

109TH CONGRESS
1ST SESSION

S. 1690

To provide for flexibility and improvements in elementary and secondary education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2005

Ms. COLLINS (for herself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide for flexibility and improvements in elementary and secondary education, 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 Flexibility and Improvements Act”.

6 **SEC. 2. DISCRETION TO MODIFY ADEQUATE YEARLY**
7 **PROGRESS TIMELINE.**

8 Section 1111(b)(2)(F) of the Elementary and Sec-
9 ondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(F))
10 is amended—

1 (1) by striking “(F) TIMELINE.—Each State”
2 and inserting the following:

3 “(F) TIMELINE.—

4 “(i) IN GENERAL.—Each State”; and

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

6 “(ii) DISCRETION OF SECRETARY TO
7 MODIFY THE TIMELINE.—Every 3 years,
8 the Secretary—

9 “(I) shall review the require-
10 ments of the timeline established in
11 clause (i); and

12 “(II) may issue guidance or regu-
13 lations modifying such requirements if
14 the Secretary determines, at the Sec-
15 retary’s discretion and after a review
16 of the progress of the States towards
17 making adequate yearly progress for
18 the 2013–2014 school year, that
19 modifications to the timeline are in
20 the interests of improving student
21 achievement and are in keeping with
22 the purposes of this title.”.

1 **SEC. 3. ALTERNATIVE ACCOUNTABILITY SYSTEMS.**

2 Section 1111(b)(2) of the Elementary and Secondary
3 Education Act of 1965 (20 U.S.C. 6311(b)(2)) is further
4 amended—

5 (1) by striking subparagraph (I) and inserting
6 the following:

7 “(I) ANNUAL IMPROVEMENT FOR
8 SCHOOLS.—

9 “(i) IN GENERAL.—Each year for a
10 school to make adequate yearly progress
11 under this paragraph—

12 “(I) each group of students de-
13 scribed in subparagraph (C)(v) must
14 meet or exceed the objectives set by
15 the State under subparagraph (G), ex-
16 cept that if any group described in
17 subparagraph (C)(v) does not meet
18 those objectives in any particular
19 year, the school shall be considered to
20 have made adequate yearly progress
21 if—

22 “(aa) the percentage of stu-
23 dents in that group who did not
24 meet or exceed the proficient
25 level of academic achievement on
26 the State assessment under para-

1 graph (3) decreased by 5 percent
2 over the past year, or an aggregate
3 of 10 percent over 2 years,
4 and that group has made
5 progress on 1 or more of the academic
6 indicators described in
7 subparagraph (C)(vi) or (vii); or

8 “(bb) the students in that
9 group demonstrate that they are
10 making progress towards proficiency
11 through an additional
12 model or system for measuring
13 student progress described in
14 subparagraph (J) and that group
15 has made progress on one or
16 more of the academic indicators
17 described in subparagraph (C)(vi)
18 or (vii); and

19 “(II) not less than 95 percent of
20 each group of students described in
21 subparagraph (C)(v) who are enrolled
22 in the school are required to take the
23 assessments, consistent with paragraph
24 (3)(C)(xi) and with accommodations,
25 guidelines, and alternative

1 assessment provided in the same man-
2 ner as those provided under section
3 612(a)(17)(A) of the Individuals with
4 Disabilities Education Act and para-
5 graph (3), on which adequate yearly
6 progress is based (except that the 95
7 percent requirement described in this
8 clause shall not apply in a case in
9 which the number of students in a
10 category is insufficient to yield statis-
11 tically reliable information or the re-
12 sults would reveal personally identifi-
13 able information about an individual
14 student).

15 “(ii) CHILDREN WITH DISABIL-
16 ITIES.—In the case of a child with a dis-
17 ability (as defined in section 602(3) of the
18 Individuals with Disabilities Education
19 Act), a State may deem the child to have
20 met the State’s proficient level of academic
21 achievement on the State assessments for
22 purposes of calculating adequate yearly
23 progress under this section if—

24 “(I) the student’s individualized
25 education program plan team (as de-

1 fined in section 614(d)(1)(B) of such
2 Act) designates an alternate assess-
3 ment based on alternate or modified
4 student academic achievement stand-
5 ards as a more appropriate measure
6 of the student's academic progress
7 and achievement for purposes of the
8 assessment requirements under this
9 part; and

10 “(II) the student achieves a pro-
11 ficient score on such alternate assess-
12 ment.

