

STATE AND LOCAL FUNDING FLEXIBILITY ACT

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JULY 25, 2011.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. KLINE, from the Committee on Education and the Workforce,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2445]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 2445) to amend the Elementary and Secondary Education Act of 1965 to provide States and local educational agencies with maximum flexibility in using Federal funds provided under such Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

The Act may be cited as the “State and Local Funding Flexibility Act”.

**SEC. 2. FLEXIBILITY TO USE FEDERAL FUNDS.**

(a) IN GENERAL.—Subpart 2 of part A of title VI of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7305 et seq.) is amended to read as follows:

**“Subpart 2—Funding Flexibility for State and Local  
Educational Agencies**

**“SEC. 6121. SHORT TITLE.**

“This subpart may be cited as the ‘State and Local Funding Flexibility Act’.

**“SEC. 6122. PURPOSE.**

“The purpose of this subpart is to allow States and local educational agencies the flexibility to—

“(1) design flexible programs that use Federal funds to support student achievement for all students, including students most at risk of failing to meet the State’s academic achievement standards; and

“(2) extend and enhance the funding flexibility provided to rural local educational agencies under section 6211 to all State educational agencies and local educational agencies by providing such agencies flexibility in using Federal formula funds received to carry out authorized State or local activities for other authorized or required State or local activities.

**“SEC. 6123. FLEXIBILITY TO USE FEDERAL FUNDS.**

“(a) ALTERNATIVE USES OF FEDERAL FUNDS FOR STATE EDUCATIONAL AGENCIES.—

“(1) IN GENERAL.—Subject to subsections (c) and (d) and notwithstanding any other provision of law, a State educational agency may use the applicable funding that the agency receives for a fiscal year to carry out any State activity authorized or required under one or more of the following provisions:

“(A) Section 1003.

“(B) Section 1004.

“(C) Subpart 1 of part B of title I.

“(D) Part C of title I.

“(E) Part D of title I.

“(F) Part A of title II.

“(G) Part B of title II.

“(H) Title III.

“(I) Part B of title IV.

“(J) Part A of title V.

“(K) Subpart 1 of part A of title VI.

“(L) Subpart 2 of part B of title VI.

“(M) Subpart 2 of part A of title VII.

“(2) NOTIFICATION.—Not later than June 1 of each year, a State educational agency shall notify the Secretary of the State educational agency’s intention to use the applicable funding for any of the alternative uses under paragraph (1).

“(3) APPLICABLE FUNDING DEFINED.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), in this subsection, the term ‘applicable funding’ means funds provided to carry out State activities under one or more of the following provisions:

“(i) Section 1003(g)(2).

“(ii) Section 1004.

“(iii) Subpart I of Part B of title I.

“(iv) Part C of title I.

“(v) Part D of title I.

“(vi) Part A of title II.

“(vii) Part B of title II.

“(viii) Part A of title III.

“(ix) Part B of title IV.

“(x) Part A of title V.

“(xi) Title I of Public Law 111–226.

“(B) LIMITATION.—In this subsection, the term ‘applicable funding’ does not include funds provided under any of the provisions listed in subparagraph (A) that State educational agencies are required by this Act—

“(i) to reserve, allocate, or spend for required activities;

“(ii) to allot or award to local educational agencies or other entities eligible to receive such funds; or

“(iii) to use for technical assistance or monitoring.

“(4) DISBURSEMENT.—The Secretary shall disburse the applicable funding to State educational agencies for alternative uses under paragraph (1) for a fiscal year at the same time as the Secretary disburses the applicable funding to State educational agencies that do not intend to use the applicable funding for such alternative uses for the fiscal year.

“(b) ALTERNATIVE USES OF FEDERAL FUNDS FOR LOCAL EDUCATIONAL AGENCIES.—

“(1) IN GENERAL.—Subject to subsections (c) and (d) and notwithstanding any other provision of law, a local educational agency may use the applicable funding that the agency receives for a fiscal year to carry out any local activity authorized or required under one or more of the following provisions:

“(A) Section 1003.

“(B) Part A of title I.

“(C) Subpart 1 of part B of title I.

“(D) Part C of title I.

“(E) Part D of title I.

“(F) Part A of title II.

“(G) Part B of title II.

“(H) Part A of title III.

“(I) Part B of title IV.

“(J) Part A of title V.

“(K) Subpart 2 of part B of title VI.

“(L) Part A of title VII.

“(M) Section 613(f) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(f)).

“(2) NOTIFICATION.—A local educational agency shall notify the State educational agency of the local educational agency’s intention to use the applicable funding for any of the alternative uses under paragraph (1) by a date that is established by the State educational agency for the notification.

“(3) APPLICABLE FUNDING DEFINED.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), in this subsection, the term ‘applicable funding’ means funds provided to carry out local activities under one or more of the following provisions:

“(i) Part A of title I.

“(ii) Part C of title I.

“(iii) Part D of title I.

“(iv) Part A of title II.

“(v) Part A of title III.

“(vi) Part A of title V.

“(vii) Part A of title VII.

“(viii) Title I of Public Law 111–226.

“(B) LIMITATION.—In this subsection, the term ‘applicable funding’ does not include funds provided under any of the provisions listed in subparagraph (A) that local educational agencies are required by this Act—

“(i) to reserve, allocate, or spend for required activities;

“(ii) to allot or award to entities eligible to receive such funds; or

“(iii) to use for technical assistance or monitoring.

“(4) DISBURSEMENT.—Each State educational agency that receives applicable funding for a fiscal year shall disburse the applicable funding to local educational agencies for alternative uses under paragraph (1) for the fiscal year at the same time as the State educational agency disburses the applicable funding to local educational agencies that do not intend to use the applicable funding for such alternative uses for the fiscal year.

“(c) RULE FOR ADMINISTRATIVE COSTS.—A State educational agency or a local educational agency may only use applicable funding (as defined in subsection (a)(3) or (b)(3), respectively) for administrative costs incurred in carrying out a provision listed in subsection (a)(1) or (b)(1), respectively, to the extent that the agency, in the absence of this section, could have used funds for administrative costs with respect to a program listed in subsection (a)(3) or (b)(3), respectively.

“(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to relieve a State educational agency or local educational agency of any requirements relating to—

“(1) maintenance of effort;

“(2) use of Federal funds to supplement, not supplant, non-Federal funds;

“(3) comparability of services;

“(4) equitable participation of private school students and teachers;

“(5) applicable civil rights requirements;

“(6) the selection of school attendance areas or schools under subsections (a) and (b), and allocations to such areas or schools under subsection (c), of section 1113;

“(7) section 1111;

“(8) section 1116; or

“(9) section 3122.”

(b) CONFORMING AMENDMENT.—The table of contents of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended by striking the items relating to subpart 2 of part A of title VI and inserting the following:

“Subpart 2—Funding Flexibility for State and Local Educational Agencies

“Sec. 6121. Short title.

“Sec. 6122. Purpose.

“Sec. 6123. Flexibility to use Federal funds.”.

## PURPOSE

H.R. 2445, the State and Local Funding Flexibility Act, amends Title VI, Part A, Subpart 2 of the Elementary and Secondary Edu-

cation Act to provide states and school districts with maximum flexibility to use federal education dollars on programs that best serve the needs of students.

#### COMMITTEE ACTION

This bill is the third in a series designed to reauthorize the Elementary and Secondary Education Act (ESEA). H.R. 2445 builds upon the Committee's efforts to examine the federal investment in education and reduce federal control over elementary and secondary education programs.

#### 112TH CONGRESS

##### *Hearings*

On February 10, 2011, the Committee on Education and the Workforce held a hearing in Washington, DC, on "Education in the Nation: Examining the Challenges and Opportunities Facing America's Classrooms." The purpose of the hearing was to learn what challenges states face in developing a high-quality education system, explore innovative policies that are being proposed and implemented at the state and local level, and examine the federal investment in education and its limited effect on student achievement. Testifying before the Committee were: Dr. Tony Bennett, Superintendent of Public Instruction, Indiana Department of Education, Indianapolis, IN; Ms. Lisa Graham Keegan, Founder, Education Breakthrough Network, Phoenix, AZ; Mr. Andrew Coulson, Director, Center for Educational Freedom, CATO Institute, Seattle, WA; and Mr. Ted Mitchell, President and CEO, New Schools Venture Fund, San Francisco, CA.

On March 1, 2011, the Committee on Education and the Workforce held a hearing in Washington, DC, on "Education Regulations: Weighing the Burden on Schools and Students." The purpose of the hearing was to examine the burden of federal, state, and local regulations on the nation's education system and learn whether these time consuming and duplicative requirements ultimately improve student achievement. Testifying before the Committee were: Mr. Gene Wilhoit, Executive Director, Council of Chief State School Officers, Washington, DC; Dr. Edgar Hatrick, Superintendent, Loudoun County Public Schools, Ashburn, VA; Mr. Christopher B. Nelson, President, St. John's College, Annapolis, MD; and Ms. Kati Haycock, President, The Education Trust, Washington, DC.

On March 9, 2011, the Committee on Education and the Workforce held a hearing in Washington, DC, on "The Budget and Policy Proposals of the U.S. Department of Education." The purpose of the hearing was to discuss the Department's budget request for Fiscal Year 2012. Testifying before the Committee was The Honorable Arne Duncan, Secretary, U.S. Department of Education, Washington, DC.

On March 15, 2011, the Committee on Education and the Workforce, Subcommittee on Early Childhood, Elementary, and Secondary Education, held a hearing in Washington, DC, on "Education Regulations: Burying Schools in Paperwork." The purpose of the hearing was to hear from local officials representing elementary and secondary schools about the paperwork burden bureau-

cratic regulations impose on their schools and school districts. Testifying before the Subcommittee were: Mr. Robert P. “Bob” Grimesey, Jr., Superintendent, Orange County Public Schools, Orange, VA; Mr. James Willcox, CEO, Aspire Public Schools, Oakland, CA; Ms. Jennifer A. Marshall, Director of Domestic Policy Studies, Heritage Foundation, Washington, DC; and Mr. Chuck Grable, Assistant Superintendent for Instruction, Huntington County Community School Corporation, Huntington, IN.

