



Separated by Sex: Title IX and Single-Sex Education

Title IX of the Education Amendments of 1972 prohibits sex discrimination in public and private institutions that receive federal financial assistance. The American Association of University Women strongly supports Title IX and opposes any efforts that would weaken its effectiveness. AAUW's 2009-2011 Public Policy Program commits AAUW to the "... vigorous enforcement of Title IX and all other civil rights laws pertaining to education."¹

AAUW has long been a proponent of public education and believes that a strong, free public education system is the foundation of a democratic society. AAUW also believes that the principles of nondiscrimination and applicable civil rights laws should be strictly adhered to in the provisions of that education. Unfortunately, some policies that purport to improve student performance—such as private school vouchers and single-sex education in public schools—skirt critical civil rights protections. Steps should be taken to improve student performance and educational outcomes, but the rights of students should not be trampled in the process.

Historically, public single-sex education has often harmed girls by depriving them of equal educational opportunities. Where programs are established separately for both boys and girls, they have tended to be distinctly unequal, with fewer resources allocated for girls' programs and stereotypical notions limiting vocational options. As a result, the U.S. Supreme Court—relying on the U.S. Constitution and Title IX—struck a careful balance, placing strict limits on the availability of public single-sex education while at the same time explicitly allowing for such programs if they were carefully constructed to remedy existing or past discrimination. Recent Title IX regulatory changes have removed these previous restrictions on public single-sex education; whether these changes will stand up to constitutional muster is an open question. However, one point remains clear and is underscored by the U.S. Department of Education's own research: single-sex education is not a silver bullet to improving performance in our public schools.

When elements of a good education are present, girls and boys succeed. What does foster an improved educational environment? The following elements have been documented as successful practices and qualities, regardless of the gender make-up of the school:²

- a focused academic curriculum
- small class size
- qualified teachers
- sufficient funding
- parental involvement
- equitable teaching practices
- maintaining appropriate and consistent discipline.

AAUW believes that discrimination in education can only be prevented by maintaining strong civil rights standards. While this country has taken great strides towards equity, there is still work to be done before we can say that males and females are treated equitably in education.³ Furthermore, the progress women and girls have made depends on the constant and continued enforcement of anti-discrimination protections such as Title IX.

Boys' Crisis Debunked

Despite the current hype over the “boys’ crisis,” which is often given as a justification for allowing unrestricted, publicly funded single-sex education, women and girls still face inequities in educational opportunities. AAUW’s groundbreaking 1992 report *How Schools Shortchange Girls* revealed startling evidence of inequity in education, which continues in critical areas to this day.⁴ At the time, girls were not receiving the same quality or quantity of education as their male counterparts. By disaggregating such data, the report also showed disparities *among* girls, which exist today.

As women continue to make gains in education and the workplace, it is important to remember that these successes do not come at the expense of men. Unfortunately, that is the insidious implication underlying many of the recent assaults on Title IX that are in turn fueling erroneous notions of a “boys’ crisis,” as well as calls that perhaps Title IX’s work is done. AAUW’s recently released research, *Where the Girls Are: The Facts About Gender Equity in Education*, completely refutes the notion of a boys’ crisis. Education is not a zero sum game. In fact, when and where girls do better, so do boys.⁵ Independent research also debunks the “boys’ crisis” and supports AAUW’s position.⁶ AAUW is proud of women’s and girl’s achievements, and believes policies and reforms that allow women *and* men to excel are beneficial for society as a whole.

Although many improvements have been made since the 1972 enactment of Title IX, much still remains to be accomplished before real equity is achieved. Women and girls still experience:

- the prevalence of sexual harassment and bullying⁷
- under representation in math, science, and technology programs⁸
- lower scores on standardized tests⁹
- sex-segregated vocational education programs, with females overwhelmingly directed into training programs for historically female—and traditionally low-wage—jobs¹⁰
- exclusion of female students from many athletic opportunities, including athletic scholarships worth hundreds of millions of dollars¹¹
- wage disparities (According to the U.S. Census Bureau and Bureau of Labor statistics, women who work full time earn about 77 cents for every dollar men earn.¹²)

AAUW believes that single-sex programs can in some instances perform a valuable role in combating these inequities. For example, to remedy the persistent effects of discrimination, federal, state, local, and private entities have developed a considerable network of gender-based scholarships and financial assistance aimed at supporting women seeking to enter historically male-dominated fields. Some institutions have also created outreach programs,

such as summer residential math and science institutes for girls on college campuses, aimed at encouraging female high school and junior high school students to consider engineering and other nontraditional career options. In light of the history of discrimination against women in education and the barriers that female students continue to face based on their gender, such programs have a legitimate place.

