

111TH CONGRESS
1ST SESSION

H. R. 2958

To amend the accountability provisions of part A of title I of the Elementary and Secondary Education Act of 1965, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2009

Mr. TERRY (for himself, Mr. PLATTS, Mr. PAUL, and Mr. SIMPSON) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the accountability provisions of part A of title I of 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.**

4 This Act may be cited as the “State and Local Edu-
5 cation Flexibility Act of 2009”.

6 **SEC. 2. AMENDMENTS TO ESEA.**

7 (a) LIMITED ENGLISH PROFICIENT STUDENTS.—
8 Section 1111(b) of the Elementary and Secondary Edu-
9 cation Act of 1965 (20 U.S.C. 6311(b)) is amended—

1 (1) in paragraph (2)(C)—

2 (A) in clause (vi), by striking “and” at the
3 end;

4 (B) in clause (vii), by striking the period
5 at the end and inserting “; and”; and

6 (C) by adding at the end the following:

7 “(viii) at the State’s discretion on a
8 case-by-case basis, may not include the
9 performance of any limited English pro-
10 ficient student if—

11 “(I) the student has not been en-
12 rolled for 3 full school years in an ele-
13 mentary school or secondary school in
14 the State; and

15 “(II) the parents of the student,
16 and the school administrator or team
17 of educators designated by the stu-
18 dent’s school for making limited
19 English proficiency placement and as-
20 sessment decisions, agree that such an
21 exclusion is educationally appropriate
22 for the student.”;

23 (2) in clause (ii) of paragraph (2)(I), by insert-
24 ing “is subject to paragraph (3)(C)(xvi),” after “ex-

cept that the 95 percent requirement described in
this clause”;

(3) in paragraph (3)(C)—

(A) in clause (xiv), by striking “and” at
the end;

(B) in clause (xv), by striking the period at
the end and inserting “; and”; and

(C) by adding at the end the following:

“(xvi) notwithstanding clause
(ix)(III), at the State’s discretion on a
case-by-case basis, not include any limited
English proficient student if—

“(I) the student is enrolled in his
or her first full school year in an ele-
mentary school or secondary school in
the State; and

“(II) the parents of the student,
and the school administrator or team
of educators designated by the stu-
dent’s school for making limited
English proficiency placement and as-
sessment decisions, agree that such an
exclusion is educationally appropriate
for the student.”; and

1 (4) in paragraph (7), by adding at the end the
2 following: “Notwithstanding the preceding sentence,
3 a State plan may provide for the exclusion from
4 such annual assessment of English proficiency of
5 any limited English proficient student if (A) the stu-
6 dent is enrolled in his or her first full school year
7 in an elementary or secondary school in the State;
8 and (B) the parents of the student, and the school
9 administrator or team of educators designated by
10 the student’s school for making limited English pro-
11 ficiency placement and assessment decisions, agree
12 that such an exclusion is educationally appropriate
13 for the student.”

14 (b) CONSIDERATION OF GRADUATION RATES IN
15 AYP.—Clause (vi) of section 1111(b)(2)(C) of the Ele-
16 mentary and Secondary Education Act of 1965 (20 U.S.C.
17 6311(b)(2)(C)) is amended by inserting “, except that, at
18 the discretion of the State, such graduation rates may in-
19 clude (I) any student who has exceptional circumstances
20 and graduates from secondary school with a regular di-
21 ploma in not more than 5 years, (II) any qualified child
22 with a disability (as that term is defined in paragraph
23 (3)(C)(11)) who graduates from secondary school with a
24 regular diploma before attaining an age established by
25 State law, and (III) any qualified child with a disability

1 (as that term is defined in paragraph (3)(C)(11)) who sat-
 2 isfies such alternative challenging academic content and
 3 achievement standards as the State may establish for the
 4 child to complete secondary school in a reasonable period
 5 of time” after “in the standard number of years”.

