



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

FEB 12 1999

Honorable Arlen Specter
Senate Appropriations Committee on Labor, Health
and Human Services, Education, and Related Agencies
711 Hart Senate Office Building
Washington, D.C. 20510-6034

Dear Mr. Chairman:

Enclosed is a report on single sex education requested by your Committee in Senate Report No. 105-300, accompanying the 1999 Omnibus Appropriations Act. If you or your staff have questions about the report, please do not hesitate to call me at 401-1700.

Sincerely,

Thomas P. Skelly
Thomas P. Skelly, Director
Budget Service

Enclosure

cc: Senator Harkin
Senator Hutchison
Representative Porter
Representative Obey

REPORT TO THE SENATE APPROPRIATIONS COMMITTEE ON REVIEW OF TITLE IX REGULATIONS AND POLICIES REGARDING SINGLE SEX PROGRAMS

In accordance with S. Rep No. 105-300 at 258-59 (1998), the report of the Senate Appropriations Committee on S. 2440, the 1999 Omnibus Appropriations Act, this report addresses the Department of Education's review of its regulations and policies under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.. The Senate Committee report urged the Department "... to review its regulations and policies to ensure that if funds are used for students to participate in any education reform projects that provide same gender schools or classrooms, comparable educational opportunities are offered to students of both sexes." The Senate Committee report directed the Department to report on this review within 90 days of enactment of the appropriations act.

Both the Title IX statute and current Title IX regulations do not apply to single-sex admissions practices of non-vocational elementary and secondary schools. However, consistent with the statute's general prohibition of sex-based discrimination, the regulations require a local educational agency that operates a school for one sex to provide the other sex -- "pursuant to the same policies and criteria of admission" -- with comparable courses, services, and facilities. 34 CFR 106.35. With respect to classes, the regulations generally prohibit coeducational schools from denying access to courses, or carrying out any program or activity separately, on the basis of sex. Limited exceptions are provided for, such as contact sports or courses on human sexuality. 34 CFR 106.34.

The Department of Education is examining whether there is a legal basis for interpreting Title IX to permit single sex classrooms as well as schools where they are justified on educational grounds and do not involve stereotyping or stigmatizing students based on gender and where comparable educational opportunities are afforded to students of both sexes. The issues presented are sensitive and complex, including consideration of the constitutional implications of any change, but we believe that we have made substantial progress in our review.

As part of our review, we have initiated consultations with other Federal agencies, including the Department of Justice. Those consultations are incomplete, but are being given very high priority. Assuming that our further review and consultations support a change in the Title IX regulations, we will formulate a proposal in light of those consultations. We will then need to consult with interested educational organizations, both to be sure that they are aware of where we are headed and to be sure that our proposal is sound, comprehensive in addressing practical educational situations, and understandable. We would be pleased to consult with the Senate Appropriations Committee at that time. If we proceed with a regulatory change, we will also issue a notice of proposed rulemaking to be published in the Federal Register. Our estimate is that any such notice of proposed rulemaking would be published this spring or summer.

We will further advise the Committee if these plans should change.

Single sex education 2/25/99 1pm

CA - Putting into place single sex academies
Plan not yet been challenged (!)

→ Marcia's view of

Admission:

sure - time

En. needs

who knows -
when put it.

Principles - legal

VA Institute Military Care

Title IX issue -

Constitution / regs as currently constructed.

U.S. v. VA

argue - sep ed

Constitution - State of VA - nation - sep & comparable programs

Many Border College. argument "sep & comparable" -

rejected as an appropriate - constitutional

lines - gender.

Hickman - "it is not" - Marcia - rejecting it

Comparability - 1. principle - rejected.

[Hickman - not open to "equal"]

VMI - open re: "when do you have sep"

skeptical scrutiny re: justification for separability.

framework - compensatory rationale framework - w/ some

i.e. affirmative action

CT didn't use traditional ~~compensatory~~ affirmative action

how flexible of elastic - rationale.

① broadness of def

w/ some showings of
discrepancy in specific
area

② Is it compensatory -
i.e. - math class formed
in class - plan to
target minorities - until

If Harlem - w/ targeting - race
is an plan - then ed apply plan
across the board.

