



## MEMORANDUM

To: Russlynn Ali, Assistant Secretary, Office for Civil Rights,  
U.S. Department of Education

From: National Coalition for Women and Girls in Education

Date: July 19, 2011

Re: Problems with the 2006 ED Title IX Regulations on Single-Sex Education

### Introduction

On behalf of the National Coalition for Women and Girls in Education (NCWGE), we write to share our insights on some ways public schools and districts across the country seriously misinterpret the 2006 ED Title IX regulations on single-sex education. We look forward to meeting with you and your staff soon to discuss possible solutions.

Research suggests that over 1,000 public schools are intentionally separating students by sex,<sup>1</sup> and, as described below, we suspect that many are doing so in ways that violate Title IX's strong mandate against sex discrimination as well as the letter and the spirit of the 2006 regulations. This is especially disturbing since according to results we just received from your office, the 2010 CRDC found 5,585 schools in the sample of 72,222 schools with single-sex academic classes.<sup>2</sup> Although NCWGE believes these regulations should be rescinded, it is also apparent that guidance from ED's OCR is needed to help halt and prevent the spread of discriminatory sex separation, particularly separation based on broad stereotypes about the preferences and abilities of students based on their sex.

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<sup>1</sup> Klein, S. (forthcoming 2011). State of Public School Sex Segregation in the States, Feminist Majority Foundation, Arlington, VA. (During the 2007-9 school years, FMF identified 646 public schools with deliberate single-sex education. 304 were middle schools followed by 236 elementary schools, and 106 high schools. Forty-seven of these public schools were only for girls and 35 were only for boys. Based on related follow-up information from a question on public schools with single-sex academic classes in the 2006 Civil Rights Data Collection (CRDC), FMF estimates that there were over 1000 public schools separating students by sex during the 2007-9 school years.)

<sup>2</sup> CRDC Single-Sex Class Data. E-mail to Sue Klein, Feminist Majority Foundation from Daren Briscoe, Deputy Press Secretary, U.S Department of Education 7-7-11.

The first section of this memo contains examples of problematic single-sex programs, established or expanded following the 2006 regulations, that rely on and perpetuate sex stereotypes that – as OCR has repeatedly recognized – diminish educational opportunities for all students.<sup>3</sup> As these examples show, school officials articulating a justification for sex separation frequently rely on pseudo-scientific theories or misinformation that results in reinforcing sex stereotypes—even when they assert that their single-sex education is intended to counteract sex stereotypes. These officials often say that girls and boys learn differently and thus need to be taught differently and separately. The schools typically reference single-sex education advocates Leonard Sax and Michael Gurian, who also advocate that teachers be trained (often by them) to teach girls and boys differently.

After providing examples of separation by sex that we believe clearly violates the 2006 regulations, we include some recommendations for additional guidance from the Department we think would be useful to recipients of federal funds contemplating or implementing single-sex programs.

### **Some Examples of Discriminatory Single-Sex Programs**<sup>4</sup>

#### **Pittsburgh, PA – Elementary School teaching kindergarteners differently based on sex stereotypes**

Attending a speech by Leonard Sax inspired an elementary school principal to distribute copies of Sax’s book *Why Gender Matters* to his teaching staff and suggest they apply some of Sax’s ideas in their classrooms. The principal’s suggestion led the school to implement a sex-separated forty-minute period for kindergarteners. One kindergarten teacher supplements the district curriculum with stories for girls about princesses and fairies and uses tea parties, wands, and tiaras as learning incentives. She also uses “fantasy and role playing to help girls learn to read and write in a quieter atmosphere.” Meanwhile, the teacher of the boys’ kindergarten class uses Sax’s ideas to teach his students “sight words through a modified basketball game and got them to put words together in phrases while running relays.” He says, “Boys can’t be as attentive as girls because of their developmental levels.” The female teacher of a second boys’ class said, “I think that, depending on the child, girls are more interested in playing school and [in] fine motor activities. Boys are more interested in the gross motor things. But if the boys do some real fun activities, they do just fine and get right up there with the girls.”<sup>5</sup>

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<sup>3</sup> See, e.g. *Doe v. Vermilion Parish* [cite to DOE/DOJ brief and 5<sup>th</sup> Circuit opinion]; see also OCR Dear Colleague Letter on Bullying and Harassment (Oct. 26, 2010) (clarifying that Title IX requires schools to address harassment based on a student’s failure to conform to sex stereotypes). We have focused on these illegitimate justifications rather than the less ambiguous examples of sex discrimination related to inequitable resources such as class size, special student benefits, outside investments, expectations, etc. However, some of the examples such as Pittsburgh show both stereotyping and inequitable treatment of girls and boys.

