



Sex-Segregated Education

BACKGROUND ON SEX-SEGREGATED EDUCATION

Sex-segregated classes, activities, and schools often rely on debunked misinformation suggesting there are neurological differences between girls and boys requiring different learning environments. In reality, this rationale for sex-segregated education is rooted in sex-based stereotypes. Nevertheless, as of 2018, nearly 800 coeducational public schools today have at least some sex-segregated programming at the PK-12 level, including

academic classes.¹ In addition, the United States has more than 130 all-girl or all-boy public schools, including public charter and magnet schools.²

School districts often rely on the works of two authors who assert benefits to sex-segregated education: Leonard Sax, a physician and psychologist who founded the National Association for Single Sex Public Education, and Michael Gurian, founder of the Gurian Institute. Both still conduct teacher trainings nationally. Sax asserts that girls' and boys' brains are hardwired differently and develop so differently

that they should be taught using different methods, such as teaching girls mathematics with concrete examples while engaging boys in abstract math.³ Gurian makes similar claims based on regressive sex stereotypes, including that: boys are better than girls in math because their bodies receive daily surges of testosterone, while girls have equivalent mathematics skills only during the few days in their menstrual cycle when they have an estrogen surge; boys are by nature abstract thinkers and so are naturally good at things like philosophy and engineering, while girls are by nature concrete thinkers; and full participation by girls in athletics is not “neurologically or hormonally realistic.”⁴

However, numerous studies by reputable neuroscientists and child development experts have debunked these claims and have consistently found that cognitive abilities and learning needs differ more *within* groups of girls and boys than *between* them.⁵ For example, the Association for Psychological Science selected six independent cognitive experts to examine sex differences in learning math and science. These experts concluded: “None of the data regarding brain structure or function suggests that girls and boys learn differently or that either sex would benefit from single-sex schools.”⁶ Research abounds supporting this conclusion and debunking claims that single-sex schooling leads to improved outcomes.⁷ In 2014, the American Psychological Association published a National Science Foundation-funded meta-analysis of 184 studies, representing testing of more than 1.6 million PK–12 students, examining the impact of sex-segregated versus coeducational schooling across a range of outcomes. The authors conclude that when proper

controls are used, studies show that sex-segregated education provides no benefits over coeducational schooling.⁸

Unfortunately, sex-segregated education programs have nevertheless proliferated in recent years. For example, in 2018, a New Jersey school district taught its teachers in a mandatory training that face-to-face seating is appropriate for girls but will promote conflict in boys; that bright lights and strong teacher voices facilitate learning for boys but elicit a stress response in girls; and that boys learn best through competitive, dynamic games, but girls flourish in a more collaborative setting.⁹ Similarly, a 2012 study found that a Virginia school district stated “[b]oys prefer reading material that is non-fiction, or if fiction, adventure oriented” whereas “girls prefer reading fiction material that does not necessarily contain much action.”¹⁰ Similarly, a Wisconsin school district collected materials that trained teachers to ask boys about literature, “What would you DO if...?” while asking girls, “How might/would you FEEL if...?” and that boys like “[b]eing ‘On Top’ ... Being a Winner!!” while girls like “[b]eing ‘Accepted’, liked, loved!!!”¹¹

Not only do these sex-segregated programs reinforce harmful gender stereotypes, but they also often fail to offer comparable subjects or teaching methods for boys and girls, provide no comparable option for students who prefer coeducation, allocate fewer (or no) resources for girls’ programs,¹² and are correlated with high race-based segregation.¹³

Developments Since 1972

Both the U.S. Constitution and Title IX include safeguards to ensure that educational programs do not classify students on the basis of sex in a discriminatory manner. One of the primary purposes of Title IX was to put an end to educational practices that separated boys and girls on the basis of societal expectations about their interests and capabilities (for example, steering girls into home economics and boys into woodshop, calculus, and physics). Title IX on its face does not permit the separation of girls and boys within coeducational schools, although its regulations have always allowed for separation for contact sports, for sex education, for chorus, and for affirmative and remedial action.¹⁴ The Constitution requires that in public schools, any gender-based classification (whether in a coeducational school or a sex-segregated school) have an “exceedingly persuasive justification” and be “substantially related” to an important governmental objective.¹⁵ The Supreme Court has limited when gender classifications by governmental actors are justified under the Constitution, noting that such classifications must be “determined through reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions about the proper roles of men and women.”¹⁶ The Court has further clarified that “overbroad generalizations” about the typical talents, capacities, and preferences of men and women are an impermissible basis for separation of the sexes.¹⁷ This prohibition on basing single-sex educational programs on sex stereotypes is echoed in current Department of Education guidance regarding sex separation.

