



FEMINIST MAJORITY FOUNDATION

Working for Women's Equality

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Re: Single-Sex Proposed Regulations Comments

In the thirty years since Title IX's passage, opponents of women's equality have fought its implementation and sought to undermine it at every turn. The Department of Education's proposed regulations on single-sex schooling are the latest attempt by those who would deny equal education and equal opportunity on the basis of sex. The Feminist Majority Foundation urges the Department of Education to abandon these proposed regulations, leave Title IX unchanged, and fully enforce Title IX's prohibition on discrimination in federally funded education.

The Feminist Majority Foundation (FMF) advocates full equality for women and men. FMF was co-founded in 1987 by Eleanor Smeal, former President of the National Organization for Women (NOW). As President of NOW, Ms. Smeal was a leader of the campaign to pass the Civil Rights Restoration Act to override the Supreme Court's decision in *Grove City College v. Bell*, 465 U.S. 533 (1984). FMF was part of the coalition of women's groups that opposed and successfully halted the Department's attempts to weaken the athletic provisions of Title IX in 2003. FMF recently established an Education Equity Program to help increase gender equity in education. It is providing leadership in developing an authoritative research synthesis *Handbook for Achieving Gender Equity Through Education*.

These proposed regulations are antithetical to the spirit, purpose, and letter of Title IX. The regulations alter a very successful system of statute and regulations, ignore that Title IX regulations already provide for single-sex education in appropriate circumstances, increase the likelihood of gender discrimination in education, do not meet the Department's own requirements for relying on rigorous scientific studies, and, in the end, will harm students. In 1954, the Supreme Court stated, "[w]e conclude that in the field of public education the doctrine of 'separate but equal' has no place" and ended the system of race segregated schools. Fifty years later, an Administration that has shamefully shortchanged and under-funded the nation's public schools has revived this divisive and discriminatory policy in a blatant effort to undermine public schools and women's equality.

I. Title IX Has Been Effectively Addressing Discrimination in Education for Thirty Years and Should Not be Dismantled.

Title IX is *the reason* access and opportunities in education for women and girls have increased. Prior to Title IX, women and girls were routinely kept out of classes and schools and given inferior resources. Because of Title IX, the opportunities for women and girls have improved tremendously. Math, science, and industrial arts classes are no longer closed to girls and women, and students are no longer tracked into specific classes because of their sex. Rather, students' abilities and interests determine their education. As a direct result of Title IX and the increased opportunities girls have in education, the number of women in applying to and attending college and professional schools has increased remarkably. Since 1972, the number of women enrolled either part-time or full-time in college has more than doubled as has the number of women enrolled in graduate programs. Women are now 49% of the applicants and new entrants to medical schools; prior to Title IX, women were approximately 9% of applicants and entrants. And women are now almost half of the classes entering law schools.

Rather than changing the Title IX regulations to permit more sex segregation and discrimination, the Department should be enforcing current regulations to fulfill Title IX's purpose and promise and to protect and expand gender equity both in and through education.

II. The Current Title IX Regulations Allow for Appropriate Single-Sex Education In the Only Situation Where it Should be Allowed—to Remedy Sex Discrimination.

Although completely ignored by the Department's proposed regulations, the current Title IX regulations do provide for single-sex education but limit its use to targeted interventions to overcome discrimination and increase equality in education. Specifically, sex segregation is "permitted if it constitutes remedial or affirmative action." "Affirmative action," in turn, is defined as efforts "to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex." 34 C.F.R. § 106.3. This current exception to the general rule of coeducation contains exactly what the proposed regulation lacks—a defined reason for single-sex education that is tied to discrimination and a method to ensure that the single-sex education is used to overcome discrimination, not to create more. This exception to Title IX's requirement for gender integrated schooling is targeted, limited, and should remain the Department's policy.

Under the current guidelines, educational institutions have been able to use single-sex education when it is necessary to overcome discrimination. The Department has recognized and supported this use of single-sex education. For example, in 2000 the Department approved the recommendations of the Gender Equity Expert Panel that

the Orientation to Non-Traditional Occupations for Women (ONOW) program be listed as an exemplary program that worked to help women. This Gender Equity Expert Panel was a precursor to the Department's new What Works Clearinghouse and used similar criteria related to effectiveness. See the Gender Equity Expert Panel report http://www.ed.gov/pubs/genderequity/gender_equity.pdf.

III. The Proposed Regulations Would Increase Sex Discrimination in Education.

A. The Proposed Regulations Would Allow Education Decisions to be Based on Discriminatory Stereotypes and Invalid Assumptions About What Will Improve Education

The proposed regulations list a variety of ill-defined reasons a school may consider in deciding to have single-sex classes (parental choice, parental or student preference, “sound educational judgment”) without including procedural safeguards or even cautioning schools that choices, preferences, or “sound judgment” should not be based on discriminatory stereotypes or reinforce discriminatory stereotypes. Because the proposed regulations never question the real reason for the selection of gender segregated education, the regulations would allow gender segregation if the motivation was a principal who (in her “sound educational judgment”) thought girls’ science classes should include only examples relating to cooking and boys’ should include only ones related to rockets. In effect, the discriminatory or stereotypical beliefs of parents or educators will be allowed to override federal civil rights mandates.

