



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 10/22/2004 (Per: PG)



☞ The 2003 drafting file for LRB 03-4202

has been transferred to the drafting file for

2005 LRB 05-0524

☞ This cover sheet, the final request sheet, and the final version of the 2003 draft were copied on yellow paper, and returned to the original 2003 drafting file.

☞ The attached 2003 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2003 DRAFTING REQUEST

Bill

Received: **02/05/2004**

Received By: **pgrant**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Jensen (608) 264-6970**

By/Representing: **Steve Knudson**

This file may be shown to any legislator: **NO**

Drafter: **pgrant**

May Contact:

Addl. Drafters:

Subject: **Education - school boards
Education - charter schools**

Extra Copies: **MJL**

Submit via email: **YES**

Requester's email: **Rep.Jensen@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Authorize single-sex schools

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pgrant 02/06/2004	csicilia 03/11/2004		_____			
/1			jfrantze 03/11/2004	_____	lemery 03/11/2004		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 02/05/2004

Received By: pgrant

Wanted: As time permits

Identical to LRB:

For: Scott Jensen (608) 264-6970

By/Representing: Steve Knudson

This file may be shown to any legislator: NO

Drafter: pgrant

May Contact:

Addl. Drafters:

Subject: Education - school boards
Education - charter schools

Extra Copies: MJL

Submit via email: YES

Requester's email: Rep.Jensen@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Authorize single-sex schools

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	pgrant	1/3/04	2/3/04	2/3/04			

FE Sent For:

<END>

Grant, Peter

From: Knudson, Steve
Sent: Thursday, February 05, 2004 2:26 PM
To: Grant, Peter
Subject: Drafting Request from Rep. Jesnen

Hello Peter,

Representative Jensen would like a bill drafted that would empower local school boards to establish single sex schools.

Although I'm sure you are already aware of the guidelines, I have attached a link to a document containing DOE guidelines for the establishment of single sex schools.

<http://www.ed.gov/policy/rights/guid/ocr/edlite-t9-guidelines-ss.html>

Thank you for your assistance. If you have any questions, please feel free to contact me.

Steve Knudson

Clerk, Assembly Committee on Education Reform
Office of State Representative Scott Jensen
Room 123 West, PO Box 8952
State Capitol
Madison, Wisconsin 53708-8952
Phone: (608) 264-6970
Fax: (608) 282-3698

Grant, Peter

From: Knudson, Steve
Sent: Thursday, February 05, 2004 3:14 PM
To: Grant, Peter
Subject: RE: Drafting Request from Rep. Jesnen

Yes.

Steve Knudson

Clerk, Assembly Committee on Education Reform
Office of State Representative Scott Jensen
Room 123 West, PO Box 8952
State Capitol
Madison, Wisconsin 53708-8952
Phone: (608) 264-6970
Fax: (608) 282-3698

-----Original Message-----

From: Grant, Peter
Sent: Thursday, February 05, 2004 3:12 PM
To: Knudson, Steve
Subject: RE: Drafting Request from Rep. Jesnen

Steve, do you want to allow a school board or other entity to establish a single-sex charter school as well?

-----Original Message-----

From: Knudson, Steve
Sent: Thursday, February 05, 2004 2:26 PM
To: Grant, Peter
Subject: Drafting Request from Rep. Jesnen

Hello Peter,

Representative Jensen would like a bill drafted that would empower local school boards to establish single sex schools.

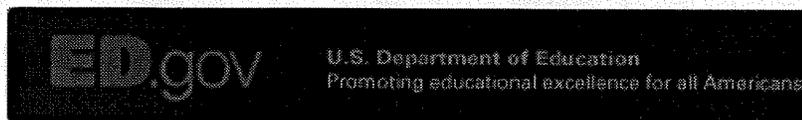
Although I'm sure you are already aware of the guidelines, I have attached a link to a document containing DOE guidelines for the establishment of single sex schools.

<http://www.ed.gov/policy/rights/guid/ocr/edlite-t9-guidelines-ss.html>

Thank you for your assistance. If you have any questions, please feel free to contact me.

Steve Knudson

Clerk, Assembly Committee on Education Reform
Office of State Representative Scott Jensen
Room 123 West, PO Box 8952
State Capitol
Madison, Wisconsin 53708-8952
Phone: (608) 264-6970
Fax: (608) 282-3698



Information For	GO >
Information About	GO >

4000-01-U

DEPARTMENT OF EDUCATION

Office for Civil Rights; Single-Sex Classes and Schools: Guidelines on Title IX Requirements

AGENCY: Department of Education.

