

109TH CONGRESS  
1ST SESSION

# H. R. 1177

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2005

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

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## A BILL

To amend the accountability provisions of 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 “State and Local Edu-  
5       cation Flexibility Act of 2005”.

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

7       (a) LIMITED ENGLISH PROFICIENT STUDENTS.—  
8       Section 1111(b) of the Elementary and Secondary Edu-  
9       cation Act of 1965 (20 U.S.C. 6311(b)) is amended—

10               (1) in paragraph (2)(C)—

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

3 (B) in clause (vii), by striking the period  
4 at the end and inserting “; and” ; and

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

6 “(viii) at the State’s discretion on a  
7 case-by-case basis, may not include the  
8 performance of any limited English pro-  
9 ficient student if—

10 “(I) the student has not been en-  
11 rolled for 3 full school years in an ele-  
12 mentary school or secondary school in  
13 the State; and

14 “(II) the parents of the student,  
15 and the school administrator or team  
16 of educators designated by the stu-  
17 dent’s school for making limited  
18 English proficiency placement and as-  
19 sessment decisions, agree that such an  
20 exclusion is educationally appropriate  
21 for the student.”;

22 (2) in clause (ii) of paragraph (2)(I), by insert-  
23 ing “is subject to paragraph (3)(C)(xvi),” after “ex-  
24 cept that the 95 percent requirement described in  
25 this clause”;

1 (3) in paragraph (3)(C)—

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

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

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

7 “(xvi) notwithstanding clause  
8 (ix)(III), at the State’s discretion on a  
9 case-by-case basis, not include any limited  
10 English proficient student if—

11 “(I) the student is enrolled in his  
12 or her first full school year in an ele-  
13 mentary school or secondary school in  
14 the State; and

15 “(II) the parents of the student,  
16 and the school administrator or team  
17 of educators designated by the stu-  
18 dent’s school for making limited  
19 English proficiency placement and as-  
20 sessment decisions, agree that such an  
21 exclusion is educationally appropriate  
22 for the student.”; and

23 (4) in paragraph (7), by adding at the end the  
24 following: “Notwithstanding the preceding sentence,  
25 a State plan may provide for the exclusion from

1       such annual assessment of English proficiency of  
2       any limited English proficient student if (A) the stu-  
3       dent is enrolled in his or her first full school year  
4       in an elementary or secondary school in the State;  
5       and (B) the parents of the student, and the school  
6       administrator or team of educators designated by  
7       the student's school for making limited English pro-  
8       ficiency placement and assessment decisions, agree  
9       that such an exclusion is educationally appropriate  
10      for the student.”

11      (b) CONSIDERATION OF GRADUATION RATES IN  
12 AYP.—Clause (vi) of section 1111(b)(2)(C) of the Ele-  
13 mentary and Secondary Education Act of 1965 (20 U.S.C.  
14 6311(b)(2)(C)) is amended by inserting “, except that, at  
15 the discretion of the State, such graduation rates may in-  
16 clude (I) any student who has exceptional circumstances  
17 and graduates from secondary school with a regular di-  
18 ploma in not more than 5 years, (II) any qualified child  
19 with a disability (as that term is defined in paragraph  
20 (3)(C)(11)) who graduates from secondary school with a  
21 regular diploma before attaining an age established by  
22 State law, and (III) any qualified child with a disability  
23 (as that term is defined in paragraph (3)(C)(11)) who sat-  
24 isfies such alternative challenging academic content and  
25 achievement standards as the State may establish for the

1 child to complete secondary school in a reasonable period  
2 of time” after “in the standard number of years”.

3 (c) CHILDREN WITH DISABILITIES.—Subsection (b)  
4 of section 1111 of the Elementary and Secondary Edu-  
5 cation Act of 1965 (20 U.S.C. 6311) is amended—

6 (1) in subparagraph (B) of paragraph (1), by  
7 striking “The academic standards” and inserting  
8 “Subject to paragraph (11), the academic stand-  
9 ards”;

10 (2) in clause (i) of paragraph (2)(C), by strik-  
11 ing “applies the same high standards” and inserting  
12 “subject to paragraph (11), applies the same high  
13 standards”;

14 (3) in clause (i) of paragraph (3)(C), by strik-  
15 ing “be the same academic assessments” and insert-  
16 ing “subject to paragraph (11), be the same aca-  
17 demic assessments”; and

18 (4) by adding at the end the following:

19 “(11) CHILDREN WITH DISABILITIES.—

20 “(A) RELATION TO IEP.—Subject to the  
21 requirements of subparagraphs (B) and (C),  
22 with respect to a qualified child with a dis-  
23 ability, a State plan may provide for modifica-  
24 tion of the challenging academic content stand-  
25 ards and challenging student academic achieve-

1           ment standards required by paragraph (1)(A),  
2           the high standards of academic achievement de-  
3           scribed in paragraph (2)(C)(i), and the yearly  
4           student academic assessments described in  
5           paragraph (3), to align such standards and as-  
6           sessments with the child’s individualized edu-  
7           cation program.