On April 7, 2011, the Committee on Education and the Workforce held a hearing in Washington, DC, on “Education Reforms: Promoting Flexibility and Innovation.” The purpose of the hearing was to discuss the appropriate federal role in K–12 education and explore the work of state and local education leaders who are pushing for innovative approaches to education reform and greater state and local flexibility. Testifying before the Committee were: Dr. Janet Barresi, Oklahoma State Superintendent of Public Instruction, Oklahoma City, OK; Dr. Gary Amoroso, Superintendent, Lakeville Area Public Schools, Lakeville, MN; Mr. Yohance Maqubela, Chief Operating Officer, Howard University Middle School of Mathematics and Science, Washington, DC; and Dr. Terry Grier, Superintendent, Houston Independent School District, Houston, TX.

#### *Legislative action*

On July 7, 2011, Rep. John Kline (R–MN) introduced H.R. 2445, the State and Local Funding Flexibility Act. This bill strikes the State and Local Educational Agencies Funding Transferability program under the Elementary and Secondary Education Act and replaces it with a more flexible program allowing for improved use of federal education funds. H.R. 2445 is cosponsored by Rep. Duncan Hunter (R–CA), Rep. Howard P. “Buck” McKeon (R–CA), Rep. Bob Goodlatte (R–VA), Rep. Phil Roe (R–TN), Rep. Glenn Thompson (R–PA), Rep. Scott DesJarlais (R–TN), Rep. Richard Hanna (R–NY), Rep. Larry Bucshon (R–IN), Rep. Lou Barletta (R–PA), Rep. Kristi Noem (R–SD), Rep. Martha Roby (R–AL), Rep. Joseph Heck (R–NV), Rep. Dennis Ross (R–FL), and Rep. Mike Kelly (R–PA).

The Committee on Education and the Workforce considered H.R. 2445 in legislative session on July 13, 2011, and reported it favorably, as amended, to the House of Representatives by a vote of 23–17. The Committee considered and adopted the following amendment to H.R. 2445:

- Rep. Glenn Thompson (R–PA) offered an Amendment in the Nature of a Substitute to make technical corrections to the legislation. The amendment also reiterates that states and school districts must comply with all civil rights requirements and school funding allocation requirements. The amendment was adopted by voice vote.

The Committee further considered the following amendments to H.R. 2445, which were not adopted:

- Rep. George Miller (D–CA) offered an amendment to prohibit Local Educational Agencies (LEAs) from using funds allocated for Title I, Part A, for any other purpose. The amendment failed by a vote of 17–23.

- Rep. Raul Grijalva (D–AZ) offered an amendment to prohibit State Educational Agencies (SEAs) and LEAs from using funds al-

located for English Language Acquisition, Language Enhancement, and Academic Achievement for any other purpose. The amendment failed by a vote of 17–23.

- Rep. Ruben Hinojosa (D–TX) offered an amendment to prohibit SEAs and LEAs from using funds allocated for the Education of Migratory Children for any other purpose. The amendment failed by a vote of 17–23.

- Rep. Robert “Bobby” Scott (D–VA) offered an amendment to prohibit SEAs and LEAs from using funds allocated for the Education of Neglected, Delinquent, or At-Risk Children for any other purpose. The amendment failed by a vote of 17–23.

- Rep. Dale Kildee (D–MI) offered an amendment to prohibit LEAs from using funds allocated for Indian Education for any other purpose. The amendment failed by a vote of 17–23.

- Rep. Rush Holt (D–NJ) offered an amendment to add reporting requirements for SEAs and LEAs on how funds are used. The amendment failed by a vote of 17–23.

The Committee received letters of support for H.R. 2445 from the American Association of School Administrators (AASA); the National School Boards Association (NSBA); and several local school superintendents across the country.

#### SUMMARY

H.R. 2445, the State and Local Funding Flexibility Act, allows states and school districts to use certain funds received under the Elementary and Secondary Education Act (ESEA) for additional activities authorized under the law. This provides state and local officials with greater control over their education decisions, eliminates bureaucratic red tape, and encourages local innovation to reform public education.

The legislation defines the list of programs states and districts may use for an alternative purpose.

*States may use funds from:*

- School Improvement Grants (State Administration)
- Aid for the Disadvantaged (State Administration)
- Migrant Education
- Neglected and Delinquent Programs
- Teacher Quality State Grants
- English Language Acquisition Grants
- 21st Century Community Learning Centers
- Education Jobs Fund

*School districts may use funds from:*

- Aid for the Disadvantaged
- Migrant Education
- Neglected and Delinquent Programs
- Teacher Quality State Grants
- English Language Acquisition Grants
- Indian Education
- Education Jobs Fund

*Activities for which the funds may be used include:*

- School Improvement Grants
- Aid for the Disadvantaged (State Administration) (states only)
- Aid for the Disadvantaged (school districts only)
- Reading First
- Migrant Education

- Neglected and Delinquent Programs
- Teacher Quality Grants
- Math and Science Partnerships
- English Language Acquisition Grants
- 21st Century Community Learning Centers
- Innovative Programs
- Grants for State Assessments (states only)
- Rural and Low-Income School Program
- Indian Education
- Early Intervening Services under Section 613(f) of the Individuals with Disabilities Education Act (school districts only)

Under the State and Local Funding Flexibility Act, if a state or school district receiving formula funds under the Teacher Quality State Grant program wanted to use those funds to purchase new computers or create a new literacy program for English Language Learners, it could do so unencumbered by federal spending requirements. The bill maintains monitoring, reporting, and accountability requirements for states and school districts under existing ESEA programs. This ensures states and school districts continue to focus on improving the academic achievement of special populations of students, including disadvantaged students, migrant students, at-risk students, and English Language Learners.

The State and Local Funding Flexibility Act also includes a reasonable annual notification requirement. Under the bill, school districts will notify the state how they plan to use their federal funds and states will notify the Secretary of Education how they plan to use their federal funds. The bill does not require an application or approval process to utilize the flexibility. Further, the legislation ensures states and school districts intending to exercise funding flexibility will receive their allocations at the same time as those choosing not to utilize the authority, an assurance also included under the existing rural flexibility program.

By maintaining a focus on student performance and enabling states and school districts to determine how best to deliver those results, the State and Local Funding Flexibility Act will help enhance our commitment to education by encouraging local innovation, restore state and local control of education, and reduce the federal role in public education.

#### COMMITTEE VIEWS

##### *Background*

The federal government currently operates a host of elementary and secondary education programs, each of which is governed by a separate set of eligibility requirements, reporting regulations, and strict rules dictating how federal funds may be spent. For example, if a local suburban elementary school wants to use Title I (Aid for the Disadvantaged) to create a literacy program targeted toward all 3rd graders, it can only do so if it meets federal requirements to administer a school-wide program in which 40 percent or more of its students come from low-income families. Similarly, if a local school district has completed hiring all of its highly qualified teachers for the year and still has remaining Title II (Teacher Quality State Grants) dollars, it has no choice but to spend the funding on an activity authorized under that program irrespective of need or

other priorities. The Committee believes such siloed funding can severely limit states' and school districts' ability to apply federal funds toward local education priorities and innovative initiatives.

Since passage of the Elementary and Secondary Education Act (ESEA), which was last reauthorized as the No Child Left Behind (NCLB), states, local superintendents, and teachers have widely criticized the law as an excessive expansion of the federal government into public education and pushed back against its most burdensome requirements. The Committee has heard from numerous states and school districts that federal requirements surrounding how educators spend federal dollars are too restrictive. Under the current structure, each of the federal ESEA programs have contradictory funding and use conditions and varying eligibility requirements, thus limiting flexibility to local school districts. The Committee believes this heavy-handed approach empowers the federal government to dictate funding decisions of states and local school districts and inhibits their ability to foster innovation to improve public education.

Current law includes a number of provisions that provide states and school districts with limited flexibility to tailor using federal dollars to support local priorities. The funding authorities include the following:

- *Transferability*: States and school districts can transfer up to 50 percent of their Teacher Quality Grants, Education Technology, 21st Century Community Learning Centers, and Innovative Program dollars between programs and/or into the Title I program. States and school districts that are in "School Improvement," "Corrective Action," or "Restructuring" status are limited to transferring 30 percent of their funds between programs. Approximately 12–16 percent of school districts take advantage of this flexibility option.<sup>1</sup>

- *State-Flex Program*: Up to seven states can apply to the Secretary of Education to consolidate all of its state administration and state activity funds. Currently, no states participate in the State-Flex program.<sup>2</sup>

- *Local-Flex Program*: Eighty school districts can apply to the Secretary of Education to consolidate all of their funds under Teacher Quality Grants, Education Technology, 21st Century Community Learning Centers, and Innovative Program programs. Seattle is the only school district currently participating, and is doing so under a Department of Education waiver.<sup>3</sup>

- *Rural Education Achievement Program (REAP) Flex*: The REAP Flex program allows eligible rural school districts flexibility in using funds for activities under a limited number of authorized ESEA programs. To participate in the program, an eligible school district simply must notify its state educational agency of its intent to do so by the notification deadline established by the state. More

<sup>1</sup> Congressional Research Service, "RL31583:K–12 Education: Special Forms of Flexibility in the Administration of Federal Aid Programs."

<sup>2</sup> U.S. Department of Education, State Flexibility Demonstration Program: <http://www2.ed.gov/programs/stateflex/awards.html>.

<sup>3</sup> U.S. Department of Education, Local Flexibility Demonstration Program: <http://www2.ed.gov/programs/localflex/awards.html>.



than 4,000 districts nationwide are eligible, and more than 50 percent of those eligible districts use this flexibility option.<sup>4</sup>

Since these funding authorities were created by Congress in 2001, states and school districts have criticized the Transferability, State Flex, and Local Flex Programs as overly complex and burdensome. For example, in most cases, the authority to consolidate funds is limited to a small number of federal programs, many of which have received little to no funding by Congress. This dramatically limits the ability of school districts to maximize their use of funds. The Secretary has the authority to take flexibility away from states and school districts if they are found to be noncompliant with the authority and can also impose penalties. The approval process and requirements of a number of the programs are onerous, thus limiting the number of states and school districts that want to take advantage of this funding flexibility. The Committee believes these funding authorities, while important, are overly complex and need to be restructured to provide true funding flexibility to state and school districts.

Despite record increases in federal spending, academic achievement has not improved, and academic achievement gaps persist. According to the National Assessment for Educational Progress (NAEP), the average math score for 13 year olds in 2008 was only 15 points higher than in 1973 and reading scores in 2008 were only one point higher than in 1971.<sup>5</sup> Today, only 60 percent of students with disabilities,<sup>6</sup> 57 percent of African Americans students, and 58 percent of Hispanic students graduate from high school.<sup>7</sup> Additionally, the Secretary of Education has said that more than 80 percent of schools will fail to meet Adequate Yearly Progress (AYP) this year.

