AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

Mr. Kenneth L. Marcus
U.S. Department of Education
400 Maryland Avenue SW
Room 5000
Mary E. Switzer Building
Washington, DC 20202-1100

April 15, 2004

RE: Single-Sex Proposed Regulations

Dear Mr. Marcus:

On behalf of the 100,000 members of the American Association of University Women (AAUW), we submit the following comments to object to your March 9 Single-Sex Proposed Regulations amending the regulations of Title IX of the Education Amendments of 1972 regulations. AAUW believes Title IX and its regulations serve as a crucial backstop to ensuring that *all* students have equal education opportunities. We urge you to abandon the attempt to change Title IX regulations regarding single-sex education.

Overview

AAUW has been a leader in the promotion of women and girls in education since its founding in 1881. We were a key player in the passage of Title IX in 1972, and have devoted the thirty years since to the preservation of its crucial anti-discrimination protections. It is unclear why now, after three decades of public education existing under the current Title IX single-sex regulations, the Department of Education Office of Civil Rights (hereafter referred to as OCR) has determined to amend these regulations. Although the No Child Left Behind Act [NCLB, 5131(a)] allows local education agencies to use Innovative Assistance Programs funds "to provide same-gender schools and classrooms (consistent with the Constitution and applicable civil rights law)," the bill did not call for amendments to the Title IX regulations. OCR 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.

AAUW objects to these regulations for the following reasons. First, gender discrimination is still prevalent in K-12 education. Second, the research on single-sex education and its benefits is inconclusive, thus giving us legitimate reason for concern that OCR is giving schools unproven flexibility options. Third, AAUW fears the proposed regulations offer little responsibility for accountability to OCR for the implementation of single-sex classes and schools. Finally, the proposed regulations raise constitutional concerns and create legal liability for schools.

Gender Discrimination is Still Prevalent in K-12 Education

Research suggests that discrimination is still quite prevalent, and is perhaps more dangerous because it is subversive. Teacher attitudes towards students frequently reflect a gender bias,[1] and the broader presence of gender stereotype reinforcement and embedded discrimination are present in all schools – regardless of whether the school is coeducational or single-sex.[2]

AAUW believes that discrimination in education can only be prevented by maintaining strong civil rights standards. While this country has taken great strides towards equity, there is still much to be done before we can say that males and females are treated equitably in education.[3] Furthermore, the progress women have made depends on the constant enforcement of anti-discrimination protections. OCR suggests that discrimination against women is not as prevalent as it was in 1972 when Title IX was passed. While the environment for women in education has vastly improved, this does not justify easing discrimination protections. AAUW is disturbed that OCR admits that "there are still more gains to be made" (11276) yet moves forward in its effort to weaken the very law that brought about the massive achievements women and girls have made in the last thirty years. Regardless of the intention, by amending Title IX these regulations will necessarily weaken the laws protecting against discrimination. Experience with similar civil rights laws has shown that opening them up for amendment generally leads to restricting their impact.[4] Without overt anti-discriminatory policies, both girls and boys still experience a wide array of stereotyping and latent discrimination. These factors taken together must serve to heighten our defense of existing civil rights laws and their ongoing need for consistent application and enforcement.

No Conclusive Research on Single-Sex Education

The research on single-sex education is at best inconclusive, largely anecdotal, and based on private and parochial schools – many of which are outside the United States. The AAUW Educational Foundation's 1998 report on single-sex education, *Separated by Sex*,

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[1] "Inner-City Single-Sex Schools: Educational Reform or Invidious Discrimination." 105 Harvard Law Review 1756-57 (1992), which shows that teachers tend to be more biased and impose different expectations and requirements on boys and girls.

[2] Lee, Valerie E. and Marks, Helen M. "Sexism in Single-Sex and Co-educational Independent Secondary School Classrooms," Sociology of Education 67 (1994)

[3] Brake, Deborah L. "A Legal Framework for Single-Sex Education." WEEA Digest published by Women's Educational Equity Act (WEEA) Resource Center (October 1999); Professor Brake lists the following ongoing problems and barriers that exist for women and girls in education: "1) discrimination against pregnant girls and young mothers, combined with wholly inadequate educational opportunities for these students that exacerbate high drop-out rates and foster economic dependence, with all of its attendant problems; 2) the rampant nature of sexual harassment; 3) substantial underrepresentation of females in math, science, and other technology programs; 4)significantly lower test scores by female students on a wide variety of standardized tests; 5) prejudices against girls' participation in the classroom; 6) biased curricula; 7) predominantly sex-segregated vocational education programs, with females overwhelmingly directed into training programs for historically female – and traditionally low-wage – jobs; 8) the exclusion of female students from many athletic opportunities, including athletic scholarships worth hundreds of millions of dollars; and 9) the exclusion of women from consideration by entire classes of other scholarships, many for student infields in which men already have a participation advantage." (p. 5)

