

PROVIDING FOR THE CONSIDERATION OF H.R. 1, THE NO
CHILD LEFT BEHIND ACT OF 2001

MAY 16, 2001.—Referred to the House Calendar and ordered to be printed

Ms. PRYCE of Ohio, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 143]

The Committee on Rules, having had under consideration House Resolution 143, by a record vote of 9 to 2, report the same to the House with recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 1, the No child Left Behind Act of 2001, under a structured rule. The rule provides two hours of general debate divided equally between the chairman and ranking minority member of the Committee on Education and the Workforce.

The rule waives all points of order against consideration of the bill. The rule makes in order the Committee on Education and the Workforce's amendment in the nature of a substitute now printed in the bill as an original bill for the purpose of amendment, which shall be considered as read.

The rule further makes in order only those amendments printed in this report. The amendments made in order may be offered only in the order printed in the report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against the amendments are waived. Finally, the rule provides one motion to recommit with or without instructions.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 10

Date: May 16, 2001.

Measure: H.R. 1.

Motion by: Mr. Frost.

Summary of motion: To make in order an amendment by Representative Owens that would provide more than \$20 billion for school renovation, repair and construction.

Results: Defeated 2 to 9.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; Dreier—Nay.

Rules Committee record vote No. 11

Date: May 16, 2001.

Measure: H.R. 1.

Motion by: Mr. Frost.

Summary of motion: To make in order an amendment by Representative Etheridge that would authorize an additional \$500 million per year for FY2002–2006 for low-performing schools to raise student achievement. Funds may be used for class size reduction, extended learning time, teacher training, statewide turnaround teams, staff recruitment and retention, teacher mentoring, student loan forgiveness, and teacher/parenting/community partnerships. The amendment also calls for measuring and evaluating progress and providing assistance to achieve a standard of continual student improvement.

Results: Defeated 2 to 9.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; Dreier—Nay.

Rules Committee record vote No. 12

Date: May 16, 2001.

Measure: H.R. 1.

Motion by: Mr. Goss.

Summary of motion: To report the resolution.

Results: Adopted 9 to 2.

Vote by Members: Goss—Yea; Linder—Yea; Pryce—Yea; Diaz-Balart—Yea; Hastings—Yea; Myrick—Yea; Sessions—Yea; Reynolds—Yea; Frost—Nay; Slaughter—Nay; Dreier—Yea.

AMENDMENTS MADE IN ORDER

1. Boehner—Manager's Amendment. Makes various technical and conforming changes, including several clarifications. (10 minutes)

2. Capps—Allows funding under Title IV to be used for CPR training in schools. (10 minutes)

3. Dunn/Frost—Allows local educational agencies to spend more of their federal funds to hire School Resource Officers. (10 minutes)

4. Graves—Expresses the Sense of Congress that the Department of Education, states, and local educational agencies work together to ensure that at least 95 percent of all funds appropriated for elementary and secondary education programs administered by the Department of Education is spent directly to improve the academic achievement of children in classrooms. (10 minutes)

5. Hill—Expands Section 401 to include the creation of smaller learning communities among the possible uses of local innovative education program funds. (10 minutes)

6. Hoekstra/Frank—Strikes language requiring annual state assessments in reading and math for grades 3–8 and retains current law for state assessments, requiring that states measure students in all subjects that the state has developed standards. (30 minutes)

7. Dooley—Requires states and school districts to provide a comparison of student subgroups with the state's annual goals and to provide a description of the state's accountability system, including a description of the criteria used by the state to evaluate school performance and to determine whether a school enters school improvement, corrective action or reconstitution. (10 minutes)

8. Vitter/Sessions—Requires those secondary education institutions that accept federal funds to allow military recruiters to visit the school. (10 minutes)

9. Tiberi/Castle—Allows 100 school districts in 50 states to enter into performance agreements with the Secretary. Under these agreements, school districts would be able to consolidate programs and be relieved of the requirements of those programs. (30 minutes)

10. Hoekstra—Increases the 50 percent transferability cap for local educational agencies to 75 percent upon approval from the state. (20 minutes)

11. Meek—Amends the Osborne Mentoring Program so that both adults and qualified, trained and motivated high school students can be mentors. (10 minutes)

12. Rogers (MI)—Authorizes the Secretary of Education to work with state administrators to promote and advocate the use and establishment of state-sponsored college savings plans during a student's elementary years. (10 minutes)

13. Norwood/Barr/Graves—Authorizes school personnel to discipline a student with a disability who has a weapon; knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or commits aggravated assault or battery at a school in the same manner as they would discipline a non-disabled student who has committed the same offense, including suspension or expulsion. A disabled child who is disciplined under this amendment would be able to assert a defense that the possession of a weapon, or possession or use of illegal drugs, or sale or solicitation of a controlled substance, was unintentional or innocent. (20 minutes)

14. Graham/Tiahrt—"Parental Freedom of Information" amendment which guarantees parents the right to access the curriculum to which their children are exposed. Requires informed written consent prior to any student being required to undergo non-emergency medical, psychological or psychiatric examination, testing or treatment while at school. Further clarifies that no student should be required to take any survey, analysis or evaluation that reveals

personal information or seeks responses on material inappropriate for children. (20 minutes)

15. Arney/Boehner/DeLay—Authorizes private school choice for students who have attended low performing schools for 3 years; private school choice as a local use of funds under the Innovative education grants under subpart 1 of part A of Title IV; and private school choice for students attending unsafe schools or for students who have been victims of crime. (40 minutes)

16. Arney/DeLay/Watts/Lipinski—Authorizes up to 5 school choice research demonstration projects involving public and private schools to demonstrate the effectiveness of school choice in improving the academic achievement of disadvantaged students. (20 minutes)

17. Akin—Adds that the testing required in Section 1111(b)(4) be a test of objective knowledge, based on measurable, verifiable and widely accepted professional testing and assessment standards, and shall not assess the personal opinions, attitudes, or beliefs of the student being tested. (10 minutes)

18. Stearns—Requires that state educational agencies make known, in the form of a report to the Department of Education, those schools that are in the process of school improvement and indicate the specific category of status: school improvement, corrective action or reconstruction (10 minutes)

19. Traficant—Expresses the Sense of the Congress that all construction related activities resulting from funding authorized under the Act shall use American-made steel and that all purchasing shall comply with the requirements of the Buy America Act. (10 minutes)

20. Brady (TX)—Ensures teachers have the power to maintain order and discipline in the classroom and discourages frivolous, harassing lawsuits against educators and school districts that take reasonable actions to maintain order and discipline. (20 minutes)

21. Mink—Requires mentoring for teachers with 3 years or less experience in low-performing schools. (10 minutes)

22. Wamp/Etheridge—Increases the authorization for character education from \$25 million to \$50 million for fiscal year 2002 and such sums as may be necessary for each of fiscal years 2003 through 2006. (10 minutes)

23. DeMint—Allows 7 state educational agencies (SEAs) and 25 local educational agencies (LEAs) to participate in the Straight A's program; allows states to use their Title I accountability system to demonstrate achievement gains; provides that Title I targeting requirements remain in effect within state and school districts; limits uses of funds to uses authorized by programs consolidated as part of the performance agreement; requires the states and school districts to exceed adequate yearly progress by a statistically significant amount; provides that states and school districts are subject to administrative sanctions for failure to perform. (30 minutes)

24. Hilleary—Prohibits the use of federal funds by any state or local education agency or school that discriminates against the Boy Scouts of America in providing equal access to school premises or facilities. (10 minutes)

25. Velázquez—Amends Title V to make it easier for entities in disadvantaged communities to successfully apply for 21st century community learning grants in states that exercise the option to re-

quire a match by allowing them to meet the matching requirement with in-kind contributions. (10 minutes)

26. Kirk—Expresses the Sense of Congress that Sections 8002 (Federal Property) and 8003 (Federally Connected Children) of the Impact Aid Program should be fully funded. (10 minutes)

27. Hoeffel—Clarifies that localities can spend Title V, Part B funding to provide leave time to teachers so they can attend technology training classes. (10 minutes)

28. Cox—Provides that the total of all funding increases in the bill in the first year will not exceed an 11.5% increase over fiscal year 2001. Authorizes further increases in aggregate funding of 14% (representing 3.5% annually) for all subsequent years. (20 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BOEHNER OF OHIO, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 1003(b) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 103 of the bill, strike “1116(c)” and insert “1116(b)”.

In section 1003(e) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 103 of the bill, strike “amount of State funds” and all that follows through “the preceding fiscal year” and inserting the following: “amount of funds each local educational agency receives under subpart 2 below the amount received by such agency under such subpart in the preceding fiscal year”.

