

Single Sex Education in Elementary and Secondary Public Schools

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Introduction

When the Supreme Court held in *United States v. Virginia* that the Virginia Military Institute (VMI) must accept women applicants, people feared that signaled the end of single sex education in the United States. However, recently, single sex schools have been springing up all over the country. As of March 2009, there were 540 schools operating in some degree as single gender.¹ The *No Child Left Behind Act of 2001* authorized school districts to use local or innovative program funds to offer single-sex schools and classrooms consistent with applicable laws.² And, the U.S. Department of Education published amendments to the Title IX regulations in October 2006 that provided school districts additional flexibility to implement single sex programs.³ Single sex education has its proponents and critics. With the idea of single sex education comes the question of constitutionality. The Supreme Court has never answered the question, if single sex education in public elementary and secondary schools would pass the intermediate scrutiny test of the Equal Protection Clause of the 14th Amendment. Nor have they answered the question, if these types of schools will pass a separate but equal test that failed in *U.S. v. Virginia*. This note will first look at the advantages and disadvantages of single sex education, and determine that the benefits outweigh any disadvantages. Next, this note will examine the history of gender equal protection cases in the United States, and then specifically look at single sex education cases. And finally, this note will analyze what types of single sex education is constitutional under the ruling in *U.S. v. Virginia*, and that if a single sex school offers any “unique” qualities, the gender classification will not pass.

There are different kinds of single sex educational programs that public school offers. There are single sex schools that are entirely all one sex, in other words, the campus is single gender. These types of schools offer different amenities to students. Some schools target at-risk students, others are focus on math and science for girls or math and business for boys.⁴ Some single sex schools are public schools offered by the local school district, and some are charter schools which also operate in junction with the school district but are subject to different rules and regulations.⁵ There are some schools that have single sex classrooms, which mean that the children separate by gender for certain subjects. Some schools have single sex grades, in which the entire grade is separated by sex for all classes. And finally, some public schools separate

¹ National Association for Single Sex Public Education, <http://www.singlesexschools.org/home-introduction.htm> (last visited May 12, 2009) [hereinafter NASSPE].

² Cornelius Riordan, et al., Early Implementation of Public Single Sex Schools: Perceptions and Characteristics ix US Department of Education (2008) available at <http://www.ed.gov/rschstat/eval/other/single-sex/characteristics/characteristics.pdf>.

³ *Id.*

⁴ NASSPE, *supra* note 1

⁵ *Id.*

boys and girls in different schools, but those schools are within the same facility.⁶ Public schools offering single sex education for select subjects or single sex settings in addition to co-educational programs are difficult to identify because schools are reluctant to draw attention to themselves because of the Office of Civil Rights of the U.S. Department of Education.⁷

Advantages and Disadvantages of Single Sex Schools

Before examining the disadvantages and advantages of single sex education, one has to look at the different types of outcomes that will be judge to determine if this type of education is working. What factors determine if a single-sex education is beneficial to the children it is serving? When looking at the benefits or disadvantages of single sex school, researchers first look at outcome variables that have been subject to empirical evidence and that can be measured during a student's time in school.⁸ These short-term outcomes include student academic achievement (test scores, grades), student behavior (drug use, violence, illegal activity), student harassment, student interest in certain fields based on gender stereotypes, student attitudes and student academic experience.⁹ Later outcomes that are examined include career choice, career services, adult relationship, and adult adjustment (self esteem).¹⁰

