

111TH CONGRESS  
2D SESSION

# H. R. 4837

To amend the Elementary and Secondary Education Act of 1965, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2010

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

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## A BILL

To amend the Elementary and Secondary Education Act of 1965, and for other purposes.

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; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5 “School Accountability Improvement Act of 2010”.

6       (b) **TABLE OF CONTENTS.**—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

### TITLE I—MEASURING ADEQUATE YEARLY PROGRESS

Sec. 101. Measuring adequate yearly progress of groups.

Sec. 102. Intermediate goals need not increase in equal increments for all groups.

- Sec. 103. Alternative approaches to measuring adequate yearly progress.
- Sec. 104. Graduation rates.
- Sec. 105. Participation of students in assessments.
- Sec. 106. Students with disabilities requiring alternate assessments.
- Sec. 107. Assessments.
- Sec. 108. Regulations.
- Sec. 109. Research and standards.

#### TITLE II—STATE FLEXIBILITY

- Sec. 201. State flexibility.

#### TITLE III—IMPLEMENTATION OF SANCTIONS

- Sec. 301. School improvement and public school choice.
- Sec. 302. School district improvement.
- Sec. 303. Supplemental services.
- Sec. 304. Full implementation.

#### TITLE IV—NONPUBLIC SCHOOLS

- Sec. 401. Participation of children enrolled in private schools.

#### TITLE V—EFFECTIVE DATE AND REGULATIONS

- Sec. 501. Effective date.
- Sec. 502. Regulations.

# 1 **TITLE I—MEASURING ADEQUATE** 2 **YEARLY PROGRESS**

## 3 **SEC. 101. MEASURING ADEQUATE YEARLY PROGRESS OF** 4 **GROUPS.**

5 (a) “N” SIZE MAY VARY BY SIZE OF SCHOOL OR  
6 LEA.—The following provisions of the Elementary and  
7 Secondary Education Act of 1965 are each amended by  
8 inserting after “reliable information” the following: “(the  
9 number required to be insufficient being greater, at the  
10 option of the State, for a local educational agency than  
11 for a school, and varying, at the option of the State, from  
12 agency to agency and school to school in proportion to  
13 total enrollment)”:

14 (1) In section 1111 (20 U.S.C. 6311)—

1 (A) subsection (b)(2)(C)(v), in the matter  
2 after subclause (II)(dd);

3 (B) subsection (b)(2)(I)(ii);

4 (C) subsection (b)(3)(C)(xiii); and

5 (D) subsection (h)(C)(i).

6 (2) Section 1431(b) (20 U.S.C. 6471(b)).

7 (b) PERMITTING FEWER STUDENTS IN GROUP TO  
8 DEMONSTRATE PROGRESS TO MEET AYP SAFE HAR-  
9 BOR.—Section 1111 (20 U.S.C. 6311) is further amended  
10 in subsection (b)(2)(I)(i) by striking “10 percent” and in-  
11 serting “5 percent”.

12 (c) COUNTING STUDENTS WHO ARE IN MORE THAN  
13 ONE GROUP.—Section 1111 (20 U.S.C. 6311) is further  
14 amended in subsection (b)(2) by adding at the end the  
15 following:

16 “(L) COUNTING STUDENTS WHO  
17 ARE IN MORE THAN ONE GROUP.—  
18 For the purpose of determining ade-  
19 quate yearly progress, the State may  
20 establish a uniform procedure for  
21 counting students under which a stu-  
22 dent who belongs to more than one of  
23 the groups described in subparagraph  
24 (C)(v) is counted toward each such  
25 group to which the student belongs as

1 a fraction of 1 student, the numerator  
 2 of the fraction being 1 and the de-  
 3 nominator being the number of such  
 4 groups to which the student belongs.”.

5 **SEC. 102. INTERMEDIATE GOALS NEED NOT INCREASE IN**  
 6 **EQUAL INCREMENTS FOR ALL GROUPS.**

7 Section 1111 of the Elementary and Secondary Edu-  
 8 cation Act of 1965 (20 U.S.C. 6311) is further amended  
 9 in subsection (b)(2)(H)(i)—

10 (1) by striking “in equal increments”; and

11 (2) by inserting before the semicolon at the end  
 12 the following: “in—

13 “(aa) increments defined by  
 14 the State as appropriate for the  
 15 group, for each of the groups of  
 16 students described in subpara-  
 17 graph (C)(v); and

18 “(bb) equal increments, for  
 19 all other students.”.

20 **SEC. 103. ALTERNATIVE APPROACHES TO MEASURING ADE-**  
 21 **QUATE YEARLY PROGRESS.**

22 (a) **EXPANSION OF AYP TO INCLUDE GAIN SCORES**  
 23 **AND PARTIAL CREDIT FOR MEETING BASIC TARGETS.—**

24 Section 1111 of the Elementary and Secondary Education  
 25 Act of 1965 (20 U.S.C. 6311) is further amended in sub-

1 section (b)(2)(C)(vii) by inserting after “such as” the fol-  
2 lowing: “achievement under a ‘gain score’ approach (such  
3 as a value-added system), progress toward meeting basic  
4 proficiency targets,”.

