# Physical Education and High School Programs Information

Physical education (PE) is essential to a student's overall education experience and builds a foundation for lifelong healthy living. The goal of physical education is to develop physically literate individuals who have the knowledge, skills and confidence to enjoy a lifetime of healthy physical activity. Iowa Code (IC) and Iowa Administrative Code (IAC) require that all students who are physically able be required to participate in physical education in each semester in which they are enrolled in school with some specific waivers, exemptions and excusals (IC 256.11; 281 IAC chapter 12). Most exemptions and excusals require a written request by the student's parent or guardian to the school principal.

This document provides basic information on the following topics related to physical education and high school programs:


- Physical Education at Alternative Schools and Programs
- Physical Education Exemptions and Excusals
- Categorical Physical Education Excusals
- Physical Education and Physical Activity
- "Contract" or Independent Study Physical Education
- Single-Sex Physical Education Activities


## High School Physical Education and Physical Activity Requirements

### Physical Education

Iowa law requires all students in grades 9-12 to participate in physical education each grading period. Students must complete a minimum of 1/8 unit (900 minutes) of physical education activities during each semester (grading period) for a total of ¼ unit of physical education each academic year. A trimester schedule will require a minimum of the total annual requirement of 1800 minutes (¼ unit) divided by three trimesters or at least 600 minutes per trimester (grading period).

Districts may request a school waiver from the Iowa Department of Education to offer less than year-long physical education, meeting the ¼ unit requirement within a condensed schedule.

### Physical Activity

Iowa law requires schools to provide physical activity for students in grades 9-12 for at least 120 minutes per week for a total of 4,320 minutes per year. Schools and school districts must provide documentation that pupils are being provided with the support to complete the physical activity requirement. This documentation may be provided through printed schedules, district policies, student handbooks, and individual physical activity contracts. The physical activity requirement may be met through physical education classes, recess, active class time, and before- or after-school activities.

- For additional information see the Physical Education and Physical Activity section.

# Physical Education at Alternative Schools and Programs

By definition, an “alternative school” is to provide a “comprehensive educational program” to its students and, because it is a school, must meet all accreditation requirements, including physical education; an “alternative program” is a part of the school’s regular educational program, which would include physical education (281 IAC 12.2).

A student who participates in alternative programs or attends alternative schools must participate in physical education, unless the student receives a student-specific excusal of physical education or the Department has granted a waiver to the school or program, based on satisfaction of the high standards for a waiver of general accreditation standards. (IC 256.11(8); 281 IAC chapter 12)

A school district may permit a waiver of the physical education requirement to particular students who attend alternative schools or participate in alternative programs; however, those waivers are based on written parent requests. Those student-specific waivers shall not be presumed, turned into “blanket” waivers, or built into the entrance process to the alternative school or program.

## Examples

1. A clause in an alternative program’s attendance agreement that states “By requesting to attend the XYZ School District’s Alternative Program, I agree to waive physical education” would be an impermissible coerced “choice”.
2. It would be impermissible to state “We are an off-campus program, so we do not need to have physical education” (attempting to rely on the “off-campus program” rule described below) because that eliminates the requirement that physical education excusals be requested by parents.
3. It would be impermissible to state “Our schedule at the QRST Alternative Program is too full, so physical education is not available.” The “full schedule” excusal, in addition to not being student-specific and parent-requested, does not permit alternative schools or programs to construct their schedules in such a way that there is no room for physical education.
4. It would be impermissible to state “Students who are ‘over-aged-and-under-credited’ will not take PE so they maximize the number of credits they can earn in the alternative setting.” As noted in Example 3, a school cannot over-schedule to avoid offering physical education. While it is important that students who are behind trajectory to graduate earn credits as rapidly and as meaningfully as possible, the law requires participation in physical education unless one of the excusals is applicable. If a parent wants a child to fill the child’s schedule with credit and component recovery courses and activities and thereby request a waiver of physical education, that is the parent’s decision to make. It cannot be made by the school for all children.

While students in alternative programs and schools are required to participate in physical education, the activities and facilities do not need to be identical to the activities and facilities at a comprehensive school, so long as the content specifications in 281 IAC chapter 12 are available to students in alternative programs and schools.

