

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3316

To provide for flexibility and improvements in elementary and secondary education, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 5, 2010

Ms. COLLINS (for herself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To provide for flexibility and improvements in elementary and secondary education, 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.**

4       This Act may be cited as the “No Child Left Behind  
5 Flexibility and Improvements Act”.

6       **SEC. 2. DISCRETION TO MODIFY ADEQUATE YEARLY**  
7               **PROGRESS TIMELINE.**

8       Section 1111(b)(2)(F) of the Elementary and Sec-  
9       ondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(F))  
10      is amended—

1           (1) by striking “(F) TIMELINE.—Each State”  
2           and inserting the following:

3                   “(F) TIMELINE.—

4                           “(i) IN GENERAL.—Each State”; and

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

6                           “(ii) DISCRETION OF SECRETARY TO  
7                   MODIFY THE TIMELINE.—Every 3 years,  
8                   the Secretary—

9                                   “(I) shall review the require-  
10                                   ments of the timeline established in  
11                                   clause (i); and

12   “(II) may issue guidance or regu-  
13   lations modifying such requirements if  
14   the Secretary determines, at the Sec-  
15   retary’s discretion and after a review  
16   of the progress of the States towards  
17   making adequate yearly progress for  
18   the 2013–2014 school year, that  
19   modifications to the timeline are in  
20   the interests of improving student  
21   achievement and are in keeping with  
22   the purposes of this title.”.

1 **SEC. 3. ALTERNATIVE ACCOUNTABILITY SYSTEMS.**

2 Section 1111(b)(2) of the Elementary and Secondary  
3 Education Act of 1965 (20 U.S.C. 6311(b)(2)) is further  
4 amended—

5 (1) by striking subparagraph (I) and inserting  
6 the following:

7 “(I) ANNUAL IMPROVEMENT FOR  
8 SCHOOLS.—

9 “(i) IN GENERAL.—Each year, for a  
10 school to make adequate yearly progress  
11 under this paragraph—

12 “(I) each group of students de-  
13 scribed in subparagraph (C)(v) must  
14 meet or exceed the objectives set by  
15 the State under subparagraph (G), ex-  
16 cept that if any group described in  
17 subparagraph (C)(v) does not meet  
18 those objectives in any particular  
19 year, the school shall be considered to  
20 have made adequate yearly progress  
21 if—

22 “(aa) the percentage of stu-  
23 dents in that group who did not  
24 meet or exceed the proficient  
25 level of academic achievement on  
26 the State assessment under para-

1 graph (3) decreased by 5 percent  
2 over the past year, or an aggregate  
3 of 10 percent over 2 years,  
4 and that group has made  
5 progress on 1 or more of the academic  
6 indicators described in  
7 clause (vi) or (vii) of subparagraph  
8 (C); or

9 “(bb) the students in that  
10 group demonstrate that the students  
11 are making progress towards  
12 proficiency through an additional  
13 model or system for  
14 measuring student progress described  
15 in subparagraph (J) and  
16 that group has made progress on  
17 one or more of the academic indicators  
18 described in clause (vi) or  
19 (vii) of subparagraph (C); and

20 “(II) not less than 95 percent of  
21 each group of students described in  
22 subparagraph (C)(v) who are enrolled  
23 in the school are required to take the  
24 assessments, consistent with paragraph  
25 (3)(C)(xi) and with accom-

1 modations, guidelines, and alternative  
2 assessment provided in the same man-  
3 ner as those provided under section  
4 612(a)(16)(A) of the Individuals with  
5 Disabilities Education Act and para-  
6 graph (3), on which adequate yearly  
7 progress is based (except that the 95  
8 percent requirement described in this  
9 clause shall not apply in a case in  
10 which the number of students in a  
11 category is insufficient to yield statis-  
12 tically reliable information or the re-  
13 sults would reveal personally identifi-  
14 able information about an individual  
15 student).