In different studies performed throughout the country, there have been found to be both benefits and detriments to single sex education. Some advantages to single sex education include the benefits to young girls. The primary issue in creating single gender schools or classrooms was because girls were short-changed in mixed classrooms.¹¹ Research has shown that girls appreciate an environment in which they are neither competing with boys for the teachers attention nor being distracted by boy's behavior.¹² In single sex classrooms both boys and girls reported less distractions.¹³ Girls then feel more comfortable expressing themselves, because they are not afraid of being embarrassed by boys or having the class dominated by males.¹⁴ This allows girls to more likely feel good about getting good grades and not outshining boys because in a mixed classroom girl might receive mixed messages about being smart but also downplaying intelligence in trying to attract boys.¹⁵ Girls then spend more time on homework, academic activities and non-stereotypical extracurricular activities.¹⁶ Single sex schools are also known to have more opportunity for leadership roles, which benefits females because males are more likely to take on leadership roles in mixed schools.¹⁷

⁶ Brighter Choice, *Single Sex Public Schools in the U.S. 1* (2009) available at http://www.brighterchoice.org/fileadmin/user_upload/report.pdf

⁷ *Id.*

⁸ Fred Mael, et al., *Theoretical Arguments For and Against Single Sex Schools: A Critical Analysis of the Explanation 2* American Institute for Research (2004).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 17.

¹² *Id.* at 16.

¹³ *Id.* at 27.

¹⁴ *Id.* at 15, 27.

¹⁵ *Id.* at iii, 16.

¹⁶ *Id.* at 15, 25.

¹⁷ *Id.* at 24.

Separated classrooms also help girls, especially in grade school, because it has been shown that girls are much more easily distracted than boys because of a heightened sense of hearing. Girls have very sensitive hearing and by the age of 12 their sense of hearing is ten times higher than those of boys.¹⁸ Girls are distracted by extraneous noise such as tapping a pencil.¹⁹

Girls have also been found to appreciate single sex schools for the community atmosphere.²⁰ They see these schools as safe havens that can be called their own, and free from male intrusion.²¹ Girls then do not have to be afraid of sexual harassment in school, which can occur in co-educational settings.²²

Single sex schools are not only advantageous for girls but also boys. Some sources say that coeducational schools short-change boys because they do not pay attention to difficulties boys have in reading and writing and that the curriculum is geared towards girls, not placing boys into consideration.²³ Co-educational schools also often are poorly versed in the specific social and emotional needs of boy, and teachers do not know how to discipline them.²⁴ Boys and girls learn differently. Geometry and spatial relations mature about four years earlier in boys than girls.²⁵ Boys also are more active when learning, and are not as easily distracted.²⁶ They have shorter attention spans and higher energy levels.²⁷ A gender exclusive curriculum can accommodate for the difference in learning abilities at different ages. Some classroom have allowed boy to sit, stand, paying attention in the best position for them.²⁸ Males have cited that the main distraction in the classroom was sexual, and with single sex schools, boys can concentrate on academics.²⁹

Critics of single sex education say that it is a “quick-fix” to the array of problems facing many public schools. Critics do not approve of single sex education because they state that when proponents claim science can prove that girls’ and boys’ brains work differently (girl cooperative, boys compete) it is really just a dressed up way of stereotyping men and women.³⁰ Critics claim that school officials are wasting time and money on single sex schools and education when they should be exerting their energy on factors that will really work to improve schools, such as reducing class size and increasing teacher training.³¹ Some claim that single sex schools deprive children of real co-educational world of work and family.³² They claim that co-educational schools will better prepare students for the real world and students, especially girls,

¹⁸ Leonard Sax, *The Promise and Peril of Single Sex Public Education: Mr. Chip Meets Snoop Dogg*, Education Week, Mar. 2, 2005, at 34-5, 48 available at <http://www.singlesexschools.org/edweek.html>.

¹⁹ *Id.*

²⁰ Mael et al., *supra* note 8, at 22.

²¹ *Id.*

²² *Id.* at 26.

²³ *Id.* at 17.

²⁴ *Id.*

²⁵ Sax, *supra* note 18.

²⁶ *Id.*

²⁷ Mael et al., *supra* note 8, at 22.

²⁸ Sax, *supra* note 18.

²⁹ Mael et al., *supra* note 8, at 27.

