

107TH CONGRESS
1ST SESSION

H. R. 3349

To amend the Elementary and Secondary Education Act of 1965 to ensure fairness.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 27, 2001

Mr. ACEVEDO-VILÁ introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Elementary and Secondary Education Act of 1965 to ensure fairness.

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. BASIC GRANTS TO LOCAL EDUCATIONAL AGEN-**
4 **CIES.**

5 Section 1124 of the Elementary and Secondary Edu-
6 cation Act of 1965 (20 U.S.C. 6333) is amended to read
7 as follows:

8 **“SEC. 1124. BASIC GRANTS TO LOCAL EDUCATIONAL AGEN-**
9 **CIES.**

10 “(a) AMOUNT OF GRANTS.—

1 “(1) GRANTS FOR LOCAL EDUCATIONAL AGEN-
2 CIES AND PUERTO RICO.—Except as provided in
3 paragraph (4) and in section 1126, the grant that
4 a local educational agency is eligible to receive under
5 this section for a fiscal year is the amount deter-
6 mined by multiplying—

7 “(A) the number of children counted under
8 subsection (c); and

9 “(B) 40 percent of the average per-pupil
10 expenditure in the State, except that the
11 amount determined under this subparagraph
12 shall not be less than 32 percent or more than
13 48 percent, of the average per-pupil expenditure
14 in the United States.

15 “(2) CALCULATION OF GRANTS.—

16 “(A) ALLOCATIONS TO LOCAL EDU-
17 CATIONAL AGENCIES.—The Secretary shall cal-
18 culate grants under this section on the basis of
19 the number of children counted under sub-
20 section (c) for local educational agencies, unless
21 the Secretary and the Secretary of Commerce
22 determine that some or all of those data are un-
23 reliable or that their use would be otherwise in-
24 appropriate, in which case—

1 “(i) the two Secretaries shall publicly
2 disclose the reasons for their determination
3 in detail; and

4 “(ii) paragraph (3) shall apply.

5 “(B) ALLOCATIONS TO LARGE AND SMALL
6 LOCAL EDUCATIONAL AGENCIES.—(i) For any
7 fiscal year in which this paragraph applies, the
8 Secretary shall calculate grants under this sec-
9 tion for each local educational agency.

10 “(ii) The amount of a grant under this
11 section for each large local educational agency
12 shall be the amount determined under clause
13 (i).

14 “(iii) For small local educational agencies,
15 the State educational agency may either—

16 “(I) distribute grants under this sec-
17 tion in amounts determined by the Sec-
18 retary under clause (i); or

19 “(II) use an alternative method ap-
20 proved by the Secretary to distribute the
21 portion of the State’s total grants under
22 this section that is based on those small
23 agencies.

24 “(iv) An alternative method under clause
25 (iii)(II) shall be based on population data that

1 the State educational agency determines best
2 reflect the current distribution of children in
3 poor families among the State’s small local edu-
4 cational agencies that meet the eligibility cri-
5 teria of subsection (b).

6 “(v) If a small local educational agency is
7 dissatisfied with the determination of its grant
8 by the State educational agency under clause
9 (iii)(II), it may appeal that determination to the
10 Secretary, who shall respond not later than 45
11 days after receipt of such appeal.

12 “(vi) As used in this subparagraph—

13 “(I) the term ‘large local educational
14 agency’ means a local educational agency
15 serving an area with a total population of
16 20,000 or more; and

17 “(II) the term ‘small local educational
18 agency’ means a local educational agency
19 serving an area with a total population of
20 less than 20,000.

21 “(3) ALLOCATIONS TO COUNTIES.—

22 “(A) CALCULATION.—For any fiscal year
23 to which this paragraph applies, the Secretary
24 shall calculate grants under this section on the
25 basis of the number of children counted under

1 section 1124(c) for counties, and State edu-
2 cational agencies shall suballocate county
3 amounts to local educational agencies, in ac-
4 cordance with regulations issued by the Sec-
5 retary.

