

The Pennsylvania State University

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**A LEGAL ANALYSIS OF THE CONSTITUTIONALITY OF THE ATLANTA
PUBLIC SCHOOLS DISTRICT'S SINGLE-GENDER PILOT PROGRAM**

A Thesis in

Educational Leadership

by

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ABSTRACT

With the reauthorization of Title IX, public school districts are now permitted to implement single gender schooling. Supporters assert that single gender education will help states comply with No Child Left Behind Act of 2002 (NCLB) by reducing the black-white achievement gaps. A number of schools have been developed pursuant to the reauthorization of Title IX. One example is the pilot program of the Benjamin S. Carson Preparatory Academy, a public school located in Atlanta, Georgia.

The purpose of this study is to determine whether the Benjamin S. Carson Honors Preparatory Academy pilot program violates the United States Constitution?

Specifically, this dissertation examines two questions:

1. Does the pilot program violate the Equal Protection Clause of the U.S. Constitution?
2. How would an expansion of the pilot program survive a challenge under the Equal Protection Clause?

These measures of academic achievement, increased self concept and increasing graduation rates and college attendance are displayed by the state in attempt to display how the single gender education program is “exceedingly persuasive” in that there is an important government interest with genuine purpose and the means substantially relate to the goals end without no perpetuation of stereotypes. Because of that the Atlanta Public Schools district program of Benjamin S. Carson Preparatory Academy is not in violation of the Equal protection clause and should withstand an equal protection clause challenge.

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CHAPTER I

INTRODUCTION

Statement of the Problem

Several analysts have claimed that the United States Public school system is deficient in excellence, equity, and academic rigor, which in turn may harm our society. Elmore (1996) has asserted that the nation's public schools are deficient in certain respects for all students whereas Educational Testing Services (1999) categorizes the problem in terms of wide disparities in educational outcomes between income and ethnic groups.

Because of these criticisms, a number of reform measures have emerged. First, public school policy makers and states have moved towards a more results-driven system which stems from increased accountability and measurable explicit standards (Linn, 2000). Second, according to Ball (1993) free market reforms, which purport to inspire educational innovation, improve achievement, increase accountability, and gain parental support have been adopted. Powers and Cookson (1999) contend that the latter can be shown in school choice examples such as magnet schools, charter schools, and voucher programs.

The third approach for improving education is single gender education. The American Association of University Women (2004) asserts that gender biases exist in public coeducational schools with girls being the less favored. According to Kleinfeld (1998) there is a great deal of concern on the boy "crisis," pertaining to boys having lower reading and language test scores and higher rates of special education referrals than

girls. This is further supported by Gilbert and Gilbert's (1998) finding that boys are more likely to be involved in violent crimes, particularly boys of minority ethnic groups.

Student performance on national assessments also suggests that boys are not performing well academically. According to reports of The National Center for Educational Statistics (NCES) (2000), males have been outscored in reading performances and writing proficiency at all grade levels since 1988. Boys also performed worse than girls in reading on the National Assessment of Education Progress (NAEP). The national reading scores for 4th graders on a testing scale of 0-500 resulted in girls averaging a score of 222 and boys averaging a score of 212. Both are below the median and neither average meets the nation's expectations.

One area that has experienced a great deal of attention at both the state and federal level is the area of special education. Evidence reveals that boys are overrepresented in special education. According to U.S Education Department (2005) boys make up 73% of the children diagnosed with learning disabilities and 76% of the students diagnosed as emotionally disturbed. In looking at schedules of high school students, girls enroll in student government classes 27% of the time whereas boys only enroll 19% of the time. Forty-six percent of girls enroll in Music/Performing Arts classes, while only 35% of boys enroll in such classes. With respect to Yearbook/Newspaper courses, girls enroll at 29% and boys enroll at 21%. When looking at enrollments in Academic Clubs, girls enroll 36% of the time and boys enroll 28% of the time. According to NCES (2005) the only group that boys' percentages were better than girls is in the Athletic teams' section of the data- whereas girls enrolled 49% of the time and boys enrolled 63% of the time.

The federal government has indicated that single gender education may improve academic outcomes for both girls and boys. The No Child Left Behind Act of 2001 (NCLB), makes it easier for a school system or local government to provide the option of single gender schools where requested by parents. Title IX permits separation of students in activities, classes or schools of middle and secondary schools if the action constitutes remedial or affirmative action to decrease gender discrimination in desired outcomes (AAUW, 2006). Currently, there are 253 single gender public schools; many of these schools have come as a result of the new regulations to Title IX and NCLB. According to the National Association for Single Gender Public Education (NASSPE), 33 states have public schools or classes that offer gender specific settings. Of the 51 single gender schools listed by NASSPE, 42 were implemented or became single gender following the NCLB's passage.

The Atlanta Public Schools has decided to develop a pilot single-gender education program at Benjamin S. Carson Honors Preparatory School (Carson), which is an especially poor-performing middle school. When compared to 24 other middle schools in a ten mile radius of Carson, the Criterion Referenced Competency Test (CRCT), Carson ranked 25th in CRCT reading, 24th in CRCT math and tied for 24th in CRCT language arts. In addition, the Carson Middle School failed to meet adequate yearly progress (AYP) as required by NCLB from 2001 to 2004. Table 1 provides a summary of Carson Honors Preparatory School by gender.

Table 1: Comparison of Carson Preparatory Academy on Georgia Criterion Reference Competency Test Results by Gender

Grade & Academic Area	2002-2003				2003-2004				2004-2005			
	Girls		Boys		Girls		Boys		Girls		Boys	
	Carson- APS –	Carson - APS	Carson- APS -	Carson- APS	Carson- APS -	Carson- APS	Carson- APS -	Carson- APS	Carson- APS -	Carson- APS		
6th grade												
Reading	44%	36%	35%	25%	57%	43%	40%	28%	52%	35%	32%	24%
Language Arts	69%	56%	53%	43%	64%	52%	42%	36%	60%	44%	37%	28%
Mathematics	68%	56%	38%	27%	70%	54%	58%	45%	58%	48%	48%	38%
8th grade												
Reading	64%	56%	38%	27%	57%	35%	29%	22%	40%	37%	32%	25%
Language Arts	58%	51%	37%	30%	57%	41%	31%	24%	45%	39%	27%	24%
Mathematics	68%	60%	68%	53%	72%	50%	63%	45%	68%	54%	71%	49%

Table 1 shows that students at Carson did not meet all of the standards in any of the three reported academic years. Notably, there was a range in performance among boys and girls that ranged from 9-28%. Even with the range in percentages, the percentages of Carson students were significantly lower than the district's aggregate group. A second major point of concern highlighted in the table is that the achievement scores from grades 6 to 8 for girls in math and science display a greater decline when compared with boys. While the data reveal that both genders are performing poorly, the girls who are statistically outperforming boys are beginning to show signs of academic achievement breakdown.

Purpose of the Study

This pilot program may be vulnerable to an Equal Protection Clause challenge on the basis of gender discrimination. The purpose of this investigation is to determine whether this pilot program violates the United States Constitution. Specifically, two questions will be examined.

1. Does the pilot program violate the Equal Protection Clause of the U.S. Constitution?
2. How would an expansion of the pilot program survive a challenge under the Equal Protection Clause?

Significance of the Study

According to the National Association of Single Sex Public Education (NASSPE) (2006), there are currently 253 single gender public schools; many of these schools have come as a result of the new regulations to Title IX and NCLB. According to the National Association for Single Gender Public Education (NASSPE), 33 states have public schools or classes that offer gender specific settings. Of the 51 single gender schools listed by NASSPE, 42 were implemented or became single gender following the passage of NCLB.

As with any public institution that receives federal funding, the failure to comply with the Constitution places a program in jeopardy. This research will provide information to public school districts that will assist them in identifying the practical and legal way of piloting a single gender school. As a legal analysis, this study can help parents and school districts minimize potential litigation in perhaps the introduction of other single gender schools.

CHAPTER II

LITERATURE REVIEW

Introduction

This chapter provides a literature review of single gender education. The first section reviews the historical origins of public single gender education. This section also includes a description of the legislation governing single gender public schools. The second section presents a review of the research that synthesizes the contentions of both proponents and critics of single gender education. The third section provides a brief overview of cases generally used as precedence cases when deciding on the constitutionality of single gender education programs. The reactions of legal commentators pertaining to single gender education are addressed in the fourth section.

Historical Context of Public Single Gender Education

As early as colonial America, single gender schools and single gender classrooms practices have existed (Sadker & Sadker, 1994). Mead (2003) divides single gender education into three generations: “First Generation” schools are those that would have been structured in similar design of the Virginia Military Institute – an all-male or all-female institution that explicitly ignores the educational rights of the other gender; “Second Generation” single gender schools, on the other hand, offer education opportunity to only one gender but were devised pursuant to discrimination litigation cases spirited by gender advocate groups and regulations; while “Third Generation” single gender schools offer educational opportunity to both boys and girls on equal basis (Mead, 2003. p. 168).

According to Mead there were a total of only 11 single-gender public schools as of 2003. Table 2 identifies these schools.

Table 2
Public Single Gender Schools and Programs through 2002

School	Type of Program	Year Begun
Western High School, Baltimore, MD	All girl high school	1844
Philadelphia High School for Girls, Philadelphia, PA	All girl high school	1848
Robert Coleman Elementary School, Baltimore, MD	Single- gender classrooms- both genders	1993
The Young Women's Leadership School, New York, NY	All girl-middle/high school, grades 7-12	1996
The San Francisco 49ers Academies, East Palo Alto, CA	Paired single sex programs for each gender on the same campus.	1996
Lewis Fox Middle School (Mary McLeod Bethune Institute for Girls and Benjamin E. Mays Institute for Boys), Hartford CT	Paired single gender programs for each gender within a larger host school	1996
Maria Mitchell Elementary School, Denver CO	Single Gender classrooms for 4 th and 5 th grades	1998
Jefferson Leadership Academies, Long Beach, CA	Paired Single Gender academies for each gender on the same campus (grades 6-8)	1999
Thurgood Marshall Elementary School, Seattle, WA	Single Gender classrooms grades 1-5	2000
Young Women's Leadership Charter School, Chicago, IL	All girl middle/high school, grades 6-12	2000
Brighter Choice Charter Schools, Albany, NY	Paired single gender academies for each gender on the same campus (k-5)	2002

(Mead, 2003)

As Table 2 makes clear, there were only two public single gender schools prior to 1993 whereas nine of the listed eleven schools came into existence after 1993. A second point of emphasis is that public single gender education can be deployed in multiple forms. One form is placement of both public single gender schools and classrooms on a traditional functioning co-educational campus. For example, Denver's Maria Mitchell elementary school separates its students according to gender only in 4th and 5th grade (Denver Public Schools, 2006). Thurgood Marshall Elementary School in Seattle separates the genders in grades 1-5 (Seattle Public Schools, 2006).

