



Jim Kelly

Bill Analysis

Legislative Service Commission

H.B. 273

123rd General Assembly
(As Introduced)

Reps. Britton, Allen, Boyd, Buchy, Cates, Ford, Hood, Krebs, Netzley, Patton, Padgett, Pringle, Smith, Taylor, Tiberi, Vesper, Willamowski, Williams

BILL SUMMARY

- Authorizes school districts with formula ADMs of at least 25,000 students to establish one single-gender school for boys and one single-gender school for girls for grades seven through 12.
- Declares legislative findings concerning single-gender schools.

CONTENT AND OPERATION

Current law

Existing statutes are silent on the specific question of whether school districts may establish single-gender schools. But district boards of education, by statute, "have the management and control of all the public schools" that they operate.¹ Thus, implicitly, districts might have authority to create special schools unless such schools are explicitly prohibited.

The bill

Authority to establish single-gender schools

(sec. 3313.536)

The bill specifically authorizes districts that have formula ADMs of 25,000 or more students each to establish one single-gender school for boys and one

¹ *Sec. 3313.47, not in the bill.*

single-gender school for girls, but for grades seven through 12 only.² If a board establishes a school for one gender, it must establish a school for the other. The two schools must be comparable in instruction and facilities to each other and to other schools in the district that provide instruction to the same grade levels. Students enrolled at the schools must be subject to the same promotion and graduation requirements of all other students in the district.

If a district establishes single-gender schools, enrollment must be voluntary. Districts must use the admission procedures they have established for enrollment in alternative schools. Districts are not required to admit students from outside the district to their single-gender schools, even if they have open enrollment policies for their other schools.

Purpose and legislative findings

(sec. 3313.536(C); Section 2)

The bill specifies that the purpose of the authorized single-gender schools is "to take advantage of the academic benefits some students realize from single-gender instruction and facilities and to offer the districts' students and parents the option of single-gender education. The bill declares legislative findings recognizing these reported academic benefits and making other statements of the General Assembly's intent in authorizing these schools.

COMMENT

Gender classifications are subject to heightened scrutiny under both the U.S. Constitution and the Ohio Constitution. The Fourteenth Amendment of the U. S. Constitution provides that no state may "deny to any person . . . the equal protection of the laws." Article I, Section 2 of the Ohio Constitution states that "[a]ll political power is inherent in the people [and thus] [g]overnment is instituted for their equal protection and benefit" The Ohio Supreme Court has held that the state's equal protection clause is the "functional equivalent" of the federal equal

² "Formula ADM" is a figure that approximates a district's total enrollment for purposes of state funding. For FY 1999, only five districts have formula ADMs of 25,000 or more: Akron, Cincinnati, Cleveland, Columbus, and Toledo.

protection clause.³ Therefore, gender classifications under either constitution are subject to the same analysis.⁴

The U.S. Supreme Court considers gender to be a "quasi-suspect" classification subject to an "intermediate level review." Specifically, the Court requires that the state show an "exceedingly persuasive justification" for a gender classification. Under such a level of review, the burden of proof is met only by showing that the classification serves "important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives."⁵ Recently, the U.S. Supreme Court held that the Commonwealth of Virginia constitutionally could not deny women admission to the prestigious Virginia Military Institute unless it made available to them a truly comparable alternative institution.⁶ This analysis likely would be applied to gender classifications in elementary and secondary schools, too. Thus, if single-gender schools were challenged on equal protection grounds, the state probably would have to show an "exceedingly persuasive justification" for such schools.

In addition to constitutional analysis, gender classifications in education are subject to some scrutiny under federal statutory law. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded educational program.⁷ Apparently, however, the U.S. Department of Education interprets the statute and its own regulation to mean that school districts must provide "comparable facilities, courses, and services to both boys and girls," but not to mean that districts may not create "single-gender schools."⁸ Also, the Equal Educational Opportunities Act ("EEOA") prohibits assignment to a school other than a neighborhood school if such assignment results in greater segregation of students within a district on the basis of race, color, sex, or national origin.⁹

³ *State ex rel. Dayton Fraternal Order of Police Lodge No. 44 v. State Emp. Relations Bd.*, 22 Ohio St.3d 1, 6 (1986).

⁴ *Fahey v. McDonald Police Dept.*, 70 Ohio St.3d 351, 353 (1994).

⁵ *Mississippi University for Women v. Hogan*, 454 U.S. 718, 723-726 (1982).

⁶ *U.S. v. Virginia*, 116 S. Ct. 2264, 2277-79, 2282-86 (1996).

⁷ 20 United States Code § 1681; see also 34 Code of Federal Regulations § 106.34.

⁸ *U.S. General Accounting Office, Report to U.S. Representative John R. Kasich, May 28, 1996, p. 7.*

⁹ 20 U.S.C. § 1701.

Reportedly, though, the EEOA has limited applicability in gender classifications where choice of school is voluntary and has generally not been raised in challenges to single-gender education.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-24-99	p. 368

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