<sup>4</sup> Information for these examples came mostly from press reports of the justifications and nature of single-sex education in the schools. It is difficult to find original proposals, descriptions of single-sex programs and evaluation reports on single-sex education programs in most schools, and few of the school websites even indicate that they operate sex-separated classes.

<sup>5</sup> Rita Michel, *Kindergarten Gender Groups in Shaler Play to Strengths*, PITTSBURGH POST-GAZETTE, Nov. 4, 2010 available at <http://www.post-gazette.com/pg/10308/1100358-298.stm>.

### **Pittsburgh, PA – Proposed High School converting from coed to dual academies based on purported brain differences/different teaching for sexes**

After two of the district's high schools, Westinghouse and Peabody, were designated for corrective action under No Child Left Behind, the school board approved a proposal to close the Westinghouse 9-12 program and open in the same location the Young Men's and Young Women's Academies, to serve grades 6-12. The academies are scheduled to open for the 2011-2012 school year.

The program, which was piloted the previous year in several single-sex classrooms at another public high school, Pittsburgh Milliones, will be structured as two single-sex academies in order to cater to "the separate needs of young women and young men."<sup>6</sup> However, the school board has failed to produce or cite any data tracking the outcomes of the pilot program at Milliones. Information about the academies received pursuant to an open records act request filed by the ACLU of Pennsylvania included claims that "research solidly indicates that boys and girls learn differently," although no such research is actually cited.<sup>7</sup> (For example, draft documents incorrectly state that "adolescent girls' brains exhibit high levels of communication between different subject matter, cultures and time periods, while young men make meaning through movement."<sup>8</sup>) Documents make clear that the program is intended to enable teachers to "appeal" to these supposedly different gendered learning styles.<sup>9</sup>

The initial proposal would have assigned students to the new Westinghouse academies based on geographic lines. Then, in November 2010, citing legal reasons, the board approved the academies as magnet schools into which parents must opt their children.<sup>10</sup> The board once again changed the proposal in April 2011, and now calls for students to be assigned to Westinghouse and then given a certain time period to opt-out.

The academies will be structured with a longer school day and are intended to have a more rigorous academic focus. The district has mounted a recruitment campaign, including advertising and an "ambassador" program where male and female students recruited as spokespersons for the new academies have gone on separate field trips to visit other single-sex programs in the U.S. In addition, the boys (but not the girls) have access to a summer program to improve their readiness for the more rigorous academic programs at the new academies.

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<sup>6</sup> East Region Advisory Committee. *Final Recommendations to the Superintendent* (Mar. 25, 2010) (on file with ACLU).

<sup>7</sup> Single Gender Academies Working Group, Pittsburgh Public Schools, *What is a Single-Gender School?* (undated document on file with ACLU).

<sup>8</sup> *Young Men's Academy Young Women's Academy Program Sketch [draft]* (undated document on file with ACLU).

<sup>9</sup> Pittsburgh Public Schools, *The Young Men's Academy 6-12 at Pittsburgh Westinghouse* (undated document on file with ACLU).

<sup>10</sup> Pittsburgh Board of Public Education Legislative Meeting Transcript, Nov. 23, 2010 (on file with ACLU).

### **Foley, AL – Intermediate School teaching boys and girls differently based on sex stereotypes**

Foley Intermediate School, for fifth- and sixth-grade students, has had an optional single-sex program since 2004. The program began when the school's principal began researching ways to improve the standardized test scores of her school's minority boys. She read Michael Gurian's book, *Boys and Girls Learn Differently!* and brought in Leonard Sax to train the teachers. In the 2009-2010 school year, each grade had two all-girls classes, two all-boys classes, and one coed class. In "the boys' classrooms, against a backdrop of blue-painted walls and cold blue lighting, teachers (both male and female) speak loudly and authoritatively to hold the attention of their students. Meanwhile, the boys are allowed to move around during a lesson, so they scatter and roam. Some sit at their desks, some hang out on the floor." This contrasts with the girls' classrooms, where "the girls sit attentively at their desks; the rooms are painted yellow and they're warmly lit .... [and the] students work in cooperative groups." Additionally, the girls' classes hold a "weekly class meeting to talk through their interpersonal issues," which, according to one news commentator, is "due to problems with the girls being catty and not getting along."<sup>11</sup>

