

108TH CONGRESS
2D SESSION

S. 2794

To improve elementary and secondary education.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2004

Mr. KENNEDY (for himself, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. BINGAMAN, Mrs. MURRAY, Mr. REED, and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To improve elementary and secondary education.

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 Act of 2004”.

1 **TITLE I—PUBLIC SCHOOL**
 2 **CHOICE, SUPPLEMENTAL**
 3 **EDUCATIONAL SERVICES,**
 4 **AND TEACHER QUALITY**

5 **SEC. 101. PUBLIC SCHOOL CHOICE CAPACITY.**

6 (a) SCHOOL CAPACITY.—Section 1116(b)(1)(E) of
 7 the Elementary and Secondary Education Act of 1965 (20
 8 U.S.C. 6316(b)) is amended—

9 (1) in clause (i), by striking “In the case” and
 10 inserting “Subject to clauses (ii) and (iii), in the
 11 case”;

12 (2) by redesignating clause (ii) as clause (iii);

13 (3) by inserting after clause (i) the following:

14 “(ii) SCHOOL CAPACITY.—The obliga-
 15 tion of a local educational agency to pro-
 16 vide the option to transfer to students
 17 under clause (i) is subject to all applicable
 18 State and local health and safety code re-
 19 quirements regarding facility capacity.”;
 20 and

21 (4) in clause (iii) (as redesignated by paragraph
 22 (2)), by inserting “and subject to clause (ii),” after
 23 “public school,”.

24 (b) GRANTS FOR SCHOOL CONSTRUCTION AND REN-
 25 OVATION.—Subpart 1 of part A of title I of the Elemen-

1 tary and Secondary Education Act of 1965 (20 U.S.C.
 2 6311 et seq.) is amended by adding at the end the fol-
 3 lowing:

4 **“SEC. 1120C. GRANTS FOR SCHOOL CONSTRUCTION AND**
 5 **RENOVATION.**

6 “(a) PROGRAM AUTHORIZED.—From funds appro-
 7 priated under subsection (g), the Secretary is authorized
 8 to award grants to local educational agencies experiencing
 9 overcrowding in the schools served by the local educational
 10 agencies, for the construction and renovation of safe,
 11 healthy, high-performance school buildings.

12 “(b) APPLICATION.—Each local educational agency
 13 desiring a grant under this section shall submit an appli-
 14 cation to the Secretary at such time, in such manner, and
 15 accompanied by such additional information as the Sec-
 16 retary may require.

17 “(c) PRIORITY.—In awarding grants under this sec-
 18 tion, the Secretary shall give priority to local educational
 19 agencies—

20 “(1) who have documented difficulties in meet-
 21 ing the public school choice requirements of para-
 22 graph (1)(E), (5)(A), (7)(C)(i), or (8)(A)(i) of sec-
 23 tion 1116(b), or section 1116(c)(10)(C)(vii); and

24 “(2) with the highest number of schools at or
 25 above capacity.

1 “(d) AWARD BASIS.—From funds remaining after
 2 awarding grants under subsection (c), the Secretary shall
 3 award grants to local educational agencies that are experi-
 4 encing overcrowding in the schools served by the local edu-
 5 cational agencies.

6 “(e) PREVAILING WAGES.—Any laborer or mechanic
 7 employed by any contractor or subcontractor in the per-
 8 formance of work on any construction funded by a grant
 9 awarded under this section will be paid wages at rates not
 10 less than those prevailing on similar construction in the
 11 locality as determined by the Secretary of Labor under
 12 subchapter IV of chapter 31 of title 40, United States
 13 Code (commonly referred to as the Davis-Bacon Act).

14 “(f) DEFINITIONS.—In this section:

15 “(1) AT OR ABOVE CAPACITY.—The term ‘at or
 16 above capacity’, in reference to a school, means a
 17 school in which 1 additional student would increase
 18 the average class size of the school above the aver-
 19 age class size of all schools in the State in which the
 20 school is located.

