissibility of separating students by sex within physical education classes during participation in contact sports. The proposed regulation would not, however, otherwise permit sex-segregated physical education activities. The provision requiring coeducational physical education classes was the subject of thorough debate at the time the Title IX regulations were promulgated, see 108 Fed. Reg. 24133 (June 4, 1975), and stereotyping in physical education classes was a particular concern of Congress when it enacted Title IX. Nor does the proposed regulation permit sex-segregated vocational education classes. Congress was also specifically concerned with gender-based stereotyping in this area. See 118 Cong. Rec. 5806. To permit single-sex vocational education classes, programs, or activities would be inconsistent with congressional intent since Congress did not permit single-sex vocational education schools at the elementary and secondary level.

Examples of equivalent classes, programs and activities

The following examples are intended to illustrate programs that do and do not satisfy the regulatory definition of equivalent.

Example 1 – Coeducational Middle School A offers several single-sex math and science classes for freshman and sophomore girls and for freshman and sophomore boys. The single-sex classes are open to all students of the relevant sex at these grade levels. There are slight but insignificant differences in curriculum, class size, and teacher quality (as measured by preparation and certification in the area of instruction) between the single-sex classes and the coeducational classes in the same subject matter. The school offers equal educational opportunities for boys and girls.

Example 2 – Middle School B offers middle school boys, on a voluntary basis, an innovative mentoring program in which boys are encouraged to develop a close, one-on-one relationship with an adult in the community who is not their parent or teacher. The school provides opportunities for community leaders to make presentations to the boys and provides regular opportunities within the school curriculum for the boys and mentors to meet as a group to discuss gang involvement, drug abuse, and other risk factors affecting boys in the community. The mentors regularly provide one-on-one counseling and other support services. For students in the all-girls mentoring program, and for students in the coeducational mentoring program, the school maintains a list of adult professionals who are willing to be mentors, but the school does not provide any other opportunities for mentoring of these students. The school is not providing equal educational opportunities for boys and girls.

Single-sex schools

The statutory exemption for the admissions policies of nonvocational elementary and secondary schools precludes OCR from regulating the single-sex admissions policies of these schools. On the other hand, the Department has consistently interpreted Title IX to require that a school district ensure that when it chooses to offer single-sex schools to one sex – absent a remedial basis – it must provide equal educational opportunities to the other sex. Moreover, Congress deferred to federal agencies further to determine through regulations the meaning of an equal educational opportunity when an LEA chooses to establish one or more single-sex schools. 20 U.S.C. § 1682. The existing regulation (see Part 106.35), thus, permits LEAs to operate single-sex schools, without an examination of the LEA's justification for the school, as long as the excluded sex is provided comparable opportunities. The proposed regulation does not change these provisions except to clarify that under Part 106.35 comparable means equivalent in all fundamental aspects (see discussion above regarding equivalent classes and programs). It also clarifies that under Title IX, equal opportunity is satisfied where an LEA offers a single-sex school only to one sex as long as it offers an equivalent coeducational school.

Thus, the proposed regulation would clarify that an LEA operating a single-sex school has three options for satisfying the requirement for equal educational opportunity:

- (1) An LEA offers an equivalent single-sex school for each sex; it offers an equivalent coeducational school; and admission to all three schools is voluntary; or

(2) An LEA offers equivalent single-sex schools for each sex, without offering an equivalent coeducational school; or

 (3) An LEA offers a single-sex school for one sex, without offering a single-sex school for the other sex; admission to the single-sex school is voluntary; and the LEA provides an equivalent coeducational school.

LEAs need to be aware that single-sex schools are vulnerable to challenge under the U.S. Constitution. OCR does not have the authority to require a justification for a single-sex school under Title IX. However, if challenged in court litigation under the Equal Protection Clause, a school will be required to provide an exceedingly persuasive justification for its single-sex policy.

