

111TH CONGRESS
2^D SESSION

S. 3316

To provide for flexibility and improvements in elementary and secondary education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 5, 2010

Ms. COLLINS (for herself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide for flexibility and improvements in elementary and secondary education, 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 “No Child Left Behind
5 Flexibility and Improvements Act”.

6 **SEC. 2. DISCRETION TO MODIFY ADEQUATE YEARLY**
7 **PROGRESS TIMELINE.**

8 Section 1111(b)(2)(F) of the Elementary and Sec-
9 ondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(F))
10 is amended—

1 (1) by striking “(F) TIMELINE.—Each State”
2 and inserting the following:

3 “(F) TIMELINE.—

4 “(i) IN GENERAL.—Each State”; and

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

6 “(ii) DISCRETION OF SECRETARY TO
7 MODIFY THE TIMELINE.—Every 3 years,
8 the Secretary—

9 “(I) shall review the require-
10 ments of the timeline established in
11 clause (i); and

12 “(II) may issue guidance or regu-
13 lations modifying such requirements if
14 the Secretary determines, at the Sec-
15 retary’s discretion and after a review
16 of the progress of the States towards
17 making adequate yearly progress for
18 the 2013–2014 school year, that
19 modifications to the timeline are in
20 the interests of improving student
21 achievement and are in keeping with
22 the purposes of this title.”.

1 **SEC. 3. ALTERNATIVE ACCOUNTABILITY SYSTEMS.**

2 Section 1111(b)(2) of the Elementary and Secondary
3 Education Act of 1965 (20 U.S.C. 6311(b)(2)) is further
4 amended—

5 (1) by striking subparagraph (I) and inserting
6 the following:

7 “(I) ANNUAL IMPROVEMENT FOR
8 SCHOOLS.—

9 “(i) IN GENERAL.—Each year, for a
10 school to make adequate yearly progress
11 under this paragraph—

12 “(I) each group of students de-
13 scribed in subparagraph (C)(v) must
14 meet or exceed the objectives set by
15 the State under subparagraph (G), ex-
16 cept that if any group described in
17 subparagraph (C)(v) does not meet
18 those objectives in any particular
19 year, the school shall be considered to
20 have made adequate yearly progress
21 if—

22 “(aa) the percentage of stu-
23 dents in that group who did not
24 meet or exceed the proficient
25 level of academic achievement on
26 the State assessment under para-

1 graph (3) decreased by 5 percent
2 over the past year, or an aggregate
3 of 10 percent over 2 years,
4 and that group has made
5 progress on 1 or more of the academic
6 indicators described in
7 clause (vi) or (vii) of subparagraph
8 (C); or

9 “(bb) the students in that
10 group demonstrate that the students
11 are making progress towards
12 proficiency through an additional
13 model or system for
14 measuring student progress described
15 in subparagraph (J) and
16 that group has made progress on
17 one or more of the academic indicators
18 described in clause (vi) or
19 (vii) of subparagraph (C); and

20 “(II) not less than 95 percent of
21 each group of students described in
22 subparagraph (C)(v) who are enrolled
23 in the school are required to take the
24 assessments, consistent with paragraph
25 (3)(C)(xi) and with accom-

1 modations, guidelines, and alternative
2 assessment provided in the same man-
3 ner as those provided under section
4 612(a)(16)(A) of the Individuals with
5 Disabilities Education Act and para-
6 graph (3), on which adequate yearly
7 progress is based (except that the 95
8 percent requirement described in this
9 clause shall not apply in a case in
10 which the number of students in a
11 category is insufficient to yield statis-
12 tically reliable information or the re-
13 sults would reveal personally identifi-
14 able information about an individual
15 student).

16 “(ii) CHILDREN WITH DISABIL-
17 ITIES.—In the case of a child with a dis-
18 ability (as defined in section 602(3) of the
19 Individuals with Disabilities Education
20 Act), a State may deem the child to have
21 met the State’s proficient level of academic
22 achievement on the State assessments for
23 purposes of calculating adequate yearly
24 progress under this section if—

1 “(I) the student’s individualized
2 education program team (as defined
3 in section 614(d)(1)(B) of such Act)
4 designates an alternate assessment
5 based on alternate or modified student
6 academic achievement standards as a
7 more appropriate measure of the stu-
8 dent’s academic progress and achieve-
9 ment for purposes of the assessment
10 requirements under this part; and

11 “(II) the student achieves a pro-
12 ficient score on such alternate assess-
13 ment.

