

108TH CONGRESS  
2D SESSION

# S. 2404

Entitled the “Fairness in School Discipline 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 “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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