In considering the required offering of physical education in alternative schools, teachers and administrators may wish to give great weight to the proven, positive relationship between high quality physical education programs and academic achievement. While the physical education program and methods at alternative schools and programs may look different than at other

schools, it is a legal obligation to make physical education available and taught by a teacher with the appropriate physical education licensure.

# Physical Education Exemptions and Excusals

The law provides exemptions to and excusals from the physical education requirement for students in grades 9-12. Exemptions and excusals require the written request from a parent or guardian of a student to a school principal. A principal may not grant any of these excusals until the principal has received a written request from a student's parent/guardian. These excusals are to be considered on a student-by-student basis. They are not to be granted on a "blanket" or "en masse" basis. In re Jed and Tessa Thompson, 10 D.o.E. App. Dec. 195, 201 (Iowa St. Bd. of Educ. 1993). The law requires that the principal notify the superintendent of the school district or nonpublic school of any student excused from physical education under these provisions.

## Medical Exemption

If a parent of a student files a statement signed by a physician, or other health care provider within the scope of the provider's licensure and authorized practice, that a student is not "physically able" to participate in physical education, then the student is exempt from physical education (IC 256.11(6)). If a document is signed by a physician or health care provider, it shall not be questioned by the school.

Medical exemptions may not be sought by a school to unilaterally exempt students with physical disabilities from physical education. States and schools are required to provide equal opportunity to participate in physical education by children and youth with and without disabilities. The Individuals with Disabilities Education Act (IDEA, 2004) and the Iowa Administrative Rules of Special Education (2010) require schools to provide free appropriate public education (FAPE) in the least restrictive environment (LRE). "Special education" specifically lists, "instruction in physical education", requiring all students to have access to appropriate physical education instruction.

## Religious Exemption

If a parent of a student files a written statement that a physical education course conflicts with the "pupil's religious belief," the student shall be exempt from participation in the physical education course (IC 256.11(6)). If a parent files such a statement, the student is exempt, without question, from physical education. The school has no discretion to deny the exemption. School officials shall not require the parent to provide proof of or otherwise question the sincerity of the asserted belief.

## Off-Campus Educational Program Excusal

If a student is enrolled in a "work-based learning program or other educational program authorized by the school" requiring the student's absence from school premises during the school day, the principal shall excuse the student requesting an excusal from the physical education requirement during the semester enrolled (IC 256.11(5)(g); 281 IAC 12.5). Additional exemptions apply for participation in the Iowa page program and Junior Reserve Officers Training program (see below). If the student drops the program, the student must enroll in physical education.

**Examples**

1. If the student spends their entire school day in a location other than the child's school (e.g., all of the student's education is provided at an off-campus alternative school), this excusal is not available. It is only available for students who divide their time between two locations. If a student spends their entire school day at another location, the student is required to take physical education at that location (unless another excusal applies). See above for alternative schools and programs.
2. If the student participates in an off-campus educational activity that occurs outside of the school day, such as work study on weekends or a college class in the evening, this excusal is not available. Note that the off-campus educational program must be "authorized" by the school, and it must require the student's absence during the school day.
3. This is not a blanket excusal for students in "vocational" programs. First, the law does not restrict off-campus programs to those programs providing career and technical education content (e.g., a student could be taking an off-campus foreign language course). Second, students whose educational programs are entirely on-campus, including on-campus career and technical education programs, are not eligible to request this excusal.
4. Enrollment in an on-campus career and technical education course, standing alone, does not qualify for this excusal. For example, a student who is enrolled in an on-campus work-study program in the school's food service department is not eligible for this excusal.

## Academic Course Not Otherwise Available Excusal

If a student seeks to enroll in “academic courses not otherwise available to the student”, the student’s parent may request excusal from physical education in writing (IC 256.11(5)(g); 281 IAC 12.5). To qualify under this excusal provision, it is not necessary that the course at issue be a core course or a graduation requirement. The course may be an elective. If the student drops the course, the student must enroll in physical education.

This excusal is only available if the item in the student’s schedule is an academic course. A student cannot be excused if the basis for it is a time conflict with something that is not an academic course, such as an optional study hall or an opportunity for early dismissal.

