

110TH CONGRESS
1ST SESSION

H. R. 648

To amend the Elementary and Secondary Education Act of 1965, and for
other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 2007

Mr. YOUNG of Alaska introduced the following bill; which was referred to the
Committee on Education and Labor

A BILL

To amend 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “No Child Left Behind Improvements Act of 2007”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References.

TITLE I—MEASURING ADEQUATE YEARLY PROGRESS

Sec. 101. Measuring adequate yearly progress of groups.

- Sec. 102. Intermediate goals need not increase in equal increments for all groups.
- Sec. 103. Alternative approaches to measuring adequate yearly progress.
- Sec. 104. Participation of students in assessments.
- Sec. 105. Students with disabilities requiring alternate assessments.
- Sec. 106. Assessments.
- Sec. 107. Regulations.

TITLE II—STATE FLEXIBILITY

- Sec. 201. State flexibility.

TITLE III—IMPLEMENTATION OF SANCTIONS

- Sec. 301. School improvement and public school choice.
- Sec. 302. School district improvement.
- Sec. 303. Supplemental services.
- Sec. 304. Full implementation.

TITLE IV—NON-PUBLIC SCHOOLS

- Sec. 401. Participation of children enrolled in private schools.

TITLE V—EFFECTIVE DATE AND REGULATIONS

- Sec. 501. Effective date.
- Sec. 202. Regulations.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise specifically provided, whenever in
 3 this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or a repeal of, a section or other
 5 provision, the reference shall be considered to be made to
 6 a section or other provision of the Elementary and Sec-
 7 ondary Education Act of 1965 (42 U.S.C. 6200 et seq.).

8 **TITLE I—MEASURING ADEQUATE** 9 **YEARLY PROGRESS**

10 **SEC. 101. MEASURING ADEQUATE YEARLY PROGRESS OF** 11 **GROUPS.**

12 (a) “N” SIZE MAY VARY BY SIZE OF SCHOOL OR
 13 LEA.—The following provisions are each amended by in-
 14 serting after “reliable information” the following: “(the

1 ‘number’ required to be ‘insufficient’ being greater, at the
 2 option of the State, for a local educational agency than
 3 for a school, and varying, at the option of the State, from
 4 agency to agency and school to school in proportion to
 5 total enrollment)”:

6 (1) In section 1111 (20 U.S.C. 6311)—

7 (A) subsection (b)(2)(C)(v), in the matter
 8 after subclause (II)(dd);

9 (B) subsection (b)(2)(I)(ii);

10 (C) subsection (b)(3)(C)(xiii); and

11 (D) subsection (h)(C)(i).

12 (2) Section 1431(b) (20 U.S.C. 6471(b)).

13 (b) PERMITTING FEWER STUDENTS IN GROUP TO
 14 DEMONSTRATE PROGRESS TO MEET AYP “SAFE HAR-
 15 BOR”.—Section 1111 (20 U.S.C. 6311) is further amend-
 16 ed in subsection (b)(2)(I)(i) by striking “10 percent” and
 17 inserting “5 percent”.

18 (c) COUNTING STUDENTS WHO ARE IN MORE THAN
 19 ONE GROUP.—Section 1111 (20 U.S.C. 6311) is further
 20 amended in subsection (b)(2) by adding at the end the
 21 following:

22 “(L) COUNTING STUDENTS WHO ARE IN
 23 MORE THAN ONE GROUP.—For the purpose of
 24 determining adequate yearly progress, the State
 25 may establish a uniform procedure for counting

1 students under which a student who belongs to
 2 more than one of the groups described in sub-
 3 paragraph (C)(v) is counted toward each such
 4 group to which the student belongs as a frac-
 5 tion of 1 student, the numerator of the fraction
 6 being 1 and the denominator being the number
 7 of such groups to which the student belongs.”.

8 **SEC. 102. INTERMEDIATE GOALS NEED NOT INCREASE IN**
 9 **EQUAL INCREMENTS FOR ALL GROUPS.**

10 Section 1111 (20 U.S.C. 6311) is further amended
 11 in subsection (b)(2)(H)(i)—

12 (1) by striking “in equal increments”; and
 13 (2) by inserting before the semicolon at the end
 14 the following: “in—

15 “(aa) increments defined by the
 16 State as appropriate for the group,
 17 for each of the groups of students de-
 18 scribed in subparagraph (C)(v); and

19 “(bb) equal increments, for all
 20 other students.”.