8           “(B) PARENTAL CONSENT.—A State plan  
9           may not provide for modification pursuant to  
10          subparagraph (A) of any standard or assess-  
11          ment unless the parents of the child involved  
12          agree that such modification is educationally  
13          appropriate for the child.

14          “(C) PROGRESSIVELY HIGHER LEVEL OF  
15          INSTRUCTION.—In the case of a qualified child  
16          with a disability who has a significant cognitive  
17          impairment, but not a severe cognitive impair-  
18          ment, any modification pursuant to subpara-  
19          graph (A) of any standard or assessment appli-  
20          cable to the child shall continue to require a  
21          progressively higher level of instruction each  
22          year.

23          “(D) RULE OF CONSTRUCTION.—This  
24          paragraph shall not be construed to give rise to  
25          any new right under the Individuals with Dis-

abilities Education Act, to expand the definition of a child with a disability under that Act, or to otherwise affect any provision of that Act.

“(E) DEFINITIONS.—In this paragraph:

“(i) The term ‘individualized education program’ has the meaning given to that term in section 602 of the Individuals with Disabilities Education Act.

“(ii) The term ‘qualified child with a disability’ means a child who receives services under the Individuals with Disabilities Education Act and has been certified by a licensed health care professional or a multidisciplinary team (established in accordance with State guidelines and including a licensed health care professional) as a child with severe or significant cognitive impairment that prevents learning consistent with the child’s age group.”.

(d) LOCAL DEVELOPMENT OF ASSESSMENTS.—Paragraph (3) of section 1111(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(3)) is amended by adding at the end the following:

“(E) LOCAL DEVELOPMENT OF ASSESSMENTS.—

1 “(i) IN GENERAL.—Notwithstanding  
2 subparagraphs (A) and (C)(i), a State edu-  
3 cational agency may authorize a local edu-  
4 cational agency, or school, in the State to  
5 develop and implement the student aca-  
6 demic assessments required by this para-  
7 graph with respect to the students served  
8 by the local educational agency or school,  
9 respectively.

10 “(ii) SAME ASSESSMENT.—Subject to  
11 paragraph (11), any assessment developed  
12 and implemented by a local educational  
13 agency or school pursuant to this subpara-  
14 graph shall be the same academic assess-  
15 ment used to measure the achievement of  
16 all children served by the local educational  
17 agency or school, respectively.

18 “(iii) STATE RESPONSIBILITY.— If a  
19 State educational agency chooses to au-  
20 thorize a local educational agency, or  
21 school, in the State to develop and imple-  
22 ment assessments pursuant to this sub-  
23 paragraph, the State educational agency  
24 shall be responsible for demonstrating in  
25 the State plan that each such assessment



1                   complies with the requirements of this  
2                   paragraph.”.

3           (e) MULTIPLE ASSESSMENTS.—

4           (1) IN GENERAL.—Paragraph (3) of section  
5           1111(b) of the Elementary and Secondary Edu-  
6           cation Act of 1965 (20 U.S.C. 6311(b)(3)) (as  
7           amended by subsection (d)) is amended by adding at  
8           the end the following:

9                   “(F) RULE OF CONSTRUCTION.—Notwith-  
10           standing subparagraph (A), this paragraph  
11           shall not be construed to prohibit the develop-  
12           ment and implementation of the student aca-  
13           demic assessments required by this section  
14           through the use of multiple assessments of high  
15           technical quality integrated into a school’s cur-  
16           riculum and distributed throughout the course  
17           of the school year.”.

18           (2) PARTICIPATION REQUIREMENT.—Clause (ii)  
19           of section 1111(b)(2)(I) (20 U.S.C. 6311(b)(2)(I))  
20           (as amended by subsection (a)(2)) is amended by in-  
21           serting “, and shall be a 75 percent annual average  
22           requirement in a case in which the school imple-  
23           ments academic assessments for purposes of para-  
24           graph (3) through the use of multiple assessments  
25           integrated into a school’s curriculum and distributed

1 throughout the course of the school year” before the  
2 close parenthesis at the end.