The original Title IX regulations issued in 1975 essentially prohibited separation of boys and girls in any academic and vocational classes in coeducational schools, with the exception of classes intended to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex.¹⁸ (See also [Gender- and Race-Conscious Programs](#) and [Athletics](#).¹⁹) In 2002, President G.W. Bush signed into law the No Child Left Behind Act, which contained a provision allowing the Department of Education to fund innovative sex-segregated schools and classrooms “consistent with existing law.”²⁰ In 2006, the G.W. Bush administration’s Department of Education issued Title IX regulations that allowed for some single-sex classes in coeducational schools, as well as expressly allowing for the creation of new single-sex PK–12 schools.²¹ Under the 2006 regulations, schools can exclude girls or boys from a class or extracurricular activity if that exclusion is justified by: 1) the offering of diverse educational opportunities (e.g., offering a girls-only AP Calculus class in addition to a coeducational AP Calculus class to increase girls’ enrollment in AP Calculus), or 2) a needs objective (e.g., offering a boys-only third-grade reading class to address the pattern of low reading performance among third-grade boys).²² Critically, these objectives serve as a justification only if they “do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex” and if “the single-sex nature of the class or extracurricular activity is ‘substantially related’ to achieving that objective.”²³

DEVELOPMENTS SINCE 1972 *continued*

Unfortunately, sex-segregated classes—not justified under either objective—proliferated in the immediate wake of the 2006 regulations because they were misinterpreted by non-lawyers, including educators, as allowing *all* single-sex classes. Many of these classes were based on the debunked theories of innate neurological and developmental differences between boys and girls.²⁴ Accordingly, in 2014, the Obama administration’s Department of Education issued a Title IX guidance instructing schools to offer single-sex classes and extracurricular activities sparingly and only when all of the 2006 regulatory requirements are met.²⁵ The guidance further clarified that any such classes could not incorporate the use of different teaching strategies or methods based on gender stereotypes.²⁶ While the 2014 guidance substantially clarified the rule and set forth

many barriers to establishing single-sex programs, even now most single-sex programs do not observe the proscriptions in the guidance. Recent single-sex programs for Black boys with the stated goal of remediating unmet needs and discriminatory history ignore the same history and unmet need of Black girls.²⁷

In addition to harming both girls and boys, these practices have opened schools and school districts to legal action by the Department of Education, the Department of Justice, state education and civil rights agencies, and private citizens.²⁸ The bright line of the pre-2006 regulations should be restored so that schools can focus on educating to the diversity of all students rather than creating curricula based on sex stereotypes.

Recommendations

The Department of Education should:

- Rescind the 2006 Title IX single-sex regulations and initiate enforcement efforts against sex-segregated classes and activities that rest upon and perpetuate gender stereotypes, and update relevant Title IX guidance documents to reflect this change.
- Ensure that the partial Title IX exemption for schools controlled by religious organizations is narrowly construed, so that federal funding is not used to subsidize discrimination based on sex, including sex-segregated education based on sex stereotypes.
- Continue to collect data on sex-segregated classes and schools among PK–12 students in the Civil Rights Data Collection.

RECOMMENDATIONS *continued*

Schools should:

- Look to evidence-based practices to meet the needs of all students without relying on sex stereotypes that limit learning.
- Refrain from instituting sex separation based on sex stereotypes, or for any other reason without an exceedingly persuasive justification. Furthermore, sex separation must be based on valid evidence that it will be effective in achieving a stated educational purpose, and should be instituted only as a last resort, after other methods have been attempted.
- Increase transparency by fully informing parents and families of the rationale and curricula for these programs and by making such information publicly available on the school's website.
- In addressing the racial opportunity gap, ensure that any programs benefit girls of color and boys of color equally.
- Ensure that, where Title IX compliant single-sex classes and activities are in place, transgender students are permitted to participate in classes and activities consistent with their gender identity.

