
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 23 **Hearing Date:** July 5, 2017
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Urgency: Yes **Fiscal:** No
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Subject: Educational programs: single gender schools and instructional programs

NOTE: This bill has been double referred to the Committee on Education and the Committee on Judiciary. A "do pass" motion should include referral to the Committee on Judiciary.

SUMMARY

This bill, an urgency measure, authorizes school districts with an average daily attendance of at least 400,000 students, and charter schools authorized by a school district with at least 400,000 students, to implement single gender schools and instructional programs, subject to specified conditions.

BACKGROUND

Existing federal law:

- 1) Prohibits discrimination on the basis of sex in any federally funded educational program or activity. (Title IX of the Education Amendments of 1972; Title 20, United States Code, § 1681)
- 2) Makes an exception to the general prohibition against sex discrimination for non-vocational classes or extracurricular activities in an elementary or secondary school if all of the following conditions are met:
 - a) Each single-sex class or extracurricular activity is based on the recipient's important objective to do either of the following:
 - i) Improve educational achievement of its students, through a recipient's 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.
 - ii) 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.
 - b) The school implements its objective in an evenhanded manner.

- c) Student enrollment in a single-sex class or extracurricular activity is completely voluntary.
 - d) The recipient 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. (Title 34, Code of Federal Regulations, § 106.34)
- 3) Provides that, in order to comply with (2)(a)(ii) above, a recipient may be required to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex. (34 CFR §106.34)
- 4) Requires a recipient that operates a public non-vocational elementary or secondary school that excludes from admission any students, on the basis of sex, to provide students of the excluded sex a substantially equal single-sex school or coeducational school, but exempts from this requirement a non-vocational public charter school that is a single school local educational agency under state law. (34 CFR §106.34)
- 5) Identifies factors the United State Department of Education will consider, either individually or in the aggregate as appropriate, in determining whether schools are substantially equal, including, but not limited to, the following factors:
- a) The policies and criteria of admission.
 - b) The educational benefits provided, including the quality, range, and content of the curriculum and other services and the quality and availability of books, instructional materials, and technology.
 - c) The quality and range of extracurricular offerings.
 - d) The qualifications of faculty and staff.
 - e) Geographic accessibility.
 - f) The quality, accessibility, and availability of facilities and resources.
 - g) Intangible features, such as reputation of faculty. (34 CFR §106.34)

Existing state law:

- 1) Prohibits discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, or sexual orientation in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid. (Education Code § 220)
- 2) States that it is the policy of the state for elementary and secondary school classes and courses, including nonacademic and elective classes and courses,

to be conducted without regard to the sex of the pupil enrolled in these classes and courses. (EC § 221.5)

- 3) Prohibits a school district from preventing a pupil from enrolling in any class or course on the basis of the sex of the pupil, except for specified health education related courses. (EC § 221.5)
- 4) Prohibits a school district from requiring a pupil of one sex to enroll in a particular class or course, unless the same class or course is also required of a pupil of the opposite sex. (EC § 221.5)
- 5) Prohibits a local agency and its educational institutions from providing any course or otherwise carrying out any of its educational programs or activities separately on the basis of sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability or requiring or refusing participation therein by any of its students on such basis. (Title 5, California Code of Regulations, § 4940)
- 6) Prohibits the state from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (Article 1, §31, California Constitution)

ANALYSIS

This bill, an urgency measure, authorizes school districts with an average daily attendance (ADA) of at least 400,000 students, and charter schools authorized by a school district with at least 400,000 students, to implement single gender schools and instructional programs, subject to specified conditions. Specifically, this bill:

- 1) Makes Legislative findings and declarations regarding the need to increase the diversity of California's public educational offerings by making single gender schools and instructional programs available to pupils of each gender who, because of their unique educational needs, will benefit from single gender education that is aligned with Title IX.
- 2) Authorizes a school district that has an ADA of at least 400,000 or a charter school that has been authorized by a school district with at least 400,000 ADA to establish single gender schools and instructional programs pursuant to a policy adopted by the governing board or body that addresses how the school district or charter school will ensure compliance with federal Title IX regulations.
- 3) Requires the policy to meet all of the following requirements:
 - a) The single gender aspect of the school or instructional program serves an important school district or charter school objective to do either of the following:
 - i) Improve the educational achievement of its pupils through the school district's or charter school's overall established policy to

provide diverse educational opportunities, provided that the single gender nature of the school or instructional program is substantially related to achieving that objective.

