INSIDE THIS ISSUE

• Single-Sex Education .................. 3
• Highlights from FAWL’s Busy Year ..... 5
• Salute to Terry Hansen ................. 7
• FAWL Annual Meeting ................ 8
• FAWL Leadership Retreat ............. 9
• FAWL Lobby Days ..................... 10
• FAWL Chronicles .................... 12

• The Fine Print .......................... 13
• Chapter News ........................... 14
• Members on the Move .................. 16
• 2007-2008 Slate of Officers ............ 18
• Member Benefits: Free Online CLE .... 21
• FAWL Committee Preference Form .... 23
• Calendar ................................. 24

VENUS AND MARS IN SEPARATE CLASSROOMS?

THE RISE OF SINGLE-SEX EDUCATION

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I recently represented 13-year-old Michelle Selden in a successful challenge to what is becoming a growing trend — sex-segregated public schools. In May 2006, the principal of Michelle's junior high school in Livingston Parish, Louisiana, announced to students and parents that in the fall, boys and girls would be taught separately in all academic classes. No one could transfer from the segregated junior high school to a coeducational school. According to the principal, the decision to separate boys and girls was based on differences between boys' and girls' brains. Classes would be tailored to reflect these supposed brain differences; for instance, while girls would be taught "good character," boys would be taught "heroic" behavior and what it means to be a man. Michelle Selden and her parents went to court to stop the program from going forward, and they succeeded.2

Very few cases have ever been brought challenging sex segregation in public elementary and secondary schools, in large part because in recent decades, such segregation has been very rare. Today, however, more and more public schools are separating girls from boys, as school districts across the country experiment with single-sex classrooms and single-sex schools. In Pinellas County, Florida, for instance, sex-segregated classes were introduced this year for second graders at one elementary school and fourth graders in another. Hernando County recently voted to create single-sex classes in several elementary schools next fall. Schools in Broward, Volusia, and Duval Counties have also initiated such programs. Indeed, according to the National Association for Single-Sex Public Education, while there were only four sex-segregated public schools in the country a decade ago, today there are over 250.3

THE LEGAL BACKDROP

This trend is only likely to accelerate in the wake of the federal Department of Education (DOE)'s recent revision of longstanding Title IX regulations in order to permit more sex-segregated educational programs. Title IX is the federal law that prohibits schools which receive federal assistance from discriminating on the basis of sex. It applies to virtually all public schools in the United States, as well as many private schools. Specifically, it 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."4

For over thirty years Title IX regulations had interpreted this statutory language to mean what it says. These regulations prohibited coeducational schools from segregating students by sex for classes or other activities in almost all circumstances, with very narrow exceptions for sex education and contact sports.5 (Because Title IX does not govern admissions to elementary and secondary schools, Title IX regulations have never strictly prohibited single-sex schools, as opposed to classrooms, though the Equal Protection Clause and other federal and state laws, discussed below, limit state and local governments' authority to create such schools.)

Despite the language in Title IX stating that no one may be excluded from any educational program or activity on the basis of sex, the new Title IX regulations permit coeducational schools to offer sex-segregated classes in a wide variety of circumstances.7 In essence, the regulations allow a school to create a single-sex class or extracurricular activity either to provide "diverse" educational options to students or to address what the school has judged to be students' particular educational needs.8 The regulations do make clear, however, that participation in a sex-segregated class must be completely voluntary and explain that participation is not completely voluntary unless a "substantially equal" coeducational class is offered in the same subject.9 Finally, the new regulations require periodic evaluations to ensure that single-sex programs are not based on overbroad generalizations about either sex.10

The change in Title IX regulations, of course, does not affect other laws that limit sex segregation in public schools. The Supreme Court has found at least some single-sex programs violate the Equal Protection Clause of the Constitution, striking down both the Virginia Military Institute's all-male policy and Mississippi University for Women's all-female policy as unconstitutionally discriminatory.11 It has also warned that public schools attempting to justify sex-segregated programs shoulder an extremely heavy burden of persuasion.12

In addition, a federal law called the Equal
alike, are equal before the law. “

All natural persons, female and male
amended in 1998 to state explicitly that
instance, the Florida Constitution was
segregation in public schools. For
single-sex schools, classes and programs.17
would amend this provision, however,
introduced in the 2007 Session that
in education today do so for different
marks only during the few
skills only during the few
bodies receive daily surges
in math because their
Gurian argues that boys
abstract thinkers, so
they are naturally good
at things like philosophy
and engineering, while
girls are by nature
concrete thinkers because of their brain
structure.27 Accordin
to materials that
the Gurian Institute uses in teacher
training, “Pursuit of power is a universal
male trait. Pursuit of a comfortable
environment is a universal female trait.” 28

