

104TH CONGRESS  
2D SESSION

# H. R. 4304

To restore equal educational opportunity.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1996

Mr. HOKE introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To restore equal educational opportunity.

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 “School Desegregation  
5 Litigation Reform Act of 1996”.

6 **SEC. 2. APPROPRIATE REMEDIES IN SCHOOL CASES.**

7 (a) IN GENERAL.—Section 213 of the Equal Edu-  
8 cational Opportunities Act of 1974 (20 U.S.C. 1712) is  
9 amended to read as follows:

1 **“§ 213. Appropriate remedies in school cases**

2 “(a) REQUIREMENTS FOR RELIEF.—

3 “(1) PROSPECTIVE RELIEF.—(A) A Federal  
4 court shall not have jurisdiction to award prospective  
5 relief in any civil action with respect to the operation  
6 of public schools that extends further than necessary  
7 to remedy the violation of a Federal right of a plain-  
8 tiff.

9 “(B) A Federal court shall not have jurisdiction  
10 to grant or approve any prospective relief unless the  
11 court finds that such relief is narrowly drawn, ex-  
12 tends no further than necessary to remedy the viola-  
13 tion of the Federal right, and is the least intrusive  
14 means necessary to remedy the violation of the Fed-  
15 eral right.

16 “(C) A Federal court shall not have jurisdiction  
17 to order any prospective relief that requires or per-  
18 mits a government official to exceed authority under  
19 State or local law or otherwise violates State or local  
20 law, unless—

21 “(i) Federal law requires such relief to be  
22 ordered in violation of State or local law;

23 “(ii) the relief is necessary to remedy a  
24 violation of a Federal right; and

25 “(iii) no other relief will remedy the viola-  
26 tion of a Federal right.

1           “(D) Nothing in this section shall be construed  
2           to authorize a Federal court, in exercising its reme-  
3           dial powers, to order the assignment of students to  
4           particular schools on the basis of race, color, or na-  
5           tional origin, to order the raising of taxes, or to re-  
6           peal, or make less restrictive from otherwise applica-  
7           ble limitations, the remedial powers of the courts.

8           “(2) STUDENT ASSIGNMENT ORDERS.—(A) In  
9           any civil action with respect to the operation of pub-  
10          lic schools, a Federal court shall not have jurisdic-  
11          tion to enter a student assignment order unless—

12                   “(i) a Federal court has previously entered  
13                   an order for less intrusive relief that has failed  
14                   to remedy the violation of the Federal right  
15                   sought to be remedied through the student as-  
16                   signment order; and

17                   “(ii) the defendant has had a reasonable  
18                   time to comply with the previous court order.

19           “(B)(i) In any civil action with respect to the  
20          operation of the public schools, a student assignment  
21          order shall be entered only by a three-judge court in  
22          accordance with section 2284 of title 28, United  
23          States Code.

24           “(C) A party seeking a student assignment  
25          order in a Federal court shall file with any request

1 for such relief, a request for a three-judge court and  
2 materials sufficient to demonstrate that the require-  
3 ments of subparagraph (a) have been met.

4 “(D) The three-judge court shall enter a stu-  
5 dent assignment order only if the court finds by  
6 clear and convincing evidence that—

7 “(i) the requirements of subparagraph (a)  
8 have been met; and

9 “(ii) no other relief will remedy the viola-  
10 tion of the Federal right.

11 “(b) TERMINATION OF RELIEF.—

12 “(1) TERMINATION OF PROSPECTIVE RELIEF.—

13 (A) Subject to the limitation set forth in paragraph  
14 (3), in any civil action with respect to the operation  
15 of the public schools in which prospective relief is or-  
16 dered, such relief shall be terminated upon the mo-  
17 tion of any party or intervenor—

18 “(i) 2 years after the date the court grant-  
19 ed or approved the prospective relief; or

20 “(ii) 1 year after the date the court has  
21 entered an order denying termination of pro-  
22 spective relief under this paragraph.