5 (b) ALTERNATIVES TO AYP.—Such section is further  
6 amended in subsection (b)(2) by adding at the end the  
7 following:

8 “(M) ALTERNATE METHODS OF DEFINING  
9 ADEQUATE YEARLY PROGRESS.—In lieu of de-  
10 fining adequate yearly progress under subpara-  
11 graph (C), the State may define adequate year-  
12 ly progress in any manner that—

13 “(i) uses the measures of performance  
14 and progress described in subparagraph  
15 (A);

16 “(ii) complies with the time line re-  
17 quired by subparagraph (F); and

18 “(iii) includes intermediate goals, as  
19 required by subparagraph (H).

20 “(N) ADDITIONAL METHODS OF DEFINING  
21 ADEQUATE YEARLY PROGRESS.—

22 “(i) IN GENERAL.—For the purpose  
23 of meeting the requirements of this sec-  
24 tion, the State educational agency may  
25 identify a school or local educational agen-

1           cy as having made adequate yearly  
2           progress pursuant to subparagraph (I) in  
3           any year in which one or more groups de-  
4           scribed in clause (v) of subparagraph (C)  
5           in that school or local educational agency  
6           do not meet or exceed the proficient level  
7           established under subparagraph (G) in a  
8           subject to which the accountability provi-  
9           sions of this subsection applies or do not  
10          meet the requirement for any other indi-  
11          cator established under subparagraph (D)  
12          if—

13                   “(I) the same group or groups  
14                   did not fail to meet the requirements  
15                   for adequate yearly progress for that  
16                   same subject or the other indicator in  
17                   the previous year as determined with-  
18                   out using the provisions of this sub-  
19                   paragraph; and

20                   “(II) the number of students who  
21                   did not meet or exceed the proficient  
22                   level in such group or groups is not  
23                   greater in the aggregate than a per-  
24                   centage determined by the State edu-  
25                   cational agency but not in excess of

1           10 percent of the students enrolled in  
2           the school or local educational agency,  
3           as the case may be, in grades that  
4           were assessed in that subject or indi-  
5           cator for adequate yearly progress.

6           “(ii) GREATER PERCENTAGE.—The  
7           Secretary may, on an individual State  
8           basis, approve a greater percentage than  
9           the amount set forth in clause (i)(II) for  
10          determining whether a school or local edu-  
11          cational agency has met the requirements  
12          for adequate yearly progress if—

13                 “(I) the percentage over that  
14                 amount is consistent with the account-  
15                 ability system of the State and is pro-  
16                 posed as an amendment to the State  
17                 plan required by this section; and

18                 “(II) the State educational agen-  
19                 cy applies a lower status designation  
20                 of adequate yearly progress to any  
21                 school or local educational agency that  
22                 utilizes the percentage approved under  
23                 this clause for determining that ade-  
24                 quate yearly progress was met.

1                   “(O) MULTIPLE ASSESSMENTS FOR DE-  
2                   TERMINING ADEQUATE YEARLY PROGRESS.—

3                   “(i) Subject to approval by the Sec-  
4                   retary, State plans submitted pursuant to  
5                   subsection (a) may use a combination of  
6                   assessments aligned with the academic  
7                   standards of the State and other indicators  
8                   to determine whether adequate yearly  
9                   progress is made. The State plan may pro-  
10                  vide for the following:

11                  “(I) The assignment of specific  
12                  weights or points to the assessments  
13                  or other indicators that are used in  
14                  order to calculate a composite score to  
15                  determine whether adequate yearly  
16                  progress is made.

17                  “(II) The use of portfolios,  
18                  projects, and performance-based as-  
19                  sessments consistent with criteria es-  
20                  tablished by the State.

21                  “(III) The use of teacher obser-  
22                  vations that meet State criteria to as-  
23                  sess—

24                  “(aa) the performance of  
25                  students for whom such method

1 of assessment would be appro-  
2 priate, including students identi-  
3 fied in subclauses (II)(cc) and  
4 (dd) of subparagraph (C)(v); and

5 “(bb) the performance of  
6 students on skills or uses of in-  
7 formation that are not ade-  
8 quately provided for in the State  
9 assessment instrument.

10 “(IV) The use of high school  
11 graduation rates, the number or por-  
12 tion of advanced placement and inter-  
13 national baccalaureate courses taken  
14 by students in specific subjects, post-  
15 secondary education admissions, and  
16 other factors that are appropriate for  
17 the grade level of the students in-  
18 volved in addition to the academic as-  
19 sessment of those students.”.