21 **SEC. 103. ALTERNATIVE APPROACHES TO MEASURING ADE-**
 22 **QUATE YEARLY PROGRESS.**

23 (a) **EXPANSION OF AYP TO INCLUDE GAIN SCORES**
 24 **AND PARTIAL CREDIT FOR MEETING BASIC TARGETS.—**

25 Section 1111 (20 U.S.C. 6311) is further amended in sub-

1 section (b)(2)(C)(vii) by inserting after “such as” the fol-
2 lowing: “achievement under a ‘gain score’ approach (such
3 as a value-added system), progress toward meeting basic
4 proficiency targets,”.

5 (b) ALTERNATIVES TO AYP.—Such section is further
6 amended in subsection (b)(2) by adding at the end the
7 following:

8 “(M) ALTERNATE METHODS OF DEFINING
9 ADEQUATE YEARLY PROGRESS.—In lieu of de-
10 fining adequate yearly progress under subpara-
11 graph (C), the State may define adequate year-
12 ly progress in any manner that—

13 “(i) uses the measures of performance
14 and progress described in subparagraph
15 (A);

16 “(ii) complies with the timeline re-
17 quired by subparagraph (F); and

18 “(iii) includes intermediate goals, as
19 required by subparagraph (H).

20 “(N) ADDITIONAL METHODS OF DEFINING
21 ADEQUATE YEARLY PROGRESS.—

22 “(i) IN GENERAL.—For the purpose
23 of meeting the requirements of this sec-
24 tion, the State educational agency may
25 identify a school or local educational agen-

1 cy as having made adequate yearly
2 progress pursuant to subparagraph (I) in
3 any year in which one or more groups de-
4 scribed in clause (v) of subparagraph (C)
5 in that school or local educational agency
6 do not meet or exceed the proficient level
7 established under subparagraph (G) in a
8 subject to which the accountability provi-
9 sions of this subsection applies or do not
10 meet the requirement for any other indi-
11 cator established under subparagraph (D)
12 if—

13 “(I) the same group or groups
14 did not fail to meet the requirements
15 for adequate yearly progress for that
16 same subject or the other indicator in
17 the previous year as determined with-
18 out using the provisions of this sub-
19 paragraph; and

20 “(II) the number of students who
21 did not meet or exceed the proficient
22 level in such group or groups is not
23 greater in the aggregate than a per-
24 centage determined by the State edu-
25 cational agency but not in excess of

1 10 percent of the students enrolled in
2 the school or local educational agency,
3 as the case may be, in grades that
4 were assessed in that subject or indi-
5 cator for adequate yearly progress.

6 “(ii) GREATER PERCENTAGE.—The
7 Secretary may, on an individual State
8 basis, approve a greater percentage than
9 the amount set forth in clause (i)(II) for
10 determining whether a school or local edu-
11 cational agency has met the requirements
12 for adequate yearly progress if—

13 “(I) the percentage over that
14 amount is consistent with the account-
15 ability system of the State and is pro-
16 posed as an amendment to the State
17 plan required by this section; and

18 “(II) the State educational agen-
19 cy applies a lower status designation
20 of adequate yearly progress to any
21 school or local educational agency that
22 utilizes the percentage approved under
23 this clause for determining that ade-
24 quate yearly progress was met.”.

1 **SEC. 104. PARTICIPATION OF STUDENTS IN ASSESSMENTS.**

2 (a) **PERCENTAGE OF STUDENTS REQUIRED TO TAKE**
3 **ASSESSMENTS.**—Section 1111 (20 U.S.C. 6311) is fur-
4 ther amended in subsection (b)(2)(I)(ii)—

5 (1) by striking “95 percent” the first place
6 such term appears and inserting “a percentage
7 (from 90 to 95 percent, based on criteria established
8 in the State plan)”; and

9 (2) by striking “95 percent” the second place
10 such term appears and inserting “percentage”.