Despite national challenges, states and school districts are instituting and carrying out dramatic reforms to public education. Reform initiatives that address issues around teacher quality, accountability, and parental options are moving through state legislatures with great success. States with education reform agendas include: Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Minnesota, New Jersey, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, and Wisconsin. These states have embraced state-led accountability efforts, signaling to Congress that they understand a quality education is critical to prepare today's students to compete in tomorrow's workforce.

These statistics and state and local leadership demonstrate the need to re-evaluate the federal role in elementary and secondary education and restore education decisions to states and local school districts who should bear the primary responsibility for public education. H.R. 2445, the State and Local Funding Flexibility Act, is an important part of this effort to allow education leaders new freedom to use federal funds to develop comprehensive solutions to local education challenges.

<sup>4</sup> U.S. Department of Education, "Evaluation of Flexibility Under No Child Left Behind: Volume III—The Rural Education Achievement Program (REAP Flex): <http://www2.ed.gov/rschstat/eval/disadv/flexibility/volIII-reap.pdf>.

<sup>5</sup> "The Nation's Report Card: Long-Term Trend 2008." April 28, 2009.

<sup>6</sup> U.S. Department of Education, "FY2010 Program Performance Reports/Special Education Grants To States," p.7. <http://www2.ed.gov/about/reports/annual/2010report/program.html>.

<sup>7</sup> EPE Research Center, 2011. <http://www.edweek.org/media/dc11-graduationintheunitedstates-2.pdf>.

*Providing funding flexibility for every State and school district*

H.R. 2445, the State and Local Funding Flexibility Act, amends Title VI of ESEA to repeal the current Transferability authority, replacing it with new authority to allow all 50 states and almost 14,000 school districts to use funds received under federal formula grants and Education Jobs Funds to support certain activities authorized under ESEA. Under the legislation, states and school districts will be able to use more than \$20 billion in federal funds on their own state and local education priorities, thereby increasing the academic achievement of all students, including special populations.

The Elementary and Secondary Education Act requires states and school districts to be accountable for the academic achievement of all students. Although funds are allocated to states and school districts, in part, based on the number of low-income students they serve, the law focused on helping all students excel academically. The Committee believes the current structure and use of federal funds must be updated to reflect existing realities and the needs of states and school districts to improve public education for all students.

Under the State and Local Funding Flexibility Act, states and school districts could use federal education funds to bolster those activities that support all students, including low-income students, English Language Learners, migrant students, and other special populations. The legislation will help states and school districts meet the requirements of Title I (Aid for the Disadvantaged) and Title III (English Language Acquisition) programs, which hold all schools accountable for student performance, including student subgroups, and English proficiency, respectively. At the same time, the legislation preserves the current Title I and Title III provisions requiring states and local school districts to disaggregate data and measure student performance to ensure all students are excelling academically and achieving English proficiency. As such, states and school districts will still be held accountable for the academic achievement of special populations of students.

Schools with a poverty level of at least 40 percent are currently able to use Title I funds for school-wide programs that benefit all students and consolidate a number of federal ESEA programs to meet their students' unique needs. This poverty threshold was lowered from 75 percent to 50 percent in the 1994 reauthorization of the Elementary and Secondary Education Act and was reduced again in the No Child Left Behind Act. There is a long-standing, bipartisan federal recognition that the best way to address the needs of the most at-risk students is to enable and encourage school-wide solutions. The Committee notes that H.R. 2445 builds on this consensus by expanding the flexibility provided through the Title I school-wide program, as well as the REAP Flex program, to additional federal education programs.

The State and Local Funding Flexibility Act will help put decisions about education priorities back in the hands of state officials and school administrators while maintaining accountability standards and protecting taxpayers. Lawmakers and bureaucrats in the nation's capital will never have the same integral understanding of the diverse needs of students in cities like New Orleans, Indianapolis, or Tampa Bay as the teachers, administrators, and parents

who spend time with them every day. The bill provides states and school districts with additional flexibility to target federal dollars to the programs and initiatives that best meet the unique needs of their students.

*Challenging erroneous myths*

While empowering states and local officials to take the lead on important education reform efforts, H.R. 2445 does not take money away from poor or disadvantaged children, migrant, neglected and delinquent, English Language Learners, and Native American students. The bill does not allow states or school districts to change formula allocations or allow states and school districts to ignore civil rights laws or neglect the academic achievement of all students.

TITLE I—EDUCATION FOR THE DISADVANTAGED

The Committee believes the best way to address the needs of at-risk students is to enable and encourage solutions that benefit all students. The State and Local Funding Flexibility Act leaves these decisions to states and school districts by providing the flexibility to redirect funds across federal programs. For example, if a LEA determines that more support is needed to serve disadvantaged students for Title I purposes, it could use Title II (Teacher Quality Grants) to support those important activities and programs under Title I. A local school district could also use Title I funds for new teacher preparation programs or to create new literacy initiatives that benefit all students. As noted, H.R. 2445 will not change the formula allocation for Title I Part A. Funds will continue to be distributed to each school district under existing formulas that take into consideration factors such as concentrations of poor students and the amount of state funding spent on education. Under current law, Title I schools that have 40 percent or more students from low-income families are classified as ‘School-Wide Programs’ and are allowed to spend Title I funds to support all students in the school, not just those who are disadvantaged. Today, more than 50 percent of Title I schools are ‘school-wide’ and use funds to support all students. The bill attempts to expand this authority to all schools in the nation, allowing them to take advantage of this important flexibility.

TITLE III—ENGLISH LANGUAGE ACQUISITION

Many state and local activities required under the Title III program, such as increasing student academic achievement in core academic subjects, improving the achievement of English Language Learners, and providing professional development to classroom teachers, mirror similar provisions under Title I (Aid for the Disadvantaged) and Title II (Teacher Quality State Grant) programs. States and school districts use Title I and Title II funds—funds that benefit all students—to serve English Language Learners. The federal government should give state and local areas additional flexibility to consolidate funding streams so that all students can be served through a seamless education system. The Committee notes that states and school districts have not been meeting the annual performance targets for English Language Learners as established in current law. According to the Department of Education,

just 10 states met all of their Title III Annual Measurable Achievement Objectives in the 2008–2009 school year and only 46 percent of school districts met them. The State and Local Funding Flexibility Act will allow states and school districts to use a different funding model to address the needs of English Language Learners while still being responsible for meeting the objectives under current law.

#### TITLE VII—INDIAN EDUCATION

Contrary to false charges, H.R. 2445 does not jeopardize the sovereign rights of Indian students and does not alter the commitment or guaranteed funding provided to Indian reservations by the Bureau of Indian Education. The bill simply provides school districts with the flexibility to rededicate funds across federal programs. If a school district determines more support is needed for Title VII purposes, it could use funds from the Education Jobs Fund to support those important activities.

#### EDUCATION FOR MIGRANT, AND NEGLECTED AND DELINQUENT STUDENTS

Title I, Parts C and D provide grants to states to establish and improve programs for children of migrant workers and neglected and delinquent children. The State and Local Funding Flexibility Act does not change the accountability requirements that are in place for these students under the main Title I program. The bill merely allows states and school districts to consolidate funding streams across titles to improve academic programs for all students.

#### REPORTING REQUIREMENTS

The Committee believes states and school districts are best suited to decide how funds should be used to serve their students. H.R. 2445 includes provisions requiring states to notify the Secretary of Education of their intention to use the flexibility authority under the bill by June 1 of each year. The bill also requires school districts to notify states of their intention to use funding flexibility, providing important information to federal and state policymakers and the public. Additionally, the bill maintains current mechanisms through which states and school districts report on the academic performance of their students and how they are using federal funds, including state or local plans, application processes, or annual reports.

#### *Conclusion*

Our nation's education system is not properly educating our kids for future success; it is time for a new approach. H.R. 2445, the State and Local Funding Flexibility Act, streamlines and simplifies the federal role in education, empowering states, school districts, teachers, and parents to pursue innovative reforms that meet the needs of their students. The Committee strongly supports this effort to provide states and school districts the flexibility to determine how they use federal funds at the local level to promote innovation and increase academic achievement for all children.

## SECTION-BY-SECTION ANALYSIS

*Section 1—Short title*

States the short title as the “State and Local Funding Flexibility Act.”

*Section 2—Flexibility to use federal funds*

Specifies the new flexibility offered to states and school districts, including the funds that may be used and the activities that may be supported for funding flexibility.

## EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the body of this report.

## APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.R. 2445 amends Title VI, Part A, Subpart 2 of the Elementary and Secondary Education Act to provide states and school districts with maximum flexibility to use federal education dollars on programs that best serve the needs of students.

## UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This issue is addressed in the CBO letter.

## EARMARK STATEMENT

H.R. 2445 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of House Rule XXI.

## ROLLCALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: July 13, 2011**COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE**

Roll Call: 1 Bill: H.R. 2445 Amendment Number: 2

Disposition: Defeated by a vote of 17 to 23

Sponsor/Amendment: Mr. Miller /prohibits districts from using funds designated for low-income students on other student populations

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. KILDEE (MI)	X		
Mr. McKEON (CA)		X		Mr. PAYNE (NJ)	X		
Mrs. BIGGERT (IL)		X		Mr. ANDREWS (NJ)	X		
Mr. PLATTS (PA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Ms. WOOLSEY (CA)	X		
Mrs. FOXX (NC)		X		Mr. HINOJOSA (TX)	X		
Mr. GOODLATTE (VA)		X		Mrs. McCARTHY (NY)	X		
Mr. HUNTER (CA)		X		Mr. TIERNEY (MA)	X		
Mr. ROE (TN)		X		Mr. KUCINICH (OH)	X		
Mr. THOMPSON (PA)		X		Mr. WU (OR)	X		
Mr. WALBERG (MI)		X		Mr. HOLT (NJ)	X		
Mr. DesJARLAIS (TN)		X		Mrs. DAVIS (CA)	X		
Mr. HANNA (NY)		X		Mr. GRIJALVA (AZ)	X		
Mr. ROKITA (IN)		X		Mr. BISHOP (NY)	X		
Mr. BUCSHON (IN)		X		Mr. LOEBSACK (IA)	X		
Mr. GOWDY (SC)		X		Ms. HIRONO (HI)	X		
Mr. BARLETTA (PA)		X					
Mrs. NOEM (SD)		X					
Mrs. ROBY (AL)		X					
Mr. HECK (NV)		X					
Mr. ROSS (FL)		X					
Mr. KELLY (PA)		X					

