

108TH CONGRESS
2D SESSION

S. 2405

Entitled the “Restoring Authority to Schools 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 “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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