The fourth-grade boys' class read *Hatchet* by Gary Paulsen and discussed hunting. Meanwhile, the fourth-grade girls' class sang "Always Sisters" and performed an experiment about the density of oil and water, discussing how the oil always rises to the top of the sink when their mothers wash dishes.<sup>12</sup>

### **Mobile County, AL – Middle School total separation of boys and girls in coed school based on purported brain differences and sex stereotypes**

Mobile County Public School System implemented single-sex programs in eight schools with no parental notification. At one school, boys and girls ate lunch at different times and were not allowed to speak to each other on school grounds.<sup>13</sup> For boys, teachers were instructed to create "competitive, high-energy classrooms" and teach "heroic behavior"; for girls, "cooperative, quiet classrooms" and "good character." In sixth-grade language arts class, boys were to brainstorm action words used in sports, while girls were to describe their dream wedding cake. "Electives" were pre-assigned; girls took drama and boys took computer applications. The principal told parents that "boys' and girls' brains were so different they needed a different curriculum." The program was terminated in 2009 in all eight schools after the ACLU threatened a lawsuit on behalf of two parents.<sup>14</sup>

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<sup>11</sup> Jenna Goudreau, *The New Segregation Battle: Boys Vs. Girls*, FORBES, May 20, 2010, available at [http://www.forbes.com/2010/05/20/public-schools-education-single-sex-classrooms-forbes-woman-leadership-test-scores\\_print.html](http://www.forbes.com/2010/05/20/public-schools-education-single-sex-classrooms-forbes-woman-leadership-test-scores_print.html).

<sup>12</sup> Elizabeth Weil, *Teaching Boys and Girls Separately*, N.Y. TIMES, Mar. 2, 2008, available at <http://www.nytimes.com/2008/03/02/magazine/02sex3-t.html?pagewanted=1&r=2>.

<sup>13</sup> David Holthouse, *Gender Segregation: Separate but Effective?*, TEACHING TOLERANCE, Spring 2010, available at <http://www.tolerance.org/magazine/number-37-spring-2010/gender-segregation-separate-effective>.

<sup>14</sup> *Id.*

### **Manning, SC – Elementary School teaching boys and girls differently based on purported brain differences and sex stereotypes**

In Manning, a single-sex program for seven and eight year-old children was initiated by two second-grade teachers who heard the South Carolina Coordinator for Single-Gender Education, David Chadwell, speak about physical and cognitive differences in child development and decided to “experiment” by separating the boys and girls in their coed classes.

Speaking of South Carolina’s program on “single-gender” education, Chadwell stated: “These (learning) differences are tendencies, not absolutes ... However, we can teach boys and girls based on what we now know because of medical technology.” He stated that boys and girls “see differently” because “[b]oys interpret the world as objects moving through space.” “The teacher [in boys’ classrooms] should move around the room constantly and be that object,” while girls’ eyes are drawn toward textures and warmer colors, so girls should face each other in a circle and teachers should use descriptive phrases and lots of colors. He also said that boys and girls hear differently, advising girls’ teachers to watch the tone of their voices and boys’ teachers to sound matter-of-fact. He said that girls’ classrooms should be warmer than boys’ classrooms because boys are more alert while moving in a room around 69 degrees, while girls are more focused while seated in a 75-degree room.<sup>15</sup>

### **Columbia, SC – Elementary School teaching boys and girls differently based on sex stereotypes**

At South Kilbourne Elementary, an all-boys first-grade class featured boys spelling the word “air” while thumping their desks with their textbooks, stomping their feet, clapping, and jogging in place, while saxophone music played in the background. By contrast, an all-girls second-grade class featured girls sitting in small groups, with lowered lights and a quieter atmosphere, where “[the] sound of pages turning in a reporter’s notebook seems a violation of the serenity.”<sup>16</sup>