Date: July 13, 2011**COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE**

Roll Call: 2 Bill: H.R. 2445 Amendment Number: 3

Disposition: Defeated by a vote of 17 to 23

Sponsor/Amendment: Mr. Grijalva /prohibits states and districts from using funds designated for English Language Learners and immigrant students on other student populations

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. KILDEE (MI)	X		
Mr. McKEON (CA)		X		Mr. PAYNE (NJ)	X		
Mrs. BIGGERT (IL)		X		Mr. ANDREWS (NJ)	X		
Mr. PLATTS (PA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Ms. WOOLSEY (CA)	X		
Mrs. FOXX (NC)		X		Mr. HINOJOSA (TX)	X		
Mr. GOODLATTE (VA)		X		Mrs. McCARTHY (NY)	X		
Mr. HUNTER (CA)		X		Mr. TIERNEY (MA)	X		
Mr. ROE (TN)		X		Mr. KUCINICH (OH)	X		
Mr. THOMPSON (PA)		X		Mr. WU (OR)	X		
Mr. WALBERG (MI)		X		Mr. HOLT (NJ)	X		
Mr. DesJARLAIS (TN)		X		Mrs. DAVIS (CA)	X		
Mr. HANNA (NY)		X		Mr. GRIJALVA (AZ)	X		
Mr. ROKITA (IN)		X		Mr. BISHOP (NY)	X		
Mr. BUCSHON (IN)		X		Mr. LOEBSACK (IA)	X		
Mr. GOWDY (SC)		X		Ms. HIRONO (HI)	X		
Mr. BARLETTA (PA)		X					
Mrs. NOEM (SD)		X					
Mrs. ROBY (AL)		X					
Mr. HECK (NV)		X					
Mr. ROSS (FL)		X					
Mr. KELLY (PA)		X					

Date: July 13, 2011**COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE**

Roll Call: 3 Bill: H.R. 2445 Amendment Number: 4

Disposition: Defeated by a vote of 17 to 23

Sponsor/Amendment: Mr. Hinojosa /prohibits states and districts from using funds designated for migrant students on other student populations

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. KILDEE (MI)	X		
Mr. McKEON (CA)		X		Mr. PAYNE (NJ)	X		
Mrs. BIGGERT (IL)		X		Mr. ANDREWS (NJ)	X		
Mr. PLATTS (PA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Ms. WOOLSEY (CA)	X		
Mrs. FOXX (NC)		X		Mr. HINOJOSA (TX)	X		
Mr. GOODLATTE (VA)		X		Mrs. McCARTHY (NY)	X		
Mr. HUNTER (CA)		X		Mr. TIERNEY (MA)	X		
Mr. ROE (TN)		X		Mr. KUCINICH (OH)	X		
Mr. THOMPSON (PA)		X		Mr. WU (OR)	X		
Mr. WALBERG (MI)		X		Mr. HOLT (NJ)	X		
Mr. DesJARLAIS (TN)		X		Mrs. DAVIS (CA)	X		
Mr. HANNA (NY)		X		Mr. GRIJALVA (AZ)	X		
Mr. ROKITA (IN)		X		Mr. BISHOP (NY)	X		
Mr. BUCSHON (IN)		X		Mr. LOEBSACK (IA)	X		
Mr. GOWDY (SC)		X		Ms. HIRONO (HI)	X		
Mr. BARLETTA (PA)		X					
Mrs. NOEM (SD)		X					
Mrs. ROBY (AL)		X					
Mr. HECK (NV)		X					
Mr. ROSS (FL)		X					
Mr. KELLY (PA)		X					



Date: July 13, 2011**COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE**

Roll Call: 4 Bill: H.R. 2445 Amendment Number: 5

Disposition: Defeated by a vote of 17 to 23

Sponsor/Amendment: Mr. Scott /prohibits states and districts from using funds designated for neglected and delinquent students on other student populations

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. KILDEE (MI)	X		
Mr. McKEON (CA)		X		Mr. PAYNE (NJ)	X		
Mrs. BIGGERT (IL)		X		Mr. ANDREWS (NJ)	X		
Mr. PLATTS (PA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Ms. WOOLSEY (CA)	X		
Mrs. FOXX (NC)		X		Mr. HINOJOSA (TX)	X		
Mr. GOODLATTE (VA)		X		Mrs. McCARTHY (NY)	X		
Mr. HUNTER (CA)		X		Mr. TIERNEY (MA)	X		
Mr. ROE (TN)		X		Mr. KUCINICH (OH)	X		
Mr. THOMPSON (PA)		X		Mr. WU (OR)	X		
Mr. WALBERG (MI)		X		Mr. HOLT (NJ)	X		
Mr. DesJARLAIS (TN)		X		Mrs. DAVIS (CA)	X		
Mr. HANNA (NY)		X		Mr. GRIJALVA (AZ)	X		
Mr. ROKITA (IN)		X		Mr. BISHOP (NY)	X		
Mr. BUCSHON (IN)		X		Mr. LOEBSACK (IA)	X		
Mr. GOWDY (SC)		X		Ms. HIRONO (HI)	X		
Mr. BARLETTA (PA)		X					
Mrs. NOEM (SD)		X					
Mrs. ROBY (AL)		X					
Mr. HECK (NV)		X					
Mr. ROSS (FL)		X					
Mr. KELLY (PA)		X					

Date: July 13, 2011**COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE**

Roll Call: 5 Bill: H.R. 2445 Amendment Number: 6

Disposition: Defeated by a vote of 17 to 23

Sponsor/Amendment: Mr. Kildee /prohibits districts from using funds designated for Native

American and Alaska Native students on other student populations

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. KILDEE (MI)	X		
Mr. McKEON (CA)		X		Mr. PAYNE (NJ)	X		
Mrs. BIGGERT (IL)		X		Mr. ANDREWS (NJ)	X		
Mr. PLATTS (PA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Ms. WOOLSEY (CA)	X		
Mrs. FOXX (NC)		X		Mr. HINOJOSA (TX)	X		
Mr. GOODLATTE (VA)		X		Mrs. McCARTHY (NY)	X		
Mr. HUNTER (CA)		X		Mr. TIERNEY (MA)	X		
Mr. ROE (TN)		X		Mr. KUCINICH (OH)	X		
Mr. THOMPSON (PA)		X		Mr. WU (OR)	X		
Mr. WALBERG (MI)		X		Mr. HOLT (NJ)	X		
Mr. DesJARLAIS (TN)		X		Mrs. DAVIS (CA)	X		
Mr. HANNA (NY)		X		Mr. GRIJALVA (AZ)	X		
Mr. ROKITA (IN)		X		Mr. BISHOP (NY)	X		
Mr. BUCSHON (IN)		X		Mr. LOEBSACK (IA)	X		
Mr. GOWDY (SC)		X		Ms. HIRONO (HI)	X		
Mr. BARLETTA (PA)		X					
Mrs. NOEM (SD)		X					
Mrs. ROBY (AL)		X					
Mr. HECK (NV)		X					
Mr. ROSS (FL)		X					
Mr. KELLY (PA)		X					

Date: July 13, 2011

**COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE**

Roll Call: 6 Bill: H.R. 2445 Amendment Number: 7

Disposition: Defeated by a vote of 17 to 23

Sponsor/Amendment: Mr. Holt/requires states and districts that utilize H.R. 2445 authority to provide disaggregated data on funded activities and number of students who benefited and those that did not.

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. KILDEE (MI)	X		
Mr. McKEON (CA)		X		Mr. PAYNE (NJ)	X		
Mrs. BIGGERT (IL)		X		Mr. ANDREWS (NJ)	X		
Mr. PLATTS (PA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Ms. WOOLSEY (CA)	X		
Mrs. FOXX (NC)		X		Mr. HINOJOSA (TX)	X		
Mr. GOODLATTE (VA)		X		Mrs. McCARTHY (NY)	X		
Mr. HUNTER (CA)		X		Mr. TIERNEY (MA)	X		
Mr. ROE (TN)		X		Mr. KUCINICH (OH)	X		
Mr. THOMPSON (PA)		X		Mr. WU (OR)	X		
Mr. WALBERG (MI)		X		Mr. HOLT (NJ)	X		
Mr. DesJARLAIS (TN)		X		Mrs. DAVIS (CA)	X		
Mr. HANNA (NY)		X		Mr. GRIJALVA (AZ)	X		
Mr. ROKITA (IN)		X		Mr. BISHOP (NY)	X		
Mr. BUCSHON (IN)		X		Mr. LOEBSACK (IA)	X		
Mr. GOWDY (SC)		X		Ms. HIRONO (HI)	X		
Mr. BARLETTA (PA)		X					
Mrs. NOEM (SD)		X					
Mrs. ROBY (AL)		X					
Mr. HECK (NV)		X					
Mr. ROSS (FL)		X					
Mr. KELLY (PA)		X					

Date: July 13, 2011

**COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE**

Roll Call: 7

Bill: H.R. 2445

Disposition: Ordered favorably reported, as amended, to the House by a vote of 23-17

Sponsor/Amendment: Mr. Petri / motion to report the bill to the House with an amendment, and with the recommendation that the amendment be agreed to, and that the bill as amended do pass

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)	X			Mr. MILLER (CA) (Ranking)		X	
Mr. PETRI (WI)	X			Mr. KILDEE (MI)		X	
Mr. McKEON (CA)	X			Mr. PAYNE (NJ)		X	
Mrs. BIGGERT (IL)	X			Mr. ANDREWS (NJ)		X	
Mr. PLATTS (PA)	X			Mr. SCOTT (VA)		X	
Mr. WILSON (SC)	X			Ms. WOOLSEY (CA)		X	
Mrs. FOXX (NC)	X			Mr. HINOJOSA (TX)		X	
Mr. GOODLATTE (VA)	X			Mrs. McCARTHY (NY)		X	
Mr. HUNTER (CA)	X			Mr. TIERNEY (MA)		X	
Mr. ROE (TN)	X			Mr. KUCINICH (OH)		X	
Mr. THOMPSON (PA)	X			Mr. WU (OR)		X	
Mr. WALBERG (MI)	X			Mr. HOLT (NJ)		X	
Mr. DesJARLAIS (TN)	X			Mrs. DAVIS (CA)		X	
Mr. HANNA (NY)	X			Mr. GRIJALVA (AZ)		X	
Mr. ROKITA (IN)	X			Mr. BISHOP (NY)		X	
Mr. BUCSHON (IN)	X			Mr. LOEBSACK (IA)		X	
Mr. GOWDY (SC)	X			Ms. HIRONO (HI)		X	
Mr. BARLETTA (PA)	X						
Mrs. NOEM (SD)	X						
Mrs. ROBY (AL)	X						
Mr. HECK (NV)	X						
Mr. ROSS (FL)	X						
Mr. KELLY (PA)	X						

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House Rule XIII, the goal of H.R. 2445 is to streamline the federal role in education and spur local innovation by providing states and school districts with maximum flexibility to use federal education dollars on programs that best serve the needs of students. The Committee expects the Department of Education to comply with these provisions and implement the changes to the law in accordance with these stated goals.

## STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

## NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 2445 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 14, 2011.*

Hon. JOHN KLINE,  
*Chairman, Committee on Education and the Workforce,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2445, the State and Local Funding Flexibility Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Justin Humphrey.

Sincerely,

DOUGLAS W. ELMENDORF,  
*Director.*

Enclosure.

*H.R. 2445—State and Local Funding Flexibility Act*

H.R. 2445 would amend title VI of the Elementary and Secondary Education Act of 1965 to permit state and local education agencies to use federal funds appropriated for specific educational activities to carry out other federal authorized education programs specified in the bill.

CBO estimates that implementing H.R. 2445 would have no net effect on discretionary spending. The underlying authorizations for the specified programs for which funds may be used under H.R. 2445 have expired. Thus, enacting the bill would provide flexibility for using appropriated funds to the extent that those programs are reauthorized in subsequent legislation.

In addition, enacting the bill would have no impact on mandatory spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2445 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Justin Humphrey. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 2445. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965**

\* \* \* \* \*

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

\* \* \* \* \*

TITLE VI—FLEXIBILITY AND ACCOUNTABILITY

PART A—IMPROVING ACADEMIC ACHIEVEMENT

\* \* \* \* \*

**[Subpart 2—Funding Transferability for State and Local Educational Agencies**

- [Sec. 6121. Short title.**
- [Sec. 6122. Purpose.**
- [Sec. 6123. Transferability of funds.]**

*Subpart 2—Funding Flexibility for State and Local Educational Agencies*

- Sec. 6121. Short title.*
- Sec. 6122. Purpose.*
- Sec. 6123. Flexibility to use Federal funds.*

\* \* \* \* \*

## TITLE VI—FLEXIBILITY AND ACCOUNTABILITY

### PART A—IMPROVING ACADEMIC ACHIEVEMENT

\* \* \* \* \*

#### [Subpart 2—Funding Transferability for State and Local Educational Agencies

**[SEC. 6121. SHORT TITLE.**

[This subpart may be cited as the “State and Local Transferability Act”.

**[SEC. 6122. PURPOSE.**

[The purpose of this subpart is to allow States and local educational agencies the flexibility—

[(1) to target Federal funds to Federal programs that most effectively address the unique needs of States and localities; and

[(2) to transfer Federal funds allocated to other activities to allocations for certain activities authorized under title I.

**[SEC. 6123. TRANSFERABILITY OF FUNDS.**

**[(a) TRANSFERS BY STATES.—**

[(1) IN GENERAL.—In accordance with this subpart, a State may transfer not more than 50 percent of the nonadministrative State funds (including funds transferred under paragraph (2)) allotted to the State for use for State-level activities under the following provisions for a fiscal year to one or more of the State’s allotments for such fiscal year under any other of such provisions:

[(A) Section 2113(a)(3).

[(B) Section 2412(a)(1).

[(C) Subsections (a)(1) (with the agreement of the Governor) and (c)(1) of section 4112 and section 4202(c)(3).

[(D) Section 5112(b).

[(2) ADDITIONAL FUNDS FOR TITLE I.—In accordance with this subpart and subject to the 50 percent limitation described in paragraph (1), a State may transfer any funds allotted to the State under a provision listed in paragraph (1) to its allotment under title I.

**[(b) TRANSFERS BY LOCAL EDUCATIONAL AGENCIES.—**

**[(1) AUTHORITY TO TRANSFER FUNDS.—**

[(A) IN GENERAL.—In accordance with this subpart, a local educational agency (except a local educational agency identified for improvement under section 1116(c) or subject to corrective action under section 1116(c)(9)) may transfer not more than 50 percent of the funds allocated to it (including funds transferred under subparagraph (C)) under each of the provisions listed in paragraph (2) for a fiscal year to one or more of its allocations for such fiscal year under any other provision listed in paragraph (2).

[(B) AGENCIES IDENTIFIED FOR IMPROVEMENT.—In accordance with this subpart, a local educational agency identified for improvement under section 1116(c) may transfer not more than 30 percent of the funds allocated to it (including funds transferred under subparagraph (C)) under each of the provisions listed in paragraph (2) for a fiscal year—

[(i) to its allocation for school improvement for such fiscal year under section 1003; or

[(ii) to any other allocation for such fiscal year if such transferred funds are used only for local educational agency improvement activities consistent with section 1116(c).

[(C) ADDITIONAL FUNDS FOR TITLE I.—In accordance with this subpart and subject to the percentage limitation described in subparagraph (A) or (B), as applicable, a local educational agency may transfer funds allocated to such agency under any of the provisions listed in paragraph (2) for a fiscal year to its allocation for part A of title I for that fiscal year.

[(2) APPLICABLE PROVISIONS.—A local educational agency may transfer funds under subparagraph (A), (B), or (C) of paragraph (1) from allocations made under each of the following provisions:

[(A) Section 2121.

[(B) Section 2412(a)(2)(A).

[(C) Section 4112(b)(1).

[(D) Section 5112(a).

[(c) NO TRANSFER OF TITLE I FUNDS.—A State or a local educational agency may not transfer under this subpart to any other program any funds allotted or allocated to it for part A of title I.

[(d) MODIFICATION OF PLANS AND APPLICATIONS; NOTIFICATION.—

[(1) STATE TRANSFERS.—Each State that makes a transfer of funds under this section shall—

[(A) modify, to account for such transfer, each State plan, or application submitted by the State, to which such funds relate;

[(B) not later than 30 days after the date of such transfer, submit a copy of such modified plan or application to the Secretary; and

[(C) not later than 30 days before the effective date of such transfer, notify the Secretary of such transfer.

[(2) LOCAL TRANSFERS.—Each local educational agency that makes a transfer of funds under this section shall—

[(A) modify, to account for such transfer, each local plan, or application submitted by the agency, to which such funds relate;

[(B) not later than 30 days after the date of such transfer, submit a copy of such modified plan or application to the State; and

[(C) not later than 30 days before the effective date of such transfer, notify the State of such transfer.

[(e) APPLICABLE RULES.—



【(1) IN GENERAL.—Except as otherwise provided in this subpart, funds transferred under this section are subject to each of the rules and requirements applicable to the funds under the provision to which the transferred funds are transferred.

【(2) CONSULTATION.—Each State educational agency or local educational agency that transfers funds under this section shall conduct consultations in accordance with section 9501, if such transfer transfers funds from a program that provides for the participation of students, teachers, or other educational personnel, from private schools.】

### ***Subpart 2—Funding Flexibility for State and Local Educational Agencies***

**SEC. 6121. SHORT TITLE.**

*This subpart may be cited as the “State and Local Funding Flexibility Act”.*

**SEC. 6122. PURPOSE.**

*The purpose of this subpart is to allow States and local educational agencies the flexibility to—*

*(1) design flexible programs that use Federal funds to support student achievement for all students, including students most at risk of failing to meet the State’s academic achievement standards; and*

*(2) extend and enhance the funding flexibility provided to rural local educational agencies under section 6211 to all State educational agencies and local educational agencies by providing such agencies flexibility in using Federal formula funds received to carry out authorized State or local activities for other authorized or required State or local activities.*

**SEC. 6123. FLEXIBILITY TO USE FEDERAL FUNDS.**

**(a) ALTERNATIVE USES OF FEDERAL FUNDS FOR STATE EDUCATIONAL AGENCIES.—**

*(1) IN GENERAL.—Subject to subsections (c) and (d) and notwithstanding any other provision of law, a State educational agency may use the applicable funding that the agency receives for a fiscal year to carry out any State activity authorized or required under one or more of the following provisions:*

- (A) Section 1003.*
- (B) Section 1004.*
- (C) Subpart 1 of part B of title I.*
- (D) Part C of title I.*
- (E) Part D of title I.*
- (F) Part A of title II.*
- (G) Part B of title II.*
- (H) Title III.*
- (I) Part B of title IV.*
- (J) Part A of title V.*
- (K) Subpart 1 of part A of title VI.*
- (L) Subpart 2 of part B of title VI.*
- (M) Subpart 2 of part A of title VII.*

*(2) NOTIFICATION.—Not later than June 1 of each year, a State educational agency shall notify the Secretary of the State*

educational agency's intention to use the applicable funding for any of the alternative uses under paragraph (1).

(3) *APPLICABLE FUNDING DEFINED.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), in this subsection, the term “applicable funding” means funds provided to carry out State activities under one or more of the following provisions:

- (i) Section 1003(g)(2).
- (ii) Section 1004.
- (iii) Subpart I of Part B of title I.
- (iv) Part C of title I.
- (v) Part D of title I.
- (vi) Part A of title II.
- (vii) Part B of title II.
- (viii) Part A of title III.
- (ix) Part B of title IV.
- (x) Part A of title V.
- (xi) Title I of Public Law 111–226.

(B) *LIMITATION.*—In this subsection, the term “applicable funding” does not include funds provided under any of the provisions listed in subparagraph (A) that State educational agencies are required by this Act—

- (i) to reserve, allocate, or spend for required activities;
- (ii) to allot or award to local educational agencies or other entities eligible to receive such funds; or
- (iii) to use for technical assistance or monitoring.

(4) *DISBURSEMENT.*—The Secretary shall disburse the applicable funding to State educational agencies for alternative uses under paragraph (1) for a fiscal year at the same time as the Secretary disburses the applicable funding to State educational agencies that do not intend to use the applicable funding for such alternative uses for the fiscal year.

(b) *ALTERNATIVE USES OF FEDERAL FUNDS FOR LOCAL EDUCATIONAL AGENCIES.*—

(1) *IN GENERAL.*—Subject to subsections (c) and (d) and notwithstanding any other provision of law, a local educational agency may use the applicable funding that the agency receives for a fiscal year to carry out any local activity authorized or required under one or more of the following provisions:

- (A) Section 1003.
- (B) Part A of title I.
- (C) Subpart 1 of part B of title I.
- (D) Part C of title I.
- (E) Part D of title I.
- (F) Part A of title II.
- (G) Part B of title II.
- (H) Part A of title III.
- (I) Part B of title IV.
- (J) Part A of title V.
- (K) Subpart 2 of part B of title VI.
- (L) Part A of title VII.