21 “(2) HEALTHY, HIGH-PERFORMANCE SCHOOL
 22 BUILDING.—The term ‘healthy, high-performance
 23 school building’ has the meaning given such term in
 24 section 5586.

1 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated to carry out this section
 3 \$250,000,000 for fiscal year 2005, and such sums as may
 4 be necessary for each of the 2 succeeding fiscal years.”.

5 **SEC. 102. SUPPLEMENTAL EDUCATIONAL SERVICES.**

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

8 (1) in paragraph (4)—

9 (A) in subparagraph (B), by striking the
 10 semicolon and inserting “, including criteria
 11 that—

12 “(i) ensure that personnel delivering
 13 supplemental educational services to stu-
 14 dents have adequate qualifications; and

15 “(ii) may, at the State’s discretion,
 16 ensure that personnel delivering supple-
 17 mental educational services to students are
 18 teachers that are highly qualified, as such
 19 term is defined in section 9101;”;

20 (B) in subparagraph (D), by striking
 21 “and” after the semicolon;

22 (C) in subparagraph (E), by striking the
 23 period and inserting “; and”; and

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

“(F) ensure that the list of approved providers of supplemental educational services described in subparagraph (C) includes a choice of providers that have sufficient capacity to provide effective services for children who are limited English proficient and children with disabilities.”;

(2) in paragraph (5)(C)—

(A) by striking “applicable”; and

(B) by inserting before the period “, and acknowledge in writing that, as an approved provider in the relevant State educational agency program of providing supplemental educational services, the provider is deemed to be a recipient of Federal financial assistance”;

(3) by redesignating paragraphs (6), (7), (8), (9), (10), (11), and (12) as paragraphs (7), (8), (9), (10), (11), (12), and (13), respectively;

(4) by inserting after paragraph (5) the following:

“(6) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a local educational agency from being considered by a State educational agency as a potential provider of supplemental educational services under this subsection, if

such local educational agency meets the criteria adopted by the State educational agency in accordance with paragraph (5).”;

(5) in paragraph (13) (as redesignated by paragraph (3))—

(A) in subparagraph (B)—

(i) in clause (ii), by striking “and” after the semicolon;

(ii) in clause (iii), by striking “and” after the semicolon; and

(iii) by adding at the end the following:

“(iv) may employ teachers who are highly qualified as such term is defined in section 9101; and

“(v) pursuant to its inclusion on the relevant State educational agency’s list described in paragraph (4)(C), is deemed to be a recipient of Federal financial assistance; and”;

(B) in subparagraph (C)—

(i) in the matter preceding subclause (i), by striking “are”;

(ii) in subclause (i)—

1 (I) by inserting “are” before “in
2 addition”; and

3 (II) by striking “and” after the
4 semicolon;

5 (iii) in subclause (ii), by striking the
6 period and inserting “; and”; and

7 (iv) by adding at the end the fol-
8 lowing:

9 “(iii) if provided by providers that are
10 included on the relevant State educational
11 agency’s list described in paragraph
12 (4)(C), shall be deemed to be programs or
13 activities of the relevant State educational
14 agency.”; and

15 (6) by adding at the end the following:

16 “(14) CIVIL RIGHTS.—In providing supple-
17 mental educational services under this subsection, no
18 State educational agency or local educational agency
19 may, directly or through contractual, licensing, or
20 other arrangements with a provider of supplemental
21 educational services, engage in any form of discrimi-
22 nation prohibited by—

23 “(A) title VI of the Civil Rights Act of
24 1964;

1 “(B) title IX of the Education Amend-
2 ments of 1972;

3 “(C) section 504 of the Rehabilitation Act
4 of 1973;

5 “(D) titles II and III of the Americans
6 with Disabilities Act;

7 “(E) the Age Discrimination Act of 1975;

8 “(F) regulations promulgated under the
9 authority of the laws listed in subparagraphs
10 (A) through (E); or

11 “(G) other Federal civil rights laws.”.

