

109TH CONGRESS  
1ST SESSION

# S. 1690

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

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2005

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

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## 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 subparagraph (C)(vi) or (vii); or

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

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

1 assessment provided in the same man-  
2 ner as those provided under section  
3 612(a)(17)(A) of the Individuals with  
4 Disabilities Education Act and para-  
5 graph (3), on which adequate yearly  
6 progress is based (except that the 95  
7 percent requirement described in this  
8 clause shall not apply in a case in  
9 which the number of students in a  
10 category is insufficient to yield statis-  
11 tically reliable information or the re-  
12 sults would reveal personally identifi-  
13 able information about an individual  
14 student).

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

24 “(I) the student’s individualized  
25 education program plan team (as de-

1                    fined in section 614(d)(1)(B) of such  
2                    Act) designates an alternate assess-  
3                    ment based on alternate or modified  
4                    student academic achievement stand-  
5                    ards as a more appropriate measure  
6                    of the student's academic progress  
7                    and achievement for purposes of the  
8                    assessment requirements under this  
9                    part; and

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

13                    “(iii) REPORT FROM SEA.—For any  
14                    year that a State educational agency  
15                    makes use of the flexibility provided by  
16                    this section to allow alternate assessments  
17                    for more than 3 percent of the total stu-  
18                    dent population Statewide, the State edu-  
19                    cational agency shall make available to the  
20                    public a report that includes the percent-  
21                    age of all special education students in the  
22                    State who were assessed according to  
23                    clause (ii).”.

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

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

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

16           “(i) cohort growth models that—

17           “(I) demonstrate progress based  
18 on longitudinal student assessment re-  
19 sults indicating improvement in the  
20 academic performance of the same co-  
21 hort of students over time; and

22           “(II) may in some instances  
23 specify different starting points, dif-  
24 ferent intermediate goals, and dif-

1                   ferent annual measurable objectives  
2                   for different cohorts;

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

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

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

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 system 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                                 2006; and

23                                 “(ii) \$670,000,000 for fiscal year  
24                                 2007.”.

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

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

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

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

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

19 “(3) the teacher has demonstrated a high level  
20 of competency in at least one subject taught by the  
21 teacher by passing a test described in subclause (I),  
22 or a successful completion described in subclause  
23 (II), of section 9101(23)(B)(ii), applicable to such  
24 subject;

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

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

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

22           “(B) the teacher has an academic minor con-  
23 sisting of not less than 15 credit hours, or the equiv-  
24 alent of an academic minor as defined by the State  
25 educational agency in its State plan pursuant to sec-

1 tion 1119(a)(2), in each academic subject that is  
2 taught by the teacher (other than a subject for  
3 which the teacher has demonstrated a high level of  
4 competency under paragraph (3)), and each such  
5 subject is related to a subject for which the teacher  
6 has demonstrated a high level of competency under  
7 paragraph (3).

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

12 “(1) the number of teachers in the State that  
13 are deemed highly qualified under subsection (a);  
14 and

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

22 **SEC. 9. READING ACTIVITIES FOR INDIVIDUAL STUDENTS.**

23 Section 1202(c)(7) of the Elementary and Secondary  
24 Education Act of 1965 (20 U.S.C. 6362(c)(7)) is amended  
25 by adding at the end the following:

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

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

11       Section 9101(23)(B)(ii)(II) (20 U.S.C.  
12 7801(23)(B)(ii)(II)) is amended by striking  
13 “credentialing; and” and inserting “credentialing,  
14           except that the Secretary shall promulgate  
15 regulations permitting a teacher to dem-  
16 onstrate subject area competence in his-  
17 tory, geography, economics, government,  
18 civics, or related subjects at middle or sec-  
19 ondary schools in the State through a  
20 State social studies certificate that quali-  
21 fies the teacher to teach such subjects;  
22 and”.

○