(M) Section 613(f) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(f)).

(2) *NOTIFICATION.*—A local educational agency shall notify the State educational agency of the local educational agency's intention to use the applicable funding for any of the alternative uses under paragraph (1) by a date that is established by the State educational agency for the notification.

(3) *APPLICABLE FUNDING DEFINED.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), in this subsection, the term “applicable funding” means funds provided to carry out local activities under one or more of the following provisions:

- (i) Part A of title I.
- (ii) Part C of title I.
- (iii) Part D of title I.
- (iv) Part A of title II.
- (v) Part A of title III.
- (vi) Part A of title V.
- (vii) Part A of title VII.
- (viii) Title I of Public Law 111–226.

(B) *LIMITATION.*—In this subsection, the term “applicable funding” does not include funds provided under any of the provisions listed in subparagraph (A) that local educational agencies are required by this Act—

- (i) to reserve, allocate, or spend for required activities;
- (ii) to allot or award to entities eligible to receive such funds; or
- (iii) to use for technical assistance or monitoring.

(4) *DISBURSEMENT.*—Each State educational agency that receives applicable funding for a fiscal year shall disburse the applicable funding to local educational agencies for alternative uses under paragraph (1) for the fiscal year at the same time as the State educational agency disburses the applicable funding to local educational agencies that do not intend to use the applicable funding for such alternative uses for the fiscal year.

(c) *RULE FOR ADMINISTRATIVE COSTS.*—A State educational agency or a local educational agency may only use applicable funding (as defined in subsection (a)(3) or (b)(3), respectively) for administrative costs incurred in carrying out a provision listed in subsection (a)(1) or (b)(1), respectively, to the extent that the agency, in the absence of this section, could have used funds for administrative costs with respect to a program listed in subsection (a)(3) or (b)(3), respectively.

(d) *RULE OF CONSTRUCTION.*—Nothing in this section shall be construed to relieve a State educational agency or local educational agency of any requirements relating to—

- (1) maintenance of effort;
- (2) use of Federal funds to supplement, not supplant, non-Federal funds;
- (3) comparability of services;
- (4) equitable participation of private school students and teachers;
- (5) applicable civil rights requirements;
- (6) the selection of school attendance areas or schools under subsections (a) and (b), and allocations to such areas or schools under subsection (c), of section 1113;

(7) *section 1111;*  
(8) *section 1116; or*  
(9) *section 3122.*

\* \* \* \* \*

## MINORITY VIEWS

Committee Democrats strongly and unanimously oppose H.R. 2445. Under the guise of flexibility, H.R. 2445 dismantles the federal role in education—exacerbating achievement gaps and funding inequities, and it does nothing to address the concerns raised by education stakeholders. H.R. 2445 does not address the core issues of No Child Left Behind that must be revised: it does nothing to address standards and assessment; it does nothing to address Adequate Yearly Progress (AYP); it does nothing to address school improvement; and it does nothing to improve application processes or reporting requirements. In fact, it does nothing at all to improve student achievement.

H.R. 2445 allows school districts to use taxpayer dollars arbitrarily, for purposes other than that for which the money was intended; dismantling the fundamental role of the federal government in education. H.R. 2445 attacks children’s civil rights. It endangers our schools, our economic stability and our global competitiveness. It deliberately hurts the students, families, communities, and schools that need help the most. It amounts to a raid on the funding for disadvantaged schools and students.

Specifically, the bill allows funds from formula programs within the Elementary and Secondary Education Act, including formula programs targeting specific disadvantaged student populations, to be spent on nearly any purpose under the Act, thereby undermining federal efforts to increase educational equity for disadvantaged students and jeopardizing our national competitiveness.

### H.R. 2445 DISMANTLES THE FEDERAL ROLE IN EDUCATION

The modern federal role in the nation’s K–12 education system arose out of two significant events—Brown v. Board of Education and Sputnik. In 1954, the Supreme Court declared in Brown v. Board of Education that every child in this country has a right to equal access to education—a separate education for black and white students cannot be considered equal.<sup>1</sup> In 1957, the Soviet Union launched Sputnik, the world’s first venture into outer space, igniting a national concern that our education system was not sufficient to keep up with new global competitors.<sup>2</sup> As a result, Congress passed the National Defense Education Act in 1958 which focused on improving science, math, and foreign language instruction in our elementary and secondary schools. Seven years later, the Elementary and Secondary Education Act would follow.

Although progress has been made since then, the need remains for our education laws to remedy inequality and increase student

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<sup>1</sup>*Brown v. Board of Education*, 347 U.S. 483 (1954).

<sup>2</sup>U.S. Department of Education. (2011). The Federal Role in Education. Retrieved from: <http://www.2.ed.gov/about/overview/fed/role.html>

achievement. In a nation of growing income disparity, a state and local tax structure that allows education funding inequities, and a legacy of racial segregation, education inequalities will persist, or even grow, without an updated education law and a reordering of national priorities.

While equity in education is a moral and constitutional issue, it is also inextricably tied to economic competitiveness. Students that graduate high school today are entering a labor market that is more globalized and more competitive than ever. Of 34 industrialized countries, in 2009, the U.S. ranked 14th in reading, 17th in science, and 25th in math.<sup>3</sup> These rankings are directly linked to the United States tolerating achievement gaps within its population. Our top 10 percent of students perform equally with the students from top countries internationally, but there are significant discrepancies between the performance of students in those other countries and the rest of our population, especially poor and minority children.<sup>4</sup>

Many of the primary formula programs under the Elementary and Secondary Education Act are driven by a focus on specific students—such as students from low-income families, migrant students, neglected and delinquent students, English language learners, and American Indian students—that have been traditionally underserved in education. These programs were created to promote equity and to ensure resources were focused on these traditionally underserved populations. While these programs require that funding be spent on the designated population, they offer considerable flexibility to districts in how those districts spend funds to improve services to the students for which they are intended.

Instead of targeting funds to the schools and students most in need, H.R. 2445 would allow formula funds from programs to be moved around and spent for nearly any purpose under the Elementary and Secondary Education Act. States and districts would get federal funds for specific purposes, but be permitted to spend those funds elsewhere. Districts would only be required to notify the state of their intent to change the use of funds, and states would only need to notify the Secretary. Neither would need to report on how they changed their uses of funds.

#### H.R. 2445 DOES NOT IMPROVE NO CHILD LEFT BEHIND

H.R. 2445 does nothing to fix the problems with No Child Left Behind, it does nothing to respond to the requests of education stakeholders, and it does not provide real solutions for the burdens of current law. Last year, the Committee received thousands of recommendations on how to reauthorize ESEA, including some on flexibility. The Committee has also heard testimony on the need for flexibility within certain requirements of ESEA. The following section outlines a summary of recommendations the Committee received with regard to flexibility over the past two years.

- **Standards and Assessments:** In reauthorization, stakeholders have requested Congress provide states with flexibility, funding,

<sup>3</sup>OECD (2011), *Lessons from PISA for the United States, Strong Performers and Successful Reformers in Education*, OECD Publishing. Retrieved from: <http://dx.doi.org/10.1878/9789264096660-en>.

<sup>4</sup>*Ibid.*

and incentives to collaborate with other states and develop state college- and career-ready standards and higher-quality more-flexible assessments.

- Adequate Yearly Progress (AYP): In reauthorization, stakeholders have requested that ESEA provide greater flexibility in developing statewide accountability systems. They have requested flexibility in determining metrics for such accountability systems—including examining student growth—and in determining how to identify schools in need of improvement.

- School Improvement: One of the major complaints associated with current law is the mandated “one-size-fits-all” approach once schools fail to make AYP. LEAs are unable to differentiate services based on data indicating their specific needs. In addition, many LEAs say that 20 percent set-aside prohibits local flexibility and creates more burdens.

- Funding and Competitive Grant Programs: In reauthorization, stakeholders have requested program consolidation around common purposes to encourage data-based decision-making, create greater efficiencies and reduce burdens for schools and districts. This consolidation creates a more streamlined system for states and districts in applying for funding as they would have fewer required applications.

H.R. 2445 does nothing to address any of these requests for improved flexibility.

The Majority argues that funds are not diverted from disadvantaged students under their bill because formulas are not changed; however, they neglect to mention that once the money is distributed to states and districts, funds can be siphoned from the very populations (ie. poor, migrant, English language learners, neglected or delinquent children, and Indian children) that drive the formulas and that the law intended to serve. The Majority also argues that the bill maintains accountability and reporting, but, if H.R. 2445 were to be enacted, accountability and reporting become irrelevant because there will be no information on how the money is spent. Lastly, the Majority argues they have maintained civil rights requirements by including those words in the bill. The words, however, are meaningless when the actions of the bill open a floodgate to increase inequity in education.

Committee Democrats believe funding allocated based on the number of children from poor families, the number of migrant students, the number of neglected or delinquent students, the number of English Language Learners, or the number of Indian students should be used for services for those students to increase educational opportunity. Rather than fixing No Child Left Behind, this bill fails our students and puts our economic future and global competitiveness at risk.

TITLE I, PART A: BASIC PROGRAMS FOR IMPROVING THE ACADEMIC  
ACHIEVEMENT OF THE DISADVANTAGED

Title I, part A provides grants to school districts for the stated purpose of “meeting the educational needs of low-achieving children in our Nation’s highest poverty schools.” H.R. 2445 allows districts to siphon money away from the low-achieving children in our

highest poverty schools.<sup>5</sup> With this bill, the Majority permits districts to spend Title I funding on wealthier schools for activities such as CPR training or developing charter schools and threatens the services and supports to over 21 million low-income students across the nation.