16 “(ii) CHILDREN WITH DISABIL-  
17 ITIES.—In the case of a child with a dis-  
18 ability (as defined in section 602(3) of the  
19 Individuals with Disabilities Education  
20 Act), a State may deem the child to have  
21 met the State’s proficient level of academic  
22 achievement on the State assessments for  
23 purposes of calculating adequate yearly  
24 progress under this section if—

1           “(I) the student’s individualized  
2           education program team (as defined  
3           in section 614(d)(1)(B) of such Act)  
4           designates an alternate assessment  
5           based on alternate or modified student  
6           academic achievement standards as a  
7           more appropriate measure of the stu-  
8           dent’s academic progress and achieve-  
9           ment for purposes of the assessment  
10          requirements under this part; and

11           “(II) the student achieves a pro-  
12          ficient score on such alternate assess-  
13          ment.

14           “(iii) STATE EDUCATIONAL AGENCY  
15          REPORT.—For any year that a State edu-  
16          cational agency makes use of the flexibility  
17          provided by this section to allow alternate  
18          assessments for more than 3 percent of the  
19          total student population statewide, the  
20          State educational agency shall make avail-  
21          able to the public a report that includes  
22          the percentage of all special education stu-  
23          dents in the State who were assessed ac-  
24          cording to clause (ii).”;

1           (2) by redesignating subparagraphs (J) and (K)  
2 as subparagraphs (L) and (M), respectively; and

3           (3) by inserting after subparagraph (I) (as  
4 amended by paragraph (1)) the following:

5                   “(J) ADDITIONAL MODELS AND SYSTEMS  
6 FOR MEASURING STUDENT PROGRESS.—In de-  
7 veloping a single, statewide State accountability  
8 system pursuant to subparagraph (A), a State  
9 may establish models and systems for meas-  
10 uring student progress for purposes of deter-  
11 mining whether an agency or school has made  
12 adequate yearly progress that are in addition to  
13 the models and systems otherwise described in  
14 this paragraph if the models and systems are in  
15 keeping with the purposes of this title. Addi-  
16 tional models and systems that measure student  
17 progress under this paragraph may include—

18                           “(i) cohort growth models that—  
19                                   “(I) demonstrate progress based  
20 on longitudinal student assessment re-  
21 sults indicating improvement in the  
22 academic performance of the same co-  
23 hort of students over time; and

24                                   “(II) may in some instances  
25 specify different starting points, dif-

1           ferent intermediate goals, and dif-  
2           ferent annual measurable objectives  
3           for different cohorts;

4           “(ii) indexing systems that dem-  
5           onstrate progress based on improvement in  
6           assessment scores for students below the  
7           proficient level, such as improvements from  
8           the below basic to basic level, or from basic  
9           to another intermediate level below the  
10          proficient level, if the system does not in-  
11          clude improvement in students scores for  
12          students who scored at the proficient level  
13          and higher; or

14          “(iii) a system that demonstrates  
15          progress based on improvements in closing  
16          the achievement gap or making progress  
17          toward another State-established high-  
18          achievement target, such as a system that  
19          demonstrates progress towards having all  
20          subgroups meet or exceed the current per-  
21          centage of proficient students at the  
22          State’s top-performing schools (such as the  
23          top 20 percent of schools), if the system  
24          requires continued improvement towards

1           subsequently higher targets until all stu-  
2           dents have reached the proficient level.

3           “(K) REQUIREMENT FOR GUIDANCE FROM  
4           THE SECRETARY ON ADDITIONAL MODELS AND  
5           SYSTEMS FOR MEASURING STUDENT  
6           PROGRESS.—Not later than 120 days after the  
7           date of enactment of the No Child Left Behind  
8           Flexibility and Improvements Act, the Secretary  
9           shall establish specific models of additional  
10          models and systems for measuring student  
11          progress that meet the requirements of sub-  
12          paragraph (J), including models of cohort-  
13          growth systems, indexing systems, or high-  
14          achievement target systems described in such  
15          subparagraph. To the extent possible, the mod-  
16          els shall demonstrate the maximum amount of  
17          flexibility available under this part in the design  
18          of additional models and systems for measuring  
19          student progress. In addition, the Secretary  
20          shall create a task force to provide guidance  
21          and other technical assistance to those States  
22          interested in incorporating additional models  
23          and systems for measuring student progress  
24          into their State accountability plan.”.

