

110TH CONGRESS  
1ST SESSION

# H. R. 3426

To modify certain amendments made by the No Child Left Behind Act  
of 2001.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 2007

Mr. MATHESON introduced the following bill; which was referred to the  
Committee on Education and Labor

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## A BILL

To modify certain amendments made by the No Child Left  
Behind Act of 2001.

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 “Flexibility for Indi-  
5 vidual Excellence in Education Act of 2007”.

6 **SEC. 2. MODIFICATION TO AMENDMENTS MADE BY NO**  
7 **CHILD LEFT BEHIND ACT OF 2001.**

8 (a) MODIFICATIONS TO HIGHLY QUALIFIED TEACH-  
9 ER STANDARD.—

1           (1) MIDDLE OR SECONDARY TEACHERS NEW TO  
2           PROFESSION MAY USE COLLEGE MINOR.—Subclause  
3           (II) of section 9101(23)(B)(ii) of the Elementary  
4           and Secondary School Act of 1965 (20 U.S.C.  
5           7801(23)(B)(ii)) is amended by inserting “or minor”  
6           after “academic major”.

7           (2) EXTENT TIME TEACHING IS CONSIDERED.—  
8           Subclause (V) of section 9101(23)(C)(ii) of such Act  
9           (20 U.S.C. 7801(23)(C)(ii)) is amended by striking  
10          “not be based primarily on” and inserting “not be  
11          based solely on”.

12          (b) EXTENSION UNTIL 2011–12 SCHOOL YEAR FOR  
13          RURAL SCHOOLS TO MEET ALL HIGHLY QUALIFIED  
14          TEACHER STANDARDS; ADDITIONAL \$50 MILLION AU-  
15          THORIZED TO HELP RURAL SCHOOLS MEET STAND-  
16          ARDS.—

17               (1) EXTENSION.—Subsection (a) of section  
18               1119 of the Elementary and Secondary Education  
19               Act of 1965 (20 U.S.C. 6319) is amended by adding  
20               at the end the following new paragraph:

21                       “(4) RURAL SCHOOL DISTRICTS.—

22                               “(A) IN GENERAL.—Notwithstanding the  
23                               deadline described in paragraphs (2) and (3), a  
24                               plan developed by a State educational agency or  
25                               a local educational agency under this subsection

1 shall ensure that all teachers who are described  
2 in such paragraphs, but are teaching in a rural  
3 school district, are highly qualified not later  
4 than the end of the 2011–2012 school year.

5 “(B) DEFINITION.—For purposes of this  
6 paragraph, the term ‘rural school district’  
7 means a local educational agency that—

8 “(i) meets the eligibility criteria de-  
9 scribed in section 6211(b), including by ob-  
10 taining a waiver under paragraph (2) of  
11 such section; and

12 “(ii) employs a percentage of teachers  
13 who are not highly qualified that is higher  
14 than the corresponding percentage for the  
15 State involved.”.

16 (2) ADDITIONAL FUNDING.—Section 6234 of  
17 the Elementary and Secondary Education Act of  
18 1965 (20 U.S.C. 7355c) is amended—

19 (A) by striking “There are” and inserting  
20 “(a) IN GENERAL.—There are”; and

21 (B) by adding at the end the following new  
22 subsection:

23 “(b) ADDITIONAL FUNDING.—For the purpose of  
24 making grants under subpart 2 to be used for teacher re-  
25 cruitment, retention, and professional development activi-

1 ties described in section 6222(a) in rural school districts  
 2 (as defined in section 1119(a)(4)), there are authorized  
 3 to be appropriated \$50,000,000 for fiscal year 2008 and  
 4 such sums as may be necessary for each of the 4 following  
 5 fiscal years. Such authorization shall be in addition to the  
 6 authorization in subsection (a).”.

7 (c) HIGHLY QUALIFIED TEACHER RULES LIMITED  
 8 TO TEACHERS OF CORE SUBJECTS.—

9 (1) Title I of the Elementary and Secondary  
 10 Education Act of 1965 is amended by adding at the  
 11 end the following new section:

12 **“SEC. 1005. HIGHLY QUALIFIED TEACHER CONCEPT LIM-**  
 13 **ITED TO TEACHERS OF CORE SUBJECTS.**

14 “Notwithstanding any other provision of this Act, any  
 15 reference in this Act to highly qualified teachers shall be  
 16 deemed to refer only to teachers in core subjects.”.

17 (2) The table of contents of such Act is amend-  
 18 ed by inserting after the item relating to section  
 19 1004 the following new item:

“Sec. 1005. Highly qualified teacher concept limited to teachers of core sub-  
 jects.”.

