

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 213 Education

**SPONSOR(S):** Schools and Learning Council; Legg and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 242

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Education Innovation &amp; Career Preparation</u>	<u>7 Y, 0 N</u>	<u>Beagle</u>	<u>White</u>
2) <u>Schools &amp; Learning Council</u>	<u>13 Y, 3 N, As CS</u>	<u>Beagle</u>	<u>Cobb</u>
3) _____	_____	_____	_____
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### SUMMARY ANALYSIS

In recent years, the prevalence of single-gender schools and classes has increased. Approximately 366 public schools in the United States offer single-gender educational opportunities. Department of Education data for the 2007-2008 school year indicates the following statewide enrollment for single-gender classes in grades Prekindergarten through 12: (a) math: 17,943 students; (b) science: 15,459 students; (c) social studies: 13,942 students; and (d) language arts: 70,634 students. California, District of Columbia, Michigan, Nebraska, Nevada, New York, Ohio, Tennessee, Virginia, and Wisconsin currently have laws permitting some form of single-gender educational opportunity. Recently adopted federal law permits local education agencies (LEAs) to implement single-gender schools and classes.

Committee Substitute for House Bill 213 creates s. 1002.311, F.S., to authorize a district school board to establish a single-gender class, extracurricular activity, or school if the board also offers:

- A coeducational class, extracurricular activity, or school of substantially equal quality; and
- A single-gender class, extracurricular activity, or school for students of the other gender that is of substantially equal quality.

The bill provides that no student may be required to enroll in a single-gender class, extracurricular activity, or school. Student participation must be voluntary. Each district school board must evaluate its single-gender programs every two years to ensure compliance with federal law.

The bill amends s. 1000.05, F.S., to authorize the separation of students by gender for the single-gender programs authorized by the bill. The bill also amends s. 1002.20, F.S., to add single-gender programs to the school choice options about which school districts must provide information to parents.

The bill does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Empower Families--** The bill authorizes school districts to provide an additional education choice option to students and parents.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Single-Gender Education Programs

In recent years, the prevalence of single-gender schools and classes has increased significantly. The emergence of single-gender education is rooted in research indicating that girls and boys have unique learning styles. Based on this research, proponents assert that, because separating students by gender enables teachers to use instructional techniques targeted to the learning styles of each gender, some students may be better served in a single-gender learning environment.<sup>1</sup>

A pilot project initiated in 2004-2005 at Woodward Elementary School in Deland, Florida, in partnership with Stetson University, found increased rates of student proficiency in single-gender classes. Over the past three academic years, student FCAT data indicated that 37% of boys and 59% of girls in coed classes scored proficient on FCAT subjects as compared to 86% of boys and 75% of girls in single-sex classes.<sup>2</sup> Other research regarding the educational and social impacts of single-gender education, however, has been largely inconclusive.<sup>3</sup>

Approximately 366 public schools in the United States offer single-gender educational opportunities.<sup>4</sup> Department of Education data for the 2007-2008 school year indicates the following statewide enrollment for single-gender classes in grades Prekindergarten through 12: (a) math: 17,943 students; (b) science: 15,459 students; (c) social studies: 13,942 students; and (d) language arts: 70,634 students.<sup>5</sup> California, District of Columbia, Michigan, Nebraska, Nevada, New York, Ohio, Tennessee, Virginia, and Wisconsin currently have laws permitting some form of single-gender education program.<sup>6</sup>

*Federal Law:* The No Child Left Behind Act of 2001 (NCLB) states that federal funds may be provided to LEAs for the purpose of implementing innovative assistance programs, which may include single-gender

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<sup>1</sup> The Gurian Institute *available at* <http://www.gurianinstitute.com>. See also National Association for Single Sex Public Education *available at* <http://www.singlesexschools.org/schools-classrooms.htm>.

<sup>2</sup> See National Association of Single Sex Public Education, *Single Sex Versus Coed: The Evidence available at* <http://www.singlesexschools.org/research-singlesexvscoed.htm>.

<sup>3</sup> See U.S. Department of Education, Office of Planning, Evaluation and Policy Development, *Single-Sex Versus Coeducational Schooling: A Systematic Review* (September 2005) (Finding that whether single-gender education produces better academic outcomes than coeducational education is unclear. For example, students in single-gender schools showed improved performance on "all-subject" academic achievement tests in the short term; however, there was no apparent link to improved performance over the long term.); and Smithers, Alan and Pamela Robinson, The Centre for Education and Employment, University of Buckingham, *The Paradox of Single-Sex co-Educational Schooling* (July 2006) (Stating that the, "main determinants of a school's performance are the ability and social background of the pupils," and that the determination as to whether to implement a single-gender or coeducational student configuration should, "be a matter of judgment. " "It is for the providers to work out which they think is the most appropriate to offer in their circumstances, and for parents to choose the schools they think would best suit their children." Also noting that single-gender student configurations have been found to benefit disadvantaged students in American schools.).

