

108TH CONGRESS  
2D SESSION

# S. 2405

Entitled the “Restoring Authority to Schools Act of 2004”.

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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

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## A BILL

Entitled the “Restoring Authority to Schools 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 “Restoring Authority  
5 to Schools Act of 2004”.

6 **SEC. 2. PURPOSES.**

7       The purposes of this Act are—

8           (1) to restore authority to the public schools to  
9       conduct education as a human enterprise;

10          (2) to limit Federal court oversight of public  
11       schools to that which is reasonable and necessary to  
12       implement Federal law; and

1           (3) to allow State and local education officials  
2           to bring new insights and solutions to problems of  
3           allocating revenues and resources for the common  
4           good in keeping with their designated legislative and  
5           executive powers.

6 **SEC. 3. APPROPRIATE REMEDIES WITH RESPECT TO VIOLA-**  
7                           **TIONS OF FEDERAL LAW IN THE PUBLIC**  
8                           **SCHOOLS.**

9           (a) REQUIREMENTS FOR RELIEF.—

10           (1) PROSPECTIVE RELIEF.—

11                   (A) Prospective relief in any civil action  
12                   with respect to violations of Federal law in the  
13                   public schools shall extend no further than nec-  
14                   essary to correct the violation of the Federal  
15                   right of a particular plaintiff or plaintiffs. The  
16                   court shall not grant or approve any prospective  
17                   relief unless the court finds that such relief is  
18                   narrowly drawn, extends no further than nec-  
19                   essary to correct the violation of the Federal  
20                   right, and is the least intrusive means necessary  
21                   to correct the violation of the Federal right.  
22                   The court shall give substantial weight to any  
23                   adverse impact on other students or the school  
24                   community as a whole caused by the relief.

1           (B) The court shall not order any prospec-  
2           tive relief that requires or permits a govern-  
3           ment official to exceed his or her authority  
4           under State or local law or otherwise violates  
5           State or local law, unless—

6                   (i) Federal law requires such relief to  
7                   be ordered in violation of State or local  
8                   law;

9                   (ii) the relief is necessary to correct  
10                  the violation of a Federal right; and

11                  (iii) no other relief will correct the vio-  
12                  lation of the Federal right.

13           (2) PRELIMINARY INJUNCTIVE RELIEF.—In any  
14           civil action with respect to violations of Federal law  
15           in the public schools, to the extent otherwise author-  
16           ized by law, the court may enter a temporary re-  
17           straining order or an order for preliminary injunc-  
18           tive relief. Preliminary injunctive relief must be nar-  
19           rowly drawn, extend no further than necessary to  
20           correct the harm the court finds requires prelimi-  
21           nary relief, and be the least intrusive means nec-  
22           essary to correct that harm. The court shall give  
23           substantial weight to any adverse impact on other  
24           students or the school community as a whole caused  
25           by the preliminary relief and shall respect the prin-

1 principles of comity set out in paragraph (1)(B) in tai-  
2 loring any preliminary relief. Preliminary injunctive  
3 relief shall automatically expire on the date that is  
4 90 days after its entry, unless the court makes the  
5 findings required under subsection (a)(1) for the  
6 entry of prospective relief and makes the order final  
7 before the expiration of the 90-day period.

8 (b) TERMINATION OF RELIEF.—

9 (1) TERMINATION OF PROSPECTIVE RELIEF.—

10 (A) In any civil action with respect to vio-  
11 lations of Federal law in the public schools in  
12 which prospective relief is ordered, such relief  
13 shall be terminable upon the motion of any  
14 party or intervener—

15 (i) 2 years after the date the court  
16 granted or approved the prospective relief;

17 (ii) 1 year after the date the court has  
18 entered an order denying termination of  
19 prospective relief under this paragraph; or

20 (iii) in the case of an order issued on  
21 or before the date of enactment of the Re-  
22 storing Authority to Schools Act (enacted  
23 \_\_\_\_\_, 2004), 2 years after such  
24 date of enactment.

1           (B) Nothing in this section shall prevent  
2           the parties from agreeing to terminate or mod-  
3           ify relief before the relief is terminated under  
4           subparagraph (A).