Another form of single gender schooling is to provide single gender education for two separate single gender schools on the same campus. For example, the Jefferson Leadership Academies of Long Beach California was established in 1999 for grades 6-8 and services a combined student population of 1152 boys and girls (Harris, 2006).

Some public schools serve only one gender. For example, Harlem's Young Women's Leadership School for Girls was established in 1996 as a magnet school for both middle and high school girls, that focuses on technology, leadership, mathematics, and science (TYWLS, 2006). Advocates of this school believe that single gender education promotes elevating academic development in the aforementioned subjects and increases cases of higher self esteem (TYWLS, 2006).

Young has no admissions exams nor does it require girls to have an exceptional academic background before admittance. It does require that girls have at least a C average in order to be considered for admissions. While it does not discourage multiracial admissions, the student population is composed of 99 percent Hispanic and Black. The first graduating class showed a record 99% of its students being accepted into

four year colleges with the one percent exception of a student who enlisted in the United States Air Force. Over the span of five graduating classes, almost all of the girls have been accepted into a four year college with many of them meeting academic scholarship requirements.

The similarly structured Young's Leadership Charter School located in the Chicago Public School District was established in 2000 (YWLCS, 2006). This school has identical beliefs and operations of its model school in New York, however it envisions servicing a larger student population of 500 girls. Currently, the student population is 340. The first class graduated in 2004 with a college admission rate of 86%.

Two legislative enactments, Title IX and the No Child Left Behind Act, have encouraged the recent growth of single gender schools. Title IX, which was enacted in 1972, prohibits gender discrimination against students and employees of educational institutions (U.S. GAO, 1996). In 1975, regulations were passed which permitted single gender schools and classes to overcome gender discrimination. However in 2002, Congress passed the No Child Left behind Act, which extensively amended the Elementary and Secondary Education Act of 1965. The expressed purpose was to ensure that "all children have the opportunity to obtain a high-quality education. The act would achieve this goal by holding states more accountable for students' academic results, increasing flexibility and control for local school boards, providing greater options for parents, and demanding that school districts focus on using scientific proven teaching methods.

To further the purpose, NCLB allows federal funds to be used for innovative programs, including programs to provide same gender schools and classrooms. On October 25, 2006, the United States Department of Education published new regulations governing single gender education in public schools. The new regulations permit single gender classrooms and schools as long as the gender that does not receive such options are receiving a “substantially equal” education.

One could strongly assert that Title IX and NCLB have worked together to increase the number of single gender public schools. According to the National Association for Single Gender Public Education (NASSPE), 33 states have public schools or classes that offer gender specific settings. Of the 51 single gender schools listed by NASSPE, 42 were implemented or became single gender following the passage of the NCLB. Table 3 displays how some states have high numbers of single gender education public schools following the reauthorization of Title IX. Table 3 highlights that there are examples of single education schools and single gender classrooms. Both forms have become very popular and are experiencing varying results. However a question of debate as to whether this alternative form to coeducation is arguably worth the experiment increases in scholarly discourse.

Table 3: Popular Sites for Single Gender Public Education in 2006

States	Number of Single Gender Public Schools
New York	(10)
Ohio	(10)
Indiana	(7) all younger than 14 months
Pennsylvania	(5) 1 piloting in August 2007
South Carolina	(1) but 15 co-ed schools which have single gender classes
Texas	(1) but 15 co-ed schools which have single gender classes
Kentucky	(1) but 15 co-ed schools which have single gender classes

Proponents and Opponents of Single Gender Education

This section reviews the literature of what researchers say in support and opposition of single gender education. There are two primary topics spurring discourse among both supporters and challengers of public single gender education. The single gender public education debate revolves around the usage of the umbrella words “academic” and “sociological benefits.” Proponents of single gender education contend that single gender education provides the academic benefit of decreasing classroom discrimination, improving educational experiences for both boys and girls, and presenting parents with more choices from which to select the system of education that works best for their children. They also argue that separating students by gender potentially increase the options available to poor and minority children, whose parents may not otherwise afford the single gender education traditionally offered only in private schools.

Critics of single gender education contend that proponents’ research on single gender education is inconclusive, largely anecdotal and based on parochial and private schools outside of the United States (AAUW, 1998). Critics contend that single gender education does not promote diversity, instead it presents the same legal issue as did

Brown v. Board of Education: state endorsed segregation of students. They unanimously contend that smaller class sizes are the explanation of success not single gender education. Lee and Marks (1994) challenge single gender education contending that generally contaminated teacher attitudes towards students frequently reflect gender bias; thus embedded discrimination is present in all schools regardless of school type. Opponents argue that the new regulations of Title IX divert attention away from the real education problems.

Real problems according to opponents of single gender education are lack of funding, a shortage of teachers, overcrowded classrooms, inadequate facilities, and poor technology in the classroom. I cannot find definitive support for either argument. The remainder of this research will emphasize how insufficient the research is in regards to single gender education.

Academic Benefits

Both supporters and critics of single gender education use the same studies but interpret and apply them differently. In looking at the primary argument first, academic achievement, different interpretations are noted. Mok and Flynn (1996) in their research looked at the effect of school size on academic achievement which also investigated how the relationship changed after controlling for other student and school variables. The researchers looked at 4,949 12th grade students in 44 different Catholic Schools in South Wales, Australia. Academic achievement in the study was measured by the students' performance in the Higher School Certificate Examination (HSC) in 1990. Several analyses were undertaken to answer the research questions, including a school level simple regression analysis and a number of analyses involving four multilevel models.

The researchers pointed out that correlation does not imply causality. They found that larger schools tended to gain higher HSC results. They also found that all effective schools were single gender and of higher SES. In their findings they found that both boys and girls were included in the highly effective schools, but no coeducational schools were included. They found that in looking at student background and education culture the medium socio-economic status schools did not score significantly better than low SES schools in the HSC examination, although there were substantial differences between high and low SES schools. The researchers concluded by saying that there is significant school size effect on academic achievement, even after controlling for background variables and processes in Catholic Schools. Proponents of single gender education would point out that regardless of controlled variables the implementation of single gender education is the primary reason for the academic success. Critics would say that other variables were found to be the reason for the academic success.

Datnow, Hubbard, and Woody (2001) in their study examined whether gender schooling is a viable option in the public sector. This study was a two year longitudinal case study of six single gender operating districts in California. They looked specifically at the state of California's experimentation with single gender education due to the state's large scale interest in the topic. They focused on socio-political context of single gender public education in each community, the organization and implementation of single gender education, and the policy implications regarding single gender academies as a school choice option of the state of California.

They found that for most administrators, single gender schooling was a vehicle for meeting at risk students needs and not an end in itself. Secondly, most parents viewed

California's single gender academies as an opportunity for their children to benefit from special resources. Thirdly, they found that traditional gender stereotypes were often reinforced. This was realized in the findings that boys tended to be taught in a more regimented, traditional, and individualistic fashion and girls in more nurturing, cooperative and open environments.

Next, students received mixed messages about gender from their teachers. They found that even though separation of the genders reduces classroom distractions from the opposite gender, students experienced teasing and harassment in the coeducational spaces of the single gender academies. Arguments in support of critics are explicit here. Proponents of single gender education could point out that oftentimes parents do not recognize the actual purpose of reform measures and may have different goals from the school districts. Secondly, had parents yielded to the district, the schools would have been more effective in achieving the intended outcomes.

Singh, Vaught and Mitchell (1998) conducted a quantitative study that was a quasi-experimental research of 5th graders in two single gender classes and two coeducational classes. The total sample size was 90 students. This study researched whether or not a single gender class organization would lead to higher academic achievement and better attendance. All students were classified as average learners by principals and teachers. There were no special education students in any of the classes. The teachers were labeled as competent "master teachers" by their principals.

In looking at the schools' standardized Iowa Test for Basic Skills (ITBS) data of the three subject areas math, science, and social studies there were no trends but the coeducational groups performed better. The reading scores on the ITBS were the same

for both settings. In looking at the academic grades, researchers found that the single gender classes were higher than the coeducational classes but there was no statistical significance.

The findings' actual results were that the girls' only class outperformed the boys' in both coeducation classes and single gender classes in math. Boys in all male classes scored the lowest on the mathematics test. Girls in the same gender classes had the lowest ITBS science scores. Single gender classes had the highest student attendance. The average days missed in the coeducation classes were 9.24 days. The average absences in the same gender classes were 5.73 days. One very notable finding was that females in both settings had fewer absences than males in both settings. Coeducation males averaged 13.39 absences, the highest of the entire sample. One upside is that males in the single gender classes missed an average of 5.77 days. There were no differences in attendance between females in single gender and coeducational classes. The results of this study appear to support proponents of single gender education but opponents would counter argue that the study failed to mention other important variables such as incentives for attendance, test preparation and the accessibility of resources.

Harker (2000) explored whether there are gender differences in outcome on selected academic criteria between girls at single gender schools when compared with girls at coeducational schools at a variety of levels in secondary schools in New Zealand. This study was conducted using the data of other studies. One study was titled "Progress at School." It was a longitudinal study of 5,300 students in 37 schools. The other two data sources were national level data from the Ministry of Education and the National Qualifications Authority.

Harker found that girls are substantially ahead of boys in English in terms of curriculum coverage and examination results. In mathematics, the boys were a little ahead of the girls. The differences in science were minimal slightly favoring the boys. He points out that because other studies find similar results that high concern areas for girls are mathematics and science and English for boys. He found that in mathematics and science and computer studies girls have achieved near parity with boys except in physics where there is a 2:1 ratio which is the exact ratio of girl dominance in biology.

He points out that because of this it is no longer common to think that math and science are preserved by boys. His findings reveal that when adequate control is exercised for the different ability levels and the social and ethnic mix of the two types of schooling, the initial significant differences between girls who attend single gender and coeducational schools disappear. He concluded by saying that school type is not an important factor in attempts that might be made to improve performance levels of girls in mathematics, science, and English. He attested particular findings to what is referred to as 'market oriented' subjects. He found no significant differences between the two types of schools when all variables are controlled. This study could offer support to both supporters and critics. This study found that success was evident where single gender education was not the absolute cause of the academic achievement. The findings do not suggest that single gender education is not worth devising however one could argue that other alternatives could be more effective.