20 **SEC. 104. GRADUATION RATES.**

21 Section 1111(b)(2) of the Elementary and Secondary  
22 Education Act of 1965 (20 U.S.C. 6311(b)(2)) is amended  
23 by adding at the end the following:

24 “(L) GRADUATION AND DROP-OUT  
25 RATES.—In determining the graduation and

1 drop-out rates required by this Act, the State  
2 plan may provide alternatives, in lieu of count-  
3 ing students in the year of the on-time, 4-year  
4 high school graduation cohort of such students,  
5 in order to address the following circumstances:

6 “(i) Students who do not graduate on  
7 time and who are enrolled in school for the  
8 summer or semester (and where applicable  
9 are continuously enrolled in a subsequent  
10 semester) after their fourth year of high  
11 school, except that such students shall be  
12 counted in the calculation of the gradua-  
13 tion and dropout rates for the school year  
14 in which such graduation (or noncomple-  
15 tion) occurs.

16 “(ii) Students who leave school prior  
17 to earning a high school diploma and who  
18 are enrolled for the semester after their  
19 fourth year of high school in an accredited  
20 postsecondary institution in a program  
21 leading to a two-year or a four-year degree  
22 or in a job training program that is ap-  
23 proved by the State and prepares students  
24 for employment and to advance beyond the  
25 entry level, except that—

1                   “(I) such students shall be count-  
2                   ed in the school year in which such  
3                   graduation (or noncompletion) occurs;  
4                   and

5                   “(II) such determination may be  
6                   made on the basis of whether such  
7                   students leave school or a job training  
8                   program having successfully com-  
9                   pleted the courses or job training pro-  
10                  gram that the State would deem as  
11                  having satisfied the requirements for  
12                  a high school diploma.”.

13 **SEC. 105. PARTICIPATION OF STUDENTS IN ASSESSMENTS.**

14           (a) **PERCENTAGE OF STUDENTS REQUIRED TO TAKE**  
15 **ASSESSMENTS.**—Section 1111 of the Elementary and Sec-  
16 ondary Education Act of 1965 (20 U.S.C. 6311) is further  
17 amended in subsection (b)(2)(I)(ii)—

18                   (1) by striking “95 percent” the first place  
19                   such term appears and inserting “a percentage  
20                   (from 90 to 95 percent, based on criteria established  
21                   in the State plan)”; and

22                   (2) by striking “95 percent” the second place  
23                   such term appears and inserting “percentage”.

1 (b) DETERMINING PARTICIPATION RATES.—Section  
2 1111 of such Act (20 U.S.C. 6311) is further amended  
3 in subsection (b)(2) by adding at the end the following:

4 “(N) STUDENTS EXEMPT FROM PARTICI-  
5 PATING IN ASSESSMENTS.—For the purpose of  
6 determining compliance with the percentage re-  
7 quired by subparagraph (I)(ii), the State may  
8 provide for a student to be excluded from the  
9 determination with respect to an assessment if  
10 any of the following apply:

11 “(i) EXCUSED ABSENCE.—The stu-  
12 dent did not take that assessment by rea-  
13 son of—

14 “(I) a medical condition;

15 “(II) a parental decision to ex-  
16 empt the student, if such a decision is  
17 available under, and exercised pursu-  
18 ant to, State law; or

19 “(III) a circumstance out of the  
20 control of the student, school, or local  
21 educational agency, such as a natural  
22 disaster.

23 “(ii) CHRONIC NONATTENDANCE.—

24 Each of the following is true:

1                   “(I) The student did not take the  
2                   assessment and has demonstrated an  
3                   unusual and chronic pattern of non-  
4                   attendance, as defined by the State.

5                   “(II) The local educational agen-  
6                   cy in which the student is enrolled is  
7                   implementing a plan to increase par-  
8                   ticipation in the assessments by stu-  
9                   dents demonstrating such a pattern of  
10                  nonattendance.

11                  “(O) STUDENTS ASSIGNED ‘BELOW BASIC’  
12                  SCORE BY DEFAULT.—For the purpose of de-  
13                  termining adequate yearly progress, and for the  
14                  purpose of determining compliance with the  
15                  percentage required by subparagraph (I)(ii), a  
16                  student who does not take an assessment and  
17                  who is not excluded under subparagraph (N)  
18                  may, if the State plan so provides, be treated  
19                  as having taken the assessment and having  
20                  achieved a score below the level described in  
21                  paragraph (1)(D)(ii)(III) (below basic).”.

1 **SEC. 106. STUDENTS WITH DISABILITIES REQUIRING AL-**  
2 **TERNATE ASSESSMENTS.**

3 Section 1111 of the Elementary and Secondary Edu-  
4 cation Act of 1965 (20 U.S.C. 6311) is further amended  
5 in subsection (b)(2) by adding at the end the following:

6 “(P) STUDENTS WITH DISABILITIES RE-  
7 QUIRING ALTERNATE ASSESSMENTS.—Con-  
8 sistent with paragraph (3), a State may imple-  
9 ment the amendments made to part 200 of title  
10 34, Code of Federal Regulations, on December  
11 9, 2003 (68 Fed. Reg. 68698) (related to  
12 achievement of students with significant cog-  
13 nitive disabilities) as if such amendments—