In section 1111 of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 104 of the bill, add at the end the following:

“(j) SPECIAL RULE WITH RESPECT TO BUREAU FUNDED SCHOOLS.—In determining the assessments to be used by each Bureau funded school receiving funds under this part, the following shall apply:

“(1) Each Bureau funded school which obtains accreditation by the State in which it is operating shall utilize the assessments the State has developed and implemented to meet the requirements of this section, or such other appropriate assessment as approved by the Secretary of the Interior.

“(2) Each Bureau funded school which obtains accreditation by a regional accreditation organization shall adopt an appropriate assessment, in consultation and with the approval of the Secretary of Interior and consistent with assessments adopted by other schools in the same State or region, that meets the requirements of this section.

“(3) Each Bureau funded school which obtains accreditation by a tribal accrediting agency or tribal division of education shall use an assessment developed by such agency or division, except that the Secretary of Interior shall ensure that such assessment meets the requirements of this section.

In section 1111(h)(1)(D)(i) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 104 of the bill, strike “subsection (b)(4)(F)” and insert “subsection (b)(4)”.

In section 1116 of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 106 of the bill, add at the end the following:

“(f) TREATMENT OF BUREAU FUNDED SCHOOLS.—For the purposes of applying the requirements of subsection (b) to schools funded by the Bureau of Indian Affairs, the Secretary of Interior shall implement such subsection in a manner that treats the appropriate tribe or tribal organization as a local educational agency for the purpose of implementing school improvement, corrective action and restructuring actions. If such tribe or tribal organization does not take the appropriate action required under subsection (b), the Secretary shall take such appropriate action as required under subsection (b) after final notice to such tribe or tribal organization.”

In section 1116(b) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 106 of the bill—

(1) in paragraph (7)(D), strike “to participate in developing any plan under subparagraph (A)(iii)” and insert “, to the extent practicable, to participate in developing any plan under subparagraph (A)(ii)(III)”;

(2) in the matter preceding subparagraph (A) of paragraph (8)—

(A) insert “(1)(E) for schools described in paragraphs (1)(A)(i),” after “paragraph”; and

(B) insert a comma after “(6)(D)(i)”;

(9)—

(A) insert “(1)(E),” after “paragraph”; and

(B) insert a comma after “(6)(D)(i)”.

In section 1116(d)(11) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 106 of the bill—

(1) strike “paragraph shall” and insert “subsection shall”; and

(2) strike “under this paragraph”.

In section 1118 of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 108 of the bill—

(1) in paragraph (12), insert “and” after the semicolon;

(2) in paragraph (13), strike “; and” and insert a period; and

(3) strike paragraph (14).

In section 1221(2)(A) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 111 of the bill, strike “alphabet;” and insert “alphabet and letter sounds;”.

In section 1221(5) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 111 of the bill, strike “care agencies,” and insert “care agencies and programs,”.

In section 1222 of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 111 of the bill—

(1) in subsection (b)—

(A) in paragraph (2) insert “or agencies” after “organizations” each place such term appears and insert “or program” after “child care agency”; and

(B) in paragraph (3), insert “or agencies” after “organizations”; and

(2) in subsection (e)—

(A) in paragraph (1)(B)(i), strike “alphabet;” and insert “alphabet and letter sounds;”; and

(B) in paragraph (2)(B), strike “care agencies,” and insert “care agencies or programs.”

In subpart 2 of part B of title I of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 111 of the bill, amend section 1224 to read as follows:

“SEC. 1224. REPORTING REQUIREMENTS.

“Each eligible applicant receiving a grant under this subpart shall report annually to the Secretary regarding the eligible applicant’s progress in addressing the purposes of this subpart, including information on—

“(1) the research-based instruction, materials, and activities being used in the programs funded under the grant;

“(2) the types of programs funded under the grant and the ages of children served by such programs;

“(3) the qualifications of the program staff who provide early literacy instruction under such programs and the type of ongoing professional development provided to such staff; and

“(4) the curricula, materials, and activities used by the programs funded under the grant to support children’s reading development.

In section 1711(c) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 171 of the bill—

(1) insert “subpart 1 of” before “part A of title V”; and

(2) strike “5212(2)(A)” and insert “5212(a)(2)(A)”.

In section 2012(e) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 201 of the bill, strike paragraph (12) and insert the following:

“(12) Developing, or assisting local educational agencies in developing, teacher advancement initiatives that promote professional growth and emphasize multiple career paths (such as career teacher, mentor teacher, and master teacher) and pay differentiation.

In section 2031(a) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 201 of the bill, amend paragraph (7) to read as follows:

“(7) Teacher advancement initiatives that promote professional growth and emphasize multiple career paths (such as career teacher, mentor teacher, and master teacher) and pay differentiation.

In title III of the bill, add at the end the following:

SEC. 315. ACCOUNTABILITY FOR BUREAU FUNDED SCHOOLS

Notwithstanding the provisions of section 7102 of the Elementary and Secondary Education Act of 1965, the Secretary shall limit any reduction of administrative funding for the Bureau of Indian Affairs under such section to no more than 50 percent of the amount that may be reserved for administration under such Act.

In section 4131(b) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 401 of the bill—

(1) in paragraph (14), strike “and” at the end;

(2) in paragraph (15), strike the period at the end and insert a semicolon; and

(3) add at the end the following:

“(16) programs to establish or enhance prekindergarten programs for children ages 3 through 5; and

“(17) academic intervention programs that are operated jointly with community-based organizations and that support academic enrichment and counseling programs conducted during the school day (including during extended school day or extended school year programs) for students most-at-risk of not meeting challenging State academic standards or not completing secondary school.

In section 4201(b)(2) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 411 of the bill, insert “academic” before “achievement”.

In section 5122(a)(3) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 501 of the bill, insert “students who attend” after “target”.

In section 5124 of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 501 of the bill—

- (1) in subsection (a), strike paragraph (3);
- (2) in subsection (c)(1), insert “(including summer school programs)” after “school activities”; and
- (3) in subsection (d), insert “, during the summer,” after “after school”.

In section 5151(4)(B) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 501 of the bill, insert “and harassment” after “weapons”.

In section 5202(5) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 501 of the bill, insert “to training” after “constant access”.

In section 5213(b)(4)(A) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 501 of the bill, strike “that” before “ongoing” and insert a comma before “so that”.

In section 5214(b) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 501 of the bill—

- (1) in paragraph (5), insert “(including software and other electronically delivered learning materials)” after “will integrate technology”; and
- (2) in paragraph (10)(B)—
 - (A) strike “an assurance that” and insert “a description of how”; and
 - (B) strike “have compatibility and interconnectivity with technology obtained” and insert “be integrated”.

In section 5215(a)(2) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 501 of the bill, insert a comma after “reduced-cost loans”.

In section 5232 of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 501 of the bill, strike “**TELECOMMUNICATIONS PROGRAM**” in the section heading and insert “**READY TO TEACH**”.

In title VI of the bill, insert after section 602 the following:

SEC. 603. ELIGIBILITY UNDER SECTION 8003 FOR CERTAIN HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.

(a) ELIGIBILITY.—Section 8003(b)(2)(C) (20 U.S.C. 7703(b)(2)(C)) is amended—

- (1) in clauses (i) and (ii) by inserting after “Federal military installation” each place it appears the following: “(or if the

agency is a qualified local educational agency as described in clause (iv))”; and

(2) by adding at the end the following:

“(iv) **QUALIFIED LOCAL EDUCATIONAL AGENCY.**—A qualified local educational agency described in this clause is an agency that meets the following requirements:

“(I) The boundaries of the agency are the same as island property designated by the Secretary of the Interior to be property that is held in trust by the Federal Government.

“(II) The agency has no taxing authority.

“(III) The agency received a payment under paragraph (1) for fiscal year 2001.”.

(b) **EFFECTIVE DATE.**—The Secretary shall consider an application for a payment under section 8003(b)(2) for fiscal year 2002 from a qualified local educational agency described in section 8003(b)(2)(C)(iv), as added by subsection (a), as meeting the requirements of section 8003(b)(2)(C)(iii), and shall provide a payment under section 8003(b)(2) for fiscal year 2002, if the agency submits to the Secretary an application for payment under such section not later than 60 days after the date of the enactment of this Act.

In section 7203(b)(2)(C) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by such section 701 of the bill, strike “Part A of title V or section 5212(2)(A)” and insert “Subpart 1 of part A of title V or section 5212(a)(2)(A)”.

In section 8305(a) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 801 of the bill, strike “Governor and” and add at the end the following: “The State educational agency shall make any consolidated local plans and applications available to the Governor.”.

In section 8305(c) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 801 of the bill, strike “A Governor and State educational agency” and insert “A State educational agency, in consultation with the Governor,”.

In part E of title VIII of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 801 of the bill—

(1) in section 8516, insert “**ON DEPARTMENT AUDITS**” after “**REPORT**” in the section heading; and

(2) after section 8516, insert the following (and redesignate succeeding provisions, and cross-references thereto, accordingly):

“SEC. 8517. STUDY OF TESTING.