Single-Sex Education and No Child Left Behind

The No Child Left Behind Act, the 2001 reauthorization of the Elementary and Secondary Education Act, allows for limited use of ‘innovative programs’ education funding “to provide same-gender schools and classrooms (consistent with applicable law),” which includes Title IX of the Education Amendments of 1972.¹³ However, the law gave no mandate to change Title IX regulations. Rather, NCLB only required the U.S. Department of Education to issue guidelines on laws applicable to schools seeking innovative programs funding. While the U.S. Department of Education’s Office for Civil Rights fulfilled this requirement, this May 2002 guidance was cursory and did not adequately address how schools can implement single-sex education consistent with applicable law—not only Title IX, but also all relevant Supreme Court decisions and constitutional protections.

Despite the lack of a mandate and the prior Title IX regulations’ allowance for limited exceptions to create single-sex schools and classes in public education, in May 2002—ironically on the same date they issued their inadequate NCLB-mandated guidance—the U.S. Department of Education issued a Notice of Intent to Regulate expressing the intent to amend the Title IX regulations “to provide more flexibility for educators to establish single-sex classes and schools at the elementary and secondary levels.”¹⁴ The proposed regulations were released in March 2004. At the time, single-sex education options were available in a number of public school systems, highlighting that the prior regulations offered the flexibility for situations where single-sex offerings addressed student needs. The U.S. Department of Education received public comments overwhelmingly opposed to any changes to these regulations, but issued final regulations not much different from those released for public comment in March 2004. The new regulations went into effect Nov. 24, 2006.

New Single-Sex Regulations Undermine Title IX

In October 2006, OCR announced its decision to issue final regulations to ease limits on single-sex education. The new regulations allow the exclusion of students from classes based on gender.¹⁵ While OCR suggested that discrimination against women is not as prevalent as it was in 1972 when Title IX was passed, OCR also admitted that, “There are still more gains to be made.”¹⁶ Despite this acknowledgement, OCR moved forward in its effort to weaken the very law that brought about the massive achievements women and girls have made over the last 37 years. While the environment for women in education has vastly improved, this does not justify easing discrimination protections. AAUW believes single-sex education without proper attention to civil rights protections can reinforce problematic gender stereotypes, increase discrimination, and restrict the educational opportunities open to both girls and boys. AAUW opposed the change in Title IX regulations for the following reasons:

- **The regulations are tantamount to an executive fiat, undermining the principles upheld in *Brown v. Board of Education (1954)*.** In the *Brown* decision, the U.S. Supreme Court said “separate but equal” is inherently unequal. Such separation sets up opportunities for discrimination and perpetuates stereotypes, whether intended or not. The U.S. Supreme Court also found in the Virginia Military Institute case, *United States v. Virginia*, that “sex classifications may be used to compensate women for particular economic disabilities they may have suffered, to promote equal employment opportunities, to advance full development of the talent and capabilities of our Nation’s people.”¹⁷ The inherent difficulty in providing equal opportunity is that by separating the sexes, schools become open to liability they don’t currently face. Even though Title IX regulations were altered in the name of added flexibility in single-sex education, schools still have to comply with constitutional requirements—although AAUW is very concerned that there has been little oversight to see that they do so.
- **The regulations pose no accountability or reporting requirements consistent with the No Child Left Behind Act.** Although NCLB places a premium on implementing strategies that are based on sound science, the regulations break from this standard. Schools are not required to demonstrate that a significant education problem needed to be fixed, nor are they required to demonstrate that single-sex classes or schools will fix such a problem. Schools will have the authority to “tinker” with gender equity without having to prove that such actions are even necessary. Furthermore, while the regulations require schools to self-evaluate single-sex practices every two years, schools are not required to report these internal evaluations to the OCR, and evaluations are not required to be scientifically valid or reliable.
- **The regulations divert attention away from more serious education problems.** Rather than implementing sound strategies to improve achievement in core academic subjects, the Bush administration persists in experimenting on our nation’s children with unproven, controversial options. President George W. Bush’s budget for fiscal year 2009 allotted only \$24.7 billion for NCLB—nearly \$15 billion below the authorized amount. Over the course of its existence, NCLB has been underfunded to the tune of over \$85 billion.¹⁸ Meaningful school reform—for boys *and* girls—begins with fulfilling our existing promises to children and their parents by fully funding programs authorized in NCLB.
- **Prior to the regulatory change, Title IX already allowed flexibility for schools to segregate students by sex when there was a *legitimate* reason to do so, while maintaining civil rights protections.** Prior to the issuance of the new regulations, Title IX prohibited single-sex classes or programs within coed public schools, with some limited exceptions. Single-sex was permitted for physical education activities involving contact sports, sex education at the elementary and secondary levels, and choral groups. Other than these exceptions, Title IX prohibited single-sex programs unless such programs were designed to overcome the effects of past discrimination. To meet this standard, a school district had to show that the sex-based exclusion was necessary to