6 “(B) DIRECT ALLOCATIONS.—In any State
7 in which a large number of local educational
8 agencies overlap county boundaries, or for
9 which the State believes it has data that would
10 better target funds than allocating them by
11 county, the State educational agency may apply
12 to the Secretary for authority to make the allo-
13 cations under this part for a particular fiscal
14 year directly to local educational agencies with-
15 out regard to counties.

16 “(C) ASSURANCES.—If the Secretary ap-
17 proves the State educational agency’s applica-
18 tion under subparagraph (B), the State edu-
19 cational agency shall provide the Secretary an
20 assurance that such allocations shall be made—

21 “(i) using precisely the same factors
22 for determining a grant as are used under
23 this part; or

24 “(ii) using data that the State edu-
25 cational agency submits to the Secretary

1 for approval that more accurately target
2 poverty.

3 “(D) APPEAL.—The State educational
4 agency shall provide the Secretary an assurance
5 that it shall establish a procedure through
6 which a local educational agency that is dissat-
7 isfied with its determinations under subpara-
8 graph (B) may appeal directly to the Secretary
9 for a final determination.

10 “(4) PUERTO RICO.—

11 “(A) IN GENERAL.—For each fiscal year,
12 the grant which the Commonwealth of Puerto
13 Rico shall be eligible to receive under this sec-
14 tion shall be the amount determined by multi-
15 plying the number of children counted under
16 subsection (c) for the Commonwealth of Puerto
17 Rico by the product of—

18 “(i) the percentage which the average
19 per-pupil expenditure in the Common-
20 wealth of Puerto Rico is of the lowest aver-
21 age per-pupil expenditure of any of the 50
22 States; and

23 “(ii) 32 percent of the average per-
24 pupil expenditure in the United States.

1 “(B) MINIMUM PERCENTAGE.—The per-
2 centage in subparagraph (A)(i) shall not be less
3 than—

4 “(i) for fiscal year 2002, 77.5 percent;

5 “(ii) for fiscal year 2003, 80.0 per-
6 cent;

7 “(iii) for fiscal year 2004, 82.5 per-
8 cent;

9 “(iv) for fiscal year 2005, 85.0 per-
10 cent;

11 “(v) for fiscal year 2006, 92.5 per-
12 cent; and

13 “(vi) for fiscal year 2007 and suc-
14 ceeding fiscal years, 100 percent.

15 “(C) LIMITATION.—If the application of
16 subparagraph (B) would result in any of the 50
17 States or the District of Columbia receiving less
18 under this part than it received under this part
19 for the preceding fiscal year, the percentage in
20 subparagraph (A) shall be the greater of the
21 percentage in subparagraph (A)(i) or the per-
22 centage used for the preceding fiscal year.

23 “(5) DEFINITION.—For purposes of this sub-
24 section, the term ‘State’ does not include Guam,

1 American Samoa, the Virgin Islands, and the North-
2 ern Mariana Islands.

3 “(b) MINIMUM NUMBER OF CHILDREN TO QUAL-
4 IFY.—A local educational agency is eligible for a basic
5 grant under this section for any fiscal year only if the
6 number of children counted under subsection (c) for that
7 agency is both—

8 “(1) 10 or more; and

9 “(2) more than 2 percent of the total school-age
10 population in the agency’s jurisdiction.

11 “(c) CHILDREN TO BE COUNTED.—

12 “(1) CATEGORIES OF CHILDREN.—The number
13 of children to be counted for purposes of this section
14 is the aggregate of—

15 “(A) the number of children aged 5 to 17,
16 inclusive, in the school district of the local edu-
17 cational agency from families below the poverty
18 level as determined under paragraph (2);

19 “(B) the number of children (determined
20 under paragraph (4) for either the preceding
21 year as described in that paragraph, or for the
22 second preceding year, as the Secretary finds
23 appropriate) aged 5 to 17, inclusive, in the
24 school district of such agency in institutions for
25 neglected and delinquent children (other than

1 such institutions operated by the United
2 States), but not counted pursuant to subpart 1
3 of part D for the purposes of a grant to a State
4 agency, or being supported in foster homes with
5 public funds; and

6 “(C) the number of children aged 5 to 17,
7 inclusive, in the school district of such agency
8 from families above the poverty level as deter-
9 mined under paragraph (4).