6 (c) CHILDREN WITH DISABILITIES.—Subsection (b)
 7 of section 1111 of the Elementary and Secondary Edu-
 8 cation Act of 1965 (20 U.S.C. 6311) is amended—

9 (1) in subparagraph (B) of paragraph (1), by
 10 striking “The academic standards” and inserting
 11 “Subject to paragraph (11), the academic stand-
 12 ards”;

13 (2) in clause (i) of paragraph (2)(C), by strik-
 14 ing “applies the same high standards” and inserting
 15 “subject to paragraph (11), applies the same high
 16 standards”;

17 (3) in clause (i) of paragraph (3)(C), by strik-
 18 ing “be the same academic assessments” and insert-
 19 ing “subject to paragraph (11), be the same aca-
 20 demic assessments”; and

21 (4) by adding at the end the following:

22 “(11) CHILDREN WITH DISABILITIES.—

23 “(A) RELATION TO IEP.—Subject to the
 24 requirements of subparagraphs (B) and (C),
 25 with respect to a qualified child with a dis-

1 ability, a State plan may provide for modifica-
2 tion of the challenging academic content stand-
3 ards and challenging student academic achieve-
4 ment standards required by paragraph (1)(A),
5 the high standards of academic achievement de-
6 scribed in paragraph (2)(C)(i), and the yearly
7 student academic assessments described in
8 paragraph (3), to align such standards and as-
9 sessments with the child's individualized edu-
10 cation program.

11 “(B) PARENTAL CONSENT.—A State plan
12 may not provide for modification pursuant to
13 subparagraph (A) of any standard or assess-
14 ment unless the parents of the child involved
15 agree that such modification is educationally
16 appropriate for the child.

17 “(C) PROGRESSIVELY HIGHER LEVEL OF
18 INSTRUCTION.—In the case of a qualified child
19 with a disability who has a significant cognitive
20 impairment, but not a severe cognitive impair-
21 ment, any modification pursuant to subpara-
22 graph (A) of any standard or assessment appli-
23 cable to the child shall continue to require a
24 progressively higher level of instruction each
25 year to achieve graduation with a regular di-

1 ploma or an alternative State-established di-
2 ploma leading toward graduation with a regular
3 diploma or an alternative State-established di-
4 ploma.

5 “(D) RULE OF CONSTRUCTION.—This
6 paragraph shall not be construed to give rise to
7 any new right under the Individuals with Dis-
8 abilities Education Act, to expand the definition
9 of a child with a disability under that Act, or
10 to otherwise affect any provision of that Act.

11 “(E) DEFINITIONS.—In this paragraph:

12 “(i) The term ‘individualized edu-
13 cation program’ has the meaning given to
14 such term in section 602 of the Individuals
15 with Disabilities Education Act.

16 “(ii) The term ‘qualified child with a
17 disability’ means a child who receives serv-
18 ices under the Individuals with Disabilities
19 Education Act and has been certified by a
20 licensed health care professional or a mul-
21 tidisciplinary team (established in accord-
22 ance with State guidelines and including a
23 licensed health care professional) as a child
24 with severe or significant cognitive impair-

1 ment that prevents learning consistent
2 with the child’s age group.”.

3 (d) LOCAL DEVELOPMENT OF ASSESSMENTS.—Para-
4 graph (3) of section 1111(b) of the Elementary and Sec-
5 ondary Education Act of 1965 (20 U.S.C. 6311(b)(3)) is
6 amended by adding at the end the following:

7 “(E) LOCAL DEVELOPMENT OF ASSESS-
8 MENTS.—

9 “(i) IN GENERAL.—Notwithstanding
10 subparagraphs (A) and (C)(i), a State edu-
11 cational agency may authorize a local edu-
12 cational agency, or school, in the State to
13 develop and implement the student aca-
14 demic assessments required by this para-
15 graph with respect to the students served
16 by the local educational agency or school,
17 respectively.

18 “(ii) SAME ASSESSMENT.—Subject to
19 paragraph (11), any assessment developed
20 and implemented by a local educational
21 agency or school pursuant to this subpara-
22 graph shall be the same academic assess-
23 ment used to measure the achievement of
24 all children served by the local educational
25 agency or school, respectively.

1 “(iii) STATE RESPONSIBILITY.—If a
2 State educational agency chooses to au-
3 thorize a local educational agency, or
4 school, in the State to develop and imple-
5 ment assessments pursuant to this sub-
6 paragraph, the State educational agency
7 shall be responsible for demonstrating in
8 the State plan that each such assessment
9 complies with the requirements of this
10 paragraph.”.

