

109TH CONGRESS
1ST SESSION

H. R. 4578

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

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

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

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

“(II) such definition includes intermediate goals, as required under
subparagraph (H).”; and

(2) in section 1116(c)(10)—

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

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

“(I) that fails to make adequate
yearly progress, as defined by the
State, in the same subject and averaged across all grades and in at least
one grade span (as determined by the
State) for a group described in section
1111(b)(2)(C)(v) by the end of the
second full school year after the identification of such agency under paragraph (3); and

“(II) whose total number of students (who are members of a group
described in section 1111(b)(2)(C)(v))
who did not meet or exceed the proficient 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.

○