<sup>4</sup> National Association for Single Sex Public Education, *Single-Sex Schools/Schools with Single-Sex Classrooms/What's the Difference?* *available at* <http://www.singlesexschools.org/schools-schools.htm>.

<sup>5</sup> Data provided by the Department of Education, Office of Data, Reporting, and Accountability Services (February 7, 2008).

<sup>6</sup> Cal. Educ. Code § 58521 (West 2007), D.C. Code Ann. § 38-1851.07(2007), Mich. Comp. Laws Ann. § 380.475 (2007), Neb. Rev. Stat § 79-1807 (2007), Nev. Rev. Stat 386.580 (Michie 2007), N.Y. Educ. Law § 2854 (McKinney 2007), Ohio Rev. Code Ann. § 3314.06 (Anderson 2007), Tenn. Code Ann. § 492-108 (2007), Va. Code Ann. § 22.1-212.1:1 (2007), and Wis. Stat. Ann. § 118.40 (2007).

schools and classrooms.<sup>7</sup> At the time of NCLB's passage, these provisions were in conflict with regulations implementing Title IX of the Education Amendments of 1972 (Title IX).<sup>8</sup> Title IX prohibits gender-based discrimination by educational institutions that receive federal funding.<sup>9</sup> Thus, in May of 2002, the U.S. Department of Education (USDOE) announced its intent to adopt revised Title IX regulations to provide flexibility to LEAs seeking to establish single-gender schools and classrooms.<sup>10</sup> These regulations became effective in November of 2006.<sup>11</sup>

The 2006 regulations establish separate standards for single-gender classes, including extracurricular activities,<sup>12</sup> and schools. In general, both single-gender classes and schools must be nonvocational<sup>13</sup> in nature and may only serve elementary or secondary students.<sup>14</sup> Additionally for single-gender classes, the regulations require that:

- The LEA's purpose in establishing a single-gender classroom be substantially related to achieving one of two important governmental objectives: (a) to improve student achievement as part of a policy of providing diverse learning opportunities; or (b) to meet the specific learning needs of students.
- The LEA implements single-gender classrooms in an evenhanded manner.
- Enrollment be voluntary.
- Single-gender classrooms be evaluated every two years. The LEA must demonstrate that it is adhering to the important governmental objectives for which its single-gender classrooms were established to serve. It must also demonstrate that its program continues to operate free from overly-broad gender stereotypes.<sup>15</sup>

A LEA choosing to offer a single-gender class: (a) must provide all other students, including members of the other gender, a coeducational option that is of substantially equal quality;<sup>16</sup> and (b) may also be required to offer a substantially equal single-gender option to members of the other gender.<sup>17</sup> A LEA choosing to offer a single-gender school must provide students of the other gender a substantially equal single-gender school or coeducational school.<sup>18</sup>

*State Law:* Statute prohibits gender-based discrimination by public K-20 educational institutions that receive state or federal funding. Such institutions may not restrict access by establishing admission criteria to a program or course based on gender; however, students may be separated by gender for: (a) physical education classes involving participation in bodily contact sports;<sup>19</sup> and (b) classes dealing primarily with human reproduction.<sup>20</sup>

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<sup>7</sup> 20 U.S.C.A. § 7215(a)(23).

<sup>8</sup> See 34 C.F.R. 106.34(b)-(f) and 34 C.F.R. 106.35(both amended in 2006).

<sup>9</sup> 20 U.S.C.A. § 1681. (Title IX also prohibits gender-based discrimination pertaining to participation in extracurricular activities).

<sup>10</sup> Federal Register, Vol. 67, No. 89 (May 8, 2002) *available at* <http://www.ed.gov/legislation/FedRegister/proprule/2002-2/050802a.html>.

<sup>11</sup> Federal Register, Vol. 71, No. 206 (October 24, 2006) *available at* <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

<sup>12</sup> The regulation does not define the terms "class" or "extracurricular activity," but it does specify that the terms do not include interscholastic, club, or intramural athletics. 34 C.F.R. 106.34(5).