THE SOCIAL SCIENCE DATA
Whatever theory they rely on, most
proponents of single-sex education
argue that segregation leads to greater
academic achievement. Yet no compelling,
consistent evidence supports this
conclusion. Some studies find that
students in coeducational schools do
better than students in single-sex schools.
Other studies find the opposite. Many
studies show no difference between the
two in terms of student achievement.
In 2005, the DOE published an
extensive review of existing studies and
characterized the data as “equivocal” — in
other words, it found no clear evidence
showing that in general students are more
likely to succeed in single-sex schools.29

Researchers have investigated why
some studies show that students do
especially well in some sex-segregated
programs, when other studies show no
effect. Most have concluded that the
successful programs aren’t successful
because they are segregated. Instead,

EDITOR’S NOTE:
This important issue could affect our families and our communities. We welcome comments
from our members on this issue. Please e-mail comments to FAWL@FAWL.org.
these schools are successful because, for instance, they also have small classes, qualified teachers, parental involvement, adequate funding, and a focus on core academics. Of course, these factors foster success in coeducational classrooms too.

CAUSE FOR CONCERN?

As sex segregation gains popularity as an educational technique, it is worth raising questions about the theories and evidence underlying school districts’ decisions to implement these programs. Because sex segregation itself has not been shown to increase student academic achievement, in many schools the better educational approach may be to focus on what has been shown to work, such as smaller classes, more parental involvement, and more funding, rather than spending the resources, time, and effort on the sex segregation experiment.

Moreover, many people believe that when students socialize, compete and collaborate with students of the other sex at school, they are more prepared to succeed in the world, given that real life is not separated by gender. At their best, one of the strengths of public schools is the opportunity they provide for students of different sexes, classes, races and religions to learn from each other. Indeed, these lessons are some of the most important that schools can teach.

1 Emily J. Martin is the Deputy Director of the American Civil Liberties Union Women’s Rights Project. At the Women’s Rights Project, she undertakes litigation and advocacy challenging gender discrimination in housing, employment, and education, with a special emphasis on the needs of low-income women and women of color.


8 34 C.F.R. §106.34(b)(i). Id. at §106.34(b)(ii), (iv). The regulations also provide that if a school district creates a single-sex school, it must provide a substantially equal educational opportunity for students of the excluded sex. Id. at §106.34(c).

9 Id. at §106.34(b)(iii), (iv).

10 Id. at §106.34(b)(4).


12 Virginia, 518 U.S. at 524, 531, 533.


14 Fla. Const., art. IX § 2.


16 Id. at §1000.05(2)(b).

17 S.B. 924, 2007 Sess. (Fla. 2007). As of this writing, the bill is currently before the Senate judiciary Committee.


24 Id. at 88-92.


27 Id. at 17, 90-92.


PRESIDENT, From Page 5

Ad Hoc Committee on Chapter Benefits, upgraded the FAWL website so members can now pay their dues and registration fees online (welcome to the 21st century, FAWL!). Our merchant account provider also offers a reduced package to law firms of members to set up their own credit card accounts; so if you do any amount of credit card payments, this may be a great benefit for your law firm. The FAWL office also worked with Miami-Dade, C-FAWL, Palm Beach County Chapter, South Palm Beach County, and Tallahassee Women Lawyers to customize dues renewal statements.

Pat Stephens also continues to work on website redesign, which will allow Chapters to access and download their membership database to more easily e-mail their members. Several Chapters are currently subscribing to email newsletter programs that will be available at no cost through the FAWL website. Look for more work to be done on this in the coming year.

A round of thanks to everyone who has helped me through this year. They are, of course, too numerous to mention, but I do want to extend thanks to the FAWL Board: Sherri Johnson, Becky Steele, Carolyn Coukas, Dawn Bates-Buchanan, Musette Stewart, Carla Jones, C.J. Weinman and June McKinney, all of whom have worked tirelessly on their projects and willingly stepped in to carry the baton when necessary. Thanks also to the Committee Chairs: Susan Fox, Barbara Twine-Thomas, Patti Morgan, Dinita James, Evelyn Moya, Stephanie Fackender, Kasongo Butler, Kalinitha Dillard, Zelda Hawk and Peggy Wood, as well as all those who served on FAWL’s committees. Many, many thanks to all those Chapter Representatives and Presidents who have participated in our FAWL meetings and carried word back to their Chapters about what FAWL is doing. I also extend my thanks to all the individual members of FAWL who have allowed me to lead this wonderful organization. It has been a huge honor. Finally, many, many thanks to Pat Stephens, who is the keystone for FAWL. Without her, I could not have done this job.

I look forward to seeing everyone in Orlando on June 28 for the installation of officers for our 2007-2008 FAWL year our luncheon, and on June 29th for the luncheon where FAWL will present the Rosemary Barkett Outstanding Achievement Award to Attorney General Janet Reno. Be sure to make your reservation through the Florida Bar Annual Meeting registration form so you can be assured of a seat at this luncheon.