³⁰ American Civil Liberties Union, *Segregated Schools: Separate and Unequal*, <http://www.aclu.org/womensrights/edu/30129res20070614.html> (last visited May 12, 2009) [hereinafter ACLU].

³¹ *Id.*

³² *Id.*

who need the opportunity to express themselves in front of a mixed classroom during elementary and secondary school to gain needed self-esteem that they will be able to compete in a mixed environment later.³³

The critics of single sex education are not looking at the benefits it has to offer. Public schools are failing, so it is the best interest of students for administrators to use all possible means for the students to receive a good education. Research has shown that boys and girls brains are different, they are programmed to learn distinct ways.³⁴ It is not saying that one gender is inferior to the other, they are just different. Single sex education has been shown to reduce stereotypes based on gender rather than promote them.³⁵ Factors such as smaller classrooms and teacher training are factors of a good school and many single sex schools offer those variables, in addition to offering different and specialized teaching styles which also may improve the quality of education. Public schools offering single sex education are providing choices to parents to pick the best education for their son or daughter. And finally the assumption that children from single sex classrooms or schools will not know how to act in the “real world” is not a proven theory. Students have a variety of opportunities to interact with the opposite sex, whether it be in extracurricular activities, through family, or just walking down the street to go to a store. Children will still interact with the opposite sex. In fact, some studies have shown that girls have a higher self-esteem after attending an all-girls school.

A study of by the U.S. Department of Education looked at the differences between single sex and co-educational schools. The study focused less on theoretical arguments for or against single sex schools but more on objective factors. Some of their findings included:

- Teachers in the single sex schools were more likely than teachers in the comparison schools to have earned certification beyond a master’s degree but on average, teachers from single-sex schools had fewer years of experience in the classroom.³⁶
- Overall, the single sex public schools served student populations similar to those incomparable co-educational public schools, although fewer students with disabilities attended single sex elementary and high schools.³⁷
- In both the elementary and middle school samples, more positive academic and behavioral interactions between teachers and students (both boys and girls) were observed in the single sex schools than in the co-educational comparison schools. (elementary and middle schools although differences fewer in middle).³⁸
- The principals of single sex schools were more likely to participate in professional development with their teachers than were the principals of co-educational schools.³⁹

³³ Mael et al., *supra* note 8, at 28.

³⁴ Sax, *supra* note 18.

³⁵ Riordan, *supra* note 2, at 70.

³⁶ *Id.* at 17.

³⁷ *Id.* at 19.

³⁸ *Id.* at 21.

³⁹ *Id.* at 22.

- The primary reasons for establishing single sex schools were to increase the focus on academics, to better address individual student needs and to reduce discipline issues or dropouts.⁴⁰
- Teachers reported significantly greater benefits of single-sex schooling for girls than for boys in five of the ten benefit categories. That is, teachers believed that girls benefit more than boys from better peer interactions, a greater emphasis on academic behaviors, a greater degree of order and control, socio-emotional benefits, and safe behavior. Teachers believed that both sexes benefit equally from single-sex education in terms of a greater sensitivity to sex differences in learning and maturation.⁴¹
- Teachers in single sex high schools rated problems with student behavior as less serious than teachers in coed schools.⁴²

It is important to note that a key variable for explaining the success of some single sex schools, and many successful schools for that matter, is the pro-academic choice made the stakeholders in a student's life.⁴³ This includes the student, parents, teachers, principals, etc. Because most students are not forced to go to single sex schools, the stakeholders are making an important decision to attend one of these schools.⁴⁴ So those who chose single sex schools usually have a core belief in education.⁴⁵ And this allows for the creation of school policy necessary for an effective school.⁴⁶ Professional development is also a crucial role in the development of single sex schools.⁴⁷

The research done of single sex schools is not perfect by any means. Some of the problems with this research are whether the favorable variables found in single sex schools, require a single sex school or are just more typically found in single sex schools.⁴⁸ But, the consensus is that single sex education has been found to benefit both boys and girls on some level.