- 1 Sue Klein et al., *Tracking Deliberate Sex Segregation in U.S. K-12 Public Schools 1*, Feminist Majority Foundation (2018), <https://feminist.org/wp-content/uploads/2020/06/SexSegReport2018.pdf>.
- 2 *Id.*
- 3 Leonard Sax, *Why Gender Matters: What Parents and Teachers Need to Know About the Emerging Science of Sex Differences* at 9, 94–104, (2017).
- 4 Michael Gurian, *The Boys and Girls Learn Differently Action Guide for Teachers* at 17, 75, 90–92, 100 (2003)
- 5 National Coalition for Women and Girls in Education, *Title IX At 45: Advancing Opportunity through Equity in Education 64* (2017), available at <https://www.ncwge.org/singlesex.html>.
- 6 Diane F. Halpern et al., *The Science of Sex Differences in Science and Mathematics*, 8(1) Psych. Sci. in the Pub. Interest 1-51 (2007).
- 7 See Lise Eliot, *Pink Brain, Blue Brain* (2009); Diane F. Halpern et al., *The Pseudoscience of Single-Sex Schooling*, 333(6050) Science 1706–1707 (Sept. 23, 2011), <https://feminist.org/wp-content/uploads/2020/06/pseudoscienceofsinglesexschooling.pdf>; Alan Smithers & Pamela Robinson, *The Paradox of Single-Sex and Co-Educational Schooling* (2006).
- 8 Erin Pahlke et al., *The Effects of Single-Sex Compared with Coeducational Schooling on Students' Performance and Attitudes: A Meta-Analysis*, 140(4) Psychological Bulletin 1042-1072 (2014), <https://www.apa.org/pubs/journals/releases/bul-a0035740.pdf>.
- 9 Mary Bozenmayer, *Gender Stereotyping Has No Place in My Classroom*, American Civil Liberties Union (Mar. 22, 2018), <https://www.aclu.org/blog/womens-rights/womens-rights-education/gender-stereotyping-has-no-place-my-classroom>.
- 10 American Civil Liberties Union, *Preliminary Findings of ACLU "Teach Kids, Not Stereotypes" Campaign 4* (Aug. 20, 2012) [hereinafter ACLU "Teach Kids, Not Stereotypes" Report], https://www.aclu.org/files/assets/doe_ocr_report2_0.pdf.
- 11 *Id.*
- 12 See, e.g., American Civil Liberties Union, *Leaving Girls Behind: An Analysis of Washington D.C.'s "Empowering Males of Color" Initiative* (May 2016) [hereinafter ACLU "Leaving Girls Behind" Report], <https://www.aclu.org/report/leaving-girls-behind>.
- 13 Kiera Butler, *The Discredited Science Behind the Rise of Single-Sex Public Schools*, Mother Jones (May 2020), <https://www.motherjones.com/politics/2020/05/single-sex-public-schools-brain-science-gender>.
- 14 34 C.F.R. § 106.34.
- 15 *United States v. Virginia*, 518 U.S. 515 (1996).
- 16 *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 726 (1982).
- 17 *Id.* at 730.
- 18 45 C.F.R. §§ 86.3(b), 86.34 (issued in 1975 by Department of Health, Education, and Welfare). See also 34 C.F.R. §§ 106.3(b), 106.34(a).
- 19 34 C.F.R. §106.41.
- 20 Pub. L. 107-110 § 5131(a)(23). This source of funding is no longer available.
- 21 34 C.F.R. § 106.34(b)-(c).
- 22 34 C.F.R. § 106.34(b)(1)(i)(A)-(B). See *infra* note 22 (2014 guidance).
- 23 *Id.*
- 24 See ACLU "Teach Kids, Not Stereotypes" Report, *supra* note 10, at 4.
- 25 Department of Education, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities 21* (Dec. 1, 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.
- 26 *Id.*
- 27 E.g., Letter from African American Policy Forum to President Barack Obama, *Why We Can't Wait: Women of Color Urge Inclusion in 'My Brother's Keeper'* (sent June 17, 2014; updated May 4, 2021), <https://www.aapf.org/post/why-we-can-t-wait-women-of-color-urge-inclusion-in-my-brother-s-keeper>; Maryland State Department of Education, *Transforming the Culture of Maryland's Schools for Black Boys* (April 2021), <https://www.marylandpublicschools.org/stateboard/Documents/2021/0427/MSDETransformCultureforBlackBoys.pdf> (relying on Sax and Gurian's theories to recommend establishing single-sex classes targeting Black males); ACLU "Leaving Girls Behind" Report, *supra* note 12.
- 28 E.g., American Civil Liberties Union, *School District Will Act to Correct Discriminatory Training Based on Gender Stereotypes* (Aug. 26, 2019), <https://www.aclu-nj.org/en/press-releases/school-district-will-act-correct-discriminatory-training-based-gender-stereotypes>; *Doe v. Vermillion Parish Sch. Bd.*, 421 Fed. App'x 366, 371 (5th Cir. 2011) (applying heightened scrutiny to school board's decision to separate boys and girls into parallel single-sex classrooms within a coeducational school); *Doe v. Wood County Bd. of Educ.*, 888 F.Supp.2d 771 (2012) (enjoining mandatory sex-segregated core curriculum classes in co-educational public middle school).