3 (f) HIGHLY QUALIFIED SPECIAL EDUCATION AND  
4 RURAL TEACHERS.—Clause (I) of section 9101(23)(B)(ii)  
5 of the Elementary and Secondary Education Act of 1965  
6 (20 U.S.C. 7801(23)(B)(ii)) is amended by inserting “(ex-  
7 cept that, at the discretion of the State, a special edu-  
8 cation teacher or a teacher in a rural school may satisfy  
9 the requirements of this subclause by passing such a rig-  
10 orous State academic subject test in any 1 subject in  
11 which the teacher teaches if, with respect to each other  
12 academic subject in which the teacher teaches, the teacher  
13 works in close consultation, either in-person or through  
14 high-quality distance education or consultation, with an-  
15 other teacher who is highly qualified in such other aca-  
16 demic subject)” before the semicolon.

17 **SEC. 3. STUDY ON THE ADEQUACY OF ESEA FUNDING.**

18 (a) STUDY.—The Comptroller General of the United  
19 States (in this section referred to as the “Comptroller  
20 General”) shall conduct a study to determine for each of  
21 school years 2001–2002, 2002–2003, and 2003–2004, the  
22 following:

23 (1) The amount of costs incurred by local edu-  
24 cational agencies and schools as a result of efforts  
25 to comply with the provisions of part A of title I of

1 the Elementary and Secondary Education Act of  
2 1965 (20 U.S.C. 6301 et seq.).

3 (2) The amount of funds received by local edu-  
4 cational agencies and schools under such part A.

5 (b) REGULAR EDUCATIONAL EXPENSES.—In making  
6 a determination of costs under subsection (a)(1), the  
7 Comptroller General shall exclude educational costs that  
8 would be incurred by local educational agencies and  
9 schools irrespective of efforts to comply with the provisions  
10 of part A of title I of the Elementary and Secondary Edu-  
11 cation Act of 1965 (20 U.S.C. 6301 et seq.).

12 (c) SAMPLES.—The Comptroller General shall make  
13 sample determinations under paragraphs (1) and (2) of  
14 subsection (a) for—

15 (1) at least 1 local educational agency and 1  
16 school in a rural area in each State; and

17 (2) at least 1 local educational agency and 1  
18 school in an urban area in each State.

19 (d) REPORT.—Not later than 1 year after the date  
20 of the enactment of this Act, the Comptroller General shall  
21 submit a report to the Congress on the results of the study  
22 conducted under this section.

23 (e) SUBSEQUENT STUDY AND REPORTS.—The  
24 Comptroller General shall conduct additional study under  
25 this section and submit a revised report to the Congress—

1           (1) not later than 2 years after the date of the  
2           enactment of this Act, containing determinations on  
3           the amounts described in paragraphs (1) and (2) of  
4           subsection (a) for school year 2005–2006; and

5           (2) not later than 3 years after the date of the  
6           enactment of this Act, containing determinations on  
7           the amounts described in paragraphs (1) and (2) of  
8           subsection (a) for school year 2006–2007.

9   **SEC. 4. STUDY ON FEASIBILITY OF MEASURING INDIVIDUAL STUDENT ACADEMIC ACHIEVEMENT.**  
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11       (a) **STUDY.**—The Secretary of Education (in this section referred to as the “Secretary”) shall enter into an  
12       arrangement with a reputable, nonpartisan educational re-  
13       search entity to conduct a study—  
14

15           (1) to assess the feasibility of measuring stu-  
16       dent academic achievement on an individual basis  
17       over a period of time for purposes of determining  
18       whether a school is making adequate yearly  
19       progress; and

20           (2) to identify States and local educational  
21       agencies that already have in effect longitudinal data  
22       systems that could be used for such measurements.

23       (b) **CONSIDERATIONS.**—In conducting the study  
24       under this section, the Secretary shall consider the fol-  
25       lowing:

1           (1) Privacy issues, including—

2                   (A) who would have access to information  
3           on individual student academic achievement;  
4           and

5                   (B) how such information would be main-  
6           tained in a confidential manner.

7           (2) Ensuring against labeling of students.

8           (3) Costs.

9           (c) REPORT.—Not later than 1 year after the date  
10   of the enactment of this Act, the Secretary shall submit  
11   a report to the Congress on the results of the study con-  
12   ducted under this section.

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