



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

**Questions and Answers on Title IX and Single-Sex Elementary and Secondary
Classes and Extracurricular Activities***

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) has received a number of questions about the legality, under the Department's regulations implementing Title IX of the Education Amendments of 1972 (Title IX), of single-sex elementary and secondary classes and extracurricular activities offered by recipients of funding from the Department.¹

Although Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, regulations issued by the Department authorize schools to offer single-sex classes or extracurricular activities under certain circumstances.² In order to ensure that schools subject to Title IX comply with the Department's requirements if they choose to offer single-sex classes and extracurricular activities, OCR provides the following responses to questions that schools should consider when assessing their compliance with Title IX. Although this document focuses on single-sex classes, some of the legal principles will also apply to single-sex schools. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

December 1, 2014

* The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that it enforces. OCR's legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

[OCR-00082]

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Overview of Title IX's Application to Single-Sex Classes and Extracurricular Activities*

1. What types of schools are covered by the Department's Title IX regulations on single-sex classes?

Answer: Coeducational elementary and secondary schools and school districts that receive Federal financial assistance from the Department must comply with the Department's Title IX regulations in 34 C.F.R. § 106.34(b) on single-sex classes if they intend to offer such classes. (OCR often refers to these schools and school districts as "recipients.") In practice, the regulations regarding single-sex classes apply to every public school (including traditional, charter, and magnet schools) because every public school is part of a local education agency that receives financial assistance from the Department. The regulations also apply to the few private coeducational schools that receive Federal financial assistance from the Department³ and wish to offer single-sex classes.[†]

2. Are there other legal considerations beyond the Title IX regulations discussed in this guidance document that apply to single-sex classes?

Answer: Yes. While this document only addresses the requirements of the Department's Title IX regulations, public school districts and schools that are currently offering or are interested in offering single-sex classes must comply with the Constitution of the United States and other applicable Federal laws. The Equal Protection Clause of the Fourteenth Amendment prohibits discrimination on the basis of sex by public schools.⁴ In addition, Title IV of the Civil Rights Act of 1964 (Title IV) prohibits public school boards from denying students the equal protection of the laws based on sex,⁵ and the Equal Educational Opportunities Act (EEOA) prohibits some forms of student assignment to schools if the assignment results in sex segregation.⁶

* The Department's regulations clarified in this document apply to all single-sex classes and extracurricular activities covered by 34 C.F.R. § 106.34(b). For simplicity, OCR generally uses the term "classes" or "classes and activities" to refer to "classes and extracurricular activities."

† A private school that is controlled by a religious organization is exempt from Title IX even when it receives Federal financial assistance to the extent that the law's requirements conflict with the organization's religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office. (See the response to Question 33 to determine which regional office serves your location.)

All of these legal requirements are enforced in different ways. OCR has authority to investigate a potential Title IX violation in response to a complaint or proactively through a compliance review and may refer a matter to the Department of Justice (DOJ) if voluntary compliance cannot be achieved.⁷ DOJ also has independent authority to enforce the Equal Protection Clause, Title IV, and the EEOA. Additionally, an individual may bring a private lawsuit against a school district or school for alleged violations of Title IX, the Equal Protection Clause, or the EEOA, and DOJ may seek to intervene in such a suit.

Therefore, when public school districts and schools offer single-sex classes, they must ensure that they comply with the Constitution and all applicable Federal laws, not just Title IX. State and local rules cannot limit or override the requirements of Federal laws, including Title IX and its regulations, but States and localities may have constitutions, laws, or regulations that impose additional limitations regarding the offering of single-sex classes.⁸

OCR recommends that a school district or school consult with legal counsel prior to offering single-sex classes.

3. Does this document address single-sex schools?

Answer: This document focuses on the Department’s Title IX regulations pertaining to single-sex classes in public elementary and secondary schools. There are separate Title IX regulations in 34 C.F.R. § 106.34(c) that govern public, nonvocational single-sex schools. Generally, a school district may offer a single-sex nonvocational elementary or secondary school under Title IX only if it offers a substantially equal single-sex or coeducational school to students of the excluded sex.⁹ However, single-sex nonvocational private schools are not governed by the Department’s Title IX regulation requiring a substantially equal single-sex or coeducational school. By contrast, vocational schools that receive Federal financial assistance may never be limited to one sex.¹⁰ There are also Department Title IX regulations that apply to admissions to single-sex nonvocational public and private colleges and universities.¹¹

As noted in the response to Question 2, public single-sex schools are subject to the Equal Protection Clause of the Fourteenth Amendment and other Federal statutes as well as Title IX. The Department requires grant applicants that seek funds or other forms of Federal financial assistance for the establishment or operation of a public single-sex school to demonstrate the school’s compliance with Title IX, the Equal Protection Clause of the Fourteenth Amendment, and all other applicable laws and regulations. Failure to demonstrate compliance with these requirements may lead to a rejection of the grant application or disqualification from receipt of continuation funds or other financial assistance.

4. May schools offer single-sex classes and extracurricular activities under the Department’s Title IX regulations?

Answer: Yes. The Department’s Title IX regulations permit offering single-sex classes under certain circumstances. The general rule under Title IX is that a recipient may not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex in its education programs or activities—including classes and extracurricular activities—unless expressly authorized to do so under Title IX or the Department’s implementing regulations.¹² The Department’s Title IX regulations identify the following categories for which a recipient may intentionally separate students by sex:¹³

- Contact sports in physical education classes;¹⁴
- Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality;¹⁵ and
- Nonvocational classes and extracurricular activities within a coeducational, nonvocational elementary or secondary school if certain criteria are met.¹⁶

5. What kinds of classes and activities does this document address?

Answer: This document focuses on the last exception noted in the response to Question 4—nonvocational classes and extracurricular activities in a coeducational, nonvocational elementary or secondary school receiving Federal financial assistance. These include any single-sex curricular activity (such as a class or a field trip) and any single-sex extracurricular activity (such as a before-school or after-school activity, lunch, or recess). The requirements regarding this exception apply to single-sex classes and activities whether they are provided directly by a school district or school or through another entity.¹⁷

Vocational classes are not discussed further in this document because they may never be offered on a single-sex basis.¹⁸ For purposes of this document, vocational classes are those classes that have as their primary purpose the preparation of students to pursue a technical, skilled, or semi-skilled occupation or trade; or to pursue study in a technical field, consistent with the definition of “institution of vocational education” in 34 C.F.R. § 106.2(o).¹⁹

OCR does not address interscholastic, club, or intramural athletics in this document because extracurricular athletics are governed by separate Title IX regulations.²⁰

6. Is a class that is open to all students but in which only members of one sex enroll covered by the Title IX regulations described in this document?

Answer: No. The regulations described in this document apply to a class that excludes students of one sex from enrolling or otherwise participating in that class.

By contrast, a class is not subject to the regulations described in this document if it is open to members of both sexes, even if students of only one sex, or a substantially disproportionate number of students of one sex, enroll. If such disproportion exists in a coeducational class, however, it may be an indication of inappropriate steering or other discrimination in counseling or guidance. Title IX requires that, if such disproportion exists, the school ensure that the disproportionate enrollment is not the result of discrimination on the basis of sex, including in counseling or guidance of students or applicants for admission.²¹

7. What criteria must be met to offer single-sex classes under the Department’s Title IX regulations?

Answer: The Department’s Title IX regulations permit a nonvocational elementary or secondary school to offer a nonvocational single-sex class if it has a two-part justification for doing so that demonstrates that:

- each single-sex class is based on the recipient’s “important objective” either to
 - improve its students’ educational achievement through its overall established policies to provide diverse educational opportunities (the diversity objective), or
 - to meet the particular, identified educational needs of its students (the needs objective); and
- the single-sex nature of the class is “substantially related” to achieving that important objective.²²

In addition to establishing a justification for offering a single-sex class, in order to comply with the Department’s Title IX regulations, the recipient must:

- implement its objective in an evenhanded manner;
- ensure that student enrollment in the single-sex class is completely voluntary;
- provide a substantially equal coeducational class in the same subject; and

- conduct periodic evaluations to determine whether the class complies with Title IX, and if not, modify or discontinue the class to ensure compliance with Title IX.

