

NCWGE NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

Mr. Gerald A. Reynolds
Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Avenue SW
Room 5000
Mary E. Switzer Building
Washington, DC 20202-1100

July 8, 2002

RE: Single-sex Notice of Intent Comments

Dear Assistant Secretary Reynolds:

On behalf of the National Coalition for Women and Girls in Education (NCWGE), a nonprofit coalition of more than 50 organizations dedicated to improving educational opportunities for women and girls, we express our opposition to and grave concerns regarding your May 8 Notice of Intent to Rule (NOIR) on amending the regulations of the Title IX of the Education Amendments of 1972. NCWGE believes that Title IX and its regulations serve as a crucial backstop to ensuring that *all* students have equal education opportunities.

Equality did not exist in 1972 when Title IX was enacted, and while many improvements have been made since that time, there is much to be done before true gender equity in education is achieved. Ongoing problems include rampant sexual harassment in our nation's schools; under-representation of females in math, science, and high technology programs; female students' significantly lower scores on a wide variety of standardized tests; highly sex-segregated vocational education programs with female students overwhelmingly in programs that are "traditionally female" and lead to low wage jobs; exclusion of female students from many athletics opportunities, including athletic scholarships worth millions of dollars; and discrimination against pregnant and parenting young women, combined with wholly inadequate educational opportunities, which exacerbate high dropout rates and foster economic dependence.

Historically, single-sex education has deprived women and girls of educational opportunities critical to their advancement in society, relying on harmful stereotypes to limit girls' opportunities and aspirations. Even where parallel programs have been established for girls, they have tended to be distinctly unequal, with fewer resources and inferior offerings. We are not very far from the days when girls were required to take home economics while boys took shop, and girls were excluded from prestigious academic high schools that were for boys only. For these reasons, Congress and the courts have struck a careful balance, authorizing single-sex programs only where adequate safeguards are in place to ensure that the programs will not reinforce stereotypes or perpetuate discrimination. Both Title IX and the U.S. Constitution permit single-sex education in appropriate circumstances, but also provide careful legal protections so that girls' opportunities and aspirations are not limited by sex-segregated schools or classes. These safeguards must be maintained, and any attempt to weaken them is unwarranted and ill-advised. Moreover, where the law limits the use of single-sex programs, any effort to expand those programs could subject schools to the risk of legal challenge.

On May 8, the Department of Education issued a NOIR expressing the Secretary's 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." As you know, Title IX regulations already permit a wide-array

of single-sex programming. Title IX does not explicitly cover admissions policies in non-vocational elementary and secondary institutions, at least in those that were single-sex before Title IX was enacted. Title IX regulations also allow for the creation of single-sex classrooms in specific circumstances, such as competitive athletics, human sexuality, and choirs. Further, single-sex classes and schools can be created for compensatory purposes to allow women and girls to overcome barriers to equal education. However, Title IX explicitly prohibits single-sex education in the context of vocational education, professional education, graduate-level education, and public institutions of higher education. Further, local educational agencies and their public schools are government-run institutions, to which constitutional principles of equal protection apply. In *United States v. Virginia*, 518 U.S. 515 (1996), the Supreme Court held that the Constitution allows for single-sex education programs that are compensatory and operate to overcome barriers

It is also unclear why after 27 years of public education existing under the current Title IX single-sex regulations, the Department of Education has determined to amend such regulations. Although, section 5131(a)(23) of P.L. 107-110, the No Child Left Behind Act (NCLBA), allows local education agencies to use innovative programs funding “to provide same-gender schools and classrooms (consistent with applicable law),” the bill did not call for opening up Title IX regulations. Rather, the NCLBA only required the Department of Education to issue guidelines on applicable law to schools seeking funding under section 5131(a)(23). The Office for Civil Rights (OCR) fulfilled this requirement, although the guidance, also issued on May 8, was cursory and did not address how schools can implement single-sex education in schools consistent with applicable law, which includes not just Title IX, but also all relevant Supreme Court decisions and the Constitution, particularly the Equal Protection clause of the 14th amendment. The Department of Education has received no mandate from Congress, schools, parents, or teachers to amend Title IX regulations in the name of increased flexibility in the arena of single-sex education.

The NCLBA repeatedly points to the need for “scientifically-based research” to be the foundation of implementing new programs and initiatives. However, the research on single-sex education is at best inconclusive, largely anecdotal, and based on the private and parochial schools, not public schools. For example, research on the failed attempt made by the state of California to implement single-sex education resulted in reinforced sex stereotyping, despite a clear state government mandate and honest efforts from teachers, schools, and policymakers to create quality, equal education opportunities for boys and girls.¹ The AAUW Educational Foundation’s 1998 report, *Separated by Sex*, summarized the most recent research on this issue and is the result of commissioned papers, a review of the literature, and proceedings from the Foundation’s national roundtable that assessed the research on single-sex education in K-12 public schools. The report came to many important conclusions: 1) there is no evidence that single-sex education in general “works” or is “better” than co-education; 2) educators and policymakers need to further identify the components of a “good education;” 3) single-sex educational programs produce positive results for *some* students in *some* settings; and 4) the long-term impact of single-sex education for boys and girls is unknown. The report showed conflicting research including revealing that girls do better in some single-sex classes, such as math classes, where they feel more confident in participating in class by raising their hands and answering questions versus other research pointing to diminished achievement for girls in single-sex classrooms.² It is clear that there is much to learn on the value of single-sex education as a whole and in what circumstances is it beneficial and what circumstances is it not. NCWGE does not believe that Title IX should be altered in the name of developing an education program that may or may not be beneficial to students’ ability to learn in public education.

¹ Datnow, A., Hubbard, L., & Conchas, G. (2001). How Context Mediates Policy: The Implication of Single Gender Public Schooling in California. *Teachers College Record, Volume 102, Number 2, 184-206.*

² “Separated by Sex: A Critical Look at Single-sex Education for Girls,” AAUW Education Foundation (1998).

NCWGE believes that single sex education does not guarantee improved schools. Rather, the elements that enable children to succeed in single-sex education can be replicated in coeducational settings. These elements include a focus on core academics, small class size, qualified teachers, sufficient funding, and parental involvement. New York City's Harlem Girls School in has been a huge success for the girls who attend and has all of the elements for a quality education. However, if all of these elements were replicated in a co-ed public school, we anticipate a similar educational result. Further, it is unclear whether boys in that school district or even girls unable to attend the Harlem Girls School are receiving an equal education. Co-educational public schools, where 90 percent of our students learn, should be improved with proven methods and not untested ideas. Until we know if single-sex education actually improves student performance, Title IX should not be amended.

Again, we strongly oppose amendments to Title IX's implementing regulations that would weaken the current standards, and request that the Administration reconsider its decision to open long-standing Title IX regulations. If you have any questions, please contact Nancy Zirkin, American Association of University Women at 202/785-7720, Jamie Pueschel, American Association of University Women at 202/785-7730, or Leslie Annexstein, National Women's Law Center, at 202/588-5180.

Sincerely,

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Co-Chair

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