Since the # of girls, i.e. - Harlem
School # - G. L. - small - to even
attend - broader plan to address
career - imp.

of not - calls into q -
purpose - re put to set up monitoring / intention to learn a lesson

Title IX

25 yrs - still unequal athletic opp:

Purpose
reduce stigma
incidental use
of stereotypes

Practical issue -

not talking about equal but rather unequal -

if giving green light - radical departure

real world - bringing cases - who would do it?

CA: Prop 205, AA, & setting up gender based public schools

Can you differentiate - resources -

concerned about signals & standards

effectively - voucher system - resources poured in

Admission - level playing field, moving as together

but "experiment" of cost vs purposes.

Who is going to be award to evaluate - to

sentiment - sep of equal - to be cognizant of

what they're doing being denied -

→ practically - of who has the burden of what has to be shown - is so imp.

action facing events

Report - sent to Senate

sep but comparable - there, not compensating

→ tone of report - okay to be flex. - if looking to

shake off leg. - okay

tone - what looking at if accomplish - in the scope of educational experimentation

rational - same

shedding of burden - how hard

Title IX - supposed to stronger protection than civil, int. weaker - even if the exception for admission

NCWGE

NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

October 8, 1998

Dear Appropriations Committee Members:

Attached is a letter signed by 28 organizations opposed to Senator Kay Bailey Hutchison's (R-TX) amendment to allow local education agencies to offer single-sex schools or classes which was expected to be offered to the FY99 Labor, Health and Human Services, and Education Appropriations bill (S 2440). This amendment lacks important safeguards to ensure that these public schools and classes comply with anti-discrimination laws and constitutional standards. In addition, we have serious procedural concerns regarding this provision.

At present, the Department of Education is working on modifications of the Title IX regulations regarding single-sex classes. The Department anticipates drafting revised regulations that would provide more flexibility for schools that seek to offer single-sex classes and programs while still being in compliance with anti-discrimination laws and constitutional standards. In addition, next year the 106th Congress will be reauthorizing the Elementary and Secondary Education Act (ESEA). Therefore, now is not the time to make changes to Title VI of ESEA and Title IX.

Again, we urge you to oppose the inclusion of Senator Hutchison's single-sex schools and classes amendment in the omnibus appropriations bill. If you have any questions please contact any one of the following:

Nancy Zirkin, American Association of University Women, 202/785-7720

Cindy Brown, American Association of University Women, 202/785-7730

Leslie Annexstein, National Women's Law Center, 202/588-5180

September 30, 1998

Dear Senator:

The undersigned organizations urge you to oppose Senator Kay Bailey Hutchison's (R-TX) amendment to the Labor, Health and Human Services, and Education Appropriations bill (S 2440) to allow local education agencies to offer single-sex schools or classes. We oppose this amendment because it allows single-sex schools and classes to be established without requiring that they be designed to inform and improve the coeducational public school system. Further, this amendment lacks safeguards to ensure that these public schools and classes conform to constitutional standards.

Over 90 percent of America's children attend co-educational public schools. Therefore, any education reform effort should be designed to improve student achievement in a coeducational setting. While single-sex education experiments do produce some positive results for some students in some cases, much of the research indicates that it is the properties of a good education, not a sex-segregated environment, that make the difference. These properties include: small classes, a rigorous curriculum, high standards, discipline, good teachers, and attention to eliminating gender bias.

The Hutchison amendment offers no assurances that participating local education agencies will offer equal educational experiences for both boys and girls, nor does it ensure compliance with constitutional law. Unless single-sex programs are carefully designed to remedy particular sex-based disadvantages, such programs can deny equal educational opportunities and reinforce harmful stereotypes. For example, in the mid-1980s, Philadelphia's sex-segregated magnet schools were found to shortchange girls in everything from course offerings and faculty credentials to recreation facilities and library resources.

The Hutchison amendment is unnecessary because Title IX already allows for same-sex programming under certain circumstances. Title IX's regulations allow for single-sex programming as long as such programs are carefully crafted to adhere to anti-discrimination requirements.

Again, the undersigned organizations strongly urge you to oppose the Hutchison amendment because resources and funds should be allocated to achieve educational reform for all students. If you have any questions, or need more information, please contact Nancy Zirkin, Director of Government Relations for the American Association of University Women (AAUW), at 202/785-7720, or Cindy Brown, Government Relations Manager at AAUW, 202/785-7730.