Gender Classification Equal Protection Cases

In *Reed v. Reed*, the Supreme Court began applying a heightened form of scrutiny for gender classification.⁴⁹ In *Reed*, both a mother and father of a deceased minor boy petitioned to become the administrator of the son's estate.⁵⁰ The probate court held a joint hearing and issued the letters of administration.⁵¹ The court relied on an Iowa statute that stated, "males must be

⁴⁰ *Id.* at 24.

⁴¹ *Id.* at 27.

⁴² *Id.*

⁴³ Mael et al., *supra* note 8, at 11.

⁴⁴ *Id.*

⁴⁵ *Id.* at 11-12.

⁴⁶ *Id.* at 12.

⁴⁷ Sax, *supra* note 18.

⁴⁸ Mael et al., *supra* note 8, at ii.

⁴⁹ 404 U.S. 71, 76-77 (1971).

⁵⁰ *Id.* at 78.

⁵¹ *Id.* at 71.

preferred to females” in order of entitlement class and appointed the father as the administrator.⁵² Sally Reed, the mother appealed the judgment and the case made its way to the U.S. Supreme Court.⁵³

The Court recognized that the 14th Amendment does not allow a state the power to place people in different classifications on the basis of criteria that is wholly unrelated to the objective of that statute.⁵⁴ Although the state argued it had a rational basis for preferring males over females – to eliminate an area of controversy when two or more persons seek letters of administration.⁵⁵ The Supreme Court recognized there was some legitimacy, but held that the classification was not consistent with the Equal Protection Clause.⁵⁶ Although the state’s objective was conceivable or rational, the Court still rejected the state’s reasoning and went beyond rational basis and raised the analysis to a higher level of scrutiny for gender classifications.⁵⁷ At this time the Court did not put a name on the heightened standard of review.

Five years later, in *Craig v. Boren*, the Court acknowledged the intermediate scrutiny test for gender under the Equal Protection Clause.⁵⁸ In this case, an Oklahoma statute prohibited the sale of “nonintoxicating” 3.2% beer to males under the age of 21, and to females under the age of 18.⁵⁹ Craig, a male between the ages of 18 and 21 sought relief against enforcement of this law on the fact that it violated the Equal Protection Clause of the 14th Amendment. The Court recognized that *Reed v. Reed* provided a new standard of review when evaluating statutes that applied gender classifications for overbroad generalizations.⁶⁰ The Supreme Court relied on *Reed*, and established that a state must show an “important government objective” and means “substantially related to achievement of those objectives” for a gender classification to survive the Equal Protection Clause.⁶¹ The state argued that the statute was created for important government objective of traffic safety.⁶² The state then presented statistics on male/female driving and stated that the classification in the statute was substantially related to achievement of those goals.⁶³ The Court did find that the health and safety of its residents was an important government objective to satisfy the first prong of intermediate scrutiny. However the Court did not agree that the statistics were enough to satisfy the second prong – that gender based distinction serves to achieve the government objective.⁶⁴ The Court held that this classification failed the *Reed* standard, and therefore failed under the Equal Protection Clause.

⁵² *Id.*

⁵³ *Id.* at 75.

⁵⁴ *Id.* at 76.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ 429 U.S. 190, 197 (1976).

⁵⁹ 429 U.S. 190, 192 *citing* Okla.Stat., Tit 37. SS 241, 245).

⁶⁰ 429 U.S. 190, 198.

⁶¹ *Id.* at 197.

⁶² *Id.* at 199.

⁶³ *Id.*

⁶⁴ *Id.* at 200.