1 **SEC. 4. STATE OPTION REGARDING STUDENTS WITH LIM-**  
 2 **ITED ENGLISH PROFICIENCY.**

3 Section 1111(b)(2) of the Elementary and Secondary  
 4 Education Act of 1965 (20 U.S.C. 6311(b)(2)) (as amend-  
 5 ed by section 3) is further amended by adding at the end  
 6 the following:

7 “(N) STATE OPTION REGARDING STU-  
 8 DENTS WITH LIMITED ENGLISH PRO-  
 9 FICIENCY.—

10 “(i) IN GENERAL.—In determining  
 11 whether a school, local educational agency,  
 12 or State has made adequate yearly  
 13 progress under this subsection, a State  
 14 shall have the option to include in the stu-  
 15 dents with limited English proficiency sub-  
 16 group a student who was formerly included  
 17 in the subgroup and subsequently acquired  
 18 proficiency in English.

19 “(ii) DURATION OF INCLUSION IN  
 20 THE SUBGROUP.—A State may include a  
 21 student described in clause (i) in the stu-  
 22 dents with limited English proficiency sub-  
 23 group until the student completes sec-  
 24 ondary school.

1                   “(iii) RULES OF CONSTRUCTION.—  
 2                   Nothing in this subparagraph shall be con-  
 3                   strued—

4                   “ (I) to count a student described  
 5                   in clause (i) as a student with limited  
 6                   English proficiency for purposes of—

7                   “ (aa) determining a State-  
 8                   defined minimum subgroup size;  
 9                   and

10                   “ (bb) allocating funds under  
 11                   title III; or

12                   “ (II) to require a student de-  
 13                   scribed in clause (i)—

14                   “ (aa) to continue to take a  
 15                   limited English proficiency as-  
 16                   sessment under paragraph (7);  
 17                   and

18                   “ (bb) to receive language  
 19                   services provided to students with  
 20                   limited English proficiency.”.

21 **SEC. 5. LOCAL ACADEMIC ASSESSMENTS.**

22                   Section 1111(b)(3)(A) of the Elementary and Sec-  
 23                   ondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(A))  
 24                   is amended—

1           (1) by striking “(A) IN GENERAL.—Each State  
2 plan” and inserting the following:

3                   “(A) IMPLEMENTATION OF ASSESS-  
4 MENTS.—

5                           “(i) IN GENERAL.—Each State plan”;

6                           and

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

8                           “(ii) RULE OF CONSTRUCTION RE-  
9 GARDING USE OF LOCAL ASSESSMENTS.—

10                           Nothing in this Act shall be construed to  
11 prohibit a State from using a local assess-  
12 ment system or a mixed system of State  
13 and local assessments in carrying out  
14 clause (i), if the assessment system—

15                                   “(I) is aligned with the State’s  
16 content and achievement standards  
17 and provides coherent information  
18 about student attainment of those  
19 standards;

20                                   “(II) is valid and reliable, and  
21 consistent with relevant professional  
22 and technical standards;

23                                   “(III) provides individual student  
24 reports and itemized score analysis;  
25 and

1                   “(IV) allows the State to aggregate,  
2                   with confidence, data from disparate local assessments.  
3

4                   “(iii) REQUIRED TECHNICAL ASSISTANCE.—Not later than 120 days after the  
5                   date of enactment of the No Child Left  
6                   Behind Flexibility and Improvements Act,  
7                   the Secretary shall provide models of local  
8                   assessment systems or mixed systems of  
9                   State and local assessments meeting the  
10                  requirements described in clause (ii), and  
11                  shall provide guidance and technical assistance to States on ways that these systems  
12                  may be used to satisfy the assessment requirements of this part.”.