The regulations also would permit gender segregation in education if a school identifies its program as meeting the “particular, identified educational need” of its students. Nowhere in the undefined identification process, however, is a school required to identify how *coeducation* or even *discrimination* created this need. Under these regulations, sex segregation would be a viable remedy for any type of perceived educational failing, regardless of its source. Furthermore, a school would not be required to consider or try other, less discriminatory means than gender segregation to meet the “identified” need. By not requiring schools to try interventions short of sex segregation, these regulations would allow schools to use discrimination to attempt to address any perceived problem even if a less drastic measure would have solved it.

B. The Regulations Specifically Will Not Provide Students with Equal Resources.

The Department's proposal legalizes gender discrimination as long as both gender's receive “substantially equal” resources. The Department goes out of its way to define what “substantially equal” is not—equal— but is much more unwilling to define what it is. The Department's planned standard does not protect

against discrimination against the disfavored gender and would allow drastically unequal opportunity, resources, and educational experiences. Under these regulations, a school could be considered in compliance with Title IX if it offered its boy students an all male math class with 10 students which allowed each student individual access to a computer and its girl students a coeducational computer class with 20 students so that students had to share computers.

When less than equality is the standard, girls will be shortchanged. In the Virginia Military Institute (VMI) litigation, many decision makers, including the State of Virginia, the district court judge, and a majority of the Fourth Circuit Court of Appeals judges found that women would receive a “substantially comparable” education to that offered to men at VMI at the Virginia Women’s Military Institute (VWMI). They reached this decision even though students’ SAT scores at VWMI were 100 points lower than students at VMI, VWMI’s faculty was paid less, VWMI offered far fewer degrees, VWMI’s endowment was a fraction of VMI’s and VWMI lacked the alumni support and alumni network of VMI. *Id.* at 526-527. A study of “single-sex Catholic schools found that per-pupil expenditures at boys’ schools were 25 percent higher than those at girls’ schools, and 30 percent higher than those at coed schools.” Patricia B. Campbell and Jo Sanders, “Challenging the System: Assumptions and Data behind the Push for Single-Sex Schooling” in A. Datnow and L. Hubbard (Eds.) Gender In Policy and Practice: Perspectives on Single-Sex and Coeducational Schooling. New York: RoutledgeFalmer (2002). Campbell and Sanders also describe the changes that a private boys’ school and girls’ school underwent in order to become coeducational. When girls entered the boys’ school, the curriculum was not changed because “they [the faculty] believed they already had the best curriculum.” As boys entered the formerly all girls’ school however, “many changes occurred in the academic programs, curriculum, and extra-curricular offerings....As a school originally designed for girls, Grove was *not* good enough for boys.” (emphasis in the original).

Furthermore, the proposed regulations provide that the “substantially equal” standard can be met by offering one gender single-sex education and the other coeducation. This is a change from current Title IX regulations, but the proposed regulations do not explain why the Department has made this change or offer any support for the idea that coeducation can provide a “substantially equal” alternative to single-sex education. Of course, the mere fact that coeducation can be “substantially equal” completely belies the need for sex segregation—if the Department truly believes that education is “substantially equal” in a coeducational class, there is no need for sex segregation to occur. And, while preserving the idea that no student can be forcibly assigned to a single-sex class, the Department ignores that by allowing single-sex classes for one gender, but not the other, schools will create *de-facto* single-sex classes or will have classes with a tiny number of one gender and a large number of the other.

IV. The Proposed Regulations Do Not Meet the Department's Own Requirements for Basing Educational Decisions on Rigorous Scientific Evidence.

The recommended changes permit single-sex education for almost any purpose and bypass the current protections against sex discrimination. The regulations' proposed justifications and procedures are so flawed that they do not meet the Department of Education's *own standards* for evidence-based decision making.

As the proposed regulations are forced to acknowledge, there is no social science support for the idea that single-sex education increases educational attainment or that it is likely to be better than coeducational schools or classes. As study after study has shown, the qualities that make some single-sex schools and classes attractive – less students, motivated parents, motivated teachers, a clear focus, and resources – are the same factors that make any school or class successful. Indeed, the Department itself in 2003 commissioned a study of the effects of single-sex educational programs. If such a study is deemed necessary, it seems very premature to for the Department to be changing the Title IX regulations to allow more single-sex education. The Department's actions also cast strong doubt on the independence of this proposed study and whether the conclusions it will draw have been predetermined by the Administration.