overcome historical sex-based barriers that have disadvantaged those who would benefit from the program. For example, an all-girl math class may have met this standard if the class was designed to compensate for girls' limited participation in math.

However, some school districts have used the new regulations as an opportunity to promulgate single-sex classes that not only serve no legitimate purpose, but are illegal and discriminatory. In March 2009, [the American Civil Liberties Union](#) announced that the Mobile, Alabama County Board of School Commissioners approved an agreement to reverse the mandatory sex segregation policy in public schools that was implemented for the 2008-2009 school year.¹⁹ The Mobile County School System segregated the entire student body of Hankins Middle School by gender, violating Title IX of the Education Amendments, the Equal Education Opportunities Act, and the U.S. Constitution. Under the new agreement, Hankins Middle School will immediately end segregation of students by sex in elective classes, at lunchtime, and all other nonacademic events. Beginning in fall 2009, all courses will be integrated, and no sex segregated programs will be instituted for at least three years.

- **The regulations require more resources than most schools can afford.** State and local education agencies are deeply concerned about a lack of funding to implement existing NCLB requirements, as well as the rising shortage of highly qualified teachers. These regulation changes could be costly for schools that choose to implement them because the schools would likely have to add new teachers for every subject area that they choose to provide a single-sex class for, as they still must provide a co-ed opinion.
- **The goals of single-sex education will not be uniform, and the most basic safeguards are thrown out.** The regulations allow each school to identify the educational objective for sex segregation. Schools do not have to justify segregation and can identify any range of objectives for why segregation is necessary. The new regulations would even allow schools to create sex-segregated programs based on parent or student preferences—a practice that would never be allowed were the issue to be segregation on the basis of race.
- **The regulations do not identify what is meant by "substantially equal."** In fact, the regulations do not mandate equal treatment for students excluded from a single-sex program. Although the regulations require "substantially equal" opportunities for both sexes in the aggregate, they do not necessarily require equal opportunities school by school, class by class, or subject by subject. The regulations do not require that if, for example, a school chooses to create a single-sex math class for boys, that they offer a "substantially equal" single-sex math class for girls. The school in this example would only be required to offer only a "substantially equal" coeducational class for the excluded sex. AAUW does not believe substantially equal or "close enough" is good enough for our children; it is not an acceptable legal standard or educational policy.

- The development of such classes and schools is usually rationalized by efforts to make the case that single-sex classes or schools are better in certain situations; if this were the case, in *denying* that opportunity to the excluded sex, schools would be necessarily creating an *unequal* learning environment.
- **AAUW does not oppose the idea of single-sex education, so long as it is appropriate, necessary, and done in a manner consistent with constitutional requirements and existing antidiscrimination laws.** Within public education, single-sex classes and schools must comply with relevant civil rights law, be initiated in response to demonstrated need, and be designed to inform and improve the coeducational public school system. AAUW supports pilot and voluntary single-sex classes that meet the above criteria. AAUW would not necessarily oppose pilot single-sex public schools that expand the research and meet the above criteria. Unfortunately, the new regulations are not nearly rigorous enough to ensure adequate civil rights protections, and do not put safeguards in place to limit the problematic stereotypes that have historically limited girls' opportunities.
- **Single-sex education is not the solution because there is not a "boys' crisis."** While AAUW's recent report, *Where the Girls Are*, finds no evidence of a boys' crisis, it does reaffirm the large disparities in educational achievement by race/ethnicity and family income. If a crisis exists, it is a crisis for African American and Hispanic students and students from lower-income families – both girls and boys.²⁰ Because about 90 percent of these children attend public elementary and secondary schools, AAUW believes legislators must develop strong, fair public schools—not single-sex education—to improve student achievement.²¹
 - **Apply qualities of a good education.** While single-sex education experiments have produced positive results for some students in some cases, research indicates that the properties of a good education—not a sex-segregated environment—make the difference.
 - **Foster an equitable learning environment.** Schools striving to achieve an equitable learning environment must adopt reforms that will help all students learn better. Strategies include teacher development in gender-fair teaching methods; recruitment and visibility of female and minority administrators to provide role models; adoption and dissemination of school nondiscrimination policies, sexual harassment policies and prevention programs; and equitable athletic opportunities.
- The regulations rely on unproven assumptions about the benefits of single-sex programs. The research supporting the effect of single-sex education on improving educational outcomes is inconclusive at best, and some shows potentially harmful effects. In fact, in its most recent report, the U.S. Department of Education calls its own 2005 results on the benefit of single-sex education "equivocal."²² Further, much of that