### **St. Louis, MO – High School teaching boys and girls differently based on sex stereotypes**

In 2010, when Normandy High School in suburban St. Louis was about to lose its accreditation due to low test scores, its newly-hired principal created the Ninth Grade Academy, at which “girls and boys are separated from each other and the rest of the school.” The principal previously used single-gender classrooms in Baton Rouge, LA, and Atlanta. News reports depict separate communications arts classes, in which girls sat in “groups of four around desks and used color markers to draw and write character traits of well-known personalities,” while the boys’ class “studied characterization, using John F. Kennedy and Michael Jordan as subjects.” The teacher of the boys’ communications arts class, said that because “boys are more likely to squirm in their seats, use nonverbal communication and talk out of turn,” he keeps lectures shorter and pauses to let the boys get up and move, girls, on the other hand, “tend to be more verbal, and prefer organization and working in groups.”<sup>17</sup>

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<sup>15</sup> Carol Kaufmann, *How Boys and Girls Learn Differently*, READER’S DIGEST, available at <http://www.rd.com/make-it-matter-make-a-difference/how-boys-and-girls-learn-differently/article103575.html>.

<sup>16</sup> Carol Kaufmann, *A Look at Single Sex Classrooms*, READER’S DIGEST, available at <http://www.rd.com/family/a-look-at-single-sex-classrooms/>.

<sup>17</sup> *St. Louis-Area High School Tries Single-Gender Classrooms*, THE MISSOURIAN, Nov. 22, 2010, available at <http://www.columbiamissourian.com/stories/2010/11/22/st-louis-area-high-school-tries-single-gender-classrooms/>.

### **Los Angeles, CA – Coed Middle School entirely separated based on sex stereotypes**

The Academy is one of the newest middle schools in Los Angeles Unified, the nation's second-largest school district. Since 2009, the Academy has enrolled both boys and girls, but kept them separate for all classes. Teachers explained that “[B]oys are impulsive,” and, “require a lot of classroom management” while “[g]irls thrive in the collaborative atmosphere.” This means the boys’ classes tend to be more rambunctious, according to a seventh-grade boy. “We don't have a lot of time to finish our stuff.” Aside from core classes, the school includes an “advisory” class in which “students are encouraged to discuss their feelings.” According to a teacher, this is new ground for the boys, whose “‘pack mentality’ stamps emotion as a sign of weakness.” To make it easier for the boys, teachers staged “a boys’ intramural basketball tournament, grading them on teamwork and sportsmanship.” The dean of the boys’ academy claims, “[b]oys just need a purpose ... If we could solve this—how to manage all this adolescent male testosterone and support them on an emotional level—then the academics will come.”<sup>18</sup>

### **Syracuse, NY – Dual academies at a coed middle school based on sex stereotypes; one principal, no coed option**

A public middle-school principal has requested permission from the school board to create two single-gender academies in an attempt to improve academic performance. The school was previously under state review due to low test scores, but is currently in good standing without sex separation. The plan has a champion in a school board member who herself attended an all-girls school. “In the middle and high school years, girls become self-conscious about themselves, gender and sex, and that’s removed when there are no boys,” she explains. “And boys, who need more movement and physical activity, can have it and can be more aggressive or assertive without fear of being overpowering or overbearing to a girl.” In preparation, staff members at the school have been reading the works of Dr. Leonard Sax. Although the principal has said that parents who do not want their children enrolled in the single-sex academies will have the option to transfer their children to another school, precise details have not been outlined. Pending school board approval, teacher training was to begin in January 2011.<sup>19</sup>

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<sup>18</sup> Amina Khan. *Single-Sex Middle School Aims to Divide and Conquer*, L.A. TIMES, Nov. 29, 2009, available at <http://www.latimes.com/news/local/la-me-singlesex30-2009nov30,0,1860355.story>.

<sup>19</sup> Maureen Nolan. *Clary Middle School in Syracuse Looks to Separate Classes for Boys and Girls*, The Post-Standard, December 26, 2010, available at [http://www.syracuse.com/news/index.ssf/2010/12/clary\\_middle\\_school\\_in\\_syracus.html](http://www.syracuse.com/news/index.ssf/2010/12/clary_middle_school_in_syracus.html); Maureen Nolan. *Parents at Clary Middle in Syracuse are Split on Proposal to Create Single Gender Classrooms*, The Post-Standard, January 11, 2011, available at [http://www.syracuse.com/news/index.ssf/2011/01/parents\\_at\\_clary\\_middle\\_in\\_syr.html](http://www.syracuse.com/news/index.ssf/2011/01/parents_at_clary_middle_in_syr.html).