23 “(B) Nothing in this section shall prevent the  
24 parties from agreeing to terminate or modify relief

1 before the relief is terminable under subparagraph  
2 (A).

3 “(2) IMMEDIATE TERMINATION OF PROSPECTIVE  
4 RELIEF.—In any civil action with respect to  
5 the operation of the public schools, a defendant or  
6 intervenor shall be entitled to the immediate termi-  
7 nation of any prospective relief if the relief was ap-  
8 proved or granted in the absence of a finding by the  
9 court that the relief is narrowly drawn, extends no  
10 further than necessary to remedy the violation of the  
11 Federal right, and is the least intrusive means nec-  
12 essary to remedy the violation of the Federal right.

13 “(3) LIMITATION.—(A) Prospective relief shall  
14 not terminate if the court previously entered the pro-  
15 spective relief after finding it necessary to remedy a  
16 violation of a Federal right and the plaintiff estab-  
17 lishes by a preponderance of the evidence that pro-  
18 spective relief remains necessary to remedy a current  
19 and ongoing violation of that Federal right. The  
20 court shall not permit discovery.

21 “(B) Nothing in this section shall prevent any  
22 plaintiff from bringing a new civil action with re-  
23 spect to the operation of the public schools against  
24 a party to a pending civil action with respect to the  
25 operation of the public schools for a new violation of

1 a Federal right, or obtaining prospective relief con-  
2 sistent with the provisions of this section for such a  
3 new violation. If a new action is brought in Federal  
4 court, it shall not be heard by any judge who has  
5 previously entered an order for prospective relief in  
6 a civil action that has been in effect for longer than  
7 2 years with respect to the operation of the public  
8 schools.

9 “(4) TERMINATION OR MODIFICATION OF RE-  
10 LIEF.—Nothing in this section shall prevent any  
11 party or intervenor from seeking modification or ter-  
12 mination before the relief is terminable under para-  
13 graph (1) or (2), to the extent that modification or  
14 termination would otherwise be legally permissible.

15 “(c) SETTLEMENTS.—

16 “(1) CONSENT DECREES.—In any civil action  
17 with respect to the operation of public schools, a  
18 Federal court shall not have jurisdiction to enter or  
19 approve a consent decree unless it complies with the  
20 limitations on relief set forth in subsection (a).

21 “(2) PRIVATE SETTLEMENT AGREEMENTS.—  
22 Nothing in this section shall preclude parties from  
23 entering into a private settlement agreement that  
24 does not comply with the limitations on relief set  
25 forth in subsection (a).

1       “(d) PROCEDURE FOR MOTIONS AFFECTING PRO-  
2 SPECTIVE RELIEF.—The court shall promptly rule on any  
3 motion to modify or terminate prospective relief in a civil  
4 action with respect to the operation of the public schools.

5       “(e) SPECIAL MASTERS.—In any civil action with re-  
6 spect to the operation of public schools—

7               “(1) IN GENERAL.—(A) The court may appoint  
8 a special master who shall be disinterested and ob-  
9 jective to conduct hearings on the record and pre-  
10 pare proposed findings of fact.

11              “(B) The court shall appoint a special master  
12 during the remedial phase of the action only upon a  
13 finding that the remedial phase will be sufficiently  
14 complex to warrant the appointment.

15              “(2) APPOINTMENT.—(A) If the court deter-  
16 mines that the appointment of a special master is  
17 necessary, the court shall request that the defendant  
18 and the plaintiff each submit a list of not more than  
19 5 persons to serve as a special master.

20              “(B) Each party shall have the opportunity to  
21 remove up to 3 persons from the opposing party’s  
22 list.

23              “(C) The court shall select the master from the  
24 persons remaining on the list after the application of  
25 subparagraph (B).

1           “(D) If the court determines that the persons  
2 remaining on the list are not qualified to serve as  
3 special master, the court may appoint a person not  
4 on the list with the consent of all parties.

5           “(3) INTERLOCUTORY APPEAL.—Any party  
6 shall have the right to an interlocutory appeal of the  
7 judge’s selection of the special master, on the  
8 ground of partiality.

