

Legislative Analysis



SINGLE SEX SCHOOLS IN DETROIT

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House Bill 4264 as enrolled
Public Act 347 of 2006
Sponsor: Rep. LaMar Lemmons, III

House Bill 6247 as enrolled
Public Act 348 of 2006
Sponsor: Rep. Bill McConico

House Committee: HB 4264: Education
HB 6247: Discharged from Education
Senate Committee: Education

First Analysis (1-25-07)

BRIEF SUMMARY: The bills would allow the Detroit Public Schools to establish a school, class, or program in which enrollment is limited to students of the same sex, if a substantially equal school, class, or program was made available to students of each sex, and if participation was wholly voluntary. (The bills use the term "gender.")

FISCAL IMPACT: The bills would have no fiscal impact on the state but could increase costs for the local school district, for any required administrative, personnel, program, or building changes related to the establishment of a single-sex school and its parallel coeducational program.

THE APPARENT PROBLEM:

Under state and federal law, public schools are required to offer equivalent educational opportunities to students, and are forbidden from discriminating against students based on their sex. Many have interpreted the laws as prohibiting the separation of students according to their sex, except in limited circumstances such as for physical education or sex education, or for remedial or affirmative action purposes.

Where single-sex public schools have been proposed or established, they frequently have been the subject of lawsuits or complaints by parents or civil rights groups. Attempts by the Detroit Public Schools to establish three boys' schools in 1991 were met with a legal challenge, causing the district to abandon the plans. (See [Background Information](#).)

Some believe, however, that students could benefit from a learning environment limited to students of one sex, and that such schools could be a way of providing a higher-quality education to disadvantaged students, particularly in struggling school districts such as the Detroit Public Schools.

It has been suggested that Michigan law should be amended to permit that school district to offer single-gender instruction under limited conditions.

THE CONTENT OF THE BILLS:

The bills would amend the Revised School Code and the Elliott-Larsen Civil Rights Act, respectively, to allow the Detroit Public School system to operate single sex schools, under certain conditions. A more detailed description of each bill follows.

House Bill 4264 would amend the Revised School Code (MCL 380.475) to permit a first class school district to establish and maintain a single-sex school, class, or program under certain conditions. [Detroit is the only "district of the first class" in the state of Michigan, based upon the district's size. Under the code, a first class school district has at least 100,000 students enrolled on the most recent pupil membership count day.]

The bill would permit the Detroit School Board to establish and maintain a single-sex school, class, or program within a school if the district also made available to students a substantially equal coeducational school, class, or program and a substantially equal school, class, or program for students of the other sex.

The school district could not require any of its students to participate in the single-sex school, class, or program, and the school board would have to ensure that participation was wholly voluntary. A student's participation would not be considered voluntary unless the district also made available to the student a substantially equal coeducational school, class, or program.

House Bill 6247 would amend Article 4 (which concerns educational institutions) of the Elliott-Larsen Civil Rights Act (MCL 37.240a) to specify that the article would not prohibit a school board from establishing and maintaining a single-sex school, class, or program as provided under the Revised School Code.

Article 4 of the Elliott-Larsen Civil Rights Act prohibits an educational institution from discriminating against a person because of religion, race, color, national origin, or sex. The bill specifies that Article 4 would not prohibit the board of a school district or intermediate school district or the board of directors of a public school academy (customarily called a charter school) from establishing and maintaining a single-sex school, class, or program within a school as provided under Sections 475 and 1146 of the Revised School Code. House Bill 4264 would add Section 475.

A related bill, Senate Bill 1296 (now Public Act 303 of 2006) amended Section 1146 of the Revised School Code to permit a single-sex school, class, or program within any public school district or charter school. Prior to Public Act 303, Section 1146 said, "a separate school or department shall not be kept for a person on account of race, color, or sex." As enacted, the bill permits exceptions if the single sex school is voluntary and if it makes available to pupils "a substantially equal coeducational school, class, or program and a substantially equal school, class, or program for pupils of the other gender."

BACKGROUND INFORMATION:

[Much of the information in the following Background section and in the Arguments section was derived from an analysis of the bills by the Senate Fiscal Agency, dated 8-16-06.]

