

111TH CONGRESS
2D SESSION

S. 3770

To amend the Elementary and Secondary Education Act of 1965 to improve elementary and secondary education.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2010

Mr. FEINGOLD (for himself and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Elementary and Secondary Education Act of 1965 to improve elementary and secondary education.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Flexibility and Innovation in Education Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References.
- Sec. 3. Findings.
- Sec. 4. State and local flexibility in assessment and accountability models.
- Sec. 5. Privacy protections for data systems.

Sec. 6. Improvements to the peer review process.

Sec. 7. Disaggregation of graduation rates.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, whenever in
3 this Act an amendment or revision is expressed in terms
4 of an amendment to, or revision of, a section or other pro-
5 vision, the reference shall be considered to be made to a
6 section or other provision of the Elementary and Sec-
7 ondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

8 **SEC. 3. FINDINGS.**

9 Congress makes the following findings:

10 (1) State and local governments bear the ma-
11 jority of the cost of and responsibility for educating
12 public elementary school and secondary school stu-
13 dents.

14 (2) State and local governments often struggle
15 to find adequate funding to provide basic edu-
16 cational services.

17 (3) The Federal Government has not provided
18 its full share of funding for numerous federally man-
19 dated elementary and secondary education pro-
20 grams.

21 (4) Underfunded Federal education mandates
22 increase financial pressures on States and local edu-
23 cational agencies.

1 (5) States and local educational agencies are
 2 facing increased costs when implementing the an-
 3 nual student academic assessments required under
 4 section 1111(b)(3)(C)(vii) of the Elementary and
 5 Secondary Education Act of 1965 (20 U.S.C.
 6 6311(b)(3)(C)(vii)).

7 (6) Multiple measures of student academic
 8 achievement on various methods of assessment pro-
 9 vide a more complete picture of a student’s
 10 strengths and weaknesses than does a single score
 11 on a high stakes standardized test.

12 **SEC. 4. STATE AND LOCAL FLEXIBILITY IN ASSESSMENT**
 13 **AND ACCOUNTABILITY MODELS.**

14 (a) ACCOUNTABILITY DEFINITION CHANGES.—Sec-
 15 tion 1111(b)(2)(A) (20 U.S.C. 6311(b)(2)(A)) is amend-
 16 ed—

17 (1) in the matter preceding clause (i), by strik-
 18 ing “under this paragraph.” and inserting “, as de-
 19 fined in the State plan in accordance with this para-
 20 graph and which may be measured in terms of ade-
 21 quate yearly growth in accordance with subpara-
 22 graph (L).”; and

23 (2) in clause (iii), by striking “sanctions” and
 24 inserting “proven interventions”.

1 (b) ADEQUATE YEARLY PROGRESS CHANGES.—Sec-
 2 tion 1111(b)(2) (as amended by subsection (a)) (20
 3 U.S.C. 6311(b)(2)) is further amended—

4 (1) in subparagraph (B)—

5 (A) by inserting “and, other academic indi-
 6 cators, as selected by the State in accordance
 7 with subparagraph (C)(vii)” after “assessments
 8 described in paragraph (3)”; and

9 (B) by inserting “(which may be measured
 10 in terms of adequate yearly growth in accord-
 11 ance with subparagraph (L))” after “adequate
 12 yearly progress”; and

13 (2) in subparagraph (D)—

14 (A) in clause (i), by striking “and” after
 15 the semicolon;

16 (B) by striking clause (ii) and inserting the
 17 following:

18 “(ii) in order to provide a more accu-
 19 rate determination of school improvement
 20 and subject to subparagraph (C)(iv) and
 21 the approval of the Secretary, may elect to
 22 use other academic indicators described in
 23 clauses (vi) and (vii) of subparagraph (C)
 24 (except for locally administered assess-
 25 ments) to determine which schools and

1 local educational agencies are identified for
2 school improvement, corrective action, or
3 restructuring under section 1116; and”;
4 and

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

6 “(iii) shall ensure that the academic
7 assessments described in paragraph (3)
8 represent not less than 50 percent of the
9 factors used to determine how academic
10 achievement is measured for purposes of
11 determining adequate yearly progress.”.