Carpenter and Hayden (1987) looked at the effects of parents' occupational status, teachers' encouragement for further study, and high school curriculum on girls' academic achievement of single gender girls' schools and coeducational schools. The study was

conducted in two Australian states' Victoria and Queensland. Multiple regression analysis was used to identify factors deemed important by researchers.

The researchers found that the choice of single gender schooling for girls is partly explained by factors in the social structure, particularly by the mother's education. They found that in Victoria girls who attend girls' schools receive consistent encouragement from parents, teachers, and friends to enter college; girls are more apt to take college prerequisites courses by year twelve which include the sciences. They also found that parents are more likely to expose their daughters to peers who encourage college attendance. The researchers found that impact of school sex composition in a country in which the completion of year 12 is partly dependent upon social origins. They found that school curriculum and the perception of teacher encouragement for college entrance exercise slightly larger effects upon academic achievement than school gender composition. This study supports both arguments and depending on how one wishes to dissect findings, this study can be used in to complement discourse favoring either proponents or supporters. This study exemplifies how findings of studies can be interpreted to support whoever is leading in discussion.

Baker (1995) investigated the relationship between grade 12 mathematics achievements and the proportion of single gender schools in four countries using data from the International Educational Assessments (IEA) Second International Mathematics Studies (SIMS). Baker hypothesized that "achievement differences will be largest in countries where the proportion of single –gender schooling is small." Belgium, New Zealand, Thailand and Japan were the four countries researched in this research. Two countries had fairly high percentages of single gender education initiatives and two had

fairly low percentages of single gender education initiatives. Baker determined that systems with higher percentages of single gender schooling initiatives experienced parallel achievement differences to countries that had smaller percentages of single gender initiatives. The researcher points out that the most important factor of academic gains could have been because parents and students were making what researchers refer to as “pro-academic choice,” not single- gender setting. Again this research supports the argument that single gender schooling offers other important variables that are direct causes of the success such programs experience.

Gilson (1999) examined the effects of single-gender classes on girls’ achievement and attitudes towards mathematics by comparing single-gender and coed mathematics classes in private middle schools in the United States. All schools were members of the National Association of Independent Schools which typically serviced middle to upper income families. Data were collected using a questionnaire designed to assess students’ perceptions towards mathematics (their ability, their efforts, their ‘academic identity in math’, and their interest in the subject). Gilson found no significant differences between school type and attitudes towards mathematics or mathematics achievement. The researcher contended that SES and parental support for academic achievement are likely more significant influences on academic attitudes and achievement of students than the educational setting itself. Variables noted in a single gender setting were found to have more impact than the implementation of single gender education. This study would support the challengers’ argument.

Sociological Differences

The sociological argument is based on the contentions that single gender education increases self esteem, class participation, and the confidence of both genders, particularly girls. Some literature also highlights the brain differences of the genders thus identifying physical differences that cause sociological differences. Proponents of single gender education offer the difference in learning styles of boys and girls as support for their argument. Because some research reveals that boys and girls learn differently, proponents advocate that students should be placed in environments to maximize their fullest learning potential.

Derry and Phillips (2004) investigated differences in experiences for both students and teachers in coed and girls-only PE classes. Data were collected using student questionnaires, and the coded and analyzed video/audio tape recordings of eighteen classes. Authors Derry and Phillips found that all-girl PE classes allowed for increased skill-learning time and more student initiated interactions with teachers. They found that the all girls' PE classes exhibited significantly higher teacher-time management- teacher initiated positive verbal interaction, and motivational feedback. This research suggests that the gained self esteem students are experiencing in single gender schools could be a result of the staffs' interactions with the different genders not the separation of the genders into single gender environments.

Norfleet, James, and Richards (2003) tested the perception that single gender schools produced long-term benefits for boys. Their research used surveys to compare the educational attitudes, post-secondary majors, and career skill-sets of 412 graduates of 12 single gender and coeducation boarding schools. The researchers found that graduates

of single-gender boys' schools demonstrated greater long-term benefits than their coed peers, had more positive attitudes towards English, history and reading in general, chose to major in the humanities more often; and used communication and reading skills in their careers more than their coed peers.

Lee, Marks, and Byrd (1994) investigated how socialization to gender operates in three types of independent secondary schools. The 21-school investigation covered 83 classrooms surveying all boys, girls, and coeducational schools. The study found that teachers initiated most of the incidents relating to sexism. They found that while forms of sexism existed in each setting, they differed within the different setting. They found that none of the 21 schools were absent of sexism. The researchers found that the coeducational chemistry classes exhibited major sexism and that most sexism occurred in the boys' schools. The researchers highlighted that the girls' schools displayed more equity than any others. They also found that the schools also experienced sexism in the form of academic dependence and non-rigorous instruction, resulting in the "single gender education" experience not being different as far as outcome in the coeducation schools. They found that schools with the least sexism were similar with respect to gender equity in enrollment and faculty hiring. This study condemns proponents of single gender education. The researchers highlight that sexism exists in all school settings, which implies that the increase of self esteem and or prevention of stereotypes should not be recognized as a exceedingly persuasive justification of a district aspiring to implement single gender education.

Catsambis (1994) conducted a study that traced the development of gender differences in learning opportunities, achievement and choice in mathematics among

white, African American, and Latino students using prerecorded data from a national longitudinal study that looked at students in their 8th grade year and again in the 10th grade year. She found that female and male students are parallel in test scores and grades during this age span. She also found that female students tended to be less confident in their mathematic abilities. She found that the Latinos had the widest gender gaps and African American had the smallest. She found that attitudes and career choices were the causes of mathematics achievement barriers for white females. The researcher also found that minority students of both genders had limited learning opportunities and lower levels of achievement. This study favors the challengers of single gender education because it suggests that more opportunities could increase levels of resources not succinctly separation of genders.

Brutsaert (1999) explored the possible influence of school type on how girls and boys perceived themselves in terms of gender stereotypical traits. A questionnaire measuring academic performance, gender identity, and classroom behavior was given to 6,427 14- and 15-year-old students. Curriculum, school and parental socio-economic status, and school type were all controlled variables. Brutsaert found that girls in coed schools demonstrated greater connections with traits traditionally acknowledged as feminine such as being considerate, emotional, affectionate, compassionate, tender, sensitive to the needs of others, and eager to help others than their single gender educational peers. The single-gender schools indicated greater identification with traditionally masculine traits such as being self confident, competitive, liking to be in charge of things, ambitious, self reliant, dominant, and mastery oriented. This research supports aforementioned arguments that coeducation schools are not harmful to the

effective education of kids in regards to preparing students to become functioning, contributing citizens in society. Proponents could argue that while success is being experienced in single gender schools and the traditional masculine traits are the essentials women need to compete in a competitive society. Opponents counter argument could state that a functioning society must have apparent distinction among genders. This study highlights that traditional societal norms are essentially realities and in many cases a basis for normal existence. In result, according to this study, a single gender education may not be in compliance with the common belief of traditionalists and it is apparent here that a functioning female citizen is more or less functional in measures of her willingness to comply with traditional norms.

Marsh, Smith, Marsh, and Owens (1988) wanted to know whether students attending the single gender schools have systematically different self-concepts or levels of achievement than students attending coeducational schools and whether these differences vary according to areas of self concept or the areas of achievement. Also they wanted to know if gender differences in specific areas of self concept or achievement differ for students attending single gender schools and coeducational schools. The 4-year longitudinal study looked at the transition of students in a single neighborhood from two single gender high schools to two coeducational high schools. In looking at the pre-transition and post-transition, researchers found that self concept increased when looking at particular areas of self concept derived from achievement. For example, there were no significant differences in either mathematics or English achievement; thus the self concept in both subject areas were equal. The researchers did emphasize that girls performed better than boys in English and poorer than boys in mathematics, but these

findings were common in both settings and not in result of the transition. This study suggests that the coeducational setting is equally supportive of males and females in regards to multidimensional self concept and that the benefit does not correlate to academic achievement. Challengers would find support in the finding that that increased self concept can be achieved in a coeducational environment just as well as in a single gender environment.

Single Gender Education and the Equal Protection Clause

Even though there have been reauthorizations to Title IX and NCLB, public single gender education could be vulnerable to challenges under the Fourteenth Amendment of the U.S. Constitution. The Equal Protection Clause of the Fourteenth Amendment declares that a state may not deny anyone its jurisdiction the equal protection of the laws. The Equal Protection Clause is implicated where similarly situated persons are being treated differently by a government law or action. Thus, a single gender school and any possible extensions of sort may be challenged on Equal Protection Clause grounds. In these particular instances courts generally apply three levels of scrutiny to determine whether a governmental classification violates the Equal Protection Clause. These classifications are set out in Table 4. As Table 4 makes clear, classifications based on gender would be subject to intermediate scrutiny: in other words, the classification must be substantially related to an important state interest.

Table 4: Equal Protection Clause Classifications

Judicial Test	Classification	Test Employed
Strict scrutiny	<ol style="list-style-type: none"> 1. Suspect class (race, religion, national origin) 2. Fundamental rights recognized under the Constitution 	Narrowly tailored to satisfy a compelling government interest
Intermediate/ scrutiny	Gender	Substantially related to important state interest
Rational basis	All other classes (e.g., age, economic status, sexual orientation)	Rationally related to a legitimate state interest

There are several cases that may provide guidance for policy decisions being made on single gender public education: *Mississippi University for Women v. Hogan* (1982), *Vorchheimer v. School District of Philadelphia* (1977), *Garrett v. Board of Education of School District of Detroit* (1991) and *U. S. v. Virginia* (1996).

In *Vorchheimer v. School District of Philadelphia* (1977), the Supreme Court first examined the question of the constitutionality of single gender public schools. The case involved Central High School, an all male public high school in Philadelphia that denied admission to a female student solely on the basis of her gender. As a justification, the Philadelphia School district offered two empirical studies supporting segregation in schools; neither study dealt with the issue before the court.

The U.S. Court of Appeals for the Third Circuit found that Girls and Central High School were academically and functionally equivalent, and that the admission's requirements based on gender classification did not violate the Equal Protection Clause of the Fourteenth Amendment. The circuit court held that there is a need to allow innovation in methods and techniques justifiable for segregation by gender. The court

reasoned that gender should not be treated the same as race under the Equal Protection Clause because, unlike race, fundamental differences do exist between girls and boys.

