SINGLE-SEX SCHOOLS, THE LAW, AND SCHOOL REFORM

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Public schools in the United States have undergone a wide array of reforms motivated by both political and educational concerns. Some social scientists have labeled these reform efforts a civil war involving several aspects of society (Apple, 1993; Brown, 1995, 1997; Crozier, 1984). Seeking to reintroduce single-sex public education, one of the more controversial of these recent reforms, may not always lead to rational discourse, but is always political and noteworthy (Apple, 1993; Brown, 1995, 1997; Crozier, 1984; Hopkins, 1997).

In light of the array of issues surrounding single-sex schools, we first briefly examine the recent history of school reform, as it provides the backdrop for the push for single-sex schools. After discussing the history of single-sex schools, we focus on and analyze the legal status of these schools. More specifically, we review constitutional dimensions of gender-based discrimination and the leading cases that have been litigated in this regard. In the final section of the article, we offer our reflections on why we believe single-sex schools are not likely to occupy a major place in the future of urban American public schools.

SCHOOL REFORM BACKGROUND

School reform movements are almost as old as schools themselves. The constant flow of change in the schools aside, there is little doubt that the current wave of reform was initiated by the seminal report A Nation at Risk (National Commission on Excellence in Education, 1983). This report’s assertion that the schools were in dire need of improvement galvanized
reformers into action. The school reform movement involves national, state, and local efforts at improving the quality of public education. Among the more salient efforts in the long list of reform initiatives are accountability measures to raise academic achievement, higher standards for teachers, increased funding, additional input from teachers into the educational process through site-based decision-making councils, greater parental involvement, and, of course, the call for single-sex schools. In addition, ongoing strategies designed to improve public schools can be traced to the original motivation for change, judicial efforts to integrate public education initiated by Brown v. Board of Education (1954). In fact, desegregation efforts continue to play a major role in reform efforts in different parts of the country, most notably in the largest urban centers more racially segregated today than they were 30 years ago (Orfield, 1993), where public funds are often tied to choice programs including vouchers and charter schools with their attendant promises of raising academic outcomes.

Proponents of choice have long considered it a panacea to provide greater equity to disadvantaged students, the poor, and racial and ethnic minorities, and a means to reduce violence in the schools (Coons & Sugarman, 1978; Peterson & Hassel, 1998; Witte & Clune, 1990). These reformers view choice plans including vouchers, charter schools, magnet schools, and open enrollment programs as mechanisms to help disadvantaged students improve their chances for success in life. In this long list of reforms, perhaps the most recent calls for the creation of single-sex schools. Although they are far from new, a small subset of the choice movement seeks to provide parents with the option of sending their children to single-sex public schools as a way to provide an environment within which children can optimize their opportunities by being free to focus on academic concerns, rather than so much of the social interaction that takes place in coeducational institutions.

**SINGLE-SEX SCHOOLS**

Except for large urban centers in the Northeast such as Baltimore, Boston, Buffalo, New York, and Philadelphia, and a few cities in the South, coeducational public schools were the rule through the 19th century. Large cities were the exception because middle-class parents typically did not want their daughters to mingle with the sons of the poor. In fact, by the end of the 19th century, only 12 of 628 public school districts reported single-sex schools (Shmurak, 1998, p. 6).
Single-sex schools continued to decline in America at the dawn of the 20th century (Shmurak, 1998). In 1910, 27% of the nation’s colleges were all male, 15% were all female; the remaining 58% were coeducational (Kaminer, 1998). More recently, the number of colleges for women declined from 228 in 1970 to 94 in 1992. At the secondary level, private schools followed the lead of public education in becoming increasingly coeducational. In 1992, the National Association of Independent Schools reported that whereas there were 166 all female schools out of 682 member institutions in 1963, this number had shrunk to 109 out of 870 schools (Shmurak, 1998). Most single-sex secondary schools in America are Catholic, but their numbers are also declining. Currently, about 40% of the approximately 1,200 Catholic high schools in the United States are single-sex, down 10% from a decade ago; of these, 82% of the single-sex Catholic schools are for girls (Tucker, 1998a, p. 13).