12 (c) ADEQUATE YEARLY GROWTH.—Section
13 1111(b)(2) (20 U.S.C. 6311(b)(2)) is further amended—

14 (1) in subparagraph (F), by inserting “or, in
15 the case of a State measuring adequate yearly
16 progress in terms of adequate yearly growth in ac-
17 cordance with subparagraph (L), all students in
18 each group described in subparagraph (C)(v) will
19 meet the State’s definition of adequate yearly
20 growth” before the period at the end; and

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

22 “(L) ADEQUATE YEARLY GROWTH.—Not-
23 withstanding any other provision of this Act, a
24 State may elect in the State plan to measure
25 adequate yearly progress in terms of adequate

1 yearly growth if the State has developed a defi-
2 nition of adequate yearly growth for the stu-
3 dents in the State that has been approved by
4 the Secretary. In the case of a State that makes
5 such an election and that has obtained approval
6 of the State’s definition of adequate yearly
7 growth, all requirements of this paragraph with
8 respect to adequate yearly progress shall apply
9 to such State, except that—

10 “(i) Statewide annual measurable ob-
11 jectives shall, in lieu of the requirements of
12 clauses (iii) and (iv) of subparagraph
13 (G)—

14 “(I) identify a minimum percent-
15 age of students who are required to
16 meet a certain level of adequate yearly
17 growth, as defined by the State; and

18 “(II) ensure that all students will
19 meet the State’s definition of ade-
20 quate yearly growth within the State’s
21 timeline under subparagraph (F); and

22 “(ii) the exception described in sub-
23 paragraph (I)(i) regarding groups of stu-
24 dents that do not meet the objectives shall
25 not apply to schools in such State.”.

1 (d) STATE FLEXIBILITY TO DESIGN GROWTH MOD-
 2 ELS.—Section 1111(b)(2) (20 U.S.C. 6311(b)(2)) is fur-
 3 ther amended by adding at the end the following:

4 “(M) STATE FLEXIBILITY TO DESIGN
 5 GROWTH MODELS.—

6 “(i) IN GENERAL.—Notwithstanding
 7 any other provisions of this section, in car-
 8 rying out this section a State may choose
 9 to develop and use a growth model ac-
 10 countability system for the purposes of de-
 11 termining adequate yearly progress by
 12 measuring adequate yearly growth in ac-
 13 cordance with subparagraph (L).

14 “(ii) REQUIREMENTS FOR GROWTH
 15 MODELS.—A growth model accountability
 16 system referred to in clause (i) shall meet
 17 the following requirements:

18 “(I) VALID, RELIABLE, AND AC-
 19 CURATE MEASURES.—The growth
 20 model uses valid, reliable, and accu-
 21 rate measures.

22 “(II) SUFFICIENT TECHNICAL
 23 QUALITY AND CAPACITY.—The growth
 24 model has sufficient technical quality
 25 and technical capacity to ensure the

1 growth model can function fairly and
2 accurately for each student.

3 “(III) STATEWIDE PRIVACY-PRO-
4 TECTED DATA SYSTEM.—The growth
5 model has a statewide privacy-pro-
6 tected data system capable of tracking
7 individual students’ growth.

8 “(IV) ANNUAL ASSESSMENTS.—
9 The State annually assesses students
10 in grades 3 through 8 and once in
11 grades 9 through 12 and such assess-
12 ments produce reliable results in each
13 grade and from year to year.

14 “(V) PERFORMANCE MEASURES
15 OR GROWTH TARGETS.—The State
16 may set performance measures or
17 growth targets based on a student’s
18 current academic level, but may not
19 set performance measures or growth
20 targets for students on the basis of
21 the student’s membership in 1 of the
22 groups listed in subparagraph
23 (C)(v)(II).

24 “(VI) ABILITY TO EVALUATE.—
25 The State is able to evaluate student

1 gains or progress in, at a minimum,
2 mathematics and reading or language
3 arts.