Sincerely,

American Association of University Women
American Civil Liberties Union
American Civil Liberties Union/Women's Rights Project
American Federation of School Administrators
Association of Teacher Educators

Business and Professional Women/USA
Center for Advancement of Public Policy
Coordinating Center for Women, United Church of Christ
Council of Chief State School Officers
Feminist Majority
Girls Scouts of the USA
Locq Haven University of Pennsylvania
Myra Sadker Advocates for Gender Equity
National Association of College Women Athletics Administrators
National Association of Women in Education
National Coalition for Sex Equity in Education
National Coalition for Women and Girls in Education
National Council of Administrative Women in Education
National Council of Jewish Women
National Education Association
National Organization for Women
National Partnership for Women and Families
National Women's Conference
National Women's History Project
National Women's Law Center
NOW Legal Defense and Education Fund
Wider Opportunities for Women
Women's Sports Foundation

S.D.C. 5.01 pm

Fay Bailey Hutchison

AMENDMENT NO. _____

Calendar No. _____

Purpose: To amend section 6301(b) of the Elementary and Secondary Education Act of 1965 regarding same gender schools.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

H.R. 2646

To amend
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AMENDMENT No 2021

tax-
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By Hutchison

Bill/Res. No. H.R. 2646

Referred

2
Page(s)

UFG: 1998 25-001 (hard)

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. HUTCHISON

Viz:

1 At the end, add the following:

2 TITLE —EQUAL

3 EDUCATIONAL OPPORTUNITY

4 SEC. ____01. EQUAL EDUCATIONAL OPPORTUNITY.

5 (a) SHORT TITLE.—This section may be cited as the
6 "Equal Educational Opportunity Act".

7 (b) AMENDMENTS TO ESEA.—Subsection (b) of sec-
8 tion 6301 of the Elementary and Secondary Education
9 Act of 1965 (20 U.S.C. 7351) is amended—

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

3 (2) in paragraph (8), by striking the period and
4 inserting "; and"; and

5 (3) by adding at the end the following:

6 "(9) education reform projects that provide
7 same gender schools and classrooms, as long as com-
8 parable educational opportunities are offered for stu-
9 dents of both sexes."

Proposed LHAS Amendment

7/27/98

Nothing in Public Law ⁹²⁻~~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.

Supposed to be limited to K-12

Art Coleman 205-5557

Jean Vada 701-6000

DRAFT

September 22, 1998

MEETING ON HUTCHISON AMENDMENT

Possible Positions

- Advocate specific proposal
 - Hutchison Amendment.
 - Other proposal.
 - Speak in favor of the concept, but not a proposal (favor flexibility; intended revision of Dept's regulations).
- Oppose
 - The concept.
 - The specific Hutchison Language (Title VI; specific language).
- Stay silent
 - Hutchison proposal (application to Title VI; comparable educational opportunities; relationship to proposed revision of regulations).

Alternative Legislative Proposals

- Short general proposal.
- Amendment that spells out the test for offering single sex classes.
- NWLC proposal.

SINGLE SEX CLASSROOMS

SEC. _____. In accordance with regulations of the Secretary of Education relating to equal educational opportunities[, including access to courses, services, and activities,] for students of both sexes, nothing in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) shall be construed to prohibit an elementary or secondary school, other than a school of vocational education, from providing one or more single-sex classrooms attended by students whose parents have chosen such a classroom.

Specifications for Alternative Language:

Possible language to amend Title IX:

A single sex program may be offered by any public elementary or secondary school, except for vocational classes, if:

[a] It is not based on and does not further stereotyping based on sex and does not stigmatize students of either gender; and

[b] It is:

1. part of diverse educational programs, and school/district provides opportunity for comparable single-sex programs for the other gender; or
2. there are educational needs/problems particular to students of one gender in the school/district, the single-sex program is designed to address those needs/problems, and the single-sex program does not adversely affect the educational opportunities of students of the excluded gender.
 - Under [b][1], the school's offering of equal options to promote diversity would provide the basis for establishing "an exceedingly persuasive justification."
 - Under [b][2], the school must be able to show that it has "an exceedingly persuasive justification" for setting up single-sex programs and that the separation by sex was "substantially related" to achieving the educational objectives. E.g., school would have to demonstrate that one sex was performing poorly when compared to the other sex or otherwise had particular needs not experienced by the other sex ; that the school tried or considered other educational options to address the unequal learning; and that establishing a single-sex classroom does not have an adverse effect on students of the other sex .

Students have the option of a co-ed program.