[4] Eglit, Howard. "The Age Discrimination in Employment Act, Title VII, and the Civil Rights Act of 1991: Three Acts and a Dog That Didn't Bark". 39 Wayne Law Review 1093; 1096-1106 (1993)

summarized the most recent research 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:

- There is no evidence that single-sex education in general "works" or is "better" than co-education;
- Educators and policymakers need to further identify the components of a "good education;"
- Single-sex educational programs produce positive results for *some* students in *some* settings; and
- 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, versus other research pointing to diminished achievement for girls in single-sex classrooms.[5]

OCR bases its argument for greater flexibility in the single-sex education regulations upon the assumption that "educational research has suggested that in *certain circumstances* [emphasis added] single-sex education provides educational benefits for *some students* [emphasis added]" (11276). Yet OCR itself admits that the final word on the benefits of single-sex education has yet to be determined (see footnote 3 of proposed regulations). Indeed, there is a great deal of controversy surrounding the effectiveness, and potential harm, of sex segregation in schools. AAUW believes that allowing experimentation on students in such a manner runs counter to the spirit of the No Child Left Behind Act of 2001 (NCLB), which repeatedly points to the need for "scientifically-based research" to be the foundation of implementing new programs and initiatives.

The validity of research claims about the impact of single-sex education is certainly questionable. AAUW believes the lack of uniformity and accountability in the proposed regulations would muddy our understanding of the impact of such educational options on achievement. Although OCR's overview states that single-sex education may only be appropriate in certain circumstances, the regulations do not identify what the goals of single-sex education should be, nor do they give local educational agencies (LEAs) clear guidelines on when sex segregation might be appropriate and what it should seek to accomplish.

In other words, LEAs do not have to prove that there is a problem, and they do not have to prove that sex segregation will fix the problem. It is highly likely that there are spurious variables other than sex segregation that attribute to a good educational environment (teacher quality, parental involvement, small class size, school resources, etc.). According to existing research, good school environments – single sex and coed – share these common characteristics and practices. Thus it appears that it is *context* that matters, rather than demographic composition of students. The Harlem Girls School in New York City has been a huge success for the girls who attend and has all of the above

[5] "Separated by Sex: A Critical Look at Single-sex Education for Girls," report by AAUW Education Foundation (1998).

elements for a quality education. However, if all of these elements were replicated in a co-ed public school, AAUW anticipates a similar educational result.

There are two potential arguments for sex segregation advanced in the scholarly literature, one sociological and the other academic. The sociological argument evidences increased self-esteem, class participation, and confidence of girls who attend single-sex classes.[6] AAUW contends, however, that if girls feel more comfortable in an all-girl classroom, then there must be something wrong in the coeducational environment. Yale Law School professor Jack Balkin argues that single-sex education "can be embraced as a relatively cheap solution to educational problems in urban schools that diverts attention from severe long-term problems of inequality and lack of educational opportunity in public education. Given a fixed educational budget, dollars could be better spent on improving general educational quality than on creating single-sex schools and classrooms."[7] Single-sex classes do little to resolve the underlying problem for which segregation is deemed to be the solution. Segregation does nothing to encourage fair treatment and respect for either gender, and nothing to change the behavior of teachers who may be treating students differently.[8]

The academic argument is based on the assumption that girls and boys prosper in different subjects, and should be divided by gender so classroom curricula can better suit each gender's overall needs.[9] The sum of the scholarly literature, however, demonstrates that though girls may feel more comfortable in single-sex classes, their academic achievement is not correlated with single-sex classrooms.[10] If schools are able to demonstrate that one sex tends to perform under or above par in any particular subject, schools will be able to offer a single-sex class for advancement or remediation. It is not made clear why advanced or remedial classes – that serve ALL students who need help or who need a more stringent challenge – would not meet this goal. A girl who is strongly advanced in physics might be denied the opportunity to take an advanced physics class if the school only offered it to boys, because in the aggregate boys outperform girls in physics. Denying advancement or remedial opportunities to either sex based on aggregate test scores only further cements sex-based stereotypes about educational achievement. Boys who do well in literature should be encouraged to take an advanced class, even if overall the class is dominated by girls. Similarly, girls who perform above