Recently, two proposed single-sex K-12 public schools have received extensive public attention: the all-Black male academies planned for Detroit and East Harlem’s Girls School in New York City (Lewin, 1998). At the same time, other schools have established single-sex classes. At least two private schools have started with single-sex classes: the Walker School in Marietta, Georgia, and the Marin Academy in San Rafael, California. In the public arena, in attempting to improve discipline, a middle school in Tyler, Texas, separates boys and girls in cafeterias and in the classes, by seating the boys on one side and girls on the other (Coles, 1998).

The middle school in Irvington, New Jersey, instituted separate classes for the sexes in 1994. San Francisco’s Marina Middle School has single-sex classes for algebra; the boys enroll in the Arthur Ashe Academy, whereas the girls enter the Sally Ride Academy (Tucker, 1998b). Five other schools in California, located in East Palo Alto, San Jose, Stockton, Doris, and Fountain Valley, have single-sex classes. Moreover, California Governor Pete Wilson supports a $5 million pilot program approved by the state legislature to promote experimentation with single-sex middle and high schools in 10 districts (Kaminer, 1998; Tucker, 1998b). Yet, the pilot program has received only nine applications (Tucker, 1998b) and may have to survive constitutional challenges. Currently, single-sex schools exist in New York, Virginia, Maine, Maryland, New Hampshire, Illinois, and California. As noteworthy as these developments may be, this article delimits itself to an examination of single-sex schools as a unit rather than single-sex classes within schools.
The effectiveness of single-sex schools is currently a hot topic of debate. In his longitudinal study, Shmurak (1998) concluded that single-sex schools generally do not produce the advantages claimed or desired over coeducational schools when controls are implemented for socioeconomic status and other factors. She maintained that the single-sex movement is driven by ideological and marketing schemes rather than pedagogical or educational concerns. In addition, the recent study of single-sex schools, *How Schools Shortchange Girls* (American Association of University Women, 1992), revealed that single-sex schools had no advantages over coeducational schools (Kaminer, 1998; Lewin, 1998). Others researching this topic drew similar conclusions (Lee, 199 Lee & Bryk, 1986; Marsh, 1989; Tyack & Hansot, 1992).

**THE LAW AND SINGLE-SEX DISCRIMINATION**

The interrelationship between the Constitution, statutory law, and judicial interpretation govern the operations of single-sex schools. First and foremost, American law protecting citizens against discrimination changed with the adoption of the 14th Amendment to the Constitution in 1868. This amendment applied the Bill of Rights to the states and added the due process and the equal protection clauses to prevent discrimination, especially against the newly freed slaves. Until the 14th Amendment was adopted, the Bill of Rights held the federal government accountable for its actions against citizens but did not apply to individual states. Under these two provisions, a state can neither deprive any person of life, liberty, or property (including education) without due process nor deny any person equal protection under the law, meaning that the government must, as noted below, treat similarly situated people similarly.

In examining equal protection more closely, the more common constitutional vehicle when seeking equity of any sort, the result of a case typically hinges on the level of scrutiny a court applies when dealing with a form of alleged discrimination. Equal protection guarantees that the government will treat similarly situated individuals similarly. Rather than reject the government's ability to classify persons in the creation and application of laws, equal protection analysis seeks to ensure that such classifications are neither based on impermissible criteria nor used arbitrarily to burden a group of individuals. Equal protection has nothing to do with the determination
of whether a specific individual is properly placed within a classification. Instead, it tests whether the classification is properly created.

The Supreme Court has adopted three standards of review in cases involving equal protection. Under the first test, the court will not grant any significant review of legislative decisions to classify persons in terms of general economic legislation. Thus, if a classification is of this type, the court will ask only whether it is conceivable that the classification bears a rational relationship to an end of government not prohibited by the Constitution. As long as it is arguable that another branch of government had such a basis for creating the classification, a court should not invalidate its action. This test gives a strong presumption of constitutionality to the governmental action; the court only invalidates the law if it has no rational relationship to any legitimate interest of government.