“(a) **IN GENERAL.**—The Secretary shall provide for a study of the effects of testing on students in elementary and secondary schools. Such study may include—

“(1) overall improvement or decline in what students are learning based on independent measures;

“(2) changes in course offerings, teaching practices, course content, and instructional material;

“(3) changes in rates of teacher and administrator turnover;

“(4) changes in dropout, grade retention and graduation rates for students;

“(5) costs of preparing for, conducting and grading the assessments in terms of dollars expended by the school district and time expended by students and teachers; and

“(6) such other effects as the Secretary may deem appropriate.

“(b) REPORT.—Not later than 2 years after the date of enactment of the No Child Left Behind Act of 2001, the Secretary shall transmit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate a report on the study conducted under subsection (a).

“(c) SUBSEQUENT CONGRESSIONAL CONSIDERATION.—After receipt of the report described in subsection (b), Congress may consider whether it is appropriate to enact legislation to mitigate any negative effects on students in elementary or secondary schools caused by testing.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAPPAS OF CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In subsection (b) of section 4131 of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 401 of the bill—

(1) strike “and” at the end of paragraph (14);

(2) strike the period at the end of paragraph (15) and insert “; and”; and

(3) add at the end the following:

“(16) programs for cardiopulmonary resuscitation (CPR) training in schools.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DUNN OF WASHINGTON, OR REPRESENTATIVE FROST OF TEXAS, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 5115(b)(2) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 501 of the bill, strike subparagraph (D) and insert the following:

“(D) to the extent that expenditures do not exceed 20 percent of the amount made available to a local educational agency under this subpart (except that this subparagraph shall not apply to the hiring and training of school resource officers pursuant to clause (ii)), law enforcement and security activities, including—

“(i) acquisition and installation of metal detectors;

“(ii) hiring and training of security personnel (including school resource officers), that are related to youth drug and violence prevention;

“(iii) reporting of criminal offenses on school property; and

“(iv) development of comprehensive school security assessments;

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GRAVES OF MISSOURI, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In part F of title VIII of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 801 of the bill, add at the end the following:

“SEC. 8605. EFFECTIVE USE OF FEDERAL ELEMENTARY AND SECONDARY EDUCATION FUNDS.

“It is the sense of the Congress that the Secretary, State educational agencies, and local educational agencies should work together to ensure that not less than 95 percent of all funds appropriated to carry out elementary and secondary education programs under this Act is spent directly to improve the academic achievement of the Nation’s children in their classrooms.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HILL OF INDIANA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 401 of the bill, at the end of section 4131(b) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 401) add the following:

“(16) programs to establish smaller learning communities.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HOEKSTRA OF MICHIGAN, OR REPRESENTATIVE FRANK OF MASSACHUSETTS, OR A DESIGNEE, DEBATABLE FOR 30 MINUTES

In section 1111(b)(4) of the Elementary and Secondary Education Act of 1965 as amended by section 104 of the bill—

(1) strike subparagraph (E) and insert the following:

“(E) measure the proficiency of students in the academic subjects in which a State has adopted challenging academic content and student performance standards and be administered at some time during—

“(i) grades 3 through 5;

“(ii) grades 6 through 9; and

“(iii) grades 10 through 12;” and

(2) strike subparagraph (G).

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DOOLEY OF CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 1111(h)(1)(D) of the Elementary and Secondary Education Act of 1965, as amended by section 104 of the bill, after clause (i), insert the following (and redesignate subsequent provisions accordingly):

“(ii) information that provides a comparison between the actual achievement levels of each group of students described in subclauses (I) and (II) of subsection (b)(2)(C) to the State’s annual numerical objectives for each such group of students on each of the assessments required under this part;

In section 1111(h)(1)(D) of the Elementary and Secondary Act of 1965, as amended by section 104 of the bill—

(1) after clause (v), strike “and”;

(2) at the end of clause (vi), strike the period and insert “; and”; and

(3) add at the end the following:

“(viii) a clear and concise description of the State’s accountability system, including: a description of the criteria by which the State evaluates school performance, and the criteria that the State has established, consistent with (b)(2)(B), to determine the status of schools regarding school improvement, corrective action, and reconstitution.”.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE VITTER OF LOUISIANA, OR REPRESENTATIVE SESSIONS OF TEXAS, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In part E of title VIII of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 801 of the bill, after section 8519, insert the following (and redesignate succeeding paragraphs, and any cross-references thereto, accordingly):

“SEC. 8520. ARMED SERVICES RECRUITING.

“Any secondary school that receives Federal funds under this Act shall permit regular United States Armed Services recruitment activities on school grounds, in a manner reasonably accessible to all students of such school.

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TIBERI OF OHIO, OR REPRESENTATIVE CASTLE OF DELAWARE, OR A DESIGNEE, DEBATABLE FOR 30 MINUTES

At the end of the provision proposed to be added by section 701 of the bill, add the following:

**“PART C—LOCAL FLEXIBILITY
DEMONSTRATION**

“SEC. 7301. SHORT TITLE.

This part may be cited as the “Local Flexibility Demonstration Act”.

“SEC. 7302. PURPOSE.

“The purpose of this part is to create options for local educational agencies—

“(1) to improve the academic achievement of all students, and to focus the resources of the Federal Government upon such achievement;

“(2) to improve teacher quality and subject matter mastery, especially in mathematics, reading, and science;

“(3) to empower parents and schools to effectively address the needs of their children and students;

“(4) to give local educational agencies maximum freedom in determining how to boost academic achievement and implement education reforms;

“(5) to eliminate Federal barriers to implementing effective local education programs;

“(6) to hold local educational agencies accountable for boosting the academic achievement of all students, especially disadvantaged children; and

“(7) to narrow achievement gaps between the lowest and highest performing groups of students so that no child is left behind.

“SEC. 7303. AGREEMENTS TO PROVIDE LOCAL FLEXIBILITY.

“(a) **AUTHORITY.**—Except as otherwise provided in this part, the Secretary shall enter into performance agreements—

“(1) with local educational agencies that meet their State’s definition of adequate yearly progress, that submit approvable performance agreement proposals, and that are selected under paragraph (2); and

“(2) under which the agencies may consolidate and use funds as described in section 7304.

“(b) **SELECTION OF LOCAL EDUCATIONAL AGENCIES.**—

“(1) **IN GENERAL.**—Subject to paragraph (2), the Secretary shall enter into performance agreements under this part with not more than 100 local educational agencies. Each such local educational agency shall be selected from among those local educational agencies that—

“(A) submit a proposed performance agreement to the Secretary and demonstrate, to the satisfaction of the Secretary, that the agreement—

“(i) has substantial promise of meeting the requirements of this part; and

“(ii) describes a plan to combine and use funds (as authorized under section 7304) under the agreement to meet the State’s definition of adequate yearly progress);

“(B) provide information in the proposed performance agreement regarding how the local educational agency has notified the State of the local educational agency’s intent to submit a proposed performance agreement; and

“(C) have consulted and involved parents and educators in the development of the proposed performance agreement.

“(2) **GEOGRAPHIC DISTRIBUTION.**—

“(A) **IN GENERAL.**—

“(i) **INITIAL AGREEMENTS.**—During the period of time that expires 3 years after the date of enactment of the No Child Left Behind Act of 2001, the Secretary may enter into not more than 2 performance agreements under this part with local educational agencies in each State.

“(ii) **SUBSEQUENT AGREEMENTS.**—After the expiration of the 3-year period beginning on the date of enactment of the No Child Left Behind Act of 2001, the Secretary may enter into performance agreements under this part with any number of local educational agencies in each State until the total number of such agreements equals 100.

“(B) **URBAN AND RURAL AREAS.**—If more than 2 local educational agencies in a State submit approvable performance agreements under this part, the Secretary shall select

local educational agencies for performance agreements under this part in a manner that ensures an equitable distribution among such agencies serving urban and rural areas.

“(c) REQUIRED TERMS OF PERFORMANCE AGREEMENT.—Each performance agreement entered into with the Secretary under this part shall have each of the following terms:

“(1) TERM.—The performance agreement shall be for a term of 5 years.

“(2) APPLICATION OF PROGRAM REQUIREMENTS.—The performance agreement shall provide that no requirements of any program described in section 7304(b) and included by the local educational agency in the scope of the agreement shall apply to the agency, except as otherwise provided in this part.

“(3) LIST OF PROGRAMS.—The performance agreement shall list which of the programs described in section 7304(b) are included in the scope of the performance agreement.

“(4) USE OF FUNDS TO IMPROVE STUDENT ACHIEVEMENT.—The performance agreement shall contain a 5-year plan describing how the local educational agency intends to combine and use the funds from programs included in the scope of the performance agreement to advance the education priorities of the State and the local educational agency, meet the general purposes of the included programs, improve student achievement, and narrow achievement gaps.