<sup>13</sup> The regulation does not define the term "nonvocational," but definitions for the regulation provide that an, "institution of vocational education" means, "a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study." 34 CFR 106.2(o).

<sup>14</sup> 34 C.F.R. s. 106.34.

<sup>15</sup> 34 C.F.R. s. 106.34(b).

<sup>16</sup> 34 C.F.R. s. 106.34(b)(1)(iv).

<sup>17</sup> 34 C.F.R. s. 106.34(b)(2).

<sup>18</sup> 34 C.F.R. s. 106.34(c)(1).

<sup>19</sup> Section 1000.05(3)(c), F.S., states, "For the purpose of this section, bodily contact sports include wrestling, boxing, rugby, ice hockey, football, basketball, and other sports in which the purpose or major activity involves bodily contact."

<sup>20</sup> Section 1000.05(2), F.S. (These provisions also prohibit discrimination on the basis of race, ethnicity, disability, and other factors).

## **Effect of Proposed Changes**

Committee Substitute for House Bill 213 creates s. 1002.311, F.S., to authorize a district school board to establish a single-gender class, extracurricular activity, or school if the board also offers:

- A coeducational class, extracurricular activity, or school of substantially equal quality; and
- A single-gender class, extracurricular activity, or school for students of the other gender that is of substantially equal quality.

The bill provides that no student may be required to enroll in a single-gender school, class, or extracurricular activity. Student participation must be voluntary. Each district school board must evaluate its single-gender programs every two years to ensure compliance with federal law.

The bill amends s. 1000.05, F.S., to authorize the separation of students by gender for the single-gender programs authorized by the bill. The bill also amends s. 1002.20, F.S., to add single-gender programs to the school choice options about which school districts must provide information to parents.

### **C. SECTION DIRECTORY:**

**Section 1.:** Amends s. 1000.05, F.S., to authorize separation of students by gender under s. 1002.311, F.S.

**Section 2.:** Amends s. 1002.20, F.S., to require school districts to provide information regarding single-gender programs to parents.

**Section 3.:** Creates s. 1002.311, F.S., to authorize a district school board to establish a single-gender class, extracurricular activity, or school; requires districts to provide substantially equal single-gender and coeducational options to students; requires student enrollment in single-gender educational options to be voluntary; and requires evaluation of a single-gender program every two years in order to ensure compliance with federal regulation.

**Section 4.:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

This bill does not appear to have a fiscal impact on state revenues.

#### **2. Expenditures:**

This bill does not appear to have a fiscal impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

This bill does not appear to have a fiscal impact on local revenues.

#### **2. Expenditures:**

This bill does not appear to have a fiscal impact on local expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

#### D. FISCAL COMMENTS:

If a district school board chooses to establish a single-gender school, class, or program, it will be required by the bill to also provide both a single-gender and a coeducational alternative of substantially equal quality to all other students. School districts may incur additional costs in complying with this requirement.

School districts that choose to provide professional development training in instructional practices targeted to the strengths of female and male students may incur additional costs. One provider's fee schedule for such training indicates a cost of \$6,000.<sup>21</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds.

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

*Equal Protection:* The constitutionality of gender classifications may be subject to challenge under the Equal Protection Clause of the Federal Constitution.<sup>22</sup> The standard of review for gender classifications is intermediate-level scrutiny. The burden of proof is on the defendant to show that the classification is substantially related to the achievement of an important government objective.<sup>23</sup> In some cases, courts have employed a more rigorous standard by requiring the defendant to also demonstrate an "exceedingly persuasive justification" for the gender classification.<sup>24</sup>

The United States Supreme Court has decided two cases specifically addressing the constitutionality of single-gender education programs. Both cases dealt with single-gender admissions policies at state-sponsored universities. In *Mississippi University for Women v. Hogan*, the court declared the defendant university's female-only admissions policy for its nursing school to be unconstitutional. The university argued that its policy was intended to compensate for past discrimination against women. The court rejected this argument, reasoning that its policy perpetuated the stereotype that nursing was an all-

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<sup>21</sup> The Gurian Institute, Fee Schedule for Michael Gurian and the Gurian Institute Training Division.

<sup>22</sup> U.S. Const. amend. XIV, § 1.

<sup>23</sup> *Wengler v. Druggists Mutual Insurance Co.*, 446 U.S. 142, 150 (1980).