On appeal, the Supreme Court affirmed the third circuit court decision which noted that the primary aim of any school system should be to provide the highest quality education possible, which, in this case, meant single gender education, because single gender schools, among other things, may help adolescents study more effectively relative to coeducational schools. The Court did so in a 4-4 split, which means the decision, is binding only in the Third Circuit.

The Supreme Court revisited the issue in the context of higher education in *Mississippi University for Women v. Hogan* (1982). Joe Hogan, a registered nurse and qualified applicant, was denied admission to the Mississippi University for Women (MUW) School of Nursing baccalaureate program solely on the basis of gender. He was told that he could audit classes but not enroll for credit. He filed an action in United States District Court, claiming that the single gender admission policy violated the Fourteenth Amendment.

The only question to the Court was whether a state supported professional nursing school that excluded males violated the Fourteenth Amendment. In ruling in favor of the State, the district court asked whether the “maintenance of MUW as a single gender school bears a rational relationship to the State’s legitimate interest” (*Mississippi University for Women v. Hogan*, 1982, p. 721) in providing educational options to the female students in Mississippi. Since providing single gender schools was consistent with a respected theory of educational benefits, the admissions policy was not arbitrary.

The Fifth Circuit reversed and rejected the “rational relationship” test in favor of a test stating that “gender based classifications must be substantially related to important governmental objectives in order to withstand constitutional challenge.” Although the State did have a significant interest in providing educational opportunities to all its students, the Fifth Circuit found that the State had failed to show that providing a unique opportunity for females, but not for males, was substantially related to that interest.

The Supreme Court, affirming the judgment of the Fifth Circuit held that any policy expressly discriminating among applicants on the basis of gender was subject to scrutiny under the Equal Protection Clause, regardless of whether it discriminated against males or females. The Court further held that any party seeking to uphold a statute classifying people on the basis of gender must show an exceedingly persuasive justification for the classification. To meet the “exceedingly persuasive justification” burden, the Court requires that: (1) the classification serves an important governmental objective; and (2) the discriminatory means employed are substantially related to the achievement of those objectives. The Court recognized that a gender based classification could be justified if it intentionally and directly assists members of the gender that is disproportionately burdened (p. 728).

The Court found that the all female policy violated the second prong of the announced test because there was no showing that the gender based classification was substantially and directly related to the compensatory objective. Because men were allowed to audit classes, the State could not plausibly argue that it was achieving the benefits of a school where women were not adversely affected by the presence of men. Since neither the interest nor the relationship between the interest and the means satisfied

the Court's standards, the Court held that the all female policy violated the Equal Protection Clause.

The state fell short of proving an exceedingly persuasive justification for the maintenance of the school. The Court found that Congress did not have the power to change the guarantees of the Fourteenth Amendment. The court found that if single gender schools or classes were unconstitutional, the fact that Congress or an agency wished to expressly permit them was irrelevant.

In this case the court was not considering whether a state could fund separate but equal colleges for men and women. The court considered only whether a man should be admitted to the School of Nursing and not other schools within MUW. The Court did not find that all public single gender education was unconstitutional, just that Mississippi's articulated objective did not warrant excluding one gender.

In *Garrett v. Board of Education* (1991), the Eastern District of Michigan preliminarily enjoined the Detroit Board of Education from excluding females from three public academies which were formed to address high unemployment rates, school dropout levels, and homicide among urban African American males. The academies were organized to teach 250 boys from preschool through fifth grade, and then phase in programs for sixth through eighth grades. The academies, developed by a private organization, planned to offer special programs including an Afro-centric curriculum, a "Rites of Passage" class designed for adolescent males, career preparation, an emphasis on male responsibility, mentors, individualized counseling, and student uniforms. The plaintiffs contended that these special programs did not require a uniquely male

atmosphere to succeed and that they addressed issues females face, too. Moreover, the academies did not target only at-risk boys but boys from all achievement levels.

The case came to the court on a motion for a preliminary injunction. In such cases, the courts do not render a final decision, but they will grant an injunction forbidding a party from engaging in certain activity if they find, that it is likely that the plaintiffs would succeed at trial and would suffer irreparable injury if the injunction is not granted. The court applied the same standard used in *Hogan*. It found that both the U.S. Constitution and the Michigan Constitution prohibit the exclusion of an individual from publicly funded school because of his or her gender unless the state can show that gender-based classification serves an important governmental objectives and that the discriminatory means employed are substantially related to achieving those objectives. The court noted that no evidence existed that the education system was failing urban males because of females attending schools with males. The injunction was granted and this case never came to trial. The parties agreed to expand the academies to include girls and to have comparable male-focused classes and activities.

In *U.S. v. Virginia* (1996) the Supreme Court considered the constitutionality of single education for a third time. The origins of this case date back to 1988- 1990. In 1991, a federal district court held that Virginia Military Institute's (VMI) male-only admissions policy did not violate the Equal Protection Clause. The district court reasoned that single gender education yielded substantial benefits for both men and women and that VMI's unique method of instruction enhanced diversity in an otherwise coeducational Virginia system.

In 1992, the U.S. Court of Appeals for the Fourth Circuit disagreed and ordered VMI to remedy the constitutional violation. The state of Virginia proposed to create the Virginia Women's Institute for Leadership (VWIL) as a parallel program for women. VMI proposed that it be allowed to continue to admit only men, and that it would assist nearby Mary Baldwin College in establishing a "leadership" program for women that would approximate VMI's program for males. The Fourth Circuit ruled that despite the difference in prestige between VMI and VWIL, the two programs would offer "substantively comparable" educational benefits. The Supreme Court decided that VWIL did not meet the equal protection requirement because the program and facilities at Mary Baldwin College were not comparable to those at VMI.

Virginia argued that the men-only policy is based on philosophy of leadership training that involved physical fitness, emotional stability, and self-discipline. The state also claimed that it maintained a valid interest in providing educational opportunities to students who could benefit from single gender education and admitting women would fundamentally alter the school's curriculum. Thirdly, the state argued the VWIL provided a separate but equal educational opportunity for women. VWIL and VMI used different cooperative methods to build self esteem.

The Supreme Court argued that VWIL and VMI were not equal in terms of resources, reputation, and the value of its degrees. In a 7-1 decision the Court held that VMI's male only admissions policy was unconstitutional since no adequate alternative for women existed. Because it failed to provide exceedingly persuasive justification for VMI's gender based admission policy, Virginia violated the Fourteenth Amendment's Equal protection Clause.

The Court ruled in this manner because Virginia failed to show that VMI's male only admissions policy was created or maintained with the purpose of furthering educational diversity and VWIL could not offer women the same benefits as VMI offered men. VWIL would not provide women with the same rigorous military training, faculty, courses, facilities, financial opportunities, or alumni reputation and connections that VMI afforded its male cadets. The court also argued that acknowledging the existence of some "inherent differences" should not be used as a basis to deny opportunities.

Moreover the, Court rejected the findings that the district court made regarding gender based developmental differences which were based on opinions about typically male or female tendencies. Instead the Court held that: "State actors controlling gates to opportunity may not exclude qualified individuals based on fixed notions concerning the roles and abilities of males and females" (*U.S. v. Virginia*, 1996, p.541, quoting *Mississippi Univ. for Women*, p. 725). A second example can be seen in the explanation that the state offered in regards to generalizations about the desires and abilities of each gender not being uniformly correct. It was found that the state could not deny to women an opportunity available to men, because women would fall outside the mold. The Court determined that VMI's real mission is "to produce citizen soldiers" and that goal was great enough to accommodate women. The court found that in applying the intermediate scrutiny test, maintaining VMI as an all male school did not substantially relate to the interests of producing citizen –soldiers or the preservation of the adversative method.

In the second part of the opinion, the court dismissed VWIL as an inadequate remedy because it did not respond closely enough to the constitutional violation, calling the VWIL a pale shadow of the VMI School. The court concluded that women seeking

and fit for a VMI quality education cannot be offered anything less, under the state's obligation to afford them genuinely equal protection.

The Justices in this case interpreted intermediate scrutiny differently in this case. Justice Rehnquist believed that exceedingly persuasive justification was too broad of a phrase thereby making it difficult to apply the intermediate scrutiny level appropriately. Justice Scalia accused the majority of with applying strict scrutiny level test to an intermediate scrutiny level question. Scalia believed that Virginia easily passed the intermediate scrutiny level. Justice Scalia concluded his dissent by saying that the majority did a major disservice to experimenters of single gender schools, since no school district or state would ever want to offer diversity in the face of great litigation.

Legal Commentators

The legal discourse of single gender education primarily rationalizes “choice/ diversity,” and equality. Public opinion and popular practices have tainted Congress's intent in regards to Equal Protection as it relates to the public education parameters. There is also some debate as to which standard the state must meet to justify a gender classification. Many commentators agree that discrimination exist in public education, yet they disagree as to whether girls, boys, or both face this discrimination. This section will highlight the legal commentators' position on single gender education.

Justifications According to Legal Commentators

Levit, (2000) traces the history of the judicial move away from court-ordered desegregation in the name of “choice” and “diversity” of options,” and she depicts the current education system's fascination in experimenting with single gender education as it relates to “choice and diversity.” According to her, it is the usage of the words choice

and diversity that drives the ambiguity of rationale of experimentation with single gender schools and classes. She points out in research that the single gender movement has interpreted choice and diversity differently from how the constitution intended for it to be interpreted. Levit contends that the media guides public opinion and a misguided misinformed society can result in litigation. According to her, the constitutionally endorsed concept of diversity is defined in school admissions or affirmative action cases.

Levit finds that embracing segregation only presents empirical evidence that adds to the ambiguity of the intended application of choice and diversity. However, Levit suggests that because differences exist in constitutional theory, sociological and behavioral research, and educational practices, changes cannot rest on stereotypical generalizations but instead on empirical support. She argues that districts should understand the intent of the constitutional usage of the words choice and diversity so that practices and not applied that contradict the constitutions intent to support equalize opportunity for all persons.

Sullivan (2003) asserts that districts are misinterpreting the single gender education choice concept, facing school districts after the No Child Left Behind Act. It is his belief that Congress did not intend to encourage gender discrimination. Rather, he maintains that Senator Kay Bailey Hutchinson's \$450 million innovative to support single-gender education was introduced to further the goals of closing the achievement gap through accountability, flexibility and choice. He says that it is difficult to dispute that there is a substantial educational achievement gap between students from high-income families and students from low-income families.