11 (e) MULTIPLE ASSESSMENTS.—

12 (1) IN GENERAL.—Paragraph (3) of section
13 1111(b) of the Elementary and Secondary Edu-
14 cation Act of 1965 (20 U.S.C. 6311(b)(3)) (as
15 amended by subsection (d)) is amended by adding at
16 the end the following:

17 “(F) RULE OF CONSTRUCTION.—Notwith-
18 standing subparagraph (A), this paragraph
19 shall not be construed to prohibit the develop-
20 ment and implementation of the student aca-
21 demic assessments required by this section
22 through the use of multiple assessments of high
23 technical quality integrated into a school’s cur-
24 riculum and distributed throughout the course
25 of the school year.”.

1 (2) PARTICIPATION REQUIREMENT.—Clause (ii)
 2 of section 1111(b)(2)(I) (20 U.S.C. 6311(b)(2)(I))
 3 (as amended by subsection (a)(2)) is amended by in-
 4 serting “, and shall be a 75 percent annual average
 5 requirement in a case in which the school imple-
 6 ments academic assessments for purposes of para-
 7 graph (3) through the use of multiple assessments
 8 integrated into a school’s curriculum and distributed
 9 throughout the course of the school year” before the
 10 close parenthesis at the end.

11 (f) HIGHLY QUALIFIED SPECIAL EDUCATION AND
 12 RURAL TEACHERS.—Section 9101(23)(B)(ii) of the Ele-
 13 mentary and Secondary Education Act of 1965 (20 U.S.C.
 14 7801(23)(B)(ii)) is amended as follows:

15 (1) By striking “or” at the end of subclause
 16 (I), redesignating subclause (II) as (III) and insert-
 17 ing the following new subclause after subclause (I):

18 “(II) at the discretion of the
 19 State, in the case of a special edu-
 20 cation teacher or a teacher in a rural
 21 school, by passing such a rigorous
 22 State academic subject test in any 1
 23 subject in which the teacher teaches
 24 if, with respect to each other academic
 25 subject in which the teacher teaches,

1 the teacher works in close consulta-
2 tion, either in-person or through high-
3 quality distance education or consulta-
4 tion, with another teacher who is
5 highly qualified in such other aca-
6 demic subject; or”.

7 (2) By inserting before the closing parentheses
8 in clause (i) “or, at the option of the State, a rig-
9 orous academic subject matter teaching curriculum
10 and institutional skill assessments (as determined by
11 the State’s education commissioner) developed by a
12 public or private university”.

13 (g) SOCIAL STUDIES TREATED AS CORE ACADEMIC
14 SUBJECT.—Paragraph (11) of section 9101 of the Ele-
15 mentary and Secondary Education Act of 1965 (20 U.S.C.
16 7801) is amended by striking “and geography” and insert-
17 ing “geography, and social studies”.

18 (h) COMPETENCE IN SCIENCE AND SOCIAL STUDIES
19 TREATED AS COMPETENCE IN SUBDISCIPLINES.—Para-
20 graph (23) of section 9101 of the Elementary and Sec-
21 ondary Education Act of 1965 (20 U.S.C. 7801) is amend-
22 ed by striking “and” at the end of subparagraph (B), by
23 striking the period at the end of subparagraph (C) and
24 inserting “; and”, and by adding at the end the following
25 new subparagraph:

1 “(D) shall be determined under this para-
2 graph by treating demonstrated competence in
3 general science or social studies as competence
4 in the subdisciplines of general science and so-
5 cial studies, respectively”.

6 **SEC. 3. STUDY ON THE ADEQUACY OF ESEA FUNDING.**

7 (a) STUDY.—The Comptroller General of the United
8 States (in this section referred to as the “Comptroller
9 General”) shall conduct a study to determine for each of
10 school years 2001–2002, 2002–2003, 2003–2004, 2004–
11 2005, 2005–2006, 2006–2007, and 2007–2008 the fol-
12 lowing:

13 (1) The amount of costs incurred by local edu-
14 cational agencies and schools as a result of efforts
15 to comply with the provisions of part A of title I of
16 the Elementary and Secondary Education Act of
17 1965 (20 U.S.C. 6301 et seq.).