Single Sex Education Equal Protection Cases

The first case that examined single sex schools and the Equal Protection Clause was *Mississippi University for Women v. Hogan*.⁶⁵ In this case, Joe Hogan, a male, applied for admission to Mississippi University for Women (MUW)'s Nursing Baccalaureate Program.⁶⁶ Although he was otherwise qualified, he was denied admission solely because of his sex.⁶⁷ The Court began their analysis under the intermediate scrutiny test developed in *Reed*.⁶⁸ Even though the school's policy discriminated against males, it was still subject to the same scrutiny.⁶⁹ The Court also stated that gender classifications will only be upheld if there is an "exceedingly persuasive justification" for the classification.⁷⁰ The Court said this burden is met by showing that the classification at least serves an "important government objective" and that the discriminatory means employed are "substantially related to the achievement of those objectives."⁷¹ The Court stated that if a government objective is to exclude or protect members of one gender because they are presumed to suffer an inherent handicap, the objective is legitimate.⁷² It would seem to follow then, that because women were the subjects of societal discrimination, a classification to benefit them would serve an important government objective. When analyzing a gender classification, if the Court determines a government's objective is legitimate and important, they will next look at whether there is a substantial relationship between the objective and the means.⁷³ The purpose of this is to make sure the classification is not based on stereotypes of men and women.⁷⁴ However, the mere recitation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into actual purpose underlying a statutory scheme.⁷⁵ The members of the class actually have to have suffered a disadvantage related to the classification.⁷⁶ Here, Mississippi made no showing that women have been discriminated against in the field of nursing.⁷⁷ The exclusion of males actually added to the stereotype that nursing is exclusively a woman's job.⁷⁸ Mississippi claimed a benign, compensatory purpose but did not establish the objective's actual purpose underlying the discriminatory classification.⁷⁹ Mississippi had to show that women were discriminated in the past for the government objective to be legitimate, so, Mississippi failed the first prong of the intermediate scrutiny test because there was no important interest.

Even though Mississippi had failed to establish the first prong, the Court examined their case under the second.⁸⁰ MUW allowed men to audit the courses which showed that having men

⁶⁵ 458 U.S. 718 (1982).

⁶⁶ *Id.* at 720.

⁶⁷ *Id.* at 721.

⁶⁸ *Id.* at 723.

⁶⁹ *Id.* at 723-724.

⁷⁰ *Id.* at 724.

⁷¹ 458 U.S. 718, 724 *citing* *Wengler v. Druggist Mutual Ins. Co.*, 446 U.S. 142, 150 (1980).

⁷² 458 U.S. 718, 725.

⁷³ *Id.*

⁷⁴ *Id.* at 726.

⁷⁵ *Id.* at 728.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 729.

⁷⁹ *Id.* at 730.

⁸⁰ *Id.*

present in the classroom did not adversely affect the women.⁸¹ Men in the classroom did not affect the teaching style,⁸² or the performance of the female students,⁸³ and men did not dominate the classroom, so excluding men was not necessary to reach the school's educational goals and Mississippi would fail the second prong.⁸⁴ *Hogan* laid the framework for 14th Amendment challenges for single sex schools.

In *Garrett v. Board of Education*, three male academies were scheduled to open in August of 1991, offering Afrocentric curriculum.⁸⁵ Shawn Garrett sued the Detroit School District on behalf of her daughter Crystal, and brought action that these schools were in violation of the 14th Amendment Equal Protection Clause.⁸⁶ Garrett contended that the special offerings in the school did not require a male-only environment to work and that the academies offered help with issues that face all children, including females. The Court, in this case did not address the question of whether the school district could provide separate but equal public school institutions of boys and girls.

