

April 23, 2004

Kenneth L. Marcus, Esq.
U.S. Department of Education
400 Maryland Avenue, S.W.
Room 5000
Mary E. Switzer Building
Washington, D.C. 20202-1100

RE: Single-Sex Proposed Regulations Comments

Dear Mr. Marcus:

On behalf of the six million members of the National PTA, I respectfully submit the following comments opposing the Department of Education's proposed amendments to regulations implementing Title IX of the Education Amendments of 1972 (Title IX) governing single sex classes and schools.¹ The National PTA is the largest volunteer child advocacy organization in the United States comprised of parents, teachers, students, and other citizens working to improve the education, health and well-being of all children. Since the National PTA was founded in 1897, it has advocated for improving educational opportunities for all children. The National PTA opposes the proposed regulations because rather than providing expanded educational options for all children, they would undermine protections set forth in Title IX and the U.S. Constitution, threaten equal opportunity in education for women and girls, and weaken the Nation's public school system.

Title IX, which was enacted in 1972 to prohibit sex discrimination in federally assisted education programs, as well as the U.S. Constitution, provide vital safeguards to ensure equal opportunity for millions of students. The enforcement of these protections over the last 30 years has resulted in women and girls making dramatic gains in both education and in the workplace.

¹ The National PTA also supports comments submitted by the Leadership Conference on Civil Rights (LCCR) and has signed on to comments submitted by the National Coalition for Women and Girls in Education.

Under current law, single-sex classes and schools are generally prohibited, except in certain carefully defined situations. Where permitted, gender based classifications may not be based on, or result in, stereotypes or overbroad generalizations about the interests and abilities of each gender, *United States v. Virginia*, 518 U.S. 515, 533 (1996); “perpetuate the legal, social and economic inferiority of women,” *id.* at 534; or be based on the preferences of parents or students. *Brown v. Board of Education*, 349 U.S. 294, 300 (1954). Instead, recipients have the “demanding” burden of showing that a single-sex program is substantially related to an “exceedingly persuasive justification.” *Virginia*, 518 U.S. 515.

The National PTA opposes the Department’s proposed changes for the following reasons:

1. Title IX Protections are Still Warranted

Discrimination in education against women and girls still persists. Ongoing problems include sexual harassment, under-representation of females in math, science and high-technology programs, highly sex-segregated vocational education programs with female students overwhelmingly clustered in “traditionally female” programs that lead to low-wage jobs, exclusion of female students from many athletic opportunities, including athletic scholarships worth millions of dollars, and continued discrimination against pregnant and parenting young women. Historically, single-sex education has operated to deprive women and girls of equal educational opportunities and perpetuated harmful stereotypes that have limited girls’ aspirations. Therefore, while some gains have been made in these areas since the passage of Title IX, an increase in sex-segregated education will increase the likelihood of discrimination.

2. The Proposed Regulations Provide Inadequate Safeguards

The Department of Education’s proposed regulations would relax current standards with respect to permitting single-sex schools and classes at the elementary and secondary school levels by allowing such programs based on a mere assertion of educational benefit. Schools would not be required to articulate the educational benefit they are trying to achieve, or produce evidence that a sex-segregated program will promote that benefit. Moreover, while the regulations require that the school system provides “substantially equal” opportunities for both sexes, they do not explicitly require that there be equal single-sex programs for the excluded gender, or equal opportunities class by class or subject by subject

3. The “Separate But Equal” Doctrine Does Not Work

The proposed regulations would undermine equal opportunity in education even if single-sex opportunities were guaranteed to all students. This year we are celebrating the 50th anniversary of the Supreme Court’s landmark decision in *Brown v. Board of Education*, in which the Court held, in the race context, that “separate but equal” is inherently unequal. As stated by Chief Justice Earl Warren in the majority decision: “To separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the

community that may affect their hearts and minds in a way very unlikely ever to be undone ...". *Brown, supra*. Such separation was also found to set up opportunities for discrimination and perpetuate stereotypes, whether intended or not. In the area of sex segregated education, this has also been the case, for even where parallel programs have been established for girls, they have tended to be distinctly unequal, with fewer resources and inferior offerings.

4. Current Law Already Provides Flexibility

Changes to the regulations are unnecessary because current law already permits single-sex classes and schools in appropriate circumstances. Gender based classifications are allowed to remedy past discrimination to allow girls and women to overcome historical barriers to equal education. In addition, Title IX permits separate gender programs for physical education involving contact sports, human sexuality classes for elementary and secondary schools, and choirs. The Department has made no showing that current regulations are inadequate to promote educational benefits and reduce discrimination.

5. We Should Not Experiment with Our Nation's Children and Scarce Funds

Meaningful school reform should be based on demonstrated strategies and sound science, not controversial and unproven options. Yet, the Department of Education fails to point to any scientific evidence to support its position that additional single-sex classes and schools are needed to improve public education. In fact, existing research by the Department of Education and others is inconclusive.² Moreover, the proposed changes would require more funding for additional teachers, at a time when funding is scarce and state and local education agencies already lack the necessary resources to implement reforms required by the No Child Left Behind Act.

For the reasons set forth above, the National PTA opposes the proposed regulations and urges the Department to preserve the current regulations that have effectively protected equal opportunity in publicly funded education for over three decades. If you have questions regarding these comments, please contact Nancy Segal, Legislative Manager, National PTA, at 202-289-6790.

Sincerely,

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Linda M. Hodge
President

² See U.S. Department of Education, Office of Educational Research and Improvement, *Single-Sex Schooling: Perspectives from Practice and Research*, Vol. I, OR-94-3152, p. 17 (Dec. 1993); and *Separated by Sex: A Critical Look at Single-Sex Education for Girls*, American Association of University Women Educational Foundation (1998).