14 “(i) permitted 3 percent of such stu-  
15 dents to be counted for the purposes of de-  
16 termining adequate yearly progress, except  
17 that—

18 “(I) any assessment given to any  
19 such student for the purposes of de-  
20 termining such adequate yearly  
21 progress must be required by the indi-  
22 vidualized education plan of such stu-  
23 dent;

24 “(II) the individualized education  
25 plan must reflect the need for any  
26 such alternate assessment based on

1 the evaluation of such student and the  
2 services provided such student under  
3 section 614 of the Individuals with  
4 Disabilities Education Act (42 U.S.C.  
5 1400 et seq.); and

6 “(III) the individualized edu-  
7 cation plan must include written con-  
8 sent from the parent of such student  
9 prior to such alternate assessment  
10 being administered;

11 “(ii) used the term ‘students requiring  
12 alternate assessments’ in lieu of the term  
13 ‘students with the most significant cog-  
14 nitive disabilities’; and

15 “(iii) permitted the eligibility of such  
16 students to be determined by the State  
17 educational agency, except that such eligi-  
18 bility shall, at a minimum, include—

19 “(I) students who are receiving  
20 services pursuant to a plan required  
21 under section 504 of the Rehabilita-  
22 tion Act of 1973 and part 104 of title  
23 34, Code of Federal Regulations;

24 “(II) students who are assessed  
25 at a grade level below the grade level

1 in which they are enrolled (out of level  
2 assessments); and

3 “(III) students considered stu-  
4 dents with the most significant cog-  
5 nitive disabilities, as defined by the  
6 State educational agency, prior to the  
7 enactment of the No Child Left Be-  
8 hind Improvements Act of 2007.”.

9 **SEC. 107. ASSESSMENTS.**

10 Section 1111(b)(3)(C) of the Elementary and Sec-  
11 ondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(C))  
12 is amended—

13 (1) in clause (ix) by striking subclause (III) and  
14 inserting the following:

15 “(III) the inclusion of limited-  
16 English-proficient students, who—

17 “(aa) may, consistent with  
18 paragraph (2)(P), be assessed, as  
19 determined by the local edu-  
20 cational agency, through the use  
21 of an assessment which requires  
22 achievement of specific gains for  
23 up to three school years from the  
24 first year any such student is as-

1           sessed for the purposes of this  
2           subsection;

3           “(bb) may, at the option of  
4           the State educational agency, be  
5           assessed in the first year any  
6           such student attended school in  
7           the United States (not including  
8           Puerto Rico);

9           “(cc) shall not be included  
10          in any calculation of adequate  
11          yearly progress when such stu-  
12          dents are in the first year of at-  
13          tending school in the United  
14          States (not including Puerto  
15          Rico); and

16          “(dd) shall be assessed in a  
17          valid and reliable manner and  
18          provided reasonable accommoda-  
19          tions on assessments adminis-  
20          tered to such students under this  
21          paragraph, including, to the ex-  
22          tent practicable, assessments in  
23          the language and form most like-  
24          ly to yield accurate data on what  
25          such students know and can do

1 in academic content areas, until  
2 such students have achieved  
3 English language proficiency as  
4 determined under paragraph  
5 (7);”;

6 (2) in clause (xiv) by striking “and” at the end;

7 (3) by redesignating clause (xv) as clause (xvii);

8 and

9 (4) by inserting after clause (xiv) the following:

10 “(xv) at the option of the local edu-  
11 cational agency, be administered multiple  
12 times to any such student during the  
13 school year, or (at the option of the State)  
14 a subsequent date prior to the beginning of  
15 the next school year, provided that the  
16 local educational agency shall determine  
17 which score of any such administration be  
18 used for determining adequate yearly  
19 progress;

20 “(xvi) at the option of the school dis-  
21 trict, measure the achievement of a stu-  
22 dent as if such student were in the grade  
23 level proceeding the grade level of such  
24 student, provided that—

1                   “(I) if such student meets the  
 2                   proficient level of achievement for  
 3                   such proceeding grade level, such  
 4                   score shall be used to determine ade-  
 5                   quate yearly progress for such pro-  
 6                   ceeding grade level; and

7                   “(II) if such student does not  
 8                   meet the proficient level of achieve-  
 9                   ment for such proceeding grade level,  
 10                  such score is not used for the pur-  
 11                  poses of determining adequate yearly  
 12                  progress; and”.