9           “(4) COMPENSATION.—The compensation to be  
10 allowed to a special master shall be based on an  
11 hourly rate not greater than the hourly rate estab-  
12 lished under section 3006A of title 18 for payment  
13 of court-appointed counsel, plus costs reasonably in-  
14 curred by the special master. Such compensation  
15 and costs shall be paid with funds appropriated to  
16 the judiciary. In no event shall the court require the  
17 parties to pay the compensation or costs of the spe-  
18 cial master.

19           “(5) REGULAR REVIEW OF APPOINTMENT.—  
20 The court shall review the appointment of the spe-  
21 cial master every 6 months to determine whether the  
22 services of the special master continue to be required  
23 under paragraph (1). In no event shall the appoint-  
24 ment of a special master extend beyond the termi-  
25 nation of the relief.

1           “(6) LIMITATIONS ON POWERS AND DUTIES.—  
2           A special master appointed in any civil action with  
3           respect to the operation of public schools—

4                   “(A) may be authorized by a court to con-  
5                   duct hearings on the record and shall make any  
6                   findings of fact based on the record as a whole;

7                   “(B) shall not make any findings or com-  
8                   munications ex parte; and

9                   “(C) may be removed at any time, but  
10                  shall be relieved of the appointment upon the  
11                  termination of relief.

12                  “(7) The requirements of paragraphs (1)  
13                  through (4) shall apply only to special masters ap-  
14                  pointed after the date of enactment of School Deseg-  
15                  regation Litigation Reform Act of 1996.

16                  “(f) INTERVENTION.—In any civil action with respect  
17                  to the operation of public schools, any State or local offi-  
18                  cial or unit of government whose jurisdiction includes the  
19                  appropriation of funds for, or the operation of, public  
20                  schools shall have standing to oppose the imposition or  
21                  continuation in effect of prospective relief and to seek ter-  
22                  mination of such relief, and shall have the right to inter-  
23                  vene in any proceeding relating to such relief.

24                  “(g) DEFINITIONS.—As used in this section—

1           “(1) the term ‘consent decree’ means any relief  
2 entered by the court that is based in whole or in  
3 part upon the consent or acquiescence of the parties,  
4 but does not include private settlement agreements;

5           “(2) the term ‘civil action with respect to the  
6 operation of public schools’ means any civil proceed-  
7 ing arising under Federal law with respect to the op-  
8 eration of any public school system by any State or  
9 local government that alleges that the public school  
10 system has been or is being operated in violation of  
11 the 5th or 14th amendment rights or any other pro-  
12 vision of Federal law that guarantees equal edu-  
13 cational opportunity;

14           “(3) the term ‘student assignment order’ in-  
15 cludes any order, including a temporary restraining  
16 order or preliminary injunctive relief, that has the  
17 purpose or effect of directing or regulating the par-  
18 ticular public school to which students are assigned  
19 to attend;

20           “(4) the term ‘private settlement agreement’  
21 means an agreement entered into among the parties  
22 that is not subject to judicial enforcement other than  
23 the reinstatement of the civil proceeding that was  
24 concluded as a result of the agreement entering into  
25 force;

1           “(5) the term ‘prospective relief’ means all re-  
2           lief other than compensatory monetary damages, in-  
3           cluding the appointment of a special master;

4           “(6) the term ‘special master’ means any per-  
5           son appointed by a Federal court pursuant to rule  
6           53 of the Federal Rules of Civil Procedure or pursu-  
7           ant to any power of the court to exercise the powers  
8           of a master, regardless of the title or description  
9           given by the court;

10           “(7) the term ‘relief’ means all relief in any  
11           form that may be ordered or approved by the court,  
12           and includes consent decrees but does not include  
13           private settlement agreements; and

14           “(8) the term ‘violation of a Federal right’ in-  
15           cludes a violation of a Federal constitutional or Fed-  
16           eral statutory right, but does not include a violation  
17           of a court order that is not independently a violation  
18           of a Federal constitutional or Federal statutory  
19           right.”.

