

109TH CONGRESS  
1ST SESSION

# H. R. 4216

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.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 2, 2005

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

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## 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 2005”.

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”;

(B) in paragraph (5), by striking “that fails to make adequate yearly progress” and inserting “that fails (with respect to the same group of students and the same subject described in paragraph (1)(A)) to make adequate yearly progress”;

(C) in paragraph (7)(C), by striking “that fails to make adequate yearly progress” and inserting “that fails (with respect to the same group of students and the same subject described in paragraph (1)(A)) to make adequate yearly progress”; and

(D) in paragraph (8)(A), by striking “to fail to make adequate yearly progress” and inserting “to fail (with respect to the same group of students and the same subject described in paragraph (1)(A)) to make adequate yearly progress”.

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

(A) in subparagraph (A)—

(i) by striking “and” at the end of 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

1 consistent with relevant, nationally recog-  
2 nized professional and technical standards,  
3 if any; and

4 “(ii) schools identified for school im-  
5 provement, corrective action, or restruc-  
6 turing are identified using multiple meas-  
7 ures of assessing school performance.”.

8 (5) NORM REFERENCED ASSESSMENTS.—  
9 Clause (ii) of section 1111(b)(3)(C) of the Elemen-  
10 tary and Secondary Education Act of 1965 (20  
11 U.S.C. 6316(b)(3)(C)) is amended—

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

13 and

14 (B) by inserting “, be aligned with cur-  
15 riculum and instruction to adequately assess  
16 their effect on each content standard assessed,  
17 and include individual test items that, based on  
18 technical criteria, enable students to achieve the  
19 items if the students receive appropriate in-  
20 struction” before the semicolon at the end.

21 (6) EXCLUSION OF LEP STUDENTS FROM MATH  
22 ASSESSMENTS.—Clause (ix) of section 1111(b)(3)(C)  
23 of the Elementary and Secondary Education Act of  
24 1965 (20 U.S.C. 6311(b)(30(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.



“(B) EXCEPTION.—If a teacher described in subparagraph (A) transfers to a school in a different State, the State may reject the teacher’s status as highly qualified to the extent that such status was based on passing a rigorous State test pursuant to section 9101(23)(B) or meeting a high objective uniform State standard of evaluation pursuant to section 9101(23)(C).

“(C) DEFINITION.—For purposes of this paragraph, the term ‘different State’ means a State other than the State in which the teacher demonstrated that he or she was highly qualified.”.

(4) CERTIFICATION WAIVERS.—Clause (ii) of section 9101(23)(A) of the Elementary and Secondary Education Act (20 U.S.C. 7801(23)(A)) is amended to read as follows:

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

(c) SPECIAL EDUCATION STUDENTS.—

(1) GRADUATION RATE.—Clause (vi) of section 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 disabil-  
 21 ities.”.

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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