



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

ASSISTANT SECRETARY

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.

[OCR-00037]

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

by additional explanatory information. An electronic link to the Federal Register and this supplementary information is available on the Department's Web site at <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

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,

A handwritten signature in black ink that reads "Stephanie J. Monroe". The signature is written in a cursive style with a large, prominent initial "S".

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 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 separate 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)(ii) 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 qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.

(4) *Periodic evaluations.* (i) The recipient must conduct periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities.

(ii) Evaluations for the purposes of paragraph (b)(4)(i) of this section must be conducted at least every two years.

(5) *Scope of coverage.* The provisions of paragraph (b)(1) through (4) of this section apply to classes and extracurricular activities provided by a recipient directly or through another entity, but the provisions of paragraph (b)(1) through (4) of this section do not apply to interscholastic, club, or intramural athletics, which are subject to the provisions of §§ 106.41 and 106.37(c) of this part.

(c) *Schools.* (1) *General Standard.* Except as provided in paragraph (c)(2) of this section, a recipient that operates a public nonvocational elementary or secondary school that excludes from admission any students, on the basis of sex, must provide students of the excluded sex a substantially equal single-sex school or coeducational school.

(2) *Exception.* A nonvocational public charter school that is a single-school local educational agency under State law may be operated as a single-sex charter school without regard to the requirements in paragraph (c)(1) of this section.

(3) *Substantially equal factors.* Factors the Department will consider, either individually or in the aggregate as appropriate, in

determining whether schools 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" includes a "school within a 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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