16 **SEC. 6. DEFERRAL OF ACADEMIC ASSESSMENTS.**

17                  Section 1111(b)(3)(D) of the Elementary and Secondary  
18                  Education Act of 1965 (20 U.S.C. 6311(b)(3)(D))  
19                  is amended by striking clauses (i) through (iv) and inserting the following:  
20

21                                 “(i) \$640,000,000 for fiscal year  
22                                 2010; and

23                                 “(ii) \$670,000,000 for fiscal year  
24                                 2011.”.

1 **SEC. 7. ADEQUATE YEARLY PROGRESS BY GROUP AND SUB-**  
2 **JECT.**

3 Section 1116(b) of the Elementary and Secondary  
4 Education Act of 1965 (20 U.S.C. 6316(b)) is amended—

5 (1) in subparagraph (A) of paragraph (1), by  
6 inserting “with respect to the performance of a par-  
7 ticular group of students described in section  
8 1111(b)(2)(C)(v) in the same academic subject,”  
9 after “that fails, for 2 consecutive years,”;

10 (2) in the matter preceding subparagraph (A)  
11 of paragraph (5), by inserting “with respect to the  
12 performance of a particular group of students de-  
13 scribed in section 1111(b)(2)(C)(v) in the same aca-  
14 demic subject,” after “that fails to make adequate  
15 yearly progress,”;

16 (3) in the matter preceding clause (i) of para-  
17 graph (7)(C), by inserting “with respect to the per-  
18 formance of a particular group of students described  
19 in section 1111(b)(2)(C)(v) in the same academic  
20 subject,” after “that fails to make adequate yearly  
21 progress,”; and

22 (4) in the matter preceding clause (i) of para-  
23 graph (8)(A), by inserting “with respect to the per-  
24 formance of a particular group of students described  
25 in section 1111(b)(2)(C)(v) in the same academic

1 subject,” after “continues to fail to make adequate  
2 yearly progress,”.

3 **SEC. 8. MODIFICATION OF THE DEFINITION OF HIGHLY**  
4 **QUALIFIED TEACHER.**

5 (a) IN GENERAL.—Subpart 1 of part A of title I of  
6 the Elementary and Secondary Education Act of 1965 (20  
7 U.S.C. 6311 et seq.) is amended by adding at the end  
8 the following:

9 **“SEC. 1120C. MODIFICATION OF THE DEFINITION OF HIGH-**  
10 **LY QUALIFIED TEACHER.**

11 “(a) HIGHLY QUALIFIED TEACHERS OF MULTIPLE  
12 ACADEMIC SUBJECTS.—Notwithstanding section  
13 9101(23) or any other provision of law, a middle or sec-  
14 ondary school teacher employed to teach multiple aca-  
15 demic subjects shall be deemed to be highly qualified for  
16 purposes of this part, if—

17 “(1) the teacher meets the requirements of sec-  
18 tion 9101(23)(A);

19 “(2) the teacher has a bachelor’s degree;

20 “(3) the teacher has demonstrated a high level  
21 of competency in at least one subject taught by the  
22 teacher by—

23 “(A) passing a test described in section  
24 9101(23)(B)(ii)(I) that is applicable to such  
25 subject; or

1           “(B) successful completion of a course of  
2           study, certification, or credential described in  
3           section 9101(23)(B)(ii) that is applicable to  
4           such subject; and

5           “(4)(A) the State educational agency makes a  
6           determination, for a period of not more than 3 years  
7           at a time, that—

8           “(i) the teacher should be considered high-  
9           ly qualified for purposes of this part based on  
10          a showing that the teacher is making progress  
11          toward becoming highly qualified as defined in  
12          section 9101(23); and

13          “(ii) at the time the State educational  
14          agency makes such determination, the teacher  
15          teaches in a local educational agency of the  
16          State that has provided the State educational  
17          agency with evidence (that may include the fact  
18          that the local educational agency serves a small  
19          and rural school facing unique staffing or hir-  
20          ing challenges that require teachers to teach  
21          multiple academic subjects) that the local edu-  
22          cational agency has made a reasonable effort to  
23          provide teachers who are highly qualified as de-  
24          fined in section 9101(23) to every student  
25          served by the local educational agency; or

1           “(B) the teacher has an academic minor con-  
2           sisting of not less than 15 credit hours, or the equiv-  
3           alent of an academic minor as defined by the State  
4           educational agency in its State plan pursuant to sec-  
5           tion 1119(a)(2), in each academic subject that is  
6           taught by the teacher (other than a subject for  
7           which the teacher has demonstrated a high level of  
8           competency under paragraph (3)), and each such  
9           subject is related to a subject for which the teacher  
10          has demonstrated a high level of competency under  
11          paragraph (3).

