

110TH CONGRESS  
1ST SESSION

# H. R. 648

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

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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

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## 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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