5           (2) IMMEDIATE TERMINATION OF PROSPECTIVE  
6           RELIEF.—In any civil action with respect to viola-  
7           tions of Federal law in the public schools, a defend-  
8           ant or intervener shall be entitled to the immediate  
9           termination of any prospective relief if the relief was  
10          approved or granted in the absence of a finding by  
11          the court that the relief is narrowly drawn, extends  
12          no further than necessary to correct the violation of  
13          the Federal right, and is the least intrusive means  
14          necessary to correct the violation of the Federal  
15          right.

16          (3) LIMITATION.—Prospective relief shall not  
17          terminate if the court makes written findings based  
18          on the record that prospective relief remains nec-  
19          essary to correct a current and ongoing violation of  
20          the Federal right, extends no further than necessary  
21          to correct the violation of the Federal right, and  
22          that the prospective relief is narrowly drawn and the  
23          least intrusive means to correct the violation.

24          (4) TERMINATION OR MODIFICATION OF RE-  
25          LIEF.—Nothing in this section shall prevent any

1 party or intervener from seeking modification or ter-  
2 mination before the relief is terminable under para-  
3 graph (1) or (2), to the extent that modification or  
4 termination would otherwise be legally permissible.

5 (c) SETTLEMENTS.—

6 (1) CONSENT DECREES.—In any civil action  
7 with respect to violations of Federal law in the pub-  
8 lic schools, the court shall not enter or approve a  
9 consent decree unless it complies with the limitations  
10 on relief set forth in subsection (a).

11 (2) PRIVATE SETTLEMENT AGREEMENTS.—

12 (A) Nothing in this section shall preclude  
13 parties from entering into a private settlement  
14 agreement that does not comply with the limita-  
15 tions on relief set forth in subsection (a), if the  
16 terms of that agreement are not subject to  
17 court enforcement other than the reinstatement  
18 of the civil proceeding that the agreement set-  
19 tled.

20 (B) Nothing in this section shall preclude  
21 any party claiming that a private settlement  
22 agreement has been breached from seeking in  
23 State court any remedy available under State  
24 law.

1 (d) STATE LAW REMEDIES.—The limitations on rem-  
 2 edies in this section shall not apply to relief entered by  
 3 a State court based solely upon claims arising under State  
 4 law.

5 (e) PROCEDURE FOR MOTIONS AFFECTING PRO-  
 6 SPECTIVE RELIEF.—

7 (1) GENERALLY.—The court shall promptly  
 8 rule on any motion to modify or terminate prospec-  
 9 tive relief in a civil action with respect to violations  
 10 of Federal law in the public schools. Mandamus shall  
 11 lie to remedy any failure to issue a prompt ruling on  
 12 such a motion.

13 (2) AUTOMATIC STAY.—Any motion to modify  
 14 or terminate prospective relief made under sub-  
 15 section (b) shall operate as a stay during the pe-  
 16 riod—

17 (A)(i) beginning on the 30th day after  
 18 such motion is filed, in the case of a motion  
 19 made under paragraph (1) or (2) of subsection  
 20 (b); or

21 (ii) beginning on the 180th day after such  
 22 motion is filed, in the case of a motion made  
 23 under any other law; and

24 (B) ending on the date the court enters a  
 25 final order ruling on the motion.

1           (3) POSTPONEMENT OF AUTOMATIC STAY.—

2           The court may postpone the effective date of an  
3           automatic stay specified in subsection (e)(2)(A) for  
4           not more than 60 days for good cause. No postpone-  
5           ment shall be permissible because of general conges-  
6           tion of the court’s calendar.

7           (4) ORDER BLOCKING THE AUTOMATIC STAY.—

8           Any order staying, suspending, delaying, or barring  
9           the operation of the automatic stay described in  
10          paragraph (2) (other than an order to postpone the  
11          effective date of the automatic stay under paragraph  
12          (3)) shall be treated as an order refusing to dissolve  
13          or modify an injunction and shall be appealable pur-  
14          suant to section 1292(a)(1) of title 28, United  
15          States Code, regardless of how the order is styled or  
16          whether the order is termed a preliminary or a final  
17          ruling.