“(5) LOCAL INPUT.—The performance agreement shall contain an assurance that the local educational agency will provide parents, teachers, and schools with notice and an opportunity to comment on the proposed terms of the performance agreement in accordance with State law.

“(6) FISCAL RESPONSIBILITIES.—The performance agreement shall contain an assurance that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the performance agreement.

“(7) CIVIL RIGHTS.—The performance agreement shall contain an assurance that the local educational agency will meet the requirements of applicable Federal civil rights laws in carrying out the agreement and in consolidating and using the funds under the agreement.

“(8) PRIVATE SCHOOL PARTICIPATION.—The performance agreement shall contain an assurance that the local educational agency agrees that in consolidating and using funds under the performance agreement—

“(A) the local educational agency will provide for the equitable participation of students and professional staff in private schools; and

“(B) that sections 8504, 8505, and 8506 shall apply to all services and assistance provided with such funds in the same manner as such sections apply to services and assistance provided in accordance with section 8503.

“(9) ANNUAL REPORTS.—The performance agreement shall contain an assurance that the local educational agency agrees that not later than 1 year after the date on which the Secretary enters into the performance agreement, and annually

thereafter during the term of the performance agreement, the local educational agency shall disseminate widely to parents and the general public, transmit to its State educational agency and the Secretary, distribute to print and broadcast media, and post on the Internet, a report that includes a detailed description of how the local educational agency used the funds consolidated under the agreement to improve student academic achievement and reduce achievement gaps.

“(c) APPROVAL.—Not later than 60 days after the receipt of a proposed performance agreement submitted by a local educational agency under this part, the Secretary shall approve the performance agreement or provide the local educational agency with a written determination that such agreement fails to satisfy the requirements of this part.

“(d) AMENDMENT TO PERFORMANCE AGREEMENT.—

“(1) IN GENERAL.—In each of the following circumstances, the Secretary shall agree to amend a performance agreement entered into with a local educational agency under this part:

“(A) REDUCTION IN SCOPE OF PERFORMANCE AGREEMENT.—Not later than 1 year after entering into the performance agreement, a State seeks to amend the agreement to remove from the scope any program described in section 7304(b).

“(B) EXPANSION OF SCOPE OF PERFORMANCE AGREEMENT.—Not later than 1 year after entering into the performance agreement, a State seeks to amend the agreement to include in its scope any additional program described in section 7304(b) or any additional achievement indicators for which the State will be held accountable.

“(2) APPROVAL OF AMENDMENT.—

“(1) IN GENERAL.—Not later than 60 days after the receipt of a proposed amendment to the performance agreement submitted by a local educational agency, the Secretary shall approve the amendment or provide the agency with a written determination that the amendment fails to satisfy the requirements of this part.

“(B) TREATMENT AS APPROVED.—Each amendment for which the Secretary fails to take the action required in subparagraph (A) in the time period described in such subparagraph shall be considered to be approved.

“(3) TREATMENT OF PROGRAM FUNDS WITHDRAWN FROM AGREEMENT.—Beginning on the effective date of an amendment executed under paragraph (1)(A), each program requirement of each program removed from the scope of a performance agreement shall apply to the local educational agency’s use of funds made available under the program.

“SEC. 7304. CONSOLIDATION AND USE OF FUNDS.

“(a) IN GENERAL.—

“(1) AUTHORITY.—Under a performance agreement entered into under this part, a local educational agency may consolidate, subject to subsection (c), Federal funds made available to the agency under the provisions listed in subsection (b) and use such funds for any educational purpose permitted under this Act.

“(2) PROGRAM REQUIREMENTS.—Except as otherwise provided in this part, a local educational agency may use funds under paragraph (1) notwithstanding the program requirements of the program under which the funds were made available to the State.

“(b) ELIGIBLE PROGRAMS.—Funds made available under programs under each of the following provisions of this Act may be consolidated and used under subsection (a):

“(1) Title II.

“(2) Part A of title IV.

“(3) Subpart 1 of part A of title V.

“(4) Part B of title V.

“SEC. 7305. LIMITATIONS ON ADMINISTRATIVE EXPENDITURES.

Each local educational agency that has entered into a performance agreement with the Secretary under this part may use for administrative purposes not more than 4 percent of the total amount of funds allocated to the agency under the programs included in the scope of the performance agreement.

“SEC. 7306. PERFORMANCE REVIEW AND PENALTIES.

“(a) MIDTERM REVIEW.—The Secretary may not enter into a performance agreement under this part unless the agreement includes a provision permitting the Secretary, after notice and an opportunity for a hearing, to terminate the agreement if, during the term of the agreement, the local educational agency that is party to the agreement fails to make adequate yearly progress for 3 consecutive years.

“(b) FINAL REVIEW.—If, at the end of the 5-year term of a performance agreement entered into under this part, a local educational agency that is party to the agreement has not met the achievement goals contained in the performance agreement, the Secretary may not renew the agreement under section 7307 and, beginning on the date on which such term ends, the local educational agency shall be required to comply with each of the program requirements in effect on such date for each program included in the performance agreement.

“SEC. 7307. RENEWAL OF PERFORMANCE AGREEMENT.

“(a) IN GENERAL.—Except as provided in section 7306(b) and in accordance with this section, the Secretary shall renew for 1 additional 5-year term a performance agreement entered into under this part if the State that is party to the agreement has met or has substantially met, by the end of the original term of the agreement, the achievement goals contained in the agreement.

“(b) NOTIFICATION.—The Secretary may not renew a performance agreement under this part unless, not less than 6 months before the end of the original term of the agreement, the local educational agency seeking the renewal notifies the Secretary of its intention to renew.

“(c) EFFECTIVE DATE.—A renewal under this section shall be effective at the end of the original term of the agreement or on the date on which the local educational agency seeking renewal provides to the Secretary all data required under the agreement, whichever is later.

“SEC. 7308. REPORTS.

“(a) TRANSMITTAL TO CONGRESS.—Not later than 60 days after the Secretary receives a report described in section 7303(c)(9), the Secretary shall make the report available to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate.

“(b) LIMITATION.—A State in which a local educational agency that is party to a performance agreement entered into under this part is located may not require such local educational agency to provide any application information with respect to the programs included within the scope of such performance agreement other than that information that is required to be included in the report described in section 7303(c)(9).

“SEC. 7309. DEFINITIONS.

“In this part, the following definitions apply:

“(1) ADEQUATE YEARLY PROGRESS.—The term ‘adequate yearly progress’ means the adequate yearly progress determined by the State in which a local educational agency is located pursuant to section 1111(b)(2)(C).

“(2) ALL STUDENTS.—The term ‘all students’ means all students attending public schools or charter schools that are participating in the State’s accountability and assessment system.”.

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HOEKSTRA OF MICHIGAN, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

In section 701 of the bill, in subparagraph (A) of section 7203(b)(1) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 701), strike “may transfer” and all that follows through the end of such subparagraph and insert the following:

may transfer—

“(i) not more than 50 percent of the funds allocated to it under each of the provisions listed in paragraph (2) for a fiscal year to 1 or more of its allocations for such fiscal year under any other provision listed in paragraph (2); or

“(ii) not more than 75 percent of the funds allocated to it under each of the provisions listed in paragraph (2) for a fiscal year to 1 or more of its allocations for such fiscal year under any other provision listed in paragraph (2), if the local educational agency obtains State approval before making such transfer.

11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MEEK OF FLORIDA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 501 of the bill, in section 5501(1) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 501), strike “adult”.

In section 501 of the bill, in section 5502(1) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 501), strike “adult” and insert “individual”.

In section 501 of the bill, in section 5503(a)(1) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 501), after “responsible adults” insert “or students in secondary school”.

In section 501 of the bill, in section 5503(c)(1)(C) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 501), strike “adult”.

12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROGERS OF MICHIGAN, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In the matter proposed to be inserted as part E of title VIII of the Elementary and Secondary Education Act of 1965 by section 801 of the bill, insert after section 8520 the following:

“SEC. 8521. ENCOURAGE EDUCATION SAVINGS.

“To the extent practicable, the Secretary shall promote education savings accounts in States that have qualified State tuition programs (as defined in section 529 of the Internal Revenue Code of 1986).

13. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NORWOOD OF GEORGIA, OR REPRESENTATIVE BARR OF GEORGIA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

At the end of part A of title V of the Elementary and Secondary Education Act of 1965, as amended by section 501 of the bill, add the following:

“SEC. 5155. DISCIPLINE OF CHILDREN WITH DISABILITIES.

“(a) **AUTHORITY OF SCHOOL PERSONNEL.**—Each State receiving funds under this Act shall require each local educational agency to have in effect a policy under which school personnel of such agency may discipline (including expel or suspend) a child with a disability who—

“(1) carries or possesses a weapon to or at a school, on school premises, or to or at a school function, under the jurisdiction of a State or a local educational agency;

“(2) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at a school, on school premises, or at a school function, under the jurisdiction of a State or a local educational agency; or

“(3) commits an aggravated assault or battery (as defined under State or local law) at a school, on school premises, or at a school function, under the jurisdiction of a State or local educational agency, in the same manner in which such personnel may discipline a child without a disability. Such personnel may modify the disciplinary action on a case-by-case basis.