12 **SEC. 103. QUALIFICATIONS FOR TEACHERS AND PARA-**
13 **PROFESSIONALS.**

14 (a) HIGH OBJECTIVE UNIFORM STATE STANDARD
15 OF EVALUATION.—Section 1119 of the Elementary and
16 Secondary Education Act of 1965 (20 U.S.C. 6319) is
17 amended—

18 (1) in subsection (a)(2)—

19 (A) by redesignating subparagraphs (A)
20 through (C) as clauses (i) through (iii), respec-
21 tively, and indenting as appropriate;

22 (B) by striking “(2) STATE PLAN.—As
23 part” and inserting the following:

24 “(2) STATE PLAN.—

25 “(A) IN GENERAL.—As part”; and

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

2 “(B) AVAILABILITY OF STATE STAND-
3 ARDS.—Each State educational agency shall
4 make available to teachers in the State the high
5 objective uniform State standard of evaluation,
6 as described in section 9101(23)(C)(ii), for the
7 purpose of meeting the teacher qualification re-
8 quirements established under this section.”;

9 (2) by redesignating subsections (e), (f), (g),
10 (h), (i), (j), (k), and (l) as subsections (f), (g), (h),
11 (i), (j), (k), (l), and (m), respectively;

12 (3) by inserting after subsection (d) the fol-
13 lowing:

14 “(e) STATE RESPONSIBILITIES.—Each State edu-
15 cational agency shall ensure that local educational agen-
16 cies in the State make available all options described in
17 subparagraphs (A) through (C) of subsection (c)(1) to
18 each new or existing paraprofessional for the purpose of
19 demonstrating the qualifications of the paraprofessional,
20 consistent with the requirements of this section.”; and

21 (4) in subsection (l) (as redesignated in para-
22 graph (2)), by striking “subsection (l)” and insert-
23 ing “subsection (m)”.

24 (b) DEFINITION OF HIGHLY QUALIFIED TEACH-
25 ERS.—Section 9101(23)(B)(ii) is amended—

1 (1) in subclause (I), by striking “or” after the
2 semicolon;

3 (2) in subclause (II), by striking “and” after
4 the semicolon; and

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

6 “(III) in the case of a middle
7 school teacher, passing a State-ap-
8 proved middle school generalist exam
9 when the teacher receives a license to
10 teach middle school in the State;

11 “(IV) obtaining a State middle
12 school or secondary school social stud-
13 ies certificate that qualifies the teach-
14 er to teach history, geography, eco-
15 nomics, civics, and government in
16 middle schools or in secondary
17 schools, respectively, in the State; or

18 “(V) obtaining a State middle
19 school or secondary school science cer-
20 tificate that qualifies the teacher to
21 teach earth science, biology, chem-
22 istry, and physics in middle schools or
23 secondary schools, respectively, in the
24 State; and”.

1 **TITLE II—ADEQUATE YEARLY**
2 **PROGRESS DETERMINATIONS**

3 **SEC. 201. REVIEW OF ADEQUATE YEARLY PROGRESS DE-**
4 **TERMINATIONS FOR SCHOOLS FOR THE 2002–**
5 **2003 SCHOOL YEAR.**

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

11 (b) FINAL DETERMINATION.—Not later than 30 days
12 after receipt of a request by a school for a review under
13 this section, a local educational agency shall issue and
14 make publicly available a final determination on whether
15 the school made adequate yearly progress for the 2002–
16 2003 school year.