4 “(iii) LIMITATION.—Paragraph (3)(E)
5 shall not apply to a State that chooses to
6 use a growth model accountability system
7 under this subparagraph.”.

8 (e) MULTIPLE MEASURES OF ASSESSMENT.—Section
9 1111(b)(3) is further amended—

10 (1) in subparagraph (C)—

11 (A) in clause (xiv), by striking “and” after
12 the semicolon;

13 (B) in clause (xv), by striking the period
14 and inserting “; and”; and

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

16 “(xvi) if the State chooses, include
17 other valid and reliable assessments, in-
18 cluding performance assessments, tech-
19 nology-based assessments, thorough course
20 assessments, adaptive assessments, and ap-
21 propriate assessments for students with
22 disabilities and English language learners,
23 that—

1 “(I) are aligned with the State’s
2 academic content standards and stu-
3 dent academic achievement standards;

4 “(II) are capable of measuring
5 student academic growth;

6 “(III) are fair, valid, reliable, and
7 capable of producing comparable and
8 disaggregated results for all students,
9 including all student subgroups de-
10 scribed in section
11 1111(b)(2)(C)(v)(II);

12 “(IV) are able to measure readi-
13 ness for postsecondary education or
14 the workplace;

15 “(V) use scoring mechanisms
16 that enable the assessments to be
17 scored in such a way as to produce
18 fair, valid, reliable, and comparable
19 results for all students;

20 “(VI) have been approved
21 through the peer-review process de-
22 scribed in subsection (e);

23 “(VII) measure higher-order
24 thinking skills;

1 “(VIII) produce evidence about
2 student learning and achievement in a
3 timely manner; and

4 “(IX) provide teachers with
5 meaningful feedback so that the
6 teachers can modify, improve, and
7 target instructional strategies based
8 on individual student need.”.

9 (f) STATE FLEXIBILITY TO TEST IN GRADE
10 SPANS.—Section 1111(b)(3) (20 U.S.C. 6311(b)(3)) is
11 further amended by adding at the end the following:

12 “(E) STATE FLEXIBILITY TO TEST IN
13 GRADE SPANS.—

14 “(i) IN GENERAL.—Notwithstanding
15 clauses (v) and (vii) of subparagraph (C)
16 or any other provision in this Act and sub-
17 ject to clause (ii), a State may elect to ad-
18 minister the assessments required under
19 this paragraph not less than—

20 “(I) once during grades 3
21 through 5;

22 “(II) once during grades 6
23 through 8; and

24 “(III) once during grades 9
25 through 12.

1 “(ii) REQUIREMENTS.—If a State ex-
 2 ercises the flexibility regarding admin-
 3 istering assessments provided under clause
 4 (i), the State shall ensure that the State
 5 has statewide systems in place to monitor
 6 and report the academic progress and
 7 growth of students in core academic sub-
 8 jects in grades for which the State is not
 9 administering the assessments under this
 10 paragraph.”.

11 **SEC. 5. PRIVACY PROTECTIONS FOR DATA SYSTEMS.**

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

15 **“SEC. 1120C. PRIVACY PROTECTIONS FOR DATA SYSTEMS.**

16 “(a) IN GENERAL.—Each State receiving a grant
 17 under this part shall implement measures to—

18 “(1) limit the use of information in a statewide
 19 education data system by a State educational agen-
 20 cy, a local educational agency, or an institution of
 21 higher education to the purposes and functions for
 22 such information set forth in Federal or State edu-
 23 cation law, and allow access to the information in
 24 the statewide education data system only to those
 25 State or local employees or agents, and only on such

1 terms, as may be necessary to fulfill those purposes
2 and functions;

3 “(2) prohibit the disclosure of student-level in-
4 formation in the data system to any other person,
5 agency, institution, or entity, except that States may
6 allow the disclosures permitted under section 444 of
7 the General Education Provisions Act (commonly re-
8 ferred to as the ‘Family Educational Rights and Pri-
9 vacy Act of 1974’) in accordance with the limitations
10 set forth in this section and any additional limita-
11 tions set forth in State law;