The proposed regulations reflect a total disregard of evidence-based decision-making that the Department, in other contexts, advocates as a key method to improve education. For example, the programs that are to be promoted on the Department's What Works Clearinghouse www.w-w-c.org all have to meet rigorous scientific standards. The proposed regulations, however, offer no research-based justification for the major change in Title IX civil rights policy. Evidently, in this instance at least, the Department does not think it is important to have evidence to support changes it endorses. This decision is especially disturbing because the Department has a mandated responsibility to provide federal civil rights protections and oversight while decisions about testing and instruction in the subject areas, where the Department does require higher standards of evidence, are typically left to the states.¹

¹ When asked about the lack of a requirement for evidence-based decision-making for single-sex education, the Director of the Department's Institute of Education Sciences said that the Department did not need to use evidence for policy decisions in some areas. The Director did not explain how the Department reached this determination or why it decided that civil rights protections should be one of those areas. *Response of Grover Whitehurst, Director of Department of Education's Institute of Education Sciences, to a question from Dr. Susan Klein, FMF Education Equity Director, at March 11, 2004 Conference on Scientific Evidence in Education: A Report Card on Policy & Practice.*

Because the proposed regulations cannot be defended by current research, the Department has claimed that the new regulations will allow researchers and educators to learn what works in sex segregated education.² Given the way that single-sex activities would be handled under the proposed regulations, this claim is baseless. Past experience with single-sex interventions (and educational research and evaluation in general) has shown that it is not feasible to learn about the impact of single-sex activities if they are poorly designed, non-replicable, and lack appropriate evaluations that could support claims that the sex segregated aspect of the activity, rather than other factors contributed to the outcomes. Given the free-for-all that will occur if schools follow the suggestions in the proposed regulations on how and why they may segregate students by sex, the research value of this enterprise will be completely compromised.

More specifically, nothing will be learned about the value of single-sex interventions in increasing gender equity—or anything else-- because the proposed regulations contain no mechanism that would be conducive to such research. The proposed regulations contain no method for the Department to track how many schools are using single-sex education, the reasons for that decision, the types of classes the schools are offering, the resources the schools are supplying students, and the outcomes of these experiments. Without any monitoring mechanisms or requirements for plans and results to support claims about the value of the single-sex activities, the Department and researchers will not be able to follow or study the effects of these classes and the new regulations. The potential for research will be further undermined by the Department's rule that permits schools to give different sexes unequal resources. Without resources being held constant, it will be simply impossible to determine if the single-sex nature of the class, or some other variable, caused the observed changes in the children's education.

V. The Sex Segregation Permitted by These Proposed Regulations Will Harm Students.

Nowhere in the proposed regulations are schools instructed to consider, or even informed of, the negative effects of the decision to segregate students based on sex. In the work place, in political decision-making, in higher education, and in every facet of daily life, women and men must perform a gender-integrated atmosphere. Sex segregation, like race segregation, forces people to know each other only through stereotypes, not as intelligent, competent people who can perform a variety of tasks and roles. The Department and this Administration should recognize that the same considerations that argue against government sanctioned race segregation in schools—the stigma of inferiority, the reliance on discriminatory stereotypes, the unequal resources—apply equally to sex segregation.

² Kenneth L. Marcus, Acting Director of the U.S. Department of Education Office for Civil Rights, National Public Radio, Talk of the Nation Interview, March 8, 2004.

Moreover, the regulations contain no requirement that schools train instructors of single-sex classes to avoid discriminatory stereotypes, monitor the classes to ensure that they are not being used to reinforce negative gender stereotypes, or require that the classes actually challenge discriminatory stereotypes about the abilities of each gender.

Unless it is carefully monitored and managed, research shows that single-sex education will simply reinforce damaging gender stereotypes. For example, take the case of a school that uses single-sex education to “protect” girls from the harassment of their boy classmates. This rationale reinforces several negative stereotypes about both boys and girls—that boys are somehow “naturally” going to misbehave, and that girls’ response to that should be to hide, rather than to require equal treatment. *See* Patricia B. Campbell and Jo Sanders, “Challenging the System: Assumptions and Data behind the Push for Single-Sex Schooling” in A. Datnow and L. Hubbard (Eds.) Gender In Policy and Practice: Perspectives on Single-Sex and Coeducational Schooling. New York: RoutledgeFalmer (2002) (“By removing the girls rather than dealing with the issue of classroom misbehavior and the disrespect that are creating the problem in the first place, we are assuming a stereotyped view of girls as gentle, weak creatures who cannot handle the rough environment of the real world. Moreover, we are implicitly accepting these beliefs.”)

In the working world, we would never suggest that women who are being harassed be put in a special office. We would demand, as the current Title IX regulations require, that the harassment stop and that the women be given equal opportunity. This should remain the standard. Without such requirements, Title IX will be used to support schools that reinforce outmoded beliefs about the interests and abilities of boys and girls—exactly the opposite of what the legislation intended.

Essentially, the proposed regulations and the entire push toward gender segregated education are based on harmful, inaccurate stereotypical beliefs about the “essential nature” and “inherent differences” of females and males. These inaccurate, discriminatory beliefs are the same ideas that are used to keep girls and women out of traditionally male employment, schools, and athletics. Of course, history shows that when women, girls, men, and boys, are given opportunities—in math classes, parenting classes, dance classes or on the playing field—they rush to them and perform admirably. Lack of opportunity, not lack of ability, is what holds women and girls back, and that is where the Department’s focus should be.



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