20 (d) STUDENTS WITH DISABILITIES ASSESSED AT  
 21 THE LEVEL OF INSTRUCTION IN COMPLIANCE WITH  
 22 THEIR INDIVIDUALIZED EDUCATION PLAN.—Clause (ix)  
 23 of section 1111(b)(3)(C) of the Elementary and Secondary  
 24 Education Act of 1965 (20 U.S.C. 6311(b)(3)(C)) is

1 amended by striking “and” at the end of subclause (II),  
2 by adding “and” at the end of subclause (III), and by  
3 adding at the end the following new subclause:

4                                   “(IV) at the discretion of the  
5                                   State, the assessment of students with  
6                                   disabilities (as defined in section  
7                                   602(3) of the Individuals with Dis-  
8                                   abilities Education Act) whose in-  
9                                   structional level in the core academic  
10                                  subjects is below the grade level in  
11                                  which the student is enrolled, by using  
12                                  the State assessment determined by  
13                                  the student’s individualized education  
14                                  program team (as described in section  
15                                  614(d)(1)(B) of such Act) to most  
16                                  closely correspond to the student’s in-  
17                                  structional level;”.

18           (e) USE OF GROWTH MODELS AND MULTIPLE MEAS-  
19   URES IN DETERMINING ADEQUATE YEARLY PROGRESS.—

20                   (1) GROWTH MODELS.—Clause (iii) of section  
21           1111(b)(2)(C) of the Elementary and Secondary  
22           Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)) is  
23           amended by striking “for all students” and inserting  
24           “for all students, as demonstrated by measures of

1 students' progress toward proficiency, including lon-  
2 gitudinal growth”.

3 (2) MULTIPLE MEASURES.—Subparagraph (A)  
4 of section 1111(b)(2) of the Elementary and Sec-  
5 ondary Education Act of 1965 (20 U.S.C.  
6 6311(b)(2)) is amended by striking “and” at the  
7 end of clause (ii), by striking the period at the end  
8 of clause (iii) and inserting “; and”, and by adding  
9 at the end the following new clause:

10 “(iv) include multiple measures of stu-  
11 dent academic achievement, such as the  
12 proportion of State report card indicators  
13 met, a performance index score, student  
14 drop-out rate, and a measure based on in-  
15 dividual student achievement gains over  
16 time, disaggregated by each of the groups  
17 of students described in subparagraph  
18 (C)(v).”.

19 (f) ADEQUATE YEARLY PROGRESS DETERMINED BY  
20 GROUP AND SUBJECT.—

21 (1) IDENTIFICATION OF SCHOOLS IN NEED OF  
22 IMPROVEMENT.—

23 (A) Subparagraph (A) of section  
24 1116(b)(1) of the Elementary and Secondary  
25 Education Act of 1965 (20 U.S.C. 6316(b)(1))

1 is amended by striking “that fails” and insert-  
2 ing “if the same group of students described in  
3 section 1111(b)(2)(C)(v) fails in the same aca-  
4 demic subject”.

5 (B) Subparagraph (C) of such section is  
6 amended by striking “almost every student in  
7 each group specified in section 1111(b)(2)(C)(v)  
8 enrolled in such school is meeting or exceeding  
9 the State’s proficient level of academic achieve-  
10 ment” and inserting “almost every student in  
11 each group enrolled in such school for which  
12 there is such a failure in an academic subject  
13 is meeting or exceeding the State’s proficient  
14 level of academic achievement in such subject”.

15 (2) FAILURE TO MAKE ADEQUATE YEARLY  
16 PROGRESS DURING FIRST YEAR AFTER IDENTIFICA-  
17 TION.—So much of the text of paragraph (5) of sec-  
18 tion 1116(b) of such Act as precedes subparagraph  
19 (A) is amended to read as follows: “If, by the end  
20 of the first full school year after identification under  
21 paragraph (1) of a school served under this part,  
22 any group of students that met the requirements for  
23 such identification in an academic subject fails to  
24 make adequate yearly progress in such subject, as

1 set out in the State’s plan under section 1111(b)(2),  
2 the local educational agency serving such school—”.

3 (3) FAILURE TO MAKE ADEQUATE YEARLY  
4 PROGRESS DURING SECOND YEAR AFTER IDENTI-  
5 FICATION.—So much of the text of subparagraph  
6 (C) of section 1116(b)(7) of such Act as precedes  
7 clause (i) is amended to read as follows: “If, by the  
8 end of the second full school year after identification  
9 under paragraph (1) of a school served under this  
10 part, any group of students that met the require-  
11 ments for such identification in an academic subject  
12 fails to make adequate yearly progress in such sub-  
13 ject, as set out in the State’s plan under section  
14 1111(b)(2), the local educational agency shall—”.

15 (4) FAILURE TO MAKE ADEQUATE YEARLY  
16 PROGRESS DURING FIRST YEAR AFTER CORRECTIVE  
17 ACTION.—So much of the text of subparagraph (A)  
18 of section 1116(b)(8) of such Act as precedes clause  
19 (i) is amended to read as follows: “If, after 1 full  
20 year of corrective action under paragraph (7), any  
21 group of students (at the school subject to such cor-  
22 rective action) that met the requirements for identi-  
23 fication under paragraph (1) in an academic subject  
24 continues to fail to make adequate yearly progress in

1 such subject, then the local educational agency  
2 shall—”.

