

110TH CONGRESS  
1ST SESSION

# H. R. 2577

To amend the Elementary and Secondary Education Act of 1965 to provide additional flexibility to State and local educational agencies to raise the academic achievement of all students.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2007

Mr. McKEON (for himself, Mr. BOEHNER, Mr. CASTLE, Mr. REGULA, Mr. MARCHANT, Mr. HELLER of Nevada, Mr. WALBERG, Mr. RENZI, and Mr. PAUL) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend the Elementary and Secondary Education Act of 1965 to provide additional flexibility to State and local educational agencies to raise the academic achievement of all students.

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 Flexi-  
5 bility Improvement Act”.

1 **SEC. 2. INCREASED USE OF STATE AND LOCAL TRANSFER-**  
2 **ABILITY OF FUNDS.**

3 (a) TRANSFERS BY STATES.—Section 6123(a) of the  
4 Elementary and Secondary Education Act of 1965 (20  
5 U.S.C. 7305b(a)) is amended—

6 (1) in paragraph (1)—

7 (A) by striking “not more than 50 per-  
8 cent” and inserting “up to 100 percent”; and

9 (2) in paragraph (2)—

10 (A) by striking “and subject to the 50 per-  
11 cent limitation described in paragraph (1).”.

12 (b) TRANSFERS BY LOCAL EDUCATIONAL AGEN-  
13 CIES.—Section 6123(b) of the Elementary and Secondary  
14 Education Act of 1965 (20 U.S.C. 7305b(b)) is amended—

15 (1) in paragraph (1)—

16 (A) by amending subparagraph (A) to read  
17 as follows:

18 “(A) IN GENERAL.—In accordance with  
19 this subpart, a local educational agency may  
20 transfer up to 100 percent of the funds allo-  
21 cated to it (including funds transferred under  
22 subparagraph (B)) under each of the provisions  
23 listed in paragraph (2) for a fiscal year to one  
24 or more of its allocations for such fiscal year  
25 under any other provision listed in paragraph  
26 (2).”;

1 (B) by striking subparagraph (B);

2 (C) by redesignating subparagraph (C) as  
3 subparagraph (B); and

4 (D) in subparagraph (B), as redesignated,  
5 by striking, “and subject to the percentage limi-  
6 tation described in subparagraph (A) or (B), as  
7 applicable”; and

8 (2) in paragraph (2), by striking “subpara-  
9 graph (A), (B), or (C)” and inserting “subpara-  
10 graph (A) or (B)”.

11 (c) Section 6123(e) of the Elementary and Secondary  
12 Education Act of 1965 (20 U.S.C. 7305b(e)) is amend-  
13 ed—

14 (1) in paragraph (1), by striking “IN GEN-  
15 ERAL” and inserting “PARTIAL TRANSFER OF  
16 FUNDS”;

17 (2) by redesignating paragraph (2) as para-  
18 graph (3); and

19 (3) by inserting after paragraph (2) the fol-  
20 lowing:

21 “(2) TOTAL TRANSFER OF FUNDS.—If a State  
22 or local educational agency transfers 100 percent of  
23 the funds allocated to it for any of the programs  
24 under subsection (a)(1) or subsection (b)(2) respec-  
25 tively, the funds so transferred shall not be subject

1 to the rules and requirements applicable to the funds  
2 under the provision from which the transferred  
3 funds are transferred.”.

4 **SEC. 3. STRENGTHENING STATE AND LOCAL CONTROL TO**  
5 **ENCOURAGE INNOVATION IN THE CLASS-**  
6 **ROOM.**

7 Subpart 3 of part A of title VI of the Elementary  
8 and Secondary Education Act of 1965 (20 U.S.C. 7311  
9 et seq.) is amended to read as follows:

10 “SUBPART 3—STATE FLEXIBILITY PERFORMANCE  
11 AGREEMENTS

12 **“SEC. 6131. PURPOSE.**

13 “The purpose of this subpart is to provide States  
14 greater flexibility in determining how—

15 “(1) to increase the academic achievement of all  
16 students so that all students will meet or exceed the  
17 State’s proficient level of academic achievement in  
18 reading and math by school year 2013–2014;

19 “(2) to narrow achievement gaps between the  
20 lowest- and highest-achieving groups of students;  
21 and

22 “(3) to eliminate barriers to implementing ef-  
23 fective education reforms and directing Federal re-  
24 sources to where they are most needed.