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[6] Rowe, Kenneth J. "Single Sex and Mixed Sex Classes: The Effects of Class Type on Student Achievement, Confidence and Participation in Mathematics" 32 Australian Journal of Education 2 (1988)

[7] Balkin, Jack M. "Is There a Slippery Slope From Single-Sex Education to Single-Race Education?" 37 The Journal of Blacks in Higher Education (August 2002) www.jbhe.com/features/37_balkin.html; this argument is also substantiated by Hildebrand, Gaell. "Together or Apart?: Organization, Policy, and Practice in Co-educational and Single-Sex Education," (1996) paper presented at American Educational Research Association annual meeting in New York

[8] *Inner-City Single-Sex Schools* (1992)

[9] Harvey, T.J. "Science in Single-Sex and Mixed Teaching Groups"27 Educational Research 3 (1985) (Shows girls in coed schools perform better in science than girls in single-sex schools, and that no difference was apparent for boys in coed or single-sex schools.)

[10] AAUW study, (1998) p. 22; Macfarlane, J. and Crawford, P. "The Effect of Sex-Segregated Mathematics Classes on Student Attitudes, Achievement, and Enrollment in Mathematics," evaluation for the North York Board of Education, Willowdale, Ontario, September 1985 (found that even though students perceived higher performance, their marks did not improve upon entering single-sex classrooms)

average in mathematics should be encouraged to take classes that challenge them, even if they are a minority in that class. If a school decides there is an educational need in creating different classes for students with different abilities, entry into those classes should be based solely on ability – not on gender stereotypes.

AAUW recommends careful evaluation of current single-sex schools so that we can determine if there are aspects of such schools that are working and whether or not that success is related to the variable of educating a single gender or other variables. Such research should also consider the effects single-sex schools have on the remainder of the school district where such schools exist.

Proposed Regulations Do Not Provide Accountability in Classes or Schools

AAUW supports strong standards and accountability for every school in America, and especially for those that receive federal dollars. This accountability serves to ensure that schools offer each student the best possible education, and that they do so in a manner consistent with civil rights requirements. The proposed regulations relax standards and accountability requirements on schools and LEAs in the implementation of single-sex classes and schools.

1. **Single-sex classes:** The proposed regulations [Proposed 34 CFR 106.34 (b)] charge recipients with ensuring that any single-sex class complies with Title IX and the Constitution. OCR will not require that plans for single-sex classes be submitted in advance to ensure compliance with the law. This lack of oversight and uniformity places girls at risk of discrimination, as the very school that wants to implement single-sex classes (for whatever reason it feels justified in doing so) is also responsible for making sure that the excluded sex is not unduly disadvantaged. AAUW is concerned that civil rights, administered in this self-regulated manner, will only be protected retroactively through complaints and lawsuits brought by students and their parents. The proposed regulations provide little substantive guidelines that delineate between appropriate and inappropriate sex segregation, creating substantial liability problems for schools that choose to exercise this proposed "flexibility."

   The proposed regulations also allow schools to provide more single-sex opportunities to one sex than to the other sex. If a school offers "significantly more" (11279) opportunities to one sex than to the other sex, OCR will investigate to determine if discrimination is a factor. However, given OCR's very loose concept of what constitutes discrimination, AAUW fears schools will be permitted to offer substantially *unequal* educational opportunities.

   The proposed amendments outline two potential justifications [Proposed 34 CFR 106.34(b)(1)(i)] upon which a school may rely in offering a single-sex class – (1) to provide a diversity of educational options to students and parents provided that the single-sex nature of the class is substantially related to achievement of that objective [Proposed 34 CFR 106.34 (b)(1)(i)(A)]; or (2) to meet the particular, identified educational needs of its students, provided that the single-sex nature of

the class is substantially related to meeting those needs [Proposed 34 CFR 106.34 (b)(1)(i)(B)].

a. **Diversity of Educational Options:** On the first justification for single-sex classes, OCR mistakenly assumes that a diversity of educational options is an inherently valuable goal. OCR has consistently advocated for increasing parental choices for children in public education, without proving that choice is appropriate in public education. However, the legal responsibility for ensuring nondiscrimination in education lies with OCR, not with parents, which is why uniform standards and accountability measures should always be in place. While AAUW is certain that this administration would consider advancing single-sex education as a way of increasing parental options, there are many additional problems with this theory. By increasing some parents' options, other parents will have fewer options. Whose choices would you allow? If some parents want their children in single-sex classes and others within the same grade do not, how would parental preferences be balanced? To which parents would a school be expected to listen?