18 (2) The amount of funds received by local edu-
19 cational agencies and schools under such part A.

20 (b) REGULAR EDUCATIONAL EXPENSES.—In making
21 a determination of costs under subsection (a)(1), the
22 Comptroller General shall exclude educational costs that
23 would be incurred by local educational agencies and
24 schools irrespective of efforts to comply with the provisions

1 of part A of title I of the Elementary and Secondary Edu-
2 cation Act of 1965 (20 U.S.C. 6301 et seq.).

3 (c) SAMPLES.—The Comptroller General shall make
4 sample determinations under paragraphs (1) and (2) of
5 subsection (a) for—

6 (1) at least 1 local educational agency and 1
7 school in a rural area in each State; and

8 (2) at least 1 local educational agency and 1
9 school in an urban area in each State.

10 (d) REPORT.—Not later than 1 year after the date
11 of the enactment of this Act, the Comptroller General shall
12 submit a report to the Congress on the results of the study
13 conducted under this section.

14 (e) SUBSEQUENT STUDY AND REPORTS.—The
15 Comptroller General shall conduct a study, for each school
16 year after the 2005–2006 school year, to determine the
17 costs and funds described in subsection (a) for such year.
18 The report of each such study shall be submitted to the
19 Congress not later than 1 year after the close of the school
20 year to which the study relates.

21 **SEC. 4. MEASURING INDIVIDUAL STUDENT ACADEMIC**
22 **ACHIEVEMENT.**

23 The Elementary and Secondary Education Act of
24 1965 is amended by adding the following at the end of

1 subpart 4 of part A of title VI and by making the nec-
2 essary conforming changes in the table of contents:

3 **“SEC. 6165. MEASURING INDIVIDUAL STUDENT ACADEMIC**
4 **ACHIEVEMENT.**

5 “A State may choose to demonstrate adequate yearly
6 progress under this subpart by utilizing individual growth
7 models to measure individual student progress from grade
8 to grade if the State meets all of the following require-
9 ments:

10 “(1) The State system contains strong privacy
11 protections and measures to prevent the labeling of
12 students.

13 “(2) The State system includes measures to
14 meet the academic progress benchmarks established
15 under NCLB to reach the universal goal of 100 per-
16 cent student proficiency by 2014.

17 “(3) The State system includes both annual or
18 multiple yearly assessments of high technical quality
19 and academic merit as primary measurements of
20 student academic progress.

21 “(4) The State data system meets minimum
22 standards, which will be established by the Secretary
23 to ensure high data quality, including the ability to
24 match test records of individual students from year

1 to year and the ability to measure growth at the
2 classroom and school level.

3 “(5) In the case of a student who is one or
4 more full grade levels behind his or her classmates,
5 as determined by the State in accordance with the
6 State’s grade-level academic standards, the State
7 has a plan in place to bring the student up to age-
8 appropriate grade level learning within three years
9 through targeted interventions chosen by the State,
10 and the plan has been approved at the start of each
11 of the three applicable school years by one or both
12 of the student’s parents.

13 “(6) The State system recognizes individual
14 student GPA as a factor in reporting student
15 progress.

16 States utilizing individual growth models may, in the case
17 of a student who is determined by the State to be one
18 or more full grade levels behind his or her classmates,
19 count the student as meeting adequate yearly progress re-
20 quirements for up to three years as long as the student
21 is meeting the annual State-established goals for indi-
22 vidual student progress that are designed to bring the stu-
23 dent up to age-appropriate grade level learning within
24 three years through appropriate targeted interventions.

1 **“SEC. 6166. ACCURATE IDENTIFICATION OF SCHOOLS**
2 **NEEDING IMPROVEMENT.**

3 “(a) IN GENERAL.—For purposes of determining
4 adequate yearly progress under this subpart, schools shall
5 be graded on the following grading scale:

6 “(1) Grade A+: Schools achieving 100 percent
7 of the factors that make up adequate yearly
8 progress.

9 “(2) Grade A: Schools achieving 90–99 percent
10 of such factors.

11 “(3) Grade B: Schools achieving 80–89 percent
12 of such factors.

13 “(4) Grade C: Schools achieving 70–79 percent
14 of such factors.

