

109TH CONGRESS  
1ST SESSION

# H. R. 4578

To amend the Elementary and Secondary Education Act of 1965 to clarify Federal requirements under such Act.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2005

Ms. MCCOLLUM of Minnesota introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend the Elementary and Secondary Education Act of 1965 to clarify Federal requirements under such Act.

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 shall be cited as the “Student Achievement  
5       and Successful Schools Act of 2005”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

8               (1) Access to a high quality public education for  
9       all children is essential to a fully functioning democ-  
10      racy.

1           (2) Primary responsibility for the operation,  
2           quality, and governance of the public schools of the  
3           United States lies with State and local governments.

4           (3) Bipartisan reviews of the No Child Left Be-  
5           hind Act of 2001 (Public Law 107–110; 115 Stat.  
6           1425) have suggested that granting States flexibility  
7           to meet the goals of the law will result in better stu-  
8           dent successes, more accountability, a stronger de-  
9           mocracy, and a more robust economy.

10          (4) More than 30 States are considering legisla-  
11          tion requesting the Federal Government to provide  
12          waivers or other means of flexibility, calling for addi-  
13          tional money to cover mandates required under the  
14          No Child Left Behind Act of 2001, prohibiting a  
15          State from spending State funds to comply with  
16          such mandates, or requiring that a State will comply  
17          only in areas fully funded by the Federal Govern-  
18          ment, or fully opting-out of the mandates required  
19          under the No Child Left Behind Act of 2001.

20          (5) States have been financially penalized,  
21          amounting to a total of nearly \$1,300,000, for not  
22          meeting the Federal requirements. These fines are  
23          in addition to education cuts sustained at the Fed-  
24          eral, State, and local levels.

1           (6) School districts across the country have re-  
2       jected or reallocated funding under part A of title I  
3       of the Elementary and Secondary Education Act of  
4       1965 (20 U.S.C. 6301 et seq.) to avoid costly sanc-  
5       tions associated with failing to make adequate yearly  
6       progress under such Act.

7           (7) States, school districts, education advocacy  
8       groups, and schools have filed lawsuits in response  
9       to the No Child Left Behind Act of 2001, including  
10      lawsuits filed by school districts in Michigan,  
11      Vermont, Texas, California, and Connecticut, the  
12      National Education Association, and the California  
13      League of United Latin American Citizens. Several  
14      States, school districts, education advocacy groups,  
15      and schools are considering joining in or filing their  
16      own litigation and have questioned the constitu-  
17      tionality of the No Child Left Behind Act of 2001.

18          (8) The Department of Education has recog-  
19      nized the flaws in the No Child Left Behind Act of  
20      2001 and has issued several changes to the regula-  
21      tions promulgated pursuant to such Act.

22          (9) Since being signed into law, schools have  
23      been consistently underfunded from what was prom-  
24      ised by Congress in the No Child Left Behind Act  
25      of 2001.

1           (10) All children should have the opportunity to  
2           succeed with a high quality, public education.

3 **SEC. 3. SENSE OF CONGRESS.**

4           It is the sense of Congress that—

5           (1) full funding should be provided to schools to  
6           allow them to satisfy Federal mandates required  
7           under the No Child Left Behind Act of 2001; and

8           (2) States and school districts should have the  
9           necessary flexibility in implementing the No Child  
10          Left Behind Act of 2001 to ensure that all students  
11          are successful and achieve all of the goals of the law.

12 **SEC. 4. ADEQUATE YEARLY PROGRESS.**

13          (a) IN GENERAL.—Subpart 1 of part A of title I of  
14          the Elementary and Secondary Education Act of 1965 (20  
15          U.S.C. 6311 et seq.) is amended—

16               (1) in section 1111(b)(2)—

17                       (A) in subparagraph (C), by striking  
18                       “‘Adequate’” and inserting “‘Except as pro-  
19                       vided in subparagraph (N), ‘adequate’”;

20                       (B) in subparagraph (F), by striking “12  
21                       years” and inserting “16 years”;

22                       (C) in subparagraph (I)—

23                               (i) by striking “subparagraph (C)(v)  
24                               must meet or exceed the objectives” and  
25                               inserting “subparagraph (C)(v), subject to