   AAUW cannot stress enough the danger in putting constitutional matters in the hands of parental preference [Proposed 34 CFR 106.34 (b)(1)(i)(A)].[11] As the proposed regulations note, surveys from parents demonstrating interest and desire will be sufficient justification to establish a single-sex class for one sex, excluding the other sex. Parents of a particular religious faith could band together and request a separate class for their students simply because they do not want them mingling with the other sex – even if there is no strongly demonstrated educational need to be advanced. While AAUW strongly supports parental involvement in their children's education, parents do not have the right to trump civil rights protections.

   AAUW fears that by allowing parents to decide that there may be some benefit in single-sex education (without having to meet objective standards), schools will now be justified in abandoning constitutional civil rights standards. In no other aspect of public education do parental wishes have so much sway over the applicability of federal standards and constitutional mandates. OCR wishes to allow schools flexibility to provide "diversity of educational options" to only one sex if the schools choose. As OCR notes later in the proposed regulations, schools do not have to provide the same single-sex opportunities, or even a substantially equal number of single-sex opportunities in the aggregate, to both genders. Even if the quality of single-sex opportunities is substantially equal, the amount of such opportunities does not have to be equal, so the same diversity of options may not be available to the excluded gender. Schools can offer a very shallow justification – that parents would prefer single-sex classes because "they believe they would provide a benefit not available in coeducational classes" (11278) – in order to

[11] This country's southern region would have never been fully integrated had parental preference driven school policy on busing in the 1960's and 1970's.

offer these opportunities. If there is a benefit that is not available in coeducational classes, then by virtue of establishing a class solely to provide such a benefit to some students but not to others, the two classes will not be substantially equal. OCR asserts, in footnote seventeen, that the Supreme Court has not addressed the question of whether or not a school that provides a single-sex class should be required to provide a single-sex class for the excluded sex. Rather than erring on the side of caution, OCR has decided to gamble and allow schools to only offer a coeducational option for the excluded sex without knowing whether or not this advice is constitutional.

AAUW is also concerned that, if one sex is allowed the opportunity for self-segregation, students who do not opt out of coeducational classes will now be a substantial minority in the coeducational classroom. If the argument is made that girls face difficulties in coeducational classes, those difficulties will be dramatically compounded when some girls are pulled out, off-setting the gender balance in the coeducational environment. The problems between boys and girls may become extraordinary when girls become a minority in the classroom. Schools should be places that try to eradicate stereotypes, not encourage them.

b. Meeting the Educational Needs of Students: On the second justification for single-sex classes, OCR does not offer schools clear guidelines in determining the legitimacy of a causal link between single-sex classes and educational needs. The school will have the ultimate determination of what educational need there is to be met, how that need is to be identified, and how to prove that sex segregation is the best way to meet such educational need. AAUW is concerned about how schools will identify and service the "particular, identified needs of its students" (12278) and how OCR can be certain that these "identified needs" are not perceived needs based on harmful stereotypes. As there is scant oversight into how schools implement single-sex classes, there will be no way to know if educational needs are assessed – even if unintentionally - using discriminatory and stereotypical measures.

Furthermore, in footnote fourteen, OCR cites the two Supreme Court cases outlining when the Constitution permits sex-based classifications.[12] The Court required that proponents of such segregation must "demonstrate" (12278) that segregation is causally connected to the objective of the segregation. However, under the proposed regulations, schools and LEAs do not have to "demonstrate" that segregation is necessary to anyone. The proposed regulations recommend that the school have sufficient reason, but that the case does not have to be made ahead of time, thus schools are only accountable post hoc.

[12] *United States v. Virginia (Virginia)*, 518 U.S. 515 (1996), and *Mississippi University for Women v. Hogan* (Hogan), 458 U.S. 718 (1982)

On this point, OCR has tried to make the case that schools may decide on their own what educational or government objective is served by sex segregation. They cite, in footnote 14, the *Virginia* case where the Court made allowances for segregation. However, in writing the majority opinion in that case, Justice Ginsburg noted that gender-based classifications must have "an exceedingly persuasive justification" in order to be constitutional. This high burden of proof requires that not only should schools have *some* reason to segregate the sexes, but that the reason be extraordinarily compelling and that it be documented by "compelling research evidence."[13] OCR encourages schools to use "reliable information and sound educational judgment," though as previously noted parental wishes may count as reliable information. The qualitative difference between these two tests is both striking and alarming. AAUW is concerned that what may be perceived as reliable information or sound judgment under the proposed regulations may be grounded harmful stereotypes or latent biases.