1 **“SEC. 6132. STATE FLEXIBILITY PERFORMANCE AGREE-**  
2 **MENTS.**

3 “(a) **AUTHORITY.**—In accordance with this subpart,  
4 a State may enter into a performance agreement with the  
5 Secretary under which, except as otherwise provided in  
6 this subpart, the State may—

7 “(1) waive statutory or regulatory program re-  
8 quirements pursuant to section 6133, including  
9 those requirements for any local educational agency  
10 or school within the State;

11 “(2) consolidate the Federal funds described in  
12 section 6133 and use those funds for any edu-  
13 cational purpose authorized under State law;

14 “(3) enter into local performance agreements  
15 with local educational agencies in the State in ac-  
16 cordance with section 6134 in order to—

17 “(A) assist those agencies in making ade-  
18 quate yearly progress (as described in section  
19 1111(b));

20 “(B) advance the educational priorities of  
21 the State;

22 “(C) improve student achievement and  
23 narrow achievement gaps; and

24 “(D) allow those agencies to consolidate  
25 funds under the Federal programs described in

1 section 6134 and use those funds for any edu-  
2 cational purpose authorized under State law;

3 “(4) use an alternative method for making allo-  
4 cations to local educational agencies under part A of  
5 title I, provided that the Secretary determines that  
6 the method of allocation proposed by the State tar-  
7 gets a greater proportion of funds to local edu-  
8 cational agencies with high concentrations of chil-  
9 dren from low-income families than would the alloca-  
10 tion pursuant to subpart 2 of that part; and

11 “(5) permit local educational agencies to use al-  
12 ternative criteria for directing funds provided under  
13 part A of title I to schools, in order to target serv-  
14 ices more effectively to schools that serve a high con-  
15 centration of students from low-income families.

16 “(b) TERMS OF PERFORMANCE AGREEMENT.—Each  
17 performance agreement entered into by the Secretary  
18 under this subpart shall include the following provisions:

19 “(1) DURATION.—A statement that the dura-  
20 tion of the performance agreement shall be for a pe-  
21 riod of 5 years.

22 “(2) LIST AND DESCRIPTION OF PROGRAM RE-  
23 QUIREMENTS.—A list and description of the Federal  
24 statutory and regulatory program requirements de-  
25 scribed in section 6133 that the State expects to

1 waive and included in the performance agreement,  
2 and an assurance that the State will waive only  
3 those requirements described in that section.

4 “(3) APPLICATION OF PROGRAM REQUIRE-  
5 MENTS.—A statement that no program requirements  
6 of any program included by the State in the per-  
7 formance agreement shall apply, except as otherwise  
8 provided in this subpart.

9 “(4) USE OF FUNDS TO IMPROVE STUDENT  
10 ACHIEVEMENT.—A 5-year plan describing how the  
11 State intends to use the flexibility included in the  
12 performance agreement to advance the education  
13 priorities of the State, improve student achievement,  
14 and narrow achievement gaps between groups of stu-  
15 dents.

16 “(5) ACCOUNTABILITY REQUIREMENTS.—If a  
17 State includes any part of part A of title I in its per-  
18 formance agreement, the State shall include a cer-  
19 tification that the State has developed and continues  
20 to implement the challenging State academic stand-  
21 ards, academic assessments, and accountability sys-  
22 tems described in section 1111(b) and had those sys-  
23 tems approved by the Secretary pursuant to section  
24 1111(e).

1           “(6) STUDENT ACADEMIC ACHIEVEMENT RE-  
2           QUIREMENTS.—If a State includes any part of part  
3           A of title I in its performance agreement, the State  
4           shall include a description of how it will hold local  
5           educational agencies and schools accountable for stu-  
6           dent performance that includes a procedure for iden-  
7           tifying local educational agencies and schools in need  
8           of improvement, and assistance and interventions for  
9           those local educational agencies and schools to en-  
10          sure that their students make substantial gains in  
11          achievement.

12           “(7) PUBLIC SCHOOL CHOICE AND SUPPLE-  
13          MENTAL EDUCATIONAL SERVICES.—If a State in-  
14          cludes any part of part A of title I in its perform-  
15          ance agreement, the State shall include a certifi-  
16          cation that the State accountability system developed  
17          in paragraph (6) includes public school choice and  
18          supplemental education services for those schools not  
19          making adequate yearly progress for two or more  
20          consecutive years.