15 “(5) Grade D: Schools achieving only 60–69
16 percent of such factors.

17 “(6) Grade F: Schools achieving 59 percent or
18 less of such factors.

19 “(b) AWARDS AND SCHOOL IMPROVEMENT MEAS-
20 URES.—The following awards and school improvement
21 measures shall apply to schools based on the grade each
22 school receives on the above school improvement grading
23 scale:

24 “(1) A+ schools shall receive greater flexibility
25 in the use of title I funds provided to their school

1 with the transferability percentage increased from
2 50 percent to 75 percent flexibility.

3 “(2) A schools shall have flexibility to utilize
4 Federal funds to help boost achievement for specific
5 sub-groups not making adequate yearly progress in-
6 cluding for additional teacher development and any
7 other interventions the school deems appropriate.

8 “(3) B SCHOOLS.—After two years of not mak-
9 ing AYP, the district shall choose the interventions
10 from those allowed under section 1116 of the Ele-
11 mentary and Secondary Education Act of 1965 (20
12 U.S.C. 6316) that are appropriate to help the school
13 improve its performance as quickly and effectively as
14 possible.

15 “(4) C SCHOOLS.—After two years of not mak-
16 ing AYP, the district in consultation with the State
17 shall choose the appropriate interventions from those
18 allowed section 1116 of the Elementary and Sec-
19 ondary Education Act of 1965 (20 U.S.C. 6316) to
20 help the school improve its performance as quickly
21 and effectively as possible.

22 “(5) D SCHOOLS.—After two years of not mak-
23 ing AYP, the district and State shall choose the ap-
24 propriate interventions from those allowed under
25 section 1116 of the Elementary and Secondary Edu-

1 cation Act of 1965 (20 U.S.C. 6316) to help the
2 school improve its performance as quickly and effec-
3 tively as possible.

4 “(6) F SCHOOLS.—After two years of not mak-
5 ing AYP, the State shall choose the appropriate
6 interventions from those allowed under section 1116
7 of the Elementary and Secondary Education Act of
8 1965 (20 U.S.C. 6316) to help the school improve
9 its performance as quickly and effectively as pos-
10 sible.

11 “(c) SCHOOLS MAKING AYP.—In the case of schools
12 graded B, C, D, or F, States and school districts, coordi-
13 nating as appropriately required for each grade level in
14 this section, may choose to implement any, all, or none
15 of the school improvement measures currently available
16 under section 1116 of the Elementary and Secondary
17 Education Act of 1965 (20 U.S.C. 6316) for schools not
18 making AYP for 3–5 years without the school being identi-
19 fied “in need of improvement” or as needing corrective
20 action.

21 “(d) SCHOOLS NOT MAKING AYP.—In the case of
22 schools graded B, C, D, or F which fail to progress beyond
23 their initial grade level for three consecutive years, such
24 schools shall be subject to the current school improvement
25 measures that apply to schools that have not made AYP

1 for three years as defined in the State’s plan under section
2 1111(b)(2).”.

3 **SEC. 5. COMPARISON OF STATEWIDE REPORT CARDS.**

4 Section 1111(h)(6) of the Elementary and Secondary
5 Education Act of 1965 (20 U.S.C. 6311(h)(6)) is amend-
6 ed—

7 (1) by redesignating subparagraph (C) as sub-
8 paragraph (D); and

9 (2) by inserting after subparagraph (B) the fol-
10 lowing:

11 “(C) ADDITIONAL INFORMATION.—In ad-
12 dition to the information that parents may re-
13 quest under subparagraph (A), a school that re-
14 ceives funds under this part shall provide, to
15 each individual parent, student progress report
16 cards referred to in this subsection in addition
17 to report cards showing the schoolwide and
18 statewide progress of students as required by
19 this subsection. States shall include on the stu-
20 dent progress report cards the grade of the
21 school the individual student attends, as identi-
22 fied from the school improvement grading scale
23 in section 6166. States shall also include on
24 schoolwide and statewide progress report cards
25 the State’s performance on the National Assess-

1 ment of Educational Progress (NAEP) in the
2 academic subject areas required to be reported.
3 An explicit side-by-side comparison is not re-
4 quired and each State may choose the format in
5 which information is presented if the NAEP
6 scores are included.”.

○