13 **SEC. 108. REGULATIONS.**

14                  Section 1111 of the Elementary and Secondary Edu-  
 15                  cation Act of 1965 (20 U.S.C. 6311) is further amended  
 16                  by adding at the end the following:

17                  “(o) REGULATIONS.—

18                         “(1) CODIFICATION OF REGULATIONS AFFECT-  
 19                         ING LIMITED ENGLISH PROFICIENT CHILDREN.—

20                         This part shall be implemented consistent with  
 21                         amendments proposed to part 200 of title 34, Code  
 22                         of Federal Regulations, on June 24, 2004 (69 Fed.  
 23                         Reg. 35462) (relating to the assessment of limited  
 24                         English proficient children and the inclusion of lim-  
 25                         ited-English-proficient children in subgroups) as if

1 such amendments permitted students who were pre-  
2 viously identified as limited-English-proficient to be  
3 included in the group described in subsection  
4 (b)(2)(C)(v)(II)(dd) for three additional years, as  
5 determined by a local educational agency (based on  
6 the individual needs of a child) for the purposes of  
7 determining adequate yearly progress.

8 “(2) ISSUANCE OF REGULATIONS AFFECTING  
9 CHILDREN WITH DISABILITIES.—The Secretary shall  
10 issue regulations not later than 180 days after the  
11 date of the enactment of the No Child Left Behind  
12 Improvements Act of 2006 regarding the participa-  
13 tion of children with disabilities under this part.  
14 Such regulations shall permit a State to include, for  
15 up to three years, students who were children with  
16 disabilities as part of the group described under sec-  
17 tion 1111(b)(2)(C)(v)(II)(cc) but who are no longer  
18 identified as children with disabilities. Students with  
19 disabilities may be provided an alternate assessment,  
20 including an out of level assessment, if deemed ap-  
21 propriate by the individual education plan team for  
22 that student and included within the written indi-  
23 vidual education plan for that student.”.

1 **SEC. 109. RESEARCH AND STANDARDS.**

2 (a) IN GENERAL.—From funds appropriated under  
3 subsection (b), the Secretary is authorized to conduct re-  
4 search and to make grants to States and groups of States  
5 for the purpose of developing and implementing standards  
6 and assessments in academic subjects for which States are  
7 held accountable for making adequate yearly progress  
8 under the Elementary and Secondary Education Act of  
9 1965 (20 U.S.C. 6301 et seq.), subject to the following  
10 conditions:

11 (1) HIGH QUALITY STANDARDS.—The stand-  
12 ards that are developed pursuant to this subsection  
13 will—

14 (A) be designed with the expectation that  
15 students will graduate from high school pre-  
16 pared to enter postsecondary education or the  
17 workplace; and

18 (B) be clear, concise, and consistent with  
19 the rigor of standards in nations that research  
20 validates as being high caliber.

21 (2) PROHIBITION.—The Federal Government  
22 and any entity under its control is prohibited from—

23 (A) establishing academic standards or re-  
24 quiring any State to adopt specific standards or  
25 assessments as a condition for receiving funds

1 under any program administered by the De-  
2 partment; and

3 (B) establishing any assessment or requir-  
4 ing any State to adopt a specific assessment for  
5 determining adequate yearly progress.

6 (3) INCENTIVE.—A State that adopts standards  
7 in an academic system pursuant to paragraph (1)  
8 may—

9 (A) revise the measurable objectives re-  
10 quired by section 1111(b)(2)(G) of the Elemen-  
11 tary and Secondary Education Act of 1965 (8  
12 U.S.C. 6311(b)(2)(G));

13 (B) extend the time line set forth in sec-  
14 tion 1111(b)(2)(F) of such Act to a subsequent  
15 year but not beyond the 2017–18 school year;

16 (C) exclude assessment results from the  
17 determination of whether a school or local edu-  
18 cational agency is in need of improvement  
19 under section 1116(b)(1)(A) of such Act for the  
20 school year in which such standards are imple-  
21 mented by local educational agencies; and

22 (D) defer the implementation of the re-  
23 quirements of paragraph (5), (7), and (8) of  
24 section 11116(b) of such Act for the school year  
25 following the first school year in which such

1 standards are implemented by local educational  
2 agencies.

3 (4) STATE PLANS.—The State plan under sec-  
4 tion 1111 of such Act of any State that adopts  
5 standards pursuant to paragraph (1) shall indicate  
6 how the State will—

7 (A) assist local educational agencies to—

8 (i) provide for the professional devel-  
9 opment of teachers and administrators to  
10 effectively teach to such standards;

11 (ii) align curriculum with such stand-  
12 ards;

13 (iii) acquire and align, as the case  
14 may be, course materials, technology data  
15 systems and other resources necessary to  
16 effectively teach to such standards;

17 (iv) ensure that the State will give a  
18 high priority in providing assistance under  
19 this subsection to schools and local edu-  
20 cational agencies wherein 35 percent or  
21 more of the students in the group identi-  
22 fied under subclause (I) of section  
23 1111(b)(2)(C)(v) of such Act did not make  
24 adequate yearly progress targets in the

1 year prior to the implementation of such  
2 standards; and

3 (v) ensure that representatives of  
4 teachers, administrators, school board  
5 members, parents, and other stakeholders  
6 are provided timely involvement in the de-  
7 velopment, adoption, implementation, and  
8 evaluation of standards and assessments  
9 funded by this section; and

10 (B) use State funds and the funds pro-  
11 vided under such Act to support the activities  
12 described in subparagraph (A) as a top priority.