14 “(iii) STATE EDUCATIONAL AGENCY
15 REPORT.—For any year that a State edu-
16 cational agency makes use of the flexibility
17 provided by this section to allow alternate
18 assessments for more than 3 percent of the
19 total student population statewide, the
20 State educational agency shall make avail-
21 able to the public a report that includes
22 the percentage of all special education stu-
23 dents in the State who were assessed ac-
24 cording to clause (ii).”;

1 (2) by redesignating subparagraphs (J) and (K)
2 as subparagraphs (L) and (M), respectively; and

3 (3) by inserting after subparagraph (I) (as
4 amended by paragraph (1)) the following:

5 “(J) ADDITIONAL MODELS AND SYSTEMS
6 FOR MEASURING STUDENT PROGRESS.—In de-
7 veloping a single, statewide State accountability
8 system pursuant to subparagraph (A), a State
9 may establish models and systems for meas-
10 uring student progress for purposes of deter-
11 mining whether an agency or school has made
12 adequate yearly progress that are in addition to
13 the models and systems otherwise described in
14 this paragraph if the models and systems are in
15 keeping with the purposes of this title. Addi-
16 tional models and systems that measure student
17 progress under this paragraph may include—

18 “(i) cohort growth models that—
19 “(I) demonstrate progress based
20 on longitudinal student assessment re-
21 sults indicating improvement in the
22 academic performance of the same co-
23 hort of students over time; and

24 “(II) may in some instances
25 specify different starting points, dif-

1 ferent intermediate goals, and dif-
2 ferent annual measurable objectives
3 for different cohorts;

4 “(ii) indexing systems that dem-
5 onstrate progress based on improvement in
6 assessment scores for students below the
7 proficient level, such as improvements from
8 the below basic to basic level, or from basic
9 to another intermediate level below the
10 proficient level, if the system does not in-
11 clude improvement in students scores for
12 students who scored at the proficient level
13 and higher; or

14 “(iii) a system that demonstrates
15 progress based on improvements in closing
16 the achievement gap or making progress
17 toward another State-established high-
18 achievement target, such as a system that
19 demonstrates progress towards having all
20 subgroups meet or exceed the current per-
21 centage of proficient students at the
22 State’s top-performing schools (such as the
23 top 20 percent of schools), if the system
24 requires continued improvement towards

1 subsequently higher targets until all stu-
2 dents have reached the proficient level.

3 “(K) REQUIREMENT FOR GUIDANCE FROM
4 THE SECRETARY ON ADDITIONAL MODELS AND
5 SYSTEMS FOR MEASURING STUDENT
6 PROGRESS.—Not later than 120 days after the
7 date of enactment of the No Child Left Behind
8 Flexibility and Improvements Act, the Secretary
9 shall establish specific models of additional
10 models and systems for measuring student
11 progress that meet the requirements of sub-
12 paragraph (J), including models of cohort-
13 growth systems, indexing systems, or high-
14 achievement target systems described in such
15 subparagraph. To the extent possible, the mod-
16 els shall demonstrate the maximum amount of
17 flexibility available under this part in the design
18 of additional models and systems for measuring
19 student progress. In addition, the Secretary
20 shall create a task force to provide guidance
21 and other technical assistance to those States
22 interested in incorporating additional models
23 and systems for measuring student progress
24 into their State accountability plan.”.

1 **SEC. 4. STATE OPTION REGARDING STUDENTS WITH LIM-**
 2 **ITED ENGLISH PROFICIENCY.**

3 Section 1111(b)(2) of the Elementary and Secondary
 4 Education Act of 1965 (20 U.S.C. 6311(b)(2)) (as amend-
 5 ed by section 3) is further amended by adding at the end
 6 the following:

7 “(N) STATE OPTION REGARDING STU-
 8 DENTS WITH LIMITED ENGLISH PRO-
 9 FICIENCY.—

10 “(i) IN GENERAL.—In determining
 11 whether a school, local educational agency,
 12 or State has made adequate yearly
 13 progress under this subsection, a State
 14 shall have the option to include in the stu-
 15 dents with limited English proficiency sub-
 16 group a student who was formerly included
 17 in the subgroup and subsequently acquired
 18 proficiency in English.

19 “(ii) DURATION OF INCLUSION IN
 20 THE SUBGROUP.—A State may include a
 21 student described in clause (i) in the stu-
 22 dents with limited English proficiency sub-
 23 group until the student completes sec-
 24 ondary school.

1 “(iii) RULES OF CONSTRUCTION.—
 2 Nothing in this subparagraph shall be con-
 3 strued—

4 “(I) to count a student described
 5 in clause (i) as a student with limited
 6 English proficiency for purposes of—

7 “(aa) determining a State-
 8 defined minimum subgroup size;
 9 and

10 “(bb) allocating funds under
 11 title III; or

12 “(II) to require a student de-
 13 scribed in clause (i)—

14 “(aa) to continue to take a
 15 limited English proficiency as-
 16 sessment under paragraph (7);
 17 and

18 “(bb) to receive language
 19 services provided to students with
 20 limited English proficiency.”.