Each of these elements is discussed below.

Justification for Offering a Single-Sex Class

8. Does a recipient need a justification for each single-sex class or activity it offers?

Answer: Yes. A specific, individual justification (demonstrating the recipient’s objective and the substantial relationship between the objective and the single-sex nature of the class or activity) is necessary for each single-sex class or activity. A recipient may not offer single-sex classes in multiple grades or subjects without separately justifying each class. At the elementary school level, where a class typically covers many subjects, the recipient must separately justify the use of single-sex classes for each subject. This requirement applies to each single-sex curricular activity and each single-sex extracurricular activity offered by the school.

9. When must a recipient establish its justification for a single-sex class?

Answer: A recipient must establish its justification prior to offering the single-sex class.²³

Although OCR does not pre-approve class offerings or offer legal advisory opinions, OCR will request documentation of the justification during a complaint investigation or compliance review. OCR will review the justification to ensure that it was the actual reason that motivated the offering of that single-sex class, rather than an after-the-fact explanation prepared in response to the complaint or investigation.²⁴ A recipient is not required to prepare a written justification, but in the absence of a written justification, OCR will assume that the recipient did not establish its justification prior to offering the single-sex class and that any justification was established after the initiation of the complaint investigation or compliance review, unless the recipient can prove otherwise. Therefore, it is strongly recommended that the recipient articulate its justification in writing prior to offering the single-sex class and preserve that documentation for at least as long as the recipient offers the single-sex class in question and for a reasonable time after the class ends. This documentation may also assist the recipient as it periodically evaluates its single-sex offerings, as discussed in more detail in response to Questions 23 through 28.

10. In what ways can a school identify an important objective for offering a single-sex class?

Answer: To offer a single-sex class, a school district or school must first identify an important objective that the particular single-sex class is intended to address. The Title IX

regulations on single-sex classes describe the following two important objectives, one of which must be the basis for offering a single-sex class.

- **Diversity Objective:** “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.”²⁵

To meet this objective, a recipient must first identify the educational achievement it seeks to improve through the diverse educational opportunities it offers and the proposed single-sex class.²⁶ Recipients may not rely on the diversity objective if the only type of nontraditional class offered is a single-sex class.²⁷ Rather, the recipient must offer a range of diverse educational opportunities beyond single-sex and coeducational classes. Diverse offerings in a school might include, for example, a variety of electives, a variety of curricula (such as a science, technology, engineering, math (STEM) focus or International Baccalaureate classes), co-op or internship opportunities, or the option to take classes at other schools.

- *Example A*^{*}: The students at Options High School earn high grades and above-average scores on State exams, but their enrollment in Advanced Placement (AP) classes is low. Options High School would like to increase enrollment in AP classes in an effort to improve its students’ college preparedness. As part of its college-preparedness effort, Options High School offers diverse educational opportunities, including AP classes, a variety of electives, a STEM-focused curriculum option, and a visual and performing arts-focused curriculum option. Many students who are not enrolled in AP classes have expressed interest in taking AP classes in a single-sex setting. The high school would like to add single-sex AP classes to its class offerings in order to increase enrollment in AP classes and thus improve college preparedness. Under these circumstances, attempting to improve its students’ college preparedness through single-sex AP classes is an appropriate use of the diversity objective.

* This document provides guidance on a number of Title IX requirements applicable to single-sex classes, including justification/important objective; substantial relationship; evenhandedness; voluntariness; a substantially equal coeducational class; and periodic evaluations. Each example in this document is intended to illustrate the principles discussed in the response in which the example appears. Each example also presumes compliance with all the Title IX requirements discussed elsewhere in the document and should be read with that understanding.

- Needs Objective: “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.”²⁸

Unlike the diversity objective, to meet the needs objective, the recipient must identify a particular educational need in its student body, evidenced by limited or deficient educational achievement, which is not being met by coeducational classes.²⁹

- *Example B*: Underperforming Elementary School wants to address the fact that its male third-grade students routinely score “not proficient” on the State reading exam. Attempting to increase male students’ performance to proficient on a State exam through the offering of a single-sex third-grade reading class is an appropriate use of the needs objective.

The needs objective also encompasses certain social needs that students may have. The Department recognizes that a school’s educational mission may extend beyond strictly academic objectives, and that classes and activities may provide social benefits that can have a positive effect on students’ educational outcomes.³⁰

- *Example C*: A high school’s Title IX coordinator has received a number of reports of dating violence among the school’s students. All of the reports came from female complainants and were about male aggressors. Many of the female complainants have expressed a fear of interacting with male students. To address the issue, the school offers an after-school, extracurricular program to provide all students with information about dating violence, the cycle of abuse, anger management, and effective methods for ending a violent relationship. The school offers the program to students on a single-sex basis, with boys meeting on one night and girls meeting a different night, as well as a coeducational option.

Given the circumstances at this school, attempting to decrease the prevalence of dating violence among students by offering a single-sex extracurricular activity is an appropriate use of the needs objective.

Regardless of which objective it chooses, the recipient must meet the other Title IX requirements discussed in this document, including showing that the single-sex nature of the class is substantially related (see the responses to Questions 11 and 12) to meeting the identified objective.

Administrative convenience will never justify the offering of single-sex classes.³¹

- *Example D:* Shortcut Elementary School’s fourth-grade class is half female and half male. The fourth-grade students have lunch and recess from 10:30 a.m. to 11:30 a.m., with half an hour allotted for lunch and half an hour for recess. Half of the students have lunch first, followed by recess. The other half of the students go to recess first, followed by lunch. To make it easier for teachers to know whether students are attending their assigned lunch/recess block, Shortcut Elementary has divided the students by sex, with all fourth-grade girls in the first group and all fourth-grade boys in the second group. This is not an appropriate justification for operating single-sex lunch and recess.

11. What kind of evidence may a recipient use to show that the single-sex nature of a class is substantially related to achieving an important objective?

Answer: The substantial relationship between the single-sex nature of the class and the school’s important objective must be directly supported by evidence (as described below) gathered and evaluated prior to offering the single-sex class. Below are examples of types of evidence that a recipient may use to demonstrate the required substantial relationship. A recipient may use more than one type of evidence to determine whether a substantial relationship exists. Regardless of the evidence used, the justification may “not rely on overbroad generalizations about the different talents, capacities, or preferences of” either sex, so, likewise, the evidence cited in the justification may not rely on these overly broad generalizations.³²

Comparator schools: The recipient may obtain data demonstrating a substantial relationship through the use of comparator schools. To do this, the recipient must: (1) identify comparator schools with a student population and school and class setting (*e.g.*, grades served, curricular offerings, geographic location, admissions requirements, educational benefits, etc.) that are similar to the population and setting of the recipient’s school; and (2) obtain data showing that the comparator schools achieved the recipient’s important objective in the relevant subject or with respect to the relevant educational or social need through the use of single-sex classes. When identifying comparator schools, the recipient should consider factors that may distinguish two schools, such as socioeconomic differences among the student population, differences in admissions policies and criteria, or resources available through private funding.

