

108TH CONGRESS
2D SESSION

H. R. 5200

To improve the accountability provisions of the part A of title I of the Elementary and Secondary Education Act of 1965, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 2004

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

A BILL

To improve the accountability provisions of the part A of title I of 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.**

4 This Act may be cited as the “No Child Left Behind
5 Improvement and Flexibility Act of 2004”.

6 **SEC. 2. AMENDMENTS TO ESEA.**

7 (a) ASSESSMENTS AND ADEQUATE YEARLY
8 PROGRESS.—

9 (1) CONTINUOUS GROWTH MODEL.—Clause (iii)
10 of section 1111(b)(2)(C) of the Elementary and Sec-

1 ondary Education Act of 1965 (20 U.S.C.
2 6311(b)(2)(C)) is amended to read as follows:

3 “(iii) results in continuous and sub-
4 stantial academic improvement for all stu-
5 dents as demonstrated by measures of stu-
6 dents’ progress toward proficiency, includ-
7 ing longitudinal growth at the student level
8 or student cohort level;”.

9 (2) DATA AVERAGING.—Clause (iii) of section
10 1111(b)(2)(J) of the Elementary and Secondary
11 Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)) is
12 amended by inserting “or other means that increase
13 the stability of school-building results from year to
14 year” after “school”.

15 (3) SAME SUBGROUP, SAME SUBJECT.—Section
16 1116(b) of the Elementary and Secondary Edu-
17 cation Act of 1965 (20 U.S.C. 6316(b)) is amend-
18 ed—

19 (A) in paragraph (1)(A), by striking “that
20 fails, for 2 consecutive years, to make adequate
21 yearly progress” and inserting “in which the
22 same group of students described in section
23 1111(b)(2)(C)(v) fails in the same subject, for
24 2 consecutive years, to make adequate yearly
25 progress”;

1 (B) in paragraph (5), by striking “that
2 fails to make adequate yearly progress” and in-
3 serting “that fails (with respect to the same
4 group of students and the same subject de-
5 scribed in paragraph (1)(A)) to make adequate
6 yearly progress”;

7 (C) in paragraph (7)(C), by striking “that
8 fails to make adequate yearly progress” and in-
9 serting “that fails (with respect to the same
10 group of students and the same subject de-
11 scribed in paragraph (1)(A)) to make adequate
12 yearly progress”; and

13 (D) in paragraph (8)(A), by striking “to
14 fail to make adequate yearly progress” and in-
15 serting “to fail (with respect to the same group
16 of students and the same subject described in
17 paragraph (1)(A)) to make adequate yearly
18 progress”.

19 (4) MULTIPLE MEASURES.—Paragraph (2) of
20 section 1111(b) of the Elementary and Secondary
21 Education Act of 1965 (20 U.S.C. 6316(b)) is
22 amended—

23 (A) in subparagraph (A)—

24 (i) by striking “and” at the end of
25 clause (ii);

(ii) by striking the period at the end of clause (iii) and inserting “; and”; and

(iii) by adding at the end the following:

“(iv) include with respect to each group of students described in subparagraph (C)(v) multiple measures of academic achievement, such as the proportion of State report card indicators met, a performance index score, student drop-out rate, and a measure based on individual student achievement gains over time.”;

(B) in clause (iv) of subparagraph (C), by striking “based primarily on the academic assessments described in paragraph (3)” and inserting “based primarily (but not more than 60 percent) on the academic assessments described in paragraph (3)”;

(C) by amending subparagraph (D) to read as follows:

“(D) REQUIREMENTS FOR OTHER INDICATORS.—In carrying out subparagraphs (A), (B), and (C), the State shall ensure that—

“(i) the indicators described in those provisions are valid and reliable, and are

consistent with relevant, nationally recognized professional and technical standards, if any; and

“(ii) schools identified for school improvement, corrective action, or restructuring are identified using multiple measures of assessing school performance.”.

(5) NORM REFERENCED ASSESSMENTS.—

Clause (ii) of section 1111(b)(3)(C) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)(3)(C)) is amended—

(A) by striking “and” before “provide”;

and

(B) by inserting “, be aligned with curriculum and instruction to adequately assess their effect on each content standard assessed, and include individual test items that, based on technical criteria, enable students to achieve the items if the students receive appropriate instruction” before the semicolon at the end.