12 “(3) require any person, agency, institution, or
13 entity to whom disclosure of information in the data
14 system is authorized under section 444 of such Act
15 to sign a data use agreement prior to disclosure,
16 that—

17 “(A) prohibits the party from further dis-
18 closing the information;

19 “(B) prohibits the party from using the in-
20 formation for any purpose other than the pur-
21 pose specified in the agreement; and

22 “(C) requires the party to destroy the in-
23 formation when the purpose for which the dis-
24 closure was made is accomplished;

1 “(4) if consistent with the purpose of the disclo-
2 sure, remove personally identifying information and
3 unique identifiers before disclosing student-level in-
4 formation in the data system;

5 “(5) in addition to meeting the accounting re-
6 quirements under section 444 of such Act, maintain
7 a record of the date of each disclosure of informa-
8 tion in the data system, a detailed description of the
9 information disclosed, and the name and address of
10 the person, agency, institution, or entity to whom
11 the disclosure was made, which accounting shall be
12 made available on request to parents of any student
13 whose information has been disclosed, or to the stu-
14 dent if the student has reached the age of 18 or is
15 enrolled in a postsecondary educational institution;

16 “(6) ensure that any disclosure of aggregate
17 data in the data system is in a form that does not
18 permit the identification of individual students, and
19 that any unique identifiers in the data system are
20 removed prior to disclosure of aggregate data;

21 “(7) maintain adequate security measures to
22 ensure the confidentiality and integrity of the data
23 system; and

24 “(8) ensure adequate enforcement of the re-
25 quirements of this section.

1 “(b) USE OF UNIQUE IDENTIFIERS.—

2 “(1) GOVERNMENTAL USE OF UNIQUE IDENTIFIERS.—It shall be unlawful for any Federal agency,
3 any employee of any Federal agency, any State or
4 local agency in a State that receives funds under
5 this Act, or any employee of a State or local agency
6 in a State that receives funds under this Act, to use
7 unique identifiers employed in a statewide education
8 data system for any purpose other than as author-
9 ized by Federal or State education law, or to deny
10 any individual any right, benefit, or privilege pro-
11 vided by law because of such individual’s refusal to
12 disclose the individual’s unique identifier.

13
14 “(2) REGULATIONS.—Not later than 1 year
15 after the date of enactment of the Flexibility and In-
16 novation in Education Act, the Secretary shall pro-
17 mulgate regulations governing the use of unique
18 identifiers employed in statewide education data sys-
19 tems, with the goal of safeguarding individual pri-
20 vacy. The regulations may require States seeking
21 grants under this part to have in place measures to
22 limit the use of unique identifiers by nongovern-
23 mental parties to the extent practicable, consistent
24 with the uses of the information authorized in Fed-
25 eral or State education law.

1 “(c) FORMULA GRANTS FOR PRIVACY PROTECTED
2 DATA SYSTEMS.—

3 “(1) GRANTS AUTHORIZED.—From amounts
4 appropriated under paragraph (4), the Secretary is
5 authorized to make grants, from allotments under
6 paragraph (2), to States receiving grants under sec-
7 tion 1121, for the purposes of carrying out the re-
8 quirements of this section related to privacy protec-
9 tions and unique identifiers.

10 “(2) ALLOTMENT FORMULA.—The Secretary
11 shall establish a formula for the allotment of grants
12 under this subsection that ensures that each State
13 receives an equitable share of the amount allotted
14 based upon relevant State factors, including student
15 population size.

16 “(3) DEFINITION OF STATE.—In this sub-
17 section the term ‘State’ means each of the several
18 States of the United States, the District of Colum-
19 bia, and the Commonwealth of Puerto Rico.

20 “(4) AUTHORIZATION OF APPROPRIATIONS.—
21 From the amounts appropriated to and available for
22 Program Administration within the Departmental
23 Management account in the Department of Edu-
24 cation for each of fiscal years 2011 through 2015,
25 there are authorized to be appropriated to carry out

1 this subsection \$1,000,000 for each such fiscal
2 year.”.