13 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
14 are authorized to be appropriated to carry out this section  
15 \$600,000,000.

## 16 **TITLE II—STATE FLEXIBILITY**

### 17 **SEC. 201. STATE FLEXIBILITY.**

18 Section 1111 of the Elementary and Secondary Edu-  
19 cation Act of 1965 (20 U.S.C. 6311) is amended—

20 (1) by redesignating subsections (f) through  
21 (m) as subsections (g) through (n); and

22 (2) by inserting after subsection (e) the fol-  
23 lowing:

24 “(f) STATE FLEXIBILITY.—

1           “(1) PLANS.—In approving plans under sub-  
2           section (e), the Secretary shall accord a State max-  
3           imum flexibility to make such plans and any revi-  
4           sions compatible with the accountability system of  
5           such State.

6           “(2) WAIVERS.—Through the authority pro-  
7           vided under part D of title IX, the Secretary may  
8           grant a waiver of any statutory or regulatory re-  
9           quirement of this part requested by a State edu-  
10          cational agency or local educational agency.

11          “(3) NOTIFICATION.—Not later than 30 days  
12          after the approval of any revisions to the plan of a  
13          State, or the granting of any waivers described  
14          under paragraph (2), the Secretary shall notify each  
15          State educational agency of such revision or waiver  
16          and, through the Website of the Department of Edu-  
17          cation and the Federal Register, the public. The no-  
18          tification described in the preceding sentence shall  
19          be in writing and include a clear and complete expla-  
20          nation of such revision or wavier.

21          “(4) APPLICABILITY OF PLAN REVISIONS AND  
22          WAIVERS TO OTHER AGENCIES.—A revision to a  
23          plan approved under this part or a waiver issued  
24          under this subsection or under part D of title IX  
25          may be applied in any other State or local edu-



1 (C) by striking “another public school”  
2 and inserting “one other public school identi-  
3 fied, and”;

4 (3) in paragraph (1)(E) by adding at the end  
5 the following:

6 “(iii) SPECIAL CONDITIONS.—A local  
7 educational agency shall not be required to  
8 implement the transfer of a student to a  
9 school under this subparagraph if doing so  
10 would—

11 “(I) violate a State or local law  
12 or policy relating to health, safety, or  
13 class size;

14 “(II) result in overcrowding, the  
15 installation of mobile classrooms, con-  
16 struction of classrooms, or other sig-  
17 nificant capital improvements in that  
18 school; or

19 “(III) be impractical due to dis-  
20 tance, geographical barriers or haz-  
21 ards, time of travel, or unusually high  
22 cost of travel.”;

23 (4) in paragraph (1) by adding at the end the  
24 following:

1           “(G) OPTIONS.—A local educational agen-  
2           cy may offer supplemental services as described  
3           in subsection (e) in place of the option to trans-  
4           fer to one or more public schools described in  
5           subparagraph (E) for the purposes of meeting  
6           the requirements of paragraphs (5)(A),  
7           (7)(C)(i), or (8)(A)(i).”;

8           (5) in paragraph (5) by inserting after “ade-  
9           quate yearly progress” the following: “(in the same  
10          subject for the same group of students)”;

11          (6) in paragraph (7)(C) by inserting after “ade-  
12          quate yearly progress” the following: “(in the same  
13          subject for the same group of students)”;

14          (7) in paragraph (7)(C)(i)—

15                 (A) by striking “all”; and

16                 (B) by striking “another” and inserting  
17                 “an other”;

18          (8) in paragraph (7) by amending subpara-  
19          graph (D) to read as follows:

20                 “(D) DELAY.—Notwithstanding any other  
21                 provision of this paragraph, the local edu-  
22                 cational agency may delay, for a period not to  
23                 exceed 1 year, implementation of the require-  
24                 ments under paragraph (5), corrective action  
25                 under this paragraph, or restructuring under

1 paragraph (8) if the school makes adequate  
2 yearly progress for 1 year or if its failure to  
3 make adequate yearly progress is due to—

4 “(i) exceptional or uncontrollable cir-  
5 cumstances, such as a natural disaster;

6 “(ii) a precipitous and unforeseen de-  
7 cline in the financial resources of the local  
8 educational agency or school; or

9 “(iii) a sudden or significant increase  
10 in the number of percentage of students  
11 represented by a group described in section  
12 1111(b)(2)(C)(v).