20           (b) APPLICATION OF AMENDMENT.—Section 213 of  
21           the Equal Educational Opportunities Act of 1974 (20  
22           U.S.C. 1712), as amended by this section, shall apply with  
23           respect to all prospective relief whether such relief was  
24           originally ordered or approved before, on, or after the date  
25           of the enactment of this Act.

1 **SEC. 3. DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY**  
2 **PROHIBITED.**

3 Section 204 of the Equal Educational Opportunities  
4 Act of 1974 (20 U.S.C. 1703) is amended to read as fol-  
5 lows:

6 **“§ 204. Denial of equal educational opportunity pro-**  
7 **hibited**

8 “No State shall deny equal educational opportunity  
9 to an individual on account of race, color, or national ori-  
10 gin, by—

11 “(1) the intentional segregation by an edu-  
12 cational agency of students on the basis of race,  
13 color, or national origin among or within schools;

14 “(2) the assignment or transfer by the State,  
15 the courts of any State, any educational agency or  
16 official thereof, or any Federal agency or official  
17 thereof of a student to a school, other than the one  
18 closest to the place of residence within the school  
19 district in which the student resides, if the assign-  
20 ment was made on the basis of race, color, or na-  
21 tional origin, of students among schools in the  
22 school district, including assignments made for the  
23 purpose of attaining a balance on the basis of race,  
24 color, or national origin, unless—

1           “(A) such assignment is necessary to rem-  
2           edy the violation of a Federal right (as defined  
3           in section 213(g)(8)); and

4           “(B) there are no other means for remedy-  
5           ing the violation of the Federal right; or

6           “(3) the modification of the lines drawn by the  
7           State, subdividing its territory into separate school  
8           districts, if the modification was made for the pur-  
9           pose of attaining a balance, on the basis of race,  
10          color, or national origin, of students among public  
11          schools, unless—

12           “(A) such assignment is necessary to rem-  
13           edy the violation of a Federal right (as defined  
14           in section 213(g)(8)); and

15           “(B) there are no other means for remedy-  
16           ing the violation of the Federal right.”.

17 **SEC. 4. CONFORMING AMENDMENTS.**

18          (a) **POLICY.**—Section 202 of the Equal Educational  
19          Opportunities Act of 1974 (20 U.S.C. 1701) is amended—

20                  (1) in subsection (a), by striking “(a) The” and  
21                  inserting “The”; and

22                  (2) by striking subsection (b).

23          (b) **FINDINGS.**—Section 203(b) of the Equal Edu-  
24          cational Opportunities Act of 1974 (20 U.S.C. 1702) is  
25          amended in subsection (b) by striking “elimination of the

1 vestiges of dual school systems, except that the provisions  
2 of this title are not intended to modify or diminish the  
3 authority of the courts of the United States to enforce  
4 fully the fifth and fourteenth amendments to the Constitu-  
5 tion of the United States.”, and inserting “denial of equal  
6 educational opportunity, limit the jurisdiction of the Fed-  
7 eral courts over the operations of public schools, and pro-  
8 hibit the use of race, color, or national origin as a basis  
9 for making school assignments.”.

10 (c) CIVIL ACTIONS.—Section 207 of the Equal Edu-  
11 cational Opportunities Act of 1974 (20 U.S.C. 1706) is  
12 amended by—

13 (1) inserting “or a school district in which such  
14 an individual resides on behalf of such an individual,  
15 or any State or local official or unit of government  
16 whose jurisdiction includes the appropriation of  
17 funds for, or the operation of, a school district in  
18 which such an individual resides on behalf of such  
19 an individual,” after “this part” in the first sen-  
20 tence; and

21 (2) striking “institute a civil action”, and in-  
22 serting “institute or intervene in a civil action”.

1       (d) Sections 214, 215, 216, 217, and 219 of the  
2 Equal Educational Opportunities Act of 1974 are  
3 repealed.

○