

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 4064

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

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2006

Mr. CRAPO 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 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 “No Child Left Behind  
5 Improvements Act of 2006”.

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 (O); 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.

1           “(L) STUDENTS WITH DISABILITIES RE-  
2           QUIRING ALTERNATE ASSESSMENTS.—Notwith-  
3           standing any other provision of this part, a  
4           State may implement the amendments made to  
5           part 200 of title 34, Code of Federal Regula-  
6           tions on December 9, 2003 (68 Fed. Reg.  
7           68698) (related to achievement of students with  
8           significant cognitive disabilities) as if such  
9           amendments—

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

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

24                           “(II) the individualized education  
25                           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          No Child Left Behind Improvements  
17          Act of 2006.

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—

1           “(i) include measures of student  
2 achievement over a period of time (such as  
3 a value added accountability system) or the  
4 progress of some or all of the groups of  
5 students described in subparagraph (C)(v)  
6 to the next higher level of achievement de-  
7 scribed in subparagraph (II) or (III) of  
8 paragraph (1)(D)(ii) as a factor in deter-  
9 mining whether a school, local educational  
10 agency, or State has made adequate yearly  
11 progress, as described in this paragraph;  
12 or

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

19           “(I) the primary goal of such  
20 definition is that all students in each  
21 group described in subparagraph  
22 (C)(v) meet or exceed the proficient  
23 level of academic achievement, estab-  
24 lished 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

1 academic performance caused the identi-  
2 fication under this paragraph, with the op-  
3 tion to transfer to one other public school  
4 identified by and”; and

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

6 “(G) OPTIONS.—A local educational agen-  
7 cy may offer supplemental services as described  
8 in subsection (e) in place of the option to trans-  
9 fer to another public school described in sub-  
10 paragraph (E), for the first school year a school  
11 is identified for improvement under this para-  
12 graph.”;

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

17 (3) in the matter preceding clause (i) of para-  
18 graph (7)(C), by inserting “(in the same subject for  
19 the same group of students)” after “adequate yearly  
20 progress”.

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