If the recipient can identify appropriate comparator schools that have offered single-sex classes in the same subjects and grades, the recipient should ensure that the comparator school’s success in each class is substantially related to the single-sex nature of the class rather than other simultaneously used strategies (*e.g.*, tutoring, extended class sessions, weekend academic programming, etc.). If the comparator school used other strategies in

its single-sex class, the recipient will need to take further steps in order to show a substantial relationship between its important objective and the single-sex nature of the class because it would be very difficult to determine whether any success in the comparator school was due to the single-sex nature of the class or the other strategies that were used. One way for the recipient school to demonstrate that the single-sex nature of the class contributed to the students' success is to try the other strategies used by the comparator school in a coeducational setting at the recipient's school prior to offering a single-sex class and to compare the results relative to the important objective that the recipient seeks to achieve.

- *Example E:* A majority of seventh-grade boys at Evidentiary Middle School have scored "not proficient" on the State science exam for the past three years. The school has identified a public school in a neighboring district, Comparator Middle School, which has dramatically increased its seventh-grade boys' scores on the State science exam over the past five years. Comparator Middle School is roughly the same size as Evidentiary Middle School, and both schools serve students at the same grade level and of similar socioeconomic status. Evidentiary Middle School would like to implement Comparator Middle School's science program in hopes that Evidentiary's seventh-grade boys will achieve similar success.

In achieving its gains, Comparator Middle School offered a single-sex science class for seventh-grade boys. The State science exam scores of male students in that class increased significantly. The all-boys science class used a newly developed curriculum and textbook, implemented a double-period science class, offered after-school tutoring to all students in the class, and implemented a mandatory robotics-themed Saturday school for the seventh-grade students in those classes.

Evidentiary Middle School implemented these same sex-neutral strategies in its coeducational seventh-grade science classes: it adopted the curriculum and textbook used by Comparator, increased class time to make science a double-period class, offered after-school tutoring, and implemented the same mandatory robotics-themed Saturday school. It offered these classes on a coeducational basis for three years, but the science scores of its seventh-grade boys remained stagnant. At that point, consistent with the needs objective, Evidentiary decided to offer an all-boys seventh-grade science class in conjunction with the sex-neutral strategies listed above.

Given these facts, OCR would find that Evidentiary Middle School had shown a substantial relationship between its objective of increasing its seventh-grade male students' proficiency on the State science exam and the single-sex nature of the boys science class it decided to offer.

- *Example F:* Most girls at Scientific High School do not enroll in AP Chemistry, though their grades and scores on State science exams suggest that they would be good candidates for the class. Boys at Scientific High School do enroll in AP Chemistry and all students otherwise take advantage of the school's widely diverse class offerings. Consistent with the diversity objective, Scientific High School would like to improve the educational achievement of its students by increasing female enrollment in AP Chemistry by further expanding its class offerings to include an all-girls AP Chemistry class.

Scientific High School has identified two schools in nearby districts that have implemented an all-girls AP Chemistry class. These schools are approximately the same size as Scientific High School, and all three schools serve students at the same grade level and of similar socioeconomic status. All three are neighborhood schools with no specific admissions requirements, and all students receive transportation to and from school through the applicable district.

Over the last three years, since the implementation of those classes, the enrollment rate of female students in AP Chemistry has steadily increased at both of the two comparator schools. Female enrollment in those schools' coeducational AP Chemistry classes has stayed roughly the same. The schools did not change any other aspect of their AP Chemistry programs; the single-sex classes are identical to their coeducational counterparts.

Given these facts, OCR would find that, through its overall policy to provide diverse educational opportunities, Scientific High School had shown a substantial relationship between the single-sex nature of the girls science class and its important objective of improving the educational achievement of its students by increasing female enrollment in AP Chemistry.

Research Evidence: Research evidence demonstrating the effectiveness of single-sex classes in circumstances sufficiently similar to the school's circumstances may also satisfy the substantial relationship requirement. A 2005 Department-commissioned survey found the results of available research on the general use of single-sex education were equivocal.³³ Nonetheless, to satisfy the substantial relationship requirement, OCR will accept a research study that: 1) employs a rigorous research design for causal inference; 2) demonstrates the

effectiveness of the single-sex nature of the class with respect to the specific important objective at issue (e.g., improving achievement in Algebra or reducing infractions requiring discipline); and 3) includes a sample that overlaps with the proposed populations or settings (e.g., ninth-grade girls in low-income communities) that the recipient is targeting. The standards set forth in the Department's *What Works Clearinghouse Procedures and Standards Handbook*³⁴ provide an appropriate guide for assessing the strength of a study of the effectiveness of the intervention (e.g., limiting a class to a single sex) in addressing the school's important objective.

- *Example G:* Town Elementary School would like to offer an all-boys fourth-grade class to reduce the discipline problems of the boys in that grade. Before it offers this class, Town Elementary School finds a research study that meets the What Works Clearinghouse Procedures and Standards and concludes that boys ages five through ten in all-boys classrooms committed fewer infractions leading to discipline than boys in coeducational "control" classes with identical rules and procedures for discipline, curricula, educational strategies, teacher-student ratio, and student population (e.g., eligibility for free and reduced-price lunch).³⁵ The population and settings of the single-sex and coeducational classes examined in the study are almost identical to those of Town Elementary School's fourth-grade classes. Absent facts distinguishing the research classes from Town Elementary School's classes, OCR would find this study is sufficient to show a substantial relationship between the school's objective of reducing discipline and the single-sex nature of the class.

12. May a recipient demonstrate a substantial relationship using a claim that a certain strategy, other than single-sex, is more effective for most members of one sex?

Answer: Claims that a certain strategy (such as a teaching method or a specific learning environment) is more effective for most members of one sex will not be sufficient, standing alone, to show a substantial relationship between the single-sex nature of a class and the important objective. This is because such a strategy may be equally effective regardless of whether it is implemented in a single-sex or a coeducational setting. If the recipient wants to use that strategy in a single-sex setting, the recipient still needs to show that students will benefit from the fact that the class is single-sex. Therefore, even assuming a recipient had evidence showing that a certain strategy was particularly effective for one sex, the recipient would need further evidence showing that the exclusion of the other sex was necessary to make the strategy effective or, at the least, substantially more effective. (This showing could be made through the use of comparator schools or research evidence, described in the response to Question 11.)

- *Example H:* A majority of third-grade girls at Cold Elementary School are underperforming on State science tests. Cold Elementary School would like to implement an all-girls third-grade class that keeps the classroom temperature ten degrees higher than the school’s other classrooms, because the school’s principal has read an article suggesting that girls learn better in warmer temperatures and boys learn better in colder temperatures. The article did not cite to any studies comparing students in coeducational warm or cold classes with students in single-sex warm or cold classes, but rather simply concluded that all girls will learn better in a warm environment and that all boys will learn better in a cold environment. Even if this research were reliable, it would not prove that boys would learn better in a cold environment with no girls, or that girls would learn better in a warm environment with no boys.

Thus, the school cannot show a substantial relationship between the single-sex nature of the class and the anticipated increase in girls’ State science test scores. If the school believes temperature affects educational outcomes, it can offer a coeducational “warm” and a coeducational “cool” classroom and use criteria, other than the student’s sex, to decide which students would attend each of those coeducational classrooms, such as allowing students and parents to choose the learning environment they believe best suits each student.

