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Dave -
Same-sex

7/27/98

Nothing in Public Law 93-318, as amended, shall be construed to prohibit the use of funds made available under this title for education reform projects that provide same gender schools or classrooms, as long as comparable educational opportunities are offered for students of both sexes.

Bruce/Mike/Ten -

FYI. A possible amendment from Hutchinson to Lada-H (and some materials on his single-sex amendment to Crowell)

Elena

Propose LHS Amendment

KAY BAILEY HUTCHISON
TEXASCOMMITTEES:
APPROPRIATIONS,
COMMERCE, SCIENCE,
AND TRANSPORTATION
RULES AND ADMINISTRATION

United States Senate

WASHINGTON, DC 20510-4304

April 20, 1998

Dear Colleague:

This week I will offer an amendment to the Coverdell A+ Accounts bill that will make certain federal education funds available to public schools for same-gender schools and classrooms, as long as comparable educational opportunities are offered for students of both sexes.

My amendment will make available to states and local schools funds under Title VI of the Elementary and Secondary Education Act. Arguably, this flexible education reform block grant (\$350 million in FY '98) could now be used for same-gender programs. However, due largely to concern that the Department of Education may view public, same-gender education as a violation of Title IX (of the 1972 Education Amendments), many schools have been reluctant to pursue this proven education option for fear of losing federal funding. This amendment will restore the intended purpose of Title IX: to prevent sex-based discrimination in education, not to prevent same-gender education.

The benefits of same-gender education are well documented. Studies have demonstrated that girls enrolled in same-gender programs tend to have more confidence to express themselves in the classroom; they pursue more courses and careers in math and science; and they are generally more able to focus on academics than they are in coed classrooms. Many boys find that they also thrive in an atmosphere in which learning, not socializing, is the central goal. Moreover, these positive attitudes translate into tangible academic benefits. One recent study found that girls in same-gender schools outscored girls in coed schools by a full grade level on science tests and by a half-grade on four other scholastic ability tests. Other studies demonstrate that boys enrolled in same-gender programs, particularly African-American and Hispanic boys, also outperform their coed peers in scholastic and extracurricular activities, and are more likely to attend and graduate from college.

While same-gender education is certainly not for everyone, I believe it should be available as an option for parents and their children, and not just those parents who can afford to send their children to private, same-gender schools. Public, same-gender education that addresses the needs of both boys and girls does not violate Title IX, nor does it violate the Constitution. It can, however, make the difference between success and failure for tens of thousands of our young people. I believe the federal government should no longer stand in the way of our public schools as they strive to give all students an equal chance at success.

Enclosed for your review are materials further explaining my amendment and the issue. If you have any questions, please call Quin Dodd of my staff, at 4-1894. Thank you.

Sincerely,



Kay Bailey Hutchison

Same-Gender Education Amendment to S. 1133, "A+ Accounts Bill"
Offered by Senator Kay Bailey Hutchison

Questions & Answers

Q: What does the Hutchison amendment seek to do?

A: The amendment would explicitly allow the use of federal Title VI education funds for "same gender schools and classrooms, as long as comparable educational opportunities are offered for students of both sexes." (Title VI of the Elementary and Secondary Education Act is a very flexible K-12 block grant program that can be used for a wide variety of education reform efforts, arguably including same-gender programs).

Q: What does the law now say about same-gender education?

A: Title IX (of the Education Amendments of 1972) prohibits sex-based discrimination by any school receiving federal funds. However, by explicit omission, Title IX does not apply to admissions at same-gender public schools¹. This is confirmed by Department of Education regulations that allow public, same-gender schools, as long as comparable courses and facilities are offered to both sexes.² Thus, the Hutchison amendment would not change federal law allowing same-gender public schools, but would authorize the use of existing federal funds for this purpose.

With regard to same-gender classrooms within co-ed public schools, the Department of Education requires that there be a sufficient showing that a single-sex class is necessary to overcome past discrimination against one sex.³ But this DoEd requirement is contrary to the language and intent of Title IX. Congress did not intend to allow same-gender schools but prohibit same-gender classrooms absent some burdensome and ambiguous showing of past discrimination.

Neither does the 14th Amendment equal protection clause prohibit same-gender education. The most recent and prominent Supreme Court case in this area, U.S. v. Virginia, held against the Virginia Military Institute because the state did not offer a comparable educational opportunity for women. The Hutchison amendment requires that there be comparable opportunities available for both sexes.

¹20 U.S.C §1681(a)(1).

²34 C.F.R. §106.35(b).

³34 C.F.R. §106.3

Q: If same-gender education is legal, why is the Hutchison amendment necessary?

A: Presently, there are less than a dozen same-gender public schools in the US (including California which is in the process of establishing up to 10 same-gender schools). Of the few that do exist, many have had lawsuits and DoEd complaints filed against them, and DoEd has taken enforcement action against several of these schools under Title IX. Clearly, schools are reluctant to initiate such efforts. This amendment is necessary to make clear that Congress did not intend Title IX to be a bar to the use of federal funds for same-gender schools or classrooms, and to allow states and local school districts to go forward and offer these beneficial programs to parents and their children as one available education option.

Q: Does same-gender education really benefit girls and boys in K-12 education?

A: Yes. Numerous studies have clearly demonstrated that students enrolled in same-gender programs have better attitudes about school, are more likely to participate in class, take more math and science classes, have higher attendance rates, and generally have a greater likelihood of educational success, including higher standardized test scores. Because there are so few same-gender public schools, there is somewhat less evidence about the academic results from these improved attitudes in the public school arena. However, a recent report by the American Association of University Women did not so much call into question the benefits of same-gender education as it argued that these benefits should be replicated in coed schools. This is not an argument against same-gender education.

Q: Would any state, school district, parent, or child be required to participate in a same-gender school or classroom under this amendment?

A: No. This amendment would simply allow states and school districts to use existing federal funds to offer these programs on a voluntary basis, much like voluntary charter and magnet schools are now offered. Presently, the vast majority of parents who want same-gender education for their children must have the means to pay for private or parochial school. This option should be available for all parents.

Q: Has the Senate ever voted on this issue before?

A: Yes. On August 1, 1994, the Senate voted 66 to 33 to approve an amendment to the Elementary and Secondary Education Act, offered by Senator Danforth of Missouri, to authorize the establishment of several same-gender public schools. (The Danforth amendment, which failed in conference, is attached, along with the Hutchison amendment and the relevant statute it amends.)

HUTCHISON AMENDMENT NO. 2021 (Senate - March 18, 1998)
(Ordered to lie on the table.)

Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill, H.R. 2646, supra; as follows:

At the end, add the following:

TITLE __--EQUAL EDUCATIONAL OPPORTUNITY

SEC. __01. EQUAL EDUCATIONAL OPPORTUNITY.

(a) Short Title: This section may be cited as the 'Equal Educational Opportunity Act'.

(b) Amendments to ESEA: Subsection (b) of section 6301 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7351) is amended--

(1) in paragraph (7), by striking 'and' after the semicolon;

(2) in paragraph (8), by striking the period and inserting '; and'; and

(3) by adding at the end the following:

'(9) education reform projects that provide same gender schools and classrooms, as long as comparable educational opportunities are offered for students of both sexes.'