- ii) Meet the particular, identified educational needs of its pupils, provided that the single gender nature of the school or instructional program is substantially related to achieving that objective.
 - b) The school district or charter school implements its objective in an evenhanded manner.
 - c) Pupil enrollment in a single gender school or instructional program is voluntary.
 - d) The school district or charter school provides to pupils of both genders a substantially equal coeducational class, extracurricular activity, or program in the same subject, unless the charter school is a nonvocational charter school that is a single school that is not part of a network or chain of charter schools or a charter school management organization that has more than one school.
- 3) Requires a school district or charter school that implements a single gender school or instructional program to conduct an evaluation at least once every two years to ensure that the single gender aspect of the school or program is based upon genuine justifications and does not rely on overly broad generalizations about the different talents, capacities, or preferences of either gender and that the single gender nature of the school or program is substantially related to the achievement of the important objective for the academy or program.
- 4) Requires the evaluation to include:
- a) An examination of whether the single gender school or instructional program has been effective as compared to coeducational schools.
 - b) An evaluation of the impact of the single gender school or instructional program on pupils who identify as lesbian, gay, bisexual, transgender, questioning, or gender nonconforming.
- 5) Requires the evaluation to be submitted to the Assembly and Senate committees on education.
- 6) Sunsets these provisions as of January 1, 2025.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "On April 14, 2015, the Los Angeles Unified School District Board of Education conditionally approved the establishment of Girls Academic Leadership Academy (GALA) conditioned upon the granting of a waiver from the State Board of Education for the operation of a single gender school. On the same date, the Board approved the submission of a

waiver to the State Board of Education (SBE) to allow for the operation of a single gender school. Girls Academic Leadership Academy's (GALA's) single gender admissions policy is designed to reduce the achievement and participation gap between male students and female students in STEM areas. GALA's highly rigorous college preparatory curriculum will provide girls with a clear pathway to college in the STEM field with the expectation that female students will graduate from GALA with a strong, confident, and independent voice, with collaborative and compassionate leadership skills, and with a sense of self and community. Title IX of the Education Amendments of 1972 ("Title IX"), has a permissive clause to allow the establishment of single gender public elementary or secondary schools. Since California law contains nondiscrimination provisions in the Education Code, the District submitted a waiver request in the event it is necessary. On June 18, 2015, the California Department of Education's Waiver Office sent written notification that upon review of the waiver request, the California Department of Education (CDE) and the SBE staff do not find that the District has provided a need for a waiver and that Los Angeles Unified School District must ensure that the school complies with state and federal statutory and constitutional requirements regarding nondiscrimination."

- 2) ***The research on single-gender schools is mixed.*** Some studies indicate that students in single-gender schools perform better academically than students in coeducational schools, some support the superiority of coeducational schools, and some find no difference. The National Association for Single Sex Public Education (NASSPE) summarizes several studies that support the advantages of single-gender schools in terms of academic achievement as well as other outcomes, such as improved socialization. On the other hand, another review of research concludes that single-gender schools are based on an "overinflated claim of gender differences" that is not supported by the research and that can reinforce gender stereotypes and biases. A meta-analysis of 184 studies reported in the *Psychological Bulletin* concluded that "Results from the highest quality studies, then, do not support the view that [single-gender] schooling provides benefits compared with [coeducational] schooling." The sponsor of this bill provided committee staff with a review of the research prepared by the U. S. Department of Education. That review found that a "preponderance of studies...yields results lending support to [single-gender] schooling," while a "limited number...provide evidence favoring [coeducational] schooling." Other studies found no difference. However, the review found that the studies suffered from a "dearth of quality...across all outcomes." Specifically, many studies had "conceptual or interpretive flaws," "lacked well-developed hypotheses," and had hypotheses that "were often not linked directly to the outcomes being studied."
- 3) ***Availability to transgender and gender nonconforming students.*** Existing law requires a student to be permitted to participate in sex-segregated school programs and activities, consistent with his or her gender identity, irrespective of the gender listed on the pupil's records. This bill requires an evaluation of the impact of the single gender school or instructional program on pupils who identify as lesbian, gay, bisexual, transgender, questioning, or gender nonconforming. Additionally, according to a school board report on the Girls Academic

Leadership Academy, its admissions policy is required to ensure that biologically male students who identify as female are admitted to the school.