Schools may not make blanket excusals from physical education because the school has what the school considers to be “more rigorous” graduation requirements. It would be improper to automatically and categorically excuse students from physical education based on “participation in an advanced placement course”, “registration in foreign language”, “registration for an instrumental or vocal music course”, “participation in alternative program” or similar categorical statements. Statements such as this improperly eliminate the requirement that the parent make a written request for excusal from physical education.

### Examples

5. ABCD High School has an eight-period day. A high school student schedules five periods of required courses (other than physical education), a mandatory study hall, and an elective Ceramics class. She also wants to take an eighth period of Auto Mechanics, also an elective, in lieu of physical education. If requested, the principal shall excuse the student in order to take the Auto Mechanics class.
6. EFG High School has an eight-period day. A high school student has six periods of required courses (other than physical education) and an elective vocal music class. He wants to be excused from physical education for the eighth period of the day so that he may take advantage of early dismissal. “Early dismissal” is not an academic course, so this excusal is not available.
7. HIJ High School requires 64 credits to graduate, which include a requirement to take a one credit “College Readiness” course. A high school senior has room for eight credits in her final semester, requires eight credits to graduate, and has not taken College Readiness. She has seven credits in her schedule already (six required and one elective). If requested, her principal will excuse the student from physical education so she may take the College Readiness class.
8. KLM High School requires 64 credits to graduate, which include a requirement to take a one credit “College Readiness” course. The school has a “policy” that students are excused from physical education in the semester that the student enrolls in College Readiness. This is not permissible.

## School Sponsored Activity Excusal

If a student is participating in an “an activity that is sponsored by the school in which the student is enrolled which requires at least as much participation per week as one-eighth unit of physical education”, the student’s parent may request excusal from physical education in writing (IC 256.11(5)(g); 281 IAC 12.5). One-eighth unit of physical education approximately 900 minutes of activity. If the student withdraws from the activity before the physical activity equivalent for one-eighth unit of physical education has been completed, the student must enroll in physical education.

To be eligible for this excusal, the activity must equal or exceed nine hundred minutes of physical activity during the semester. If the activity does not equal nine hundred minutes in a semester, students participating in the activity are not eligible to request this excusal. The activity must be sponsored by the school or school district in which the student is enrolled. Outside activities sponsored by other entities are not eligible for this excusal. The activity must be supervised by appropriately licensed and endorsed school staff. If the activity is not supervised by an appropriately licensed and endorsed employee, it does not qualify for this excusal.

It would be improper to automatically and categorically excuse students from physical education based on participation in an activity. First, statements such as these improperly presume that the activity meets the requirements of the excusal (number of minutes, appropriate supervision). Second, statements such as these improperly eliminate the requirement that the parent make a written request for excusal from physical education.

**Examples**

9. A student participates in a physical fitness club sponsored by the school and supervised by an appropriately licensed and endorsed teacher. It meets for forty-five minutes each Wednesday for the eighteen-week semester. This equals 810 minutes. Because this is less than 900 minutes, participation in this activity does not create eligibility to request an excusal under this rule.
10. A student participates in intensive daily coaching in a private gymnastics studio. The activity, not sponsored by the school district, is not eligible for this excusal.

## Less-Than-Year-Long Physical Education Waiver

Schools who request and receive a waiver from the Iowa Department of Education may have students complete a full year's worth of physical education in less than a full-year course such as having students take physical education daily for one trimester each year with the total time in physical education meeting the legal requirement for being equivalent to ¼ unit (1800 minutes). To align the physical education requirement with the "school sponsored activity" requirement, the following applies for students seeking this excusal: students may be excused from physical education based on participation in a "school sponsored activity" meeting the requirements above and requiring as much participation as ¼ unit of physical education (1800 minutes).

## Multiple Excusals

While only one ground is necessary, some students may have more than one ground for an excusal. If one of the grounds becomes unavailable to the student, the school or school district will consider the other ground or grounds.

**Example**

11. A student is involved in extracurricular athletics at ZYX High School and is eligible for an excusal based on her participation in basketball. She also has eight academic courses in an eight-period schedule. The senior and her family requested an excusal based on her academic load, which was granted. The senior and her family did not need to request an excusal based on her participation in basketball. During the semester, the senior decides to drop an elective course. This is to allow herself time outside of school hours to take an evening job to save for college. The school insists

that the student enroll in physical education. The student and family request that the school continue to excuse the child based on participation in basketball. The school will grant this request.