10 “(2) DETERMINATION OF NUMBER OF CHIL-
11 DREN.—For the purposes of this section, the Sec-
12 retary shall determine the number of children aged
13 5 to 17, inclusive, from families below the poverty
14 level on the basis of the most recent satisfactory
15 data, described in paragraph (3), available from the
16 Department of Commerce. The District of Columbia
17 and the Commonwealth of Puerto Rico shall be
18 treated as individual local educational agencies. If a
19 local educational agency contains two or more coun-
20 ties in their entirety, then each county will be treat-
21 ed as if such county were a separate local edu-
22 cational agency for purposes of calculating grants
23 under this part. The total of grants for such coun-
24 ties shall be allocated to such a local educational
25 agency, which local educational agency shall dis-

1 tribute to schools in each county within such agency
2 a share of the local educational agency's total grant
3 that is no less than the county's share of the popu-
4 lation counts used to calculate the local educational
5 agency's grant.

6 “(3) POPULATION UPDATES.—In fiscal year
7 2001 and every 2 years thereafter, the Secretary
8 shall use updated data on the number of children,
9 aged 5 to 17, inclusive, from families below the pov-
10 erty level for local educational agencies or counties,
11 published by the Department of Commerce, unless
12 the Secretary and the Secretary of Commerce deter-
13 mine that use of the updated population data would
14 be inappropriate or unreliable. If the Secretary and
15 the Secretary of Commerce determine that some or
16 all of the data referred to in this paragraph are in-
17 appropriate or unreliable, they shall publicly disclose
18 their reasons. In determining the families which are
19 below the poverty level, the Secretary shall utilize
20 the criteria of poverty used by the Bureau of the
21 Census in compiling the most recent decennial cen-
22 sus, in such form as those criteria have been up-
23 dated by increases in the Consumer Price Index for
24 all urban consumers, published by the Bureau of
25 Labor Statistics.

1 “(4) OTHER CHILDREN TO BE COUNTED.—For
2 the purposes of this section, the Secretary shall de-
3 termine the number of children aged 5 to 17, inclu-
4 sive, from families above the poverty level on the
5 basis of the number of such children from families
6 receiving an annual income, in excess of the current
7 criteria of poverty, from payments under a State
8 program funded under part A of title IV of the So-
9 cial Security Act; and in making such determina-
10 tions the Secretary shall utilize the criteria of pov-
11 erty used by the Bureau of the Census in compiling
12 the most recent decennial census for a family of 4
13 in such form as those criteria have been updated by
14 increases in the Consumer Price Index for all urban
15 consumers, published by the Bureau of Labor Statis-
16 tics. The Secretary shall determine the number of
17 such children and the number of children aged 5
18 through 17 living in institutions for neglected or de-
19 linquent children, or being supported in foster homes
20 with public funds, on the basis of the caseload data
21 for the month of October of the preceding fiscal year
22 (using, in the case of children described in the pre-
23 ceding sentence, the criteria of poverty and the form
24 of such criteria required by such sentence which
25 were determined for the calendar year preceding

1 such month of October) or, to the extent that such
2 data are not available to the Secretary before Janu-
3 ary of the calendar year in which the Secretary's de-
4 termination is made, then on the basis of the most
5 recent reliable data available to the Secretary at the
6 time of such determination. The Secretary of Health
7 and Human Services shall collect and transmit the
8 information required by this subparagraph to the
9 Secretary not later than January 1 of each year.
10 For the purpose of this section, the Secretary shall
11 consider all children who are in correctional institu-
12 tions to be living in institutions for delinquent chil-
13 dren.