- 4) ***Prior pilot program.*** In his 1996 State of the State address, Governor Pete Wilson called for the creation of single gender academies. Later that year, the education budget trailer bill appropriated \$5 million to establish the California Single-Gender Academies Pilot Program. The program provided start-up funding for 10 pairs of single-gender schools (each pair consisted of one school for boys and one for girls) at the rate of \$500,000 per pair. Grant recipients were authorized to expend the funds over a two-and-a-half period. Although the budget provided funding for 10 pairs of schools, the California Department of Education (CDE) received and funded only six proposals for six pairs, or a total of 12 schools. In the next year, the Governor proposed to re-appropriate \$2 million for second-year funding for the established schools and another \$3 million to expand the program. A staff analysis of the budget request by the Senate Budget Subcommittee #1 on Education questioned the need to appropriate funds for the ongoing costs of the established schools when the pilot program was intended to provide only start-up funding. Moreover, allocating funds on a per-school basis, rather than a per-student basis, resulted in large differences in the amount of funding per student, which ranged from \$8,000 per student for one district to \$2,700 per student in another. The staff analysis also noted that the grant funds tended to be used for on-going, rather than start-up costs and were typically used for purposes that are not unique to a single gender environment. For these reasons, the Governor's request was denied and no further funding was provided for the pilot program.

The only evaluation of the pilot program was conducted with support from the Ford and Spencer Foundations and was reported in 2001. According to the report, four pairs of schools closed after two years and one more closed the next year. It is not known when the last pair of schools closed. The report states that the program was hampered by implementation challenges: "[Recipients] had very little time to think about the plan for the single gender academies, engage the support of constituencies, recruit qualified teachers, and advertise the new schooling option for students." The report also concluded that "single gender academies were not sustainable under California's policy framework." Specifically, "Most district administrators, concerned about improved literacy, high stakes accountability, and Title IX threats, were quick to terminate their support for single-sex schools."

- 5) ***Reinforcing gender stereotypes?*** That same report on California's pilot program also found that "educators attended to perceived gender-based needs of students by adjusting their instructional methods accordingly. Because boys were perceived to be talkative and active, they were likely to be taught in traditional classroom environments that were characterized by stricter discipline, a competitive atmosphere, and more physical activities. This compared strikingly to the kinder, gentler environment offered the girls who were viewed as more studious, collaborative, and well-behaved." Moreover, the report also found that "while girls were taught they had broad choices in life, they were also applauded for being feminine and for being concerned about their appearance. Boys were told they should be able to cry but conversely, they were told that they should

learn to be strong men and take care of their wives. In most cases, traditional gender role stereotypes were reinforced, and gender was portrayed in an essentialist manner.”

While the author accurately states that this bill is a means to ensure that the Girls Academic Leadership Academy (GALA) has state authorization to operate as a single gender school, the bill would also ensure that that Los Angeles Unified School District’s Young Oak Kim Academy (Kim Academy), which has separate boys and girls academies, could also continue to operate. However, the Kim Academy has been subject to an appeal to the California Department of Education, which issued a corrective action that required LAUSD to bring the school into compliance with federal and state law regarding gender discrimination. While staff is unaware of any specific concerns regarding the design of GALA, the complaint involving the Kim Academy alleged, and LAUSD’s findings of fact confirm, that the Kim Academy was designed, in part, on research and data on boys’ and girls’ academic performance and learning differences. This bill would require an evaluation to ensure that the single gender aspect of the school or program is based upon genuine justifications and does not rely on overly broad generalizations about the different talents, capacities, or preferences of either gender. *The committee may wish to consider* the extent to which authorizing public single gender schools could lead to the reinforcement of gender stereotypes.

- 6) ***Increased options consistent with local control.*** In recent years, the state has transitioned to the Local Control Funding Formula (LCFF) and the utilization of local control and accountability plans to empower local school boards with the ability to tailor important educational decisions to the unique circumstances of their schools and communities. Moreover, local school districts increasingly face competition from both charter schools and private schools for students. Each student that school district loses to an unaffiliated charter school or to a private school is one less student that a school district is able to claim for purposes of the LCFF. Single gender schools, while commonly available at the private level, are not typically available in California school districts. While this bill would essentially only apply to the Los Angeles Unified School District, it could provide the Legislature with some indication of the level of interest in single gender schools at the public level, which could in turn enable school districts to retain students in their district that they might otherwise lose to a private school, thus affording parents greater educational options and making public school districts more competitive in an increasingly diverse educational environment.
- 7) ***Related Legislation.*** AB 716 (O’Donnell, 2017) would create a grant program, administered by the Superintendent of Public Instruction and contingent on funds being made available for its purpose, to assist school districts with startup costs for establishing magnet schools.

SUPPORT

California School Boards Association

Los Angeles Unified School District

National Association for the Advancement of Colored Persons, California State Conference

National Coalition of Girls' Schools

OPPOSITION

African American Policy Forum
American Association of University Women
American Civil Liberties Union
California National Organization for Women
Family Coalition
Feminist Majority Foundation
Genders & Sexualities Alliance Network
National Center for Lesbian Rights
National Women's Political Caucus
Public Counsel
Transgender Law Center
Women's Foundation of California

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