At the other end of the spectrum, under the strict scrutiny test, the court will not defer to the decision of the other branches of government but will independently determine the degree of relationship that the classification bears to a constitutionally compelling end. The court will not accept every permissible government purpose as sufficient to support a classification under this test, but instead requires the government to show that it is pursuing a compelling or overriding purpose. The court employs strict scrutiny in reviewing fundamental constitutional rights such as those enumerated in the Bill of Rights or when a governmental classification distinguishes between persons based upon the "suspect" classifications of race or national origin. When the government uses a classification based on race or national origin, or a fundamental right, the court applies strict scrutiny and requires it to be necessary, or narrowly tailored, to achieve a compelling or overriding governmental interest.

The Supreme Court has adopted an evolving intermediate standard of review not as difficult for the government to meet as the compelling interest test, but which involves less deference to the legislation than does rationality. Under this intermediate measure, courts are not supposed to uphold a classification unless it has a "substantial relationship" to an "important" government interest. The Supreme Court applied this standard of review most recently in United States v. Virginia (1996), the case involving the Virginia Military Institute (VMI).

The principal statutory tool addressing inequality in education based on sex is Title IX of the Educational Amendments of 1972. Title IX provides that "No person . . . shall, on the basis of sex, be excluded from participation
in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.” Title IX contributed to the banning of many single-sex public schools and opened the doors to formerly all-male selective academic and vocational schools. Although private schools are not subject to Title IX unless they receive federal aid, many followed the public school movement to coeducational programs.

**LEGAL CHALLENGES TO SINGLE-SEX SCHOOLS**

Five suits that challenged single-sex schools along with a current controversy in New York City are important for this topic. We present the cases chronologically to demonstrate the legal evolution of single-sex schools in the courts. Other than the case involving VMI, the disputes involve K-12 settings. The VMI case is included because of the important principles that the Supreme Court set in this ruling.

**Philadelphia.** In *Vorchheimer v. School District of Philadelphia* (1976), a female student unsuccessfully applied for admission to the city’s only all-male high school rather than attend the city’s all-female high school. She subsequently filed a class action suit claiming that the all-male school was unconstitutional. After a federal district court ordered the school system to admit qualified females to the all-male school, the Third Circuit reversed the decision because attendance at either of the two single-sex high schools was voluntary and the facilities were equal.

The Third Circuit reasoned that insofar as Philadelphia’s operating separate schools for girls and boys did not create educational inequities, it was not contrary to public policy. The court was of the opinion that the Constitution does not require all public schools to be coeducational as long as equal educational opportunities are made available to both sexes. Moreover, the Third Circuit rejected the student’s arguments based on cases that prohibited racial segregation. The court maintained that because race was a “suspect” classification, it called for strict scrutiny analysis whereas gender did not.

**Hinds County, Mississippi.** In an attempt to soften the blow of court-ordered racial desegregation, school systems in Hinds and Amite counties, Mississippi, sought to open schools segregated by gender. The districts argued that such an arrangement was necessary because it was the only way to
prevent Whites from leaving the public schools. After a trial court ruled that such a scheme was permissible, the Fifth Circuit reversed (United States v. Hinds County School Board, 1977), relying on both equal protection and the recently passed Equal Educational Opportunity Act of 1974. Moreover, unlike the situation in Vorcheimer, in which students were free to enroll in a single-sex school, the court struck this plan down because it involved involuntary student assignments. The court thus concluded that assigning students to gender-segregated schools under this proposed scheme violated both the Constitution and federal law.

New York City. In Jones v. Board of Education of the City of New York (1986), the parents of students in the city's only remaining all-female public high school unsuccessfully filed suit under Title IX, challenging the board's decision to make the school coeducational. The school, most of whose students were from low-income families, was open to girls from throughout the city and did not have any specific entrance requirements.