11 (b) **DETERMINING PARTICIPATION RATES.**—Section
12 1111 (20 U.S.C. 6311) is further amended in subsection
13 (b)(2) by adding at the end the following:

14 “(N) **STUDENTS EXEMPT FROM PARTICI-**
15 **PATING IN ASSESSMENTS.**—For the purpose of
16 determining compliance with the percentage re-
17 quired by subparagraph (I)(ii), the State may
18 provide for a student to be excluded from the
19 determination with respect to an assessment if
20 any of the following apply:

21 “(i) **EXCUSED ABSENCE.**—The stu-
22 dent did not take that assessment by rea-
23 son of—

24 “(I) a medical condition;

25 “(II) a parental decision to ex-
26 empt the student, if such a decision is

1 available under, and exercised pursu-
2 ant to, State law; or

3 “(III) a circumstance out of the
4 control of the student, school, or local
5 educational agency, such as a natural
6 disaster.

7 “(ii) CHRONIC NON-ATTENDANCE.—
8 Each of the following is true:

9 “(I) The student did not take the
10 assessment and has demonstrated an
11 unusual and chronic pattern of non-
12 attendance, as defined by the State.

13 “(II) The local educational agen-
14 cy in which the student is enrolled is
15 implementing a plan to increase par-
16 ticipation in the assessments by stu-
17 dents demonstrating such a pattern of
18 non-attendance.

19 “(O) STUDENTS ASSIGNED ‘BELOW BASIC’
20 SCORE BY DEFAULT.—For the purpose of de-
21 termining adequate yearly progress, and for the
22 purpose of determining compliance with the
23 percentage required by subparagraph (I)(ii), a
24 student who does not take an assessment and
25 who is not excluded under subparagraph (N)

1 may, if the State plan so provides, be treated
2 as having taken the assessment and having
3 achieved a score below the level described in
4 paragraph (1)(D)(ii)(III) (below basic).”.

5 **SEC. 105. STUDENTS WITH DISABILITIES REQUIRING AL-**
6 **TERNATE ASSESSMENTS.**

7 Section 1111 (20 U.S.C. 6311) is further amended
8 in subsection (b)(2) by adding at the end the following:

9 “(P) STUDENTS WITH DISABILITIES RE-
10 QUIRING ALTERNATE ASSESSMENTS.—Con-
11 sistent with paragraph (3), a State may imple-
12 ment the amendments made to part 200 of title
13 34, Code of Federal Regulations, on December
14 9, 2003 (68 Fed. Reg. 68698) (related to
15 achievement of students with significant cog-
16 nitive disabilities) as if such amendments—

17 “(i) permitted 3 percent of such stu-
18 dents to be counted for the purposes of de-
19 termining adequate yearly progress, except
20 that—

21 “(I) any assessment given to any
22 such student for the purposes of de-
23 termining such adequate yearly
24 progress must be required by the indi-

1 individualized education plan of such stu-
2 dent;

3 “(II) the individualized education
4 plan must reflect the need for any
5 such alternate assessment based on
6 the evaluation of such student and the
7 services provided such student under
8 section 614 of the Individuals with
9 Disabilities Education Act (42 U.S.C.
10 1400 et seq.); and

11 “(III) the individualized edu-
12 cation plan must include written con-
13 sent from the parent of such student
14 prior to such alternate assessment
15 being administered;

16 “(ii) used the term ‘students requiring
17 alternate assessments’ in lieu of the term
18 ‘students with the most significant cog-
19 nitive disabilities’; and

20 “(iii) permitted the eligibility of such
21 students to be determined by the State
22 educational agency, except that such eligi-
23 bility shall, at a minimum, include—

24 “(I) students who are receiving
25 services pursuant to a plan required

1 under section 504 of the Rehabilita-
2 tion Act of 1973 and part 104 of title
3 34, Code of Federal Regulations;

4 “(II) students who are assessed
5 at a grade level below the grade level
6 in which they are enrolled (out of level
7 assessments); and

8 “(III) include students consid-
9 ered students with the most signifi-
10 cant cognitive disabilities, as defined
11 by the state educational agency, prior
12 to the enactment of the No Child Left
13 Behind Improvements Act of 2007.”.