OCR attempts to protect against discrimination claims by requiring recipients to "periodically evaluate their single-sex classes to ensure nondiscrimination" [Proposed 34 CFR 106.34(b)(4), 11280]. There are no standard requirements or methods of evaluation put forth that every school should have to demonstrate. The proposed regulations allow schools to design and carry out their own self-evaluation offering no base-line criteria that schools must examine. Furthermore, the schools must only evaluate whether or not they are discriminating against one gender. It is not required that schools actually prove single-sex education meets any educational goal (which was supposedly the entire purpose of the initial sex segregation). Effectiveness and goal attainment are not part of the self-evaluation. It defeats the point of allowing single-sex classrooms on the basis of furthering an educational goal when schools are not required to prove that such a goal is met, and is not at all in keeping with the spirit of No Child Left Behind.

2. **Single-sex Schools:** Under the new regulation proposals [Proposed 34 CFR 106.35], OCR will allow LEAs to operate single-sex schools for one sex without having to offer the same opportunity to the other sex. OCR offers no justification for why this is legal or constitutional. In a May, 2002 statement ED agreed "There is already flexibility in the regulations for allowing school districts to offer single-sex nonvocational schools as long as certain conditions are met."[14] Without provocation, necessity, or even justification, OCR has decided that "diversity" and "educational choice" can be denied on the basis of gender, which actually *reduces* parent and student flexibility. Under current guidelines, parents of a male child could be guaranteed that their son would have the opportunity to

[13] Interpretation of Ginsburg opinion; Salomone, Rosemary. "The Legality of Single-Sex Education in the United States: Sometimes "Equal" Means "Different." In A. Datnow and L. Hubbard (Eds.) Gender in Policy and Practice: Perspectives on Single-Sex and Coeducational Schooling. New York: RoutledgeFalmer 68 (2002)

[14] "Secretary Paige Visits Harlem Young Women's Leadership School," Press Release, U.S. Department of Education, May 30, 2002.

attend an all-male elementary school if one exists for girls as well. Under the proposed guidelines, these parents will have no such choice and that child will not be treated equitably.

OCR proposes to relieve LEAs of any responsibility to justify establishing a single-sex school, and denying that opportunity to the excluded sex [Proposed 34 CFR 106.34(c)]. The only requirement is that there be a substantially equal coeducational school. Further, LEAs will be allowed to create as many single-sex opportunities for one gender as it wishes. The unequal balance of single-sex schools will not violate Title IX according to these new regulations. To support this decision, OCR relies upon Congress' decision to exempt convocational and secondary schools in the legislative history of Title IX. AAUW finds the logic simply absent from this construction, and finds no reading of Title IX or its legislative history to support the claim that "because Title IX does not cover admissions to these types of educational institutions, we have determined that Title IX does not impose an obligation on these recipients to avoid sex-based disparities in providing the opportunity to attend a single-sex… school." On the contrary, the regulatory interpretation of Title IX in other contexts supports the claim that opportunities to both sexes must be substantially proportionate to the total number of students of each sex. While Title IX does not prohibit gender segregation in limited and appropriate circumstances, the spirit of Title IX certainly contradicts any claim that it is permissible to provide benefits and opportunities *unequally* to both sexes.

AAUW is deeply troubled that OCR has chosen to grant charter schools operating as their own LEA complete exemption from the substantial equality requirement [Proposed 34 CFR 106.34(c)(2)]. It is unconscionable that OCR would allow any entity receiving federal funds to be completely exempt from federal anti-discrimination and civil rights laws. AAUW would like to remind OCR that charter schools are still public schools, and as such charter schools are not exempt from the same nondiscrimination laws as all other schools receiving public funds. The justification for such exemption, according to OCR, is that Title IX standards regarding substantial equality would "unduly burden and inhibit" (11282) charter school creation and operation. In no other context is a school or LEA exempt from accountability and discrimination standards when they become "unduly burdensome," and it is shameful to allow the perceived inconvenience of civil rights law to be a legitimate excuse to ignore its mandates.