13 “(iii) REPORT FROM SEA.—For any
14 year that a State educational agency
15 makes use of the flexibility provided by
16 this section to allow alternate assessments
17 for more than 3 percent of the total stu-
18 dent population Statewide, the State edu-
19 cational agency shall make available to the
20 public a report that includes the percent-
21 age of all special education students in the
22 State who were assessed according to
23 clause (ii).”.

24 (2) by redesignating subparagraphs (J) and (K)
25 as subparagraphs (L) and (M), respectively; and

1 (3) by inserting after subparagraph (I) (as
2 amended by paragraph (1)) the following:

3 “(J) ADDITIONAL MODELS AND SYSTEMS
4 FOR MEASURING STUDENT PROGRESS.—In de-
5 veloping a single, statewide State accountability
6 system pursuant to subparagraph (A), a State
7 may establish models and systems for meas-
8 uring student progress for purposes of deter-
9 mining whether an agency or school has made
10 adequate yearly progress that are in addition to
11 the models and systems otherwise described in
12 this paragraph if the models and systems are in
13 keeping with the purposes of this title. Addi-
14 tional models and systems that measure student
15 progress under this paragraph may include—

16 “(i) cohort growth models that—

17 “(I) demonstrate progress based
18 on longitudinal student assessment re-
19 sults indicating improvement in the
20 academic performance of the same co-
21 hort of students over time; and

22 “(II) may in some instances
23 specify different starting points, dif-
24 ferent intermediate goals, and dif-

1 ferent annual measurable objectives
2 for different cohorts;

3 “(ii) indexing systems that dem-
4 onstrate progress based on improvement in
5 assessment scores for students below the
6 proficient level, such as improvements from
7 the below basic to basic level, or from basic
8 to another intermediate level below the
9 proficient level, if the system does not in-
10 clude improvement in students scores for
11 students who scored at the proficient level
12 and higher; or

13 “(iii) a system that demonstrates
14 progress based on improvements in closing
15 the achievement gap or making progress
16 towards another State-established high-
17 achievement target, such as a system that
18 demonstrates progress towards having all
19 subgroups meet or exceed the current per-
20 centage of proficient students at the
21 State’s top-performing schools (such as the
22 top 20 percent of schools), if the system
23 requires continued improvement towards
24 subsequently higher targets until all stu-
25 dents have reached the proficient level.

1 “(K) REQUIREMENT FOR GUIDANCE FROM
2 THE SECRETARY ON ADDITIONAL MODELS AND
3 SYSTEMS FOR MEASURING STUDENT
4 PROGRESS.—Not later than 120 days after the
5 date of enactment of the No Child Left Behind
6 Flexibility and Improvements Act, the Secretary
7 shall establish specific models of additional
8 models and systems for measuring student
9 progress that meet the requirements of sub-
10 paragraph (J), including models of cohort-
11 growth systems, indexing systems, or high-
12 achievement target systems described in sub-
13 paragraph (J). To the extent possible, the mod-
14 els shall demonstrate the maximum amount of
15 flexibility available under this part in the design
16 of additional models and systems for measuring
17 student progress. In addition, the Secretary
18 shall create a task force to provide guidance
19 and other technical assistance to those States
20 interested in incorporating additional models
21 and systems for measuring student progress
22 into their State accountability plan.”.

1 **SEC. 4. STATE OPTION REGARDING STUDENTS WITH LIM-**
 2 **ITED ENGLISH PROFICIENCY.**

3 Section 1111(b)(2) of the Elementary and Secondary
 4 Education Act of 1965 (20 U.S.C. 6311(b)(2)) (as amend-
 5 ed by section 3) is further amended by adding at the end
 6 the following:

7 “(N) STATE OPTION REGARDING STU-
 8 DENTS WITH LIMITED ENGLISH PRO-
 9 FICIENCY.—

10 “(i) IN GENERAL.—In determining
 11 whether a school, local educational agency,
 12 or State has made adequate yearly
 13 progress under this subsection, a State
 14 shall have the option to include in the stu-
 15 dents with limited English proficiency sub-
 16 group a student who was formerly included
 17 in the subgroup and subsequently acquired
 18 proficiency in English.