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

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

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

1 (d) STANDARD OF REVIEW.—In conducting a review
2 under this section, a local educational agency shall revise,
3 consistent with the applicable State plan under section
4 1111 of the Elementary and Secondary Education Act of
5 1965 (20 U.S.C. 6311), the local educational agency’s
6 original determination that a school did not make ade-
7 quate yearly progress for the 2002–2003 school year if
8 the agency finds that the school made such progress, tak-
9 ing into consideration—

10 (1) the amendments made to part 200 of title
11 34, Code of Federal Regulations (68 Fed. Reg.
12 68698) (relating to accountability for the academic
13 achievement of students with the most significant
14 cognitive disabilities); or

15 (2) any regulation or guidance that, subsequent
16 to the date of such original determination, was
17 issued by the Secretary relating to—

18 (A) the assessment of limited English pro-
19 ficient children;

20 (B) the inclusion of limited English pro-
21 ficient children as part of the subgroup de-
22 scribed in section 1111(b)(2)(C)(v)(II)(dd) of
23 the Elementary and Secondary Education Act
24 of 1965 (20 U.S.C. 6311(b)(2)(C)(v)(II)(dd))

1 after such children have obtained English pro-
 2 ficiency; or

3 (C) any requirement under section
 4 1111(b)(2)(I)(ii) of the Elementary and Sec-
 5 ondary Education Act of 1965 (20 U.S.C.
 6 6311(b)(2)(I)(ii)).

7 (e) EFFECT OF REVISED DETERMINATION.—

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

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

18 (B) any obligations or actions required of
 19 the local educational agency or the school be-
 20 cause of the prior determination shall cease to
 21 be required.

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

1 (A) Section 1116(b)(13) of the Elementary
2 and Secondary Education Act of 1965 (20
3 U.S.C. 6316(b)(13)) (requiring a local edu-
4 cational agency to continue to permit a child
5 who transferred to another school under such
6 section to remain in that school until comple-
7 tion of the highest grade in the school).

8 (B) Section 1116(e)(9) of the Elementary
9 and Secondary Education Act of 1965 (as re-
10 designated by section 102(3)) (20 U.S.C.
11 6316(e)(9)) (requiring a local educational agen-
12 cy to continue to provide supplemental edu-
13 cational services under such section until the
14 end of the school year).

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

1 ing made adequate yearly progress for the 2002–
 2 2003 school year.

3 (f) NOTIFICATION.—The Secretary—

4 (1) shall require each State educational agency
 5 to notify each school served by the agency of the
 6 school’s ability to request a review under this sec-
 7 tion; and

8 (2) not later than 30 days after the date of the
 9 enactment of this section, shall notify the public by
 10 means of the Department of Education’s website of
 11 the review process established under this section.

12 **SEC. 202. REVIEW OF ADEQUATE YEARLY PROGRESS DE-**
 13 **TERMINATIONS FOR LOCAL EDUCATIONAL**
 14 **AGENCIES FOR THE 2002–2003 SCHOOL YEAR.**

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

21 (b) APPLICATION OF CERTAIN PROVISIONS.—Except
 22 as inconsistent with, or inapplicable to, this section, the
 23 provisions of section 201 shall apply to review by a State
 24 educational agency of a determination described in sub-
 25 section (a) in the same manner and to the same extent

1 as such provisions apply to review by a local educational
2 agency of a determination described in section 201(a).

3 **SEC. 203. DEFINITIONS.**

4 In this title:

5 (1) The term “adequate yearly progress” has
6 the meaning given to that term in section
7 1111(b)(2)(C) of the Elementary and Secondary
8 Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)).

9 (2) The term “local educational agency” means
10 a local educational agency (as that term is defined
11 in section 9101 of the Elementary and Secondary
12 Education Act of 1965 (20 U.S.C. 7801)) receiving
13 funds under part A of title I of such Act (20 U.S.C.
14 6311 et seq.).

15 (3) The term “Secretary” means the Secretary
16 of Education.

17 (4) The term “school” means an elementary
18 school or a secondary school (as those terms are de-
19 fined in section 9101 of the Elementary and Sec-
20 ondary Education Act of 1965 (20 U.S.C. 7801))
21 served under part A of title I of such Act (20 U.S.C.
22 6311 et seq.).

