

108TH CONGRESS  
2D SESSION

# S. 2542

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.

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## IN THE SENATE OF THE UNITED STATES

JUNE 17, 2004

Mr. KENNEDY (for himself and Mr. EDWARDS) 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 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 ADEQUATE YEARLY PROGRESS DETER-**  
2 **MINATIONS FOR SCHOOLS FOR THE 2002–2003**  
3 **SCHOOL YEAR.**

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

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

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

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

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

23 (d) STANDARD OF REVIEW.—In conducting a review  
24 under this section, a local educational agency shall revise,  
25 consistent with the applicable State plan under section  
26 1111 of the Elementary and Secondary Education Act of

1 1965 (20 U.S.C. 6311), the local educational agency's  
 2 original determination that a school did not make ade-  
 3 quate yearly progress for the 2002–2003 school year if  
 4 the agency finds that the school made such progress tak-  
 5 ing 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 de-  
16          termination that the school did not make adequate  
17          yearly progress for the 2002–2003 school year if  
18          such determination was revised under this section  
19          and the school received a final determination of hav-  
20          ing made adequate yearly progress for the 2002–  
21          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 section;  
2 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 ADEQUATE YEARLY PROGRESS DETER-**  
8 **MINATIONS FOR LOCAL EDUCATIONAL AGEN-**  
9 **CIES FOR THE 2002–2003 SCHOOL YEAR.**

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

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

23 **SEC. 4. DEFINITIONS.**

24 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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