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 2011-2013 Public Policy Program commits AAUW to the “… vigorous enforcement of Title IX and all other civil rights laws pertaining to education.”

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 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 their 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 fosters an improved educational environment? The following elements have been documented as successful practices and qualities, regardless of the gender make-up of the school:

- focused academic curriculum,
- small class size,
- qualified teachers,
- sufficient funding,
- parental involvement,
- equitable teaching practices, and
- 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. 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. 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 recent report, *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. Independent research also debunks the “boys’ crisis” and supports AAUW’s position. 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:

- prevalent sexual harassment and bullying
- underrepresentation in math, science, and technology programs
- lower scores on standardized tests
- sex-segregated vocational education programs, with females overwhelmingly directed into training programs for historically female—and traditionally low-wage—jobs
- exclusion of female students from many athletic opportunities, including athletic scholarships worth hundreds of millions of dollars
- 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.)

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 the Elementary and Secondary Education Act**
The Elementary and Secondary Education Act, also known as the No Child Left Behind Act, governs the main federal programs assisting elementary and secondary schools and 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. However, the law gave no mandate to change Title IX regulations. Rather, ESEA only required the U.S. Department of Education to issue guidelines on laws applicable to schools seeking this program funding. While the department’s Office for Civil Rights fulfilled this requirement, its 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.

In May 2002, despite the lack of a mandate and prior Title IX regulations allowing only limited exceptions to create single-sex schools and classes in public education, the 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.” 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 November 24, 2006, and continue to this day.

**New Single-Sex Regulations Undermine Title IX**
These new regulations allow the exclusion of students from classes based on gender. 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.” 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 39 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."

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 Elementary and Secondary Education Act.** Although ESEA 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 amended single-sex regulations allow schools to experiment with unproven and controversial options. Meaningful school reform—for boys and girls—begins with fulfilling our existing promises to children and their parents by fully funding programs authorized in ESEA.

- **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 September 2009, the American Civil Liberties Union filed a lawsuit against Louisiana’s Vermilion Parish School District, charging that the school’s mandatory sex segregation policy violated Title IX, the Equal Education Opportunities Act and the U.S. Constitution. The lawsuit was filed on behalf of a parent whose two children were placed in sex segregated classrooms without being offered equal coeducational options as required by law. When the parent objected to this mandatory sex segregation, the school district agreed to ensure that coeducational classes would be available and that any participation in the single-sex program would be voluntary. However, on the first day of the school year, the parent discovered that both her children had been placed in single-sex classes. When she requested that her sixth- and eighth-grade daughters be placed in coed classes, she was told that the sixth-grade coed class was already full. Her eighth-grade daughter was told that if she wanted to be in coed classes, the only option was a special needs class. After a years-long lawsuit, the school district decided to discontinue the single-sex segregation.

- 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 ESEA 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 coeducational option.

- 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 public single-sex education, so long as it is appropriate, necessary, and done in a manner consistent with constitutional requirements and existing antidiscrimination laws.** Unfortunately, the current federal regulations governing single-sex education allow for such programs without appropriate oversight or accountability, or even proof that such programs improve educational outcomes—something AAUW simply cannot support when precious tax dollars are at stake. 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 2006 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. 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.

- **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. 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.

  - **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 indicate potentially harmful effects. In fact, in a recent report, the U.S. Department of Education calls its own 2005 results on the benefit of single-sex education “equivocal.” 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.” 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.

- **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 country 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](http://www.aauw.org/takeaction). For more information, read AAUW’s related position papers on Title IX, the Elementary and Secondary Education Act, charter schools, 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](http://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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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.” Retrieved February 14, 2011, from www2.edc.org/womensequity/pubs/digests/digest-singlesex.html.
5 Ibid.
15 Ibid.
16 Ibid.
24 Ibid.