“(b) **RULE OF CONSTRUCTION.**—Nothing in subsection (a) shall be construed to prevent a child with a disability who is disciplined pursuant to the authority provided under paragraph (1) or (2) of subsection (a) from asserting a defense that the carrying or possession of the weapon, or the possession or use of the illegal drugs (or

the sale or solicitation of the controlled substance), as the case may be, was unintentional or innocent.

“(c) FREE APPROPRIATE PUBLIC EDUCATION.—

“(1) CEASING TO PROVIDE EDUCATION.—Notwithstanding any other provision of Federal law, a child expelled or suspended under subsection (a) shall not be entitled to continue educational services, including a free appropriate public education, required under Federal law during the term of such expulsion or suspension, if the State in which the local educational agency responsible for providing educational services to such child does not require a child without a disability to receive educational services after being expelled or suspended.

“(2) PROVIDING EDUCATION.—Notwithstanding paragraph (1), the local educational agency responsible for providing educational services to a child with a disability who is expelled or suspended under paragraph (1) may choose to continue to provide educational services or mental health services to such child. If the local educational agency so chooses to continue to provide the services—

“(A) nothing in any other provision of Federal law shall require the local educational agency to provide such child with any particular level of service; and

“(B) the location where the local educational agency provides the services shall be left to the discretion of the local educational agency.

“(d) DEFINITIONS.—In this section:

“(1) CONTROLLED SUBSTANCE.—The term ‘controlled substance’ has the meaning given the term in section 5151.

“(2) ILLEGAL DRUG.—The term ‘illegal drug’ means a controlled substance, but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal law.

“(3) WEAPON.—The term ‘weapon’ has the meaning given the term ‘dangerous weapon’ under subsection (g)(2) of section 930 of title 18, United States Code.

14. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GRAHAM OF SOUTH CAROLINA, OR REPRESENTATIVE TIAHRT OF KANSAS, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Before part B of title IX of the bill, insert the following:

Subpart 3—General Education Provisions

SEC. 916. INFORMATION ACCESS AND CONSENT.

(a) IN GENERAL.—Section 445 of the General Education Provisions Act (20 U.S.C. 1232h) is amended by—

(1) redesignating subsections (c) through (e) as subsections (d) through (f), respectively; and

(2) by striking subsections (a) and (b) and inserting the following:

“(a) ACCESS TO INFORMATION.—No funds shall be made available under any applicable program to any educational agency or institu-

tion that has a policy of denying, or that effectively prevents, the parent of an elementary school or secondary school student served by such agency or at such institution, as the case may be—

“(1) the right to inspect and review any instructional material used with respect to the educational curriculum of the student. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the instructional material. The granting of each such request shall be made in a reasonable period of time, but shall not exceed 45 days, after the date of the request;

“(2) the right to inspect and review a survey, analysis, or evaluation that is subject to subsection (c)(7) before the survey, analysis, or evaluation is given to a student.

“(b) RESTRICTION ON SEEKING INFORMATION FROM MINORS.—

“(1) IN GENERAL.—Notwithstanding any other provision of Federal law, no funds shall be made available under any program administered by the Secretary to any educational agency or institution that administers or provides a survey, analysis, or evaluation to a student without the prior, informed, written consent of the parent or guardian of a student concerning—

“(A) political affiliations or beliefs of the student or the student’s parent;

“(B) mental or psychological problems potentially embarrassing to the student or the student’s family;

“(C) sex behavior or attitudes;

“(D) illegal, antisocial, or self-incriminating behavior;

“(E) appraisals of other individuals with whom the minor has a familial relationship;

“(F) relationships that are legally recognized as privileged, including those with lawyers, physicians, and members of the clergy; and

“(G) religious practices affiliations or beliefs.”.

“(2) EXPLANATION.—In seeking the consent of the parent an educational agency or institution must provide an accurate explanation, in writing, of the types of items listed in subparagraphs (A) through (G) of paragraph (1) that are contained in the survey and the purpose, if known, for including those items.

“(c) RESTRICTION ON MEDICAL TESTING AND TREATMENT OF MINORS.—

“(1) CONSENT REQUIRED.—Except as provided in paragraph (2), no funds shall be made available under any applicable program to an educational agency or institution that requires or otherwise causes the student without the prior, written, informed consent of the parent or a guardian of a minor to undergo medical or mental health examination, testing, treatment, or immunization (except in the case of a medical emergency).

“(2) EXCEPTION.—Paragraph (1) shall not apply to medical or mental health examinations, testing, treatment, or immunizations of students expressly permitted by State law without written parental consent.

“(3) DEFINITIONS.—For the purpose of this section, the term ‘educational agency or institution’ means any elementary, middle, or secondary school, any school district or local board of education, and any State educational agency that is the recipi-

ent of funds under any program administered by the Secretary, except that it does not apply to postsecondary institutions.

“(4) INSTRUCTIONAL MATERIAL.—In this subsection the term ‘instructional material’ means a textbook, audio/visual material, informational material accessible through Internet sites, material in digital or electronic formats, instructional manual, or journal, or any other material supplementary to the education of a student.

“(5) RULES OF CONSTRUCTION.—(A) Nothing in this section shall be construed to supersede the Family Educational Rights and Privacy Act (20 U.S.C. 1232g).

“(B) The term ‘instructional material’ does not include academic tests or assessments.

“(6) APPLICATION.—

“(A) CERTAIN SURVEYS, ANALYSIS, AND EVALUATIONS.—Subsection (b) shall not apply to surveys, analysis, or evaluations administered to a student as part of the Individuals with Disabilities Act (20 U.S.C. 1400 et seq.).

“(B) PARENTAL CONSENT.—Nothing in subsection (c) shall be construed to supersede or otherwise affect the parental consent requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

“(C) STUDENT RIGHTS.—The rights provided parents under this Act transfer to the student once the student turns 18 years old or is an emancipated minor at any age.

“(7) STATE LAW EXCEPTION.—Educational agencies and institutions residing in a State that has a law that provides parents rights comparable to the rights contained herein may seek exemption from this Act by obtaining a waiver from the office designated by the Secretary to administer this Act. This office may grant a waiver to educational agencies and institutions upon review of State law.

15. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ARMEY OF TEXAS, OR REPRESENTATIVE BOEHNER OF OHIO, OR A DESIGNEE, DEBATABLE FOR 40 MINUTES

In section 104 of the bill, in paragraph (13) of section 1112(b) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 104), strike “public”.

In section 106 of the bill, in clause (ii) of section 1116(b)(7)(A) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 106), strike subclause (II) and insert the following:

“(II) make funds available—

“(aa) to the economically disadvantaged child’s parents to place the child in a private school in accordance with subsection (d)(2); or

“(bb) make funds available for supplementary educational services, in accordance with subsection (d)(1); and

In section 106 of the bill, in paragraph (8) of section 1116(b) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 106), after “paragraph (6)(D)(i)” insert “, (7)(A)(ii)(II)(aa),”.

In section 106 of the bill, in subparagraph (A) of section 1116(b)(8) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 106), strike “public”.

In section 106 of the bill, in subsection (d) of section 1116 of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 106)—

(1) in paragraph (1) strike “(1) In” and insert the following:
“(1) SUPPLEMENTAL INSTRUCTIONAL SERVICES.—”

“(A) In

(2) strike “this paragraph” each place it appears and insert “this subparagraph”;

(3) in paragraph (2) strike “paragraph (1)” and insert “subparagraph (A)”;

(3) in paragraph (3)—

(A) strike “paragraph (2)” and insert “subparagraph (B)”;

and

(B) redesignate subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively (and indent accordingly);

(4) in paragraph (5)—

(A) in subparagraph (B), strike “paragraph (6)” and insert “subparagraph (F)”;

(B) redesignate subparagraphs (A) through (E) as clauses (i) through (v), respectively, (and indent accordingly);

(5) in paragraph (6)—

(A) strike “paragraph (5)(c)” insert “subparagraph (E)(iii)”;

(B) redesignate subparagraphs (A) through (D) as clauses (i) through (iv), respectively (and indent accordingly);

(6) in paragraph (7)—

(A) in subparagraph (B), strike “subparagraph (A)” and insert “clause (i)”;

(B) redesignate subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively (and indent accordingly);

(7) in paragraph (10)—

(A) in subparagraphs (C) and (D), redesignate clauses (i) and (ii) as subclauses (I) and (II), respectively (and indent accordingly);

(B) redesignate subparagraphs (A) through (D) as clauses (i) through (iv), respectively (and indent accordingly);

(8) redesignate paragraphs (2) through (11) as subparagraphs (B) through (K), respectively (and indent accordingly);

(9) at the end, insert the following:

“(2) PARENTAL CHOICE.—

“(A) IN GENERAL.—In any case described in section 1116(b)(7)(A)(ii)(II)(aa) the local educational agency shall permit the parents of each eligible child defined in paragraph (7)(A) to—

“(i) receive, from the agency, the child’s share of funds allocated to the school under this part, calculated under subparagraph (B); and

“(ii) Notwithstanding any other provision of this Act, use those funds to pay the costs of attending a private school that agrees to—

“(I) assess the student in mathematics and reading and language arts each year during grades 3 through 8 and at least once during grades 10 through 12, using academic assessments that are comparable in what they measure to the academic assessments used by the State; and

“(II) provide the results of those assessments to the student’s parents.