# Categorical Physical Education Excusals

The above exemptions and excusals allow high school students to not participate in or receive credit for physical education when requested in writing by a student's parent or guardian. The following two programs provide categorical excusal from physical education through participation and do not require a written request.

## Participation in Iowa's Page Program

In 2021, Senate File 517 added new subsection 18 to Iowa Code (IC) 256.11 relating to academic credit and exemptions for students who participate in the Legislative Page program at the State Capitol. The subsection includes that the student shall be excused from the physical education requirement and is exempt from the physical activity requirements (of the Healthy Kids Act) while participating in the legislative page program at the Iowa State Capitol. If the student withdraws from the activity, the student must enroll in physical education.

## Participation in Junior Reserve Officers Training Corps (JROTC)

In 2021, House File 793 added a new subparagraph 4 to Iowa Code (IC) 256.11(5)(g). A student who is enrolled in a junior reserve officers' training corps (JROTC) shall not be required to participate in physical education activities under subparagraph (1) or to meet the physical activity requirement (of the Healthy Kids Act), but shall receive one-eighth unit of physical education credit for each semester, or the equivalent, of junior reserve officers' training corps the student completes. If the student withdraws from the activity, the student must enroll in physical education.

# Physical Education and Physical Activity

In 2008, Iowa enacted the Healthy Kids Act. As part of that law, schools and school districts must require that physically able students in grades 6 through 12 engage in 120 minutes per week of physical activity in weeks in which there are 5 days of school. "Physical activity" is defined as "any movement, manipulation, or exertion of the body that can lead to improved levels of physical fitness and quality of life". A school or school district shall not reduce instructional time to implement the Healthy Kids Act's physical activity requirement. A school or school district may meet the physical activity requirement through "physical education classes, activities during recess or during class time, and before- or after-school activities". (IC 256.11; 281 IAC 12.5)

A student in grades 6 through 12 who takes part in "an organized and supervised athletic program or non-school-sponsored extracurricular activity which requires the student to participate in physical activity for a minimum of 120 minutes per week is exempt" from the "physical activity" requirement (IC 256.11). If the student meets some or all of the one hundred and twenty minutes per week with non-school activities, the school or school district and the student may enter into a written agreement (physical activity contract). The written contract permitted by this rule is not a means of earning a physical education credit or demonstrating eligibility for a physical education excusal. A parent may request a child be exempted from the physical activity requirement based on conflict with religious beliefs (IC 256.11(6)(a); 281 IAC 12.5(6)).

"Physical activity" and "physical education" are conceptually related, but legally separate. For example, a student may satisfy the physical activity requirement in a manner that qualifies for neither a physical education excusal nor a physical education credit. Likewise, an activity that satisfies a requirement for a physical education credit or excusal may not meet the minimum physical activity requirement. In that case, the minimum physical activity requirement must be met by other means.

### Examples

12. A high school senior participates in a recreational basketball league arranged by the city's parks department. The league has practice one hour a week on Wednesday nights and one hour a week on Friday nights. During the weeks that the league is in session, the basketball league is eligible to meet the Healthy Kids Act's physical activity requirement because it equals 120 minutes per week. The activity would not qualify for a physical education excusal because it is not sponsored by a school or school district.
13. A high school student participates in an afterschool strength and agility training program supervised by appropriately credentialed school personnel. The activity meets for 10 weeks, at 90 minutes per week. The activity is eligible for an excusal as an organized and supervised athletic program that equals 900 minutes in a semester; however, because the activity is less than 120 minutes per week, the senior will be required to engage in additional physical activity.

The "physical activity" requirement is a part of the accreditation standards. It is not a graduation requirement. Schools and school districts must maintain documentation to demonstrate compliance with this requirement which "may be provided through printed schedules, district policies, student handbooks, and similar means". (281 IAC 12.5)

## "Contract" or Independent Study Physical Education

The use of physical activity "contracts" to meet the requirements of the Healthy Kids Act has led to the belief that a physical activity "contract," standing alone, may lead to awarding a physical education "credit." This is incorrect, based on general accreditation standards.

