

111TH CONGRESS
2D SESSION

H. R. 4837

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2010

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 “School Accountability Improvement Act of 2010”.

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

Sec. 1. Short title; table of contents.

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. Graduation rates.
 Sec. 105. Participation of students in assessments.
 Sec. 106. Students with disabilities requiring alternate assessments.
 Sec. 107. Assessments.
 Sec. 108. Regulations.
 Sec. 109. Research and standards.

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—NONPUBLIC SCHOOLS

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

TITLE V—EFFECTIVE DATE AND REGULATIONS

Sec. 501. Effective date.
 Sec. 502. Regulations.

1 **TITLE I—MEASURING ADEQUATE** 2 **YEARLY PROGRESS**

3 **SEC. 101. MEASURING ADEQUATE YEARLY PROGRESS OF** 4 **GROUPS.**

5 (a) “N” SIZE MAY VARY BY SIZE OF SCHOOL OR
 6 LEA.—The following provisions of the Elementary and
 7 Secondary Education Act of 1965 are each amended by
 8 inserting after “reliable information” the following: “(the
 9 number required to be insufficient being greater, at the
 10 option of the State, for a local educational agency than
 11 for a school, and varying, at the option of the State, from
 12 agency to agency and school to school in proportion to
 13 total enrollment)”:

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

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

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

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

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

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

7 (b) PERMITTING FEWER STUDENTS IN GROUP TO
 8 DEMONSTRATE PROGRESS TO MEET AYP SAFE HAR-
 9 BOR.—Section 1111 (20 U.S.C. 6311) is further amended
 10 in subsection (b)(2)(I)(i) by striking “10 percent” and in-
 11 serting “5 percent”.

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

16 “(L) COUNTING STUDENTS WHO
 17 ARE IN MORE THAN ONE GROUP.—
 18 For the purpose of determining ade-
 19 quate yearly progress, the State may
 20 establish a uniform procedure for
 21 counting students under which a stu-
 22 dent who belongs to more than one of
 23 the groups described in subparagraph
 24 (C)(v) is counted toward each such
 25 group to which the student belongs as

1 a fraction of 1 student, the numerator
 2 of the fraction being 1 and the de-
 3 nominator being the number of such
 4 groups to which the student belongs.”.

5 **SEC. 102. INTERMEDIATE GOALS NEED NOT INCREASE IN**
 6 **EQUAL INCREMENTS FOR ALL GROUPS.**

7 Section 1111 of the Elementary and Secondary Edu-
 8 cation Act of 1965 (20 U.S.C. 6311) is further amended
 9 in subsection (b)(2)(H)(i)—

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

13 “(aa) increments defined by
 14 the State as appropriate for the
 15 group, for each of the groups of
 16 students described in subpara-
 17 graph (C)(v); and

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

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

22 (a) EXPANSION OF AYP TO INCLUDE GAIN SCORES
 23 AND PARTIAL CREDIT FOR MEETING BASIC TARGETS.—
 24 Section 1111 of the Elementary and Secondary Education
 25 Act of 1965 (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 time line 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 “(O) MULTIPLE ASSESSMENTS FOR DE-
2 TERMINING ADEQUATE YEARLY PROGRESS.—

3 “(i) Subject to approval by the Sec-
4 retary, State plans submitted pursuant to
5 subsection (a) may use a combination of
6 assessments aligned with the academic
7 standards of the State and other indicators
8 to determine whether adequate yearly
9 progress is made. The State plan may pro-
10 vide for the following:

11 “(I) The assignment of specific
12 weights or points to the assessments
13 or other indicators that are used in
14 order to calculate a composite score to
15 determine whether adequate yearly
16 progress is made.

17 “(II) The use of portfolios,
18 projects, and performance-based as-
19 sessments consistent with criteria es-
20 tablished by the State.

21 “(III) The use of teacher obser-
22 vations that meet State criteria to as-
23 sess—

24 “(aa) the performance of
25 students for whom such method

1 of assessment would be appro-
 2 priate, including students identi-
 3 fied in subclauses (II)(cc) and
 4 (dd) of subparagraph (C)(v); and
 5 “(bb) the performance of
 6 students on skills or uses of in-
 7 formation that are not ade-
 8 quately provided for in the State
 9 assessment instrument.