Legal Challenges to Single-Sex Schools. In 1991, officials of the Detroit Public Schools announced their intention to establish three public boys' academies within the district. Some parents and students challenged the proposal in the United States District Court for the Eastern District of Michigan (*Garrett, et al. v The Board of Education of the School District of the City of Detroit*, 775 F.Supp 1004). The plaintiffs claimed that the establishment of males-only academies would violate Title IX (which prohibits sex-based discrimination in an educational program receiving federal funds); the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Michigan Constitution (which guarantee equal protection under the law); the Elliott-Larsen Civil Rights Act; and other federal and state statutes. The District Court granted the plaintiffs' motion for a preliminary injunction, and the Detroit Public Schools subsequently abandoned its plans for the proposed schools.

The District Court based its ruling, in part, on a 1982 decision of the United States Supreme Court, *Mississippi University for Women v Hogan* (458 U.S. 718), in which the Supreme Court laid out specific criteria to determine when the consideration of sex was appropriate. In that case, the court ruled against a state-supported university that denied men entrance to its nursing program. The court rejected the university's argument that congress, in enacting Title IX, expressly authorized the university to continue its single-sex admissions policy by exempting public undergraduate institutions that traditionally have used such policies from the statute's sex discrimination prohibition, and through that provision, limited the reach of the Fourteenth Amendment. According to the court, "[T]he party seeking to uphold a statute that classifies individuals on the basis of their gender must carry the burden of showing an 'exceedingly persuasive justification' for the classification. The burden is met only by showing at least that the classification serves 'important governmental objectives, and that the discriminatory means employed' are 'substantially related to the achievement of those objectives.'" In regard to the university's argument, the court stated, "[N]either Congress nor a State can validate a law that denies the rights guaranteed by the Fourteenth Amendment."

In 1996, the U.S. Supreme Court applied the Hogan criteria in *United States v Virginia, et al.* (518 U.S. 515), in which the court ruled against the Virginia Military Academy (VMI), a state-funded school that limited enrollment to men. Initially, the U.S. District Court upheld the school's admission policy and rejected the equal protection challenge; the U.S. Circuit Court of Appeals for the Fourth Circuit disagreed and ordered Virginia to remedy the constitutional violation. In response, the state proposed a parallel program for women: the Virginia Women's Institute for Leadership (VWIL). The state returned to District Court, which decided that the plan met equal protection requirements. The Fourth Circuit affirmed, finding that the state's purpose of providing single-gender educational

options was legitimate, and the exclusion of men at VWIL and women at VMI was essential to that purpose.

Since its analysis risked bypassing an equal protection scrutiny, the circuit court added another test it called "substantive comparability," and found that the educational opportunities at the two schools were sufficiently comparable. The U.S. Supreme Court disagreed. Applying the Hogan criteria, the court concluded that Virginia had shown no exceedingly persuasive justification for excluding all women from VMI and had violated the Fourteenth Amendment. Finding that Virginia had not shown substantial equality in the separate educational opportunities it provided at VWIL and VMI, the court ruled that the proposed remedy did not cure the constitutional violation.

Title IX. Title IX of the Education Amendments of 1972 was enacted to ensure that students of both sexes receive equal educational opportunities. The statute specifies, "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..." According to the U.S. Department of Education, the current regulations implementing Title IX prohibit the development of single-sex classes, but since admissions to non-vocational elementary and secondary schools are not covered under Title IX, the department has said that the statute does not prohibit single-sex schools, provided that the district creates comparable equal schools for students of both sexes.

USDOE Eases Title IX Regulations to Allow Same Sex Schools. The Secretary of Education suggested in 2002 that the Title IX regulations should be revised to ease restrictions on single-sex schools, and the proposed revisions were distributed in March 2004. The proposed rules were the subject of much debate. The final version of the new Title IX single-sex regulations were published on October 25, 2006 and took effect on November 24, 2006. The revisions permit single-sex schools as long as comparable educational opportunities are available for students of the other sex, either in a single-sex school or in a coeducational environment, and also permit the creation of single-sex classes within coeducational schools. According to Secretary of Education Margaret Spellings, the new regulations "give communities more flexibility...to offer single-sex classes, extracurricular activities, and schools at the elementary and secondary levels" and acknowledge that "research shows that some students may learn better in single-sex educational environments."