In support of his contentions Sullivan states that reviewing enrollment data reveals attainment differences. He contends that rather than gender discrimination, Congress is striving to put all students on a more level playing field by expanding the number of public education options, particular given the strong correlation between educational achievement and future earnings.

Sullivan contends that before a district moves totally towards single gender schools, it should consider a more systematic approach and consider starting with implementing single gender classrooms. This is in part to his belief that single gender schools are more likely to not survive an Equal Protection Clause challenge nor comply with Title IX.

Sax (2005) provided legal synthesis on the language of “choice and diversity,” a justification used by supporters of single gender education. He found that researchers led parents to believe that the language of choice and diversity used in statutory and constitutional law meant providing them with choices pertaining to their children’s education, selecting neighborhood schools or single gender classrooms. Also Sax says there is a misperception that the researched existing natural gender differences between boys and girls necessitates single gender schools. This researcher has highlighted an aforementioned point that supporters of single gender education are wrongfully applying Congress’ intent to support equality to cater to this form of gender segregation.

Salomone (2003) covers an ongoing part of the school wars, the battle over gender equality in education in general, and over single-gender schooling in particular. In her research she provides an analysis of the legal, political, cultural and educational dimensions of the struggle over gender equality. Professor Salomone urges readers to

take a more focused and less polarized view, to reconsider the fundamental concepts of gender schooling. She says that single gender education as a topic of discussion has become entrenched in our collective psyches and thus has become our law.

She wrote that single-sex education should be a matter of choice, not an obligation to attend. She defended her conclusions and explored the validity of others' views with a balanced review of law, history and education research. She acknowledges the influence of the majority on this issue and advises persons to find for themselves whether the choice is the suitable one for the particular situation. Professor Salomone urges that states should, rather than focusing on achievement test scores, examine stages at which sex differences typically develop, while also recognizing the variations within each group. This will first result in identifying ways of improving the differential performance of students. Secondly, it would maximize the potential of different populations of genders across the schooling experience and across the curriculum areas.

Jungreis (1996) in his research emphasizes real differences such as the brain research that males and females are notably developed differently from the fetus stages of the birth process, states that "real differences between genders, can and should lead to different pedagogical approaches in the context of single gender education."

In his research assesses the line of cases construing the validity of single-gender public education. He agrees with Justice Blackmun's opinion in the *Hogan* trial: "It is easy to go too far with rigid rules in this area of claimed gender discrimination, and to lose, indeed destroy values that mean much to some people by forbidding the State to offer them a choice while not depriving others of an alternative choice (Jungreis, 1996, p.795). He argues that valuable educational opportunities may be permanently lost, to

both genders, if the Supreme Court does not affirm the Fourth Circuit's final disposition of *United States v. Virginia*. Jungreis offers what Levit and Salomone would describe as a misguided interpretation of the words choice and diversity. Jungreis in his research is biased and makes obvious his support of inequality in schools. He does not yield to the notion that equality across the board is the only form of equality. He arguably ignores the moral and social harms of segregation. He states that “real differences between genders, however can and should lead to different pedagogical approaches in the context of single gender education” (Jungreis, 1996, pg. 835).

Simson (2005) examines the constitutionality under the Equal Protection Clause of a school district's having an all-boys school and an all-girls school on the same grade levels. He suggests that even if public single gender schools pass constitutional muster, they represent too limited a response to the equity problems that sparked renewed interest in public single gender education in recent years. Simson contends that while single gender education experiences forms of academic achievement and promotes parental choice, it is said to deprive attendees of actual developmental necessities. According to him a functional society is one that is intermingled with both genders, and so should a place of public education. He asserts that if children are isolated now they begin to accept this concept as the norm and develop the belief that isolation is what will lead to becoming functional contributing citizens in society.

Exploring equality in a difference sense, Mead (2003) explores the question: under what circumstances is single gender education consistent with applicable law? Her analysis addresses the existing single gender options, the question of the legality of the programs and presents issues of which those operating or considering the operation of

single-gender programs should be mindful. Her stand is that states, stakeholders and proponents of single gender education should clearly articulate their rationales for implementing single gender education, for if not the implementation stands a strong chance of being found unconstitutional.

Reverting back to Salomone (2003) the ambiguity that exists in discussions of single gender education leads to what she refers to as “The Polarizing School Wars.” According to her if the polarizing school wars continue, single gender education will go on in the absence of a systemic provision of choice. One thing she offered in support of exercising the option is that this is not an ideal world, particularly for urban minority students. She states that while advocates cannot prove at this point that single gender education is better for students, it is also not clear that single gender education is ineffective at improving education for students. The implication is that if there is a measure that will equalize the playing field for all students particularly the disadvantaged then isn't the concept worth considering.

In her research Johnson (2004) researches single gender classes in public secondary schools. She looks at the maximizing value of public education for the nation's students when devising single gender education. She supports the idea of single gender classes over that of single gender schools due to the fact that it minimizes constitutional worries. She feels that research is clear in supporting that the nation's public education system fails many students and that wealthier parents have a greater opportunity to enroll their children in a single gender environment if they feel their children would be better served.

She contends that education is substantially related to the important state interest of preventing discrimination in the classroom and of increasing diversity of educational opportunities available to students. She states that allowing some experimentation furthers the goal of uncovering the best solution to the problems that plague the current system. According to this piece, equality is only in opportunity. If some contend that gender separation is unequal in opportunity, then this research is really biased. Johnson supports the single gender schooling idea and asserts that experimentation is really worth considering.

Corcoran (1997) finds that according to the implications of VMI, YWLS would be found constitutional. She suggests that compensatory purpose is one way in which a district can survive an equal protection clause challenge. She contends that providing compensatory purpose is more feasible in part because societal norms already recognize the disparities that exist among men and women. Corcoran asserts that while YWLS fits this rationale, the more dominant trend of all –male schools probably would not withstand scrutiny, this in part is do to the reality that men, unlike women, do not experience educational discrimination. She also points out that courts should be more critical of the benign classification states present.

According to her it is the court's responsibility to determine whether the state is attempting to discriminate based solely on gender by critically analyzing the states provided rationale for the gender separation. Corcoran found that Because YWLS provides rationale that ensures equal opportunity for girls to aspire, achieve and participate in society like boys are granted the ever supporting opportunity to do so, it should survive an equal protection clause challenge.

Devising a standard that insists that all reform efforts provide conclusive rationale as to why gender separation is the more appropriate reform measure for the district according to research could be one way a district could minimize the assertions of opponents and if need be serve as a justification that will survive constitutional muster. Even with that being expressed, there should be limitations on districts that only wish to ignite with the single gender phenomenon for the sake of simply aspiring to be a model school for future single gender education districts.

The legal discourse of single gender education rationalizes “choice/ diversity,” and equality. It is depicted in this section that public opinion and popular practices have tainted Congress’s intent in regards to Equal Protection as it relates to the public education parameters. While there is some debate as to whether the state can justify equality using this form of diversity and choice, conformity is met in the notion that positive academic achievement progressions in the public schools are much needed and open to varying approaches. It is noted in this section that commentators agree that discrimination exist in public education, yet there is no definitive answers as to whether single gender education will sufficiently resolve this matter. Whether public opinion and practices hold in the court of law is left unanswered.

This section serviced to highlight the discourse being mention presently among legal commentators. As legal figure heads, this form of research allows researchers to make sense of the scholarly literature that often times sways and appears ambiguous. In this section the legal definitions and positions on the words “choice and diversity” were dissected, which intended to provide a clearer understanding of how Congress intended

for states to achieve equality in implementing an allegedly gender exclusion type of behavior.

CHAPTER III

METHODOLOGY

Introduction

The primary purpose of this dissertation is to analyze whether the establishment of the single gender school Benjamin S. Carson Honors Preparatory violates the United States Constitution. Specifically, two questions will be analyzed.

1. Does the pilot program violate the Equal Protection Clause of the U.S. Constitution?
2. How would an expansion of the pilot program survive a challenge under the Equal Protection clause?

Data Analysis and Procedures

The dissertation will apply legal research methodology to answer these questions. According to Permuth & Mawdsley (2006) legal research methodology is a historical form of legal methodology inquiry similar to that of qualitative research but as credible as quantitative research, that services as a tool in the understanding and interpretation of the law. This form of research is very credible mainly due to the ethic criteria commonly known and upheld in the legal system.

The development of this analysis required that I first identify the Atlanta City Public School district's need and attempt for the implementation of an effective measure of school reform. Secondly, I referred to scholastic pieces of literature that evaluate and discuss single gender education. Thirdly, I gathered reporting of legal commentators positioning on the topic of single gender education. Next, I conducted a comparative analysis which looked at both social science researchers and legal commentators' position on the topic of single gender education. Finally, I gathered and evaluated the

findings of single gender education precedence cases. Chapter IV of this dissertation will analyze using legal methods whether the pilot program of the Benjamin S. Carson Preparatory Academy violates the Constitution and if so what can it do to not be in violation.

Sources of Data

The development of this analysis required that I refer to a multiple of legal materials. According to Permuth & Mawdsley (2006) primary authority states the law of the land in which the entire legal system operates. The primary authorities in which this research will develop its inquiry are constitution, cases, and statutes. The meaning and clarity of a circumstance that is interpreted by a judge is case law. This interpretation is based on precedent of other interpretations within the American legal system. The Federal Supplement and the Federal Reporter which appears in the Federal Appendix is where court rulings and opinions are found, these are known as published opinions.

Regulations are where statutes gain their meaning as applied to implementation of the law. Both federal and state agencies that have the responsibility of enforcing the law create regulations. The Federal Register is a daily publication that publishes these and other documents by government agencies. The Code of Federal Register is a permanent compilation of regulations.

Whereas all of federal court reports are published, state court reports are not. On the day of a federal courts judgment it issues rulings in the form of slip opinion. Slip opinions/law is the exact presentation of the courts decision or statute published immediately after the case or enactment of the statute. State courts opinions can be found in slip opinions and or West National Reporter System. The state opinions are housed in

one of the seven arbitrarily defined regions- North Eastern, North Western, South Eastern, South Western, Southern, Atlantic, and Pacific.

While the West Reporter is the official regional reporter, some jurisdictions, such as New York and New Jersey, publish their own rulings (Permuth & Mawdsley, 2006). *West* also prepares reports that cull both federal and state opinions on a specific subject, known as topical reporters (Permuth & Mawdsley, 2006).