21           “(8) LOCAL EDUCATIONAL AGENCIES RESPON-  
22          SIBILITIES.—A description of how a State will select  
23          local educational agencies within the State with  
24          which to enter into local performance agreements  
25          pursuant to section 6134 and a description of how



1 the State will evaluate the performance of local edu-  
2 cational agencies within the State with local per-  
3 formance agreements pursuant to section 6134 and  
4 the circumstances under which it will terminate  
5 those agreements.

6 “(9) ALTERNATIVE METHOD FOR ALLOCATING  
7 FUNDS.—In the case of a State that seeks to use an  
8 alternative method for allocating funds under part A  
9 of title I to local educational agencies, a description  
10 of that method and evidence that demonstrates that  
11 the alternative method will target funds to local edu-  
12 cational agencies with high concentrations of chil-  
13 dren from low-income families more effectively than  
14 the allocation method required under that part.

15 “(10) ALTERNATIVE CRITERIA FOR ALLO-  
16 CATING FUNDS.—In the case of a State that intends  
17 to permit local educational agencies within the State  
18 to use alternative criteria for allocating funds under  
19 part A of title I to schools, a description of the cri-  
20 teria and an analysis of the effect those criteria  
21 would have on those allocations.

22 “(11) FISCAL RESPONSIBILITIES.—An assur-  
23 ance that the State will use fiscal control and funds  
24 accounting procedures that will ensure proper dis-  
25bursement of, and accounting for, Federal funds

1 paid to the State under this Act and an assurance  
2 that the State will not reduce the level of spending  
3 of State funds for elementary and secondary edu-  
4 cation during the term of the performance agree-  
5 ment.

6 “(12) CIVIL RIGHTS.—An assurance that the  
7 State will meet the requirements of applicable Fed-  
8 eral civil rights laws.

9 “(13) STATE APPROVAL.—An assurance that  
10 not less than 2 of the following approved the pro-  
11 posed performance agreement:

12 “(A) The Governor of the State.

13 “(B) The State legislature.

14 “(C) The State educational agency.

15 “(c) APPROVAL OF PERFORMANCE AGREEMENT.—

16 “(1) IN GENERAL.—Not later than 90 days  
17 after the receipt of a proposed performance agree-  
18 ment submitted by a State, the Secretary shall ap-  
19 prove the performance agreement or provide the  
20 State with a written determination detailing the rea-  
21 sons why the performance agreement fails to satisfy  
22 the purposes, goals, or a requirement of this sub-  
23 part.

24 “(2) PEER-REVIEW PROCESS.—In carrying out  
25 paragraph (1), the Secretary shall establish a peer-

1 review process to assist in the review of applications  
2 under this section, and shall appoint as peer review-  
3 ers individuals who represent a broad range of edu-  
4 cational stakeholders.

5 “(3) TREATMENT AS APPROVED.—Each per-  
6 formance agreement for which the Secretary fails to  
7 take the action required in paragraph (1) in the  
8 time period described in that paragraph shall be con-  
9 sidered to be approved.

10 “(4) DISAPPROVAL OF PERFORMANCE AGREE-  
11 MENT.—If the Secretary disapproves a State’s per-  
12 formance agreement, the State shall have 30 days to  
13 resubmit a revised performance agreement. The Sec-  
14 retary shall approve the revised performance agree-  
15 ment within 30 days of receipt of the revised per-  
16 formance agreement or provide the State with a  
17 written determination that the revised performance  
18 agreement fails to satisfy the purposes, goals, or a  
19 requirement of this subpart.

20 “(d) AMENDMENT TO PERFORMANCE AGREE-  
21 MENT.—

22 “(1) IN GENERAL.—In each of the following  
23 circumstances, the Secretary, subject to approval  
24 under paragraph (2), shall agree to amend a per-

1 performance agreement entered into with a State under  
2 this subpart:

3 “(A) REDUCTION IN SCOPE OF PERFORM-  
4 ANCE AGREEMENT.—A State seeks to amend  
5 the performance agreement to remove from the  
6 scope of the performance agreement any pro-  
7 gram requirement described in section 6133.

8 “(B) EXPANSION OF SCOPE OF PERFORM-  
9 ANCE AGREEMENT.—A State seeks to amend  
10 the performance agreement to include within  
11 the scope of the performance agreement any ad-  
12 ditional program requirement described in sec-  
13 tion 6133.