Applying the standard discussed in *Hogan*, the court held that excluding girls was not substantially related to achieving the school's goals of developing a response to at-risk students, as it was using gender as a proxy for those types of students.⁸⁷ The board offered no evidence that the presence of girls in the classroom bears a substantial relationship to difficulties urban males face.⁸⁸ The board acknowledged that the same type of problems affected girls, so there was no adequate justification for excluding boys. The court issued the request injunction against the planned opening, based on how the classification would fail the intermediate standard of review.⁸⁹

Faulkner v. Jones was the companion case to *U.S. v. Virginia* and involved Shannon Faulkner, a female high school senior who was refused admission to the Citadel, South Carolina's state-supported military college because it had a male-only policy.⁹⁰ Faulkner sued, claiming the male-only policy violated the 14th Amendment. The Court agreed with the district court that the Citadel was in violation of the Equal Protection Clause after applying the intermediate standard of review.⁹¹ South Carolina has an important government objective for single sex education.⁹² However, South Carolina did not provide single sex education to both genders and therefore its mean to a substantially related to its government objective.⁹³ South

⁸¹ *Id.*

⁸² *Id.* at 731.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ 775 F.Supp 1004 (E.D. Mich. 1991)

⁸⁶ *Id.* at 1006

⁸⁷ *Id.* at 1001.

⁸⁸ *Id.* at 1001.

⁸⁹ *Id.* at 1008.

⁹⁰ 51 F.3d 440, 442 (4th Cir. 1995).

⁹¹ *Id.* at 450.

⁹² *Id.* at 444.

⁹³ *Id.*

Carolina asserted that there was no demand for a female single sex school.⁹⁴ However, the state did not offer enough evidence to show there was no demand for female exclusive schools.⁹⁵

United States v. Virginia, involved the Virginia Military Institute (VMI), the sole single sex school among Virginia's public colleges.⁹⁶ VMI's was unique in that its distinctive mission was to produce "citizen soldiers" to prepare men for leadership in civilian and military life by using an "adverse method" of training not available elsewhere in Virginia.⁹⁷ The "adversative" or "doubting" model of education featured physical rigor, mental stress, absolute equality of treatment, absence of privacy, minute regulation of behavior and indoctrination in desirable values.⁹⁸ VMI endeavored to instill physical and mental discipline in its cadets and impart to them a strong moral code.⁹⁹ VMI also has the largest per-student endowment of all public undergraduate school in the nation.¹⁰⁰

The United States sued Virginia and VMI alleging that the male-only admission policy violated the 14th Amendment Equal Protection Clause. In response to a ruling from a lower court, VMI established a parallel program for women, The Virginia Women's Institute for Leadership (VWIL).¹⁰¹ Using the standard from *Hogan*, the Supreme Court held that parties who seek to defend gender-based government action must demonstrate an "exceedingly persuasive justification."¹⁰² The Court recognized that there are inherent differences between men and women, but stated that those differences should not be used for artificial constraints on individual opportunity.¹⁰³

Virginia asserted two reasons as to why VMI should remain exclusively male.¹⁰⁴ First, single sex education provides important education benefits and diversity in education. Secondly, the "unique VMI method of character development and leadership training" would have to be modified if the school were to admit women.¹⁰⁵

The court agreed that diversity among public education can serve the public good.¹⁰⁶ The Court also stated that single sex education affords some students educational benefits.¹⁰⁷ But, Virginia had not shown that VMI was established to diversify its educational opportunities to students, and diversity was only a recited purpose, not the actually goal of the state.¹⁰⁸

⁹⁴ *Id.*

⁹⁵ *Id.* at 444-445.

⁹⁶ 518 U.S. 515, 520 (1996).

⁹⁷ *Id.* at 520.

⁹⁸ *Id.* at 522.

⁹⁹ *Id.* at 520.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 526.

¹⁰² *Id.* at 531.

¹⁰³ *Id.* at 533.

¹⁰⁴ *Id.* at 534-35.

¹⁰⁵ *Id.* at 535.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 535-36.