14 “(5) ESTIMATE.—When requested by the Sec-
15 retary, the Secretary of Commerce shall make a spe-
16 cial updated estimate of the number of children of
17 such ages who are from families below the poverty
18 level (as determined under subparagraph (A) of this
19 paragraph) in each school district, and the Secretary
20 is authorized to pay (either in advance or by way of
21 reimbursement) the Secretary of Commerce the cost
22 of making this special estimate. The Secretary of
23 Commerce shall give consideration to any request of
24 the chief executive of a State for the collection of ad-
25 ditional census information.

1 “(d) STATE MINIMUM.—Notwithstanding section
 2 1122, the aggregate amount allotted for all local edu-
 3 cational agencies within a State may not be less than the
 4 lesser of—

5 “(1) 0.25 percent of total grants under this sec-
 6 tion; or

7 “(2) the average of—

8 “(A) one-quarter of 1 percent of the total
 9 amount available for such fiscal year under this
 10 section; and

11 “(B) the number of children in such State
 12 counted under subsection (c) in the fiscal year
 13 multiplied by 150 percent of the national aver-
 14 age per-pupil payment made with funds avail-
 15 able under this section for that year.”.

16 **SEC. 2. STATE ALLOCATIONS.**

17 Section 1303 of the Elementary and Secondary Edu-
 18 cation Act of 1965 (20 U.S.C. 6393) is amended—

19 (1) by amending subsection (a) to read as fol-
 20 lows:

21 “(a) STATE ALLOCATIONS.—

22 “(1) FISCAL YEAR 2002.—For fiscal year 2002,
 23 each State (other than the Commonwealth of Puerto
 24 Rico) is entitled to receive under this part an
 25 amount equal to—

1 “(A) the sum of the estimated number of
2 migratory children aged 3 through 21 who re-
3 side in the State full time and the full-time
4 equivalent of the estimated number of migra-
5 tory children aged 3 through 21 who reside in
6 the State part time, as determined in accord-
7 ance with subsection (d); multiplied by

8 “(B) 40 percent of the average per-pupil
9 expenditure in the State, except that the
10 amount determined under this paragraph shall
11 not be less than 32 percent, nor more than 48
12 percent, of the average expenditure per pupil in
13 the United States.

14 “(2) SUBSEQUENT YEARS.—

15 “(A) BASE AMOUNT.—

16 “(i) IN GENERAL.—Except as pro-
17 vided in subsection (b) and clause (ii), each
18 State (other than the Commonwealth of
19 Puerto Rico) is entitled to receive under
20 this part, for fiscal year 2003 and suc-
21 ceeding fiscal years, an amount equal to—

22 “(I) the amount that such State
23 received under this part for fiscal year
24 2002; plus

1 “(II) the amount allocated to the
2 State under subparagraph (B).

3 “(ii) NONPARTICIPATING STATES.—In
4 the case of a State (other than the Com-
5 monwealth of Puerto Rico) that did not re-
6 ceive any funds for fiscal year 2002 under
7 this part, the State shall receive, for fiscal
8 year 2003 and succeeding fiscal years, an
9 amount equal to—

10 “(I) the amount that such State
11 would have received under this part
12 for fiscal year 2002 if its application
13 under section 1304 for the year had
14 been approved; plus

15 “(II) the amount allocated to the
16 State under subparagraph (B).

17 “(B) ALLOCATION OF ADDITIONAL
18 AMOUNT.—For fiscal year 2003 and succeeding
19 fiscal years, the amount (if any) by which the
20 funds appropriated to carry out this part for
21 the year exceed such funds for fiscal year 2002
22 shall be allocated to a State (other than the
23 Commonwealth of Puerto Rico) so that the
24 State receives an amount equal to—

25 “(i) the sum of—

1 “(I) the number of identified eli-
 2 gible migratory children, aged 3
 3 through 21, residing in the State dur-
 4 ing the previous year; and