14 “(2) APPROVAL OF AMENDMENT.—

15 “(A) IN GENERAL.—Not later than 60  
16 days after the receipt of a proposed perform-  
17 ance agreement amendment submitted by a  
18 State, the Secretary shall approve the amend-  
19 ment or provide the State with a written deter-  
20 mination that the amendment fails to satisfy  
21 the purposes, goals, or a requirement of this  
22 subpart.

23 “(B) TREATMENT AS APPROVED.—Each  
24 amendment for which the Secretary fails to  
25 take the action required in subparagraph (A) in

1           the time period described in such subparagraph  
2           shall be considered to be approved.

3           “(3) TREATMENT OF PROGRAM REQUIREMENTS  
4           WITHDRAWN FROM AGREEMENT.—Beginning on the  
5           effective date of an amendment executed under  
6           paragraph (1)(A), each program requirement of each  
7           program removed from the scope of a performance  
8           agreement shall apply to the State’s use of funds  
9           made available under the program.

10          “(e) WITHIN-STATE DISTRIBUTION OF FUNDS.—

11           “(1) IN GENERAL.—The distribution of funds  
12           from programs included in a performance agreement  
13           from a State to a local educational agency within the  
14           State shall be determined by the Governor of the  
15           State and the State legislature. In a State in which  
16           the constitution or State law designates another in-  
17           dividual, entity, or agency to be responsible for edu-  
18           cation, the allocation of funds from programs in-  
19           cluded in the performance agreement from a State  
20           to a local educational agency within the State shall  
21           be determined by that individual, entity, or agency,  
22           in consultation with the Governor and State Legisla-  
23           ture. Nothing in this section shall be construed to  
24           supersede or modify any provision of a State con-  
25           stitution or State law.

1           “(2) LOCAL INPUT.—States shall provide par-  
2           ents, teachers, and local schools and educational  
3           agencies notice and opportunity to comment on the  
4           proposed allocation of funds as provided under gen-  
5           eral State law notice-and-comment provisions.

6   **“SEC. 6133. ELIGIBLE PROGRAM REQUIREMENTS.**

7           “(a) SCOPE.—A State may choose to include within  
8           the scope of its performance agreement—

9                   “(1) any statutory or regulatory program re-  
10                  quirement authorized under this Act, except section  
11                  1111,

12                   “(2) any program for which Congress makes  
13                  funds available to the State if the program is for a  
14                  purpose described in section 1001, except any pro-  
15                  gram funded pursuant to the Individuals with Dis-  
16                  abilities Education Act, and

17                   “(3) notwithstanding paragraph (1), additional  
18                  models and systems for measuring student progress  
19                  for purposes of determining whether a local edu-  
20                  cational agency or school has made adequate yearly  
21                  progress described in section 1111(b).

22   Such models and systems that measure student progress  
23   under this paragraph may include growth models that  
24   demonstrate progress based on longitudinal student as-  
25   sessment results indicating improvement in the academic

1 performance of individual students over time and ensure  
2 that all students will meet or exceed the State’s proficient  
3 level of academic achievement in reading and math by  
4 school year 2013–2014.

5 “(b) USES OF FUNDS.—Funds made available to a  
6 State pursuant to a performance agreement under this  
7 subpart shall be used for any educational purpose per-  
8 mitted by State law of the State participating in the per-  
9 formance agreement.

10 **“SEC. 6134. LOCAL PERFORMANCE AGREEMENTS.**

11 “(a) IN GENERAL.—

12 “(1) A State that has entered into a perform-  
13 ance agreement with the Secretary pursuant to sec-  
14 tion 6132 may enter into local performance agree-  
15 ments with local educational agencies in the State to  
16 waive statutory or regulatory program requirements  
17 and consolidate Federal funds to improve student  
18 achievement and narrow achievement gaps. A State  
19 shall include a priority on entering into such agree-  
20 ments with high-need local educational agencies as  
21 described in paragraph (3).

22 “(2) TERMS OF PERFORMANCE AGREEMENT.—  
23 A local performance agreement entered into with the  
24 State under this subpart shall include specific, meas-  
25 urable educational goals, with annual objectives, that

1 the local educational agency plans to accomplish  
2 under the agreement. The agreement shall waive  
3 only those statutory or regulatory program require-  
4 ments included in the performance agreement au-  
5 thORIZED under section 6132.

6 “(3) HIGH-NEED LOCAL EDUCATIONAL AGEN-  
7 CY.—The term ‘high-need local educational agency’  
8 means a local educational agency that—

9 “(A) has not made adequate yearly  
10 progress for the two preceding academic years;  
11 and

12 “(B) serves a larger number, or percent-  
13 age, of economically disadvantaged students  
14 than the average number or percentage, as the  
15 case may be, of such students served by local  
16 educational agencies in the State.