“(B) PER-CHILD AMOUNT.—The amount of a school’s allocation under this part that it shall make available to the parents of an eligible child under subparagraph (A)(ii) is equal to the amount of the school’s allocation under subpart 2 of this part divided by the number of eligible children enrolled in the school.

“(C) LIMITATION.—The amount of funds provided to the parents of a child under this paragraph shall not exceed the actual costs of the parents for sending the child to a private school and providing transportation to such school.

“(D) DURATION.—The local educational agency shall continue to provide funds to parents of a child attending a private school under this section until the child completes the grade corresponding to the highest grade offered at the public school the child previously attended.

“(E) NONDISCRIMINATION.—

“(i) IN GENERAL.—A private school participating in the choice program under this paragraph shall not discriminate on the basis of race, color, national origin, or sex in carrying out the provisions of this paragraph.

“(ii) APPLICABILITY AND CONSTRUCTION WITH RESPECT TO DISCRIMINATION ON THE BASIS OF SEX.—

“(I) APPLICABILITY.—With respect to discrimination on the basis of sex, clause (i) shall not apply to a private school that is controlled by a religious organization if the application of clause (i) is inconsistent with the religious tenets of the private school.

“(II) SINGLE-SEX SCHOOLS, CLASSES, OR ACTIVITIES.—With respect to discrimination on the basis of sex, nothing in clause (i) shall be construed to prevent a parent from choosing, or a private school from offering, a single-sex school, class, or activity.

“(III) CONSTRUCTION.—With respect to discrimination on the basis of sex, nothing in clause (i) shall be construed to require any person, or public or private entity to provide or pay, or to prohibit any such person or entity from providing or paying, for any benefit or service, including the use of facilities, related to an abortion. Nothing in the preceding sentence shall be construed to permit a penalty to be imposed on any person or individual

because such person or individual is seeking or has received any benefit or service related to a legal abortion.

“(iii) CHILDREN WITH DISABILITIES.—Nothing in this subsection shall be construed to alter or modify the provisions of the Individuals with Disabilities Education Act or the Rehabilitation Act of 1973.

“(iv) RULE OF CONSTRUCTION.—

“(I) IN GENERAL.—Nothing in this paragraph shall be construed to prevent any private school which is operated by, supervised by, controlled by, or connected to, a religious organization from employing, admitting, or giving preference to, persons of the same religion to the extent determined by such institution to promote the religious purpose for which the private school is established or maintained.

“(II) SECTARIAN PURPOSES.—Nothing in this paragraph shall be construed to prohibit the use of funds made available under this subsection for sectarian educational purposes, or to require a private school to remove religious art, icons, scripture, or other symbols.

“(F) DEFINITIONS.—As used in this paragraph, the term ‘eligible child’ means a child from a low-income family, as determined by the local educational agency for purposes of allocating funds to schools under section 1113(c)(1).”.

In section 401 of the bill, in section 4131(b) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 401)—

(1) strike “and” at the end of paragraph (14);

(2) strike the period at the end of paragraph (15) and insert “; and”; and

(3) insert the following:

“(16) activities to promote, implement, or expand private school choice for disadvantaged children in failing public schools.

In section 501 of the bill, in subparagraph (P) of section 5115(b)(2) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 501), after “including a public charter school,” insert “or a private school if no safe public school or public charter school can accommodate the student,”.

In section 801 of the bill, in section 8507 of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 801)—

(1) insert “(a) IN GENERAL.—” before “Nothing”; and

(2) add at the end the following:

“(b) INAPPLICABILITY.—Subsection (a) shall not be construed to prohibit the use of funds made available to parents of eligible children for sectarian educational purposes under private school choice provisions of this Act, or to require an eligible private institution to remove religious art, icons, scripture, or other symbols.

16. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ARMEY OF TEXAS, OR REPRESENTATIVE DELAY OF TEXAS, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

After part C of title IV of the Elementary and Secondary Education Act of 1965, as amended by section 421 of the bill, add the following:

PART D—EDUCATIONAL OPPORTUNITY FUND

SEC. 431. EDUCATIONAL OPPORTUNITY FUND.

Title IV is amended by adding at the end the following:

“PART D—EDUCATIONAL OPPORTUNITY FUND

“SEC. 4411. PURPOSE.

“The purpose of this part is to determine the effectiveness of school choice in improving the academic achievement of disadvantaged students and the overall quality of public schools and local educational agencies.

“SEC. 4412. PROGRAM AUTHORIZED.

“The Secretary is authorized to make competitive awards to eligible entities to carry out and evaluate, through contracts or grants, not more than 5 research projects that demonstrate how school choice options increase the academic achievement of students, schools, and local educational agencies.

“SEC. 4413. ELIGIBLE ENTITIES.

“For purposes of this part an eligible entity is—

- “(1) a State educational agency;
- “(2) a county agency;
- “(3) a municipal agency;
- “(4) a local educational agency;
- “(5) a nonprofit corporation; or
- “(6) a consortia thereof.

“SEC. 4414. APPLICATIONS.

“Each eligible entity desiring an award under this part shall submit an application to the Secretary that shall include—

- “(1) a description of the proposed research project, including a designation from which local educational agency or agencies eligible students will be selected to participate in a choice program;
- “(2) a description of the annual costs of the project;
- “(3) a description of the research design that the eligible entity will employ in carrying out the project;
- “(4) a description of the project evaluation that will be conducted by an independent third party entity, including—
 - “(A) the name and qualifications of the independent entity that will conduct the evaluation; and
 - “(B) a description of how the evaluation will measure the academic achievement of students participating in the program, parental satisfaction and the effect of the project on the schools and agencies designated in paragraph (1);
- “(5) a description of how the eligible entity will ensure the participation of students selected for the control group;

“(6) a description of the assessment that the eligible entity will use to assess annually the progress of participants in the research project in grades 3 through 8 in mathematics and reading and how it is comparable to assessments used by the agency or agencies described under paragraph (1);

“(7) an assurance that the eligible entity will assess all students that are participating in the program or in the control group at the beginning of the project;

“(8) an assurance that the eligible entity will report annually to the Secretary on the impact of the project on student achievement, including a discussion of the meaning and an attestation of validity of the achievement data;

“(9) an assurance that, if the number of students applying to participate in the project is greater than the number of students the project can serve, participants will be selected by lottery;

“(10) a description of how the amount that will be provided directly to students for tuition, fees, transportation, or supplemental services will be determined;

“(11) an assurance that schools participating under this part will abide by the nondiscrimination requirements set forth in section 4419;

“(12) an assurance that eligible students receiving assistance under this part will not be defined by reference to religion and that grants will be allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and will be made available to children attending secular and nonsecular institutions on a nondiscriminatory basis; and

“(13) an assurance that no private school will be required to participate in the project without its consent.

“SEC. 4415. PRIORITIES.

“In awarding grants under this program, the Secretary shall give priority to applications that—

“(1) provide students and families with the widest range of educational options;

“(2) target resources to students and families that lack the financial resources to take advantage of available educational options;

“(3) are of sufficient size to have a significant impact on the public and private schools of the community that the project serves;

“(4) propose using rigorous methodologies and third party evaluators with experience in evaluating school choice proposals; and

“(5) propose serving students of varying age and grade levels.

“SEC. 4416. USE OF FUNDS.

“(a) IN GENERAL.—A grantee may reserve up to 10 percent of its award for research and evaluation activities, of which not more than 2 percent may be used for administrative purposes.

“(b) GRANTS TO STUDENTS.—A grantee shall use at least 90 percent of its award to provide grants to eligible students, who shall use the grants to—

“(1) pay the eligible educational expenses, including tuition, fees, and transportation expenses required to attend the school

of their choice, but in no event more than \$5,000 per student;
or

“(2) purchase supplemental educational services.

“(c) ASSISTANCE.—All grants provided to students under this part shall be considered assistance to students rather than to schools.

“SEC. 4417. ELIGIBLE STUDENTS.