A federal trial court rejected the parents' claim, ruling that since Title IX did not require the district to maintain the school for females only, the conversion did not deprive female students of their right to equal protection. The court reasoned that the students still had unlimited access to a free public education in New York City even if it was not in a single-sex setting. The court rejected the argument of the plaintiffs that single-sex schools are better than coeducational ones, while ruling that there is no constitutional right to the best education possible.

Detroit, Michigan. In light of the predominately Black demographic composition of the district, the Detroit Board of Education sought to establish three all-Black male academies to remedy educational problems encountered by Black males in public schools and society in general. The academies would have served approximately 250 boys in preschool through fifth grade; Grades 6 through 8 were to be phased in over the next few years. The academies would offer special programs including a class entitled "Rites of Passage," an Afrocentric curriculum, futuristic lessons in preparation for careers, emphasis on male responsibility, mentors, Saturday classes, individualized counseling, extended classroom hours, and uniforms for students.

The plan was challenged in 1991 in Garrett v. Board of Education of the School District of the City of Detroit when a parent sought to enroll her daughter in one of the planned all-male academies scheduled to begin operating in the fall of that year. The federal trial court ruled that the purpose for
which the all-male academies came into being was insufficient to override
the rights of female students to equal educational opportunities. In granting
the injunction, the court relied upon the Supreme Court’s decision in Mis-
sissippi University for Women v. Hogan (1982), which held that excluding an
individual from a public school based solely on sex violates the Equal Pro-
tection Clause.

The trial court acknowledged that the all-male academies were organized
in response to a crisis facing African American males manifested by high
homicide, high unemployment, and high drop-out rates. The court indi-
cated that although the statistics showed a compelling need, the district fell
short of demonstrating that excluding girls was substantially related to achiev-
ing its educational objectives. The court added that the district failed to
produce convincing evidence that the presence of girls in the classroom bore
a substantial relationship to the difficulties facing urban Black males.

Hopkins (1997), an African American involved in the academies in
Detroit at the time of the trial, viewed the ruling as working against the
interest of Black males and the Black community. His work, which discusses
the advantages of all-Black-male public academies and the development of
such schools across the country, argued that Black males need programs of
their own including Black role models, gender separation, and an African-
centered curriculum. Hopkins questioned the motivation of the White
middle-class organizations such as the American Civil Liberties Union
(ACLU) and the National Organization for Women (NOW) that chal-
lenged the all-Black-male academies.

Hopkins had reasons to challenge the wisdom of the trial court’s ruling
in Garrett. One could question the speed with which the judge enjoined the
academies from opening. First, the district’s plans for the academies were
made public a year in advance and the schools were just weeks away from
opening for the 1991 academic year. Yet, the mother did not file her chal-
enge until August 5, 1991. Oral arguments were heard on August 15, 1991,
and the academies were scheduled to open August 26, 1991. Second, the
mother voluntarily dismissed her action against the district before oral argu-
ments were held due to harassing phone calls and comments she received
from members of the Black community. However, the court accepted an-
other plaintiff, Nancy Doe, prior to oral arguments. The court reasoned that
female students would suffer greater harm by attending another public school
in Detroit until the conclusion of a trial than the boys would by attending
coeducational schools.
In refusing to let the schools open as planned, the judge acted on his belief in the high probability that the plaintiff would prevail if the case went to trial in light of the deciding motion for injunctive relief. The four elements are the likelihood of plaintiffs’ success on the merits, whether the injunction would save the plaintiffs from irreparable injury, whether the harm to plaintiffs if relief is not granted outweighs the harm to others if relief is granted, and whether the public interest would best be served by the issuing of the injunction. The judge was convinced that the plaintiff was likely to prevail because in Hogan, the Supreme Court held that the exclusion of an individual from a public school due to gender violated equal protection.