21 **SEC. 5. LOCAL ACADEMIC ASSESSMENTS.**

22 Section 1111(b)(3)(A) of the Elementary and Sec-
 23 ondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(A))
 24 is amended—

1 (1) by striking “(A) IN GENERAL.—Each State
2 plan” and inserting the following:

3 “(A) IMPLEMENTATION OF ASSESS-
4 MENTS.—

5 “(i) IN GENERAL.—Each State plan”;

6 and

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

8 “(ii) RULE OF CONSTRUCTION RE-
9 GARDING USE OF LOCAL ASSESSMENTS.—

10 Nothing in this Act shall be construed to
11 prohibit a State from using a local assess-
12 ment system or a mixed system of State
13 and local assessments in carrying out
14 clause (i), if the assessment system—

15 “(I) is aligned with the State’s
16 content and achievement standards
17 and provides coherent information
18 about student attainment of those
19 standards;

20 “(II) is valid and reliable, and
21 consistent with relevant professional
22 and technical standards;

23 “(III) provides individual student
24 reports and itemized score analysis;
25 and

1 “(IV) allows the State to aggregate,
2 with confidence, data from disparate local assessments.
3

4 “(iii) REQUIRED TECHNICAL ASSISTANCE.—Not later than 120 days after the
5 date of enactment of the No Child Left
6 Behind Flexibility and Improvements Act,
7 the Secretary shall provide models of local
8 assessment systems or mixed systems of
9 State and local assessments meeting the
10 requirements described in clause (ii), and
11 shall provide guidance and technical assistance to States on ways that these systems
12 may be used to satisfy the assessment requirements of this part.”.

16 **SEC. 6. DEFERRAL OF ACADEMIC ASSESSMENTS.**

17 Section 1111(b)(3)(D) of the Elementary and Secondary
18 Education Act of 1965 (20 U.S.C. 6311(b)(3)(D))
19 is amended by striking clauses (i) through (iv) and inserting the following:
20

21 “(i) \$640,000,000 for fiscal year
22 2010; and

23 “(ii) \$670,000,000 for fiscal year
24 2011.”.

1 **SEC. 7. ADEQUATE YEARLY PROGRESS BY GROUP AND SUB-**
2 **JECT.**

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

5 (1) in subparagraph (A) of paragraph (1), by
6 inserting “with respect to the performance of a par-
7 ticular group of students described in section
8 1111(b)(2)(C)(v) in the same academic subject,”
9 after “that fails, for 2 consecutive years,”;

10 (2) in the matter preceding subparagraph (A)
11 of paragraph (5), by inserting “with respect to the
12 performance of a particular group of students de-
13 scribed in section 1111(b)(2)(C)(v) in the same aca-
14 demic subject,” after “that fails to make adequate
15 yearly progress,”;

16 (3) in the matter preceding clause (i) of para-
17 graph (7)(C), by inserting “with respect to the per-
18 formance of a particular group of students described
19 in section 1111(b)(2)(C)(v) in the same academic
20 subject,” after “that fails to make adequate yearly
21 progress,”; and

22 (4) in the matter preceding clause (i) of para-
23 graph (8)(A), by inserting “with respect to the per-
24 formance of a particular group of students described
25 in section 1111(b)(2)(C)(v) in the same academic

1 subject,” after “continues to fail to make adequate
2 yearly progress,”.

3 **SEC. 8. MODIFICATION OF THE DEFINITION OF HIGHLY**
4 **QUALIFIED TEACHER.**

5 (a) IN GENERAL.—Subpart 1 of part A of title I of
6 the Elementary and Secondary Education Act of 1965 (20
7 U.S.C. 6311 et seq.) is amended by adding at the end
8 the following:

9 **“SEC. 1120C. MODIFICATION OF THE DEFINITION OF HIGH-**
10 **LY QUALIFIED TEACHER.**

11 “(a) HIGHLY QUALIFIED TEACHERS OF MULTIPLE
12 ACADEMIC SUBJECTS.—Notwithstanding section
13 9101(23) or any other provision of law, a middle or sec-
14 ondary school teacher employed to teach multiple aca-
15 demic subjects shall be deemed to be highly qualified for
16 purposes of this part, if—

17 “(1) the teacher meets the requirements of sec-
18 tion 9101(23)(A);

19 “(2) the teacher has a bachelor’s degree;

20 “(3) the teacher has demonstrated a high level
21 of competency in at least one subject taught by the
22 teacher by—

23 “(A) passing a test described in section
24 9101(23)(B)(ii)(I) that is applicable to such
25 subject; or