To earn a credit, a student must complete all or a portion of a "unit". The definition of a unit requires that it be "taught". (281 IAC 12.5) Before awarding a credit for "contract" or "independent study" physical education, a school or school district must ensure that a student receives instruction from a teacher during the term of the contract or independent study period. The question about whether a course is "taught" is answered with reference to the general accreditation standards definition of "teacher". "Teacher" for accreditation purposes is defined as follows:

A teacher *diagnoses, prescribes, evaluates*, and *directs* student learnings in terms of the school's objectives, either singly or in concert with other professional staff members; … and *evaluates or assesses* student progress during and following instruction in terms of the objectives sought, and uses this information to develop further educational procedures. (281 IAC 12.4(8) (language omitted and emphasis added)).

In light of this rule, to be "taught" and eligible to earn a "credit," a physical education "contract" or independent study plan must have a learning objective related to one or more of the physical education content specifications. The learning objective must be selected in

conjunction with an appropriately licensed teacher and based on the student's current and individual needs and should be aligned with the recommended physical education standards and grade level outcomes. The contract or plan must contain a description of how the child's participation will be supervised by the teacher, including a description of how the student's progress will be monitored and assessed and how its contents will be revised, if necessary, based on lack of progress or greater-than-expected progress. The contract or plan must contain a description of what objective must be attained for a credit to be successfully completed. Consider the following examples which relate to the content specification of physical fitness.

## Examples

14. A student at WVU High School completes a "physical education contract," in which she agrees to walk briskly for 60 minutes a week for an eighteen-week semester. The contract does not contain any provision for instruction by a physical education teacher. It does not contain any objective measure for determining whether student growth or improvement has occurred or whether the student shall receive a credit. This contract contains insufficient "teaching" to justify an award of a physical education credit.
15. A student at TSR High School completes a "physical education contract," in which she agrees to complete an eighteen-week guided study of walking/jogging theory and practice. During their first meeting, the teacher provides the student with a course outline, including a grading rubric. The teacher then completes a video-assisted walking and jogging gait analysis of the student followed by face-to-face instruction and assigned readings to reinforce the theoretical components of the content. Student is assigned a minimum of one-hour practice per day on appropriate terrains reinforcing good body mechanics. She logs her walking and jogging experiences, responds in writing to selected articles, and meets with her teacher once every two weeks to discuss and demonstrate progress. Course assessment activities include evaluation of her log, written article responses, and a final video-assisted walking and jogging gait analysis. This contract is "taught," as that term is used in Iowa law and is eligible for a physical education credit.

While a physical education contract, like any independent study plan, is flexible to account for student needs, it must be "taught" to justify awarding of a credit. To the extent a plan is more similar to Example 19 than to Example 18, the more likely that awarding a credit for plan completion complies with Chapter 12 standards.

As in any independent study course, the supervising teacher of independent study or "contract" physical education must consider the student's present performance, a meaningful and attainable learning outcome, the required instruction required to attain that outcome, and how progress will be monitored. The starting point is the student's current attainment of physical education standards. For some students with greater needs, independent study physical education will not be appropriate.

Independent study physical education has many legitimate uses (accounting for a child's full schedule or allowing a child to make up physical education credits that were not earned); however, independent study or "contract" physical education is not be used to subvert the law's physical education requirements.

# Single-Sex Physical Education Activities

Physical education courses and activities are required to be coeducational as opposed to single-sex or single-gender, subject to certain narrowly defined exceptions. This rule is based

on Title IX (1972). “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal Financial assistance…” (20 U.S.C. § 1681(a)). Title IX governs any “public or private preschool, elementary, or secondary school” receiving such assistance (Id. § 1681(c)). Additionally, the general accreditation standards require school districts to “take affirmative steps to integrate students in attendance centers and courses” (281 IAC 12.1(1)). “Sex” rather than “gender” is used in this document because that is the term in the statute.

Under Title IX regulations, “a recipient shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex” (34 C.F.R. § 106.34(a)). The regulations provide for two exceptions to this rule for physical education classes: contact sports and ability grouping.

## Contact Sports

Concerning “contact sports”, the regulations provide that Title IX allows separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact (Id. § 106.34(a)(1)). If the activity is not listed in the regulation, the school or school district must be able to demonstrate that the activity’s “purpose or major activity involves bodily contact”. If physical contact is a minor or rare part of the activity this exception does not apply.