10 “(IV) The use of high school
 11 graduation rates, the number or por-
 12 tion of advanced placement and inter-
 13 national baccalaureate courses taken
 14 by students in specific subjects, post-
 15 secondary education admissions, and
 16 other factors that are appropriate for
 17 the grade level of the students in-
 18 volved in addition to the academic as-
 19 sessment of those students.”.

20 **SEC. 104. GRADUATION RATES.**

21 Section 1111(b)(2) of the Elementary and Secondary
 22 Education Act of 1965 (20 U.S.C. 6311(b)(2)) is amended
 23 by adding at the end the following:

24 “(L) GRADUATION AND DROP-OUT
 25 RATES.—In determining the graduation and

1 drop-out rates required by this Act, the State
2 plan may provide alternatives, in lieu of count-
3 ing students in the year of the on-time, 4-year
4 high school graduation cohort of such students,
5 in order to address the following circumstances:

6 “(i) Students who do not graduate on
7 time and who are enrolled in school for the
8 summer or semester (and where applicable
9 are continuously enrolled in a subsequent
10 semester) after their fourth year of high
11 school, except that such students shall be
12 counted in the calculation of the gradua-
13 tion and dropout rates for the school year
14 in which such graduation (or noncomple-
15 tion) occurs.

16 “(ii) Students who leave school prior
17 to earning a high school diploma and who
18 are enrolled for the semester after their
19 fourth year of high school in an accredited
20 postsecondary institution in a program
21 leading to a two-year or a four-year degree
22 or in a job training program that is ap-
23 proved by the State and prepares students
24 for employment and to advance beyond the
25 entry level, except that—

1 “(I) such students shall be count-
2 ed in the school year in which such
3 graduation (or noncompletion) occurs;
4 and

5 “(II) such determination may be
6 made on the basis of whether such
7 students leave school or a job training
8 program having successfully com-
9 pleted the courses or job training pro-
10 gram that the State would deem as
11 having satisfied the requirements for
12 a high school diploma.”.

13 **SEC. 105. PARTICIPATION OF STUDENTS IN ASSESSMENTS.**

14 (a) PERCENTAGE OF STUDENTS REQUIRED TO TAKE
15 ASSESSMENTS.—Section 1111 of the Elementary and Sec-
16 ondary Education Act of 1965 (20 U.S.C. 6311) is further
17 amended in subsection (b)(2)(I)(ii)—

18 (1) by striking “95 percent” the first place
19 such term appears and inserting “a percentage
20 (from 90 to 95 percent, based on criteria established
21 in the State plan)”; and

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

1 (b) DETERMINING PARTICIPATION RATES.—Section
2 1111 of such Act (20 U.S.C. 6311) is further amended
3 in subsection (b)(2) by adding at the end the following:

4 “(N) STUDENTS EXEMPT FROM PARTICI-
5 PATING IN ASSESSMENTS.—For the purpose of
6 determining compliance with the percentage re-
7 quired by subparagraph (I)(ii), the State may
8 provide for a student to be excluded from the
9 determination with respect to an assessment if
10 any of the following apply:

11 “(i) EXCUSED ABSENCE.—The stu-
12 dent did not take that assessment by rea-
13 son of—

14 “(I) a medical condition;

15 “(II) a parental decision to ex-
16 empt the student, if such a decision is
17 available under, and exercised pursu-
18 ant to, State law; or

19 “(III) a circumstance out of the
20 control of the student, school, or local
21 educational agency, such as a natural
22 disaster.

23 “(ii) CHRONIC NONATTENDANCE.—

24 Each of the following is true:

1 “(I) The student did not take the
2 assessment and has demonstrated an
3 unusual and chronic pattern of non-
4 attendance, as defined by the State.

5 “(II) The local educational agen-
6 cy in which the student is enrolled is
7 implementing a plan to increase par-
8 ticipation in the assessments by stu-
9 dents demonstrating such a pattern of
10 nonattendance.