19 “(ii) DURATION OF INCLUSION IN
 20 THE SUBGROUP.—A State may include a
 21 student described in clause (i) in the stu-
 22 dents with limited English proficiency sub-
 23 group until the student completes sec-
 24 ondary school.

1 “(iii) RULES OF CONSTRUCTION.—
 2 Nothing in this subparagraph shall be con-
 3 strued—

4 “(I) to count a student described
 5 in clause (i) as a student with limited
 6 English proficiency for purposes of—

7 “(aa) determining a State-
 8 defined minimum subgroup size;
 9 and

10 “(bb) allocating funds under
 11 title III;

12 “(II) to require a student de-
 13 scribed in clause (i)—

14 “(aa) to continue to take a
 15 limited English proficiency as-
 16 sessment under paragraph (7);
 17 and

18 “(bb) to receive language
 19 services provided to students with
 20 limited English proficiency.”.

21 **SEC. 5. LOCAL ACADEMIC ASSESSMENTS.**

22 Section 1111(b)(3)(A) of the Elementary and Sec-
 23 ondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(A))
 24 is amended—

1 (1) by striking “(A) IN GENERAL.—Each State
2 plan” and inserting the following:

3 “(A) IMPLEMENTATION OF ASSESS-
4 MENTS.—

5 “(i) IN GENERAL.—Each State plan;
6 and”.

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

8 “(ii) RULE OF CONSTRUCTION RE-
9 GARDING USE OF LOCAL ASSESSMENTS.—

10 Nothing in this Act shall be construed to
11 prohibit a State from using a local assess-
12 ment system or a mixed system of State
13 and local assessments in carrying out
14 clause (i), if the assessment system—

15 “(I) is aligned with the State’s
16 content and achievement standards
17 and provides coherent information
18 about student attainment of those
19 standards;

20 “(II) is valid and reliable, and
21 consistent with relevant professional
22 and technical standards;

23 “(III) provides individual student
24 reports and itemized score analysis;
25 and

1 “(IV) allows the State to aggregate,
2 with confidence, data from disparate local assessments.
3

4 “(iii) REQUIRED TECHNICAL ASSISTANCE.—Not later than 120 days after the
5 date of enactment of the No Child Left
6 Behind Flexibility and Improvements Act,
7 the Secretary shall provide models of local
8 assessment systems or mixed system of
9 State and local assessments meeting the
10 requirements described in clause (ii), and
11 shall provide guidance and technical assistance to States on ways that these systems
12 may be used to satisfy the assessment requirements of this part.”.

16 **SEC. 6. DEFERRAL OF ACADEMIC ASSESSMENTS.**

17 Section 1111(b)(3)(D) of the Elementary and Secondary
18 Education Act of 1965 (20 U.S.C. 6311(b)(3)(D))
19 is amended by striking clauses (i) through (iv) and inserting the following:
20

21 “(i) \$640,000,000 for fiscal year
22 2006; and

23 “(ii) \$670,000,000 for fiscal year
24 2007.”.

1 **SEC. 7. ADEQUATE YEARLY PROGRESS BY GROUP AND SUB-**
2 **JECT.**

3 Section 1116(b) of the Elementary and Secondary
4 Education Act of 1965 (20 U.S.C. 6316(b)) is amended—

5 (1) in subparagraph (A) of paragraph (1), by
6 inserting “with respect to the performance of a par-
7 ticular group of students described in section
8 1111(b)(2)(C)(v) in the same academic subject,”
9 after “that fails, for 2 consecutive years,”;

10 (2) in the matter preceding subparagraph (A)
11 of paragraph (5), by inserting “with respect to the
12 performance of a particular group of students de-
13 scribed in section 1111(b)(2)(C)(v) in the same aca-
14 demic subject,” after “that fails to make adequate
15 yearly progress,”;

16 (3) in the matter preceding clause (i) of para-
17 graph (7)(C), by inserting “with respect to the per-
18 formance of a particular group of students described
19 in section 1111(b)(2)(C)(v) in the same academic
20 subject,” after “that fails to make adequate yearly
21 progress,”; and

22 (4) in the matter preceding clause (i) of para-
23 graph (8)(A), by inserting “with respect to the per-
24 formance of a particular group of students described
25 in section 1111(b)(2)(C)(v) in the same academic

1 subject,” after “continues to fail to make adequate
2 yearly progress,”.