14 **SEC. 106. ASSESSMENTS.**

15 Section 1111(b)(3)(C) (20 U.S.C. 6311(b)(3)(C)) is
16 amended—

17 (1) in clause (ix) by striking subclause (III) and
18 inserting the following:

19 “(III) the inclusion of limited
20 English proficient students, who—

21 “(aa) may, consistent with
22 paragraph (2)(P), be assessed, as
23 determined by the local edu-
24 cational agency, through the use
25 of an assessment which requires

1 achievement of specific gains for
2 up to three school years from the
3 first year any such student is as-
4 sessed for the purposes of this
5 subsection;

6 “(bb) may, at the option of
7 the State educational agency, be
8 assessed in the first year any
9 such student attended school in
10 the United States (not including
11 Puerto Rico);

12 “(cc) shall not be included
13 in any calculation of adequate
14 yearly progress when such stu-
15 dents are in the first year of at-
16 tending school in the United
17 States (not including Puerto
18 Rico); and

19 “(dd) shall be assessed in a
20 valid and reliable manner and
21 provided reasonable accommoda-
22 tions on assessments adminis-
23 tered to such students under this
24 paragraph, including, to the ex-
25 tent practicable, assessments in

1 the language and form most like-
2 ly to yield accurate data on what
3 such students know and can do
4 in academic content areas, until
5 such students have achieved
6 English language proficiency as
7 determined under paragraph
8 (7);”;

9 (2) in clause (xiv) by striking “and” at the end;

10 (3) by redesignating clause (xv) as clause (xvii);

11 and

12 (4) by inserting after clause (xiv) the following:

13 “(xv) at the option of the local edu-
14 cational agency, be administered multiple
15 times to any such student during the
16 school year, or (at the option of the State)
17 a subsequent date prior to the beginning of
18 the next school year, provided that the
19 local educational agency shall determine
20 which score of any such administration be
21 used for determining adequate yearly
22 progress;

23 “(xvi) at the option of the school dis-
24 trict, measure the achievement of a stu-
25 dent as if such student were in the grade

1 level proceeding the grade level of such
2 student, provided that—

3 “(I) if such student meets the
4 proficient level of achievement for
5 such proceeding grade level, such
6 score shall be used to determine ade-
7 quate yearly progress for such pro-
8 ceeding grade level; and

9 “(II) if such student does not
10 meet the proficient level of achieve-
11 ment for such proceeding grade level,
12 such score is not used for the pur-
13 poses of determining adequate yearly
14 progress; and”.

15 **SEC. 107. REGULATIONS.**

16 Section 1111 (20 U.S.C. 6311) is further amended
17 by adding at the end the following:

18 “(o) REGULATIONS.—

19 “(1) CODIFICATION OF REGULATIONS AFFECT-
20 ING LIMITED ENGLISH PROFICIENT CHILDREN.—

21 This part shall be implemented consistent with
22 amendments proposed to part 200 of title 34, Code
23 of Federal Regulations, on June 24, 2004 (69 Fed.
24 Reg. 35462) (relating to the assessment of limited
25 English proficient children and the inclusion of lim-

1 ited English proficient children in subgroups) as if
2 such amendments permitted students who were pre-
3 viously identified as limited English proficient to be
4 included in the group described in subsection
5 (b)(2)(C)(v)(II)(dd) for three additional years, as
6 determined by a local educational agency (based on
7 the individual needs of a child) for the purposes of
8 determining adequate yearly progress.

9 “(2) ISSUANCE OF REGULATIONS AFFECTING
10 CHILDREN WITH DISABILITIES.—The Secretary shall
11 issue regulations not later than 180 days after the
12 date of the enactment of the No Child Left Behind
13 Improvements Act of 2006 regarding the participa-
14 tion of children with disabilities under this part.
15 Such regulations shall permit a State to include, for
16 up to three years, students who were children with
17 disabilities as part of the group described under sec-
18 tion 1111(b)(2)(C)(v)(II)(cc) but who are no longer
19 identified as children with disabilities. Students with
20 disabilities may be provided an alternate assessment,
21 including an out of level assessment, if deemed ap-
22 propriate by the individual education plan team for
23 that student and included within the written indi-
24 vidual education plan for that student.”.

1 **TITLE II—STATE FLEXIBILITY**

2 **SEC. 201. STATE FLEXIBILITY.**

3 Section 1111 (20 U.S.C. 6311) is amended—

4 (1) by redesignating subsections (f) through
5 (m) as subsections (g) through (n); and

6 (2) by inserting after subsection (e) the fol-
7 lowing:

8 “(f) STATE FLEXIBILITY.—

9 “(1) PLANS.—In approving plans under sub-
10 section (e), the Secretary shall accord a State max-
11 imum flexibility to make such plans and any revi-
12 sions compatible with the accountability system of
13 such State.

14 “(2) WAIVERS.—Through the authority pro-
15 vided under part D of title IX, the Secretary may
16 grant a waiver of any statutory or regulatory re-
17 quirement of this part requested by a State edu-
18 cational agency or local educational agency.

