

## THE ADMINISTRATION'S PROPOSED SINGLE-SEX REGULATIONS ENDANGER EQUAL OPPORTUNITY FOR YOUNG WOMEN IN THE NATION'S SCHOOLS

The Bush Administration's new proposed regulations on single-sex programs would undermine existing protections against sex discrimination and sex stereotyping and authorize schools to provide educational alternatives for girls that fall far short of equality. Current law governing single-sex programs allows such programs when appropriate, but contains strong legal protections to ensure that the programs do not, even with good intentions, operate to confirm and perpetuate harmful stereotypes that limit girls' opportunities and aspirations.

Among the ways in which the Administration's proposal undermines those critical protections are the following.

- **The Administration's proposed regulations weaken Title IX protections based on the inaccurate assumption that discrimination against girls and women is a thing of the past so that stronger laws are no longer needed.** The proposed regulations assert that thirty years ago, it was reasonable to presume that single-sex classes would lead to discrimination, but that "the situation has [now] changed dramatically . . . schools are now far more equitable in their treatment of female students." As a result, the Department claims, "additional flexibility is warranted, and . . . will not compromise equal educational opportunities." (Proposed Regulations, pp. 5-7.) These statements ignore the dramatic evidence of continued sex discrimination against women and girls in education. Moreover, the absence of effective protections against sex discrimination in the Administration's proposals means that the proposed regulations will open the door to a *new* wave of educational inequities for female students, without leaving young women with a strong Title IX on their side.
- **The Administration's proposed regulations authorize the most general and unproven assertions as adequate justifications for single-sex classes.** Under Title IX and the Constitution, schools may offer single-sex programming that is compensatory and that will help to overcome barriers to equal educational opportunity and gender-stereotyping. But the proposed regulations throw open the doors to practically unlimited justifications for single-sex programs, including assertions that these classes will offer a diversity of educational options or meet "particular identified educational needs of students." The proposed regulations allow schools to make these decisions in a virtually standardless way, based on their own unchecked assessments or simple assertions of educational benefit.

And the proposed regulations specifically request that commenters provide *additional* justifications for allowing schools to offer single-sex programs. (Proposed Regulations, p. 16.)

- **The Administration’s proposed regulations create a standard unprecedented in civil rights law – that parent and student “preference,” no matter what that preference is based on, can dictate the scope of civil rights protections that a school will provide to its students.** The proposed regulations explicitly allow schools to provide single-sex classes “based on parental or student preference,” without regard to the constraints of existing law. (Proposed Regulations, p. 18.) This is a standard that has been consistently and universally rejected as an appropriate measure of the application of civil rights protections. Parents have never been able to opt out of legal mandates that schools be desegregated, just as employers have never been able to justify discrimination on the basis of customer or client preference. Allowing parental or student choice to override statutory and Constitutional protections against discrimination is both morally unacceptable and unlawful.
- **Contrary to the mandate of No Child Left Behind, the Administration’s proposed regulations do not require “scientifically based” evidence for implementation of single-sex programs.** The proposed regulations would authorize schools to implement single-sex classes based merely on their own judgment or hunch. Recipients are requested to use only “reliable information and sound educational judgment,” (Proposed Regulations, p. 19), with no requirement that they demonstrate the scientific or empirical basis for their view that single-sex programming would provide educational benefits. In fact, the proposed regulations explicitly allow schools to implement single-sex classes where students and parents prefer it based merely on a “belief” that such classes will provide a benefit. (Proposed Regulations, p. 16.)
- **The Administration’s proposed regulations dispense with any need to justify single-sex schools at all.** The proposed regulations suggest that because recipients have no Title IX obligation to “avoid sex-based disparities in providing the opportunity to attend a single sex” school (Proposed Regulations, p. 35), they need not “justify establishing a single-sex school.” (Proposed Regulations, p. 33.) These statements ignore Constitutional constraints, which very clearly set carefully defined limits on the circumstances in which school districts may establish single-sex schools, and expose schools to liability for ignoring those standards. To state that schools need not offer a justification for decisions to create single sex schools makes a mockery of the fundamental requirement of equal protection that schools make sex-based distinctions only where they have an “exceedingly persuasive” reason for doing so.
- **The Administration’s proposed regulations authorize schools to provide alternatives for the excluded sex that fall far short of equality.** The proposed regulations authorize schools to provide single-sex programs as long as they offer

“substantially equal” benefits to the excluded sex. But the proposal then describes “substantially equal” to allow substantial inequality, by making clear that only coeducational – and not single sex -- options for the excluded gender will typically be required. (Proposed Regulations, p. 24.) The proposed regulations also allow inequities in supposedly equal schools to exist, as long as those schools provide substantial equality “in the aggregate” to the chosen and the excluded sex. (Proposed Regulations, p. 55.) This standard authorizes inequities in particular program areas, such as curriculum, admission standards, quality of teachers, or extracurricular activities, as long as those inequities are balanced in some unspecified way in other aspects of the program. It is fundamentally inconsistent with basic civil rights principles and should be rejected here as well.

For all of the foregoing reasons, the Administration’s proposal dramatically weakens effective civil rights protections, and represents an unprecedented assault on Title IX that would set back the progress that female students have made over the course of three decades. The Administration should reconsider and reject this attack.