January 31, 2007

Dear Colleague:

I am writing to inform you that the U.S. Department of Education (Department) has amended the regulations implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (Title IX), applicable to nonvocational single-sex classes, extracurricular activities, and schools at the elementary and secondary education levels. These new regulations were published in the Federal Register on October 25, 2006, and took effect on November 24, 2006.

The new regulations apply to local educational agencies (LEAs) and other recipients of financial assistance from the Department that provide nonvocational elementary and secondary education. They provide recipients more flexibility to offer nonvocational elementary and secondary classes, extracurricular activities, and schools on a single-sex basis, consistent with the nondiscrimination requirements of Title IX. Title IX prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance.

The purpose of these new regulations is to provide requirements that, if implemented by recipients, will ensure compliance with Title IX in those situations in which recipients choose to provide nonvocational single-sex education. Like the former regulations, the new regulations do not require that recipients provide single-sex education. Single-sex education is merely an option. Recipients of financial assistance from the Department that choose to provide single-sex education should carefully evaluate their policies and practices and ensure their programs meet the requirements of the regulations.

**Summary of Title IX requirements for single-sex classes and extracurricular activities**

The new regulations provide for a new exception to the general prohibition against single-sex classes and extracurricular activities. Under the former regulations, single-sex classes were generally prohibited in a coeducational school with specific limited exceptions, such as for sex education classes and contact sports in physical education classes. The new regulations retain the specific exceptions from the former regulations and add a new exception, which permits a recipient to provide single-sex nonvocational classes and extracurricular activities based on the recipient’s “important objective.” Each single-sex class or extracurricular activity must be based on the recipient’s important objective.

The new regulations establish two important objectives upon which a recipient may base a single-sex class or extracurricular activity. The first important objective is to improve educational achievement of its students through a recipient’s overall established policy to provide diverse educational opportunities.
The second important objective is to meet the particular, identified educational needs of a recipient’s students. Regardless of the recipient’s important objective, the regulations require that the single-sex nature of the class or extracurricular activity be substantially related to achieving the recipient’s important objective.

A recipient that chooses to provide single-sex classes or extracurricular activities is required to implement its important objective in an evenhanded manner with respect to male and female students. The regulations require that student enrollment in any single-sex class or extracurricular activity must be completely voluntary. The regulations also require that the recipient provide to all students, including the students excluded from the single-sex class or extracurricular activity based on sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity. In addition to the required substantially equal coeducational class or extracurricular activity, a recipient, if necessary to comply with the requirement to implement its objective in an evenhanded manner, may also be required to provide a substantially equal single-sex class or extracurricular activity in the same subject or activity to students of the excluded sex.

After a recipient has established single-sex classes or extracurricular activities under this new regulatory exception, the regulations require recipients to conduct periodic self-evaluations of their single-sex classes or extracurricular activities at least every two years. Recipients are required to ensure through their self-evaluation that there is a substantial relationship between the single-sex nature of the class or activity and achievement of the important objective. Recipients also are required to ensure that their single-sex classes or extracurricular activities are based on genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex.

Summary of Title IX requirements for single-sex schools

With respect to requirements for offering single-sex public schools, the new regulations also provide more flexibility. The former regulations permitted an LEA to offer a nonvocational single-sex school if it offered a corresponding school for students of the other sex. Under the Department’s interpretation of the former requirements, the corresponding school must also have been a single-sex school. Under the new regulations, an LEA is permitted to offer a single-sex school to students of one sex if it provides a substantially equal school to students excluded from the single-sex school based on sex, but that school may be either single-sex or coeducational. The new regulations also allow a nonvocational public charter school that is a single-school LEA under State law an exemption from the requirement to provide a substantially equal school for students of the excluded sex.

Enclosed for your convenience is a copy of the new regulatory provisions. When the final regulations were published in the Federal Register, the regulatory provisions were accompanied

The Office for Civil Rights (OCR) in the Department enforces the Title IX regulations, among other civil rights requirements, and provides technical assistance to school districts and other recipients that request such assistance in voluntarily complying with the civil rights laws enforced by OCR. To submit questions and requests for technical assistance in connection with these new requirements, you may address them to T9singlesexTA@ed.gov, a dedicated e-mail address, which will be in operation until December 31, 2007.