17 “(b) FUNDS AVAILABLE TO BE CONSOLIDATED.—  
18 A local educational agency that has entered into a local  
19 performance agreement with a State under this section  
20 may consolidate the funds received by the local educational  
21 agency and use the consolidated funds for any educational  
22 purpose authorized under State law.

23 “(c) TERMINATION OF LOCAL PERFORMANCE  
24 AGREEMENT.—A State may, after providing notice and an  
25 opportunity for a hearing, terminate a local educational



1 agency’s local performance agreement if the State deter-  
2 mines that the local educational agency has failed to com-  
3 ply with the performance agreement.

4 **“SEC. 6135. ADMINISTRATIVE EXPENSES.**

5       “(a) STATE CONSOLIDATING FUNDS UNDER PART A  
6 OF TITLE I.—Each State that includes part A of title I  
7 within the scope of a performance agreement under this  
8 subpart may use, for administrative expenses, not more  
9 than 1 percent of the total amount of funds made available  
10 to the State under the programs included within the scope  
11 of the performance agreement.

12       “(b) STATES NOT CONSOLIDATING FUNDS UNDER  
13 PART A OF TITLE I.—Each State that does not include  
14 part A of title I within the scope of a performance agree-  
15 ment under this subpart may use, for administrative ex-  
16 penses, not more than 3 percent of the total amount of  
17 funds made available to the State under the programs in-  
18 cluded within the scope of the performance agreement.

19       “(c) LOCAL EDUCATIONAL AGENCIES.—Each local  
20 educational agency that enters into a local performance  
21 agreement with a State pursuant to section 6134 may use,  
22 for administrative expenses, not more than 4 percent of  
23 the total amount of funds allocated to such agency under  
24 the programs included within the scope of the performance  
25 agreement.

1 **“SEC. 6136. PARTICIPATION BY PRIVATE SCHOOL CHIL-**  
2 **DREN AND TEACHERS.**

3 “Each State consolidating and using funds pursuant  
4 to a performance agreement under this subpart shall pro-  
5 vide for the participation of private school children and  
6 teachers in the activities assisted under the performance  
7 agreement in the same manner as participation is provided  
8 to private school children and teachers under section  
9 9501.

10 **“SEC. 6137. ANNUAL REPORTS.**

11 “(a) IN GENERAL.—Not later than 1 year after the  
12 execution of the performance agreement, and annually  
13 thereafter, each State shall disseminate widely to the par-  
14 ents, the general public, and the Secretary, a report that  
15 includes—

16 “(1) student performance data disaggregated in  
17 the same manner as data are disaggregated under  
18 section 1111(b)(3)(C)(xiii); and

19 “(2) a description of how the State has used  
20 Federal funds to improve academic achievement,  
21 narrow the achievement gap, and improve edu-  
22 cational opportunities for the disadvantaged.

23 “(b) SUBMISSION TO CONGRESS.—Not later than 60  
24 days after the Secretary receives a report under subsection  
25 (a), the Secretary shall submit that report to the Con-

1 gress, together with any other information the Secretary  
2 considers appropriate.

3 **“SEC. 6138. PERFORMANCE REVIEW AND EARLY TERMI-**  
4 **NATION.**

5 “(a) REVIEW.—For each State having in effect a per-  
6 formance agreement under this subpart, the Secretary  
7 shall carry out a review of the performance agreement,  
8 at the midpoint of the duration of the performance agree-  
9 ment, in order to determine whether the State has met  
10 the terms of the performance agreement described in sec-  
11 tion 6132.

12 “(b) EARLY TERMINATION.—The Secretary may ter-  
13 minate a performance agreement, before the duration of  
14 that performance agreement expires, if the State does not,  
15 for 3 consecutive school years, meet the terms of the per-  
16 formance agreement described in section 6132. Such ter-  
17 mination shall occur after the Secretary provides notice  
18 and an opportunity for a hearing.”.

19 **SEC. 4. ENHANCING FLEXIBILITY FOR LOCAL SCHOOL DIS-**  
20 **TRICTS THAT OFFER SCHOOLWIDE PRO-**  
21 **GRAMS.**

22 Section 1114(a)(1) of the Elementary and Secondary  
23 Education Act is amended by striking “40 percent” each  
24 place it appears and inserting “25 percent”.

○