### **Tacoma, WA – Middle School Separating core curriculum classes; no guaranteed coed option**

At Jason Lee Middle School, the sixth-grade “core” math, science, and humanities classes are all separated by sex, starting this school year. In March, 2011, the school used Title I funds to pay Leonard Sax to give several presentations at the school (to students, teachers, and the public). In one math class, the teacher used a game of catch to help teach multiplication, saying, “[i]t’s easy to make it competitive for the boys.” Meanwhile, in a humanities class, girls don’t have to worry about “noisy boys goofing off” and “can do what girls do: talk at great length about their subjects.” The school assigns all sixth-grade students to these single-sex “core” classes and the principal says the school will only offer a coed option if enough parents request it.<sup>20</sup>

### **Wichita, KS – Middle Schools sex-separated lunch and recess; no coed option**

Public displays of affection, disciplinary incidents, “boy-girl drama” and uneaten lunches were among the stated reasons that several middle schools in Wichita adopted single-sex lunch and recess periods. Reactions to the proposed change were varied, but teachers cited research purporting to show benefits of single-sex instruction, and claimed similar benefits would become evident after instituting separate lunches.<sup>21</sup> Interestingly, even Leonard Sax of the National Association for Single-Sex Public Education does not approve of single-sex lunch periods, arguing that lunch is “the most important period of the day in terms of negotiating relationships and ... learning social skills.”<sup>22</sup>

### **South Carolina Single-Gender Initiatives (Statewide) – Flawed Evaluations**

In November 2010, South Carolina Department of Education (“SCDoE”) released a survey of parents, teachers and students participating in single-gender classes.<sup>23</sup> Its methodological flaws included: having no control group of students in coed classes; asking questions likely to lead to a positive answer; and failing to take into account the self-fulfilling expectations of parents, teachers and students who had selected single-gender classes. It did not compare actual student performance of boys and girls or of students in single-sex classes with comparable students in coed classes.<sup>24</sup>

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<sup>20</sup> Steve Maynard. *Jason Lee tries separating 6th-graders to boost achievement*. The News Tribune, March 7, 2011. <http://www.thenewstribune.com/2011/03/07/v-printerfriendly/1573411/its-a-girls-school-its-a-boys.html>.

<sup>21</sup> Kevin Murphy. *Kansas Schools Try Separate Lunches for Sexes*, Reuters, March 9, 2011, available at <http://www.reuters.com/article/2011/03/10/us-schools-lunch-sexes-idUSTRE7290BG20110310>.

<sup>22</sup> Suzanne Perez Tobias. *Several Wichita Middle Schools Try Single-Sex Lunches*, The Wichita Eagle, March 25, 2011, available at <http://www.kansas.com/2011/03/05/1748260/several-middle-schools-try-single.html>.

<sup>23</sup> <http://ed.sc.gov/news/more.cfm?articleID=1688>

<http://www.ed.sc.gov/agency/Innovation-and-Support/Public-School-Choice-and-Innovation/SingleGender/documents/edited2SGISurveyReport11-02-2010.pdf>.

<sup>24</sup> Eliot, Lise & Halpern, Diane. “The Single-Sex Trick: The flaws in a new survey that praises girls-only and boys-only classes” *Slate*, Dec. 15, 2010, <http://www.slate.com/id/2277928/>.

In January 2011, the SCDoe posted on its website<sup>25</sup> some reading and math data from 61 of its 164 schools with single-gender programs. The report's page 1 acknowledged some challenges in gathering data on single-gender comparisons between male and female classes and between single-gender and coed classes. For example, it said "Federal law only requires schools to 'review' their data every two years, not to report it. As such, there is no requirement for any school to publish or communicate the impact of their single-gender program." It also noted that "Tracking students in single-gender classes is difficult and time consuming." The partial data appeared to show that students in coed classes slightly outperformed students in single-gender classes in math and that the students in single-gender classes slightly out-performed their coed peers in reading. However, these results are not useful for learning about comparative performance in these South Carolina classes because of flaws such as the unknown selectivity in the 64 schools providing data and the unknown comparability of the students and other resources in the single-gender and coed class comparisons.

