

108TH CONGRESS
2D SESSION

H. R. 4605

To provide for review of determinations on whether schools and local educational agencies made adequate yearly progress for the 2002–2003 school year taking into consideration subsequent regulations and guidance applicable to those determinations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2004

Mr. GEORGE MILLER of California (for himself, Ms. PELOSI, Mr. KILDEE, Mr. HOYER, Mr. OWENS, Mr. PAYNE, Mr. ANDREWS, Mr. CLYBURN, Mr. MENENDEZ, Ms. WOOLSEY, Mr. HINOJOSA, Mrs. MCCARTHY of New York, Mr. TIERNEY, Mr. KIND, Mr. KUCINICH, Mr. WU, Mr. HOLT, Mr. DAVIS of Illinois, Mr. GRIJALVA, Ms. MAJETTE, Mr. RYAN of Ohio, and Mr. BISHOP of New York) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To provide for review of determinations on whether schools and local educational agencies made adequate yearly progress for the 2002–2003 school year taking into consideration subsequent regulations and guidance applicable to those determinations, 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 Fairness Act of 2004”.

1 **SEC. 2. REVIEW OF DETERMINATIONS ON WHETHER**
2 **SCHOOLS MADE ADEQUATE YEARLY**
3 **PROGRESS FOR 2002–2003 SCHOOL YEAR.**

4 (a) IN GENERAL.—The Secretary of Education shall
5 require each local educational agency to provide each
6 school served by the agency with an opportunity to request
7 a review of a determination by the agency that the school
8 did not make adequate yearly progress for the 2002–2003
9 school year.

10 (b) FINAL DETERMINATION.—Not later than 30 days
11 after receipt of a request by a school for a review under
12 this section, a local educational agency shall issue and
13 make publicly available a final determination on whether
14 the school made adequate yearly progress for the 2002–
15 2003 school year.

16 (c) EVIDENCE.—In conducting a review under this
17 section, a local educational agency shall—

18 (1) allow the principal of the school involved to
19 submit evidence on whether the school made ade-
20 quate yearly progress for the 2002–2003 school
21 year; and

22 (2) consider that evidence before making a final
23 determination under subsection (b).

24 (d) STANDARD OF REVIEW.—In conducting a review
25 under this section, consistent with the plan under section
26 1111 of the Elementary and Secondary Education Act of

1 1965 (20 U.S.C. 6311) for the State involved, a local edu-
2 cational agency shall revise its original determination that
3 a school did not make adequate yearly progress for the
4 2002–2003 school year if the agency finds that the school
5 made such progress taking into consideration—

6 (1) the amendments made to part 200 of title
7 34 of the Code of Federal Regulations on December
8 9, 2003 (68 Fed. Reg. 68698) (relating to account-
9 ability for the academic achievement of students
10 with the most significant cognitive disabilities); or

11 (2) any regulation or guidance that, subsequent
12 to the date of such original determination, was
13 issued by the Secretary relating to—

14 (A) the assessment of limited English pro-
15 ficient children;

16 (B) the inclusion of limited English pro-
17 ficient children as part of the subgroup de-
18 scribed in section 1111(b)(2)(C)(v)(II)(dd) of
19 the Elementary and Secondary Education Act
20 of 1965 (20 U.S.C. 6311(b)(2)(C)(v)(II)(dd))
21 after such children have obtained English pro-
22 ficiency; or

23 (C) any requirement under section
24 1111(b)(2)(I)(ii) of the Elementary and Sec-

1 ondary Education Act of 1965 (20 U.S.C.
2 6311(b)(2)(I)(ii)).

3 (e) EFFECT OF REVISED DETERMINATION.—

4 (1) IN GENERAL.—If pursuant to a review
5 under this section a local educational agency deter-
6 mines that a school made adequate yearly progress
7 for the 2002–2003 school year, upon such deter-
8 mination—

9 (A) any action by the Secretary, the State
10 educational agency, or the local educational
11 agency that was taken because of a prior deter-
12 mination that the school did not make such
13 progress shall be terminated; and

14 (B) any obligations or actions required of
15 the local educational agency or the school be-
16 cause of the prior determination shall cease to
17 be required.