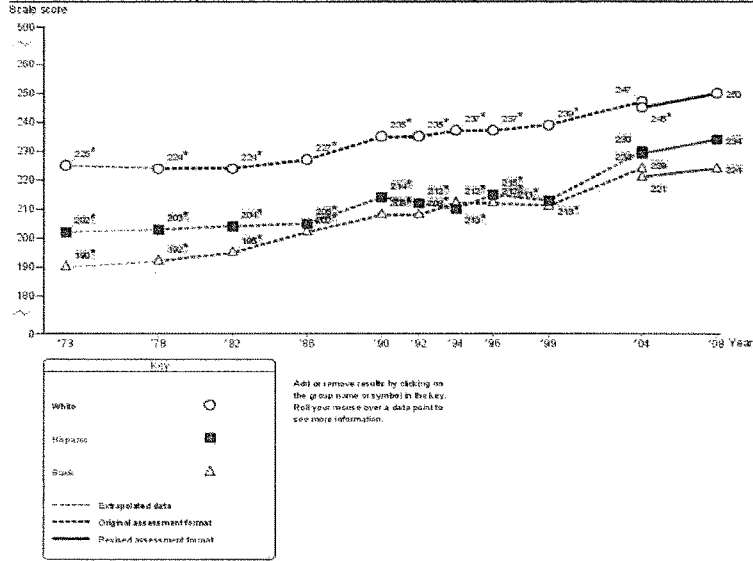
Over the past 45 years, the Title I, part A program, primarily directed toward elementary schools with low-income and minority students, has resulted in academic gains for students. In fact, since 1973, 4th grade scores on the National Assessment on Education Progress have shown dramatic increases on both reading and math assessments, and the increases for minority students have outpaced the increases of their peers, helping to narrow the achievement gap. As depicted in the charts below, since the 1970s, math scores for 4th grade White students have improved by 25 points, while scores for 4th grade Black students have improved by 34 points and Hispanic students by 32. In reading, since the 1970's, the average score for White students is 14 points higher, while the score for Black students is 34 points higher and for Hispanic students 25 points higher.

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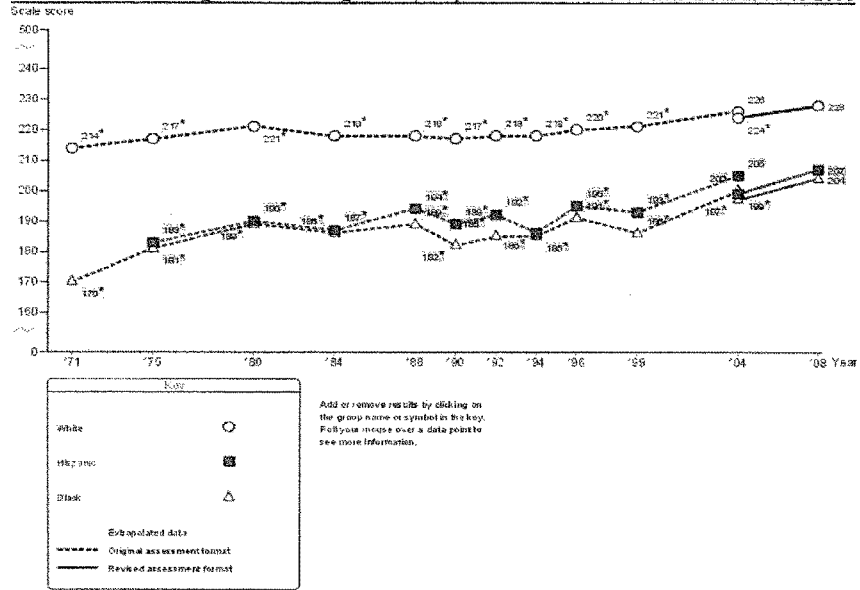
<sup>5</sup>Barbour, E., C. & Skinner, R. (July 12, 2011). The potential effect of H.R. 2445 on Selected Provisions in Section 1113 of the Elementary and Secondary Education Act. Congressional Research Service: Washington, DC.



**4<sup>th</sup> Grade NAEP Progress in Mathematics White, Hispanic and Black Students from 1973 to 2008**



**4<sup>th</sup> Grade NAEP Progress in Reading White, Hispanic and Black Students from 1971 to 2008**



Source: [http://nationsreportcard.gov/ltt\\_2008/](http://nationsreportcard.gov/ltt_2008/)

Current law already permits considerable flexibility in how districts and schools spend Title I, part A funding as long as the supports are targeted to the low-achieving children in the highest poverty schools. Districts rank and fund their schools based on their poverty levels. Schools with poverty levels higher than 40% are permitted to operate schoolwide programs. Approximately two-thirds of all Title I-receiving schools meet this threshold. The school conducts a needs assessment and then has considerable flexibility in developing strategies to improve the academic achievement of their students. The funds can be used for schoolwide activities because the concentration of poverty in these schools is so high that most of these students attending these schools are disadvantaged. Schools with poverty levels below 40% operate targeted assistance programs. In these schools, Title I funds are intended to be used to improve the academic achievement of those students furthest behind. Again, the school has flexibility in how to spend the funds to improve their outcomes, but the services must be provided to those students. There is not a specific percentage that must go from the district to the schools, but if the districts reserve funds they must be spent in low-income communities. Under H.R. 2445, districts would no longer be required to spend this money on the highest poverty schools or in high-poverty areas.

With passage of H.R. 2445, the Majority undermines the progress that targeted assistance made through Title I, part A has achieved in increasing equity in our schools and improving educational opportunity for low-income and minority students.

#### TITLE I, PART C: EDUCATION OF MIGRATORY CHILDREN

Title I, Part C provides additional funding to states and school districts to support migrant students. With this bill, the Majority permits states and school districts to use funding they receive based on the number of migrant students they have in their schools on other students and for other purposes.

Migrant children are an especially disadvantaged, hard-to-serve group. In addition to being highly mobile, migrant students are more likely to live in poverty, have limited English proficiency, and have unstable living conditions.<sup>6</sup> School-aged migrant workers are particularly at risk for poor educational outcomes. According to a National Agricultural Workers Survey, only three percent of these students were in school and performing at grade level.<sup>7</sup> The educational needs of migrant children go well beyond those traditionally supported by state and local budgets and, due to their high mobility, no single state or district is responsible for their education.<sup>8</sup>

Through the Migrant Education Program, states and districts receive funds to support the educational needs of migratory students. In 2010, nearly 500,000 students were eligible for federal support under the migrant education program, and in 2009, the program

<sup>6</sup>U.S. Department of Education. (2011a). FY2011 Department of Education Justifications of Appropriation Estimates to the Congress: Accelerating Achievement and Ensuring Equity. Washington, DC.

<sup>7</sup>U.S. Department of Labor. (2000). Finding from the National Workers Survey 1997–1998: A Demographic and Employment Profile of United States Farmworkers: Finding from the National Agricultural, Research Report No. 8. Washington, DC.

<sup>8</sup>U.S. Department of Education. (2011a).

supported approximately 7,000 programs. As a result of the program, the percent of migrant children performing at or above proficient on state assessments is growing. From 2008 to 2009, the percent of 4th grade migrant students scoring proficient in reading rose by five percent and three percent in math. Additionally, 8th grade proficiency scores increased. While these gains are promising, only about half of migrant children are currently scoring proficient or higher. Committee Democrats believe continued support for migrant students is essential so that they can continue these improvements.<sup>9</sup>

Current law also permits considerable flexibility in how states and districts spend Title I, part C funding as long as the supports are targeted to migrant students. With passage of H.R. 2445, the Majority is setting our nation back from these academic gains and further improvements in educational opportunity for migrant students.

TITLE I, PART D: PREVENTION AND INTERVENTION PROGRAMS FOR CHILDREN AND YOUTH WHO ARE NEGLECTED, DELINQUENT, OR AT RISK OF DROPPING OUT

Authorized over 40 years ago, Title I, part D creates both a state and local programs intended to improve educational services for students who are neglected, delinquent, or at risk of dropping out of school. With H.R. 2445, the Majority permits states and school districts that receive funding based on the number of neglected and delinquent students they have in their schools to use those dollars on other students and for other purposes.

Studies show that incarcerated youth struggle with literacy and have a history of high academic failure rates and low school attendance rates.<sup>10</sup> Additional research has shown that increasing educational skills for these youth is extremely beneficial for preventing future delinquency and reentry to the corrections system.<sup>11</sup>

The state neglected and delinquent program provides grants for the education of children and youth in state institutions for the neglected or delinquent with funds allocated on the basis of the number of those children and youth in the state. The local program provides aid for districts with high percentages of youth in correctional facilities to help transition youth back to the school and prevent future delinquency. Over 100,000 youths are currently served by this program.

Presently, the program offers flexibility in how states and districts can use these funds, including through professional development, curricula, and supplemental educational services, to support the goal of facilitating successful transition for neglected and delinquent students and helping them graduate high school. H.R. 2445 undermines the educational opportunities of these students by allowing once targeted funds to be used for other students and for other purposes.

<sup>9</sup> *Ibid.*

<sup>10</sup> Harris, P.J., Baltodano, H.M., Bal, A., Jolivet, K., & Malcahy, C. (2009). Reading Achievement of Incarcerated Youth in Three Regions. *Journal of Correctional Education*, 60(2), 120-145.

<sup>11</sup> U.S. Department of Education. (2011a).

TITLE III, PART A: ENGLISH LANGUAGE ACQUISITION, LANGUAGE  
ENHANCEMENT AND ACADEMIC ACHIEVEMENT

Title III, part A provides funding to states and districts to improve the education of English language learners. H.R. 2445's shortsighted approach jeopardizes the rights of English language learner and immigrant students—the rights confirmed by the Supreme Court decision in *Lau v. Nichols*.<sup>12</sup>

In *Lau*, certain Chinese speaking students in the San Francisco Unified School District filed suit because they were denied supplemental English language courses. The case was taken to the Supreme Court where it found that, based on the Civil Rights Act of 1964, the San Francisco Unified School District was in violation of the law. Because the District received substantial federal financial assistance, the school system was required to ensure that students of a particular race, color, or national origin are not denied the same opportunities to obtain an education generally obtained by other students in the same school system. Title III, part A was later created to ensure that English language learners attain English proficiency and improve their academic achievement.

According to the Census Bureau's ACS data, the number of English language learners has risen from less than 1 million in 1980 to nearly 4.6 million in 2008 in the states, DC, and Puerto Rico.<sup>13</sup> Nationally, in 4th grade mathematics, the achievement gap between English language learners and non-English language learners in 2009 was 24 points. In 8th grade mathematics, the achievement gap was 41 points. Nationally, in 4th grade reading the achievement gap between English language learners and non-English language learners in 2009 was 35 points. In 8th grade reading, the achievement gap was 46 points.<sup>14</sup> As this population grows and achievement gaps continue to exist, targeted federal assistance is necessary to help states and districts improve effective instructional practices and support effective educators to serve the English Language Learner population so that recipients of federal funding use their resources in the most efficient and effective manner possible.