Examples of equivalent schools

Example 1 -- School District A operates an all-girls middle school that offers an “alternative” program. The school emphasizes very small class size, mentoring opportunities, and daily one-on-one time between students and their teachers and mentors. The school also uses portfolio assessments instead of grades. The required curriculum is based on core subjects and subject matter established by the school board. The school district also operates a coeducational middle school that teaches the same core curriculum taught in the all-girls school. Class size at the coeducational school is average to large and the classes offer a traditional format including final exams and little one-on-one contact during class. The school district does not offer boys and girls equivalent educational opportunities. }

Example 2 – Charter School B operates in School District B. It has been chartered by a group of local community leaders, business leaders, and philanthropists as an alternative to traditional public schools in the district. The school focuses primarily on mathematics and science and has obtained significant contributions from the business community in order to outfit the school with state-of-the-art laboratory and computer equipment. Enrollment is limited to boys. There are no other schools operating in the district that have a special focus on mathematics and science, or that have similar laboratories or equipment. School District B does not offer boys and girls equivalent educational opportunities.

Example 3 -- School District C operates an all-boys high school with a hands on curriculum that involves small classes, team projects, frequent hands-on experiments, projects and field trips, and portfolio assessments instead of grades. Apart from a few core courses, students can choose their courses. Admission is open to all high school boys in the school district. At the coeducational high school, students choose all courses after freshman year. While class size is somewhat larger, the difference is not significant. Course offerings are open to all students, and apart from a few core courses, students can choose their courses. Almost all available courses utilize various aspects of the hands-on approach. For instance, some classes concentrate on team

projects, some offer frequent field trips, others offer portfolio assessments, and some classes offer all of these aspects. The school district offers boys and girls equivalent educational opportunities. However, if at the coeducational high school only students with a GPA of 3.0 and above can enroll in courses offering a hands-on curriculum, the school district would not offer boys and girls equivalent educational opportunities.

Example 4 -- School District D establishes single-sex academies for grades 10-12. The schools are given identical resources and facilities, equivalent quality teachers and administrators, and offer an identical curriculum based on core courses in mathematics, science, English, and history. After several years, the boys school has developed a close relationship with local business and community leaders. Over time, these outside groups increasingly offer significant mentoring services to the students at the boys school, such as putting on educational programs for the students, and using their contacts to help the students obtain summer jobs, internships, and interviews with alumni of highly competitive colleges. The groups also joined together to raise and donate money to build a new sports complex at the boys school. The single-sex academies are no longer equivalent.

PROPOSED REGULATORY LANGUAGE

Replace existing sections 106.34 and 106.35 with the following:

1.34 Access to course offerings

- (a) Except as provided in paragraphs (b) and (c) of this section, a recipient that operates a nonvocational elementary or secondary school may provide or carry out courses, programs, or activities separately on the basis of sex:
 - (1) As part of a program to redress sex-based discrimination or to overcome the effects of conditions that resulted in limited participation by members of one sex under §106.3;
 - (2) Within physical education classes or activities while participating in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact, or during portions of classes that deal exclusively with human sexuality;
 - (3) (i) If the recipient demonstrates an exceedingly persuasive justification for the single-sex course, program or activity. For example, this standard is met if a school, as part of an actual and demonstrated goal of providing a diverse array of educational options, operates an equivalent single-sex class, program, or activity for each sex, as well as an equivalent coeducational class, program, or activity, and admission to all three classes, programs, or activities is voluntary.
 - (ii) Factors to consider in determining whether courses, programs, or activities are

equivalent, as used in this section include whether the programs being compared are offered to students at the same age or grade level in the same school, and whether there is equivalence in the policies and criteria of admissions (excluding a policy to restrict admissions based on sex), the quality and range of the curriculum, and the qualifications and ratio of faculty and staff.

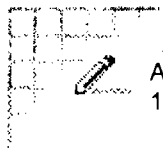
- (b) (1) A recipient may not offer sex-segregated physical education classes or activities except during participation in sports the purpose or major activity of which involves bodily contact.
 - (i) This paragraph does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance and applied without regard to sex.
 - (ii) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect of members of one sex, the recipient shall use appropriate standards which do not have such an effect
- (c) A recipient may not offer sex-segregated vocational, technical, home economics, industrial, or business classes, programs or activities.
- (d) Recipients may impose requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