Virginia's next argument, that VMI's adversative method of training cannot be made available to women without modification, and those modifications would "destroy VMI's program, was also denied by the Court.¹⁰⁹ The Court took into account expert testimony from the trial court that recognized that some women are capable of all the individual activities required of VMI cadet, some women want to attend and some can meet the physical standards.¹¹⁰ And although most women would not choose VMI's adversative method many men would not choose to be educated in that way either. Education is not "one size fits all" but VMI could not deny women who have the will and capacity to attend the school.¹¹¹

Virginia created a separate program as a remedial decree from the trial court and created the VWIL program located at Mary Baldwin College.¹¹² The Court held that VWIL did not qualify as VMI's equal.¹¹³ In fact, they stated that it was a "pale shadow" of VMI in terms of the range of curriculum choices and faculty stature, funding, prestige, alumni support and influence.¹¹⁴ The Court compared this case to *Sweatt v. Painter*, wherein the University of Texas Law School set up a school for African American students.¹¹⁵ The Court, in that case, held that the law school was unequal not only because of the tangible features but intangible such as, reputation of faculty, experience of administration, alumni and prestige.¹¹⁶ Similarly, VMI offered a unique education experience that could not be offered another school, and the court held that the VWIL and VMI were not substantially equal in terms of educational opportunities.¹¹⁷

In his dissent, Justice Scalia stated that by the decision of the court that single sex education is now threatened. But is it? The number of single sex schools have been on the rise, and the U.S. Department of Education made changes to Title IX to allow schools more leniency when incorporating single sex programs into their curriculum. But will these single sex public elementary and secondary schools survive a Supreme Court case.

Single Sex Public Elementary and Secondary Schools

Single sex schools, to be constitutional first must be able to pass the intermediate standard of review and withstand the Equal Protection Clause of the 14th Amendment. This standard is applied to gender classifications. In order to survive this scrutiny, the state must establish that the classification serves "important government objective" and that the discriminatory means employed are "substantially related to the achievement of those objectives."¹¹⁸ To further heighten the standard, the Court also has stated that gender

¹⁰⁹ *Id.* at 539.

¹¹⁰ *Id.* at 540-41.

¹¹¹ *Id.* at 542.

¹¹² *Id.* at 547.

¹¹³ *Id.* at 551.

¹¹⁴ *Id.* at 553.

¹¹⁵ 518 U.S. 515, 553 *citing* *Sweatt v. Painter* 339 U.S. 629, 632 (1950).

¹¹⁶ 518 U.S. 515, 554 *citing* *Sweatt v. Painter* 339 U.S. 629, 634.

¹¹⁷ 518 U.S. 515, 555.

¹¹⁸ 458 U.S. 718, 724 *citing* *Wengler v. Druggist Mutual Ins. Co.*, 446 U.S. 142, 150.

classifications will only be upheld if there is an “exceedingly persuasive justification” for the classification.¹¹⁹

Single sex education fulfills more than one important government objective, including diversity in education. Single sex schools add to this diversity. Diversity in education is not only exposing children to different cultures, but also exposing them to different learning styles and curriculums. The Court in *U.S. v. Virginia* acknowledged that diversity in education is an important government objective. Creating single sex schools, grades or classrooms, offers different opportunities for children to learn. Children learn in different ways, and if the public school system allows them the opportunity to find out what is the best way for them to learn, they will benefit in the future. By offering single sex rooms or schools to parents, schools are giving the parents a choice to decide what is best for their children. These different educational opportunities allow a child and his or her parents to find the best place to suit his or her needs. Single sex classrooms allow teachers to try different methods of teaching to see if they work for their students. Single sex schools promote diversity in curriculum and teaching styles. Not all students learn the same way, and single sex schools allow more flexibility for teachers to create lesson plans that will cater to a particular gender. In addition, girls and boys may respond much more positively from the different atmosphere of a single sex classroom.

Single sex schools also promote higher academic achievement in students, another important government objective. Academic achievement of children is high on the government’s list of what schools should accomplish, if not the most important. Children take standardized tests each year to inform the government about how well they are performing in school. Single sex schools contribute to higher academic achievement. Single sex schools, raise girls confidence and contribution in the classroom, which can then lead to higher academic performance. Boys, in single sex school are taught differently than girls based on scientific research on how their brain functions. This again can lead to better grades. Better school climate, more focus on academics and positive interaction with teachers are some of the advantages of single sex schools. All these components can lead to higher test scores and student success.