Parents must provide authorization for their children to be placed in a single-sex program.

Any school offering single-sex programs must evaluate the effectiveness of the program.

Hutchison amendment

Sen. Hutchison's amendment would amend Section 6301(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7351) by adding to the list of eight authorized uses of local funds for "innovative assistance" the following use:

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

(A/n/LC) Proposed modification of Hutchison amendment [italics indicate new language]

remedial
"(9) education reform projects that provide same gender schools and classrooms, as long as comparable educational opportunities are offered for students of both sexes *and the exclusion of one sex is justified to overcome barriers in accordance with constitutional equal protection principles articulated by the Supreme Court and Title IX of the Education Amendments of 1972, and as long as parents retain comparable co-educational opportunities for their children. Comparable educational opportunities are educational opportunities that are of equal educational quality and caliber in all respects, including but not limited to the range, quality and availability of curricular and extracurricular programs; the quality and availability of facilities, services, resources, and other benefits; faculty and staff quality and distribution; treatment and privileges of participants; and funding. All enforcement mechanisms under Title IX shall be available to ensure that these requirements are satisfied.*"

September 28, 1998

MEMORANDUM TO HILLARY RODHAM CLINTON

FROM: Jennifer Klein

SUBJECT: Single Sex Education

Senator Kay Bailey Hutchison continues to push an amendment allowing school districts to use funds from Title VI of the Elementary and Secondary Education Act for single-sex schools and classrooms, as long as the districts provide comparable educational opportunities to students of both sexes. As you know, Title IX allows single-sex schools as long as comparable opportunities exist for the other sex, and the Department of Education is currently working on new regulations to clarify that Title IX also permits single-sex classrooms. Senator Hutchison has threatened to offer this as an amendment to the early literacy bill (essentially the America Reads bill) -- a move that almost certainly would prevent passage of the bill -- unless we work with her to develop a version of the amendment that we could accept as part of an appropriations bill. The Department believes that the amendment is: (1) unnecessary because it simply restates current law; and (2) confusing because it may lead districts to believe that some other standard governs non-Title VI funds. Given the nature of their objections and your and the President's support of single-sex education, I believe that the Administration could reach agreement with Hutchison on an acceptable amendment.

However, most women's groups and a number of Senate Democrats (including Senators Kennedy and Harkin) appear to have much more fundamental objections to the Hutchison amendment. They argue that separate facilities are inherently unequal, and that single-sex schools and classrooms should be available only in order to overcome barriers faced by one sex (the so-called "remedial justification"). They are working on language that would make single-sex schools much more difficult to establish.

Our strategy is to use the ticking legislative clock to our advantage. Given the number of days left, we hope that Hutchison will realize that she gains nothing by bringing down the literacy bill and instead will turn to appropriations to offer her amendment. Because Hutchison has sufficient votes to pass the amendment in appropriations, we can remain silent at that point to (somewhat) avoid upsetting the women's groups.

draft

Single Sex Education



The American Association of University Women (AAUW) is committed to attaining an equitable learning environment for all students in our nation's coeducational public schools. In 1992, the AAUW Educational Foundation released *How Schools Shortchange Girls: The AAUW Report*, presenting compelling evidence that girls do not receive the same quality, or even quantity, of education as their male peers. In 1993, *Hostile Hallways* raised awareness about the extent and severity of student-to-student sexual harassment in schools. Although these reports suggested a range of strategies for addressing the issues raised, neither called for single-sex education as a remedy. The issue of single-sex education is still very much in question and what, if anything, can be learned from it to strengthen public co-ed education.

AAUW does not advocate the creation of single-sex education, but would not oppose pilot single-sex schools that:

- comply with relevant civil rights law, such as Title IX and any applicable state laws;
- are initiated in response to demonstrated need;
- expand the research base;
- are designed to inform and improve the coeducational school system where the majority of students continue to learn.

AAUW Research

Separated by Sex: A Critical Look at Single-Sex Education for Girls was released by the AAUW Educational Foundation in 1998, and included a comprehensive review of research to date on the subject. Although the report found that, in general, there is "no evidence that single-sex education is "better" than coeducation," the existing research is still inconclusive. Several of the studies within the report have found that, although single-sex schools seem to have positive effects on girls' achievement (compared with co-ed schools), once the findings were adjusted for student socioeconomic status, pre-enrollment ability, selectivity of the school, or other variables, the differences diminished or disappeared.

