

Title IX and Single Sex Education¹

By

Sue Klein, Ed. D., Education Equity Director, Feminist Majority Foundation

Title IX of 1972 Ed Amendments states: “no person in the United States, on the basis of sex, can be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Title IX helps attain the following gender equity goals:

- Both females and males acquire socially valued opportunities and outcomes.
- Decreased use of gender stereotyping in decision making by or about individuals.
- Decreased sex segregation.

This paper will discuss:

1. The extent to which single sex education is allowed under Title IX. (It will not cover what research says about the value of single sex education in increasing gender equity.)
2. Recommendations for researchers and others to use Title IX principles as they address single sex issues.

Single Sex education allowed under Title IX

The current 1975 Title IX Regulations allow single sex schools, classes and activities. But there are specific limitations. Some other laws have additional prohibitions against sex discrimination. They include the 14th Amendment Equal Protection Clause and twenty State Equal Rights Amendments (ERA's) and also state Title IX type laws. Unlike ERAs and some other civil rights legislation, Title IX only prohibits sex discrimination in entities that receive federal financial assistance. It is also limited to education—but may apply to museums, science labs, etc. that receive federal financial assistance. Sex segregation may be a type of sex discrimination but some temporary sex segregation may help reduce sex discrimination in outcomes so Title IX allows some single sex classes, activities, or schools for that purpose. In general, separation of students by sex in classes or activities in mixed-sex elementary and secondary schools is permitted only if it constitutes remedial or affirmative action to decrease sex discrimination in desired outcomes. (See U.S. GAO, 1996 for discussion of these terms.) The Title IX regulations also permit single sex classes for physical education only where the major activity involves bodily contact, and sex segregation of portions of classes that deal exclusively with human sexuality. The regulations also allowed for the continuation of existing single sex schools and colleges. Although single sex vocational schools are not allowed, new single sex elementary and secondary schools are allowed if: There are comparable schools for females and males and if they achieve affirmative action. An example of affirmative action would mean that there is adequate evidence to support claims that the Harlem Women's Leadership Academy helps its female graduates learn and use leadership skills better than if they attended comparable coed schools.

Under the Title IX Regulations there are somewhat different affirmative criteria for single sex schools and classes within coeducational schools. For the classes and related specific gender equity programs it is important to have a replicable well-defined intervention based on gender equity and other research principles and convincing evidence to support specific causal gender equity claims. For example, the Orientation to Nontraditional Occupations for Women (ONOW) program was approved by the U.S. Department of Education Gender Equity Expert Panel (U.S. Department of Education, 2001). For single sex schools a key consideration is comparability of schools for girls and boys – this means analyzing attributes, resources, and services to learn if they are equally valued. Much of the focus is on comparable input and process, but outcomes contributing to reputation and overall worth also should be considered as in the Virginia Military Institute (VMI) Supreme Court decision which showed that Mary Baldwin College was not comparable to VMI and thus VMI had to admit women to comply with the Equal Protection Clause of the 14th Amendment.

Recent Department of Education (ED) actions related to Single Sex Education

Many mistakenly believe that the 2002 No Child Left Behind legislation provides for more federal support for single sex education than previous laws. But it only said that Local Innovative Education Programs may allow funds

¹ Adapted from Power Point Presentation at the AERA/ SIG:RWE, Dayton, OH Conference, October 20, 2005

to be used for any of 27 different activities ranging from programs for cardio pulmonary resuscitation (CPR) training to "Programs to provide same-gender schools and classrooms (consistent with applicable law)" and that ED should issue guidelines for single sex programs. Applicable laws such as the previously described Title IX regulations have allowed for federally funded single sex programs since 1975. In addition to issuing the mandated single sex education guidelines, ED proposed changes in the Title IX single sex regulation in a two-step process. In May 2002 along with the single sex guidelines ED issued a Notification of Intent to Regulate. In March 2004 it proposed changes to the regulations on single sex schools and classes that would make it easy to use single sex education to discriminate, rather than to protect against sex discrimination, the key purpose of Title IX. However, all but about 100 of the 5000 public comments objected to these proposed regulations and they have not been issued.