23 (5) The term “State educational agency” means
24 a State educational agency (as that term is defined
25 in section 9101 of the Elementary and Secondary

1 Education Act of 1965 (20 U.S.C. 7801)) receiving
 2 funds under part A of title I of such Act (20 U.S.C.
 3 6311 et seq.).

4 **TITLE III—IMPROVING ASSESS-** 5 **MENT AND ACCOUNTABILITY**

6 **SEC. 301. GRANTS FOR INCREASING DATA CAPACITY FOR** 7 **PURPOSES OF ASSESSMENT AND ACCOUNT-** 8 **ABILITY.**

9 (a) PROGRAM AUTHORIZED.—From funds appro-
 10 priated under subsection (g) for a fiscal year, the Sec-
 11 retary may award grants, on a competitive basis, to State
 12 educational agencies—

13 (1) to enable the State educational agencies to
 14 develop or increase the capacity of data systems for
 15 assessment and accountability purposes, including
 16 the collection of graduation rates; and

17 (2) to award subgrants to increase the capacity
 18 of local educational agencies to upgrade, create, or
 19 manage longitudinal data systems for the purpose of
 20 measuring student academic progress and achieve-
 21 ment.

22 (b) STATE APPLICATION.—Each State educational
 23 agency desiring a grant under this section shall submit
 24 an application to the Secretary at such time, in such man-

ner, and containing such information as the Secretary may
require.

(c) STATE USE OF FUNDS.—Each State educational
agency that receives a grant under this section shall use—

(1) not more than 20 percent of the grant
funds for the purpose of—

(A) increasing the capacity of, or creating,
State databases to collect, disaggregate, and re-
port information related to student achieve-
ment, enrollment, and graduation rates for as-
sessment and accountability purposes; and

(B) reporting, on an annual basis, for the
elementary schools and secondary schools with-
in the State, on—

(i) the enrollment data from the be-
ginning of the academic year;

(ii) the enrollment data from the end
of the academic year; and

(iii) the twelfth grade graduation
rates; and

(2) not less than 80 percent of the grant funds
to award subgrants to local educational agencies
within the State to enable the local educational
agencies to carry out the authorized activities de-
scribed in subsection (e).

1 (d) LOCAL APPLICATION.—Each local educational
2 agency desiring a subgrant under this section shall submit
3 an application to the State educational agency at such
4 time, in such manner, and containing such information as
5 the State educational agency may require. Each such ap-
6 plication shall include, at a minimum, a demonstration of
7 the local educational agency’s ability to put a longitudinal
8 data system in place.

9 (e) LOCAL AUTHORIZED ACTIVITIES.—Each local
10 educational agency that receives a subgrant under this
11 section shall use the subgrant funds to increase the capac-
12 ity of the local educational agency to upgrade or manage
13 longitudinal data systems consistent with the uses in sub-
14 section (c)(1), by—

- 15 (1) purchasing database software or hardware;
- 16 (2) hiring additional staff for the purpose of
17 managing such data;
- 18 (3) providing professional development or addi-
19 tional training for such staff; and
- 20 (4) providing professional development or train-
21 ing for principals and teachers on how to effectively
22 use such data to implement instructional strategies
23 to improve student achievement and graduation
24 rates.

25 (f) DEFINITIONS.—In this section:

1 (1) The term “graduation rate” means the per-
2 centage that—

3 (A) the total number of students who—

4 (i) graduate from a secondary school
5 with a regular diploma (which shall not in-
6 clude the recognized equivalent of a sec-
7 ondary school diploma or an alternative de-
8 gree) in an academic year; and

9 (ii) graduated on time by progressing
10 1 grade per academic year; represents of

11 (B) the total number of students who en-
12 tered the secondary school in the entry level
13 academic year applicable to the graduating stu-
14 dents.

15 (2) The terms “State educational agency” and
16 “local educational agency” have the meanings given
17 such terms in section 9101 of the Elementary and
18 Secondary Education Act of 1965 (20 U.S.C. 7801).