ACTION: Guidelines on current title IX requirements related to single-sex classes and schools.

SUMMARY: On January 8, 2002, the President signed into law the No Child Left Behind Act of 2001, which reauthorized the Elementary and Secondary Act of 1965. Section 5131(a)(23) of the Elementary and Secondary Education Act allows local educational agencies (LEAs) to use Innovative Programs funds to support same-gender schools and classrooms consistent with applicable law. It also requires the Department, within 120 days of enactment, to issue guidelines for LEAs regarding the applicable law on single-sex classes and schools. This notice fully implements Congresss mandate by describing and explaining the current statutory and regulatory requirements relating to single-sex classes and schools.

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, S.W., room 5036, Mary E. Switzer Building, Washington, DC 20202-2899. Telephone: (202) 205-8635 or 1-800-421-3481.

If you use a telecommunications device for the deaf (TDD), you may call 1-877-521-2172. For additional copies of this document, you may call OCRs Customer Service Team at (202) 205-5413 or 1-800-421-3481. These Guidelines will also be available at OCRs site on the Internet at:

www.ed.gov/ocr

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION: This notice implements Congresss mandate in the No Child Left Behind Act of 2001 (NCLB Act) to provide guidelines to LEAs regarding the applicable law on single-sex classes and schools. See Pub. L. 107-110, Sec. 5131(a)(23), 5131(c).

Elsewhere in this issue of the Federal Register is a notice of intent

to regulate (NOIR), which invites comment on our intention to amend the current regulations implementing Title IX of the Education Amendments of 1972 (Title IX) related to elementary and secondary single-sex classes and schools to provide more flexibility to educators. The purpose of these amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. The NOIR is intended to begin this process and ensure adequate public input on these important and sensitive issues.

GUIDELINES ON CURRENT TITLE IX REQUIREMENTS:

Single-sex classes: The Title IX statute generally prohibits sex-based discrimination in education programs or activities receiving Federal financial assistance. Specifically, it states that no person in the United States, on the basis of sex, can be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. 1681.

Section 1681(a) of Title IX contains two limited exceptions relating to classes or activities within primary and secondary schools that otherwise are coeducational. Subsection 1681(a)(7)(B) of Title IX exempts any program or activity of any secondary school or educational institution specifically intended for the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference or for the selection of students to attend such a conference. Subsection 1681(a)(8) of Title IX states that the law does not preclude father-son or mother-daughter activities at an educational institution. However, if those activities are provided for students of one sex, opportunities for reasonably comparable activities must be provided for students of the other sex. Accordingly, these activities are permitted on a single-sex basis if the requirements of the statute are met. [1]

Our current Title IX regulations generally prohibit single-sex classes or activities. The regulations in 34 CFR 106.34 state --

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

Our regulations contain two categorical exceptions for specific types of classes or portions of classes that may be segregated by sex. Those exceptions are: (1) physical education classes during participation in sports the purpose or major activity of which involves bodily contact (34 CFR 106.34(c)); and (2) [p]ortions of classes in elementary and secondary schools which deal exclusively with human sexuality. (34 CFR 106.34(e)). In addition separation of

students by sex is permitted if it constitutes remedial or affirmative action. 34 CFR 106.3[2]

Single-sex schools: The Title IX statute exempts from its coverage the admissions practices of non-vocational elementary and secondary schools.[3] Accordingly, the regulations do not prohibit recipients from adopting single-sex admissions policies in non-vocational elementary and secondary schools. See 34 CFR 106.15(d). However, the regulations specifically provide that an LEA may exclude any person from admission to a non-vocational elementary or secondary school on the basis of sex only if such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools. (34 CFR 106.35(b)) [4] In other words, under the current regulations, an LEA cannot use a single-sex admissions policy -- which is not itself subject to Title IX's prohibition -- as the predicate for otherwise causing students, on the basis of sex, to be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. For example, school districts may not establish a single-sex school for one sex that provides the districts only performing arts curriculum. Students of the other sex also must have access to a comparable school with that curriculum. It has been our longstanding interpretation, policy, and practice to require that the comparable school must also be single-sex.