3 (g) NEEDS IMPROVEMENT LABEL TO BE GROUP  
4 AND SUBJECT SPECIFIC.—Subparagraph (A) of section  
5 1116(b)(1) of the Elementary and Secondary Education  
6 Act of 1965 (20 U.S.C. 6316(b)(1)) is amended by adding  
7 at the end the following new sentence: “Such identification  
8 shall apply only to each group and subject with respect  
9 to which there is such a failure.”

10 (h) PARENTAL NOTIFICATION OF NEEDS IMPROVE-  
11 MENT TO BE GROUP AND SUBJECT SPECIFIC.—Para-  
12 graph (6) of section 1116(b) of the Elementary and Sec-  
13 ondary Education Act of 1965 (20 U.S.C. 6316(b)) is  
14 amended by striking “of each student enrolled in an ele-  
15 mentary school or a secondary school identified for school  
16 improvement under paragraph (1)” and inserting “of each  
17 student in each group of students that met the require-  
18 ments for identification in an academic subject under  
19 paragraph (1)”.

20 (i) TRANSFER OPTION AND SUPPLEMENTAL SERV-  
21 ICES LIMITED TO STUDENTS FROM FAILING GROUPS.—

22 (1) Clause (i) of section 1116(b)(1)(E) of the  
23 Elementary and Secondary Education Act of 1965  
24 (20 U.S.C. 6316(b)(1)(E)) is amended by inserting  
25 “in each group described in section 1111(b)(2)(C)(v)

1 that met the requirements for such identification”  
2 after “all students”.

3 (2) Paragraphs (5)(A), (7)(C)(i), and (8)(A)(i)  
4 of section 1116(b) of such Act are each amended by  
5 inserting “in such group” after “all students”.

6 (j) LOCAL EDUCATIONAL AGENCIES MAY CHOOSE  
7 TO OFFER SUPPLEMENTAL EDUCATIONAL SERVICES,  
8 AND NOT PUBLIC SCHOOL CHOICE, ON INITIAL FAILURE  
9 TO MAKE ADEQUATE YEARLY PROGRESS.—

10 (1) IN GENERAL.—Subparagraph (E) of section  
11 1116(b)(1) of the Elementary and Secondary Edu-  
12 cation Act of 1965 (20 U.S.C. 6316(b)(1)) is  
13 amended to read as follows:

14 “(E) PUBLIC SCHOOL CHOICE OR SUPPLE-  
15 MENTAL EDUCATIONAL SERVICES.—In the case  
16 of a school identified for school improvement  
17 under this paragraph, the local educational  
18 agency shall, not later than the first day of the  
19 school year following such identification—

20 “(i) provide all students in each group  
21 described in section 1111(b)(2)(C)(v) that  
22 met the requirements for such identifica-  
23 tion (and who are enrolled in the school)  
24 with the option to transfer to another pub-  
25 lic school served by the local educational

1           agency, which may include a public charter  
2           school, that has not been identified for  
3           school improvement under this paragraph,  
4           unless such an option is prohibited by  
5           State law, or

6                   “(ii) make supplemental educational  
7           services available consistent with sub-  
8           section (e)(1) to students in such group in  
9           the academic subject to which such identi-  
10          fication relates.

11          If more than 1 school served by such agency is  
12          identified for school improvement under this  
13          paragraph or more than 1 group of students  
14          meets the requirements for such identification,  
15          such agency shall make the same choice under  
16          clause (i) or (ii) for all such schools and all  
17          such groups.”.

18          (2) CONFORMING AMENDMENT.—Paragraph (5)  
19          of section 1116(b) of such Act is amended to read  
20          as follows:

21                   “(5) FAILURE TO MAKE ADEQUATE YEARLY  
22          PROGRESS AFTER IDENTIFICATION.—If, by the end  
23          of the first full school year after identification under  
24          paragraph (1) of a school served under this part,  
25          any group of students that met the requirements for

1 such identification in an academic subject fails to  
2 make adequate yearly progress in such subject, as  
3 set out in the State’s plan under section 1111(b)(2),  
4 the local educational agency serving such school—

5 “(A) shall continue to provide the transfer  
6 option under clause (i) of paragraph (1)(E) or  
7 to make the supplemental educational services  
8 available under clause (ii) of such paragraph,  
9 whichever was chosen by such agency,

10 “(B) shall provide the transfer option  
11 under such clause (i) or to make the supple-  
12 mental educational services available under such  
13 clause (ii), whichever was not chosen by such  
14 agency under such paragraph; and

15 “(C) shall continue to provide technical as-  
16 sistance.”.

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