

108TH CONGRESS
2D SESSION

S. 2404

Entitled the “Fairness in School Discipline Act of 2004”.

IN THE SENATE OF THE UNITED STATES

MAY 11, 2004

Mr. MILLER introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

Entitled the “Fairness in School Discipline Act of 2004”.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in School Dis-
5 cipline Act of 2004”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to restore moral authority to the public
9 schools and support their efforts to create and main-
10 tain an orderly school environment conducive to
11 learning;

1 (2) to correct widespread misperceptions re-
2 garding Federal due process requirements in the
3 public school context; and

4 (3) to enforce the minimum Federal due proc-
5 ess obligations of the public schools, pursuant to sec-
6 tion 5 of the 14th amendment to the United States
7 Constitution, and in accordance with the interpreta-
8 tion of the due process clause by the United States
9 Supreme Court in *Goss v. Lopez* (419 U.S. 565
10 (1975)).

11 **SEC. 3. DUE PROCESS REQUIRED BY FEDERAL LAW.**

12 (a) **SUSPENSIONS OF 10 DAYS OR LESS.**—In connec-
13 tion with suspension of public school students for 10 days
14 or less, due process requires that the principal or her des-
15 ignee explain to the student what he is accused of doing
16 and the basis for the accusation and give the student an
17 opportunity to tell his side of the story in an informal,
18 non-adversarial meeting. No right of appeal from the deci-
19 sion of the principal is necessary to satisfy this statute.
20 The meeting should typically take place before the student
21 is removed from school; *provided, however*, that where the
22 principal or her designee determines that the student pre-
23 sents a continuing danger to person or property or may
24 be disruptive to the academic process, the student may

1 be removed immediately. The procedures described in this
2 subsection shall follow soon after the removal.

3 (b) SUSPENSIONS OF MORE THAN 10 DAYS.—In
4 connection with suspension of public school students for
5 more than 10 days, the following due process protections
6 are required in addition to those described in subsection
7 (a):

8 (1) The student and his parent or guardian
9 should be notified of the suspension and be given an
10 opportunity to attend an informal, non-adversarial
11 follow-up meeting with the principal at the school or
12 other location designated by the principal.

13 (2) Where the meeting described in subsection
14 (a) does not occur before the student is removed
15 from school, the due process required by subsections
16 (a) and (b)(1) may be afforded the student at one
17 meeting described in subsection (b)(1).

18 (3) The student shall be permitted a single ap-
19 peal of the principal's decision to a body designated
20 by the school board or a school-based committee of
21 teachers, parents and administrators. No right of
22 appeal from the decision of the designated body is
23 necessary to satisfy this statute.

24 (c) WAIVER.—The student shall be deemed to waive
25 his procedural rights by remaining silent, or, where the

1 hearing is held after the suspension, shall be deemed to
2 waive his procedural rights by failing to appear.

3 (d) OTHER CLAIMS.—Nothing in this Act shall pre-
4 vent any person from bringing a claim based on any other
5 legally cognizable right in a court of competent jurisdic-
6 tion.

7 (e) FEDERAL MINIMUM.—Nothing in this statute
8 should be construed to prohibit any State or local govern-
9 ment or local education authority from providing addi-
10 tional procedural protections not required by Federal law.

11 (f) SEVERABILITY.—If any provision of this Act or
12 its application to any person or circumstance is held in-
13 valid, the invalidity does not affect other provisions or ap-
14 plications of this Act that can be given effect without the
15 invalid provision or application, and to this end the provi-
16 sions of this Act are declared to be severable.

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