Evenhanded Offerings

13. What is the evenhandedness requirement?

Answer: A recipient must treat male and female students evenhandedly in implementing its important objective.³⁶ The evenhandedness requirement means that a recipient offering single-sex classes must provide equal educational opportunities to students regardless of their sex, with the end result that both sexes receive substantially equal classes.³⁷

14. How does the evenhandedness analysis apply if a recipient is asserting the diversity objective?

Answer: If the recipient asserts the diversity objective, and it has identified single-sex classes for which it can demonstrate a substantial relationship to its important objective, it must still ensure that the choice of diverse educational opportunities, including single-sex or coeducational classes, is offered evenhandedly to male and female students. To do this, it must conduct a thorough and impartial assessment of what single-sex classes to offer to each sex, and then offer those classes evenhandedly to its students.³⁸ Thus, under the diversity objective, if a recipient is able to justify single-sex classes for both sexes, offering single-sex classes for only one sex will likely violate the evenhandedness requirement,

unless the recipient can show that it evenhandedly gauged the interest of both sexes and the excluded sex was not interested in having the option to enroll in single-sex classes. Likewise, if one sex is offered single-sex classes in the school's core subjects, while the other sex is only offered single-sex classes in the school's non-core subjects, OCR would not find that the recipient is offering classes in an evenhanded manner.

- *Example I:* Advanced High School would like to use single-sex classes to increase enrollment of both male and female students in its AP Physics, English, or American History classes. Advanced High School has already determined that it can meet the requisite regulatory requirements of the Department's Title IX regulations for all of these classes, but because of staffing concerns, the school can only offer single-sex classes in one subject. Advanced High School conducted a survey to determine which subject male students would prefer; the male students chose AP Physics. Because it could only devote one teacher to single-sex classes, Advanced High School did not survey its female students, but decided instead to offer the female students a single-sex AP Physics class, as well.

This would violate the evenhandedness requirement. Even though all students are being offered identical single-sex classes, taught by the same teacher, the assessment of which class to offer favored the male students.

This does not mean, however, that male and female students must always be offered single-sex classes in the same subjects. To ensure evenhandedness, once it has completed its justification for each single-sex class, a recipient may wish to collect pre-enrollment information from parents* and students or survey parents and students about interest in enrolling in single-sex classes in each subject. If students of one sex lack interest in a single-sex class in a certain subject, the recipient would not be required to provide them a single-sex class in that subject.

- *Example J:* Nearby Middle School is considering adding single-sex classes to the diverse array of other classes it offers. Having documented its justification for the addition of single-sex classes in Pre-Algebra, American History, English, and Geometry, the school surveys all parents and students to determine whether students would be interested in taking any of these classes on a single-sex basis. Forty eighth-grade boys express interest in all-male Pre-Algebra and American

* When this document refers to "parents," the term encompasses both parents and legal guardians.

History classes, while only two girls request these classes on a single-sex basis. Thirty-five eighth-grade girls request all-female English and Geometry classes, while no boys request these classes on a single-sex basis. In this scenario, Nearby Middle School may offer the all-male Pre-Algebra and American History classes and all-female English and Geometry classes to its eighth-grade students without violating the evenhandedness requirement.

15. How does the evenhandedness analysis apply if a recipient is asserting the needs objective?

Answer: If the recipient asserts the needs objective, the evenhandedness analysis is different from the analysis used under the diversity objective. Under the needs objective, the recipient must first conduct an assessment to identify the educational needs of its students, and then determine how to meet those needs on an evenhanded basis.³⁹ If a recipient has evidence demonstrating that a single-sex class in a particular subject would meet the particular, identified educational needs of students of both sexes and that the single-sex nature of the classes is substantially related to meeting the needs for both sexes, then if the recipient offers a single-sex class in that subject, it must do so for both sexes. On the other hand, if the evidence shows that the single-sex class in that subject would meet the particular, identified needs of only one sex or that the single-sex nature of the class would be substantially related to meeting the needs of only one sex, a recipient may not offer the single-sex class to students of the other sex. That recipient would instead have to determine, based on its assessment of the educational needs of both sexes, whether a single-sex class in another subject should be offered to the excluded sex, in order to meet the evenhandedness requirement.⁴⁰

- *Example K:* Faraway High School intends to offer an all-boys AP English class because the percentage of its male students passing the AP English exam is far below the district average. The school's female students pass the AP English exam at a rate higher than the district average. The reverse is true with respect to AP Physics: the percentage of girls passing the AP Physics exam is far below the district average, while the boys' scores suggest no deficiency.

Under these circumstances, Faraway High School may provide an all-boys AP English class without offering an all-girls AP English class because there is no particular identified need for such an all-girls class. To meet the evenhandedness requirement, however, in light of data showing its female students' deficiency on the AP Physics exam, the school must first research whether an all-girls AP Physics class would be substantially related to increasing

female students' proficiency on that exam. If so, then the school must offer the female-only AP Physics class as well.

Voluntariness

16. Who decides whether a student enrolls in a single-sex class?

Answer: The Department's Title IX regulations require that student "enrollment in a single-sex class or extracurricular activity" be "completely voluntary."⁴¹ To meet this requirement, OCR strongly encourages recipients to obtain the affirmative consent from the parents to enroll a student in a single-sex class.⁴² Nevertheless, OCR will defer to State law to determine whether a student or the student's parents will have ultimate decision-making authority regarding whether a student will be enrolled in a single-sex class. If State law is silent, a recipient may use its educational judgment, based on the age and circumstances of its students and its normal class assignment procedures. The affirmative consent of the designated decision-maker, whether the parent or the student, must be received before assigning a student to a single-sex class.

17. May a recipient assign students to a single-sex class as long as it permits students to opt out of the class?

Answer: No. Regardless of whether the authority rests with the student or the parent, the decision-maker must affirmatively opt into a single-sex class; the student may not simply be assigned to a single-sex class by the school and then be permitted to opt out.⁴³ If no affirmative consent is received, the student must be enrolled in a coeducational class.⁴⁴ OCR recommends that such affirmative consent come in the form of a written, signed document.⁴⁵

18. May a recipient make it easier to enroll in a single-sex class than it is to enroll in a coeducational class?

Answer: No. A school cannot use a less stringent class enrollment procedure for its single-sex classes than it does for its coeducational classes. In order for the choice to be completely voluntary, a school may not influence the choice to enroll in one class over the other. In assessing whether a decision to enroll in a single-sex class was voluntary, OCR will consider, among other things, whether the choice was influenced by extraneous factors. For example, any authorization (*e.g.*, a permission slip) or procedure (*e.g.*, a pre-enrollment meeting with a guidance counselor) that is required for enrolling in a coeducational class, but not for enrolling in the single-sex counterpart would render involuntary the choice to enroll in the single-sex class.

19. How does the breadth of class offerings affect voluntariness?

Answer: For the single-sex class to be voluntary, a recipient must offer a substantially equal coeducational class in the same subject.⁴⁶ (Factors for determining substantial equality are discussed in the response to Question 22.) If a student is forced to choose between taking a single-sex class in a particular subject and not taking a class in that subject, the choice to take the single-sex class is not voluntary. Likewise, if the only honors class in a given subject is a single-sex class, a student's selection of that single-sex class will not be considered voluntary. And if a student must take a single-sex class in order to avoid a coeducational option that is set at a remedial level, the single-sex class will also not be considered voluntary. (Classes with such differences may also violate the requirement of offering a substantially equal coeducational class, discussed in the responses to Questions 21 and 22.)

20. What additional steps should a recipient take to ensure that participation in a single-sex class is completely voluntary?