(6) EXCLUSION OF LEP STUDENTS FROM MATH

ASSESSMENTS.—Clause (ix) of section 1111(b)(3)(C) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(C)) is amended—

1 (A) in subclause (II), by striking “and” at
2 the end;

3 (B) in subclause (III)—

4 (i) by inserting “subject to subclause
5 (IV),” before “the inclusion of limited
6 English proficient students”; and

7 (ii) by adding “and” at the end; and

8 (C) at the end of the clause, by adding the
9 following:

10 “(IV) at the discretion of the
11 State, the exclusion of limited English
12 proficient students who have attended
13 school in the United States for not
14 more than 1 school year from the aca-
15 demic assessments of mathematics
16 and reading or language arts;”.

17 (b) TEACHER QUALITY.—

18 (1) HIGHLY QUALIFIED SPECIAL EDUCATION
19 TEACHERS.—Paragraph (23) of section 9101 of the
20 Elementary and Secondary Education Act of 1965
21 (20 U.S.C. 7801) is amended—

22 (A) in subparagraph (B)—

23 (i) in subclause (I), by inserting “(ex-
24 cept that a special education teacher may
25 satisfy the requirements of this subclause

1 by passing such a rigorous State academic
2 subject test in special education or in any
3 1 subject that the teacher teaches if, with
4 respect to each other academic subject in
5 which the teacher teaches, the teacher
6 works in collaboration with a teacher who
7 is highly qualified in the subject)” before
8 the semicolon; and

9 (ii) by striking “and” at the end of
10 the subparagraph;

11 (B) by striking the period at the end of
12 subparagraph (C) and inserting “; and”; and

13 (C) by adding at the end the following:

14 “(D) when used with respect to a special
15 education elementary, middle, or secondary
16 school teacher, means that the teacher holds at
17 least a bachelor’s degree and—

18 “(i) has met the applicable standard
19 in subparagraph (B) or (C); or

20 “(ii) has successfully completed an
21 academic major, a graduate degree,
22 coursework equivalent to an undergraduate
23 academic major, or advanced certification
24 or credentialing in special education.”.

1 (2) HIGHLY QUALIFIED ELEMENTARY SCHOOL
2 TEACHERS.—Section 9101(23)(B)(i) of the Elemen-
3 tary and Secondary Education Act of 1965 (20
4 U.S.C. 7801(23)(B)(i)) is amended—

5 (A) by striking “means that the teacher”
6 and inserting “means that the teacher holds at
7 least a bachelor’s degree and”; and

8 (B) by amending subclause (I) to read as
9 follows:

10 “(I) has successfully completed a
11 graduate degree, or advanced certifi-
12 cation or credentialing; and”.

13 (3) PORTABILITY OF HIGHLY QUALIFIED STA-
14 TUS.—Subsection (a) of section 1119 of the Elemen-
15 tary and Secondary Education Act of 1965 (20
16 U.S.C. 6319) is amended by adding at the end the
17 following:

18 “(4) TRANSFERRING TEACHERS.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graph (B), if a teacher transfers to a school
21 after demonstrating at another school that he
22 or she was highly qualified, the teacher is
23 deemed to continue to satisfy the requirements
24 of subparagraph (B), (C), or (D) of section
25 9101(23), as applicable.

1 “(B) EXCEPTION.—If a teacher described
2 in subparagraph (A) transfers to a school in a
3 different State, the State may reject the teach-
4 er’s status as highly qualified to the extent that
5 such status was based on passing a rigorous
6 State test pursuant to section 9101(23)(B) or
7 meeting a high objective uniform State stand-
8 ard of evaluation pursuant to section
9 9101(23)(C).

10 “(C) DEFINITION.—For purposes of this
11 paragraph, the term ‘different State’ means a
12 State other than the State in which the teacher
13 demonstrated that he or she was highly quali-
14 fied.”.

15 (4) CERTIFICATION WAIVERS.—Clause (ii) of
16 section 9101(23)(A) of the Elementary and Sec-
17 ondary Education Act (20 U.S.C. 7801(23)(A)) is
18 amended to read as follows:

19 “(ii) the teacher does not currently
20 have certification or licensure requirements
21 waived on an emergency, temporary, or
22 provisional basis;”.

