

111TH CONGRESS  
1ST SESSION

# S. 1581

To improve the amendments made by the No Child Left Behind Act of 2001.

---

## IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2009

Mr. CRAPO (for himself and Mrs. LINCOLN) introduced the following bill;  
which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

---

## A BILL

To improve the amendments made by the No Child Left  
Behind Act of 2001.

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 “Enhancing Flexibility  
5       for Effective Schools Act”.

6       **SEC. 2. REFERENCES.**

7       Except as otherwise specifically provided, whenever in  
8       this Act an amendment or repeal is expressed in terms  
9       of an amendment to, or a repeal of, a section or other  
10      provision, the reference shall be considered to be made to

1 a section or other provision of the Elementary and Sec-  
 2 ondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

3 **SEC. 3. ADEQUATE YEARLY PROGRESS.**

4 (a) ACCOUNTABILITY.—Section 1111(b)(2) (20  
 5 U.S.C. 6311(b)(2)) is amended—

6 (1) in subparagraph (I)(ii)—

7 (A) by striking “95 percent” the first place  
 8 the term appears and inserting “90 percent  
 9 (which percentage shall be based on criteria es-  
 10 tablished by the State in the State plan)”; and

11 (B) by striking “95 percent” the second  
 12 place the term appears and inserting “90 per-  
 13 cent”;

14 (2) by redesignating subparagraph (K) as sub-  
 15 paragraph (N); and

16 (3) by inserting, after subparagraph (J), the  
 17 following:

18 “(K) SINGLE COUNT OF STUDENTS.—In  
 19 meeting the definition of adequate yearly  
 20 progress under subparagraph (C), a student  
 21 who may be counted in 2 or more groups de-  
 22 scribed in subparagraph (C)(v)(II), may be  
 23 counted as an equal fraction of 1 for each such  
 24 group.

“(L) STUDENTS WITH DISABILITIES RE-  
QUIRING ALTERNATE ASSESSMENTS.—Notwith-  
standing any other provision of this part, a  
State may implement the amendments made to  
part 200 of title 34, Code of Federal Regula-  
tions on December 9, 2003 (68 Fed. Reg.  
68698) (related to achievement of students with  
significant cognitive disabilities), as if such  
amendments—

“(i) permitted the proficient or ad-  
vanced scores on alternate assessments of  
not more than 3.0 percent of all tested stu-  
dents to be considered as proficient or ad-  
vanced, respectively, for the purposes of  
determining adequate yearly progress, ex-  
cept that—

“(I) any assessment given to any  
such so considered student for the  
purposes of determining such ade-  
quate yearly progress shall be re-  
quired by the individualized education  
program of such so considered stu-  
dent;

“(II) the individualized education  
program shall reflect the need for any

1 such alternate assessment based on  
2 the evaluation of such so considered  
3 student and the services provided such  
4 so considered student under section  
5 614 of the Individuals with Disabil-  
6 ities Education Act; and

7 “(III) the individualized edu-  
8 cation program shall include written  
9 consent from the parent of such so  
10 considered student prior to such alter-  
11 nate assessment being administered;

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

16 “(iii) permitted the eligibility, of such  
17 so considered students to have the stu-  
18 dents’ scores of proficient or advanced on  
19 alternate assessments counted as proficient  
20 or advanced for purposes of determining  
21 adequate yearly progress, to be determined  
22 by the State educational agency, except  
23 that such eligibility shall, at a minimum,  
24 include—

1           “(I) such so considered students  
2           who are receiving services pursuant to  
3           a plan required under section 504 of  
4           the Rehabilitation Act of 1973;

5           “(II) the students described in  
6           subclause (I) who are assessed at a  
7           grade level below the grade level in  
8           which the students are enrolled (out  
9           of level assessments); and

10          “(III) the students described in  
11          subclause (I) who are considered stu-  
12          dents with the most significant cog-  
13          nitive disabilities, as defined by the  
14          State educational agency, on the day  
15          before the date of enactment of the  
16          Enhancing Flexibility for Effective  
17          Schools Act.

18          “(M) OTHER MEASURES OF ADEQUATE  
19          YEARLY PROGRESS.—Notwithstanding any  
20          other provision of this paragraph, a State may  
21          establish in the State plan an alternative defini-  
22          tion of adequate yearly progress, subject to ap-  
23          proval by the Secretary under subsection (e).  
24          Such alternative definition may—

“(i) include measures of student achievement over a period of time (such as a growth model or value added accountability system) or the progress of some or all of the groups of students described in subparagraph (C)(v) to the next higher level of achievement described in subparagraph (II) or (III) of paragraph (1)(D)(ii) as a factor in determining whether a school, local educational agency, or State has made adequate yearly progress, as described in this paragraph; or

“(ii) use the measures of achievement or the progress of groups described in clause (i) as the sole basis for determining whether the State, or a local educational agency or school within the State, has made adequate yearly progress, if—

“(I) the primary goal of such definition is that all students in each group described in subparagraph (C)(v) meet or exceed the proficient level of academic achievement, established by the State, not later than 12

1 years after the end of the 2001–2002  
 2 school year; and

3 “(II) such definition includes in-  
 4 termediate goals, as required under  
 5 subparagraph (H).”.