1           subparagraph (M), must meet or exceed  
2           the objectives”; and

3                   (ii) by striking “subparagraph (C)(v)  
4           does not meet those objectives” and insert-  
5           ing “subparagraph (C)(v), subject to sub-  
6           paragraph (M), does not meet those objec-  
7           tives”;

8           (D) by adding after subparagraph (K) the  
9           following new subparagraphs:

10                   “(L) SPECIAL RULE.—A State may allow  
11           the exclusion of one or more students from the  
12           calculation used to determine whether a school  
13           makes adequate yearly progress under this  
14           paragraph based on special circumstances iden-  
15           tified by the Secretary affecting individual stu-  
16           dents, including—

17                           “(i) emergency medical conditions;

18                           “(ii) exceptional or uncontrollable cir-  
19           cumstances, such as a natural disaster or  
20           an incident of school violence; or

21                           “(iii) an unusual pattern of attend-  
22           ance as determined by the State edu-  
23           cational agency, provided that the local  
24           educational agency in which the student is  
25           enrolled is implementing a plan to increase

1            participation in the assessments described  
2            in paragraph (3).

3            “(M) SINGLE COUNT OF STUDENTS.—In  
4            meeting the definition of adequate yearly  
5            progress under subparagraph (C), a State may  
6            allow students counted in two or more groups  
7            described in subparagraph (C)(v)(II) to be  
8            counted as an equal fraction of one for each  
9            such group.

10           “(N) OTHER MEASURES OF ADEQUATE  
11           YEARLY PROGRESS.—Notwithstanding any  
12           other provision of this paragraph, a State may  
13           establish an alternative definition of adequate  
14           yearly progress, subject to approval by the Sec-  
15           retary under subsection (e) (except that such  
16           approval shall not apply as such definition ap-  
17           plies to students with disabilities and limited  
18           English proficient students). Nothing in this  
19           subparagraph shall be construed as requiring a  
20           State that establishes an approved alternative  
21           definition of adequate yearly progress under  
22           this subparagraph to satisfy the requirements  
23           of adequate yearly progress defined in subpara-  
24           graph (C). Such alternative definition may—

1           “(i) include measures of student  
2           achievement over a period of time (such as  
3           a value added accountability system) or the  
4           progress of some or all of the groups of  
5           students described in subparagraph (C)(v)  
6           to the next higher level of achievement de-  
7           scribed under subclauses (II) and (III) of  
8           paragraph (1)(D)(ii) as a factor in deter-  
9           mining whether a school, local educational  
10          agency, or State has made adequate yearly  
11          progress, as described in this paragraph;  
12          or

13          “(ii) use the measures of performance  
14          and progress described in subparagraph  
15          (A) as the sole basis for determining  
16          whether the State, its local educational  
17          agencies, or schools have met adequate  
18          yearly progress, provided—

19                 “(I) the primary goal of such  
20                 definition is that all students in each  
21                 group described in subparagraph  
22                 (C)(v) meet or exceed the proficient  
23                 level of academic achievement, estab-  
24                 lished by the State, not later than 16

1 years after the end of the 2001–2002  
2 school year; and

3 “(II) such definition includes in-  
4 termediate goals, as required under  
5 subparagraph (H).”; and

6 (2) in section 1116(c)(10)—

7 (A) by amending subparagraph (B)(ii) to  
8 read as follows:

9 “(ii) shall take corrective action with  
10 respect to a local educational agency—

11 “(I) that fails to make adequate  
12 yearly progress, as defined by the  
13 State, in the same subject and aver-  
14 aged across all grades and in at least  
15 one grade span (as determined by the  
16 State) for a group described in section  
17 1111(b)(2)(C)(v) by the end of the  
18 second full school year after the iden-  
19 tification of such agency under para-  
20 graph (3); and

21 “(II) whose total number of stu-  
22 dents (who are members of a group  
23 described in section 1111(b)(2)(C)(v))  
24 who did not meet or exceed the pro-  
25 ficient level of academic achievement