An LEA may offer a single single-sex school if such an action constitutes remedial or affirmative action. (34 CFR 106.3) In addition, while the statutory exemption precludes the Department from examining an LEA's justification for a single-sex school, LEAs also should be aware of constitutional requirements in this area.[5] LEAs may be challenged in court litigation on constitutional grounds.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the Federal Register, in text or Adobe Portable Document (PDF) on the Internet at the following site:

www.ed.gov/legislation/FedRegister/

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available on GPO Access at:

www.access.gpo.gov/nara/index.html

AUTHORITY: 20 U.S.C. 1681, 1682.

Dated: May 3, 2002

Rod Paige,

Secretary of Education.

[1] The statute also exempts activities of educational institutions controlled by religious organizations to the extent that the application of Title IX would be inconsistent with the religious tenets of the organization. 20 U.S.C. 1681(a)(3).

[2] The current regulations also permit recipients to group students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex (34 CFR 106.34(b)) and to make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex. (34 CFR 106.34 (f))

[3] Section 1681(a)(1) of Title IX states that in regard to admissions to educational institutions, the law applies only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education. As such, non-vocational elementary and secondary schools are exempt.

[4] These provisions on single-sex schools do not apply to private elementary and secondary schools.

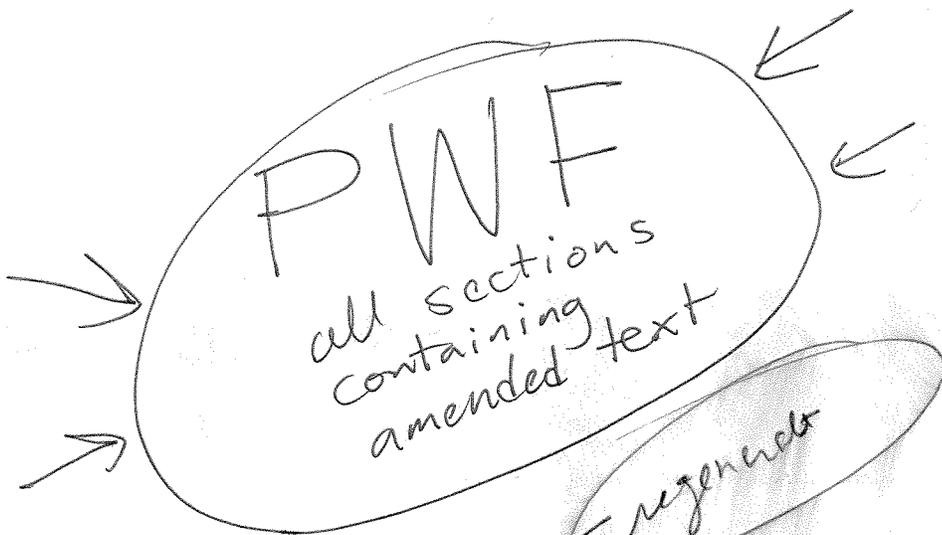
[5] The Supreme Court has decided two significant constitutional cases specifically regarding single-sex education. United States v. Virginia, 518 U.S. 515 (1996) (State-sponsored, male-only military college violated Equal Protection Clause); Mississippi University for Women v. Hogan, 458 US 718 (1982) (State-sponsored, female-only nursing school violated the Equal Protection Clause.)

2007

LPB - 4202 / 1
PK: js

SA ✓
new CR ✓
X-ref ✓

1999 BILL



1 AN ACT to amend 118.13 (1), 118.40 (4) (b) 2. and 119.04 (1); and to create 118.40
 2 (4) (c) and 120.13 (37) of the statutes; relating to: allowing school boards to
 3 establish and operate single-sex schools. ^{public and charter}

Analysis by the Legislative Reference Bureau

Current law provides that no person may be denied admission to any public school or charter school on the basis of sex or may be denied the benefits of any service or curricular or extracurricular activity on the basis of sex. This bill permits operation of public schools and charter schools that enroll only one sex. ^{the}

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill. ^(A)

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 118.13 (1) of the statutes is amended to read:

5 118.13 (1) ~~No~~ ⁽³²⁾ Except as provided in s. 120.13 (37), no person may be denied
 6 admission to any public school or be denied participation in, be denied the benefits
 7 of or be discriminated against in any curricular, extracurricular, pupil services,

BILL

1 recreational or other program or activity because of the person's sex, race, religion,
2 national origin, ancestry, creed, pregnancy, marital or parental status, sexual
3 orientation or physical, mental, emotional or learning disability.