5 “(II) the number of identified eli-
 6 gible migratory children, aged 3
 7 through 21, who received services
 8 under this part in summer or interse-
 9 sion programs provided by the State
 10 during such year; multiplied by

11 “(ii) 40 percent of the average per-
 12 pupil expenditure in the State, except that
 13 the amount determined under this clause
 14 may not be less than 32 percent, or more
 15 than 48 percent, of the average per-pupil
 16 expenditure in the United States.”;

17 (2) by amending subsection (b) to read as fol-
 18 lows:

19 “(b) ALLOCATION TO PUERTO RICO.—

20 “(1) IN GENERAL.—For each fiscal year, the
 21 grant which the Commonwealth of Puerto Rico shall
 22 be eligible to receive under this part shall be the
 23 amount determined by multiplying the number of
 24 children counted under subsection (a)(1)(A) for the
 25 Commonwealth of Puerto Rico by the product of—

1 “(A) the percentage which the average per
2 pupil expenditure in the Commonwealth of
3 Puerto Rico is of the lowest average per pupil
4 expenditure of any of the 50 States; and

5 “(B) 32 percent of the average per pupil
6 expenditure in the United States.

7 “(2) MINIMUM PERCENTAGE.—The percentage
8 in paragraph (1)(A) shall not be less than—

9 “(A) for fiscal year 2002, 77.5 percent;

10 “(B) for fiscal year 2003, 80.0 percent;

11 “(C) for fiscal year 2004, 82.5 percent;

12 “(D) for fiscal year 2005, 85.0 percent;

13 “(E) for fiscal year 2006, 92.5 percent;

14 and

15 “(F) for fiscal year 2007 and succeeding
16 fiscal years, 100 percent.

17 “(3) LIMITATION.—If the application of para-
18 graph (2) would result in any of the 50 States or
19 the District of Columbia receiving less under this
20 part than it received under this part for the pre-
21 ceding fiscal year, the percentage in paragraph (1)
22 shall be the greater of the percentage in paragraph
23 (1)(A) or the percentage used for the preceding fis-
24 cal year.”; and

1 (3) by striking subsection (d) and redesignating
2 subsection (e) as subsection (d).

3 **SEC. 3. ALLOCATION OF FUNDS.**

4 Section 1412(b) of the Elementary and Secondary
5 Education Act of 1965 (20 U.S.C. 6432(b)) is amended
6 to read as follows:

7 “(b) SUBGRANTS TO STATE AGENCIES IN PUERTO
8 RICO.—

9 “(1) IN GENERAL.—For each fiscal year, the
10 amount of the subgrant which a State agency in the
11 Commonwealth of Puerto Rico shall be eligible to re-
12 ceive under this part shall be the amount determined
13 by multiplying the number of children counted under
14 subparagraph (a)(1)(A) for the Commonwealth of
15 Puerto Rico by the product of—

16 “(A) the percentage which the average per-
17 pupil expenditure in the Commonwealth of
18 Puerto Rico is of the lowest average per-pupil
19 expenditure of any of the 50 States; and

20 “(B) 32 percent of the average per-pupil
21 expenditure in the United States.

22 “(2) MINIMUM PERCENTAGE.—The percentage
23 in paragraph (1)(A) shall not be less than—

24 “(A) for fiscal year 2002, 77.5 percent;

25 “(B) for fiscal year 2003, 80.0 percent;

1 “(C) for fiscal year 2004, 82.5 percent;

2 “(D) for fiscal year 2005, 85.0 percent;

3 “(E) for fiscal year 2006, 92.5 percent;

4 and

5 “(F) for fiscal year 2007 and succeeding
6 fiscal years, 100 percent.

7 “(3) LIMITATION.—If the application of para-
8 graph (2) would result in any of the 50 States or
9 the District of Columbia receiving less under this
10 part than it received under this part for the pre-
11 ceding fiscal year, the percentage in paragraph (1)
12 shall be the greater of the percentage in paragraph
13 (1)(A) or the percentage used for the preceding fis-
14 cal year.”.

○