Answer: Because an uninformed decision may, in many circumstances, not be completely voluntary, OCR recommends that recipients provide pre-enrollment information about each class to students and parents in sufficient time and in a manner that is accessible to those with disabilities and with limited English proficiency so that the decision-maker can make an informed choice.⁴⁷

This pre-enrollment information should explain that the decision-maker has the option of choosing between the coeducational and single-sex class;⁴⁸ describe the similarities and differences between the coeducational and single-sex classes; and provide a summary of the recipient's justification for offering the single-sex option. OCR recommends that pre-enrollment disclosures specify that parents and students have the option of reviewing the recipient's full justification (and any periodic evaluations, described in the responses to Questions 23 through 28) upon request. In providing this pre-enrollment information, recipients must ensure that the information is conveyed in a way that does not pressure parents to enroll students in a single-sex class.

- *Example L:* Steering Elementary School is planning to implement single-sex fifth-grade reading and math classes for both boys and girls. To comply with the Title IX regulatory requirements for establishing new single-sex classes, over the summer, the school sends an information packet to every parent of an incoming fifth-grade student that includes: the school's justification for its single-sex classes; the data upon which the school relied in developing its justification; a statement that substantially equal coeducational reading and math classes are available; and a description of the differences between the single-sex and

coeducational classes. In each packet are two consent forms—one for the reading class and one for the math class—allowing parents to opt in to each single-sex class. The form states that if a parent does not return the form for a given class, his or her child will be placed in a substantially equal coeducational class.

A week before school starts, the principal of Steering Elementary School calls all of the parents who have not returned the consent forms to remind them of the option to enroll their children in single-sex classes. He encourages them to take advantage of the single-sex classes, and explains that if there is not enough interest to sustain them, the school will not be able to provide the classes to anyone. He explains that many people are interested in the single-sex classes, and warns parents against being the individuals who “hold up” implementation of the “unique and beneficial opportunity.”

Although the elementary school’s practice of sending an impartial information packet home to parents, along with an appropriate opt-in form, is a good one, OCR would consider the principal’s later behavior to be inappropriate pressure to enroll in a single-sex class. His warning inappropriately suggested that a parent should consider factors outside of his or her child’s educational well-being (including ensuring that other students have access to single-sex classes). Any consent forms received after the principal’s phone calls would not be valid.

Substantially Equal Coeducational Option

21. Must a recipient offer a substantially equal coeducational option for every single-sex class offered?

Answer: Yes. A recipient that offers a single-sex class must provide all other students, including students of the excluded sex, with a substantially equal coeducational class in the same subject.⁴⁹ At least one substantially equal coeducational section must be offered in each subject for which there is a single-sex class, and more than one section may be needed because every student who requests a coeducational option must be enrolled in one. Once the preferences of students seeking a coeducational class are met, a school may offer more than one single-sex section in a given subject if enrollment in that subject warrants it.

- *Example M:* If a school offers each of its 50 eighth-grade boys the choice between single-sex or coeducational Algebra classes, and 40 choose a single-sex class and 10 choose a coeducational class, the school may offer two single-sex sections and only one coeducational section of Algebra. This is permissible, so long as every student who sought the coeducational option was enrolled in a

substantially equal coeducational class. (Additionally, the school may also be required to provide a substantially equal single-sex class for its eighth-grade girls, consistent with the evenhandedness requirement discussed in the responses to Questions 13 through 15.)⁵⁰

A school is not obligated to provide a single-sex class to any individual student, even if that student opted into the single-sex class. The school must consider the number of students interested in the option and the school's need to provide a substantially equal coeducational class for all other students, including students of the excluded sex. Thus, in the example above, if all of the eighth-grade boys opted into the single-sex Algebra class, resulting in the substantially equal coeducational class enrolling only girls, the school could not honor all of the requests for the single-sex boys class, because doing so would deny the girls a substantially equal coeducational class.

22. What factors will OCR consider in determining whether a coeducational class is substantially equal to the single-sex class?

Answer: OCR will consider all relevant factors, both individually and in the aggregate, in determining whether a coeducational class is substantially equal to the single-sex class.⁵¹ Although the single-sex and coeducational classes do not need to be identical with respect to each factor, they need to be substantially equal. This means that if one class is significantly superior with respect to one factor, or slightly superior with respect to many factors, the classes are likely not substantially equal.⁵² The Department's Title IX regulations include a non-exhaustive list of factors, each of which is addressed individually below, that OCR will consider while conducting a complaint investigation or compliance review. OCR will consider all relevant factors in determining whether a coeducational class and a single-sex class are substantially equal.⁵³ Whether information is relevant will depend on the specific facts and circumstances of each case, because each single-sex class seeks to achieve a different objective and may be offered in a different way.

- The admissions criteria and policies;
 - *Example N:* College-Bound High School offers single-sex and coeducational classes in AP Spanish. Both the coeducational and single-sex AP Spanish classes were open only to students with a grade point average of 3.5 or higher and who participate in a summer language program. On these facts, OCR would consider the admissions criteria and policies to be substantially equal.

- 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;
 - *Example O:* Tech-Savvy Middle School offers single-sex and coeducational biology classes. The coeducational classes follow a curriculum that uses textbooks with corresponding videos, which the students watch on a DVD player in the classroom, to teach lessons. The single-sex classes incorporate individually issued laptops, which allow for interactive, technology-based lessons, into the curriculum. On these facts, OCR would not consider the educational benefits provided to be substantially equal.
- The qualifications of faculty and staff;
 - *Example P:* Tenured Middle School ensures that an equal proportion of first- and second-year teachers as compared to more experienced teachers are assigned to its single-sex and coeducational Pre-Algebra classes. All of the Pre-Algebra teachers have a background in mathematics and receive training on teaching the school's Pre-Algebra curriculum. Prior to teaching the class, each teacher must demonstrate content knowledge and competencies in the relevant teaching methods. On these facts, OCR would consider the qualifications of the faculty of the classes to be substantially equal.
- Geographic accessibility;⁵⁴
 - *Example Q:* Centrally Located High School offers one all-male and one all-female chemistry class onsite. For students wishing to take this class on a coeducational basis, Centrally Located High School has entered into an agreement with Distant High School, 15 miles away, which will accept Centrally Located High School's students. Because of traffic in the district, it would take students approximately 30 minutes each way to travel to the class at Distant High School, resulting in an hour of lost instruction time. On these facts, OCR would not consider the geographic accessibility of the classes to be substantially equal.
- The quality, accessibility, and availability of facilities and resources provided to the class;
 - *Example R:* Updated High School offers both coeducational and single-sex Chemistry classes. The coeducational Chemistry class is held in a chemistry lab that was original to the building, constructed in 1970. Updated High School added a new wing in 2010, which includes a new chemistry lab that offers state-of-the-art equipment and incorporates interactive technology. The single-sex

Chemistry classes are held in the new lab. On these facts, OCR would not consider the facilities and resources of the classes to be substantially equal.

- Intangible features, such as the reputation of faculty.
 - *Example 5:* Connected High School offers two single-sex journalism classes: one for boys and one for girls. A journalist for a local newspaper teaches both of these classes. The journalist is well connected in the local media community, and in the past, she has assisted students with obtaining internships at local media outlets. The school also offers a coeducational journalism class that is taught by an individual with a degree in English, but who has never worked in the field or been involved in a school journalism program. On these facts, OCR would not consider the reputation of the faculty (an intangible feature) of the two classes to be substantially equal.