1 “(B) successful completion of a course of
2 study, certification, or credential described in
3 section 9101(23)(B)(ii) that is applicable to
4 such subject; and

5 “(4)(A) the State educational agency makes a
6 determination, for a period of not more than 3 years
7 at a time, that—

8 “(i) the teacher should be considered high-
9 ly qualified for purposes of this part based on
10 a showing that the teacher is making progress
11 toward becoming highly qualified as defined in
12 section 9101(23); and

13 “(ii) at the time the State educational
14 agency makes such determination, the teacher
15 teaches in a local educational agency of the
16 State that has provided the State educational
17 agency with evidence (that may include the fact
18 that the local educational agency serves a small
19 and rural school facing unique staffing or hir-
20 ing challenges that require teachers to teach
21 multiple academic subjects) that the local edu-
22 cational agency has made a reasonable effort to
23 provide teachers who are highly qualified as de-
24 fined in section 9101(23) to every student
25 served by the local educational agency; or

1 “(B) the teacher has an academic minor con-
2 sisting of not less than 15 credit hours, or the equiv-
3 alent of an academic minor as defined by the State
4 educational agency in its State plan pursuant to sec-
5 tion 1119(a)(2), in each academic subject that is
6 taught by the teacher (other than a subject for
7 which the teacher has demonstrated a high level of
8 competency under paragraph (3)), and each such
9 subject is related to a subject for which the teacher
10 has demonstrated a high level of competency under
11 paragraph (3).

12 “(b) REPORT.—For each year that a teacher in a
13 State is deemed to be highly qualified under subsection
14 (a), the State educational agency in the State shall make
15 available to the public a report that includes—

16 “(1) the number of teachers in the State that
17 are deemed highly qualified under subsection (a);
18 and

19 “(2) the total amount of subgrant funds made
20 available under subpart 2 of part A of title II that
21 the State awards to local educational agencies under
22 such subpart that are available to assist the teachers
23 described in paragraph (1) with the process of be-
24 coming highly qualified as defined in section
25 9101(23).”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 the Elementary and Secondary Education Act of 1965 is
 3 amended by inserting after the item relating to section
 4 1120B the following:

“Sec. 1120C. Modification of the definition of highly qualified teacher.”.

5 **SEC. 9. REAUTHORIZATION OF READING FIRST AND EARLY**
 6 **READING FIRST PROGRAMS.**

7 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
 8 1002(b) of the Elementary and Secondary Education Act
 9 of 1965 (20 U.S.C. 6302(b)) is amended—

10 (1) in paragraph (1), by striking “2002” and
 11 inserting “2010”; and

12 (2) in paragraph (2), by striking “2002” and
 13 inserting “2010”.

14 (b) USE OF FUNDS FOR READING ACTIVITIES.—

15 (1) FINDING.—Congress finds that, based on
 16 the Office of Inspector General of the Department of
 17 Education’s September 2006 report entitled “The
 18 Reading First Program’s Grant Application Proc-
 19 ess”, it is crucial to achieving the goals of the Read-
 20 ing First program under subpart 1 of part B of title
 21 I of the Elementary and Secondary Education Act
 22 of 1965 (20 U.S.C. 6361 et seq.) that greater flexi-
 23 bility is afforded to program participants, including
 24 allowing participants to choose from a variety of sci-
 25 entificallly based reading programs.

1 (2) USE OF FUNDS FOR READING ACTIVI-
 2 TIES.—Section 1202(c)(7) of the Elementary and
 3 Secondary Education Act of 1965 (20 U.S.C.
 4 6362(c)(7)) is amended by adding at the end the fol-
 5 lowing:

6 “(C) READING ACTIVITIES FOR INDI-
 7 VIDUAL STUDENTS.—Notwithstanding any
 8 other provision of this subpart, an eligible local
 9 educational agency may use the funds provided
 10 under the subgrant for any activity described in
 11 subparagraph (A) that is provided to a student
 12 in a manner other than on a classwide instruc-
 13 tion basis, including small group instruction
 14 and one-to-one instruction.”.

15 **SEC. 10. DEFINITION OF HIGHLY QUALIFIED.**

16 Section 9101(23)(B)(ii)(II) of the Elementary and
 17 Secondary Education Act of 1965 (20 U.S.C.
 18 7801(23)(B)(ii)(II)) is amended by striking
 19 “credentialing; and” and inserting the following:
 20 “credentialing,

21 “except that the Secretary shall promul-
 22 gate regulations permitting a teacher to
 23 demonstrate subject area competence in
 24 history, geography, economics, government,
 25 civics, or related subjects at middle or sec-

1 ondary schools in the State through a
2 State social studies certificate that quali-
3 fies the teacher to teach such subjects;
4 and”.

○