<sup>24</sup> *See Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981).

female profession.<sup>25</sup> Because the university had a policy of permitting male students to audit into its nursing courses, the court also rejected university's argument that the presence of men at the school disrupted female's ability to learn.<sup>26</sup> The court held that the university's use of overly-broad female stereotypes to justify its policy did not satisfy its burden to demonstrate an "exceedingly persuasive justification" for the classification. Nor did it prove that its policy served "important governmental objectives" in a manner "substantially related to the achievement of those objectives."<sup>27</sup>

In *United States v. Virginia*, the court declared the Virginia Military Institute's (VMI) male-only admissions policy to be unconstitutional. VMI argued that its course of study, which included rigorous military training unsuitable to women, necessitated its all-male admissions policy. The court rejected this reasoning, stating that gender classifications must not be justified on the basis of overly-broad generalizations and stereotypes of female inferiority.<sup>28</sup> The court also addressed VMI's assertion that its policy was justified because it had established an all-female university to provide comparable leadership education to female students. The court rejected this argument, reasoning that the all-female school was inferior to VMI in all facets. Among other things, it lacked VMI's resources, student capacity, faculty, facilities, reputation, and network of alumni. As such, it did not provide comparable educational benefits for female students.<sup>29</sup>

*Title IX:* Prior to revision in 2006, the regulations for Title IX prohibited single-gender classes in all cases except: (a) physical education classes during participation in contact sports; (b) physical education classes that result from the application of objective standards of physical ability; (c) elementary and secondary courses dealing primarily with human sexuality; and (d) choruses based on vocal range or quality, which may result in a single sex or predominantly single sex grouping.<sup>30</sup> Likewise, a LEA was prohibited from establishing a single-gender school unless it also made a comparable program available to the other gender "pursuant to the single policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools."<sup>31</sup> In light of the *Hogan* and *VMI* cases, the USDOE interpreted "comparable program" to mean that, in order to operate a single-gender school, the LEA was required to open a "comparable" single-gender school for the other gender.<sup>32</sup>

Subsequently in 2006, the regulations for Title IX were amended in order to provide LEAs with greater flexibility to establish single-gender schools as authorized by the NCLB Act. According to the USDOE's Office of Civil Rights (OCR):

The purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination.<sup>33</sup>

The 2006 regulations establish separate standards for single-gender classes, including extracurricular activities,<sup>34</sup> and schools. In general, both single-gender classes and schools must be nonvocational<sup>35</sup>

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<sup>25</sup> *Hogan*, 102 U.S. 3331, 3339 (1982).

<sup>26</sup> *Id.* at 3340.

<sup>27</sup> *Id.*

<sup>28</sup> *United States v. Virginia*, 518 U.S. 515, 533-534 (1996).

<sup>29</sup> *Id.* at 547-554.

<sup>30</sup> See 34 C.F.R. 106.34(b)-(f) (prior to its amendment in 2006).

<sup>31</sup> See 34 C.F.R. 106.35 (prior to its amendment in 2006).

<sup>32</sup> U.S. Department of Education, Guidelines Regarding Single-Sex Classrooms and Schools, 4000-01-U (May 3, 2002) *available at* <http://www.ed.gov/about/offices/list/ocr/t9-guidelines-ss.html>.

<sup>33</sup> Federal Register, Vol. 67, No. 89 (May 8, 2002) *available at* <http://www.ed.gov/legislation/FedRegister/proprule/2002-2/050802a.html>.

<sup>34</sup> The regulation does not define the terms "class" or "extracurricular activity," but it does specify that the terms do not include interscholastic, club, or intramural athletics. 34 C.F.R. 106.34(5).

in nature and may only serve elementary or secondary students.<sup>36</sup> Enrollment in a single-gender class or school must be entirely voluntary.<sup>37</sup>

A LEA may establish a single-gender classroom for the purpose of achieving one of two important governmental objectives: (a) to improve student achievement as part of a policy of providing diverse learning opportunities; or (b) to meet the specific learning needs of students.<sup>38</sup> A LEA choosing to offer a single-gender class: (a) must provide all other students, including members of the other gender, a coeducational option that is of substantially equal quality;<sup>39</sup> and (b) may also be required to offer a substantially equal single-gender option to students of the other gender.<sup>40</sup>

A LEA must provide single-gender classes in an evenhanded manner when seeking to fulfill its important objectives. Thus, if the LEA's purpose for establishing a single-gender class is to provide diverse learning opportunities, it must include students of both genders and their parents in assessing whether students and parents are interested in such an option. Similarly, if the LEA seeks to establish a single-gender class in order to better serve the learning needs of students, it must assess the needs of both genders and determine whether a single-gender class is appropriate to meet those needs. Thus, a LEA may not arbitrarily decide to offer single-gender classes exclusively to students of one gender. It may only provide a single-gender class exclusively to students of one gender if it determines that: (1) students of the other gender are not interested in a single-gender option, or (2) students of the other gender do not have learning needs that can be addressed by a single-gender class. Under these circumstances, the LEA would only be required to provide a substantially equal coeducational option to students of the other gender.<sup>41</sup>