19 (3) The term “Secretary” means the Secretary
20 of Education.

21 (g) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated to carry out this section
23 \$100,000,000 for fiscal year 2005, and such sums as may
24 be necessary for each of the 2 succeeding fiscal years.

1 **SEC. 302. GRANTS FOR ASSESSMENT OF CHILDREN WITH**
 2 **DISABILITIES AND CHILDREN WHO ARE LIM-**
 3 **ITED ENGLISH PROFICIENT.**

4 Part E of title I of the Elementary and Secondary
 5 Education Act of 1965 (20 U.S.C. 6491 et seq.) is amend-
 6 ed by adding at the end the following:

7 **“SEC. 1505. GRANTS FOR ASSESSMENT OF CHILDREN WITH**
 8 **DISABILITIES AND CHILDREN WHO ARE LIM-**
 9 **ITED ENGLISH PROFICIENT.**

10 “(a) GRANTS AUTHORIZED.—From amounts author-
 11 ized under subsection (e) for a fiscal year, the Secretary
 12 shall award grants, on a competitive basis, to State edu-
 13 cational agencies, or to consortia of State educational
 14 agencies, to enable the State educational agencies or con-
 15 sortia to collaborate with institutions of higher education,
 16 research institutions, or other organizations—

17 “(1) to design and improve State academic as-
 18 sessments for students who are limited English pro-
 19 ficient and students with disabilities; and

20 “(2) to ensure the most accurate, valid, and re-
 21 liable means to assess academic content standards
 22 and student academic achievement standards for
 23 students who are limited English proficient and stu-
 24 dents with disabilities.

25 “(b) AUTHORIZED ACTIVITIES.—A State educational
 26 agency or consortium that receives a grant under this sec-

1 tion shall use the grant funds to carry out 1 or more of
 2 the following activities:

3 “(1) Developing alternate assessments for stu-
 4 dents with disabilities, consistent with section 1111
 5 and the amendments made on December 9, 2003, to
 6 part 200 of title 34, Code of Federal Regulations
 7 (68 Fed. Reg. 68698) (relating to accountability for
 8 the academic achievement of students with the most
 9 significant cognitive disabilities), including—

10 “(A) the alignment of such assessments, as
 11 appropriate and consistent with such amend-
 12 ments, with—

13 “(i) State academic achievement
 14 standards and State academic content
 15 standards for all students; or

16 “(ii) alternate State academic achieve-
 17 ment standards that reflect the intended
 18 instructional construct for students with
 19 disabilities;

20 “(B) activities to ensure that such assess-
 21 ments do not reflect the disabilities, or associ-
 22 ated characteristics, of the students that are ex-
 23 traneous to the intent of the measurement;

24 “(C) the development of an implementation
 25 plan for pilot tests for such assessments, in

1 order to determine the level of appropriateness
2 and feasibility of full-scale administration; and

3 “(D) activities that provide for the reten-
4 tion of all feasible standardized features in the
5 alternate assessments.

6 “(2) Developing alternate assessments that
7 meet the requirements of section 1111 for students
8 who are limited English proficient, including—

9 “(A) the alignment of such assessments
10 with State academic achievement standards and
11 State academic content standards for all stu-
12 dents;

13 “(B) the development of parallel native
14 language assessments or linguistically modified
15 assessments for limited English proficient stu-
16 dents that meet the requirements of section
17 1111(b)(3)(C)(ix)(III);

18 “(C) the development of an implementation
19 plan for pilot tests for such assessments, in
20 order to determine the level of appropriateness
21 and feasibility of full-scale administration; and

22 “(D) activities that provide for the reten-
23 tion of all feasible standardized features in the
24 alternate assessments.