Recommendations

- Support the continuation and appropriate use of the 1975 Title IX single sex education regulations:
 - If needed, continue to fight changes in Title IX Regulations. Many joined the Feminist Majority Foundation and the National Coalition for Women and Girls in Education and about 5000 others to object to the March 2004 proposed regulations. These changes would have weakened Title IX by allowing increased sex segregation without retaining the current affirmative action requirements to justify single sex schooling.
 - Join the Title IX Action Network at www.feminist.org to keep informed about Title IX resources and challenges and check www.feminist.org/education
 - Instead of changing Title IX Regulations, make the current Title IX Regulations work by allowing ONLY single sex interventions that are fully justified by research and evaluation evidence that they decrease sex discrimination, the sole purpose of Title IX.
 - If asked about single sex interventions, check on legality and follow procedures like WA state.
 - Collaborate with gender equity organizations to develop guidelines to ensure that only single sex interventions that are congruent with the Title IX affirmative action provisions to end sex discrimination and the ED What Works Clearinghouse standards to insure effectiveness are initiated or maintained.
 - Make sure that Title IX Coordinators and others involved in education fully educate people about and implement these guidelines
- Implement single sex education cautiously and make sure it is very likely to decrease sex discrimination.
 - When considering any type of single sex education whether a school or classroom, it is important to remember that: Unlike many other education treatments, sex segregation may be more harmful than helpful and that if it doesn't help decrease sex discrimination it may be illegal under Title IX and other laws designed to protect equal rights. A school system may be sued. For example Hawaii recently had to pay \$900,000 in a Title IX case.
- It may be helpful for other states to consider using the following Washington State procedures for districts proposing single sex education.
 - Provide notice and opportunity to comment
 - Conclude that past gender discrimination remains
 - Explain how the single-gender activity is intended to eliminate specific past gender discrimination
 - Ensure that the single-gender activity is the exception, not the rule and is not used for administrative convenience such as discipline
 - Evaluate to determine when the under-performance ends so the single-gender treatment ends.
- Research and evaluation questions to help guide the decisions about starting or stopping single sex education programs include:
 - Is there a rigorous evaluation of the single sex intervention to show if it is designed to solve a real gender-based difference or need? (Are there big gender gaps in 5th grade reading & math to justify single sex classes in these subjects? If so, how will the sex segregated instruction decrease the gender gaps and sex stereotypes? Is there evidence that it works?)
 - Does it increase or decrease gender gaps in outcomes, sex stereotyping or other negative or positive short or long-term goals?

References

Feminist Majority Foundation website www.feminist.org/education (Check Title IX Defined and Sex Segregation pages.)

No Child Left Behind Act of 2001, SEC. 5131 under Local Innovative Programs. www.ed.gov check legislation

Title IX of the Education Amendments of 1972, Non discrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance, 34 C.F. R 106.1. <http://www.ed.gov/offices/OCR/regs/34cfr106.html> or www.feminist.org/education (Title IX Defined page)

U.S. Department of Education, Office for Civil Rights. "Notice of Intent to Regulate regarding Single Sex Classes and Schools" Washington, DC: May 3, 2002. www.ed.gov/ocr/t9-noi-ss.html

U.S. Department of Education, Office for Civil Rights. "Proposed regulations regarding Single Sex Classes and Schools" Washington, DC: March 8, 2004. [feminist.org/education](http://www.feminist.org/education) See Title IX Defined.

U.S. Department of Education, Office for Civil Rights. "Single Sex Classes and Schools: Guidelines on Title IX Requirements" Washington, DC: May 3, 2002. www.ed.gov/ocr/t9-guidelines-ss.html.

U.S. Department of Education, Office of Educational Research and Improvement, *The U.S. Department of Education's Gender Equity Expert Panel: Exemplary and Promising Gender Equity Programs 2000*. Washington, DC: September, 2001. http://www.ed.gov/pubs/genderequity/gender_equity.pdf or www.feminist.org/education

U.S. General Accounting Office. 1996. *Public Education Issues Involving Single-Gender Schools and Programs*. Report to the Chairman, Committee on the Budget, House of Representatives by Lawless, S. and Poling, S., Washington, DC GAO/HEHS-96-122, May 1996.

Washington State, 1989, "WAC 392-190-050 Course offerings -- Generally -- Separate sessions or groups permissible. Undated, but 1989 filings noted.