23 (c) SPECIAL EDUCATION STUDENTS.—

24 (1) GRADUATION RATE.—Clause (vi) of section
25 1111(b)(2)(C) of the Elementary and Secondary

1 Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)) is
 2 amended by inserting “, except that the State may
 3 exclude from the calculation of such percentage stu-
 4 dents with disabilities who are allowed by State law
 5 to remain in secondary school beyond the standard
 6 number of years” after “who graduate from sec-
 7 ondary school with a regular diploma in the stand-
 8 ard number of years”.

9 (2) ASSESSING STUDENTS WITH DISABIL-
 10 ITIES.—Subparagraph (C) of section 1111(b)(3) of
 11 the Elementary and Secondary Education Act of
 12 1965 (20 U.S.C. 6311(b)(3)) is amended—

13 (A) in clause (xiv), by striking “and” at
 14 the end;

15 (B) in clause (xv), by striking the period at
 16 the end and inserting “; and”; and

17 (C) by adding at the end the following:

18 “(xvi) notwithstanding clause (i), at
 19 the discretion of the State, provide for out-
 20 of-level testing of children with disabili-
 21 ties.”.

22 (d) RURAL SCHOOLS.—

23 (1) HIGHLY QUALIFIED TEACHERS IN RURAL
 24 SCHOOLS.—Subsection (a) of section 1119 of the El-
 25 ementary and Secondary Education Act of 1965 (20

1 U.S.C. 6319), as amended by subsection (b)(3), is
2 further amended by adding at the end the following:

3 “(5) RURAL SCHOOLS.—

4 “(A) WAIVER.—The Secretary may waive
5 the requirements of this subsection with respect
6 to the teachers teaching at any rural school if
7 the school demonstrates to the Secretary’s sat-
8 isfaction that such requirements impose an
9 undue hardship on the school because of popu-
10 lation and geographic restraints.

11 “(B) APPLICATION.—To seek a waiver
12 under this paragraph, a school shall submit to
13 the Secretary an application at such time, in
14 such manner, and containing such information
15 as the Secretary may require. Any such applica-
16 tion shall include—

17 “(i) an explanation of why the re-
18 quirements of this paragraph impose an
19 undue hardship on the school because of
20 population and geographic constraints; and

21 “(ii) a description of the actions the
22 school intends to take to meet such re-
23 quirements.

1 “(C) RENEWAL.—A waiver under this
2 paragraph may be for a period of not more
3 than 5 years and may be renewed.”.

4 (2) SCHOOL CHOICE, SUPPLEMENTAL SERV-
5 ICES.—Subparagraph (E) of section 1116(b)(1) of
6 the Elementary and Secondary Education Act of
7 1965 (20 U.S.C. 6316(b)(1)) is amended—

8 (A) in clause (i), by striking “In the case
9 of” and inserting “Subject to clause (iii), in the
10 case of”;

11 (B) by adding at the end the following:

12 “(iii) RURAL SCHOOLS.—

13 “(I) FIRST YEAR.—During the
14 first school year following identifica-
15 tion for school improvement under
16 this paragraph, a rural school may
17 make supplemental educational serv-
18 ices available consistent with sub-
19 section (e) in lieu of providing stu-
20 dents an opportunity to transfer
21 under this subparagraph.

22 “(II) SUBSEQUENT YEARS.—If a
23 rural school fails to make adequate
24 yearly progress (as set out in the
25 State’s plan under section 1111(b)(2))

1 by the end of the first school year fol-
2 lowing identification for school im-
3 provement under this paragraph, and
4 the rural school demonstrates to the
5 Secretary's satisfaction that the re-
6 quirements of this subparagraph im-
7 pose an undue hardship on the school
8 because of geographic restraints, the
9 Secretary may waive the requirements
10 of this subparagraph with respect to
11 the school.

12 “(III) APPLICATION.—To seek a
13 waiver under this paragraph, a school
14 shall submit to the Secretary an appli-
15 cation at such time, in such manner,
16 and containing such information as
17 the Secretary may require. Any such
18 application shall include an expla-
19 nation of why the requirements of this
20 subparagraph impose an undue hard-
21 ship on the school because of geo-
22 graphic restraints, and a description
23 of the actions the school intends to
24 take to meet such requirements.

1 “(IV) SUPPLEMENTAL EDU-
2 CATIONAL SERVICES.—This clause
3 shall not be construed to diminish a
4 rural school’s obligation to make sup-
5 plemental educational services avail-
6 able under paragraph (5), (7), or (8)
7 or subsection (e).”.

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