3 **SEC. 8. MODIFICATION OF THE DEFINITION OF HIGHLY**
4 **QUALIFIED TEACHER.**

5 Subpart 1 of part A of title I of the Elementary and
6 Secondary Education Act of 1965 (20 U.S.C. 6311 et
7 seq.) is amended by adding at the end the following:

8 **“SEC. 1120C. MODIFICATION OF THE DEFINITION OF HIGH-**
9 **LY QUALIFIED TEACHER.**

10 “(a) HIGHLY QUALIFIED TEACHERS OF MULTIPLE
11 ACADEMIC SUBJECTS.—Notwithstanding section
12 9101(23) or any other provision of law, a middle or sec-
13 ondary school teacher employed to teach multiple aca-
14 demic subjects shall be deemed to be highly qualified for
15 purposes of this part, if—

16 “(1) the teacher meets the requirements of sec-
17 tion 9101(23)(A);

18 “(2) the teacher has a bachelor’s degree;

19 “(3) the teacher has demonstrated a high level
20 of competency in at least one subject taught by the
21 teacher by passing a test described in subclause (I),
22 or a successful completion described in subclause
23 (II), of section 9101(23)(B)(ii), applicable to such
24 subject;

1 “(4)(A) the State educational agency makes a
2 determination, for a period of not more than 3 years
3 at a time, that—

4 “(i) the teacher should be considered high-
5 ly qualified for purposes of this part based on
6 a showing that the teacher is making progress
7 toward becoming highly qualified as defined in
8 section 9101(23); and

9 “(ii) at the time the State educational
10 agency makes such determination, the teacher
11 teaches in a local educational agency of the
12 State that has provided the State educational
13 agency with evidence (that may include the fact
14 that the local educational agency serves a small
15 and rural school facing unique staffing or hir-
16 ing challenges that require teachers to teach
17 multiple academic subjects) that the local edu-
18 cational agency has made a reasonable effort to
19 provide teachers who are highly qualified under
20 section 9101(23) to every student served by the
21 local educational agency; or

22 “(B) the teacher has an academic minor con-
23 sisting of not less than 15 credit hours, or the equiv-
24 alent of an academic minor as defined by the State
25 educational agency in its State plan pursuant to sec-

1 tion 1119(a)(2), in each academic subject that is
2 taught by the teacher (other than a subject for
3 which the teacher has demonstrated a high level of
4 competency under paragraph (3)), and each such
5 subject is related to a subject for which the teacher
6 has demonstrated a high level of competency under
7 paragraph (3).

8 “(b) REPORT.—For each year that a teacher in a
9 State is deemed to be highly qualified under subsection
10 (a), the State educational agency in the State shall make
11 available to the public a report that includes—

12 “(1) the number of teachers in the State that
13 are deemed highly qualified under subsection (a);
14 and

15 “(2) the total amount of subgrant funds made
16 available under subpart 2 of part A of title II that
17 the State awards to local educational agencies under
18 such subpart that are available to assist the teachers
19 described in paragraph (1) with the process of be-
20 coming highly qualified as defined in section
21 9101(23).”.

22 **SEC. 9. READING ACTIVITIES FOR INDIVIDUAL STUDENTS.**

23 Section 1202(c)(7) of the Elementary and Secondary
24 Education Act of 1965 (20 U.S.C. 6362(c)(7)) is amended
25 by adding at the end the following:

1 “(C) READING ACTIVITIES FOR INDI-
2 VIDUAL STUDENTS.—Notwithstanding any
3 other provision of this subpart, an eligible local
4 educational agency may use the funds provided
5 under the subgrant for any activity described in
6 subparagraph (A) that is provided to a student
7 in a manner other than on a classwide instruc-
8 tion basis, including small group instruction
9 and one-to-one instruction.”.

10 **SEC. 10. DEFINITION OF HIGHLY QUALIFIED.**

11 Section 9101(23)(B)(ii)(II) (20 U.S.C.
12 7801(23)(B)(ii)(II)) is amended by striking
13 “credentialing; and” and inserting “credentialing,
14 except that the Secretary shall promulgate
15 regulations permitting a teacher to dem-
16 onstrate subject area competence in his-
17 tory, geography, economics, government,
18 civics, or related subjects at middle or sec-
19 ondary schools in the State through a
20 State social studies certificate that quali-
21 fies the teacher to teach such subjects;
22 and”.

○