Single sex schools can easily be seen as a substantially related to the important government objectives of diversity and academic achievement. Do they go beyond that standard, as an exceedingly persuasive justification? Studies have been done to show that single sex schools do fulfill what they were made to accomplish. Students benefit from the different type of education because the teaching styles and classroom atmosphere can be more tailored to fit the students’ needs. Single sex schools are not based on archaic notions about the generalizations of males in females, in fact, amicus briefs were written in *U.S. v. Virginia* in support of single sex schools, and the court acknowledged that single sex schools’ mission is to dissipate, rather than perpetuate, traditional gender classification.¹²⁰

¹¹⁹ *Id.*

¹²⁰ 518 U.S. 515, 534.

Single sex school will have a problem being constitutional under the separate but equal test. Public schools must maintain substantially equal schools for the opposite sex to maintain constitutionality, and it may be tough. Schools can offer the same tangible resources such as facilities and equipment. But some single sex schools offer something “unique” that cannot be substituted at another school. While, it is true that elementary and secondary schools do not find it as necessary to look at such intangible qualities of a school such as alumni relations, traditions and prestige, as much as colleges and universities, they still may offer something “unique”. Some single sex schools specialize in a particular discipline or emphasize a certain academic area. With this specialization comes reputation in the community, and may lead to higher quality of teachers, and more experienced administration. The intangible qualities that arise from these specializations cannot be duplicated at another school. Therefore the single sex school would be violating the Equal Protection clause, because it is denying a student from participating in and experiencing its unique characteristics simply because of their sex. Examples of these types of single sex schools include the Young Women’s Charter School in Chicago which focuses on science and technology and the Miller-McCoy Academy of Mathematics and Business opened to boys in Louisiana.¹²¹ These schools focus on something that is not offered to the opposite sex in their area. These types of single sex schools will be inherently unequal when offering the teachers, specialized curriculum, and activities and thus fail the separate but equal test.

Single sex classrooms, however, will be able to pass the separate but equal test. Boys and girls will be in the same facility, and have some of the same teachers and administrators and use the same tangible facilities the school has to offer. The classrooms will be different, but not so unique as to fail the test. Because single sex education focuses on the differences in which boys and girls learn, Teachers most likely will instruct their students based on their gender. Students will likely be presented with subject matter differently, may have differences in the classroom such as temperature or lighting, and may have differences in the atmosphere of the classroom, but despite the differences, they will be learning the same subjects and have a substantially similar curriculum. The classrooms will be substantially equal, and the students will have a substantially equal educational opportunity.

Conclusion

Single sex education can be beneficial to students, and we have seen public schools around the country implementing this method into their classrooms and schools. While there are opponents of this method of teaching, school districts are using it as a way to try and help our failing public school system.

Single sex schools offer a different approach to the way teachers look at students and how they can teach them. Both boys and girls benefit through single sex education when the classroom is aimed at helping that certain gender learn in the best possible environment they can. Single sex schools have a better school climate, more school community and better student interaction action with teachers, all of which can lead to better grades and better career opportunities in the future. Gender classification in public elementary and secondary school would pass the intermediate scrutiny test of the Equal Protection Clause of the 14th Amendment. Single sex

¹²¹ NASSPE, *supra* note 1.

schools are an exceeding persuasive justification to achieving the important government objectives of academic achievement and diversity in schools. However, single sex schools would not pass constitutionality because of their uniqueness in course offerings, specializations and they would fail under separate but equal test. Single sex classrooms, on the other hand, will pass the test, because while teaching methods may be different, students will be exposed to the same facilities and teachers and in turn, their educational experiences will be substantially similar.