4 **SECTION 2.** 118.40 (4) (b) 2. of the statutes is amended to read:

5 118.40 (4) (b) 2. ~~Discriminate~~ Except as provided in par. (c) and ~~ss. 120.13 (37)~~
6 discriminate in admission or deny participation in any program or activity on the
7 basis of a person's sex, race, religion, national origin, ancestry, pregnancy, marital
8 or parental status, sexual orientation or physical, mental, emotional or learning
9 disability.

10 **SECTION 3.** 118.40 (4) (c) of the statutes is created to read:

11 118.40 (4) (c) *Single-sex schools.* The operator of a charter school under sub.
12 (2r) may operate a charter school that enrolls only one sex.

13 **SECTION 4.** 119.04 (1) of the statutes is amended to read:

14 119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.03 (3) (c),
15 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.38
16 (2), 115.45, 118.001 to 118.04, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14,
17 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19,
18 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), 118.245, 118.255, 118.258, 118.30 to 118.43,
19 118.51, 118.52, 118.55, 120.12 (5) and (15) to (25), 120.125, 120.13 (1), (2) (b) to (g),
20 (3), (14), (17) to (19), (26), (34) and, (35) and (37) and 120.14 are applicable to a 1st
21 class city school district and board.

22 **SECTION 5.** 120.13 ⁽³⁸⁾ ~~(37)~~ of the statutes is created to read:

23 120.13 ⁽³⁸⁾ ~~(37)~~ **SINGLE-SEX SCHOOLS.** Establish and operate schools that enroll only
24 one sex and contract for the operation of charter schools that enroll only one sex.

(END)

pursuant to 34 CFR 106.3 (a) or (b) or
in compliance with 34 CFR 106.35 (b).

2-21

23

24

25

(A)

if there is made available to
if there is made available to pupils of the
courses, services, and facilities
opposite sex courses, services, and facilities
comparable course, service,
that are comparable to each course, service,
and facility offered in or through the
and facility offered in or through the

single-sex school; if the federal Department of
Education deems it necessary to overcome the

effects of such discrimination; or if

or chartering entity operates a
a school board or chartering entity operates a
single-sex school on its own initiative

to overcome the effects of conditions that
resulted in limited participation in a school
resulted in limited participation in a school
by persons of a particular
program or activity by persons of a particular

Sex

sex

school board or chartering entity
finds that a school board or chartering entity has discriminated
on the basis of sex and

2-21-11

Single-sex schools
B E

may enter into a contract for,
may enter into a contract for,

(A) 118.40 (4)(c) A school board ^{or an} entity under
sub. (2r) may ~~contract~~ establish or enter into a
contract for, the establishment of a charter school

that enrolls only one sex, if the school board
or entity makes available to pupils of the
opposite sex, pursuant to the same policies and
criteria of admission, courses, services, and
facilities comparable to each course, service, and
facility, offered in or through the single-sex
school.

~~complies with 34 CFR 106.3 or 106.35~~

pursuant to 34 CFR 106.3 (a) or (b) or in
compliance with 34 CFR 106.35 (b) (c)

2-21:2

Section #. 119.04 (1) of the statutes is amended to read:

119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.38 (2), 115.45, 118.001 to 118.04, 118.045, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), 118.245, 118.255, 118.258, 118.291, 118.30 to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (26), 120.125, 120.13 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35) and (37), 120.14, and 120.25 are applicable to a 1st class city school district and board.

History: 1971 c. 152 s. 38; 1971 c. 154 s. 80; 1973 c. 89 s. 20 (1); 1973 c. 90; 1973 c. 188 s. 6; 1973 c. 243, 254, 290, 307, 333; 1975 c. 39, 41, 95, 220, 379, 395, 422; 1977 c. 29; 1977 c. 203 s. 106; 1977 c. 206, 284, 447; 1979 c. 20; 1979 c. 34 s. 2102 (43) (a); 1979 c. 221, 298, 331; 1979 c. 346 s. 15; 1979 c. 355; 1981 c. 59; 1981 c. 241 s. 4; 1983 a. 193; 1983 a. 339 s. 10; 1983 a. 374 s. 12; 1983 a. 412, 489, 538; 1985 a. 29 s. 3202 (43); 1985 a. 56 s. 43; 1985 a. 214 s. 4; 1985 a. 225, 332; 1987 a. 27, 187, 285, 386, 403; 1989 a. 31, 120, 121, 122, 201, 209, 359; 1991 a. 39, 42, 189, 269; 1993 a. 16, 334, 377, 491; 1995 a. 27, 225; 1997 a. 27, 77, 113, 240, 252, 335; 1999 a. 9, 32, 73; 1999 a. 150 ss. 631, 672; 1999 a. 186.