Upon locating the cases, the information has to be deciphered for clarity. This can be found in several items. The case name informs the reader of the parties involved in the suit. The case's citation informs the reader of: (a) the volume numbers in a series or books in which the case is published; (b) the page on which the opinion begins; and (c) The date in which the decision was reached, and name of the federal or state court that handed down the ruling (Permuth & Mawdsley, 2006).

According to Permuth and Mawdsley (2006) a statute appears as session law, a chronological ordering of laws enacted by a given session of the legislature. West's United States Code Annotated (U.S.C.A) is mostly used by researchers; it includes brief summaries, or annotations of cases that have applied or construed a statute. The statutes are updated annually due to the frequency of changes. Intended meaning of a statute can be obtained in the legislative history.

Both state and federal government have constitutions and they are published separately in jurisdiction's statutory compilations. Permuth & Mawdsley (2006) define constitutions as the most basic form of law that create governmental framework that outlines the rights and obligations of both citizens and the government.

Permuth and Mawdsley (2006) define secondary sources as non-authoritative writings about the actual law. These sources should be used to support arguments impacting the point of clarification relating to primary authority. Secondary sources are articles in periodicals, encyclopedias and dictionaries, restatements and books and treatises. These sources are of lesser complications than primary legal sources are.

Articles in Periodicals a means of research that provide comprehensive and extensively referenced analysis mainly aimed at academicians. Encyclopedias and dictionaries provide a quick general overview of a topic. They highlight major changes in the law. Two main encyclopedias are *Corpus Juris Secundum (CJS)* and *American Jurisprudence (AmJur)*. Restatement of the law is a commentary of the law. It is an exhaustive examination of trends and developments in a particular subject area, and contains examples of specific cases and variations of the general rule. *Books and Treatises* usually help as research tools to provide assistance.

There are various research tools that can be used to find the content of law in a particular area; the hassle is finding the most up-to date information. A researcher may rely on the electronic databases of Westlaw or Lexis. The most common means of accessing judicial opinions is by using case digest, annotated reports and descriptive word searches. Citators such as Shepard's can be used to access cases. Shepard's allows a researcher to verify the status of a ruling or statute as well as to find other opinions.

General Limitations

This research is being conducted prior to the first year of the pilot program. This research is based on publicly released documents and anticipated occurrences that are projected to take place. Carson has not met AYP for four of the last five years, totaling

seven and has been identified as a “Needs Improvement” school: thereby, its students are eligible for system wide transfer, so rather than participating in the pilot program students and parents may opt to exercise their option to transfer students to schools that are not identified as Needs Improvement. Enrollment projections may vary but should not vary enough to cause any significant changes in anticipated student to teacher ratio.

CHAPTER IV

ANAYLSIS

Introduction

This section will highlight the overview of Atlanta Public Schools' pilot program. The chapter will first look at the justifications provided by Atlanta. Secondly, the chapter will examine the constitutionality of the justifications provided by Atlanta by thoroughly analyzing each explicitly stated justification. Next the chapter will offer other possible justifications that would have also been found to be constitutional. Finally the chapter will conclude with a summary of the chapter's analysis.

Overview of Atlanta Public Schools Pilot Program

In an effort to improve student achievement in grades 6-12 throughout the district, Superintendent of Atlanta Public schools, Dr. Beverly L. Hall, has adopted a 12-year-reform initiative with the goal of 100 percent of the district meeting AYP by 2014, as required by NCLB. One aspect of this initiative is the implementation of two single gender academies at Carson Preparatory School. Both the girls' and boys' schools are anticipated to open at two separate sites during the 2007-08 school year with the first class of 6th graders. Seventh and eighth grade co-ed students will remain in separate academic settings until matriculation into high school. The Atlanta Public Schools will use a "phase out" conversion model in which only the 6th grade students will be a part of year one implementation then introducing a grade level every year until each school has a student enrolment ranging from grades 6-12 while the parent school "phases out"(APS, 2006). The school will phase in grades 6-12 over a period of time in the northwest

corridor of the district. The single gender schools are due to open during the 2007-2008 school year.

The Justification as Outlined by Atlanta Public Schools

According to Atlanta Public Schools single gender education is the most appropriate approach the district can devise that will address its student high percentage of academic underachievement percentages, increase graduation rates, and increase the percent of students being prepared for college and or other post secondary options. Atlanta Public Schools offered three justifications for piloting the single gender program at Carson Honors Preparatory School (White Papers, 2006). Atlanta Public Schools has listed as one of its justifications, to increase students self concept. According to Atlanta Public Schools, because of innate differences environments, educational environments need to be designed where boys and girls are challenged differently academically from grades 6-12. This comment is derived in part from the findings in research that support single gender education. Also the district provides other examples of the practical effectiveness of single gender schools: First, the Western High School for girls in Baltimore and the Philadelphia High School for Girls have operated for nearly 160 years. The number of years of successful operations supports the district's single gender program initiative. One particular exemplary success story can be noted in looking at Mayor of Atlanta Shirley Franklin one of the several distinguished graduates of the Philadelphia High School for Girls (White Papers, 2006).

The second justification listed by the state is that single gender schools will improve academic achievement. A recent visit by Atlanta Public Schools staff to three single gender public schools located in the New York City school district underscored the

impact of single gender schools improving student achievement. The three schools are similarly situated to Atlanta and also receive a great deal of Title I funding. The Young Women's Leadership Academy in Harlem services grades 7-12 and has a student enrollment of 400 students. The school has been in existence for 10 years. In years 2004 and 2005 100 percent of the school's graduating class was admitted into college. In 2002-2004 daily attendance was over 90%; this percentage is 8.7% higher than neighboring schools within the New York school system. In 2003-2004 there was a dropout rate of .8%; this is exactly 2 students.

The Eagle Academy for Young Men services grades 9-12, at this time 9-10 and has a student enrollment of 184 students. The school is only in its second year of existence yet it has been recognized in *Newsweek* for its accomplishments in working with boys. The Eagle Academy partners with 100 Black Men and other organizations and business to provide a mentor for almost all of its students. The boys at Eagle Academy achieved a 97% passing rate in science and a 100% passing rate in math.

The urban Assembly Academy for History and Citizenship (UAAHC) services grades 9-12, 9-10 at this time and has a student enrollment of 165 students. This school is also in its second year. The school is having success with both student achievement and attendance. The daily attendance rate was greater than 90% for the first part of the school year. According to the administration, only 10-15% of the students did not return this year, primarily due to transportation. Greater than 90% of the boys passed the math regents exam.

The third justification provided by Atlanta is that the district wishes to increase graduation rates and college attendance. The recent visit by Atlanta Public Schools staff to three single gender public schools located in the New York City school district which underscored the impact of single gender schools improving student achievement also provided support of the justification of increased graduation rates. The Young Women's Leadership Academy in Harlem which services grades 7-12 with a student enrollment of 400 students placed 100 percent of the school's graduating class into college in the 2004 and 2005 school year. In 2003-2004 there was a dropout rate of .8%; this is exactly 2 students.

Secondly, the Eagle Academy for Young Men which services grades 9-12, has a student enrollment of 184 students. In only its second year of existence has been recognized in *Newsweek* for its accomplishments in working with boys. With such positive academic achievement, the anticipation of exemplary graduation rates are within feasible grasps of the school. The boys at Eagle Academy achieved a 97% passing rate in science and a 100% passing rate in math.

Thirdly, the Urban Assembly Academy for History and Citizenship (UAAHC) which services grades 9-12, has a student enrollment of 165 students. This school is also in its second year. The school is experiencing success with both student achievement and attendance which increase graduation rates. The daily attendance rate was greater than 90% for the first part of the school year. According to the administration, only 10-15% of the students did not return this year, primarily due to transportation.

APS also cites its own history to support the pilot program. During the founding of Atlanta Public Schools in 1872, the only two high schools that were established were single gender schools. The single gender schools remained open until 1947, when the girls' high school merged with newly established co-education school of Roosevelt. Spelman College, Morehouse College and Agnes Scott College are Atlanta based single gender, post-secondary educational schools that have successfully addressed the academic and social needs of young men and women for over 100 years. The longevity and success of these schools offers support for single gender initiative Atlanta wishes to devise.

While each justification is listed separately the state's overall objective encompasses decreasing the district's achievement gap by yielding to the exclusion portion of the exceedingly persuasive justification standard. The concern in this paper is that it is possible for an unconstitutional law to be enacted however the enactment of law does not always result in a law being found constitutional in the court of law.

Analyzing the Constitutionality of Benjamin S. Carson Honors Preparatory School

School districts have three constitutionally permissible alternatives to same gender schools that employ gender tailored methods and curricula. First, school districts could develop schools and classrooms with tailored teaching methods and curricula provided they use non-discriminatory admissions policies. Second, school districts could initiate reforms within coeducational schools to promote female class participation and female achievement in math and science. Third, school districts could provide substantially equivalent parallel all-girls and all boys' schools or classrooms. In addition the state must provide evidence that displays how the program is substantially related to

the promotion of important government interests. The APS district selected the third alternative.

To survive a gender-based Equal Protection Clause challenge, APS must demonstrate that the pilot program is substantially related to an important governmental objective. According to *Mississippi University for Women v. Hogan* (1982) and *U.S. v. Virginia*, this test requires the school district to show that there is an exceedingly persuasive justification for the program, and that equality is provided to both boys and girls. Although APS is creating separate schools for both genders, it would appear that the pertinent question still remains for APS is whether there is an exceedingly persuasive justification for the program. The justifications and rationale for this program are anticipation of increased academic achievement, enhance positive self concept, and increased aspirations for graduation and goals to attend college. Each justification is analyzed below.

Analyzing Carson's Anticipation of Academic Achievement

According to Atlanta Public schools rationale, in single gender schools boys and girls are more likely to be enrolled in higher levels of math and science classes as well as other key areas of academic achievement and that quantitative and qualitative studies evaluated in the U.S Department of Education report reveals that single gender schools can positively impact student achievement in all subject areas. The argument that "coeducational environments do not always serve the needs of its students thus some students would benefit from a single gender educational environment" exists throughout the literature.

The extent to which single gender education improves the quality of educational experience for students is a matter of debate. In the *Virginia* opinion the Supreme Court did not challenge the notion that educational benefits might flow from single gender education. Atlanta interprets this educational benefit to be that of academic achievement, yet the language of the case does not directly say that. The Court did however require states to “even-handily” distribute benefits to the genders. This requirement is insisted upon regardless of a states provided justification.