Periodic Evaluations

23. How often must a recipient conduct an evaluation of its single-sex programs?

Answer: The recipient must evaluate each of its single-sex classes, and the original justification behind each single-sex class, at least every two years.⁵⁵ A recipient may decide to conduct evaluations more frequently (because its own findings have identified concerns or for other reasons). If OCR investigates a recipient and identifies compliance problems, OCR may require the recipient to conduct more frequent evaluations.⁵⁶

24. What is the purpose of these evaluations?

Answer: The recipient must use these periodic evaluations to ensure that each single-sex class it offers is based upon genuine justifications, does not rely on overly broad generalizations about either sex, and continues to be substantially related to the achievement of the important objective (*see the responses to Questions 7 through 12*).⁵⁷ The periodic evaluations should also confirm that substantially equal single-sex classes are offered if necessary to comply with the evenhandedness requirement (*see the responses to Questions 13 through 15*), and that a substantially equal coeducational alternative to each single-sex class is available (*see the responses to Questions 21 and 22*). The periodic evaluations must assess evidence and data related to the recipient's single-sex classes, rather than relying on the comparator school or research evidence used at the justification stage (*see the response to Question 27*).

25. Must the periodic evaluation address the way a single-sex class is taught?

Answer: Yes. Because of the risk that single-sex classes may lead to the adoption of classroom methods or strategies that revert to sex stereotypes, the Department’s Title IX regulations require that the recipient ensure that each single-sex class is operated in a manner that does not “rely on overly broad generalizations about the different talents, capacities, or preferences of either sex.”⁵⁸ Thus, classroom methods or strategies should be chosen on the basis of their effectiveness in teaching the individual students in the class, without regard to the sex of those students. Of course, it may be difficult to ascertain why certain methods or strategies were chosen, so the following information is intended to help schools understand how OCR will conduct its analysis during a complaint investigation or compliance review.

If identical classroom methods and strategies—including choices about classroom activities and environment—are used in single-sex classes for boys and in single-sex classes for girls (or in a single-sex class and a coeducational class), the evaluation of the way the classes are taught is complete. This is because the use of the same methods and strategies for classes for boys and classes for girls offers no reason to believe the decision to use those methods and strategies was based on overly broad generalizations about either sex.

But if different classroom methods or strategies are used in single-sex classes for boys than are used in single-sex classes for girls (or in a single-sex class in comparison with its coeducational counterpart), then the recipient must evaluate whether the decision to adopt these different methods or strategies was made in reliance on overly broad generalizations. In some cases, the different methods or strategies used in single-sex classes may simply be the result of the professional choices of an individual teacher without regard to the sex of his or her students. If the recipient can show that the teacher would have selected identical methods and strategies even if he or she were teaching a single-sex class of the opposite sex or a coeducational class, OCR will likely conclude that the school did not use overly broad generalizations about either sex. In determining whether the recipient has made this showing, OCR will consider such factors as the methods and strategies historically used by the teacher, and the timing of any changes in the teacher’s methods and strategies.

If, however, the methods or strategies were selected because of the sex of the students in the class, the risk of sex stereotypes is at its greatest because methods and strategies that are based on sex ignore the differences among students of the same sex. When a teaching method or strategy is, in fact, selected on the basis of the sex of the students, its use must be directly supported by evidence demonstrating that the particular method or strategy is more effective for one sex than the other or is more effective when used in a single-sex setting. (The response to Question 12 addresses the appropriate way to assess whether

strategies that are purported to be more effective for one sex may be used in a single-sex setting.) It would not be enough to show that there is evidence about differences between boys and girls that does not directly involve that particular teaching method or strategy. For example, while there is, of course, evidence that biological differences between males and females exist,⁵⁹ evidence of general biological differences is not sufficient to allow teachers to select different teaching methods or strategies for boys and girls.⁶⁰

- *Example T:* Quiet Elementary School created single-sex fourth-grade classes for both boys and girls. During the school year, the teachers of the single-sex classes became aware of studies that show that girls are born with a significantly more sensitive sense of hearing than boys, and that the differences grow larger as the children grow older. Relying on those studies, the school decided that the boys class would incorporate speaking in a loud tone, while the girls class would not.

A periodic evaluation of the boys class would indicate reliance on overly broad generalizations about the sexes with respect to teaching methods. Use of the specific teaching method (loud talking) would not comply with Title IX because the teachers did not rely on evidence that directly linked that particular teaching method or strategy to improved educational achievement for boys. Instead, they relied on a purported biological difference (that there are, on average, biological differences in the hearing sensitivity of the sexes) to conclude that the particular teaching method or strategy was appropriate. This general difference between the sexes, even if true, does not by itself provide evidence that loud talking will be more effective in teaching for one sex than the other or more effective in a single-sex setting. The leap from the biological differences to the use of a particular teaching method or strategy for students of one sex, without the support of evidence regarding the educational effectiveness of the method or strategy for one sex over the other, resulted in an overly broad generalization (that loud talking would improve boys' ability to learn). Because of the overly broad generalization, the school would have to discontinue its use of this teaching method for the all-boys class.

The teaching method itself is permissible. A recipient is still free to incorporate loud talking in a coeducational class or in single-sex classes for both boys and girls. But a recipient may not limit that method of instruction only to the single-sex class for boys on the basis of the overly broad generalization described above.

26. How should the evaluations be made available to the public?

Answer: OCR recommends wide distribution of the evaluations, through the recipient’s website and otherwise. Like the initial justification, these evaluations could be useful to parents who are deciding whether to enroll their children in single-sex classes and would help ensure the choice is completely voluntary.

27. How will OCR determine whether a periodic evaluation demonstrates that a single-sex class is still substantially related to the recipient’s important objective?

Answer: OCR will consider all relevant sources of evidence in determining whether the single-sex nature of the class remains substantially related to the recipient’s important objective. Whether evidence is relevant will depend on the specific facts and circumstances of each case, because each single-sex class seeks to achieve a different objective and may be offered in a different way. The evidence presented in a recipient’s periodic evaluation must be related to the recipient’s single-sex classes, rather than the evidence relied upon in the justification stage. Possible sources of evidence include, but are not limited to: students’ grades; students’ scores on standardized statewide or districtwide exams; discipline rates; attendance data; enrollment data; and educators’ observation and evaluation of the effectiveness of each class.

Because the biennial evaluations must show that the single-sex nature of the class results in achievement of, or progress toward, the recipient’s important objective, a comparison between the students in the single-sex class and the substantially equal coeducational class is appropriate.⁶¹ To best assess the effectiveness of each class, OCR recommends that schools monitor the progress of the individual students in each class from year to year. This will help ensure that any comparison between a single-sex class and a substantially equal coeducational class controls for variations among students. Positive or negative changes related to the recipient’s objective for all students in the single-sex class should be averaged together; the same should be done for students in the coeducational class. The school can then compare these averages to see how students in the single-sex class fared in comparison to their peers in the substantially equal coeducational class. The same procedure should be used to assess the single-sex class the following year. If, based on these averages, a coeducational class outperforms a substantially equal single-sex class, it is likely that OCR would find that the single-sex class is not substantially related to the recipient’s objective. Of course, the evidence will vary based on the school’s objective. For example, if the school implemented a single-sex class in an attempt to lower discipline rates, discipline statistics should be analyzed.