6 (b) ASSESSMENTS.—Section 1111(b)(3)(C) (20  
 7 U.S.C. 6311(b)(3)(C)) is amended—

8 (1) in clause (ix), by striking subclause (III)  
 9 and inserting the following:

10 “(III) the inclusion of limited  
 11 English proficient students, who—

12 “(aa) may, consistent with  
 13 paragraph (2)(M), be assessed,  
 14 as determined by the local edu-  
 15 cational agency, through the use  
 16 of an assessment which requires  
 17 achievement of specific gains for  
 18 up to 3 school years from the  
 19 first year the student is assessed  
 20 for the purposes of this sub-  
 21 section;

22 “(bb) may, at the option of  
 23 the State educational agency, be  
 24 assessed in the first year the stu-  
 25 dent attends school in the United

1 States (not including the Com-  
 2 monwealth of Puerto Rico); and  
 3 “(cc) shall not be included  
 4 in any calculation of an adequate  
 5 yearly progress determination  
 6 when the student is in the first  
 7 year of attendance at a school in  
 8 the United States (not including  
 9 the Commonwealth of Puerto  
 10 Rico).”; and

11 (2) in clause (x), by inserting “of clause (ix)”  
 12 after “subclause (III)”.

13 (c) REGULATIONS AFFECTING LIMITED ENGLISH  
 14 PROFICIENT CHILDREN AND CHILDREN WITH DISABIL-  
 15 ITIES.—Section 1111 (20 U.S.C. 6311) is amended by  
 16 adding at the end the following:

17 “(n) CODIFICATION OF REGULATIONS AFFECTING  
 18 LIMITED ENGLISH PROFICIENT CHILDREN.—Notwith-  
 19 standing any other provision of this part, this part shall  
 20 be implemented consistent with the amendments proposed  
 21 to part 200 of title 34 of the Code of Federal Regulations  
 22 on June 24, 2004 (69 Fed. Reg. 35462) (relating to the  
 23 assessment of limited English proficient children and the  
 24 inclusion of limited English proficient children in sub-  
 25 groups), as if such amendments permitted students who



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

7 **SEC. 4. SCHOOL IMPROVEMENT AND PUBLIC SCHOOL**  
 8 **CHOICE.**

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

10 (1) in paragraph (1)—

11 (A) in subparagraph (A), by inserting “(in  
 12 the same subject for the same group of stu-  
 13 dents, as described in section  
 14 1111(b)(2)(C)(v))” after “2 consecutive years”;

15 (B) in subparagraph (E)(i)—

16 (i) by striking “In the case” and in-  
 17 serting “Except as provided in subpara-  
 18 graph (G), in the case”; and

19 (ii) by striking “all students enrolled  
 20 in the school with the option to transfer to  
 21 another public school” and inserting “stu-  
 22 dents who failed to meet the proficient  
 23 level of achievement on the assessments de-  
 24 scribed in section 1111(b)(3), are enrolled  
 25 in the school, and are in the group whose

academic performance caused the identification under this paragraph, with the option to transfer to one other public school identified by and”; and

(C) by adding at the end the following:

“(G) OPTIONS.—A local educational agency may offer supplemental educational services as described in subsection (e) in place of the option to transfer to another public school described in subparagraph (E), for the first school year a school is identified for improvement under this paragraph.”;

(2) in the matter preceding subparagraph (A) of paragraph (5), by inserting “for the same group of students” after “adequate yearly progress”; and

(3) in the matter preceding clause (i) of paragraph (7)(C), by inserting “for the same group of students” after “adequate yearly progress”.

**SEC. 5. SUPPLEMENTAL EDUCATIONAL SERVICES.**

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

(1) in subparagraph (B), by inserting “(developed through consultation with local educational agencies in the State)” after “objective criteria”;

1           (2) in subparagraph (D), by striking “and”  
2     after the semicolon;

3           (3) in subparagraph (E), by striking the period  
4     and inserting at the end “; and”; and

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

6                 “(F) develop procedures by which a local  
7     educational agency may—

8                     “(i) present complaints, and docu-  
9                     mentation of such complaints, to the State  
10                    educational agency regarding the qualifica-  
11                    tion, operation, and evaluation—

12                         “(I) of approved providers; and

13                         “(II) providers of supplemental  
14                         educational services seeking to become  
15                         approved providers under this sub-  
16                         section; and

17                         “(ii) demonstrate to the State edu-  
18                         cational agency that a provider of supple-  
19                         mental educational services should not be  
20                         approved to provide supplemental edu-  
21                         cational services under this subsection to  
22                         any students attending the schools served  
23                         by the local educational agency.”.

1 **SEC. 6. FLEXIBILITY FOR SPECIAL EDUCATION MIDDLE OR**  
2 **SECONDARY SCHOOL TEACHERS.**

3 Section 9101(23)(B)(ii) (20 U.S.C. 7801(23)(B)(ii))  
4 is amended—

5 (1) in subclause (I), by striking “or” after the  
6 semicolon;

7 (2) in subclause (II), by striking “; and” and  
8 inserting “; or”; and

9 (3) by adding at the end the following:

10 “(III) in the case of a special  
11 education teacher, obtaining a State  
12 special education certificate that  
13 qualifies the teacher to teach special  
14 education in the State; and”.

○