1           exceed 35 percent of all students en-  
2           rolled in a school in such agency who  
3           took the assessment in such subject  
4           and averaged across all grades; and”;  
5           and

6           (B) by amending subparagraph (F) to read  
7           as follows:

8           “(F) DELAY.—Notwithstanding subpara-  
9           graph (B)(ii), a State educational agency may  
10          delay, for a period not to exceed 1 year, imple-  
11          mentation of corrective action under this para-  
12          graph if the local educational agency makes  
13          adequate yearly progress for 1 year or its fail-  
14          ure to make adequate yearly progress is due  
15          to—

16               “(i) exceptional or uncontrollable cir-  
17               cumstances, such as a natural disaster;

18               “(ii) a precipitous and unforeseen de-  
19               cline in the financial resources of the local  
20               educational agency; or

21               “(iii) a sudden or significant increase  
22               in the number or percentage of students  
23               represented by any group described in sec-  
24               tion 1111(b)(2)(C)(v).”.

1 (b) GRANTS FOR ADMINISTRATIVE COSTS.—In addi-  
2 tion to funds that are already available for this purpose,  
3 the Secretary of Education shall allocate Federal funds  
4 to pay for administrative costs associated with dem-  
5 onstrating achievement of adequate yearly progress in ac-  
6 cordance with subsections (a) and (c).

7 (c) EFFECTIVE DATES.—

8 (1) AMENDMENTS.—The amendments made by  
9 this section shall take effect and apply as if they had  
10 been made by the No Child Left Behind Act of  
11 2001.

12 (2) REGULATIONS.—The Secretary of Edu-  
13 cation shall enforce any regulations that the Sec-  
14 retary has promulgated on or after the date of the  
15 enactment of the No Child Left Behind Act of 2001  
16 as if such regulations had been promulgated on such  
17 date.

18 **SEC. 5. MEASURING STUDENT ACHIEVEMENT THROUGH**  
19 **LONGITUDINAL GROWTH.**

20 (a) IN GENERAL.—Section 1111(b) of the Elemen-  
21 tary and Secondary Education Act of 1965 (20 U.S.C.  
22 6311(b)) is amended—

23 (1) in paragraph (2)—

24 (A) in subparagraph (A)—

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

3 (ii) in clause (iii), by striking the pe-  
4 riod at the end and inserting “; and”; and

5 (iii) by adding at the end the fol-  
6 lowing new clause:

7 “(iv) include information relating to  
8 approved providers of supplemental edu-  
9 cational services under section 1116(e).”;  
10 and

11 (B) in subparagraph (C)—

12 (i) in clause (vi), by striking “and” at  
13 the end;

14 (ii) in clause (vii), by striking the pe-  
15 riod at the end and inserting “; and”; and

16 (iii) by adding at the end the fol-  
17 lowing new clause:

18 “(viii) at the State’s discretion, meas-  
19 ures the progress of public elementary  
20 schools, secondary schools, and local edu-  
21 cational agencies by tracking the progress  
22 of individual students or cohorts of stu-  
23 dents on a longitudinal basis in lieu of, or  
24 in addition to, comparing the proficiency of

1 a class of students with the proficiency of  
2 earlier classes of students.”; and

3 (2) by adding at the end the following new  
4 paragraph:

5 “(11) LONGITUDINAL PROGRESS OF TRANSFER-  
6 RING STUDENTS.—

7 “(A) IN GENERAL.—If a State chooses to  
8 measure adequate yearly progress on a longitu-  
9 dinal basis in accordance with paragraph  
10 (2)(C)(viii), the State may exclude from such  
11 measurement of progress at a school any stu-  
12 dent who transferred to that school at the be-  
13 ginning of or during the school year involved.

14 “(B) STUDENTS WHO FREQUENTLY  
15 TRANSFER.—The Secretary by regulation—

16 “(i) shall ensure that a State choosing  
17 to measure adequate yearly progress on a  
18 longitudinal basis has in effect a system  
19 for measuring the progress of students who  
20 frequently transfer among schools; and

21 “(ii) in the case of a student who at-  
22 tends three or more schools in any five-  
23 year period, shall provide for the sharing  
24 of school records.”.