- *Example U:* A middle school offers three substantially equal sections of tenth-grade American Literature: an all-girls class, an all-boys class, and a coeducational class. The school's objective is to increase proficiency on the State English exam. At the end of the first school year, to gather information for the periodic evaluation required at the end of the second school year, each student's score on the state English exam is compared to his or her score on the previous year's exam. The school averages the change in scores of students in the all-girls class, the all-boys class, and the coeducational class, respectively. The proficiency rate of students in the coeducational class increased slightly. By contrast, the proficiency rates of the students in the all-boys and all-girls classes both increased significantly. The difference in average increases between the single-sex classes and the coeducational class is statistically significant. The averages are similar the following year. Under these circumstances, the evidence in this periodic evaluation would suffice to show a continuing substantial relationship between the single-sex nature of the classes and the objective to increase student's proficiency on the State English exam. Note, however, that the school must continue to conduct biennial evaluations to show that a substantial relationship between the single-sex nature of the classes and the school's objective persists.

Every recipient's ability to continue each single-sex class will depend on the recipient's circumstances, the particular objective articulated in the recipient's justification, and whether the comparative class data over time demonstrate a substantial relationship between that objective and the single-sex nature of the class. A recipient's evaluation should analyze and explain all factors that influenced the achievement of, or failure to achieve, the recipient's objective.

28. What is the role of the recipient's Title IX coordinator in conducting these evaluations?

Answer: Every recipient must designate an employee to coordinate its efforts to comply with Title IX.⁶² The Title IX coordinator is responsible for overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. The Title IX coordinator must also track and review complaints to identify and correct any systemic compliance issues. This would include any complaints that single-sex classes are being offered in violation of Title IX. Because of these responsibilities, OCR recommends that the Title IX coordinator be involved in assessing the compliance of the

recipient's single-sex classes, both when determining whether and how single-sex classes can be offered and during the recipient's periodic review of single-sex offerings.

Employment

29. May a recipient assign teachers to single-sex classes based on the sex of the teacher?

Answer: No. A recipient must not assign teachers to single-sex classes on the basis that boys should be taught by men and girls should be taught by women or vice versa.⁶³ Title IX prohibits recipients from discriminating on the basis of sex in: employment; recruitment; compensation and benefits; job assignment, classification, and structure; and consideration and selection of individuals for jobs in any education program or activity operated by a recipient.⁶⁴ Although Title IX allows employment decisions based on sex "provided it is shown that sex is a bona-fide occupational qualification for that action,"⁶⁵ a school may not, for example, assign a male teacher, on the basis of his sex, to teach an all-boys class because the school thinks male students will prefer, respond better to, or learn more effectively from, a man.⁶⁶

Other Federal Protections for Students in Single-Sex Classes

30. May a recipient exclude students with disabilities or English language learners from a single-sex class so long as it permits them to participate in the substantially equal coeducational class?

Answer: No. Students with disabilities or English language learners may not be excluded from single-sex classes because of their need for special education or related aids and services or English language services.⁶⁷ Schools must ensure that students with disabilities participating in single-sex classes receive needed special education and related services in accordance with their individualized education programs, developed under Part B of the Individuals with Disabilities Education Act⁶⁸ (including, if applicable, the Part B educational placement provisions), or their plans developed under Section 504 of the Rehabilitation Act of 1973. Likewise, the school must provide the same English language services in single-sex classes as in coeducational classes.

31. How do the Title IX requirements on single-sex classes apply to transgender students?

Answer: All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX. Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.

Additional Topics

32. Which set of regulations governs a school within a school—the regulations governing single-sex schools or the regulations governing single-sex classes?

Answer: If a recipient operates a single-sex school within another school or two single-sex academies, OCR will consider these to be single-sex classes within a coeducational school unless the two entities are administratively separate from each other.⁶⁹ This is a fact-specific inquiry and will depend on the specific organization of the school within a school.

- *Example V:* A district operates dual single-sex academies that are housed in the same facility and share the same principal and certain support staff. The district claims that it need not comply with the Department’s Title IX regulations on single-sex classes because each academy is a single-sex school. Because the two academies are not administratively separate, OCR would instead view the academies as one coeducational school offering single-sex classes in every subject.

33. How can I contact OCR to get additional information or to file a complaint?

Answer: A recipient, parent, student, or other member of the public who has a question or concern about a particular single-sex offering may contact the appropriate OCR regional enforcement office. To determine which OCR regional enforcement office handles inquiries and complaints in your State, please call 1-800-421-3481 or 1-800-877-8339 (TDD) or check OCR’s website at <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>.

OTHER FEDERAL LEGAL RESOURCES RELATED TO SINGLE-SEX EDUCATION:

Department of Education Title IX regulations: 34 C.F.R. part 106, available at <http://www2.ed.gov/policy/rights/reg/ocr/34cfr106.pdf>

OCR Dear Colleague Letter on Single-Sex Title IX Regulations, dated January 31, 2007, available at <http://www.ed.gov/ocr/letters/single-sex-20070131.pdf>

Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 71 Fed. Reg. 62,530 (October 25, 2006), available at <http://www2.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>

Brief for the United States as *Amicus Curiae*, *Doe v. Vermilion Parish Sch. Bd.*, No. 10-30378 (5th Cir.) (filed June 4, 2010), available at http://www.justice.gov/crt/about/app/briefs/vermillion_brief.pdf

¹ 20 U.S.C. §§ 1681-1688.

² *Id.*; see also 34 C.F.R. § 106.34.

³ Private elementary and secondary schools are subject to the Department’s regulatory requirements for single-sex classes if they receive Federal financial assistance directly from the Department or indirectly through an intermediary. Private elementary and secondary schools are not considered recipients of Federal financial assistance if the only form of assistance that they receive is through their students’ participation in programs conducted by public school districts that are funded under Federal programs such as Title I of the Elementary and Secondary Education Act of 1965 or the Individuals with Disabilities Education Act. These private schools are not subject to these regulations, but public school districts must ensure that their programs, including services to private school students, are consistent with Title IX. See *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Final Regulations*, 71 Fed. Reg. 62,530, 62,530 n.7 (Oct. 25, 2006).

⁴ U.S. CONST. amend. XIV, § 1; see also *United States v. Virginia*, 518 U.S. 515, 531, 533 (1996) (holding, in a challenge to an all-male public postsecondary institution, that a party “seek[ing] to defend gender-based government action” under the Equal Protection Clause “must demonstrate an exceedingly persuasive justification for that action,” which means the government “must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives” (citations, brackets, and internal quotation marks omitted)).

⁵ 42 U.S.C. §§ 2000c to c-9.

⁶ 20 U.S.C. §§ 1703(c), 1705, 1720(c); see also 71 Fed. Reg. at 62,533 n.18 (referencing same).

⁷ 34 C.F.R. § 106.71 (incorporating by reference 34 C.F.R. §§ 100.6-100.11 and 34 C.F.R. part 101).

⁸ 34 C.F.R. § 106.6(b); see also 71 Fed. Reg. at 62,533 n.18 (“Public school and private school recipients also may be subject to State or local laws prohibiting single-sex classes or schools.”).

⁹ 34 C.F.R. § 106.34(c).

¹⁰ 34 C.F.R. § 106.35; 34 C.F.R. § 106.2(o) (defining “institution of vocational education”).

¹¹ 34 C.F.R. § 106.15(c)–(e).

¹² 20 U.S.C. §§ 1681-1688; 34 C.F.R. § 106.34(a).

¹³ In addition to these exceptions, the Department’s Title IX regulations do not prohibit schools from employing the following facially neutral tests or criteria even if they have a disproportionate effect on persons on the basis of sex: 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; and the use of requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex. 34 C.F.R. § 106.34(a)(2) and (4).

¹⁴ 34 C.F.R. § 106.34(a)(1).

¹⁵ 34 C.F.R. § 106.34(a)(3).

¹⁶ 34 C.F.R. § 106.34(b).