3 **SEC. 6. IMPROVEMENTS TO THE PEER REVIEW PROCESS.**

4 Section 1111(e)(1) (20 U.S.C. 6311(e)(1)) is further
5 amended—

6 (1) by striking subparagraph (B);

7 (2) by redesignating subparagraphs (C) through
8 (F) as subparagraphs (F) through (I), respectively;

9 (3) by inserting after subparagraph (A) the fol-
10 lowing:

11 “(B) develop, and update, a list of individ-
12 uals the Secretary has determined to be eligible
13 under subparagraph (C)(i) to be appointed to
14 the peer review process under this subsection,
15 which list shall include eligible individuals rec-
16 ommended by State educational agencies, local
17 educational agencies, and professional edu-
18 cational associations;

19 “(C) using the list described in subpara-
20 graph (B), appoint individuals to the peer re-
21 view process, ensuring that—

22 “(i) the individuals appointed to the
23 peer review process are—

24 “(I) representative of parents,
25 teachers, State educational agencies,

1 local educational agencies, and profes-
2 sional education associations; and

3 “(II) skilled practitioners or edu-
4 cation researchers with knowledge of
5 fair, valid, and reliable assessment de-
6 sign, including individuals with exper-
7 tise in 1 or more of the following:

8 “(aa) developing educational
9 standards;

10 “(bb) developing valid and
11 reliable assessments for all stu-
12 dents, including alternative as-
13 sessments for students with dis-
14 abilities and English language
15 learners;

16 “(cc) creating valid account-
17 ability models;

18 “(dd) accurately assessing
19 the needs of low-performing
20 schools; or

21 “(ee) adequately measuring
22 the other educational needs of
23 students so that issues relating
24 to the education of the whole
25 child are addressed; and

1 “(ii) each peer review panel used in
2 the process contains—

3 “(I) not less than 1 representa-
4 tive recommended for inclusion on the
5 list described in subparagraph (B) by
6 State educational agencies;

7 “(II) not less than 1 representa-
8 tive recommended for the list by local
9 educational agencies;

10 “(III) not less than 1 representa-
11 tive recommended for the list by pro-
12 fessional educational associations;

13 “(IV) not less than 1 representa-
14 tive recommended for the list by the
15 Secretary; and

16 “(V) not less than 1 representa-
17 tive who works in a school;

18 “(D) ensure that there is consistency from
19 State to State with respect to all decisions
20 reached by the peer review panels;

21 “(E) ensure that States are given the op-
22 portunity to receive timely feedback from peer
23 review teams, in person or via electronic com-
24 munication, and directly interact with peer re-

1 view panels on issues that need clarification
2 during the peer review process;”;

3 (4) in subparagraph (H)(iii) (as redesignated
4 by paragraph (2)), by striking “and” after the semi-
5 colon;

6 (5) in subparagraph (I) (as redesignated by
7 paragraph (2)), by striking the period and inserting
8 a semicolon; and

9 (6) by adding at the end the following:

10 “(J) post all approval and denial decisions
11 regarding the State plans and final State plans,
12 State plan amendments, and waiver decisions
13 for each State plan, on a publicly available
14 website in an easily identifiable location, and
15 provide written notification to States of all such
16 decisions within 3 business days of such deci-
17 sions; and

18 “(K) direct the Inspector General of the
19 Department to review the final determinations
20 reached by the Secretary under this subsection
21 for consistent decisionmaking through the peer
22 review process across all States and report the
23 findings to Congress once every 2 years.”.

1 **SEC. 7. DISAGGREGATION OF GRADUATION RATES.**

2 Section 1111(h)(1)(C)(vi) (20 U.S.C. 6311(h)(1)(C))

3 is amended by inserting before the semicolon the following:

4 “, disaggregated by the student subgroups described in

5 subsection (b)(2)(C)(v)(II).”.

○