I look forward to continuing our work together to ensure equal access to education and to promote educational excellence throughout the nation. Thank you for your efforts on behalf of America's students.

Sincerely,

Stephanie J. Monroe
Assistant Secretary
for Civil Rights

Enclosure
PART 106—NONDISCRIMINATION ON
THE BASIS OF SEX IN EDUCATION
PROGRAMS OR ACTIVITIES
RECEIVING FEDERAL FINANCIAL
ASSISTANCE

1. The authority citation for part 106 continues to read as follows:
Authority: 20 U.S.C. 1681 et.seq.,
unless otherwise noted.

2. Section 106.34 is revised to read as follows:
§ 106.34 Access to classes and
schools.
(a) General standard. Except as
provided for in this section or otherwise in
this part, a recipient shall not provide or
otherwise carry out any of its education
programs or activities separately on the
basis of sex, or require or refuse
participation therein by any of its students
on the basis of sex.
(1) Contact sports in physical education
classes. This section does not prohibit
separation of students by sex within
physical education classes or activities
during participation in wrestling, boxing,
rugby, ice hockey, football, basketball, and
other sports the purpose or major
activity of which involves bodily contact.
(2) Ability grouping in physical education
classes. This section does not prohibit
the grouping of students in physical education
classes and activities by ability as
assessed by objective standards of
individual performance developed and
applied without regard to sex.
(3) Human sexuality classes. Classes or
portions of classes in elementary and
secondary schools that deal primarily with
human sexuality may be conducted in
sessions for boys and girls.
(4) Choruses. Recipients may make
requirements based on vocal range or
quality that may result in a chorus or
choruses of one or predominantly one sex.
(b) Classes and extracurricular
activities. (1) General standard.
Subject to the requirements in this
paragraph, a recipient that operates a
nonvocational coeducational elementary or
secondary school may provide
nonvocational single-sex classes or
extracurricular activities, if:
(i) Each single-sex class or
extracurricular activity is based on the
recipient's important objective—
(A) To improve educational
achievement of its students, through a
recipient's overall established policy
to provide diverse educational opportunities,
provided that the single-sex nature of the
class or extracurricular activity is
substantially related to achieving that
objective; or
(B) To meet the particular, identified
educational needs of its students, provided
that the single-sex nature of the class or
extracurricular activity is substantially
related to achieving that objective;
(ii) The recipient implements its
objective in an evenhanded manner;
(iii) Student enrollment in a single-sex
class or extracurricular activity is completely
voluntary; and
(iv) The recipient provides to all other
students, including students of the excluded
sex, a substantially equal coeducational
class or extracurricular activity in the same
subject or activity.
(2) Single-sex class or extracurricular
activity for the excluded sex. A recipient
that provides a single-sex class or extracurricular
activity, in order to comply with paragraph
(b)(1)(i) of this section, may be required to
provide a substantially equal single-sex class
or extracurricular activity for students of the
excluded sex.
(3) Substantially equal factors. Factors the
Department will consider, either individually
or in the aggregate as appropriate, in
determining whether classes or
extracurricular activities are substantially
equal include, but are not limited to, the
following: The policies and criteria of
admission, the educational benefits provided,
including the quality, range, and content of
curriculum and other services and the quality
and availability of books, instructional
materials, and technology, the quality and
range of extracurricular offerings, the
qualifications of faculty and staff, geographic
accessibility, the quality, accessibility, and
availability of facilities and resources, and
intangible features, such as reputation of
faculty.
(4) Definition. For the purposes of
paragraph (c)(1) through (3) of this section,
the term "school," which means an administratively
separate school located
within another school.
Authority: 20 U.S.C. 1681, 1682

3. Section 106.35 is revised to read as
follows:
§ 106.35 Access to institutions of
vocational education.
A recipient shall not, on the basis of sex,
exclude any person from admission to any institution of vocational
education operated by that
recipient.
Authority: 20 U.S.C. 1681, 1682

4. Section 106.43 is added to subpart D to
read as follows:
§ 106.43 Standards for measuring skill or
progress in physical education classes.

If use of a single standard of measuring
skill or progress in physical education classes
has an adverse effect on members of one
sex, the recipient shall use appropriate
standards that do not have that effect.
Authority: 20 U.S.C. 1681, 1682
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