12          “(b) REPORT.—For each year that a teacher in a  
13          State is deemed to be highly qualified under subsection  
14          (a), the State educational agency in the State shall make  
15          available to the public a report that includes—

16                 “(1) the number of teachers in the State that  
17                 are deemed highly qualified under subsection (a);  
18                 and

19                 “(2) the total amount of subgrant funds made  
20                 available under subpart 2 of part A of title II that  
21                 the State awards to local educational agencies under  
22                 such subpart that are available to assist the teachers  
23                 described in paragraph (1) with the process of be-  
24                 coming highly qualified as defined in section  
25                 9101(23).”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 the Elementary and Secondary Education Act of 1965 is  
 3 amended by inserting after the item relating to section  
 4 1120B the following:

“Sec. 1120C. Modification of the definition of highly qualified teacher.”.

5 **SEC. 9. REAUTHORIZATION OF READING FIRST AND EARLY**  
 6 **READING FIRST PROGRAMS.**

7 (a) AUTHORIZATION OF APPROPRIATIONS.—Section  
 8 1002(b) of the Elementary and Secondary Education Act  
 9 of 1965 (20 U.S.C. 6302(b)) is amended—

10 (1) in paragraph (1), by striking “2002” and  
 11 inserting “2010”; and

12 (2) in paragraph (2), by striking “2002” and  
 13 inserting “2010”.

14 (b) USE OF FUNDS FOR READING ACTIVITIES.—

15 (1) FINDING.—Congress finds that, based on  
 16 the Office of Inspector General of the Department of  
 17 Education’s September 2006 report entitled “The  
 18 Reading First Program’s Grant Application Proc-  
 19 ess”, it is crucial to achieving the goals of the Read-  
 20 ing First program under subpart 1 of part B of title  
 21 I of the Elementary and Secondary Education Act  
 22 of 1965 (20 U.S.C. 6361 et seq.) that greater flexi-  
 23 bility is afforded to program participants, including  
 24 allowing participants to choose from a variety of sci-  
 25 entificallly based reading programs.

1           (2) USE OF FUNDS FOR READING ACTIVI-  
 2           TIES.—Section 1202(c)(7) of the Elementary and  
 3           Secondary Education Act of 1965 (20 U.S.C.  
 4           6362(c)(7)) is amended by adding at the end the fol-  
 5           lowing:

6                   “(C) READING ACTIVITIES FOR INDI-  
 7           VIDUAL STUDENTS.—Notwithstanding any  
 8           other provision of this subpart, an eligible local  
 9           educational agency may use the funds provided  
 10          under the subgrant for any activity described in  
 11          subparagraph (A) that is provided to a student  
 12          in a manner other than on a classwide instruc-  
 13          tion basis, including small group instruction  
 14          and one-to-one instruction.”.

15 **SEC. 10. DEFINITION OF HIGHLY QUALIFIED.**

16          Section 9101(23)(B)(ii)(II) of the Elementary and  
 17          Secondary Education Act of 1965 (20 U.S.C.  
 18          7801(23)(B)(ii)(II)) is amended by striking  
 19          “credentialing; and” and inserting the following:  
 20          “credentialing,

21                   “except that the Secretary shall promul-  
 22                  gate regulations permitting a teacher to  
 23                  demonstrate subject area competence in  
 24                  history, geography, economics, government,  
 25                  civics, or related subjects at middle or sec-

1           ondary schools in the State through a  
2           State social studies certificate that quali-  
3           fies the teacher to teach such subjects;  
4           and”.

○