



Rescind the Bush Administration 2006 Regulation Weakening Title IX Prohibitions Against Sex Discrimination in Education

The Bush Administration weakening of Title IX in 2006 allows an increase in single-sex public schools and classes. Instead of decreasing sex discrimination, the key purpose of Title IX, this Bush era regulation has led to an increase in sex-segregation to over 1000 K-12 public schools. Title IX has been one of the most successful federal civil rights acts (See *Ms.* magazine "Triumphs of Title IX" in 35th Anniversary issue - Fall 2007 <http://feminist.org/education/TriumphsOfTitleIX.pdf>). The 2006 weakening of the Department of Education (ED) Title IX regulation fortunately does not extend to higher education, or to any level of vocational education. However, encouraging sex segregation at any level increases confusion and establishes a dangerous precedent for all students and educators!

Key Objections to the Bush 2006 Changes to the Title IX Regulation

The Bush Administration arbitrarily weakened the Title IX regulation even though there was overwhelming public opposition. When the Bush ED issued a draft regulation in 2004 to allow increased single-sex education in K-12 non-vocational public schools, all but approximately 100 of the 6,000 public comments were against the changes. The Bush Administration nonetheless issued a similar version as the final regulation in 2006. The National Coalition for Women and Girls in Education, with members from 50 leading women's rights and education groups such as the NEA and AFT, has objected to these changes in the 2006 Title IX regulation ever since they were first proposed. (See <http://www.ncwge.org/singlesex.html>)

Over 1000 public schools have started single-sex education since the Bush Administration indicated its plans to change Title IX. Organizations have formed to advocate public single-sex schools or coeducational schools with single-sex classes. South Carolina established an "Office of Public School Choice - Single-Gender Education" which provided assistance to over 100 South Carolina public coeducational schools with single-sex classes. In most states, there has been little oversight by Title IX coordinators and others to ensure that single-sex activities in public schools are adequately justified even under the minimal equity requirements in the 2006 changes. Although it is difficult to find the required evaluations, there is evidence from multiple lawsuits, press reports, and investigations that many of these schools are not providing equal opportunities for their female, male, or coeducational classes. Instead of counteracting sex stereotypes, many of these schools are encouraging teachers to teach and reinforce sex-stereotypes.

There are legal challenges to the 2006 Title IX regulation. The original 1975 Title IX regulation permits sex segregated education under limited circumstances such as for contact sports. However, the American Civil Liberties Union (ACLU) is winning settlements against unlawful and discriminatory public school sex segregation that was encouraged by the 2006 regulation. Emily Martin said that while some "might think that sex segregated classes will be a quick fix for failing schools, in reality they are inherently unequal and shortchange both boys and girls." In its arguments leading to settlements to stop illegal sex segregation ACLU has pointed out that the sex segregated classes are fundamentally unequal and violate Title IX, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, the 1974 Equal Educational Opportunities Act, and in some cases, they also violate state laws.

Sex segregation in public schools is more expensive than coeducational classes and schools. The separate and often duplicate operations and facilities for public single-sex education are more costly than comparable coeducation. It takes more time and money to assure that all facilities and resources are equitable for both girls and boys in segregated rather than coeducational facilities. Even the 2006 changes require some safeguards which will cost the schools substantial time and resources. For every single-sex class, the 2006 changes require a substantially equal coeducational class. In many cases, they also require equal single-sex classes for both girls and boys. They also require voluntary selection and evaluations every two years which, if done adequately, can be quite expensive. Additional resources are needed for staff

training to address how to counteract, rather than reinforce, sex stereotypes. Schools that sex segregate may also face expensive lawsuits for violations of Title IX and other federal and state non-discrimination laws.

Separate is never equal especially in public education. Whether we are talking about facilities, quality of instruction, levels of expectations, treatment of students, or preference for a particular teacher, it is very difficult to provide even "substantial" equality in sex-segregated schools, classes, or activities. As in race or ethnic discrimination, the less prestigious or valued group often receives less favorable resources. For example, when the Albany Brighter Choices dual academies split into two buildings, the boys got the new school and the girls remained in the old building.

The rescission of the 2006 Title IX regulation is essential because this regulation encourages scientifically unsound educational practices that create misguided education policies. Sex segregation, allowed under the 2006 regulation changes, is absolute -- meaning only girls are allowed in the girls classes or schools and vice-versa. Although the 2006 regulation requires that single-sex schools or classes be chosen by students or parents voluntarily, in practice because they are not comparable options, students have no real choice. The justifications for many of the post 2006 sex-segregated classes and schools are based on inaccurate claims and inadequate research on so-called innate student differences by sex and related myths that male and female students learn differently and should receive dissimilar instruction. (See *Handbook for Achieving Gender Equity through Education*, especially Chapters 2, 9 and 31 for results from high quality research <http://www.feminist.org/education/handbook.asp>). Many advocates of single-sex education agree that there is more variation within groups of girls and boys than between them. However, they ignore this important truth when excluding everyone of one sex from a school or class intended for all boys or all girls, even if those excluded would meet the criteria and want to enroll. We live in a world where partnership, cooperation, and the ending of patriarchal traditions of male dominance and control are needed for our society's wellbeing. Sex-based separatism institutionalizes sex-based privilege and disadvantage.

Summary and Call to Action. There is no reason for the federal government to support wasteful and harmful efforts to turn back the clock by sex-segregating some public schools. Most efforts to provide sex-segregated education are detrimental and waste resources often for some of the most vulnerable students who face multiple types of discrimination related to poverty, race, ethnicity, disabilities, and gender identity or sexual orientation.

Sex segregation in public education generally does more to increase sex discrimination and stereotyping than it does to decrease sex discrimination, the key purpose of Title IX. Educators and students involved in single-sex education often accentuate stereotypes about sex differences in student learning and interests as a way to justify their segregated classes. Thus, the likelihood of promoting instruction focused on an individual student's specific needs and abilities is decreased. This hurts girls and boys and leads to sex discrimination in hiring teachers and administrators.

Title IX has been a highly effective and popular law. It has withstood many challenges. The 2006 changes in the ED Title IX regulation undermine the intent of Title IX and will continually threaten the advancement of gender equity in U.S. public schools until it is rescinded or otherwise invalidated. There is no right to discriminate on the basis of sex in education while using federal financial assistance. The Obama-Biden Administration's consistent support of gender equality and Title IX would be enhanced by the rescission of this Bush 2006 Title IX regulation and the provision of explicit non-discrimination standards for any schools that want to try sex segregation for affirmative purposes to decrease sex discriminatory outcomes as allowed in the 1975 Title IX regulation. (For other key resources on problems with sex segregation visit the American Council for Coeducational Schooling www.coedschooling.org and FMF www.feminist.org/education/SexSegregation.asp)