11 “(O) STUDENTS ASSIGNED ‘BELOW BASIC’
12 SCORE BY DEFAULT.—For the purpose of de-
13 termining adequate yearly progress, and for the
14 purpose of determining compliance with the
15 percentage required by subparagraph (I)(ii), a
16 student who does not take an assessment and
17 who is not excluded under subparagraph (N)
18 may, if the State plan so provides, be treated
19 as having taken the assessment and having
20 achieved a score below the level described in
21 paragraph (1)(D)(ii)(III) (below basic).”.

1 **SEC. 106. STUDENTS WITH DISABILITIES REQUIRING AL-**
2 **TERNATE ASSESSMENTS.**

3 Section 1111 of the Elementary and Secondary Edu-
4 cation Act of 1965 (20 U.S.C. 6311) is further amended
5 in subsection (b)(2) by adding at the end the following:

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

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

18 “(I) any assessment given to any
19 such student for the purposes of de-
20 termining such adequate yearly
21 progress must be required by the indi-
22 vidualized education plan of such stu-
23 dent;

24 “(II) the individualized education
25 plan must reflect the need for any
26 such alternate assessment based on

1 the evaluation of such student and the
2 services provided such student under
3 section 614 of the Individuals with
4 Disabilities Education Act (42 U.S.C.
5 1400 et seq.); and

6 “(III) the individualized edu-
7 cation plan must include written con-
8 sent from the parent of such student
9 prior to such alternate assessment
10 being administered;

11 “(ii) used the term ‘students requiring
12 alternate assessments’ in lieu of the term
13 ‘students with the most significant cog-
14 nitive disabilities’; and

15 “(iii) permitted the eligibility of such
16 students to be determined by the State
17 educational agency, except that such eligi-
18 bility shall, at a minimum, include—

19 “(I) students who are receiving
20 services pursuant to a plan required
21 under section 504 of the Rehabilita-
22 tion Act of 1973 and part 104 of title
23 34, Code of Federal Regulations;

24 “(II) students who are assessed
25 at a grade level below the grade level

1 in which they are enrolled (out of level
2 assessments); and

3 “(III) students considered stu-
4 dents with the most significant cog-
5 nitive disabilities, as defined by the
6 State educational agency, prior to the
7 enactment of the No Child Left Be-
8 hind Improvements Act of 2007.”.

9 **SEC. 107. ASSESSMENTS.**

10 Section 1111(b)(3)(C) of the Elementary and Sec-
11 ondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(C))
12 is amended—

13 (1) in clause (ix) by striking subclause (III) and
14 inserting the following:

15 “(III) the inclusion of limited-
16 English-proficient students, who—

17 “(aa) may, consistent with
18 paragraph (2)(P), be assessed, as
19 determined by the local edu-
20 cational agency, through the use
21 of an assessment which requires
22 achievement of specific gains for
23 up to three school years from the
24 first year any such student is as-

1 sessed for the purposes of this
2 subsection;

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

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

16 “(dd) shall be assessed in a
17 valid and reliable manner and
18 provided reasonable accommoda-
19 tions on assessments adminis-
20 tered to such students under this
21 paragraph, including, to the ex-
22 tent practicable, assessments in
23 the language and form most like-
24 ly to yield accurate data on what
25 such students know and can do

1 in academic content areas, until
2 such students have achieved
3 English language proficiency as
4 determined under paragraph
5 (7);”;

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

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

8 and

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

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

20 “(xvi) at the option of the school dis-
21 trict, measure the achievement of a stu-
22 dent as if such student were in the grade
23 level proceeding the grade level of such
24 student, provided that—

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

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

13 **SEC. 108. REGULATIONS.**

14 Section 1111 of the Elementary and Secondary Edu-
 15 cation Act of 1965 (20 U.S.C. 6311) is further amended
 16 by adding at the end the following:

17 “(o) REGULATIONS.—

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

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

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

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

1 **SEC. 109. RESEARCH AND STANDARDS.**

2 (a) IN GENERAL.—From funds appropriated under
3 subsection (b), the Secretary is authorized to conduct re-
4 search and to make grants to States and groups of States
5 for the purpose of developing and implementing standards
6 and assessments in academic subjects for which States are
7 held accountable for making adequate yearly progress
8 under the Elementary and Secondary Education Act of
9 1965 (20 U.S.C. 6301 et seq.), subject to the following
10 conditions:

11 (1) HIGH QUALITY STANDARDS.—The stand-
12 ards that are developed pursuant to this subsection
13 will—

14 (A) be designed with the expectation that
15 students will graduate from high school pre-
16 pared to enter postsecondary education or the
17 workplace; and

18 (B) be clear, concise, and consistent with
19 the rigor of standards in nations that research
20 validates as being high caliber.