Proposed Regulations Raise Constitutional Concerns

AAUW supports current Title IX regulations because they are consistent with constitutional requirements surrounding equal educational opportunities. The proposed regulations threaten to place Title IX at odds with Fourteenth Amendment equal protection guarantees. The potential constitutional concerns are barely addressed in the proposed regulations. OCR does not require recipients to obtain prior approval for a single-sex class or school, and does not require that schools implement this option uniformly, thus many schools will be exposed to legal liability. To avoid responsibility,

OCR suggests recipients "consult legal counsel regarding how these additional legal authorities may affect" that school's program (11277, footnote 5). AAUW believes this recklessly endangers schools by not providing adequate guidelines regarding constitutional concerns.

While the Supreme Court has never ruled specifically on the legitimacy of single-sex educational opportunities at the elementary and secondary school level, OCR has fallaciously interpreted their *lack* of ruling on the matter to be a "carte blanche" for allowing nonvocational schools to engage in single-sex education (11277, footnote 4). OCR sites one instance where a lower court allowed a school district to operate two comparable single-sex schools in addition to a coeducational school,[15] yet does not take into account that this court upheld the creation of single-sex schools for *both sexes*, although OCR declares such balanced opportunity is not necessary [Proposed 34 CFR 106.34 (c) and 34 CFR 106.35]. It is not clear the proposed regulations regarding the creation of single-sex schools would be consistent with the Third Circuit Court decision.

OCR cites the substantial equality standard as being the determinant of constitutional segregation [Proposed 34 CFR 106.34 (b)(3)]. OCR falls far short of providing schools with sufficient guidelines to determine what constitutes substantially equal opportunities. The proposed regulations go to great lengths to highlight that substantially equal does not mean identical. Policies and benefits applying to single-sex versus coeducational classes do not have to be exactly the same, only roughly the same. By asserting, however, that there is some benefit to be gained by sex segregation, but denying that benefit to both sexes, OCR's argument that equal does not mean identical is irrelevant. If single-sex education provides a significant educational benefit, that benefit tips the balance scale of "substantially equal" and makes the coeducational class inherently unequal. If single-sex education does not provide a significant educational benefit, then there is no reason to segregate. Either way, OCR's argument is rendered inherently flawed.

The viability of having such programs comes under further question when the legality is considered. How would a school ensure equality in education? In *Brown v. Board of Education,* the Supreme Court said "separate but equal" is inherently unequal because segregation sets up real opportunities for discrimination and stereotyping whether it is intentional or not. The difficulty in providing equal opportunity that is inherent in separating the sexes would open schools up to liability currently not faced. Even if Title IX regulations were altered in the name of added flexibility in single-sex education, schools still have to comply with the Constitution. Even when parallel programs have been established for girls, they have tended to be distinctly unequal with fewer resources and inferior offerings.[16] It is without question that it would be nearly impossible to set up even a single-sex education system based on equality, which should be the standard for the education of all students in public schools.

Finally, OCR incorrectly deems that "substantially equal" only applies to quality, not to quantity. AAUW contends that even if a single-sex and coeducational class were found

[15] *Vorchheimer v. School District of Philadelphia*, 532 F.2d 880 (3rd Circuit Court, 1976)
[16] This point is made in the *Virginia* case, 518 (1996).

to be substantially equal in content, an unequal number of single-sex opportunities for one sex is inherently unequal. Title IX and the Constitution are violated when schools are allowed to deny these opportunities, in a potentially significant amount, to one sex.

Overall, these regulations shift the burden of proof in a manner inconsistent with the Constitution. OCR allows complete leeway anywhere the law is gray or the Supreme Court or Congress have not explicitly spoken. Rather than exercising cautious judgment, OCR has erred on the side of exorbitance – taking extreme liberty rather than moderate flexibility – with Title IX's civil rights protection. This is particularly disturbing given OCR's own acknowledgement of the scant and inconclusive research on this issue. In the end, OCR has abolished by administrative fiat the "exceedingly persuasive justification" the Constitution requires[17] for implementing single-sex education.

Conclusion

AAUW strongly recommends that all Title IX regulations remain intact. As we have demonstrated, the proposed regulations ignore the fact that discrimination still exists and strong protections are necessary; they dismiss existing research, which does not necessarily support an overhaul in sex segregation; they pose accountability concerns and threaten No Child Left Behind; and they potentially violate constitutional requirements.

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 amend the long-standing and effective Title IX regulations. If you have any questions, please contact Lisa Maatz, Director of Public Policy and Government Relations, at 202/785-7720, or Lynsey Morris, Government Relations Manager, at 202/785-7730.

Sincerely,

Nancy Rustad
President

Jacqueline Woods
Executive Director

[17] Justice Ginsburg, *U.S. v. Virginia* 518 U.S.