



March 11, 2004

To: Editorial Page Editors, Writers and Columnists
From: Marcia D. Greenberger, Co-President, National Women's Law Center
Jocelyn Samuels, Vice President for Education and Employment
Re: New Single-Sex Regulations: Endangering Equal Educational Opportunity for Girls

The Bush Administration's new proposed regulations on single-sex schools and classes would undermine existing protections against sex discrimination and allow schools to provide educational alternatives for girls that fall far short of equality. We urge you to editorialize against this new proposal and in favor of keeping existing anti-discrimination provisions in place.

Last year, the Administration actively considered and encouraged an assault on Title IX (the 1972 federal law that prohibits sex discrimination in education) as it applied to girls' opportunities to play school sports. This campaign was ultimately unsuccessful -- the Administration agreed to keep Title IX athletics policies ensuring equal opportunities for male and female students in place. Now the Administration has mounted a new attack on Title IX and its single-sex regulations, with even more pervasive implications. It's time to leave Title IX alone. It is not broken and doesn't need to be "fixed."

Current law allows school districts to create single-sex schools or classes when appropriate. Where schools want to offer single-sex programs to compensate for barriers that limit educational opportunities for young people on the basis of their gender, they are already allowed to do so. And schools currently offer, completely consistently with the current law, single-sex classes in common sense circumstances such as choirs, to protect privacy and in contact sports. However, right now, strong legal protections are in place, under the Constitution and Title IX, to ensure that these programs do not, even with good intentions, operate to confirm and perpetuate harmful stereotypes that limit girls' opportunities and aspirations.

But the new Title IX regulations would throw out the most basic legal standards prohibiting sex discrimination in education and set back the progress that female students have made over the course of three decades. The Administration's proposed regulations authorize the most general and even admittedly unproven assertions as adequate justification for sex-segregated schools and classes. Schools would be able to create separate programs to which no boys or no girls may apply, based on nothing more than their untested beliefs, stereotypes and assumptions -- or even just the desire to accommodate parents or students in their views -- that a separation of the sexes would bring some educational benefit. This opens the door to sex stereotypes that should not be perpetuated into the next generation -- for example, that boys can only learn when away from girls, who slow them down, or are too inactive. Or that girls are fragile creatures who can only achieve in environments that don't challenge them in fast-paced math or science classes, or that do not place too much emphasis on competition.

Contrary to the “scientifically-based evidence” that this Administration demands to support other educational innovations, this proposal would allow schools to operate on hunches or simply on parental or student preferences. This would be unprecedented. Parents do not, for example, have the choice to opt out of legal mandates that schools desegregate, just as employers have never been able to justify discrimination on the basis of customer or client preference. Allowing parental or student choice to override Constitutional and statutory protections against discrimination is a radical suggestion, and a completely unacceptable one.

In addition, the Administration’s proposal does not ensure that, where a school chooses to create a single-sex program, members of the excluded sex will be provided equal opportunities in the classes *they* take. The proposed regulations allow inequities to exist as long as schools provide overall “substantial equality” between the sexes. This is an amorphous standard, and it can authorize inequities in particular program areas, such as curriculum, admission standards, quality of teachers, or extracurricular activities, as long as those inequities are balanced in some unspecified way with other aspects of the program. Moreover, if the parents of boys assert that girls should be excluded from an advanced physics classes because their presence will hold the boys back, schools may not only act on this assertion, but can typically refuse to offer an advanced physics class just for the excluded girls. We have come too far to accept this kind of inequality, even when cloaked in feel-good terms like “choice” and “flexibility” – as the Administration has described its single-sex proposal.

Fifty years ago this spring, the U.S. Supreme Court announced the fundamental principle that, when it comes to the education of our nation’s young people, on the basis of race separate is inherently unequal. Just last year, the Court reaffirmed the proposition that diversity – exposing students to those different than themselves – is an important educational value. The Administration’s push for sex-segregated education represents a return to a time when girls had far fewer and inferior educational opportunities, and turns its back entirely on the lessons our nation’s history has taught. Title IX’s regulations should not be amended. Equal educational opportunities for girls must be preserved.

For more information, please see “The Administration’s Proposed Single-Sex Regulations Endanger Equal Opportunity for Young Women in the Nation’s Schools” at <http://www.nwlc.org/pdf/ProposedSingleSexRegs.pdf> or call 202-588-5180 for further background.

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The National Women's Law Center is a non-profit organization that has been working since 1972 to advance and protect women's legal rights. NWLC focuses on major policy areas of importance to women and their families including economic security, education, employment and health, with special attention given to the concerns of low-income women.