21 (2) PROHIBITION.—The Federal Government
22 and any entity under its control is prohibited from—

23 (A) establishing academic standards or re-
24 quiring any State to adopt specific standards or
25 assessments as a condition for receiving funds

1 under any program administered by the De-
2 partment; and

3 (B) establishing any assessment or requir-
4 ing any State to adopt a specific assessment for
5 determining adequate yearly progress.

6 (3) INCENTIVE.—A State that adopts standards
7 in an academic system pursuant to paragraph (1)
8 may—

9 (A) revise the measurable objectives re-
10 quired by section 1111(b)(2)(G) of the Elemen-
11 tary and Secondary Education Act of 1965 (8
12 U.S.C. 6311(b)(2)(G));

13 (B) extend the time line set forth in sec-
14 tion 1111(b)(2)(F) of such Act to a subsequent
15 year but not beyond the 2017–18 school year;

16 (C) exclude assessment results from the
17 determination of whether a school or local edu-
18 cational agency is in need of improvement
19 under section 1116(b)(1)(A) of such Act for the
20 school year in which such standards are imple-
21 mented by local educational agencies; and

22 (D) defer the implementation of the re-
23 quirements of paragraph (5), (7), and (8) of
24 section 11116(b) of such Act for the school year
25 following the first school year in which such

1 standards are implemented by local educational
2 agencies.

3 (4) STATE PLANS.—The State plan under sec-
4 tion 1111 of such Act of any State that adopts
5 standards pursuant to paragraph (1) shall indicate
6 how the State will—

7 (A) assist local educational agencies to—

8 (i) provide for the professional devel-
9 opment of teachers and administrators to
10 effectively teach to such standards;

11 (ii) align curriculum with such stand-
12 ards;

13 (iii) acquire and align, as the case
14 may be, course materials, technology data
15 systems and other resources necessary to
16 effectively teach to such standards;

17 (iv) ensure that the State will give a
18 high priority in providing assistance under
19 this subsection to schools and local edu-
20 cational agencies wherein 35 percent or
21 more of the students in the group identi-
22 fied under subclause (I) of section
23 1111(b)(2)(C)(v) of such Act did not make
24 adequate yearly progress targets in the

1 year prior to the implementation of such
 2 standards; and

3 (v) ensure that representatives of
 4 teachers, administrators, school board
 5 members, parents, and other stakeholders
 6 are provided timely involvement in the de-
 7 velopment, adoption, implementation, and
 8 evaluation of standards and assessments
 9 funded by this section; and

10 (B) use State funds and the funds pro-
 11 vided under such Act to support the activities
 12 described in subparagraph (A) as a top priority.

13 (b) AUTHORIZATION OF APPROPRIATIONS.—There
 14 are authorized to be appropriated to carry out this section
 15 \$600,000,000.

16 **TITLE II—STATE FLEXIBILITY**

17 **SEC. 201. STATE FLEXIBILITY.**

18 Section 1111 of the Elementary and Secondary Edu-
 19 cation Act of 1965 (20 U.S.C. 6311) is amended—

20 (1) by redesignating subsections (f) through
 21 (m) as subsections (g) through (n); and

22 (2) by inserting after subsection (e) the fol-
 23 lowing:

24 “(f) STATE FLEXIBILITY.—

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

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

11 “(3) NOTIFICATION.—Not later than 30 days
12 after the approval of any revisions to the plan of a
13 State, or the granting of any waivers described
14 under paragraph (2), the Secretary shall notify each
15 State educational agency of such revision or waiver
16 and, through the Website of the Department of Edu-
17 cation and the Federal Register, the public. The no-
18 tification described in the preceding sentence shall
19 be in writing and include a clear and complete expla-
20 nation of such revision or wavier.