Single-gender classrooms must be evaluated every two years. The LEA must demonstrate that it is adhering to the important governmental objectives for which its single-gender classrooms were established to serve. It must also demonstrate that its program continues to operate free from overly-broad gender stereotypes and that all coeducational and single-gender options are of substantially equal quality.<sup>42</sup>

The regulations set forth a non-exclusive list of factors to be used in determining whether a coeducational or single-gender alternative is "substantially equal." These factors include: the policies and criteria for admission; the educational benefits provided, including the quality of the curriculum, services, instructional materials, and technology; the qualifications of faculty and staff; geographic accessibility; the quality and accessibility of facilities; and intangibles, such as faculty reputation.<sup>43</sup> Such factors form the basis of inquiry for required program evaluations by LEAs and investigations of complaints filed against such programs with the USDOE's OCR.<sup>44</sup>

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<sup>35</sup> The regulation does not define the term "nonvocational," but definitions for the regulation provide that an, "institution of vocational education" means, "a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study." 34 CFR 106.2(o).

<sup>36</sup> 34 C.F.R. s. 106.34.

<sup>37</sup> 34 C.F.R. s. 106.34(b)(iii).

<sup>38</sup> 34 C.F.R. s. 106.34(b)(1)(i).

<sup>39</sup> 34 C.F.R. s. 106.34(b)(1)(iv).

<sup>40</sup> 34 C.F.R. s. 106.34(b)(2).

<sup>41</sup> Federal Register, Vol. 71, No. 206 (October 25, 2006) *available at* <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

<sup>42</sup> 34 C.F.R. s. 106.34(b).

<sup>43</sup> 34 C.F.R. 106.34(b)(3) and (c)(3).

<sup>44</sup> Federal Register, Vol. 71, No. 206 (October 24, 2006) *available at* <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

Title IX does not cover admissions to nonvocational elementary and secondary schools.<sup>45</sup> Nonetheless, USDOE formerly interpreted Title IX to require a LEA that operated a single-gender school for one gender to also offer a single-gender school for the other gender.<sup>46</sup> This interpretation changed under the 2006 Title IX regulations. Now, a LEA choosing to offer a single-gender school has the option to provide students of the other gender a substantially equal single-gender school or a coeducational school.<sup>47</sup>

**B. RULE-MAKING AUTHORITY:**

This bill does not appear to create, modify, or eliminate rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

Representative Legg submitted the following sponsor statement:

As the single-gender classroom trend grows nationally, we are seeing more and more positive results. Because girls and boys are so diverse, single-gender classrooms offer unique educational opportunities for both. Allowing school districts the choice to offer single-gender classrooms will facilitate a better understanding of the learning differences of boys and girls. In addition, it will ultimately give students the chance to learn in an environment with less distractions and a greater emphasis on the individual needs of each student.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 18, 2008, the Schools and Learning Council adopted a strike everything amendment and reported the bill favorably as a council substitute. The strike everything amendment:

- Amended s. 1000.05, F.S., which prohibits separation of students by gender subject to certain exceptions, to create an exception for the single-gender programs authorized by the bill.
- Amended s. 1002.20(6), F.S., to add single-gender programs to the list of school choice options about which school districts are required to inform parents.
- Assigned a section number, s. 1002.311, F.S., to the undesignated section created by the bill to authorize establishment of single-gender programs.
- Required single-gender programs to be in compliance with 34 C.F.R. s. 106.34., and revised the section so that it uses terminology that is consistent with the federal regulation.
- Provided, consistent with the federal regulation, that single-gender programs must be nonvocational and may be offered to elementary, middle, or high school students.
- Required each school district to evaluate its single-gender programs every two years to ensure compliance with the state law and federal regulation.

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<sup>45</sup> 20 U.S.C.A. § 1681(a)(1). (“in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of higher education”).

<sup>46</sup> U.S. Department of Education, Guidelines Regarding Single-Sex Classrooms and Schools, 4000-01-U (May 3, 2002) *available at* <http://www.ed.gov/about/offices/list/ocr/t9-guidelines-ss.html>.

<sup>47</sup> 34 C.F.R. s. 106.34(c)(1).