



Concurrent Session D:

Specialty Chartering: Considerations for Single Sex, Special Education, and Other Targeted Population Schools

Handouts

Contents:

Single Sex Charter Schools in a Changing Legal Environment

SINGLE SEX CHARTER SCHOOLS In a Changing Legal Environment

**National Association of Charter School Authorizers Conference
10/04**

© 2004 Paul T. O'Neill

poneill@edisonschools.com

Legal Authorities

- U.S. Constitution, 14th Amendment Equal Protection Clause
- Federal case law relating to single sex education
- Title IX of the Education Amendments of 1972
- Proposed Amended Title IX Regulations
- No Child Left Behind Act, Regulations & Guidance
- State and local laws & cases relating to single sex education

Key Supreme Court Cases

No cases have addressed single sex elementary or secondary programs

Mississippi University for Women v. Hogan, 458 U.S. 718 (1982)

Male plaintiff denied admission to women's nursing program – the only one within reasonable traveling distance to his home. Only option was a co-ed program at a considerable distance. Court found that a similarly situated female would not have been required to choose between forgoing pursuing degree and being inconvenienced. Also determined that limiting nursing to women reinforced negative gender stereotypes, injurious to women. Court said, to be valid, a gender-based restriction must be substantially related to an important governmental interest. Court found neither here.

United States v. Virginia, 518 U.S. 718 (1996)

In response to lower court finding that VMI's policies restricting admission to males unlawfully discriminated against females, state attempted to remedy discrimination by establishing a separate program for women at neighboring women's college (Mary Baldwin). Court found there was no substantial equality between the two programs (listed various factors to look to in assessing substantial equality) and no substantially equal co-ed option available to women (the Court has not addressed whether a co-ed program could be enough to provide substantial equality). Court found not substantially related to an important government interest, and that plaintiffs did not show a requisite "exceedingly persuasive justification" for excluding women.

Factors considered – tangibles and intangibles:

- Curricular and extracurricular options
- Stature of faculty
- Funding
- Prestige
- Library resources
- Alumni support and influence

Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Department of Education, Office of Civil Rights (OCR), enforces Title IX — issues regulations, can terminate funds for noncompliance, and take other steps “authorized by law.”

Focused on higher education and vocational schools – *Silent on public and private elementary and secondary schools*

Title IX Regulations (1975)

OCR adopted regulations implementing Title IX:

Single sex classes
Single sex schools

Comparability requirement: District cannot exclude any student from admission to a school unless it makes available to the student, “pursuant to the same policies and criteria of admission, *courses, services and facilities* [that are] comparable.”

Affirmative Action / Remedial programs exception (gets around comparability requirement).

No Child Left Behind (NCLB)

NCLB (January 2002) included provision permitting “programs that provide same gender schools and classrooms, consistent with applicable law.” It gave the Dept. of Education 120 days to issue guidelines to districts

OCR issued guidelines (May 2002), stating: Title IX did not prohibit single sex elementary and secondary schools (except vocational) but districts must meet

comparability requirement. Said according to longstanding OCR “interpretation, policy and practice,” the comparable school had to be a single sex school.

Same time, also issued notice of intent to regulate – propose amendments to Title IX Regulations. Considering reading Title IX more broadly to allow for comparable opportunity in a co-ed (rather than matching single sex) program. Sought input from public.

Proposed Amended Title IX Regulations

- Times have changed – in 30 years since Title IX regulations issued, not as discriminatory to women; more equitable
- Allow for greater flexibility in creating single sex options
- Requirements:
 - Recipient of federal funds that operates public, single sex elementary or secondary school must provide students of gender not served in that program substantially equal educational opportunities in
 - A single sex school; or
 - A Single sex educational unit (school within a school); or
 - A co-educational school
- “Substantial Equality” standard replaces “comparability” standard (bringing Title IX standard in line with language in VMI case)
- An unequal number of boys/girls schools is OK (because you can find substantially equal options for excluded gender in co-ed schools)
- Charter Schools:
 - Charters that are part of an LEA (schools within a larger district) = District must ensure substantial equality of options
 - Charters that are independent LEA (act as own district) = EXEMPT – don’t have to provide substantially equal opportunities. WARNING – SEEMS OUT OF SYNCH WITH HOGAN/VMI

Single Sex Classes

Title IX also covers single sex classes. Higher threshold / tougher standard for establishing single sex classes than for schools under the proposed new regulations – Must *justify* gender restriction.

Must have important governmental or educational objective; Implement in an evenhanded manner; Substantial equality standard applies (look to list of factors much

like in VMI); may require establishment of single sex class for the excluded sex; Periodic evaluation of single sex program to ensure no discrimination.