21 “(4) APPLICABILITY OF PLAN REVISIONS AND
22 WAIVERS TO OTHER AGENCIES.—A revision to a
23 plan approved under this part or a waiver issued
24 under this subsection or under part D of title IX
25 may be applied in any other State or local edu-

1 cational agency, provided the State or agency meets
 2 any requirements issued by the Secretary applicable
 3 to such revision or waiver as implemented by such
 4 State or agency.”.

5 **TITLE III—IMPLEMENTATION OF** 6 **SANCTIONS**

7 **SEC. 301. SCHOOL IMPROVEMENT AND PUBLIC SCHOOL** 8 **CHOICE.**

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

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

15 (2) in paragraph (1)(E)(i)—

16 (A) by striking “In the case” and inserting
 17 “Consistent with subparagraph (G), in the
 18 case”;

19 (B) by striking “all students enrolled in
 20 the school” and inserting “students who failed
 21 to meet the proficient level of achievement on
 22 the assessments described under section
 23 1111(b)(3) and are in the group whose aca-
 24 demic performance caused the identification
 25 under this paragraph”; and

1 (C) by striking “another public school”
2 and inserting “one other public school identi-
3 fied, and”;

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

6 “(iii) SPECIAL CONDITIONS.—A local
7 educational agency shall not be required to
8 implement the transfer of a student to a
9 school under this subparagraph if doing so
10 would—

11 “(I) violate a State or local law
12 or policy relating to health, safety, or
13 class size;

14 “(II) result in overcrowding, the
15 installation of mobile classrooms, con-
16 struction of classrooms, or other sig-
17 nificant capital improvements in that
18 school; or

19 “(III) be impractical due to dis-
20 tance, geographical barriers or haz-
21 ards, time of travel, or unusually high
22 cost of travel.”;

23 (4) in paragraph (1) by adding at the end the
24 following:

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

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

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

14 (7) in paragraph (7)(C)(i)—

15 (A) by striking “all”; and

16 (B) by striking “another” and inserting
 17 “an other”;

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

20 “(D) DELAY.—Notwithstanding any other
 21 provision of this paragraph, the local edu-
 22 cational agency may delay, for a period not to
 23 exceed 1 year, implementation of the require-
 24 ments under paragraph (5), corrective action
 25 under this paragraph, or restructuring under

paragraph (8) if the school makes adequate yearly progress for 1 year or if its failure to make adequate yearly progress is due to—

“(i) exceptional or uncontrollable circumstances, such as a natural disaster;

“(ii) a precipitous and unforeseen decline in the financial resources of the local educational agency or school; or

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

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

(9) in paragraph (8)(A) by inserting after “adequate yearly progress” the following: “in the same subject for the same group of students and the total number of students who did not meet or exceed the proficient level of academic achievement (who are members of a group described in section 1111(b)(2)(C)(v)) that did not make adequate yearly progress exceed 35 percent of all students enrolled in such school who took the assessment in such subject”;

1 (10) in paragraph (8)(A)(i)—

2 (A) by striking “all”; and

3 (B) by striking “another” and inserting
4 “an other”;

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

7 “(E) DETERMINATION THAT LESSER
8 AMOUNT IS NEEDED.—

9 “(i) IN GENERAL.—If a local edu-
10 cational agency determines under subpara-
11 graph (A) that a lesser amount is needed
12 to comply with paragraph (9) and to sat-
13 isfy all requests for supplemental edu-
14 cational services under subsection (e), the
15 agency shall be required by this paragraph
16 to spend only that lesser amount. The re-
17 maining amount (equal to the difference
18 between that lesser amount and the
19 amount otherwise required to be spent by
20 subparagraph (A)) shall be merged back
21 with the agency’s allocation under subpart
22 2 and shall be available accordingly.

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

1 “(I) until a reasonable time after
2 notice to parents is made under para-
3 graph (6) and a reasonable time after
4 the deadline for making requests for
5 such transportation or services has
6 passed; and

7 “(II) after December 15, or after
8 the date specified in the State plan, if
9 the State plan specifies an earlier
10 date.