The judge was of the opinion that by ordering the academies to admit girls, the opening of school might be delayed and the lives of students and teachers would be disrupted. The court reasoned that greater disruption would result if plaintiffs won this suit and the academies were then aborted. The board responded that an injunction would have harmed the students who would have benefited, the males who sought to study in a controlled environment. Even though the board incurred expenses of approximately $454,000 to establish the academies, the judge was not persuaded that these lost funds would not be recouped, especially if female students were admitted to the academies. The board refused to appeal the injunction, and the all-male academies never opened.

Hopkins (1997) argued that the all-male schools were necessary to prevent another generation of Black males from school failure. He further argued that experiments with single-sex schools for Black males are necessary given that racial integration is no longer an option in most cities, where the public school population is majority Black or people of color. Although there are no all-Black-male schools in the United States, there are all-male classes or mentoring programs for Black males in Atlanta, Baltimore, Boston, Brooklyn, Cincinnati, Cleveland, East Cleveland, East Lansing, Detroit, Miami, Milwaukee, Minneapolis, New Orleans, New York, Oakland, Portland, and Raleigh.

Many African Americans believe that young Black males need programs of their own to develop and implement Afrocentric curricula and should be taught by Blacks to meet their special needs in a racist society (Hopkins, 1997). African Americans resent the fact that the Black male academies were opposed in the court by middle-class White organizations, the ACLU and NOW. These sentiments are shared by many African Americans in urban centers where most public schools students are Black and/or members of other racial minorities.
Virginia Military Institute, Virginia. During the late 1980s, several potentially academically qualified females sought admission to the all-male Virginia Military Institute (VMI). VMI, then the only single-sex college or university among Virginia's public higher education institutions, refused to admit women based on its claim that it had a special mission that favors keeping it all male. Subsequently, the United States Department of Justice filed suit against the Commonwealth of Virginia and VMI for violating the equal protection rights of female students based solely on their gender in maintaining a military college exclusively for males. After years of judicial maneuvering, the case reached the Supreme Court.

In United States v. Virginia (1996), the Supreme Court held that Virginia's failure to justify excluding women from VMI violated their rights to equal protection. The court responded that although the state had established a separate program for women at Mary Baldwin College, this alternative did not afford both genders comparable benefits that satisfied equal protection analysis (Russo & Mawdsley, 1997).

The VMI case is important because it highlights at least four important principles for reviewing gender-based discrimination cases in education. First, the court rejected the idea that educational programs can be designed to benefit only one gender. Second, the court concluded that disputes involving gender-based discrimination must, at the very least, be reviewed under the intermediate standard of scrutiny. Third, the court added that the state, not the plaintiffs, bears the burden of proving that gender discrimination is constitutional and that it has sound educational justification for creating such institutions. The court left the door open to the possibility that single-sex schools may be constitutional as long as they provide equal educational opportunities for females and males.

East Harlem Girls, New York City. School officials in New York City were undeterred by the decisions involving Detroit and VMI over the constitutional status of single-sex schools. Consequently, in 1996, New York City Board of Education (NYCBOE) established an all-female school in East Harlem (Kaminer, 1998). The school, which opened in 1996 with one seventh-grade class of 50 girls, was officially named the Young Women’s Leadership School, but is commonly known as East Harlem Girls School.

In 1997, the United States Department of Education’s Office of Civil Rights issued an informal preliminary finding that single-sex public schools appear to violate federal law. As such, the department recommended that the NYCBOE should either sexually integrate the school or establish a separate but equal facility for boys. However, Chancellor Rudy Crew made
it clear that he would not order boys admitted to the school, nor would he recommend the creation of a similar school for boys (Kaminer, 1998). The New York branches of the ACLU and NOW, along with the New York Civil Rights Coalition, are challenging the legality of the school.