“For purposes of the activities funded under this part, an eligible student is defined as a student who—

“(1) is eligible for a free or reduced-price lunch subsidy under the National School Lunch program; and

“(2) attended a public elementary or secondary school or was not yet of school age in the year preceding participation in this program.

“SEC. 4418. REPORTING REQUIREMENTS.

“(a) IN GENERAL.—Each grantee receiving an award under this program shall, beginning with the second year of the project, report annually to the Secretary regarding—

“(1) the activities carried out during the preceding 12 months with program funds; and

“(2) the results of the assessments given to students participating in the program and students selected for the control group.

“(b) PERFORMANCE REPORTS.—In addition, each grantee shall, in the third year of the research project, report annually to the Secretary regarding—

“(1) the academic performance of students participating in the project; and

“(2) parental satisfaction; and

“(3) changes in the overall performance and quality of public and private elementary and secondary schools affected by the project, as well as other indicators such as teacher quality, innovative reforms, or special programs.

“(c) REPORT TO CONGRESS.—The Secretary shall submit to the appropriate congressional committees an annual report on the findings of the reports submitted under subsections (a) and (b), and include the comments of the independent review panel in accordance with section 4420(c)(2).

“SEC. 4419. NONDISCRIMINATION.

“(a) IN GENERAL.—A private school participating in the scholarship program under this part shall not discriminate on the basis of race, color, national origin, or sex in carrying out the provisions of this part.

“(b) APPLICABILITY AND CONSTRUCTION WITH RESPECT TO DISCRIMINATION ON THE BASIS OF SEX.—

“(1) APPLICABILITY.—With respect to discrimination on the basis of sex, subsection (a) shall not apply to a private school that is controlled by a religious organization if the application of subsection (a) is inconsistent with the religious tenets of the private school.

“(2) SINGLE-SEX SCHOOLS, CLASSES, OR ACTIVITIES.—With respect to discrimination on the basis of sex, nothing in subsection (a) shall be construed to prevent a parent from choosing, or a private school from offering, a single-sex school, class, or activity.

“(3) CONSTRUCTION.—With respect to discrimination on the basis of sex, nothing in subsection (a) shall be construed to require any person, or public or private entity to provide or pay, or to prohibit any such person or entity from providing or paying, for any benefit or service, including the use of facilities, related to an abortion. Nothing in the preceding sentence shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

“(c) CHILDREN WITH DISABILITIES.—Nothing in this part shall be construed to alter or modify the provisions of the Individuals with Disabilities Education Act or the Rehabilitation Act of 1973.

“(d) RULE OF CONSTRUCTION.—

“(1) IN GENERAL.—Nothing in this part shall be construed to prevent any eligible institution which is operated by, supervised by, controlled by, or connected to, a religious organization from employing, admitting, or giving preference to, persons of the same religion to the extent determined by such institution to promote the religious purpose for which the private school is established or maintained.

“(2) SECTARIAN PURPOSES.—Nothing in this part shall be construed to prohibit the use of funds made available under this part for sectarian educational purposes, or to require a private school to remove religious art, icons, scripture, or other symbols.

“SEC. 4420. INDEPENDENT REVIEW PANEL.

“(a) ESTABLISHMENT.—The Secretary shall establish an independent review panel to advise the Secretary on technical and methodological issues and in overseeing the activities funded under this part.

“(b) MEMBERSHIP.—The Secretary shall appoint members of the independent review panel from among qualified individuals who are—

“(A) specialists in school choice research, as well as experts in statistics, evaluation, research, and assessment; and

“(B) other individuals with technical expertise who will contribute to the overall rigor and quality of the evaluations.

“(c) POWERS.—The independent review panel shall consult with and advise the Secretary—

“(1) to ensure that the evaluations funded under this part adhere to the highest possible standards of quality with respect to research design and statistical analysis; and

“(2) to evaluate and comment on the degree to which annual reports submitted in accordance with section 4418 meet the requirements under paragraph (1) with such comments included with the report submitted to the appropriate Congressional committees.

“SEC. 4421. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated \$50,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 4 succeeding fiscal years.”.

17. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE AKIN OF MISSOURI, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 104 of the bill, at the end of section 1111(b)(4) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 104), add the following:

“(L) be tests of objective knowledge, based on measurable, verifiable, and widely accepted professional testing and assessment standards, and shall not assess the personal opinions, attitudes, or beliefs of the student being assessed.

18. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE STEARNS OF FLORIDA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 1116(b) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 106 of the bill, insert after paragraph (5) the following and redesignated any subsequent provisions accordingly:

“(6) Additional notification.—Not less than once each year, each State educational agency shall provide the Secretary with the name of each school identified for school improvement under this subsection.

19. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TRAFICANT OF OHIO, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In the matter proposed to be inserted as part E of title VIII of the Elementary and Secondary Education Act of 1965 by section 801 of the bill, insert after section 8520 the following:

“SEC. 8521. SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE; USE OF AMERICAN-MADE STEEL.

“(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

“(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the head of each Federal agency shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress.

“(c) USE OF AMERICAN-MADE STEEL.—A school system receiving financial assistance under this Act for construction shall use American-made steel for such construction and shall comply with the requirements of the Buy American Act.”.

20. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BRADY OF TEXAS, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Strike part D of title II of the Elementary and Secondary Education Act of 1965, as proposed to be added by section 203 of the bill, and insert the following:

“PART D—TEACHER LIABILITY PROTECTION

“SEC. 2301. SHORT TITLE.

“This part may be cited as the ‘Paul Coverdell Teacher Liability Protection Act of 2001’.

“SEC. 2302. FINDINGS AND PURPOSE.

“(a) FINDINGS.—Congress makes the following findings:

“(1) The ability of teachers, principals and other school professionals to teach, inspire and shape the intellect of our Nation’s elementary and secondary school students is deterred and hindered by frivolous lawsuits and litigation.

“(2) Each year more and more teachers, principals and other school professionals face lawsuits for actions undertaken as part of their duties to provide millions of school children quality educational opportunities.

“(3) Too many teachers, principals and other school professionals face increasingly severe and random acts of violence in the classroom and in schools.

“(4) Providing teachers, principals and other school professionals a safe and secure environment is an important part of the effort to improve and expand educational opportunities.

“(5) Clarifying and limiting the liability of teachers, principals and other school professionals who undertake reasonable actions to maintain order, discipline and an appropriate educational environment is an appropriate subject of Federal legislation because—

“(A) the scope of the problems created by the legitimate fears of teachers, principals and other school professionals about frivolous, arbitrary or capricious lawsuits against teachers is of national importance; and

“(B) millions of children and their families across the Nation depend on teachers, principals and other school professionals for the intellectual development of children.

“(b) PURPOSE.—The purpose of this part is to provide teachers, principals and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline and an appropriate educational environment.

“SEC. 2303. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY.

“(a) PREEMPTION.—This part preempts the laws of any State to the extent that such laws are inconsistent with this part, except that this part shall not preempt any State law that provides additional protection from liability relating to teachers.

“(b) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This part shall not apply to any civil action in a State court against a teacher with respect to claims arising within that State if such State enacts a statute in accordance with State requirements for enacting legislation—

“(1) citing the authority of this subsection;

“(2) declaring the election of such State that this part shall not apply, as of a date certain, to such civil action in the State; and

“(3) containing no other provisions.

“SEC. 2304. LIMITATION ON LIABILITY FOR TEACHERS.

“(a) **LIABILITY PROTECTION FOR TEACHERS.**—Except as provided in subsections (b) and (c), no teacher in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if—

“(1) the teacher was acting within the scope of the teacher’s employment or responsibilities related to providing educational services;

“(2) the actions of the teacher were carried out in conformity with local, State, and Federal laws, rules and regulations in furtherance of efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school;

“(3) if appropriate or required, the teacher was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the teacher’s responsibilities;

“(4) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher; and

“(5) the harm was not caused by the teacher operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

“(A) possess an operator’s license; or

“(B) maintain insurance.

“(b) **CONCERNING RESPONSIBILITY OF TEACHERS TO SCHOOLS AND GOVERNMENTAL ENTITIES.**—Nothing in this section shall be construed to affect any civil action brought by any school or any governmental entity against any teacher of such school.

“(c) **EXCEPTIONS TO TEACHER LIABILITY PROTECTION.**—If the laws of a State limit teacher liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

“(1) A State law that requires a school or governmental entity to adhere to risk management procedures, including mandatory training of teachers.

“(2) A State law that makes the school or governmental entity liable for the acts or omissions of its teachers to the same extent as an employer is liable for the acts or omissions of its employees.

“(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

“(d) **LIMITATION ON PUNITIVE DAMAGES BASED ON THE ACTIONS OF TEACHERS.**—

“(1) **GENERAL RULE.**—Punitive damages may not be awarded against a teacher in an action brought for harm based on the action of a teacher acting within the scope of the teacher’s responsibilities to a school or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such teacher which constitutes willful or criminal misconduct, or a con-

scious, flagrant indifference to the rights or safety of the individual harmed.