19 “(3) NOTIFICATION.—Not later than 30 days
20 after the approval of any revisions to the plan of a
21 State, or the granting of any waivers described
22 under paragraph (2), the Secretary shall notify each
23 State educational agency of such revision or waiver
24 and, through the website of the Department of Edu-
25 cation and the Federal Register, the public. The no-

1 tification described in the preceding sentence shall
2 be in writing and include a clear and complete expla-
3 nation of such revision or waiver.

4 “(4) APPLICABILITY OF PLAN REVISIONS AND
5 WAIVERS TO OTHER AGENCIES.—A revision to a
6 plan approved under this part or a waiver issued
7 under this subsection or under part D of title IX
8 may be applied in any other State or local edu-
9 cational agency, provided the State or agency meets
10 any requirements issued by the Secretary applicable
11 to such revision or waiver as implemented by such
12 State or agency.”.

13 **TITLE III—IMPLEMENTATION OF** 14 **SANCTIONS**

15 **SEC. 301. SCHOOL IMPROVEMENT AND PUBLIC SCHOOL** 16 **CHOICE.**

17 Section 1116(b) (20 U.S.C. 6316(b)) is amended—

18 (1) in paragraph (1)(A) by inserting after “2
19 consecutive years” the following: “(in the same sub-
20 ject for the same group of students, as described in
21 section 1111(b)(2)(C)(v))”;

22 (2) in paragraph (1)(E)(i)—

23 (A) by striking “In the case” and inserting
24 “Consistent with subparagraph (G), in the
25 case”;

1 (B) by striking “all students enrolled in
2 the school” and inserting “students who failed
3 to meet the proficient level of achievement on
4 the assessments described under section
5 1111(b)(3) and are in the group whose aca-
6 demic performance caused the identification
7 under this paragraph”; and

8 (C) by striking “another public school”
9 and inserting “one other public school identified
10 and”;

11 (3) in paragraph (1)(E) by adding at the end
12 the following:

13 “(iii) SPECIAL CONDITIONS.—A local
14 educational agency shall not be required to
15 implement the transfer of a student to a
16 school under this subparagraph if doing so
17 would—

18 “(I) violate a State or local law
19 or policy relating to health, safety, or
20 class size;

21 “(II) result in overcrowding, the
22 installation of mobile classrooms, con-
23 struction of classrooms, or other sig-
24 nificant capital improvements in that
25 school; or

1 “(III) be impractical due to dis-
2 tance, geographical barriers or haz-
3 ards, time of travel, or unusually high
4 cost of travel.”;

5 (4) in paragraph (1) by adding at the end the
6 following:

7 “(G) OPTIONS.—A local educational agen-
8 cy may offer supplemental services as described
9 in subsection (e) in place of the option to trans-
10 fer to one or more public schools described in
11 subparagraph (E) for the purposes of meeting
12 the requirements of paragraphs (5)(A),
13 (7)(C)(i), or (8)(A)(i).”;

14 (5) in paragraph (5) by inserting after “ade-
15 quate yearly progress” the following: “(in the same
16 subject for the same group of students)”;

17 (6) in paragraph (7)(C) by inserting after “ade-
18 quate yearly progress” the following: “(in the same
19 subject for the same group of students)”;

20 (7) in paragraph (7)(C)(i)—

21 (A) by striking “all”; and

22 (B) by striking “another” and inserting
23 “an other”;

24 (8) in paragraph (7) by amending subpara-
25 graph (D) to read as follows:

1 “(D) DELAY.—Notwithstanding any other
2 provision of this paragraph, the local edu-
3 cational agency may delay, for a period not to
4 exceed 1 year, implementation of the require-
5 ments under paragraph (5), corrective action
6 under this paragraph, or restructuring under
7 paragraph (8) if the school makes adequate
8 yearly progress for 1 year or if its failure to
9 make adequate yearly progress is due to—

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

12 “(ii) a precipitous and unforeseen de-
13 cline in the financial resources of the local
14 educational agency or school; or

15 “(iii) a sudden or significant increase
16 in the number of percentage of students
17 represented by a group described in section
18 1111(b)(2)(C)(v).