¹⁷ 34 C.F.R. § 106.34(b)(5).

¹⁸ 34 C.F.R. § 106.35; 34 C.F.R. Appendix A to Part 106; *see also* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Notice of Proposed Rulemaking, 69 Fed. Reg. 11,276, 11,278 (Mar. 9, 2004) (“Even in these elementary and secondary schools that are not vocational schools, the proposed amendments do not change the applicability of the current general regulatory prohibition against single-sex vocational education classes.”).

¹⁹ This document refers to vocational classes because the Department’s Title IX regulations refer to “nonvocational” classes. The Department currently prefers the term “career and technical” courses.

²⁰ The Department’s Title IX regulations governing athletics appear at 34 C.F.R. §§ 106.41 and 106.37(c).

²¹ 34 C.F.R. § 106.36(c).

²² 34 C.F.R. § 106.34(b)(1)(i).

²³ 71 Fed. Reg. at 62,533 (citing *Virginia*, 518 U.S. at 533) (“The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation.”).

²⁴ *Id.*

²⁵ 34 C.F.R. § 106.34(b)(1)(i)(A).

²⁶ “For example, a recipient may seek to achieve an educational benefit for its students such as improvement in class work.” 71 Fed. Reg. at 62,534 n.26.

²⁷ 71 Fed. Reg. at 62,535.

²⁸ 34 C.F.R. § 106.34(b)(1)(i)(B).

²⁹ 71 Fed. Reg. at 62,535 & n.30.

³⁰ 71 Fed. Reg. at 62,536.

³¹ 71 Fed. Reg. at 62,535 (citing *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 151-52 (1980) and *Frontiero v. Richardson*, 411 U.S. 677, 689-90 (1973)).

³² 71 Fed. Reg. at 62,533 (citing *Virginia*, 518 U.S. at 533).

³³ The 2005 Department-commissioned survey of research on single-sex schooling found that for “many outcomes, there is no evidence of either benefit or harm.” OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT, U.S. DEPARTMENT OF EDUCATION, SINGLE-SEX VERSUS COEDUCATIONAL SCHOOLING: A SYSTEMATIC REVIEW x (2005), *available at* <http://www2.ed.gov/rschstat/eval/other/single-sex/single-sex.pdf>.

³⁴ The WWC Procedures and Standards Handbook is available at http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf.

³⁵ This example, like all the examples provided in this document, is based on hypothetical facts to help readers understand how OCR would evaluate a recipient’s single-sex class for compliance with the Department’s Title IX regulations. A recipient cannot rely on the hypothetical research described in this example to show a substantial relationship between its important objective and the single-sex nature of the class.

³⁶ 34 C.F.R. § 106.34(b)(1)(ii).

³⁷ 71 Fed. Reg. at 62,536 (citing *Virginia*, 518 U.S. at 554).

³⁸ 71 Fed. Reg. at 62,536.

³⁹ *Id.*

⁴⁰ *Id.* at 62,536-37 (“[A]lthough a single-sex class would not be required in that subject, evenhanded implementation of the recipient’s objective does require the recipient to determine, based on its assessment of educational needs of students, whether a class in another subject should be offered on a single-sex basis to meet the particular, identified needs of the students of the excluded sex.”).

⁴¹ 34 C.F.R. § 106.34(b)(1)(iii).

⁴² 71 Fed. Reg. at 62,537.

⁴³ *Id.*; *Doe v. Wood Cnty. Bd. of Educ.*, 888 F. Supp. 2d 771, 776 (S.D. W. Va. 2012) (“An opt-out provision is insufficient to meet the requirement that single-sex classes be ‘completely voluntary.’”).

⁴⁴ 71 Fed. Reg. at 62,537; *Doe*, 888 F. Supp. 2d at 776 (“[T]he Department of Education regulations require an affirmative assent by parents or guardians before placing children in single-sex classrooms.”).

⁴⁵ 71 Fed. Reg. at 62,537; *Doe*, 888 F. Supp. 2d at 776 (“Such affirmative assent would preferably come in the form of a written, signed agreement by the parent explicitly opting *into* a single-sex program.”).

⁴⁶ 71 Fed. Reg. at 62,537.

⁴⁷ *Doe*, 888 F. Supp. 2d at 777 (“The close proximity of the notices to the beginning of the school year, after students have already enrolled, suggest[s] that their choice was not fully voluntary.”).

⁴⁸ 71 Fed. Reg. at 62,537.

⁴⁹ 34 C.F.R. § 106.34(b)(1)(iv).

⁵⁰ 34 C.F.R. § 106.34(b)(2).

⁵¹ 34 C.F.R. § 106.34(b)(3); 71 Fed. Reg. at 62,538.

⁵² 71 Fed. Reg. at 62,538.

⁵³ 34 C.F.R. § 106.34(b)(3); *see also* 71 Fed. Reg. at 62,538.

⁵⁴ 71 Fed. Reg. at 62,538 (“[There are] situations in which geographic accessibility will be relevant for classes. For example, if a recipient operates a consortium of schools whereby students at three neighboring high schools [take classes at all three schools, the] location, *i.e.*, geographic accessibility, of the classes in the same subject, would be relevant to the issue of substantial equality.”).

⁵⁵ 34 C.F.R. § 106.34(b)(4).

⁵⁶ 71 Fed. Reg. at 62,539.

⁵⁷ 34 C.F.R. § 106.34(b)(4)(i).

⁵⁸ *Id.*

⁵⁹ *United States v. Virginia*, 518 U.S. 515, 533 (1996) (“Physical differences between men and women, however, are enduring . . .”).

⁶⁰ *See J.E. B. v. Alabama*, 511 U.S. 127, 139 n.11 (1994) (“We have made abundantly clear in past cases that gender classifications that rest on impermissible stereotypes violate the Equal Protection Clause, even when some statistical support can be conjured up for the generalization.”).

⁶¹ 71 Fed. Reg. at 62,539 (“Part of the periodic evaluation requirement involves an assessment of the degree to which the recipient’s important objective has been achieved and an assessment of whether the single-sex nature of the class is substantially related to achievement of the recipient’s objective.”).

⁶² 34 C.F.R. § 106.8(a).

⁶³ 71 Fed. Reg. at 62,534 (“Among other things, the Title IX regulations prohibit recipients from making job assignments on the basis of sex, § 106.51(b)(4), and from classifying jobs as being for males or females, § 106.55(a). Both of these provisions would prohibit schools from assigning teachers to single-sex classes based on their sex.”).

⁶⁴ 34 C.F.R. part 106, subpart E.

⁶⁵ 34 C.F.R. § 106.61.

⁶⁶ *Id.* (“A recipient shall not take action pursuant to this section [regarding bona-fide occupational qualifications] which is based upon . . . preference based on sex of the recipient, employees, students, or other persons.”).

⁶⁷ 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973) and 34 C.F.R. part 104; 42 U.S.C. §§ 12131-12165 (Title II of the Americans with Disabilities Act of 1990) and 28 C.F.R. part 35; 42 U.S.C. §§ 2000d to d-7 (Title VI of the Civil Rights Act of 1964) and 34 C.F.R. part 100. OCR enforces Section 504 as it applies to recipients of Federal financial assistance from the Department and shares enforcement responsibility with the U.S. Department of Justice for Title II in the education context. Title II prohibits discrimination on the basis of disability by public entities, including public school districts, in their services, programs, and activities, regardless of receipt of Federal funds.

⁶⁸ 20 U.S.C. §§ 1411-1414; 34 C.F.R. part 300.

⁶⁹ 34 C.F.R. § 106.34(c)(4).