ARGUMENTS:

For:

A growing body of evidence indicates that boys and girls develop at different rates, and respond best to different teaching techniques. Leonard Sax, director of the National Association for Single Sex Public Education, has cited research indicating that young girls develop language and fine motor skills at an earlier age than boys do, while boys develop skills using spatial relations and geometry at an earlier age (*Dayton Daily News*, 7-28-05). Girls also are more attuned to color and texture, while boys tend to focus on

motion. Sax claims that these traits are due to physical differences in the brains and eyes of young boys and girls. Although the differences even-out as children grow older, studies show that boys and girls in elementary and secondary schools could benefit from different learning environments that take advantage of those developmental characteristics. For example, one study evidently found that boys performed best in a classroom at a temperature of 69 degrees, while girls worked better at 75 degrees (*Arkansas Democrat Gazette*, 8-14-05). According to Sax, girls prefer a quiet classroom, while boys tend to be less bothered by noise and distractions.

In a single-sex setting, teachers can take advantage of these differences by designing classroom conditions and lesson plans to meet the developmental needs of their students. Such adjustments are not possible in a classroom containing both boys and girls, where teachers must compromise between the techniques best suited for boys and for girls. Schools that have experimented with single-sex education have shown impressive results, improving the quality of education for both boys and girls, often in struggling school districts having high proportions of disadvantaged or minority children. It is likely that the Detroit Public Schools could benefit from similar schools or programs.

Thurgood Marshall Elementary School, located in a low-income neighborhood of Seattle, was considered to be a failing school with significant discipline problems and low academic achievement. In 2000, the school was converted to a sex-separate format, and student performance improved immediately. In the first year after the transition, standardized test scores at Thurgood Marshall rose dramatically for both boys and girls. Attendance improved, and discipline problems decreased (*Education Week*, 3-2-05). Single sex-schools in other states have reported similar results. The Young Women's Leadership School in East Harlem, New York, was established in 1996 to provide an all-female learning environment for disadvantaged girls. Although the school has been criticized by some civil rights groups, the benefits to the student body, which consists almost entirely of minorities, have been significant. According to *Insideschools.org*, an online reviewer of public schools in New York, seniors graduating from the school have a very high college acceptance rate, and the classes place a heavy emphasis on discussion and writing. Students transferring from other schools reportedly experience a noticeable change of attitude, attributed to the school's sense of community and its dedicated teachers.

As the successes of these schools become more widely known, an increasing number of districts in a variety of states are instituting single-sex schools and programs, and there is a growing demand for these programs from parents who believe that their children would benefit from a single-sex educational environment. Private boys' and girls' schools have been commonplace throughout the nation's history, and many of the most highly respected schools in the country are limited to students of one sex. Many parents, however, cannot afford the expense of sending their children to private schools. The benefits of single-sex instruction should be available in public schools, not only to advantaged students in private schools.

Given the apparent benefits of single-sex education, and the success of similar programs in other struggling districts, the Detroit Public Schools should be given the latitude to establish boys' and girls' schools or programs, which could offer significant benefits to at-risk students in the district. The Detroit schools have been working to improve the quality of education for students in the district, and any efforts in that regard should not be restricted. Single-sex education represents another tool that could help to reach some students.

Against:

Segregating students on the basis of sex could eventually lead to the reinforcement of sex stereotypes, a return to the days when girls were taught home economics while boys attended shop class. American history has progressively moved toward integrating students of different races, sexes, and backgrounds, and society has benefited from that diversity. These bills would undo some of that progress by retreating from integration.

Although some promote single-sex education as a way to address sexual harassment or unequal treatment of boys or girls, a better approach would be to resolve and remove those problems. As students move into adulthood, they need to be able to work well among members of both sexes, and separating them as students would do nothing to prepare them for future challenges they will face.