1.35 Access to schools operated by LEAs

- (a) A local educational agency (LEA) that operates a nonvocational, single-sex school for members of one sex does not discriminate against students of the excluded sex if –
 - (1) The LEA also offers an equivalent single-sex school for the other sex; it offers an equivalent coeducational school; and admission to the single-sex schools is voluntary.
 - (2) The LEA does not offer an equivalent coeducational school, but offers equivalent single-sex schools for each sex.
 - (3) The LEA does not offer a single-sex school for the other sex, but the LEA provides an equivalent coeducational school for the other sex; and admission to the single-sex school is voluntary.
- (b) Factors to consider in determining whether a school is equivalent as used in this section,

include whether the schools being compared are offered to students at the same age or grade level in the same geographic area and whether there is equivalence in the policies and criteria of admissions (excluding a policy to restrict admissions based on sex); the quality, range, and availability of curricular and extracurricular activities; the quality, range and availability of facilities, services, resources, financial aid, and other benefits; and the qualifications and distribution of faculty and staff.

Ann - as
predicted, MV
suggests a memo to
the others.
Nicole



Ann O'Leary
10/28/99 10:14:36 AM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP, Katharine Button/WHO/EOP@EOP
cc: Ruby Shamir/OPD/EOP@EOP
Subject: Single Sex Education

Nicole and Katy -

The issue of single sex education continues to float just beneath the radar screen. The Dept. of ED is working with DOJ to put out regulations in an effort to provide clarity and guidance on the interpretation of Title IX in respect to single sex educational opportunities.

This issue is expected to receive quite a bit of attention once the Dept. releases the draft regulations. In the past, the President and First Lady have been very out front on supporting single sex opportunities. We are trying to push the draft regs to allow for a more flexible interpretation of Title IX that would support single sex opportunities. The women's groups, however, would like a much stricter interpretation of the regs that would essentially read that there would need to be "equal" opportunities for the other gender rather than just "comparable."

Once the regs are released, OCR will then evaluate the case that sparked much of the recent debate -- an all-girls school in Harlem (see more detailed note that was included in the issues update two weeks ago). The national women's groups are expected to coalesce around this issue and invigorate the debate through their NY chapters b/c of the school in Harlem.

Eric Liu and Karen Tramantano would like to bring in the national women's groups to meet on this issue once we have draft regs, but prior to doing so want to make sure that the First Lady is still in the same position on this issue. I assume that she is in the same position, but think it would be helpful to raise it to her attention. Do you agree? If so, shall I wait until I get the draft regs and write a memo or should Melanne raise it with her more informally?

Please advise.

Thanks.

-Ann

2 Nicole
Ann -

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Single Sex Education. As part of the Senate's consideration of the Labor-HHS-ED appropriations bill, Senator Kay Bailey-Hutchinson was expected to bring up her single sex education amendment. The amendment would permit ESEA Title VI funds to be spent on "educational reform projects that provide same gender schools or classrooms, as long as comparable educational opportunities are offered for students of both sexes." She was not able to bring up the amendment, but the proposed amendment led to a number of the women's groups contacting the White House (American Association of University Women, the Women's Legal Defense Fund, and the Women's Law Center) to urge the Administration to take a public position on single sex education which is expected to come up next in the context of ESEA reauthorization. The women's group have opposed the amendment in the past on two grounds: (1) concerned that we do not have the research to support single-sex education in elementary and secondary education (2) concerned that "comparability" will not be monitored or implemented effectively. Last year when the amendment was proposed, the Administration did not take a position. Instead, we argued on procedural grounds that it should be considered as part of the reauthorization of ESEA and that it was already permissible under Title IX. Furthermore, the Department of Education's Office of Civil Rights was in the process of developing regulations on single sex classrooms and schools that would provide for some flexibility in allowing for such classrooms and schools. The Department of Justice has, throughout the debate, raised constitutionality concerns, but OCR is working with DOJ on the draft regulations. The regulations are expected to be shared with the White House next week. The women's groups are very concerned about the regulations and the possible ESEA amendment. Karen Tramontano has been fielding calls from the groups and would like to convene them after we have a better sense of the content of the regulations.

Note: The impetus to put out regulations on single sex education stem from a complaint by the New York chapters of the National Organization for Women and the American Civil Liberties Union filed with the U.S. Department of Education's Office of Civil Rights. The complaint asserts that the Young Women's Leadership Academy, a public school in Harlem, violates equal-protection guarantees of the Constitution. OCR has not yet ruled on this case and plans to do so in the context of releasing the Title IX regulations.