

The Maryland State Department of Education (MSDE) received requests for guidance from local education agencies (LEAs) on the proper implementation of single-sex physical education courses. If offering single-sex courses, each LEA must ensure that its policies and practices are in alignment with the requirements of Title IX of the Education Amendments of 1972 (Title IX).

Title IX is a federal law that protects students from discrimination based on sex (including sexual orientation and gender identity) in education programs or activities that receive federal financial assistance. This includes schools and local educational agencies that receive federal financial assistance from the United States Department of Education (USDOE). The law states:

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

20 U.S.C.A. § 1681

This guidance document highlights the broad implications of Title IX for single-sex physical education courses¹ and provides considerations for the LEA in developing course offerings.²

LAW

Under Title IX, the LEA must operate its education program or activity in a non-discriminatory manner free of discrimination based on sex, including sexual orientation and gender identity. The USDOE maintains regulations, which govern the offering of single-sex classes. See 34 CFR § 106.34.

Physical Education Classes Exceptions

Generally, the LEA may not carry out a single-sex physical education class,³ or refuse participation by a student on the basis of sex, unless the class or activity meets one of two exceptions:

- (1) **Contact sports** in physical education classes. If the purpose or major activity involves bodily contact – such as wrestling, boxing, rugby, ice hockey, football, and basketball – then the LEA may separate students by sex.
- (2) **Ability grouping** in physical education classes. The LEA may group students in physical education classes and activities by ability as long as the students are assessed by objective standards of individual performance developed and applied without regard to sex.

34 CFR § 106.34(a)(1)-(2) (emphasis added).

Use of these exceptions in Maryland public schools should be rare, if used at all. Outcomes that involve physical contact are not included in the Maryland Physical Education Framework.⁴ Ability grouping should lead to meaningful and safe activities that are inclusive of all students, including students with disabilities. In many cases, grouping students solely by their ability is not a best practice.⁵

¹ It is important to note that this document is focused on single-sex physical education classes. It does not address interscholastic, club, or intramural athletics. Extracurricular athletics are governed by separate Title IX regulations. See 34 CFR §§ 106.41 and 106.37(c).

² This document is intended as guidance and does not constitute legal advice. Each LEA should consult with legal counsel to address fact-specific questions about its policies and practices, including compliance with other federal laws such as the Equal Protection Clause of the Fourteenth Amendment, Title IV of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act.

³ The regulations also allow exceptions for other classes, such as human sexuality classes and choruses. See 34 CFR § 106.34(a)(3)-(4).

⁴ Maryland Physical Education Framework: Pre-Kindergarten through 12th Grade (2020)

https://www.marylandpublicschools.org/about/Documents/DCAA/PE/Maryland_PE_Framework_2020.pdf

⁵ Physical Education in Maryland (2019)

<https://www.marylandpublicschools.org/about/Documents/DCAA/PE/PhysicalEducationMD.pdf>

Nonvocational Classes Exception⁶

If the physical education course does not meet one of the exceptions above, then separation by sex may still be allowable under a third exception for nonvocational classes that meet certain criteria. Specifically, the regulations allow the LEAs to provide nonvocational single-sex classes if:

- (1) *Each single-sex class or extracurricular activity is based on the [LEA's] important objective:*
 - a. *To improve educational achievement of its students, through [its] 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; or*
 - b. *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;*
- (2) *The [LEA] implements its objective in an evenhanded manner;*
- (3) *Student enrollment in the single-sex class or extracurricular activity is completely voluntary; and*
- (4) *The [LEA] provides to all other students, including students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.*

34 CFR § 106.34(b)(1).

In making a determination about whether coeducational classes are substantially equal to single-sex classes, the USDOE will consider:

The policies and criteria of admission, 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, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.

34 CFR § 106.34(b)(2)-(3).

The LEA is required to conduct periodic evaluations to ensure that single-sex classes are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex. The evaluation must also ensure that any single-sex classes are substantially related to the achievement of the important objective for the classes. Evaluations must be completed at least every two years.⁷ See 34 CFR § 106.34(b)(4).

Enforcement

The Office for Civil Rights at the USDOE receives complaints of discrimination and may complete investigations under Title IX and its accompanying regulations. A complaint of discrimination can be filed by anyone who believes that the LEA discriminated against someone on the basis of sex. A person or organization may file a complaint on behalf of another person or group. The LEA should consider the exceptions under the regulations *before* offering a single-sex course in order to ensure it is in compliance with the law and be prepared to respond to a complaint.

⁶ Vocational classes (i.e. career and technical classes), unlike nonvocational classes, may never be offered on a single-sex basis. According to USDOE guidance, vocational classes have a primary purpose to prepare students to pursue a technical, skilled, or semi-skilled occupation or trade; or to pursue study in a technical field.

⁷ The Office for Civil Rights at the USDOE recommends that the LEA widely distribute the evaluations, including posting on the LEA website.

Scenarios for Consideration

As the federal agency charged with implementing Title IX, the Office for Civil Rights is the ultimate authority over whether an LEA's policy or practice violates the federal law. MSDE provides the following scenarios as a tool to help LEAs proactively consider whether their policies and practices for physical education may violate Title IX.

1. **FACTS:** An LEA offers a high school weightlifting course for males only. It provides no justification for making this a single-sex class. The class does not involve physical contact between students. The LEA does not offer a co-educational version of the course. A high school counselor denies a female student access to the weightlifting course based on her sex.

ANALYSIS: This scenario is problematic for two reasons. First, the class does not involve bodily contact; therefore, it does not meet the exception for contact sports in physical education classes under 34 CFR § 106.34(a)(1). Second, the class fails to meet the exception requirements for nonvocational single-sex classes under 34 CFR § 106.34(b). Specifically, the LEA fails to provide a justification as to how the class is necessary to achieve an important objective, nor does it provide a substantially equal coeducational class.

2. **FACTS:** Students at a middle school are enrolled in a physical education class by gender without voluntary consent. The school does not offer a coeducational class.

ANALYSIS: Pursuant to 34 CFR § 106.34(b)(1)(v), a school 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. If the school offers a substantially equal coeducational class, it must also ensure that the students are not automatically assigned to the single-sex class, even with an opt-out process. Enrollment must be voluntary, such as affirmative consent in writing.

CONCLUSION

MSDE is committed to supporting LEAs in the development and implementation of standards-based physical education programs. MSDE will continue to provide LEAs with guidance and technical support to ensure **every student** has **equal access** to high-quality physical education programs.

RESOURCES

For more detailed information, please see the U.S. Department of Education ("USDOE"), Office for Civil Rights' guidance document entitled, "[Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities](#) (2014)."

For questions:

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