19 No such period shall be taken into account in
20 determining the number of consecutive years of
21 failure to make adequate yearly progress.”;

22 (9) in paragraph (8)(A) by inserting after “ade-
23 quate yearly progress” the following: “in the same
24 subject for the same group of students and the total
25 number of students who did not meet or exceed the

1 proficient level of academic achievement (who are
2 members of a group described in section
3 1111(b)(2)(C)(v)) that did not make adequate yearly
4 progress exceed 35 percent of all students enrolled
5 in such school who took the assessment in such sub-
6 ject”;

7 (10) in paragraph (8)(A)(i)—

8 (A) by striking “all”; and

9 (B) by striking “another” and inserting
10 “an other”;

11 (11) in paragraph (10) by adding at the end
12 the following:

13 “(E) DETERMINATION THAT LESSER
14 AMOUNT IS NEEDED.—

15 “(i) IN GENERAL.—If a local edu-
16 cational agency determines under subpara-
17 graph (A) that a lesser amount is needed
18 to comply with paragraph (9) and to sat-
19 isfy all requests for supplemental edu-
20 cational services under subsection (e), the
21 agency shall be required by this paragraph
22 to spend only that lesser amount. The re-
23 maining amount (equal to the difference
24 between that lesser amount and the
25 amount otherwise required to be spent by

1 subparagraph (A)) shall be merged back
2 with the agency’s allocation under subpart
3 2 and shall be available accordingly.

4 “(ii) TIMING.—A determination de-
5 scribed in clause (i) may not be made—

6 “(I) until a reasonable time after
7 notice to parents is made under para-
8 graph (6) and a reasonable time after
9 the deadline for making requests for
10 such transportation or services has
11 passed; and

12 “(II) after December 15, or after
13 the date specified in the State plan, if
14 the State plan specifies an earlier
15 date.

16 “(iii) ASSURANCES.—The remaining
17 amount may not be merged back with the
18 agency’s allocation, as described in clause
19 (i), until after the agency notifies the State
20 of the determination made under clause (i)
21 and provides assurances to the State that
22 the determination was made in compliance
23 with this paragraph.”; and

24 (12) in paragraph (13) by striking “is no longer
25 identified” and all that follows through the period at

1 the end and inserting the following: “has made ade-
2 quate yearly progress for the group in which the
3 child is a member in the same subject for which a
4 failure to meet adequate yearly progress triggered
5 the transfer.”.

6 **SEC. 302. SCHOOL DISTRICT IMPROVEMENT.**

7 Section 1116(c)(10) (20 U.S.C. 6316(c)(10)) is
8 amended—

9 (1) in subparagraph (B) by amending clause
10 (ii) to read as follows:

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

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

24 “(II) whose total number of stu-
25 dents (who are members of a group

1 described in section 1111(b)(2)(C)(v))
2 that did not meet or exceed the pro-
3 ficient level of academic achievement
4 exceed 35 percent of all students en-
5 rolled in a school in such agency who
6 took the assessment in such subject
7 and averaged across all grades; and”;
8 and

9 (2) by amending subparagraph (F) to read as
10 follows:

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

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

21 “(ii) a precipitous and unforeseen de-
22 cline in the financial resources of the local
23 educational agency; or

24 “(iii) a sudden or significant increase
25 in the number or percentage of students

1 represented by any group described in sec-
2 tion 1111(b)(2)(C)(v).”.

3 **SEC. 303. SUPPLEMENTAL SERVICES.**

4 Section 1116(e) (20 U.S.C. 6316(e)) is amended—

5 (1) in paragraph (4)—

6 (A) in subparagraph (B), by inserting after
7 “objective criteria” the following: “(developed
8 through continuous consultation with local edu-
9 cational agencies in the State)”;

10 (B) in subparagraph (D) by striking “and”
11 at the end;

12 (C) in subparagraph (E) by striking the
13 period at the end and inserting “; and”; and

14 (D) by adding at the end the following:

15 “(F) Develop procedures by which a local
16 educational agency may—

17 “(i) present complaints and docu-
18 mentation of such complaints to the State
19 educational agency regarding the qualifica-
20 tions, operation, and evaluation of ap-
21 proved providers and potential providers
22 seeking such approval; and

23 “(ii) demonstrate to the State edu-
24 cational agency that any provider should
25 not be authorized to provide supplemental

1 services, as described in this subsection to
2 any school or schools under the jurisdiction
3 of that local education agency.”;