research is of questionable value. A 2006 study completed at the College of Education at Arizona State University showed that the research into single-sex education is not of acceptable quality, let alone conclusive. According to the study, the “research...is mostly flawed by failure to control for important variables such as class, financial status, selective admissions, religious values, prior learning or ethnicity.”²³ Less than 2 percent of the over 2,000 quantitative studies were of high enough methodological quality to be accepted by the National Center for Education Statistics, even with relaxed standards.²⁴

- **Expand the research base.** Research must be conducted with the goal of improving public education for all students. Pilot single-sex education experiments must have clear research questions in mind and an established process for data collection and evaluation. Pilot programs should continue for a sufficient time to ensure that their effectiveness can be adequately measured. The same course content and assessments should be used in single-sex and coed classes to enable comparisons. Schools should also consider instituting "girl-friendly" pedagogy in one coed class to test whether segregation or teaching style makes the difference.

Resources for Advocates

It is AAUW advocates across the county who speak their minds on issues important to them that truly advance AAUW's mission. Stay informed with updates on single-sex education and other issues by subscribing to AAUW's Action Network. Make your voice heard in Washington and at home by using AAUW's Two-Minute Activist to urge your members of Congress to support Title IX and oppose efforts that would weaken its effectiveness or undermine its enforcement. Write a letter to the editor of your local paper to educate and motivate other members of your community. Attend town hall meetings for your members of Congress, or set up a meeting with your elected official's district office near you to discuss these policies. AAUW members can also subscribe to *Washington Update*, our free, weekly e-bulletin that offers an insider's view on the latest policy news, resources for advocates, and programming ideas. For details on these and other actions you can take, visit www.aauw.org/takeaction. For more information, read AAUW's related position papers on Title IX, the No Child Left Behind Act, charter schools, and school vouchers, and AAUW's research, including *Where the Girls Are: The Facts About Gender Equity in Education*. You can find these and other resources on our website at www.aauw.org.

Conclusion

AAUW is particularly concerned that the 2006 regulations may cross a constitutional line when it comes to Title IX. These civil rights protections have been hugely successful, and now is not the time to roll back the clock. AAUW opposed the change to the Title IX single-sex education regulations and believes that Title IX should serve as a crucial backstop to ensuring that all students have equal education opportunities.

The U.S. Constitution supports the prior Title IX regulations' treatment of single-sex education. The Constitution bars excluding one sex from public school programs unless the exclusion is

supported by an exceedingly persuasive justification. To date, the U.S. Supreme Court has only recognized programs designed to remedy sex-based disadvantages.

AAUW is concerned about the future of education for our nation's girls and boys—both sexes must thrive for our country to compete in the global marketplace. But stripping girls of civil rights protections that provide them with opportunities to excel is not a solution to helping improve educational opportunities for all our children. While important advancements for women and girls have been made, inequity and the necessity to fight it still exist today.

For more information, call 202/785-7793 or e-mail VoterEd@aauw.org.

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¹ American Association of University Women. (June 2009). *2009-11 AAUW Public Policy Program*. Retrieved July 9, 2009, from http://www.aauw.org/advocacy/issue_advocacy/principles_priorities.cfm.

² AAUW Educational Foundation. (1998). *Separated by Sex: A Critical Look at Single-sex Education for Girls*, 30, 46-48, 56.