The report's authors stress that the long-term impact of single-sex education on girls or boys is unknown, and that more research is needed. Meanwhile, however, the research presented suggests that some successful practices and qualities common to single-sex education may be translatable to coeducational environments.

Title IX and the Constitution

Both decisions by the Supreme Court and Title IX of the Education Amendments of 1972 recognize that single-sex educational opportunities may be justified in very

limited circumstances. The Supreme Court's decision in United States v. Virginia held that the exclusion of women from admission to the Virginia Military Institute (VMI) was a violation of the Equal Protection Clause of the 14th Amendment to the U.S. Constitution. The Court made it clear that single-sex programs must have "an exceedingly persuasive justification" in order to meet the Constitution's requirements. In fact, the Court determined that in the VMI case, the sex-based distinctions often worked an injustice on the deserving individuals and perpetuated harmful stereotypes.

However, the VMI decision did not prohibit all single-sex education. First, because VMI is a government-run institution, constitutional principles of equal protection apply to it that do not apply to private institutions. In addition, the Court left room even for public single-sex education that serves to remedy discrimination. While ruling out programs that serve to "perpetuate the legal, social, and economic inferiority of women," it also explicitly ruled that sex classifications are permissible if used "to compensate women for particular economic disabilities they have suffered ... to promote equal employment opportunity ... to advance full development of the talent and capacities of our Nation's people."

The regulations under Title IX of the Education Amendments of 1972, the federal law prohibiting sex discrimination in educational institutions receiving federal funds, do contain certain exceptions that permit specified separate gender programs including: physical education classes involving contact sports and human sexuality for elementary and secondary schools. In addition, Title IX regulations permit remedial and affirmative action. They provide as follows:

- Remedial action. If the Assistant Secretary finds that a recipient has discriminated against a person on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.
- Affirmative action. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex.

Single-Sex Education, Not the Solution

AAUW believes that there is a need to build a strong, fair public education system and improve student achievement. Public policy makers must look for solutions that benefit coeducational public schools, which over 90 percent of elementary and secondary students attend.

Qualities of a Good Education. Qualities of a good education, not the sex-segregated environment, make the difference in student achievement. While single-sex education experiments do produce some positive results for some students in some cases, much of the research indicates that it is the properties of a good education, not a sex-segregated environment, that make the difference. These properties include: small classes, a rigorous curriculum, high standards, discipline, good teachers, and attention to eliminating gender bias.

Equitable Learning Environment. Schools striving to achieve an equitable learning environment must adopt reforms that will help all students learn better in school, including: staff development for all teachers in gender-fair teaching methods; recruitment and visibility of female and minority administrators to provide role models; adoption and dissemination of school non-discrimination policies; sexual harassment policies and prevention programs; and equitable athletic opportunities.

Expand the Research Base. Educational research must be conducted with the goal of improving public education for all students. If there are to be pilot single-sex education experiments, they must be set up with clear research questions in mind and an established process for collecting data to permit evaluation. They should continue for a long enough period of time to ensure their effectiveness can be adequately measured. The same course content and assessments should be used in single-sex and co-ed classes to enable comparisons. Schools should also consider instituting similar "girl-friendly" pedagogy in one co-ed class to try to test whether it is segregation or teaching styles that makes the difference.

Contact: Nancy Zirkin, Director of Government Relations, 202/785-7720

AAUW Program and Policy Department
January 1999



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

EQUAL JUST
UNDER LA

FAX: 202-205-2689

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§ 106.33

take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

- (i) Proportionate in quantity and
- (ii) Comparable in quality and cost to the student.

A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Authority: Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

§ 106.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Authority: Secs. 901, 903, Education Amendments of 1972, 86 Stat. 373, 374)

§ 106.34 Access to course offerings.

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.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit 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.

34 CFR Ch. I (7-1-97 Edition)

(c) This section does not prohibit 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.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.35 Access to schools operated by LEAs.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless 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.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or

Office for Civil Rights, Education

§ 106.4

school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(o) *Administratively separate unit* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) *Student* means a person who has gained admission.

(r) *Transition plan* means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980; 45 FR 37428, June 8, 1980]

§ 106.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c)(1) of this section and of any remedial steps taken pursuant to paragraph (c)(1) of this section.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.4 Assurance required.