4 (2) by redesignating paragraph (12) as para-
5 graph (13); and

6 (3) by inserting after paragraph (11) the fol-
7 lowing:

8 “(12) LOCAL EDUCATIONAL AGENCIES AS PRO-
9 VIDERS.—Nothing in this section prohibits a local
10 educational agency that has failed to make adequate
11 yearly progress or is in improvement, corrective ac-
12 tion, or restructuring status pursuant to subsection
13 (c) from providing supplemental services, solely due
14 to such failure. In developing and applying objective
15 criteria under paragraph (4)(B) and withdrawing
16 approval for providers under paragraph (4)(D), a
17 State educational agency may not consider whether
18 a local educational agency made adequate yearly
19 progress or its status under subsection (c).”.

20 **SEC. 304. FULL IMPLEMENTATION.**

21 Section 1116 (20 U.S.C. 6316) is amended by adding
22 at the end the following:

23 “(i) CONDITIONAL IMPLEMENTATION.—Notwith-
24 standing any other provision of this section, a State edu-
25 cational agency, local educational agency, or school, as ap-

1 plicable, may defer the requirements of subsections (b)(7)
 2 and (8) and subsections (c)(7) and (10) in any fiscal year
 3 for which both of the following apply:

4 “(1) The amount appropriated under section
 5 1002(a) for that fiscal year fails to exceed, by at
 6 least \$2,500,000,000, the amount appropriated
 7 under that section for the preceding fiscal year.

8 “(2) The amount appropriated under section
 9 611(i) of the Individuals with Disabilities Education
 10 Act (42 U.S.C. 1400 et seq.) for that fiscal year
 11 fails to exceed, by at least \$2,000,000,000, the
 12 amount appropriated under that section for the pre-
 13 ceding fiscal year.”.

14 **TITLE IV—NON-PUBLIC** 15 **SCHOOLS**

16 **SEC. 401. PARTICIPATION OF CHILDREN ENROLLED IN PRI-** 17 **VATE SCHOOLS.**

18 Section 1120 (20 U.S.C. 6320) is amended—

19 (1) in subsection (b)(1)(D) by inserting after
 20 “academically assessed” the following: “(consistent
 21 with subsection (f))”; and

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

23 “(f) ACCOUNTABILITY FOR CHILDREN ENROLLED IN
 24 PRIVATE SCHOOLS.—

1 “(1) IN GENERAL.—Notwithstanding section
2 9506(a), as specifically provided for in this sub-
3 section, children enrolled in private elementary
4 schools and secondary schools that receive edu-
5 cational services or other benefits under this part
6 shall participate in the assessments described under
7 section 1111(b)(3).

8 “(2) REPORTING.—

9 “(A) The State educational agency shall
10 report the results of the assessments taken by
11 students in private elementary and secondary
12 schools by grade and subject to—

13 “(i) the private elementary or sec-
14 ondary school that such students attend;
15 and

16 “(ii) the local educational agency in
17 which the such private school is geographi-
18 cally located in a manner and extent that
19 is consistent with the provisions of section
20 1111(i) and the function of the local edu-
21 cational agency under section 1120(b).

22 “(B) A private elementary or secondary
23 school shall report the assessment results re-
24 ceived from the State educational agency under
25 subparagraph (A) to the parents of students en-

1 rolled in such school who receive services under
2 this part in writing and in the native language
3 of the parent in a manner and extent consistent
4 with the provisions of subsection 1111(i).

5 “(3) EFFECTIVENESS OF SERVICES.—Based on
6 the results of the assessments described under para-
7 graph (1), a State educational agency may deter-
8 mine that such services received by children under
9 this section be ceased in schools when such results,
10 compared to a comparable cohort of children en-
11 rolled in a public school in the school district of the
12 local educational agency, are significantly lower and
13 such schools do not meet the definition of adequate
14 yearly progress established by the State in which the
15 private school is located for 3 or more consecutive
16 years.”.

17 **TITLE V—EFFECTIVE DATE AND** 18 **REGULATIONS**

19 **SEC. 501. EFFECTIVE DATE.**

20 Except as specifically provided in this Act, the
21 amendments made by this Act shall be effective upon the
22 first July 1 after the date of the enactment of this Act.

1 **SEC. 502. REGULATIONS.**

2 The Secretary of Education shall issue regulations as
3 necessary to implement the provisions of this Act not later
4 than 180 days after the date of the enactment of this Act.

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