18 (2) EXCEPTIONS.—Notwithstanding paragraph
19 (1), a determination under this section shall not af-
20 fect any obligation or action required of a local edu-
21 cational agency or school under the following:

22 (A) Section 1116(b)(13) of the Elementary
23 and Secondary Education Act of 1965 (20
24 U.S.C. 6316(b)(13)) (requiring a local edu-
25 cational agency to continue to permit a child

1 who transferred to another school under such
2 section to remain in that school until comple-
3 tion of the highest grade in the school).

4 (B) Section 1116(e)(8) of the Elementary
5 and Secondary Education Act of 1965 (20
6 U.S.C. 6316(e)(8)) (requiring a local edu-
7 cational agency to continue to provide supple-
8 mental educational services under such section
9 until the end of the school year).

10 (3) SUBSEQUENT DETERMINATIONS.—In deter-
11 mining whether a school is subject to school im-
12 provement, corrective action, or restructuring as a
13 result of not making adequate yearly progress, the
14 Secretary, a State educational agency, or a local
15 educational agency may not take into account a pre-
16 vious determination that the school did not make
17 adequate yearly progress for the 2002–2003 school
18 year if such determination was revised under this
19 section and the school received a final determination
20 of having made adequate yearly progress for the
21 2002–2003 school year.

22 (f) NOTIFICATION.— The Secretary—

23 (1) shall require each State educational agency
24 to notify each school served by the agency of the

1 school's ability to request a review under this sec-
2 tion; and

3 (2) not later than 30 days after the date of the
4 enactment of this section, shall notify the public by
5 means of the Department of Education's website of
6 the review process established under this section.

7 **SEC. 3. REVIEW OF DETERMINATIONS ON WHETHER LOCAL**
8 **EDUCATIONAL AGENCIES MADE ADEQUATE**
9 **YEARLY PROGRESS FOR 2002–2003 SCHOOL**
10 **YEAR.**

11 (a) IN GENERAL.—The Secretary shall require each
12 State educational agency to provide each local educational
13 agency in the State with an opportunity to request a re-
14 view of a determination by the State educational agency
15 that the local educational agency did not make adequate
16 yearly progress for the 2002–2003 school year.

17 (b) APPLICATION OF CERTAIN PROVISIONS.—Except
18 as inconsistent with, or inapplicable to, this section, the
19 provisions of section 2 shall apply to review by a State
20 educational agency of a determination described in sub-
21 section (a) in the same manner and to the same extent
22 as such provisions apply to review by a local educational
23 agency of a determination described in section 2(a).

24 **SEC. 4. DEFINITIONS.**

25 In this Act:

1 (1) The term “adequate yearly progress” has
2 the meaning given to that term in section
3 1111(b)(2)(C) of the Elementary and Secondary
4 Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)).

5 (2) The term “local educational agency” means
6 a local educational agency (as that term is defined
7 in section 9101 of the Elementary and Secondary
8 Education Act of 1965 (20 U.S.C. 7801)) receiving
9 funds under part A of title I of such Act (20 U.S.C.
10 6311 et seq.).

11 (3) The term “Secretary” means the Secretary
12 of Education.

13 (4) The term “school” means an elementary
14 school or a secondary school (as those terms are de-
15 fined in section 9101 of the Elementary and Sec-
16 ondary Education Act of 1965 (20 U.S.C. 7801))
17 served under part A of title I of such Act (20 U.S.C.
18 6311 et seq.).

19 (5) The term “State educational agency” means
20 a State educational agency (as that term is defined
21 in section 9101 of the Elementary and Secondary
22 Education Act of 1965 (20 U.S.C. 7801)) receiving
23 funds under part A of title I of such Act (20 U.S.C.
24 6311 et seq.).

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