Because Carson’s policy includes data that highlights the academic achievement gaps of both genders and aims to address the academic achievement gaps of both genders, there is no gender distinction on the state’s behalf. It is apparent within the mere structure of Carson Middle School that Atlanta Public schools yielded to the dissent of the Court. However, in *Garret* the district court held that focusing remedial attention on the "wrong" category not only misunderstands the problem, it diverts attention from more effective solutions that are more likely to improve academic achievement. The question then becomes whether Atlanta has identified a legitimate objective.

In criticism of single gender education as a means to fixing public education, critics contend that single gender education shifts the focus away from “real” problems facing public school students. This is the risk a pilot single gender program can run if there is no supported data and sound rationale in support of the selection of its justification. In the support of the district’s decision to select academic achievement as a justification, the district court in *Garret* also found that the absence of one gender rather than the enhanced educational offerings, will undoubtedly receive the credit for a single

gender program's success. The findings in *Garrett* imply that the justification can become exceedingly persuasive pending the attainment of projected goals.

The district in this case has explicitly stated and proven that there is an immediate need to address the academic problem that exists in the district. What the district did not provide is the specific scholarly research that offers support of single gender education in light of this particular justification. There are examples of other schools' success stories but to what extent does that apply. The district provided an overly-broad assertion that academic achievement was evident in the aforementioned single gender educational institutions, many of which were higher educational institutions.

On one hand, the district has articulated its reason for selecting academic achievement and has provided some data that exemplifies how academic achievement gap is substantially related to very low academic performance but did not provide exceedingly persuasive scholarly research in support of its position. According to my findings, the research does not definitively state that academic achievement is guaranteed with the implementation of single gender education. On the other hand, there is no absolute exclusion of genders in this pilot program. Conclusively, because this justification aims to move the district in achieving its important goal, the district meets the requirement of providing an objective and explaining how the justification is important to the state, thus this justification will survive an Equal Protection Clause Challenge.

Analyzing Carson's Aims to Encourage Self Concept

According to Atlanta Public Schools single gender classrooms break down gender stereotypes (ie.. girls will take math and science classes: boys will take music and arts

classes) and 100% of studies on career aspirations of students in single gender schools set higher goals to attain. Other than a bulleted outline lists that utter the district's justifications, the district has not provided any support of these statements. For that matter, they are vague unsupported statements. While Atlanta Public Schools did not offer literature in support of this justification, this thesis provides scholarly pieces informing the reader of the reports documenting instances that encourage self concept.

One thing that is apparent in reviewing the Atlanta Public Schools documents is Atlanta's important interest to close its district's achievement gap. It appears that all of the provided justifications stem from this idea. According to sources, an Atlanta City Public Schools aim is to produce an environment that believable encourage students to perform at higher levels which results from students setting higher goals for themselves. The implication here is that coeducational environments allow for gender stereotypes which lower students self concept, therefore changing the educational setting should result in increased self concept for students.

Scholarly research does comment on self concept in regards to single gender education. While Atlanta Public Schools does not reject opponents' contentions of the long term outcome of students attending single gender schools data reports suggest that they are in support of the proponents whose contentions are more aligned with the district's short term goals. Proponents of single gender education assert that self concept is increased because the single gender environments separate the genders thereby breaking down the possibility of the typical coeducational gender stereotypes. Opponents of single gender education say that self concept is actually decreased because students are

not being prepared for the gender integrated realities society will confront them with upon leaving the single gender environment.

Atlanta did not elaborate on either discussion and neither did Atlanta reveal in the data reports how the self concepts of its students were directly related to the achievement gap existing within the district. However some scholarly research reveals that to increase self concept is a common goal in single gender education programs. But because the analysis intent is to analyze Atlanta Public Schools, and neither precedent case mirrors Atlanta Public school, it is difficult to apply the cases to this actual justification. While neither precedence case is exact, the holdings in the cases can provide some guidance as to how the courts may rule on this particular justification.

In the *Garret* case, the district court found that the all-male academies likely violated the Equal Protection Clause. The court agreed that the state's objective was important, but that the Board of Education had failed to prove that the exclusion of girls was necessary to combat unemployment, dropout, and homicide rates among urban males. The court found that there was no evidence that the school system failed boys because girls were in the classroom; the system failed girls as well. Secondly, in *Virginia*, the Supreme Court made clear that if separate educational facilities for men and women have any hope of passing constitutional challenge, the State must demonstrate substantial equality in the separate educational opportunities.

There are two important points to make here. While some may offer the argument increased self concept gained from single gender education is not supported, others may offer the counterargument that it is difficult to identify the strongest variable that resulted in the research that highlighted attendees experienced increased self concept.

Atlanta's increased self concept justification is applied equally to both genders. Here Atlanta rationalizes that the district will increase students' self concept because of the immense number of recorded cases of positive self actualization attendees of single gender education documented. Why then would the court not acknowledge Atlanta's rationale and allow for the piloting of a program who aims to include equal opportunities equally to both genders? According to the holdings this increased self concept justification which would be implemented equally at both the girls and boys' school which is substantially related to closing the achievement gap would not be struck down.

Analyzing Atlanta's Aims to Increase Graduation Rates and College Attendance

According to the Atlanta rationale, single gender schools encourage students to have higher aspirations for post secondary education and careers. Atlanta found and cited where three schools in New York experienced increased graduation rates and increased college attendance. The district did not offer scholarly research in support of this justification. First, it is very difficult to prove that one variable (single gender education) is the absolute reason recipients of single gender education set higher goals or go on to some form of post-secondary education. Opponents of single gender education throughout the literature in chapter two offer very strong contentions that facilities, resources, more parental involvement, and more focused curriculum can be attested to the inspiration of students wanting to set higher goals for themselves and gain post secondary education.

As far as courts go, it is difficult to apply this justification. This justification appeals more directly to the district's goals end (closing the achievement gap) and in my opinion is more parallel to what courts refer to when they mention compensatory purpose

thus it is very difficult to present to the court unproven hypotheses. Of the three justifications this is the more difficult one to apply because it is the least supported and is in need of a documented list of the district's means that highlights the district's aspirations to implement and achieve such outcomes. The cases that will be used to provide analysis here is *Hogan* and *U.S. Virginia*.

In *Hogan*, the state of Mississippi put forth a benign, compensatory purpose to justify its maintenance of an all-women's nursing school but the Court rejected it because the state did not establish that it was actually motivated by the benign purpose. Because compensatory objectives are generally deemed important, if a state actually motivated by a genuine compensatory purpose fails, it is usually because it has not established that the means it employed were substantially related to that objective (*Mississippi University for Women v. Hogan*, 1982). Atlanta's significant purpose in this study is closing the achievement gap but this justification does not provide absolute means of how the district will move the single gender schooling recipients to graduation and college attendance which will inevitable close the achievement gaps that exist within the district. The courts should not be left with drawing implications of how APS wishes to correlate the justification to the overall objective of the district.

In a second example, *Virginia*, the State argued that VMI served an important state interest in providing diversity of educational opportunities. In *Virginia*, VMI offered male students an opportunity to get an educational experience that they could not get anywhere else. Carson offers the experience of diversity structurally in providing on a unitary campus two separate single gender schools. Although the argument failed to justify the all-male school, the idea of an interest in diversity of options and choice was

not necessarily rejected. The Court was only unwilling to accept that justification when VMI was the only single gender school which existed, as that undermined the sincerity of the argument. It is apparent that Atlanta Public School attempts to provide an equalized distribution of choice and diversity to both genders, thus the rationale is strengthened.

In Hogan and VMI the Courts did not mean for states to prove irrefutably that Single Gender Education is “exceedingly persuasive,” for that type of proof goes beyond intermediate scrutiny. Because what exactly constitutes as exceedingly persuasive justification has been vaguely interpreted by the Court, proving exceedingly persuasive justification is not as difficult of a task as the language sounds. The mere language of “exceedingly persuasive” sounds as though states have a very narrow tailored explanation to provide but as the precedent cases have suggested, the range in proving exceedingly persuasive justification is very broad.

As vaguely supported as the three justifications for Atlanta are, the aims of the justifications are substantially related to an important state interest. It is believed by the district that each justification is persuasive and supportive just enough to collectively result in being exceedingly persuasive. According to case precedence proving exceedingly persuasive justification is not met in how weak the presentation of justifications are but the level of importance each justification is as it relates to the overall goal of the state. Strategically, the Atlanta School District selected its lowest performing school to support its justifications. The state will avoid the exclusion factor by having both a girls and boys school at a unitary site. I think that the presentation of the Atlanta Public School district single gender pilot program initiative is fairly weak and could have used more empirical scholarly support. And, the justifications provided could have been

thoroughly examined by the district. Atlanta Public Schools district could have listed the means of how the justifications would ideally bring the district to addressing its problem of immense levels of underachievement. However, the scope of this study is to only determine whether the program will survive an Equal Protection Clause Challenge.

In reviewing the new proposal regulation's criteria, the piloting program initiative and procedures have been met. Atlanta Public Schools has complied with applicable law. By rule of thumb, I think that Carson would survive an Equal Protection Clause challenge. The state will not have to concern itself with surviving the equality portion of this challenge because explicit efforts of equality are strategically placed and would because of that survive such litigation.

Are There Other Possible Justifications

A good pilot program services as a model to aid the district in future decisions relating to identical projects. It is expected that the success of this particular pilot will identify strengths and weaknesses of the program. This will systematically result in the district identifying other more suitable rationale that could service as justifications before the Court. With that being said, talks of parental choice and involvement were highlighted in this analysis. The mentioning of choice and diversity is as legal commentators stated ambiguous in regards to discourse of single gender education. There continues to be questions of how to best identify the choice factor in "single gender education" and to what extent is diversity offered in "single gender education." A solution could be for a district to plainly state that it intends to offer parental choice in the district. In support of this justification the state could argue that increased parental

choice directly increases parental involvement which carries over into prominent qualitative and quantitative literature pertaining to schools as communities.

Summary of Analysis

In analyzing a single gender program to determine whether it would survive an Equal Protection Clause challenge, the courts generally follow cases involving single gender education. Courts generally insist that the state provide an “exceedingly persuasive” justification for the state’s action. The state must show that the challenge classification serves important governmental objectives. The justification must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females (U.S. 515.532-33 {1996}).