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

19 (12) in paragraph (13) by striking “is no longer
20 identified” and all that follows through the period at
21 the end and inserting the following: “has made ade-
22 quate yearly progress for the group in which the
23 child is a member in the same subject for which a
24 failure to meet adequate yearly progress triggered
25 the transfer.”.

1 **SEC. 302. SCHOOL DISTRICT IMPROVEMENT.**

2 Section 1116(c)(10) of the Elementary and Sec-
3 ondary Education Act of 1965 (20 U.S.C. 6316(c)(10))
4 is amended—

5 (1) in subparagraph (B) by amending clause
6 (ii) to read as follows:

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

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

20 “(II) whose total number of stu-
21 dents (who are members of a group
22 described in section 1111(b)(2)(C)(v))
23 that did not meet or exceed the pro-
24 ficient level of academic achievement
25 exceed 35 percent of all students en-
26 rolled in a school in such agency who

1 took the assessment in such subject
 2 and averaged across all grades; and”;
 3 and

4 (2) by amending subparagraph (F) to read as
 5 follows:

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

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

16 “(ii) a precipitous and unforeseen de-
 17 cline in the financial resources of the local
 18 educational agency; or

19 “(iii) a sudden or significant increase
 20 in the number or percentage of students
 21 represented by any group described in sec-
 22 tion 1111(b)(2)(C)(v).”.

23 **SEC. 303. SUPPLEMENTAL SERVICES.**

24 Section 1116(e) of the Elementary and Secondary
 25 Education Act of 1965 (20 U.S.C. 6316(e)) is amended—

1 (1) in paragraph (4)—

2 (A) in subparagraph (B), by inserting after
3 “objective criteria” the following: “(developed
4 through continuous consultation with local edu-
5 cational agencies in the State)”;

6 (B) in subparagraph (D) by striking “and”
7 at the end;

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

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

11 “(F) Develop procedures by which a local
12 educational agency may—

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

19 “(ii) demonstrate to the State edu-
20 cational agency that any provider should
21 not be authorized to provide supplemental
22 services, as described in this subsection to
23 any school or schools under the jurisdiction
24 of that local education agency.”;

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

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

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

17 **SEC. 304. FULL IMPLEMENTATION.**

18 Section 1116 of the Elementary and Secondary Edu-
19 cation Act of 1965 (20 U.S.C. 6316) is amended by add-
20 ing at the end the following:

21 “(i) **CONDITIONAL IMPLEMENTATION.**—Notwith-
22 standing any other provision of this section, a State edu-
23 cational agency, local educational agency, or school, as ap-
24 plicable, may defer the requirements of subsections (b)(7)

1 and (8) and subsections (c)(7) and (10) in any fiscal year
 2 for which both of the following apply:

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

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

13 **TITLE IV—NONPUBLIC SCHOOLS**

14 **SEC. 401. PARTICIPATION OF CHILDREN ENROLLED IN PRI-** 15 **VATE SCHOOLS.**

16 Section 1120 of the Elementary and Secondary Edu-
 17 cation Act of 1965 (20 U.S.C. 6320) is amended—

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

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

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

24 “(1) IN GENERAL.—Notwithstanding section
 25 9506(a), as specifically provided for in this sub-

1 section, children enrolled in private elementary
2 schools and secondary schools that receive edu-
3 cational services or other benefits under this part
4 shall participate in the assessments described under
5 section 1111(b)(3).

6 “(2) REPORTING.—

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

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

14 “(ii) the local educational agency in
15 which the private school is geographically
16 located in a manner and extent that is con-
17 sistent with the provisions of section
18 1111(i) and the function of the local edu-
19 cational agency under section 1120(b).

20 “(B) A private elementary or secondary
21 school shall report the assessment results re-
22 ceived from the State educational agency under
23 subparagraph (A) to the parents of students en-
24 rolled in such school who receive services under
25 this part in writing and in the native language

1 of the parent in a manner and extent consistent
2 with the provisions of subsection 1111(i).

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

15 **TITLE V—EFFECTIVE DATE AND** 16 **REGULATIONS**

17 **SEC. 501. EFFECTIVE DATE.**

18 Except as specifically provided in this Act, the
19 amendments made by this Act shall take effect on the first
20 July 1 that occurs after the date of the enactment of this
21 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.