1 “(3) Developing, modifying, or revising State
2 policies and criteria for appropriate accommodations
3 to ensure the full participation of students who are
4 limited English proficient and students with disabili-
5 ties in State academic assessments, including—

6 “(A) developing a plan to ensure that as-
7 sessments provided with accommodations are
8 fully included and integrated into the account-
9 ability system, for the purpose of making the
10 determinations of adequate yearly progress re-
11 quired under section 1116;

12 “(B) ensuring the validity, reliability, and
13 appropriateness of such accommodations, such
14 as—

15 “(i) a modification to the presentation
16 or format of the assessment;

17 “(ii) the use of assistive devices;

18 “(iii) an extension of the time allowed
19 for testing;

20 “(iv) an alteration of the test setting
21 or procedures;

22 “(v) the administration of portions of
23 the test in a method appropriate for the
24 level of language proficiency of the test
25 taker;

1 “(vi) the use of a glossary or dic-
2 tionary; and

3 “(vii) the use of a linguistically modi-
4 fied assessment;

5 “(C) ensuring that State policies and cri-
6 teria for appropriate accommodations take into
7 account the form or program of instruction pro-
8 vided to students, including the level of dif-
9 ficulty, reliability, cultural difference, and con-
10 tent equivalence of such form or program;

11 “(D) ensuring that such policies are con-
12 sistent with the standards prepared by the
13 Joint Committee on Standards for Educational
14 and Psychological Testing of the American
15 Educational Research Association, the Amer-
16 ican Psychological Association, and the Na-
17 tional Council on Measurement in Education;
18 and

19 “(E) developing a plan for providing train-
20 ing on the use of accommodations to school in-
21 structional staff, families, students, and other
22 appropriate parties.

23 “(4) Developing universally designed assess-
24 ments that can be accessible to all students, includ-
25 ing—

1 “(A) examining test item or test perform-
 2 ance for students with disabilities and students
 3 who are limited English proficient, to determine
 4 the extent to which the test item or test is uni-
 5 versally designed;

6 “(B) using think aloud and cognitive lab-
 7 oratory procedures, as well as item statistics, to
 8 identify test items that may pose particular
 9 problems for students with disabilities or stu-
 10 dents who are limited English proficient;

11 “(C) developing and implementing a plan
 12 to ensure that developers and reviewers of test
 13 items are trained in the principles of universal
 14 design; and

15 “(D) developing computer-based applica-
 16 tions of universal design principles.

17 “(c) APPLICATION.—Each State educational agency,
 18 or consortium of State educational agencies, desiring to
 19 apply for a grant under this section shall submit an appli-
 20 cation to the Secretary at such time, in such manner, and
 21 containing such information as the Secretary may require,
 22 including—

23 “(1) information regarding the institutions of
 24 higher education, research institutions, or other or-
 25 ganizations that are collaborating with the State

1 educational agency or consortium, in accordance
2 with subsection (a);

3 “(2) in the case of a consortium of State edu-
4 cational agencies, the designation of 1 State edu-
5 cational agency as the fiscal agent for the receipt of
6 grant funds;

7 “(3) a description of the process and criteria by
8 which the State educational agency will identify stu-
9 dents that are unable to participate in general State
10 content assessments and are eligible to take alter-
11 nate assessments, consistent with the amendments
12 made to part 200 of title 34, Code of Federal Regu-
13 lations (68 Fed. Reg. 68698);

14 “(4) in the case of a State educational agency
15 or consortium carrying out the activity described in
16 subsection (b)(1)(A), a description of how the State
17 educational agency plans to fulfill the requirement of
18 subsection (b)(1)(A);

19 “(5) in the case of a State educational agency
20 or consortium carrying out the activities described in
21 paragraphs (1), (2), and (4) of subsection (b), infor-
22 mation regarding the proposed techniques for the
23 development of alternate assessments, including a
24 description of the technical adequacy of, technical
25 aspects of, and scoring for, such assessments;

1 “(6) a plan for providing training for school in-
2 structional staff, families, students, and other appro-
3 priate parties on the use of alternate assessments;
4 and

5 “(7) information on how the scores of students
6 participating in alternate assessments will be re-
7 ported to the public and to parents.