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or

THE WHITE HOUSE
WASHINGTON

September 19, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

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Reed
Kagan
Sperling
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1. Education -- Charter Schools: Senator Harkin continued this week to prevent charter school legislation from coming to the Senate floor. As you recall, Harkin is insisting that the legislation set aside funds for innovative non-charter schools in states (such as Iowa) that have not passed charter school legislation. Harkin is motivated in part by a desire to get money for Iowa and in part by opposition toward the charter school movement. Senator Coats will not compromise with Harkin, arguing that the set-aside would minimize the difference between charter and non-charter schools and decrease incentives for states to pass charter legislation. Coats also may be responding to leadership pressure to use all available excuses to deny you a legislative accomplishment. Secretary Riley is scheduled to talk with Senator Harkin this weekend to urge him to drop his objection; in particular, Riley will explore with Harkin whether there is some other effective way to support innovative public schools in Iowa. If Riley does not succeed in convincing Harkin to back off, we probably will ask you to make a phone call to Harkin.

2. Education -- Single Sex Schools: Senator Kay Bailey Hutchison is threatening to offer her single-sex schools amendment to the early literacy bill -- a move that almost certainly would prevent passage of the bill -- unless we work with her to develop a version of the amendment that we could accept as part of the Labor-HHS-Education appropriations bill (or an omnibus appropriations package). As you recall, Hutchison's amendment expressly allows school districts to use funds from Title VI of the Elementary and Secondary Education Act for single-sex schools, so long as the districts provide comparable educational opportunities to students of both sexes. The Department of Education believes that this amendment is unnecessary (because it simply restates the governing legal standard) and confusing (because it may lead school districts to believe that some other standard governs non-Title VI funds). Given the nature of these reservations, we probably could work out mutually agreeable language with Hutchison. But most women's groups and a number of Senate Democrats (including Senators Kennedy and Harkin) appear to have much more fundamental objections to the Hutchison amendment; they would like substitute language that makes single-sex schools a good deal harder to establish. Because of their strong feelings on this issue, we have not yet agreed to negotiate with Hutchison; we are going to have further discussions this week with the groups and Senate staff.

3. Education -- Block Grants/Class Size: The House passed education block grant legislation on Friday by a vote of 212-198. Congressman Clay offered your class size proposal as an amendment during the debate. Republicans defeated the amendment by a vote of 216-190, thus putting themselves on record as opposing measures to reduce class size in the lower grades. We do not expect the Senate to take up the block grant legislation.

4. Children and Families --Head Start Reauthorization: The House passed a generally good Head Start Reauthorization bill on Monday, after Congressman Goodling agreed to strip several highly controversial provisions -- involving, for example, vouchers and the Davis-Bacon Act -- that the Republicans had added in committee. The Senate already has passed a strong reauthorization bill, and we hope for a speedy conference and a bill signing next month. Both the House and the Senate bills reauthorize the program at sums near your request and add important new goals for the program, such as "school readiness." The most important issue left for conference concerns how to allocate new funds between quality improvement and program expansion. We have advocated a careful balance between improving quality and serving more children, very much along the lines of the Senate bill; the House bill puts more of the new money into quality improvements, such as salary enhancements. We will work in conference for the Senate version, but expect to see some middle-ground position emerge from conference.

5. Crime -- COPS Grants: The COPS Office released last week over \$20 million in grants to 27 jurisdictions to hire 331 officers. The office is now ready to release another \$300 million in grants, including: (1) \$200 million in COPS MORE grants to allow 600 law enforcement agencies across the country to redeploy 10,000 officers; (2) \$100 million for Los Angeles to hire over 700 new police officers (with a long-awaited waiver of the normal matching requirement); and (3) \$6 million to four other law enforcement agencies in California to hire an additional 82 officers.

6. Crime -- Juvenile Crime Legislation: The House attached two major juvenile crime bills that it had passed during the past year -- H.R. 3, a penalties bill which we have opposed, and H.R. 1818, a prevention bill which we have supported -- to a noncontroversial bill coming from the Senate to reauthorize funds for the Center for Missing and Exploited Children. The amended bill passed on the suspension calendar by a vote of 280-126, thereby setting up a conference on the juvenile crime measures. Senate Democrats will oppose the appointment of conferees, but they may eventually have to back down and accept a conference on juvenile crime. We will continue meeting with them this week to discuss how best to proceed on this issue.