1 (b) **EFFECTIVE DATE.**—The amendments made by  
2 subsection (a) shall take effect and apply beginning with  
3 the first academic year that begins after the date of the  
4 enactment of this Act.

5 **SEC. 6. SUPPLEMENTAL EDUCATIONAL SERVICES.**

6 (a) **IN GENERAL.**—Section 1116(e) of the Elemen-  
7 tary and Secondary Education Act of 1965 (20 U.S.C.  
8 6316(e)) is amended—

9 (1) in paragraph (4)—

10 (A) in subparagraph (B), by inserting  
11 “(developed through continuous consultation  
12 with local educational agencies in the State)”  
13 after “objective criteria”;

14 (B) in subparagraph (D), by striking “;  
15 and” at the end;

16 (C) in subparagraph (E), by striking the  
17 period at the end and inserting “; and”; and

18 (D) by adding after subparagraph (E) the  
19 following new subparagraph:

20 “(F) develop procedures by which a local  
21 educational agency may—

22 “(i) present complaints and docu-  
23 mentation of such complaints to the State  
24 educational agency regarding the qualifica-  
25 tions, operation, or evaluation of approved

1 providers or of potential providers seeking  
2 such approval; and

3 “(ii) demonstrate to the State edu-  
4 cational agency that a provider should not  
5 be authorized to provide supplemental  
6 services, as described in this subsection, to  
7 any school or schools under the jurisdiction  
8 of such local educational agency.”;

9 (2) by redesignating paragraph (12) as para-  
10 graph (13);

11 (3) by inserting after paragraph (11) the fol-  
12 lowing new paragraph:

13 “(12) LOCAL EDUCATIONAL AGENCIES AS PRO-  
14 VIDERS.—Nothing in this section shall be construed  
15 to prohibit a local educational agency that has failed  
16 to make adequate yearly progress or is in improve-  
17 ment, corrective action, or restructuring status pur-  
18 suant to subsection (c) from providing supplemental  
19 services, solely due to such failure. In developing and  
20 applying objective criteria under paragraph (4)(B)  
21 and withdrawing approval for providers under para-  
22 graph (4)(D), a State educational agency may not  
23 consider whether a local educational agency made  
24 adequate yearly progress or its status under sub-  
25 section (c).”; and

1 (4) in paragraph (13), as redesignated by para-  
2 graph (2) of this subsection—

3 (A) in subparagraph (A), by inserting  
4 “who did not meet or exceed the proficient level  
5 of academic achievement in the yearly student  
6 academic assessments required under section  
7 1111 for the child’s grade level to meet the  
8 State’s student academic achievement stand-  
9 ards” before the semicolon; and

10 (B) in subparagraph (B)—

11 (i) in clause (ii), by striking “and” at  
12 the end;

13 (ii) by adding at the end the following  
14 new clause:

15 “(iv) provides supplemental edu-  
16 cational services by individuals who are  
17 highly qualified to the same extent and in  
18 the same manner as a teacher under sec-  
19 tion 9101(23) with respect to the student  
20 receiving such services; and”.

21 (b) EFFECTIVE DATE.—The amendments made by  
22 subsection (a) shall take effect and apply beginning with  
23 the first academic year that begins after the date of the  
24 enactment of this Act.

1 **SEC. 7. HIGHLY QUALIFIED TEACHERS.**

2 (a) EXTENSION OF DEADLINE TO SATISFY REQUIRE-  
3 MENTS.—Section 1119(d) of the Elementary and Sec-  
4 ondary Education Act of 1965 (20 U.S.C. 6319(d)) is  
5 amended by striking “not later than 4 years after the date  
6 of enactment” and inserting “not later than the end of  
7 the 2005–2006 school year,”.

8 (b) HIGH OBJECTIVE UNIFORM STATE STANDARD  
9 OF EVALUATION.—Section 9101(23)(C)(ii)(III) of such  
10 Act (20 U.S.C. 7801(23)(C)(ii)(III)) is amended by in-  
11 serting “including a streamlined process under which  
12 teachers of multiple subjects may demonstrate competency  
13 in each individual subject” before the semicolon.