8 “(d) EVALUATION AND REPORTING REQUIRE-
9 MENTS.—Each State educational agency receiving a grant
10 under this section shall submit an annual report to the
11 Secretary describing the activities carried out under the
12 grant and the result of such activities, including—

13 “(1) details on the effectiveness of the activities
14 supported under this section in helping students
15 with disabilities, or students who are limited English
16 proficient, better participate in State assessment
17 programs; and

18 “(2) information on the change in achievement,
19 if any, of students with disabilities and students who
20 are limited English proficient, as a result of a more
21 accurate assessment of such students.

22 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to carry out this section
24 \$50,000,000 for fiscal year 2005, and such sums as may
25 be necessary for each of the 2 succeeding fiscal years.”.

1 **SEC. 303. REPORTS ON STUDENT ENROLLMENT AND GRAD-**
 2 **UATION RATES.**

3 Part E of title I of the Elementary and Secondary
 4 Education Act of 1965 (as amended by section 302) (20
 5 U.S.C. 6491 et seq.) is amended by adding at the end
 6 the following:

7 **“SEC. 1506. REPORTS ON STUDENT ENROLLMENT AND**
 8 **GRADUATION RATES.**

9 “(a) IN GENERAL.—The Secretary of Education shall
 10 collect from each State educational agency, local edu-
 11 cational agency, and school, on an annual basis, the fol-
 12 lowing data:

13 “(1) The number of students enrolled in each
 14 of grades 7 through 12 at the beginning of the most
 15 recent school year.

16 “(2) The number of students enrolled in each
 17 of grades 7 through 12 at the end of the most recent
 18 school year.

19 “(3) The graduation rate for the most recent
 20 school year.

21 “(4) The data described in paragraphs (1)
 22 through (3), disaggregated by the groups of students
 23 described in section 1111(b)(2)(C)(v)(II).

24 “(b) ANNUAL REPORT.—The Secretary shall report
 25 the information collected under subsection (a) on an an-
 26 nual basis.”.

1 **TITLE IV—CIVIL RIGHTS**

2 **SEC. 401. CIVIL RIGHTS.**

3 Section 9534 of the Elementary and Secondary Edu-
4 cation Act of 1965 (20 U.S.C. 7914) is amended—

5 (1) by redesignating subsections (a) and (b) as
6 subsections (b) and (c), respectively; and

7 (2) by inserting before subsection (b) (as redes-
8 igned by paragraph (1)) the following:

9 “(a) PROHIBITION OF DISCRIMINATION.—Discrimi-
10 nation on the basis of race, color, religion, sex (except as
11 otherwise permitted under title IX of the Education
12 Amendments of 1972), national origin, or disability in any
13 program funded under this Act is prohibited.”.

14 **TITLE V—TECHNICAL** 15 **ASSISTANCE**

16 **SEC. 501. TECHNICAL ASSISTANCE.**

17 Part F of title IX of the Elementary and Secondary
18 Education Act of 1965 (20 U.S.C. 7941) is amended—

19 (1) in the part heading, by inserting “**AND**
20 **TECHNICAL ASSISTANCE**” after “**EVAL-**
21 **UATIONS**”; and

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

23 **“SEC. 9602. TECHNICAL ASSISTANCE.**

24 “The Secretary shall ensure that the technical assist-
25 ance provided by, and the research developed and dissemi-

1 nated through, the Institute of Education Sciences and
2 other offices or agencies of the Department provide edu-
3 cators and parents with the needed information and sup-
4 port for identifying and using educational strategies, pro-
5 grams, and practices, including strategies, programs, and
6 practices available through the clearinghouses supported
7 under the Education Sciences Reform Act of 2002 (20
8 U.S.C. 9501 et seq.) and other federally-supported clear-
9 inghouses, that have been successful in improving edu-
10 cational opportunities and achievement for all students.”.

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