2-21-3

④ SECT. AM; 119.22

⑨ **119.22 Sex discrimination in physical education or physical training prohibited.** Courses in physical education or physical training may not discriminate on the basis of sex in the provision of necessary facilities, equipment, instruction or financial support, or the opportunity to participate in any physical education or training activity as provided in 20 USC 1681 et seq.

History: 1971 c. 219, 307, 336; 1973 c. 188; 1977 c. 284; 1979 c. 53; 1983 a. 36, 412.

Exempt as provided
in S. 11201/13 (38),
courses

2



2003 BILL

1 **AN ACT to amend** 118.13 (1), 118.40 (4) (b) 2., 119.04 (1) and 119.22; and **to create**
2 118.40 (4) (c) and 120.13 (38) of the statutes; **relating to:** allowing single-sex
3 public and charter schools.

Analysis by the Legislative Reference Bureau

Current law provides that no person may be denied admission to any public school or charter school on the basis of sex or may be denied the benefits of any service or curricular or extracurricular activity on the basis of sex. This bill permits the operation of public schools and charter schools that enroll only one sex if there is made available to pupils of the opposite sex courses, services, and facilities that are comparable to each course, service, and facility offered in or through the single-sex school; if the federal Department of Education finds that a school board or chartering entity has discriminated on the basis of sex and deems a single-sex school necessary to overcome the effects of such discrimination; or if a school board or chartering entity operates a single-sex school on its own initiative to overcome the effects of conditions that resulted in limited participation in a school by persons of a particular sex.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 118.13 (1) of the statutes is amended to read:

BILL**SECTION 1**

1 118.13 (1) ~~No~~ Except as provided in s. 120.13 (38), no person may be denied
2 admission to any public school or be denied participation in, be denied the benefits
3 of or be discriminated against in any curricular, extracurricular, pupil services,
4 recreational or other program or activity because of the person's sex, race, religion,
5 national origin, ancestry, creed, pregnancy, marital or parental status, sexual
6 orientation or physical, mental, emotional or learning disability.

7 **SECTION 2.** 118.40 (4) (b) 2. of the statutes is amended to read:

8 118.40 (4) (b) 2. ~~Discriminate~~ Except as provided in par. (c), discriminate in
9 admission or deny participation in any program or activity on the basis of a person's
10 sex, race, religion, national origin, ancestry, pregnancy, marital or parental status,
11 sexual orientation or physical, mental, emotional or learning disability.

12 **SECTION 3.** 118.40 (4) (c) of the statutes is created to read:

13 118.40 (4) (c) *Single-sex schools.* A school board may enter into a contract for,
14 and an entity under sub. (2r) may establish or enter into a contract for, the
15 establishment of a charter school that enrolls only one sex pursuant to 34 CFR 106.3
16 (a) or (b) or in compliance with 34 CFR 106.35 (b).

17 **SECTION 4.** 119.04 (1) of the statutes is amended to read:

18 119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c),
19 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.38
20 (2), 115.45, 118.001 to 118.04, 118.045, 118.06, 118.07, 118.10, 118.12, 118.125 to
21 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18,
22 118.19, 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), 118.245, 118.255, 118.258, 118.291,
23 118.30 to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (26), 120.125, 120.13
24 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35) ~~and~~, (37), and (38), 120.14, and
25 120.25 are applicable to a 1st class city school district and board.

BILL

1 **SECTION 5.** 119.22 of the statutes is amended to read:

2 **119.22 Sex discrimination in physical education or physical training**
3 **prohibited.** Courses Except as provided in s. 120.13 (38), courses in physical
4 education or physical training may not discriminate on the basis of sex in the
5 provision of necessary facilities, equipment, instruction or financial support, or the
6 opportunity to participate in any physical education or training activity as provided
7 in 20 USC 1681 et seq.

8 **SECTION 6.** 120.13 (38) of the statutes is created to read:

9 **120.13 (38) SINGLE-SEX SCHOOLS.** Operate a school that enrolls only one sex
10 pursuant to 34 CFR 106.3 (a) or (b) or in compliance with 34 CFR 106.35 (b).

11

(END)