³ Brake, Deborah L. (October 1999). A Legal Framework for Single-Sex Education. *WEEA Digest*, 5. Professor Brake listed the following ongoing problems and barriers that exist for women and girls in education: "1) discrimination against pregnant girls and young mothers, combined with wholly inadequate educational opportunities for these students that exacerbate high drop-out rates and foster economic dependence, with all of its attendant problems; 2) the rampant nature of sexual harassment; 3) substantial underrepresentation of females in math, science, and other technology programs; 4) significantly lower test scores by female students on a wide variety of standardized tests; 5) prejudices against girls' participation in the classroom; 6) biased curricula; 7) predominantly sex-segregated vocational education programs, with females overwhelmingly directed into training programs for historically female – and traditionally low-wage – jobs; 8) the exclusion of female students from many athletic opportunities, including athletic scholarships worth hundreds of millions of dollars; and 9) the exclusion of women from consideration by entire classes of other scholarships, many for study in fields in which men already have a participation advantage."

⁴ AAUW Educational Foundation. (1992). *The AAUW Report: How Schools Shortchange Girls*.

⁵ AAUW Educational Foundation. (2008). *Where the Girls Are: The Facts About Gender Equity in Education*, 2.

⁶ Mead, Sara. (June 2006). *The Truth About Boys and Girls*.

⁷ AAUW Educational Foundation. (2005). *Drawing the Line: Sexual Harassment on Campus*, 2.

⁸ National Science Foundation. (2002). *Women, Minorities and Persons with Disabilities in Science and Engineering*.

⁹ National Coalition for Women and Girls in Education. (2002). *Title IX at 30*, 49.

¹⁰ National Women's Law Center. (2005). *Tools of the Trade: Using the Law to Address Sex Segregation in High School Career and Technical Education*, 6-7.

¹¹ National Collegiate Athletic Association. *NCAA Gender Equity Report, 2005-2006*. Statistics retrieved from Women's Sports Foundation on January 14, 2009, from <http://www.womenssportsfoundation.org/Content/Articles/Issues/General/123/2008-Statistics--Gender-Equity-in-High-School-and-College-Athletics-Most-Recent-Participation--Budge.aspx>.

¹² U.S. Census Bureau (September 2010). *Income, Poverty, and Health Insurance Coverage in the United States: 2009*. Retrieved September 29, 2010, from <http://www.census.gov/prod/2010pubs/p60-238.pdf>.

¹³ No Child Left Behind Act of 2001, Pub. L. No. 107-110, section 5131(a)(23) (2001).

¹⁴ U.S. Department of Education. (May 2002). *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*. Retrieved January 14, 2009, from <http://www.ed.gov/policy/rights/reg/ocr/t9-noi-ss.html>.

¹⁵ U.S. Department of Education, Office for Civil Rights. (October 25, 2006). Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – Final Rule. *Federal Register*, 71(206), 62529-62543. Retrieved January 14, 2009, from <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.html>.

¹⁶ U.S. Department of Education, Office for Civil Rights. (March 9, 2004). Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – Notice of Proposed Rulemaking. *Federal Register*, 69(46), 11275-11285, 11276. Retrieved January 14, 2009, from <http://www.ed.gov/legislation/FedRegister/proprule/2004-1/030904a.html>.

¹⁷ *United States v. Virginia*, et al., 518 U.S. 515 (1996).

¹⁸ National Education Association. (February 4, 2008). *Funding Gap: No Child Left Behind*. Retrieved April 27, 2009, from <http://www.nea.org/assets/docs/fundinggap.pdf>.

¹⁹ American Civil Liberties Union (March 25, 2009). *Alabama School District Agrees to End Illegal Sex Segregation*. Retrieved June 30, 2009, from <http://aclu.org/womensrights/edu/39131prs20090325.html>.

²⁰ AAUW Educational Foundation. (2008). *Where the Girls Are: The Facts About Gender Equity in Education*, 4.

²¹ U.S. Department of Education, National Center for Education Statistics. (2008). *Digest of Education Statistics, 2075* (NCES 2008-022). Retrieved January 14, 2009, from <http://nces.ed.gov/fastfacts/display.asp?id=65>.

²² U.S. Department of Education. (2005). *Single-Sex versus Coeducational Scheduling: A Systematic Review*. Retrieved January 14, 2009, from <http://www.ed.gov/rschstat/eval/other/single-sex/index.html>.

²³ Bracey, Gerald W. (November 2006). *Separate but Superior? A Review of Issues and Data Bearing on Single-Sex Education* (Education Policy Research Unit, Department of Education, Arizona State University).

²⁴ Ibid.