Current law permits considerable flexibility in how states and districts spend Title III, part A funding as long as the supports are targeted toward improving the academic achievement of English language learners. H.R. 2445 interferes with our nation's obligations established under *Lau v. Nichols*, to increase equity in our schools and improve educational opportunity for English language learners.

TITLE VII, PART A: INDIAN EDUCATION

Title VII, part A provides grants to districts to address the educational and culturally related academic needs of American Indian and Alaska Native students. H.R. 2445 allows school districts that receive funding based on the number of Indian students they have in their schools to use those dollars on other students and for other

<sup>12</sup> *Lau v. Nichols*, 347 U.S. 483 (1954).

<sup>13</sup> U.S. Department of Education. (2011b). *FY2011 Department of Education Justifications of Appropriation Estimates to the Congress: English Learner Education*. Washington, DC.

<sup>14</sup> <http://nces.ed.gov/nationsreportcard/litdata/>.

purposes jeopardizing services and supports to over 500,000 students.

Indian children are subject to significant risk factors that threaten their academic success and overall well-being. Indian students' educational outcomes continue to lag behind their peers. These students are also more likely to qualify for special education services, be absent, and be suspended.<sup>15</sup>

Despite gains in academic achievement over the past 30 years, a significant achievement gap between Indian students and the general student population persists.<sup>16</sup> In fact, in 2008, Indian students lagged 18 points behind their White peers in 8th grade reading.<sup>17</sup> Additionally, in the past 30 years, the number of Indian students enrolling in college has doubled, but the dropout rate for Indian high school students is significantly above the national average.<sup>18</sup> These students deserve the support of federal programs to address their specific educational needs.

Current law actually permits considerable flexibility in how districts spend Title VII, part A funding as long as the funds are targeted toward improving the achievement of American Indian students. H.R. 2445 allows funds to be siphoned away from serving this important student population and undermines our nations effort to improve the educational outcomes and educational opportunity for American Indian and Alaska Native students.

#### FISCAL ACCOUNTABILITY

With H.R. 2445, the Majority will erode fiscal accountability. Without reporting requirements, it will be impossible to monitor fiscal accountability provisions—federal dollars can supplant local dollars and comparable services in our schools will be abandoned. In fact, the Majority voted unanimously against an amendment to include much needed reporting requirements and transparency.

Fiscal accountability has always been included in the Elementary and Secondary Education Act to ensure federal dollars are spent appropriately and to ensure that states and local districts also contribute to improve K–12 education. H.R. 2445 says that nothing in this bill “shall be construed to relieve a state educational agency or a local educational agency of any requirements relating to” supplement not supplant and comparability of services. However, the bill also fails to put in place provisions to make these protections feasible.

H.R. 2445 only requires that districts notify a state of their intent to use this provision and only requires the state to notify the Secretary. It does not require districts or states to report on how the funds are used or who is served by the federal funds.

Without this critical information, these essential fiscal accountability requirements will be impossible to monitor. There would be no assurance that the federal funds are supplementing non-federal funds because we will not know how federal funds are spent. Addi-

<sup>15</sup> U.S. Department of Education. (2011c). *FY2011 Department of Education Justifications of Appropriation Estimates to the Congress: Indian Education*. Washington, DC.

<sup>16</sup> Grigg, W., Moran, R., & Kuang, M. (2009). *National Indian Education Study—Part 1: Performance of American Indian and Alaska Native Students at Grades 4 and 8 on NAEP 2009 Reading and Mathematics Assessments*. U.S. Department of Education, Washington, DC.

<sup>17</sup> <http://nces.ed.gov/nationsreportcard/ltddata/>.

<sup>18</sup> U.S. Department of Education. (2011c).

tionally, this bill undermines Title I leaving it with no requirement to actually establish Title I receiving schools. Without Title I receiving schools, we will be unable to determine if high-poverty schools are receiving comparable services to the wealthier schools. H.R. 2445 will permit taxpayer dollars to be spent at the local level without any accountability for how they are spent.

#### LETTERS OF OPPOSITION

The Committee received letters of opposition for H.R. 2445 from: The Congressional Black Caucus; the Congressional Asian Pacific American Caucus; the Congressional Hispanic Caucus; Asian American and Pacific Islander Organizations (AAPI); American Federation of Teachers (AFT); Consortium for Citizens with Disabilities (CCD); Council for Exceptional Children (CEC); Council of the Great City Schools; Democrats for Education Reform; The Education Trust; Hispanic Education Coalition (HEC); NAACP Legal Defense and Educational Fund; Inc. (LDF); Children's Defense Fund (CDF); Lawyers' Committee for Civil Rights Under Law; League of United Latin American Citizens; Latino Elected and Appointed Officials National Taskforce on Education; National Alliance of Black School Educators (NABSE); National Association of Elementary School Principals (NAESP); National Association of Secondary School Principals (NASSP); National Association of State Directors of Special Education (NASDSE); Alliance for Excellent Education; National Urban League; Southeast Asia Resource Action Center; National Indian Education Association (NIEA); League of United Latin American Citizens; National Council of La Raza (NCLR); National PTA; National Center for Learning Disabilities (NCLD); National Education Association (NEA); Tribal Education Departments National Assembly. (TEDNA); Teachers of English to Speakers of Other Languages (TESOL); and the Leadership Conference.

#### AMENDMENTS

Due to the detrimental effect H.R. 2445 would have on students' education, Democratic Members offered a series of amendments to ensure that states and districts that receive money for specific populations of students spend the money to improve educational opportunities for those students. The amendments simply excluded the programs where funding is generated by specific populations from this provision.

Mr. Miller offered an amendment to prohibit districts from using funds obtained through Title I,

Part A, a formula based on the number of poor students in each district, from being used for activities that do not support those students. The amendment was defeated on a party-line vote.

Mr. Grijalva and Mr. Hinojosa offered an amendment to prohibit states and districts from using funds obtained through a formula based on the number of English Language Learners and immigrant students in each state, from being used for activities that do not support those students. The amendment was defeated on a party-line vote.

Mr. Hinojosa and Mr. Grijalva offered an amendment to prohibit states and districts from using funds obtained through Title I, Part

C, a formula based on the number of migrant students in each state, from being used for activities that do not support those students. The amendment was defeated on a party-line vote.

Mr. Scott offered an amendment to prohibit states and districts from using funds obtained through Title I, Part D, a formula based on the number of neglected and delinquent students in each state, from being used for activities that do not support those students. The amendment was defeated on a party-line vote.

Mr. Kildee offered an amendment to prohibit local educational agencies from using funds obtained through Title VII, part A, a formula based on the number of Native American and Alaska Native students, from being used for purposes other than supporting their educational needs. The amendment was defeated on a party-line vote.

Mr. Holt offered an amendment to require states and districts that utilize the authority provided under the H.R. 2445 to report on what activities were funded, which students benefited from those activities, disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and poverty, and the numbers of students from which the state's and District's funding from a particular program was derived. The amendment was defeated on a party-line vote.

#### DEMOCRATIC VISION FOR FLEXIBILITY

The Elementary and Secondary Education Act, first and foremost, is a civil rights law, carrying out the federal government's role in ensuring equal access and opportunity for all, as required by *Brown v. Board of Education*.<sup>19</sup> For all its flaws, No Child Left Behind did help local communities and the nation see, for the first time, what was happening in our schools for all students. In addition to revealing the state of student achievement, it also held schools accountable for improving their students' performance. Hiding this information and retreating from accountability are not options if we want to close the achievement gap and ensure the American workforce remains strong in the global economy.

To maintain the role of increasing equity and economic competitiveness, the federal government should be setting high standards for all students, establishing a strong system for accountability tied to those standards, and encouraging more data-based decision making. Once the federal government ensures the collection of this information, sets high standards, and insists on accountability, it should step back and give a great deal of flexibility to states and school districts in deciding how to help our schools meet our national goals.

Flexibility will only lead to improved student outcomes and improved school operations, if it is grounded in improving equity and student achievement. Student achievement should drive decision-making. With the focus on improving student outcomes, additional flexibility will lead to greater innovation and allow advancements—from what we have learned domestically and internationally—to drive practice. Committee Democrats believe that consolidation of programs, alignment of data, and modernization of accountability

<sup>19</sup>*Brown v. Board of Education*, 347 U.S. 483 (1954).



systems can increase flexibility for school districts while maintaining the appropriate federal role in education.

Consolidation of the smaller programs within ESEA will increase efficiency and increase flexibility at the local level, allowing school districts to design programs that best meet their needs. Consolidation of programs should maintain focus on data-based decision making and accountability for outcomes. It is important that in consolidating programs the federal government ensure that essential services to students are not lost, but that districts have the flexibility to meet the various needs of their students. For example, ESEA currently authorizes several programs on various aspects of literacy—family literacy, early literacy, and K–12 literacy. In consolidating these programs into one comprehensive program, Congress would reduce burdens on states and districts by requiring only one application and streamlined data requirements in exchange for funding to provide literacy services based on the needs of their community.

When consolidating programs, outcome requirements should be aligned and limited in number and focused on increasing student achievement and graduating college- and career-ready students. The outcome requirements established through Title I, part A—student achievement in English and math and graduation—should be central in all programs within ESEA. A focused and narrowed set of performance indicators will create coherence within the system and reduce burden on schools, districts, and states, while still providing parents, communities, and schools with much needed information on student performance.

States, districts and schools should be more fairly held accountable while maintaining the federal role in setting high expectations and holding all schools accountable for their students' performance. To be fairly held accountable, a system should consider where students and schools start and should create attainable targets that schools can achieve. Rather than relying on status-based measures to determine a school's success, Congress should consider student growth and school progress in accountability.

Congress should also fix current law's "one-size-fits-all" approach for schools that are in need of improvement. Districts should be able to differentiate services to students to improve academic achievement based on data indicating their specific needs.

#### CONCLUSION

Flexibility is more than just slogan. Flexibility is something schools and districts need in order to improve. When done right, giving schools flexibility to adapt and meet their students' needs, while maintaining accountability at every step along the way, will help students to get ahead and succeed. Most importantly, schools must not lose sight of why the federal government has a role in education in the first place: Ensuring every student, regardless of their race, economic status or zip code, receives equal access to a quality education. H.R. 2445 does not provide schools and districts with the real flexibility that they need; it does not provide students with educational opportunity. It is an arbitrary policy that undermines equality of opportunity, which is morally reprehensible, constitutionally suspect and a threat our economic competitiveness.

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