### **Vermilion Parish, LA – Flawed Evaluations**

Even after a District Court judge found the first evaluations of a single-sex program at Rost Middle School to be seriously flawed (including a lack of correlation between actual student grades and the data reported to the school board), the June, 2011 evaluation of sex separation at Rost was woefully deficient as well, even assuming the data contained in it was accurate. Although students were separated by sex for all academic classes, the survey only purported to compare student performance in Reading and Math. Moreover, it compares the performance of a coed class that consisted predominantly of students with IEPs and other performance deficiencies requiring that they be retained in middle school with the performance of single-sex classes lacking students with learning disabilities and containing all the Gifted and Talented students. As in South Carolina, the school "surveyed" parents of students in single-sex classes on line and touted to the school board an 80% parental satisfaction with single-sex classes and a concomitant intent to enroll their children in single-sex classes. Nonetheless, actual enrollment in single-sex classes was insufficient to establish sex separated classes in two of the four grades, and the program has been put on hold for the 2011-12 school year as a result.

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<sup>25</sup> <http://ed.sc.gov/agency/Innovation-and-Support/Public-School-Choice-and-Innovation/SingleGender/documents/2010MAPDataReport.pdf>.



## **Recommendations for Guidance and Clarification**

### **I. Clarifications**

The above examples illustrate that many school districts develop single-sex programs without a justification that meets the standards required by ED's 2006 Title IX regulations and the U.S. Constitution's Equal Protection Clause. Therefore, it would be helpful for OCR to clarify the following:

- A. **A rigorous evidence-based individual justification is required for each single-sex activity.** Title IX and the Constitution require that standards for justifying the separation of boys and girls be rigorous, such that each single-sex class must be individually justified (and provide educational opportunities equal to those provided in the coed class offered for that subject).
- i. Any decision to separate students by sex must have an evidence-based justification for each particular subject and particular grade of students in question. Therefore, sex separation of *all* classes within a coed school is not likely to be consistent with the regulations, unless each single-sex class is justified separately.
  - ii. Each sex-separated class, including those in pilot and experimental programs, must have an evidence-based justification that it is more effective than comparable coed classes in that subject.
  - iii. Separation by sex is not justified because it is a "scheduling byproduct," or due to administrative convenience, or due to the belief that "most" or even all students prefer sex separation.
  - iv. In coeducational schools, regardless of whether they have any single-sex classes, separation by sex for activities such as lunch and recess periods (other than for those activities specifically statutorily exempted from Title IX) must have an evidence-based justification. Because those activities are typically periods of socialization, their separation denies to students – solely on the basis of sex – the ability to socialize and exchange ideas with others and is thus unlikely to be justifiable.

The examples above also illustrate that some schools rely on sex stereotypes, both in deciding to separate students by sex in the first place, and in determining that different pedagogical methods, curricula, and classroom styles and conditions will be implemented in all-girls' versus all-boys' classes. Therefore, it would help if OCR clarifies the following:

- B. Separation decisions cannot be based on sex stereotypes.** This means that they cannot be based on the concept that there are inherent differences between boys and girls such as different brain structure, learning styles, learning preferences, abilities or interests. Such pseudoscientific theories, like those advanced by proponents of single-sex education Leonard Sax, in *Why Gender Matters*, and Michael Gurian, in *Boys and Girls Learn Differently!*, are not supported by reputable and replicable evidence and do not justify sex separation under the regulations.
- C. Single-sex education should not reinforce sex stereotypes.** Sex stereotyping also cannot be the basis for differentiated instruction of boys' and girls' classes. Sex stereotyping includes unproven "scientific" theories about the differences between the brains of boys and girls translating into differences in their learning styles, learning preferences, abilities or interests. This means, for example, that:
- i. Methods of instruction, curricula, activities and instructional materials such as textbooks or assigned novels cannot differ based on the sex of students.
  - ii. Classroom décor, physical set-up, seating arrangements, and amenities such as lighting and room temperature cannot differ based on sex stereotypes.

Additionally, as other examples – including that of Rene Rost Middle School in Vermilion Parish, LA – demonstrate, many schools have (1) assigned students to single-sex classes involuntarily, even without notice to parents; (2) used assignment procedures creating a presumption of single-sex assignment and putting the burden on parents to opt their children out of such classes, or (3) offered co-educational classes not equal in quality to the single-sex classes offered, making any "choice" between the two essentially meaningless. Therefore, OCR needs to clarify that:

- D. Single-sex education must be truly voluntary and optional.** Any single-sex schools must be offered only as an optional alternative, and may not be the primary-zone (or default) school for any student. Similarly, single-sex classes must be purely optional. This means:
- i. No student may be assigned to a single-sex school (including random assignment), even with an opt-out. Such schools must be opt-in only.
  - ii. "Dual academies" that incorporate two single-sex schools on the same campus must be opt-in only.
  - iii. No student may be assigned to a single-sex class, even with an opt-out. Such classes must be opt-in only.