14 (c) GRANTS FOR PARAPROFESSIONAL TRAINING.—In  
15 addition to funds that are already available for this pur-  
16 pose, the Secretary of Education shall allocate Federal  
17 funds to pay for paraprofessional training under sub-  
18 sections (c) and (d) of section 1119 of the Elementary  
19 and Secondary Education Act of 1965 (20 U.S.C. 6319).

20 **SEC. 8. PERFORMANCE BONUSES.**

21 (a) IN GENERAL.—The Secretary of Education shall  
22 make grants, in amounts determined appropriate by the  
23 Secretary, to eligible States to be used for non-administra-  
24 tive functions by schools that have closed achievement  
25 gaps by not less than ten percent between subgroups de-  
26 scribed in section 1111(b)(2)(C)(v)(II) of the Elementary

1 and Secondary Education Act of 1965 (20 U.S.C.  
2 6311(b)(2)(C)(v)(II)), as demonstrated to the satisfaction  
3 of the Secretary.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—There is  
5 authorized to be appropriated to the Secretary  
6 \$50,000,000 to carry out this section.

7 **SEC. 9. CONDITIONAL IMPLEMENTATION.**

8 (a) IN GENERAL.—Section 1116 of the Elementary  
9 and Secondary Education Act of 1965 (20 U.S.C. 6316)  
10 is amended by adding at the end the following new sub-  
11 section:

12 “(i) CONDITIONAL IMPLEMENTATION.—Notwith-  
13 standing any other provision of this section, a State edu-  
14 cational agency, local educational agency, or school, as ap-  
15 plicable, may defer the requirements of subsections (b)(7)  
16 and (b)(8) and subsection (c)(7) and (c)(10) in any fiscal  
17 year in which the amount appropriated under section  
18 1002(a) of this Act and section 611(i) of the Individuals  
19 with Disabilities Education Act (42 U.S.C. 1411(i)) does  
20 not equal or exceed the amount authorized under such sec-  
21 tion for such fiscal year. For purposes of determining the  
22 amounts referred to in the preceding sentence for fiscal  
23 year 2008 and subsequent fiscal years, the amount au-  
24 thorized to be appropriated under section 1002(a) of this  
25 Act in each such fiscal year shall be \$2,500,000,000 more

1 than the amount for the preceding fiscal year. Such deter-  
2 mination shall only apply for the purposes of this sub-  
3 section.”.

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall take effect beginning with the first fiscal  
6 year beginning after the date of the enactment of this Act.

7 **SEC. 10. STUDY BY GAO.**

8 (a) STUDY.—The Comptroller General of the United  
9 States shall conduct a study to—

10 (1) determine whether increases in Federal ele-  
11 mentary and secondary education funding since the  
12 date of the enactment of the No Child Left Behind  
13 Act of 2001 (Public Law 107–110; 115 Stat. 1425)  
14 are sufficient to cover the costs of Federal require-  
15 ments mandated by that Act;

16 (2) identify the costliest provisions of the Ele-  
17 mentary and Secondary Education Act of 1965 (20  
18 U.S.C. 6301 et seq.);

19 (3) identify cuts to programs and activities  
20 made by schools in order to implement requirements  
21 mandated by the No Child Left Behind Act of 2001;

22 (4) determine—

23 (A) the amount of Federal funds provided  
24 to implement the requirements of the Elemen-  
25 tary and Secondary Education Act of 1965

1           disaggregated by the percentages of such funds  
2           used to implement each such requirement; and

3           (B) the percentage of State costs to imple-  
4           ment such requirements in each such area;

5           (5) determine the cost of aligning elementary  
6           and secondary curricula to comply with the require-  
7           ments of the Elementary and Secondary Education  
8           Act of 1965;

9           (6) determine the cost of calculating adequate  
10          yearly progress; and

11          (7) determine the costs of student assessments  
12          under the Elementary and Secondary Education Act  
13          of 1965.

14          (b) REPORT.—Not later than 120 days after the date  
15          of the enactment of this Act, the Comptroller General of  
16          the United States shall submit to Congress a report con-  
17          taining the results of the study conducted under this sec-  
18          tion.

○