13 No such period shall be taken into account in  
14 determining the number of consecutive years of  
15 failure to make adequate yearly progress.”;

16 (9) in paragraph (8)(A) by inserting after “ade-  
17 quate yearly progress” the following: “in the same  
18 subject for the same group of students and the total  
19 number of students who did not meet or exceed the  
20 proficient level of academic achievement (who are  
21 members of a group described in section  
22 1111(b)(2)(C)(v)) that did not make adequate yearly  
23 progress exceed 35 percent of all students enrolled  
24 in such school who took the assessment in such sub-  
25 ject”;

1           (10) in paragraph (8)(A)(i)—  
2                 (A) by striking “all”; and  
3                 (B) by striking “another” and inserting  
4           “an other”;  
5           (11) in paragraph (10) by adding at the end  
6           the following:

7                 “(E) DETERMINATION THAT LESSER  
8           AMOUNT IS NEEDED.—

9                 “(i) IN GENERAL.—If a local edu-  
10           cational agency determines under subpara-  
11           graph (A) that a lesser amount is needed  
12           to comply with paragraph (9) and to sat-  
13           isfy all requests for supplemental edu-  
14           cational services under subsection (e), the  
15           agency shall be required by this paragraph  
16           to spend only that lesser amount. The re-  
17           maining amount (equal to the difference  
18           between that lesser amount and the  
19           amount otherwise required to be spent by  
20           subparagraph (A)) shall be merged back  
21           with the agency’s allocation under subpart  
22           2 and shall be available accordingly.

23                 “(ii) TIMING.—A determination de-  
24           scribed in clause (i) may not be made—

1                   “(I) until a reasonable time after  
2                   notice to parents is made under para-  
3                   graph (6) and a reasonable time after  
4                   the deadline for making requests for  
5                   such transportation or services has  
6                   passed; and

7                   “(II) after December 15, or after  
8                   the date specified in the State plan, if  
9                   the State plan specifies an earlier  
10                  date.

11                  “(iii) ASSURANCES.—The remaining  
12                  amount may not be merged back with the  
13                  agency’s allocation, as described in clause  
14                  (i), until after the agency notifies the State  
15                  of the determination made under clause (i)  
16                  and provides assurances to the State that  
17                  the determination was made in compliance  
18                  with this paragraph.”; and

19                  (12) in paragraph (13) by striking “is no longer  
20                  identified” and all that follows through the period at  
21                  the end and inserting the following: “has made ade-  
22                  quate yearly progress for the group in which the  
23                  child is a member in the same subject for which a  
24                  failure to meet adequate yearly progress triggered  
25                  the transfer.”.

1 **SEC. 302. SCHOOL DISTRICT IMPROVEMENT.**

2 Section 1116(c)(10) of the Elementary and Sec-  
3 ondary Education Act of 1965 (20 U.S.C. 6316(c)(10))  
4 is amended—

5 (1) in subparagraph (B) by amending clause  
6 (ii) to read as follows:

7 “(ii) shall take corrective action with  
8 respect to a local educational agency—

9 “(I) that fails to make adequate  
10 yearly progress, as defined by the  
11 State, in the same subject, in either  
12 (at the option of the State) each  
13 grade span (as determined by the  
14 State) or averaged across all grades,  
15 for a group described in section  
16 1111(b)(2)(C)(v) by the end of the  
17 second full school year after the iden-  
18 tification of such agency under para-  
19 graph (3); and

20 “(II) whose total number of stu-  
21 dents (who are members of a group  
22 described in section 1111(b)(2)(C)(v))  
23 that did not meet or exceed the pro-  
24 ficient level of academic achievement  
25 exceed 35 percent of all students en-  
26 rolled in a school in such agency who

1                   took the assessment in such subject  
2                   and averaged across all grades; and”;  
3                   and

4                   (2) by amending subparagraph (F) to read as  
5 follows:

6                   “(F) DELAY.—Notwithstanding subpara-  
7 graph (B)(ii), a State educational agency may  
8 delay, for a period not to exceed 1 year, imple-  
9 mentation of corrective action under this para-  
10 graph if the local educational agency makes  
11 adequate yearly progress for 1 year or its fail-  
12 ure to make adequate yearly progress is due  
13 to—

14                   “(i) exceptional or uncontrollable cir-  
15 cumstances, such as a natural disaster;

16                   “(ii) a precipitous and unforeseen de-  
17 cline in the financial resources of the local  
18 educational agency; or

19                   “(iii) a sudden or significant increase  
20 in the number or percentage of students  
21 represented by any group described in sec-  
22 tion 1111(b)(2)(C)(v).”.

23 **SEC. 303. SUPPLEMENTAL SERVICES.**

24                   Section 1116(e) of the Elementary and Secondary  
25 Education Act of 1965 (20 U.S.C. 6316(e)) is amended—

1 (1) in paragraph (4)—

2 (A) in subparagraph (B), by inserting after  
3 “objective criteria” the following: “(developed  
4 through continuous consultation with local edu-  
5 cational agencies in the State)”;

6 (B) in subparagraph (D) by striking “and”  
7 at the end;

8 (C) in subparagraph (E) by striking the  
9 period at the end and inserting “; and”; and

10 (D) by adding at the end the following:

11 “(F) Develop procedures by which a local  
12 educational agency may—

13 “(i) present complaints and docu-  
14 mentation of such complaints to the State  
15 educational agency regarding the qualifica-  
16 tions, operation, and evaluation of ap-  
17 proved providers and potential providers  
18 seeking such approval; and