18          (f) SPECIAL MASTERS.—

19                 (1) IN GENERAL.—

20                 (A) In any civil action in a Federal court  
21                 with respect to violations of Federal law in the  
22                 public schools, the court may appoint a special  
23                 master who shall be disinterested and objective  
24                 and who will give due regard to balancing the  
25                 needs of the school community as a whole

1           against the requested relief, to conduct hearings  
2           on the record and prepare proposed findings of  
3           fact.

4           (B) The court shall appoint a special mas-  
5           ter under this subsection during the remedial  
6           phase of the action only upon a finding that the  
7           remedial phase will be sufficiently complex to  
8           warrant the appointment.

9           (2) APPOINTMENT.—

10           (A) If the court determines that the ap-  
11           pointment of a special master is necessary, the  
12           court shall request that the defendant State of-  
13           ficials and the plaintiff each submit a list of not  
14           more than 5 persons to serve as a special mas-  
15           ter.

16           (B) Each party shall have the opportunity  
17           to remove up to 3 persons from the opposing  
18           party's list.

19           (C) The court shall select the master from  
20           the persons remaining on the list after the oper-  
21           ation of subparagraph (B).

22           (3) INTERLOCUTORY APPEAL.—Any party shall  
23           have the right to an interlocutory appeal of the  
24           judge's selection of the special master under this  
25           subsection, on the ground of partiality.

1           (4) COMPENSATION.—The compensation to be  
2           allowed to a special master under this section shall  
3           be based on an hourly rate not greater than the  
4           hourly rate established under section 3006A for pay-  
5           ment of court-appointed counsel, plus costs reason-  
6           ably incurred by the special master. Such compensa-  
7           tion and costs shall be paid with funds appropriated  
8           to the Judiciary.

9           (5) REGULAR REVIEW OF APPOINTMENT.—In  
10          any civil action with respect to violations of Federal  
11          law in the public schools in which a special master  
12          is appointed under this subsection, the court shall  
13          review the appointment of the special master every  
14          6 months to determine whether the services of the  
15          special master continue to be required under para-  
16          graph (1). In no event shall the appointment of a  
17          special master extend beyond the termination of the  
18          relief.

19          (6) LIMITATIONS ON POWERS AND DUTIES.—A  
20          special master appointed under this subsection—

21                 (A) may be authorized by a court to con-  
22                 duct hearings and prepare proposed findings of  
23                 fact, which shall be made on the record;

24                 (B) shall not make any findings or commu-  
25                 nications ex parte;

1 (C) may be authorized by a court to assist  
2 in the development of remedial plans; and

3 (D) may be removed at any time, but shall  
4 be relieved of the appointment upon the termi-  
5 nation of relief.

6 (g) DEFINITIONS.—As used in this section—

7 (1) the term “consent decree” means any relief  
8 entered by the court that is based in whole or in  
9 part upon the consent or acquiescence of the parties,  
10 but does not include private settlements;

11 (2) the term “civil action with respect to viola-  
12 tions of Federal law in the public schools” means  
13 any civil proceeding arising under Federal law with  
14 respect to any aspect of operation of the public  
15 schools or the provision of public education, includ-  
16 ing extra curricular and ancillary activities, but does  
17 not include civil proceedings relating to desegrega-  
18 tion of the public schools;

19 (3) the term “public schools” means a public el-  
20 elementary or secondary school as such terms are de-  
21 fined in section 9101 of the Elementary and Sec-  
22 ondary Education Act of 1965 (20 U.S.C. § 7801);

23 (4) the term “private settlement agreement”  
24 means an agreement entered into among the parties  
25 that is not subject to judicial enforcement other than

1 the reinstatement of the civil proceeding that the  
2 agreement settled;

3 (5) the term “prospective relief” means all re-  
4 lief other than compensatory monetary damages;

5 (6) the term “special master” means any per-  
6 son appointed by a Federal court pursuant to Rule  
7 53 of the Federal Rules of Civil Procedure or pursu-  
8 ant to any inherent power of the court to exercise  
9 the powers of a master, regardless of the title or de-  
10 scription given by the court; and

11 (7) the term “relief” means all relief in any  
12 form that may be granted or approved by the court,  
13 and includes consent decrees but does not include  
14 private settlement agreements.

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