Supporters of East Harlem Girls School have cast the debate as one rooted in class and race. They have denounced opponents of school—designed to serve Hispanic female students from lower-income families—NOW in particular, as upper-middle-class White meddlers out of touch with the needs of poor minorities (Kaminer, 1998). The challengers have retorted that the establishment of an all-female school is part of a campaign by conservative elites to dismantle public education through privatization, given that this school was conceived and partly funded by wealthy White conservatives Ann Rubenstein Tisch and her husband, Andrew Tisch, the chairman of the Loews Corporation management committee (Kaminer, 1998). Even in the midst of this heated controversy, the school, which now serves 150 students, may succeed given that it is well funded and equipped.

CONCLUSIONS

The litigation discussed above reveals that most, but not all, single-sex public schools have been susceptible to charges of violating the Equal Protection Clause and/or Title IX because they do not provide equal educational opportunities for both genders. Even so, since 1990 four all-female high schools have been established (Kaminer, 1998), and other districts are planning to operate single-sex schools. For example, despite the results in Garrett, Detroit currently maintains three single-sex schools for pregnant girls and one all-male school for potential dropouts (Hopkins, 1997). Baltimore has operated an all-female high school without a legal challenge for decades.

As evidenced in Jones v. Board of Education of the City of New York, districts are not required to operate single-sex schools. However, based on equal protection analysis, if school systems or states choose to operate single-sex institutions, they must offer comparable facilities for both genders on a voluntary basis (Vorchheimer v. School District of Philadelphia, 1976; United States v. Virginia, 1996). Consequently, a member of the opposite sex may be denied admission to a single-sex school if a comparable program exists for that gender. At the same time, single-sex public schools may not be used to circumvent court-ordered desegregation plans (United States v. Hinds County
School Board, 1977). In light of holdings against single-sex schools, they are likely to remain a small percentage of public schools.

The educational reform movement in the United States focuses on choice as a means of extricating the public schools from their present predicaments. In the current political climate, choice fits in so neatly with the American concept of free enterprise or market systems that it appears to be common sense to many Americans (Apple, 1993). Spence (1995), a lawyer and social critic, is convinced that because the concept of free enterprise is the new American religion, the function of the law is not so much to provide justice as it is to afford those in power to retain their favored positions. This seemingly powerful political choice movement is likely to prevail in the educational arena to some degree regardless of which political party controls the White House (Apple, 1993).

As far-reaching as the present reform movement is, we maintain that it is not likely to have much of an impact on the growth of single-sex schools, especially in urban areas. This prediction is based on four assumptions. First, as evidenced in Garrett, African Americans and other minority groups are more interested in seeking quality education than single-sex schools. In other words, they wish to improve the quality of education by whatever means are available and are not necessarily tied to a particular approach such as single-sex schools.

Second, in the VMI case the Supreme Court established that the creation of a single-sex public school is impermissible absent the establishment of a comparable institution for the opposite sex. In light of the VMI case, it may be difficult to create new schools or programs that are comparable in academic offerings, methods of instruction, financial resources, and that enjoy similar prestige to assist graduates in obtaining future employment or educational advancement.

Third, many women believe that having fought hard to gain entry to all-male military academies (and other types of institutions such as vocational schools) where they outperform male students academically, they would be regressing by accepting single-sex schools for women (Kaminer, 1998). As an aside, in light of the strongly negative reaction of the minority community that NOW and ACLU faced with regard to assisting challenges to single-sex schools in Detroit and New York City, we believe it will be interesting to observe whether this creates a backlash in relations between the minority community and these two organizations that have often shared common goals.
Fourth, single-sex schools simply have not been a strong element in the fabric of urban American public education. Consequently, there is no reason to anticipate any significant change in this regard.

As difficult as it is to predict, we believe that, except for those few locations where they have enjoyed success, single-sex schools are likely to remain a small part of the school reform movement. At the same time, parents and proponents of single-sex schools may be able to expand the number of these schools as long as enrollment is voluntary or comparable classes are established for both sexes. Regardless of how the status of single-sex schools evolves, this is an issue that bears watching.

REFERENCES