Here the state is piloting an innovative program on a unitary campus as a girls’ and boys’ school which results in there being no legitimate exclusion argument, thereby meeting the equality concerns of the courts. This analysis highlights where Carson has thoroughly complied with applicable law. Also, the analysis suggests that in the absence equality of opportunity to both genders, a single gender school will not pass Equal Protection Clause scrutiny. The new regulations which now allow for such schools to pilot and the holdings from case precedent implies that Carson would be found constitutional, thereby withstanding an Equal Protection Clause challenge.

CHAPTER V

IMPLICATIONS AND CONCLUSIONS

Introduction

This study intended to analyze whether the single gender pilot program at Carson Honors Preparatory School would withstand an Equal Protection Clause challenge. First the study explored the historical context of single gender education. Second, this study explored what proponents, critics, and legal commentators contended in regards to single gender education. Next, this study explored the rulings of prominent Supreme Court precedence cases to provide a model to follow to conduct a thorough analysis.

The particular discussion will interpret the analysis in the context of why Carson was found to be in compliance with the Equal Protection Clause. Implications of the analysis for policymaking, school administration, practice, and future research will then be considered followed by a presentation of the overall conclusion of the study.

The Interpretation of the Analysis

The analysis revealed that school districts have three constitutionally permissible alternatives to same gender schools that employ gender tailored methods and curricula. First, school districts could develop schools and classrooms with tailored teaching methods and curricula provided they use non-discriminatory admissions policies. Second, school districts could initiate reforms within coeducational schools to promote female class participation and female achievement in math and science. Third, school districts could provide substantially equivalent parallel all-girls and all boys' schools or classrooms.

In choosing between these three options, school districts should weigh their objectives, circumstances, and own views on the potential benefits of the initiative. In this study Carson structure parallels the third alternative. The justifications for this program are anticipation of increased academic achievement, increase positive self concept, and increase students aspirations for graduation and goals to attend college.

All of the justifications seem to stem from the “exceedingly persuasive” ultimate goal of addressing the achievement gap within the district. According to precedent “exceedingly persuasive” justifications are not as difficult to prove as one would imagine. The Court would be mainly concerned with a state providing proof that the objective of the action is important and the means of achieving the objective has substantial relations. If the state can show where it does that, the state has shown where its actions are “exceedingly persuasive.”

The analysis suggests that discrimination occurs in both single gender and coeducational schools. While historical discrimination against girls receives a great deal of attention, school districts cannot ignore the problems boys may face and this is exhibited here. Thus the usage of increasing academic achievement, increasing students’ self-concept and increasing students’ graduation and college attendance as a direct measure to link the state’s important objective of closing the district’s achievement gap aids the single gender education means at being substantially related to the important goals end of closing the achievement gap.

It is believed that coeducational schools offer the risk of conscious and substantial sexism which could as documented in Chapter Two could be present in a single gender classroom. It has been shown that the students throughout the district experience an

immense level of underachievement with the greatest impacts experienced at Carson; thus addressing the problem is an important state interest. This analysis draws implications that Carson has an important interest in ensuring that neither gender faces discrimination, and that the educational system serves the needs of each gender equally.

Precedent shows that the court will only consider Carson's actual purpose to be the promotion of educational diversity when the benefits are allotted evenhandedly and when the offerings are "substantially equal." While this is not a justification provided by the state in this case, actual design of the school exhibits diversity in an equal manner. In fact that there will be both a boys and girls schools at the same site with equal access to parallel resources, facilities, teachers, and learning opportunities. This indicates Atlanta Public School District's attempt to comply with the rulings in all of the precedent cases. Because the state in this study has provided exceedingly persuasive justification for formulating this single gender pilot program in that it avoided absolute exclusion and the justifications of academic achievement, increased self concept, and increased graduation and college attendance are substantially related to the important ultimate objective of addressing the achievement gap, I think that the state will survive an Equal Protection Clause Challenge.

Implications

According to case information, the analysis of this study can be helpful to districts and states considering the legality of single gender education. At the pace in which single gender education is expanding, states and districts should stay abreast of current policies and rulings relating to this topic. Single gender education is currently public school phenomena, states and school districts should be fully aware of potential

limitations of the law. The public education system is searching for a proven measure that will address the achievement gaps. The continual study of this type of research informs persons on what should and what should not be devised.

States and districts should be mindful that they will be challenged on the constitutionality of their single gender educational efforts. The constitutionality of single gender program initiatives will rely on the state's objectives and presentation of objectives to the courts. Degree of importance to the state will be a major criteria used to measure the state's relations to the gender discrimination. This type of action arguably results in the courts actions being viewed as arbitrarily enforced but each state is equally allowed to present its justification to the courts. It is then left to the courts to decide whether the justifications are exceedingly persuasive or not. States should be really careful of the language of their objectives and the approaches to achieving their objectives.

Also, States should devise a measure that would provide thorough examination of the program to the uninformed. This type of implementation should aid in a way that is sure to interpret and address both stated and unstated questions and concerns of parents who are uninformed of their options relating to the arguable constitutional challengeable action.

Future Research

Clearly there is much ground to cover regarding this topic. First, this study analyzed one school in one very large urban district. There are currently 253 single gender schools spread throughout the nation with many more expected in the near future. Future studies should analyze randomly selected initiatives to determine whether the

programs have taken the correct measure to implement such a school. Second, qualitative research methods may also contribute to gaining a better sense of the decision making process used by districts and schools when administering single gender education. Thirdly, quantitative research methods may also contribute to the actual effectiveness of programs devising more empirical data for proponents of single gender education. Fourth, future research should note whether some local and state culture and values permit or encourage the forms of alternatives methods to education that could breach the constitution. Finally, to minimize the confusion a state may encounter with attempting to justify a program similar to that of APS's innovative form of education, a state should select a more appropriate descriptive word or phrase that identifies with a tighter fit the mere differences of such a unitary formed single gender education.

A possible phrase could be to refer to this style of education as "unitary campus education" instead of the umbrella traditional phrase "single gender education."

Conclusions

Atlanta has identified a major problem in Carson and feels that the matter can be resolved if a program is implemented that addresses real problems within its district. It has been shown in research where differences among genders exist. One way to address differences among students is to allot different approaches in educating them. The state in this study yields to this overly broad assertion of researchers by recommending a single gender pilot program that has anecdotally proven to effectively educate children despite differences. This study analyzes those options with intent to provide support of the state's primary embedded objective of decreasing a widening achievement gap within its district.

This decision is supported by federal policy. Congress enacted the No Child Left Behind Act to give parents and school districts a choice as to what works best for their children. The amendment to the No Child Left Behind Act allowing federal funding for single gender programs was intended not to mandate a new kind of education, but to allow flexibility to school districts and parents to choose the best option for their students.

Mandating single gender classes as opposed to providing an option for such classes presents additional problems for a school district, and would be barred under the Title IX regulations. If a coeducational school were forcing all boys or all girls into a classroom that is run in a way that relies on gender stereotypes, the school is less effective for those students who do not fit the stereotype. The state in this study acknowledges this and intends to minimize this sort of stereotyping with the piloting of this program.

As the analysis of this study suggests, the implementation of the Supreme Court law is open to wide interpretation according to legal, educational, and sociological factors. Factors such as identifying problem areas and addressing them without causing problems of another sort, the documented data that supports decisions and the support of parents all have some say in the implementation level of single gender education.

The United States public school systems are most notably guilty of their lack of excellence, equity, and academic rigor, which believably attributes to a wavering decline in societal morality. The public school system has begun to move towards school choice by implementing a free market to inspire educational innovation, improve achievement, increase accountability, and regain parental support (Ball & Bowe, 1995). There is no

sound remedy for the United States' public school system's problem however districts are attempting to address the issue. Currently, there are 253 single gender public schools; many of these schools have come as a result of the new regulations to Title IX and NCLB. Of the 51 single gender schools listed by NASSPE, 42 were implemented or became single gender following the NCLB's passage.

In this analysis Atlanta Public Schools is piloting a single gender program. School districts have three constitutionally permissible alternatives to same gender schools that employ gender tailored methods and curricula. First, school districts could develop schools and classrooms with tailored teaching methods and curricula provided they use non-discriminatory admissions policies. Second, school districts could initiate reforms within coeducational schools to promote female class participation and female achievement in math and science. Third, school districts could provide substantially equivalent parallel all-girls and all boys' schools or classrooms. In addition the state must provide evidence that displays how the program is substantially related to the promotion of important government interests. The justifications for this program anticipate an increase in academic achievement, increase in students' positive self concept, and increases in students' aspirations for graduation attendance in college. None of the justifications provided by the state may rely on overbroad generalizations about the different talents, capacities, or preferences of males and females (U.S. 515.532-33 {1996}).

This analysis highlights where Carson has complied with this provision. Carson, unlike the VMI and Hogan cases does not exclude its genders and offers adequate and equal education to both females and males. Also, it is noted that Carson's students are

not forced to attend Carson for their parents have options. As a matter in fact, students within Atlanta Public Schools' district are allowed to attend another school; this in part is due to the "needs improvement" label Carson has accrued by not meeting the standards outlined by the state's enforcement of the nation's NCLB policy. This provision mandates that if schools are labeled as "Needs Improvement" for consecutive years, parents are granted an option to place their kids into another school within the district at no cost.

The first important point is that the reauthorizations of Title IX (applicable law and NCLB) allow for "innovative programs" in public schooling. When attempting to comply with federal statute and the U.S. Constitution a state wishing to implement an innovative program must do so in compliance with applicable law. However "What the Supreme Court might accept as exceedingly persuasive in k-12 context remains an open question." Thus the argument that traditional single gender schools would be arguably unconstitutional is an open question.

The single gender program that APS offers is an "innovative" form of Single gender education that structurally addressed many of the arguments that may arise in a state's attempt to prove where its means are substantially related to an important goals end. The district' objective to close the achievement gap is documented to be important by the courts. The rationale that the state has provided are academic achievement, increase self concept, and increase graduation rates and college attendance. These are links that serve in displaying how single gender education substantially relates to the furthering of the objective of closing the achievement gap.

These measures display how the single gender education program is “exceedingly persuasive” in that there is an important government interest with genuine purpose and the means substantially relate to the goals end without any perpetuation of stereotypes. Because of that the Atlanta Public Schools district program of Benjamin S. Carson Preparatory Academy is not in violation of the Equal Protection Clause and should withstand an equal protection clause challenge. The question of what to do to expand the program is superseded because Carson will believably survive an Equal Protection Clause Challenge.

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