In addition, there is little consensus that single-sex education offers any benefits to students. Many of the studies purporting to show such effects are fundamentally flawed. In most cases, the improvements in performance, attendance, and behavior can be attributed to other factors, such as increased funding, better facilities, higher-quality teachers, parental involvement, and the self-selection of more motivated students who might want to participate in such programs. These positive conditions could be replicated in a coeducational environment, producing comparable gains without the problematic segregation of students.

Currently, the Elliot-Larsen Civil Rights Act prohibits separating students based on sex, race, or other factors. Those provisions were placed into law to protect students from unequal treatment. Allowing exceptions for single-sex schools could lead to unequal educational opportunities for different students. Although House Bill 4264 would require that the Detroit schools provide substantially equal schools, classes, or programs for both sexes, the bill does not specify what "substantially equal" would mean. Schools cannot be identical in every way, and funding disparities, varying teacher qualifications, and different course offerings could end up creating divergent educational opportunities in schools that were nominally equivalent.

Students should be allowed to choose the best educational opportunities available, regardless of their sex. If a girls' school established under the bills were to outperform a boys' school, or vice versa, on what grounds could the school district deny a boy the opportunity to attend the better school? The bills would limit choices, reinforce sex stereotypes, and undermine the progress made toward educational equality for both girls and boys.

In addition, the bills could be in conflict with the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, which states, "No state shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws." In a number of U.S. Supreme Court cases, including *United States v Virginia* and *Mississippi University for Women v Hogan*, the Supreme Court has ruled that excluding individuals based on gender violates the Fourteenth Amendment. Changing the state law would do nothing to resolve this constitutional violation.

Response:

In those cases, no equivalent school was available for members of the other sex. The bill would require that students have access to an equivalent class, program, or school that was limited to students of the opposite sex, as well as an equivalent coeducational option. Providing these options for parents and students should meet the requirements of equal protection.

Against:

The bills would violate the basic precept of integration by permitting so-called separate-but-equal schools. In deciding *Brown v Board of Education* in 1954, the United States Supreme Court ruled that the establishment of "separate but equal" educational facilities for minorities was unconstitutional, and that schools segregated on the basis of race were inherently unequal, reinforcing social stereotypes and propagating racial divisions in society. The bills would create similar divisions along gender lines, and could have similar negative effects, magnifying gender differences and fostering unhealthy attitudes and assumptions. For example, a female teacher at an all-boys' school in Maryland suggested that what the boys liked best about the class was that there were no girls in it (*Washington Post*, 1-8-05). Also, many of the teaching techniques recommended by proponents of single-sex schools reveal assumptions about the propensities of boys and girls. For example, according to Dr. Leonard Sax of the National Association for Single Sex Public Education, teachers should speak in softer tones to girls than to boys, who may respond well to yelling, and girls prefer cooperative activities, while boys are more competitive and responsive to confrontation (*National Post*, 3-3-03).

Attempts to modify curricula to address perceived differences between males and females would inevitably incorporate society's preconceived notions about the abilities and preferences of men and women. To the extent that those preconceptions and stereotypes stifle children or channel them in one direction or another, educational practices based on those beliefs would be discriminatory and unjust to both boys and girls, in much the same way that racial segregation was unjust to minorities.

Response:

Allowing boys and girls to attend separate classes or schools would not reinforce stereotypes; in fact, it could help to overcome some gender-based barriers. For example, offering all-girl science and math classes could encourage more females to enter science and engineering, currently male-dominated fields. Many educators are concerned that girls' performance in math and science falls behind that of boys as they progress through school. Some research indicates that girls do better in these areas when separated into all-girl classes. This legislation would give the Detroit Public Schools another tool for improving the quality education for all students, both boys and girls. Furthermore, the

program would be completely voluntary. If a student or parent objected to the idea of single-sex education, the student could remain in the coeducational school or program.

Also, voluntary single-sex schools bear no resemblance to forced racial segregation of the past. In segregated schools, students did not have the option of choosing which school to attend, while under the bills parents would be free to choose the best school for their children, whether single-sex or coeducational. Unlike racial segregation, which was implemented for social reasons and was not purported to have any educational benefits, single-sex education has been shown to have positive effects on children's academic achievement.

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