19 “(ii) demonstrate to the State edu-  
20 cational agency that any provider should  
21 not be authorized to provide supplemental  
22 services, as described in this subsection to  
23 any school or schools under the jurisdiction  
24 of that local education agency.”;

1           (2) by redesignating paragraph (12) as para-  
2           graph (13); and

3           (3) by inserting after paragraph (11) the fol-  
4           lowing:

5           “(12) LOCAL EDUCATIONAL AGENCIES AS PRO-  
6           VIDERS.—Nothing in this section prohibits a local  
7           educational agency that has failed to make adequate  
8           yearly progress or is in improvement, corrective ac-  
9           tion, or restructuring status pursuant to subsection  
10          (c) from providing supplemental services, solely due  
11          to such failure. In developing and applying objective  
12          criteria under paragraph (4)(B) and withdrawing  
13          approval for providers under paragraph (4)(D), a  
14          State educational agency may not consider whether  
15          a local educational agency made adequate yearly  
16          progress or its status under subsection (c).”.

17 **SEC. 304. FULL IMPLEMENTATION.**

18          Section 1116 of the Elementary and Secondary Edu-  
19          cation Act of 1965 (20 U.S.C. 6316) is amended by add-  
20          ing at the end the following:

21          “(i) **CONDITIONAL IMPLEMENTATION.**—Notwith-  
22          standing any other provision of this section, a State edu-  
23          cational agency, local educational agency, or school, as ap-  
24          plicable, may defer the requirements of subsections (b)(7)

1 and (8) and subsections (c)(7) and (10) in any fiscal year  
2 for which both of the following apply:

3           “(1) The amount appropriated under section  
4           1002(a) for that fiscal year fails to exceed, by at  
5           least \$2,500,000,000, the amount appropriated  
6           under that section for the preceding fiscal year.

7           “(2) The amount appropriated under section  
8           611(i) of the Individuals with Disabilities Education  
9           Act (42 U.S.C. 1400 et seq.) for that fiscal year  
10          fails to exceed, by at least \$2,000,000,000, the  
11          amount appropriated under that section for the pre-  
12          ceding fiscal year.”.

## 13 **TITLE IV—NONPUBLIC SCHOOLS**

### 14 **SEC. 401. PARTICIPATION OF CHILDREN ENROLLED IN PRI-** 15 **VATE SCHOOLS.**

16          Section 1120 of the Elementary and Secondary Edu-  
17 cation Act of 1965 (20 U.S.C. 6320) is amended—

18           (1) in subsection (b)(1)(D) by inserting after  
19           “academically assessed” the following: “(consistent  
20           with subsection (f))”; and

21           (2) by adding at the end the following:

22           “(f) ACCOUNTABILITY FOR CHILDREN ENROLLED IN  
23 PRIVATE SCHOOLS.—

24           “(1) IN GENERAL.—Notwithstanding section  
25           9506(a), as specifically provided for in this sub-

1 section, children enrolled in private elementary  
2 schools and secondary schools that receive edu-  
3 cational services or other benefits under this part  
4 shall participate in the assessments described under  
5 section 1111(b)(3).

6 “(2) REPORTING.—

7 “(A) The State educational agency shall  
8 report the results of the assessments taken by  
9 students in private elementary and secondary  
10 schools by grade and subject to—

11 “(i) the private elementary or sec-  
12 ondary school that such students attend;  
13 and

14 “(ii) the local educational agency in  
15 which the private school is geographically  
16 located in a manner and extent that is con-  
17 sistent with the provisions of section  
18 1111(i) and the function of the local edu-  
19 cational agency under section 1120(b).

20 “(B) A private elementary or secondary  
21 school shall report the assessment results re-  
22 ceived from the State educational agency under  
23 subparagraph (A) to the parents of students en-  
24 rolled in such school who receive services under  
25 this part in writing and in the native language

1 of the parent in a manner and extent consistent  
2 with the provisions of subsection 1111(i).

3 “(3) EFFECTIVENESS OF SERVICES.—Based on  
4 the results of the assessments described under para-  
5 graph (1), a State educational agency may deter-  
6 mine that such services received by children under  
7 this section be ceased in schools when such results,  
8 compared to a comparable cohort of children en-  
9 rolled in a public school in the school district of the  
10 local educational agency, are significantly lower and  
11 such schools do not meet the definition of adequate  
12 yearly progress established by the State in which the  
13 private school is located for 3 or more consecutive  
14 years.”.

## 15 **TITLE V—EFFECTIVE DATE AND** 16 **REGULATIONS**

### 17 **SEC. 501. EFFECTIVE DATE.**

18 Except as specifically provided in this Act, the  
19 amendments made by this Act shall take effect on the first  
20 July 1 that occurs after the date of the enactment of this  
21 Act.

1 **SEC. 502. REGULATIONS.**

2       The Secretary of Education shall issue regulations as  
3 necessary to implement the provisions of this Act not later  
4 than 180 days after the date of the enactment of this Act.

○