- iv. Students may not be assigned to single-sex Physical Education classes, except within the limited exceptions permitted by the regulations. (34 C.F.R. §106.34). As with other subjects, outside these exceptions any single-sex Physical Education must be individually justified and offered on an opt-in basis only.
- v. Transgendered or gender-non-conforming youth may elect to attend the single-sex school or class for the sex of his/her gender identification, including the single-sex school or class for the opposite biological sex.
- vi. Students with disabilities or limited English proficiency must be given the same opportunity to opt into single-sex classes or schools as non-disabled or English proficient students and have the same opportunity to participate in co-educational classes or school, even when enrolment is limited.

## **II. Administrative Requirements and Best Practices**

Finally, OCR's guidance should remind recipients of the following administrative requirements and best practices that help to safeguard against illegal discrimination:

- A. **Single-sex schools should be truly independent, and not part of a coed school.** If two single-sex schools occupy the same building (otherwise known as "dual academies"), the two "academies" must be wholly independent in order to be considered single-sex schools. Consequently, they must have different principals, administrators, teachers and no shared classes. If the academies share a principal, administrators, teachers or classes, they must comply with the regulations applicable to coed schools. Similarly, no single-sex program may be designated a school within a school unless it meets the same criteria.
- B. **A teacher, administrator or other school employee may not be hired or assigned to a single-sex school or class on the basis of sex, including sex stereotypes.** (34 C.F.R. § 106.51).
- C. **A single-sex program will be granted Innovative Assistance Program funds pursuant to §5131(a)(23) of ESEA only if a recipient includes in its application a plan for compliance with the regulations, as required by §5133(9), and the recipient must annually evaluate how the single-gender program affected student academic achievement, as required by §5133(8)(c).**

- D. An applicant for ED funds must describe in its application steps it proposes to take to ensure gender-equitable access to, and gender-equitable participation in, the project or activity to be conducted with such assistance, by addressing the special needs of students, teachers, and other program beneficiaries in order to overcome barriers to gender-equitable participation pursuant to §427 of the General Education Provisions Act, 20 U.S.C. §1228a. Thus, if sex separation is used it must be justified in the funding proposal to overcome barriers that limit gender equity.**
- E. Educational institutions must biannually evaluate single-sex classes and programs to insure equality and evidence of effectiveness.** This evaluation should:
- i. compare male and female programs/classes/schools with each other to assure equality of resources and absence of sex stereotyping in the education process;
  - ii. compare single-sex education with comparable coeducation to assure equality of resources and absence of sex stereotyping in the education process; and
  - iii. compare outcomes of comparable male and female and single-sex and coed classes to learn if the single-sex program was more effective than the coed program in meeting the important objectives that justified the program. The outcome measures may include academic results, such as test scores and graduation rates, as well as school climate factors (e.g., rates of discipline and complaints of harassment).

If data reveals that either (a) the single-sex class or program is not more effective than comparably resourced coed classes in meeting the important objectives that justified the program, or (b) the single-sex class or program reinforces sex stereotypes, then the single-sex class or program should be discontinued. To ensure accountability, the data considered in the evaluation process should be reported by school districts to parents and to the public via the school districts' websites.

These recommendations are focused on ending the misinterpretations of the 2006 ED Title IX Regulation. The better fix would be to rescind this 2006 ED Title IX Regulation and provide detailed guidance on the limited exceptions for affirmative action to end sex discrimination that are allowed under the 1975 Title IX Regulations used by all other agencies.

### **Conclusion**

Thank you for your time and prompt attention to this important matter. We look forward to meeting with you soon to discuss these issues further. In the meantime, if you have any questions, please contact Michelle Richardson in the ACLU's Washington Legislative Office, at 202-715-0825, or NCWGE Single-sex Education Task Force Co-Chair Sue Klein, Feminist Majority Foundation (703-522-2214) sklein@feminist.org.