### Examples

16. The physical education department at QRO High School has decided to divide its physical education classes by sex for contact drills, scrimmages, and games during the basketball unit. This decision is specifically authorized by the Title IX regulations; however, separation may only occur during the actual contact play, not during warm-up, lecture, demonstration, or non-contact drill work.
17. The physical education department at NMLK High School has decided to separate its physical education classes by sex whenever the classes play softball. Any physical contact in softball is incidental to the game. This decision is not authorized by the Title IX regulations.

## Ability Grouping

Concerning “ability grouping”, the regulations allow “grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex” (Id. § 106.34(a)(2)). This regulation allows that students may be grouped based on demonstrated skill or performance, even if that results in nearly all males in one group and nearly all females in another group. The grouping must be made on objective criteria, and those criteria must not be developed or applied for the purpose of separating males and females, or based on sex stereotypes.

### Examples

18. The physical education department at JIH High School has decided to separate students for distance running activities based on pace per mile, which results in more males than females in one pace group, more females than males in one pace group,

and two pace groups that are almost exclusively male and female, respectively. The decision was made on the results of an initial one-mile run. This action is permissible.

19. The physical education department at GFE High School has decided to separate students for swimming into the “girls group” and the “boys group,” based on its perception that males are stronger swimmers. The odd result of this decision is that the “boys group” contains non-swimmers and the “girls group” contains the four members of a conference-record-holding relay team. This decision is not allowed by the Title IX regulations, as it is based on sex stereotypes and is not based on objective measures of ability.
20. DCBA High School has decided to separate students for swimming instruction into the “boys group” and the “girls group” based on concerns about student modesty. This is not based on ability grouping or student performance. Modesty concerns, while legitimate, must be addressed in other manners (such as by physical education uniform requirements adopted by a school district’s board of directors to create a “positive educational environment” (IC 279.58).

There are two exceptions in the Title IX regulations that might not be directly related to physical education courses or activities, but may relate tangentially depending on how physical education is included in a school’s schedule or curriculum. First, the regulations allow separation based on sex when content on human sexuality is presented and discussed (Id. § 106.34(a)(3)). Second, the regulations allow for grouping based on vocal range in vocal music activities (Id. § 106.34(a)(4)).

The Title IX regulations were amended in 2006 to allow experimentation with sex-segregated classes (including but not limited to physical education classes), if the following conditions are met:

(1) General standard. Subject to the requirements in this paragraph, a recipient that operates a non-vocational coeducational elementary or secondary school may provide non-vocational single-sex classes or extracurricular activities, if—
    (i) Each single-sex class or extracurricular activity is based on the recipient's important objective—
        (A) To improve educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective; or
        (B) To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective;
            ii. The recipient implements its objective in an even-handed manner;
            iii. Student enrollment in a single-sex class or extracurricular activity is completely voluntary; and
            iv. The recipient provides to all other students, including students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.
(2) Single-sex class or extracurricular activity for the excluded sex. A recipient that provides a single-sex class or extracurricular activity, in order to comply with paragraph (b)(1)(ii) of this section, may be required to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex.
(3) Substantially equal factors. Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities

are substantially equal include, but are not limited to, the following: the policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.

(4) Periodic evaluations.

(i) The recipient must conduct periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities.

(ii) Evaluations for the purposes of paragraph (b)(4)(i) of this section must be conducted at least every two years.

34 C.F.R. § 106.34(b)

Several items are noteworthy. First, the regulation requires that single-sex education be based on clearly identified educational objectives that are “substantially related” to single-sex education, and not based on sex stereotypes or the desire to separate the sexes as an end in itself (rather than as a means to attain an educational objective). Second, this regulation requires that the school or school district keep data to evaluate the effectiveness of the single-sex class. If a single-sex class is not based on “genuine” educational justifications, it must be discontinued. Third, both sexes must be provided with “substantially equal” educational opportunities. Fourth, enrollment in a single-sex course must be “completely voluntary”. The United States Department of Education was intentional in its use of this modifier. Coerced, “voluntary” choices (“If you don’t agree to participate in this single-sex activity, then we won’t be able to have it. You don’t want to be responsible for that, do you?”) do not qualify under this regulation. If a school or school district chooses to pursue the exception allowed by regulation 106.34(b), it must also file a school waiver exemption request (281 IAC 12.9).