7. Health Care -- Medicare Home Health Update: Ways and Means Subcommittee Chairman Bill Thomas unveiled a proposal last week to modify the home health care reimbursement provisions passed in the Balanced Budget Act. As you recall, home health providers (including Val Halamandaris) have complained that these provisions set rates too low and prevent providers from offering quality service to Medicare beneficiaries. The

Thomas proposal would raise payment rates overall, while also lessening geographical disparities in reimbursement. Although not fully satisfying the industry, the proposal goes a long way toward meeting their objections. (Val, for example, sent generally positive signals about it.) The primary problem with Thomas's approach is that it would cost \$1.4 billion over 5 years -- and that it takes this amount out of the budget surplus. We believe that House Democrats will hold firm in opposing the proposal's surplus financing, but that they will feel real pressure to propose an alternative financing mechanism. The difficulty, of course, is that the Medicare offsets that could pay for Thomas's home health proposal are themselves politically nonviable. We will meet with the Democrats next week to discuss how to proceed on this sensitive issue.

8. Welfare Reform -- New Federal Child Support Case Registry: HHS is almost ready to put in place a new national database of child support cases, called the Federal Case Registry. This registry -- another of the critical building blocks of the interstate child support system proposed in your 1994 welfare reform bill and enacted in 1996 -- will make it easier to locate deadbeat parents, especially if they have moved to a different state. HHS will check the Registry daily against an already operative database of employees (the National Directory of New Hires, which was created in October 1997 and is updated daily with "new hire" information submitted by employers). When this computer check produces a match, HHS will report information about the delinquent parent to the state in which child support is owed; the state then will arrange to garnish the wages of the parent. States will begin to submit their child support case data to HHS on October 1; HHS expects to have 30 states in its system by the end of October and 40 states by the end of the year. The National Directory of New Hires already has made it easier to find delinquent parents (the Directory helped locate one million parents in just its first nine months of operation); the addition of the Federal Case Registry will increase still further the ability of states to find and proceed against deadbeat parents.

9. Welfare Reform -- Research Grants: HHS awarded \$3 million in grants to 10 states and 3 counties last week to study what happens to families coming off the welfare rolls. The research studies will track employment and earnings; returns to welfare; participation in Food Stamps, Medicaid, child support, and child welfare programs; and family and child well-being. Florida's study is specifically designed to explore the impact of welfare reform on different ethnic groups, and Arizona's study is directed in part toward the State's large Native American population. Massachusetts will examine, among other matters, the first group of families to hit the State's 24-month time limit. Several of the states also will track what happens to families who have been diverted from the welfare rolls.

10. Immigration -- H-2A Agricultural Guestworkers: We met several times last week with Democratic Members of Congress interested in the H-2A visa program for agricultural workers to inform them that we would continue to oppose the H-2A provision on the Senate's Commerce-Justice-State (CJS) appropriations bill, but that we would engage in a broad-based process to consider future legislative reform of the program. Senators Wyden and Graham co-sponsored the provision on the CJS bill, but Hispanic groups, labor unions,

and their many Democratic friends in Congress (including Senator Kennedy and Congressmen Berman and Becerra) just as strongly oppose it. We believe that there is good reason for this opposition, because the Wyden/Graham amendment would weaken labor protections for migrant farmworkers. At the same time, we believe that the growers have legitimate concerns about the program, and that we should take a hard look at the way it operates. After several meetings, Wyden and Graham decided that they would continue to push their amendment on the CJS bill, but that they also would join a working group (which will include as well Kennedy, Berman, and Becerra) to consider different ways to reform the H-2A program. We will begin meetings of this working group this week, in the hopes of developing a consensus proposal and introducing it at the beginning of the next session of Congress. In the meantime, we believe that we are in a strong position to defeat the Wyden-Graham amendment, especially because anti-immigrant Republicans also oppose it.

11. Community Empowerment -- Regulation B: We have heard that the Federal Reserve may be coming close to approving a change in Regulation B, which implements the Equal Credit Opportunity Act, to allow (but not require) banks to collect data on the race and income of loan applicants. The Administration sent a letter to the Fed last Spring, arguing that this change in the regulation would allow banks to assess their outreach and approval practices for a variety of loans, including loans to small businesses. The Fed considered and rejected a similar proposal in December 1996, but may change its mind between now and the end of the year because of the Administration letter, supportive letters from several large banks, and recent changes in the composition of the Board of Governors.