“(2) CONSTRUCTION.—Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

“(e) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

“(1) IN GENERAL.—The limitations on the liability of a teacher under this part shall not apply to any misconduct that—

“(A) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18, United States Code) for which the defendant has been convicted in any court;

“(B) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

“(C) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

“(D) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

“(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to affect subsection (a)(3) or (d).

“SEC. 2305. LIABILITY FOR NONECONOMIC LOSS.

“(a) GENERAL RULE.—In any civil action against a teacher, based on an action of a teacher acting within the scope of the teacher’s responsibilities to a school or governmental entity, the liability of the teacher for noneconomic loss shall be determined in accordance with subsection (b).

“(b) AMOUNT OF LIABILITY.—

“(1) IN GENERAL.—Each defendant who is a teacher, shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

“(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant who is a teacher under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant’s harm.

“SEC. 2306. RULE OF CONSTRUCTION.

“Nothing in this part shall be construed to affect any State or local law (including a rule or regulation) or policy pertaining to the use of corporal punishment.

“SEC. 2307. DEFINITIONS.

“For purposes of this part:

“(1) ECONOMIC LOSS.—The term ‘economic loss’ means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense

loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

“(2) HARM.—The term ‘harm’ includes physical, nonphysical, economic, and noneconomic losses.

“(3) NONECONOMIC LOSSES.—The term ‘noneconomic losses’ means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

“(4) SCHOOL.—The term ‘school’ means a public or private kindergarten, a public or private elementary school or secondary school (as defined in section 14101, or a home school.

“(5) STATE.—The term ‘State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

“(6) TEACHER.—The term ‘teacher’ means a teacher, instructor, principal, administrator, or other educational professional that works in a school, a local school board and any member of such board, and a local educational agency and any employee of such agency.

“SEC. 2308. APPLICABILITY.

“This part applies to any claim for harm caused by an act or omission of a teacher if that claim is filed on or after the effective date of the No Child Left Behind Act of 2001 without regard to whether the harm that is the subject of the claim or the conduct that caused the harm occurred before such effective date.”.

21. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MINK OF HAWAII, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In subparagraph (A) of section 1116(b)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), as amended by section 106 of the bill—

- (1) strike “and” at the end of clause (vii);
- (2) strike period at the end of clause (viii) and insert “; and”; and
- (3) add at the end the following:

“(ix) ensure that a mentoring program is available to teachers in the school who have been in the teaching profession for 3 years or less, which provides mentoring to beginning teachers from exemplary veteran teachers with expertise in the same subject matter that the beginning teachers will be teaching, to the extent practicable be school-based, and provides mentors time for activities such as coaching, observing, and assisting the teachers who are mentored.”.

22. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WAMP OF TENNESSEE, OR REPRESENTATIVE ETHERIDGE OF NORTH CAROLINA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 501 of the bill, strike section 5302 of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 501) and insert the following:

“SEC. 5302. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out this part \$50,000,000 for fiscal year 2002 and such sums as may be necessary for each of fiscal years 2003 through 2006.

23. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DeMINT OF SOUTH CAROLINA, OR A DESIGNEE, DEBATABLE FOR 30 MINUTES

At the end of the provision proposed to be added by section 701 of the bill, add the following:

“PART C—PERFORMANCE AGREEMENTS

“SEC. 7301. SHORT TITLE.

“This part may be cited as the ‘Performance Agreements Act’.

“SEC. 7302. PURPOSE.

“The purpose of this part is to create options for selected State educational agencies and local educational agencies—

“(1) to improve the academic achievement of all students served by State educational agencies and local educational agencies, and to focus the resources of the Federal Government on that achievement;

“(2) to better empower parents, educators, administrators, and schools to effectively address the needs of their children and students;

“(3) to give participating State educational agencies and local educational agencies greater flexibility in determining how to increase their students’ academic achievement and implement education reforms in their schools;

“(4) to eliminate barriers to implementing effective State and local education reform, while preserving the goals of equality of opportunity for all students and accountability for student progress;

“(5) to hold participating State educational agencies and local educational agencies accountable for increasing the academic achievement of all students, especially disadvantaged students; and

“(6) to narrow achievement gaps between the lowest and highest performing groups of students, particularly low-income and minority students, so that no child is left behind.

“SEC. 7303. PROGRAM AUTHORITY; SELECTION OF STATE EDUCATIONAL AGENCIES AND LOCAL EDUCATIONAL AGENCIES.

“(a) PROGRAM AUTHORITY.—

“(1) IN GENERAL.—Except as otherwise provided in this part, the Secretary shall enter into performance agreements—

“(A) with State educational agencies and local educational agencies that submit approvable performance agreement proposals and are selected under paragraph (2); and

“(B) under which the agencies may consolidate and use funds as described in section 7305.

“(2) SELECTION OF STATE EDUCATIONAL AGENCIES AND LOCAL EDUCATIONAL AGENCIES FOR PARTICIPATION.—

“(A) IN GENERAL.—Subject to subparagraphs (C) and (D), the Secretary shall select not more than 7 State educational agencies and 25 local educational agencies to enter into performance agreements under this part. The State educational agencies and local educational agencies shall be selected from among those State educational agencies and local educational agencies that—

“(i) demonstrate, to the satisfaction of the Secretary, that the proposed performance agreement of the agency—

“(I) has substantial promise of meeting the requirements of this part; and

“(II) describes a plan to combine and use funds (as described in section 7305(a)(1)) under the agreement to exceed, by a statistically significant amount, the State’s definition of adequate yearly progress (as described in subparagraph (B)) while meeting the requirements of sections 1111 and 1116;

“(ii) have developed, and are administering, the assessments described in section 1111(b)(4);

“(iii) provide information in the proposed performance agreement regarding how the State educational agency—

“(I) has notified the local educational agencies within the State of the State educational agency’s intent to submit a proposed performance agreement; and

“(II) consulted with the Governor of the State about the terms of the proposed performance agreement;

“(iv) consulted and involved parents and educators in the development of the proposal; and

“(v) provide such other information, at such time and in such manner, as the Secretary may reasonably require.

“(B) DEFINITION OF ADEQUATE YEARLY PROGRESS.—In this part the term ‘adequate yearly progress’ means the adequate yearly progress determined by the State pursuant to section 1111(b)(2)(C).

“(C) GEOGRAPHIC DISTRIBUTION.—If more than 7 State educational agencies or 25 local educational agencies submit approvable performance agreements under this part, then the Secretary shall select agencies for performance agreements under this part in a manner that ensures, to the greatest extent possible, an equitable geographic distribution of such agencies selected for performance agree-

ments. In addition, if more than 25 local educational agencies submit approvable performance agreements under this part, then the Secretary shall select local educational agencies for performance agreements under this part in a manner that ensures an equitable distribution of such agencies selected for performance agreements among such agencies serving urban and rural areas.

“(D) LOCAL EDUCATIONAL AGENCY PARTICIPATION.—

“(i) IN GENERAL.—If a local educational agency is located in a State that does not enter into a performance agreement under subparagraph (A), then the local educational agency may be selected to enter into a performance agreement with the Secretary under subparagraph (A), but only if the local educational agency—

“(I) meets the requirements of this part that are applicable to the local educational agency pursuant to clause (iii), except as provided under clause (v);

“(II) notifies the State educational agency of the local educational agency’s intent to enter into a performance agreement under this part; and

“(III) notifies the Governor of the State regarding the terms of the proposed performance agreement.

“(ii) PROHIBITION.—In the event that a local educational agency enters into a performance agreement under this part, the State educational agency serving the State in which the local educational agency is located may not enter into a performance agreement under this part unless—

“(I) the State educational agency has consulted the local educational agency; and

“(II) the term of the local educational agency’s original performance agreement has ended.

“(iii) APPLICABILITY.—Except as provided in clauses (iv) and (v), each requirement and limitation under this part that is applicable to a State educational agency with respect to a performance agreement under this part shall be applicable to a local educational agency with respect to a performance agreement under this section, to the extent the Secretary determines appropriate.

“(iv) LOCAL EDUCATIONAL AGENCY WAIVER.—

“(I) WAIVER.—If a local educational agency does not wish to participate in the State educational agency’s performance agreement, then the local educational agency shall apply to the State educational agency for a waiver within 45 days of notification from the State educational agency of the State educational agency’s desire to participate in a performance agreement.

“(II) RESPONSE.—A State educational agency that receives a waiver application under subclause (I) shall respond to the waiver application within

45 days of receipt of the application. In order to obtain the waiver, the local educational agency shall reasonably demonstrate to the State educational agency that the local educational agency would be better able to exceed adequate yearly progress by opting out of the performance agreement and remaining subject to the requirements of the affected Federal programs. If the State educational agency denies the waiver, the State educational agency shall explain to the local educational agency the State educational agency's reasons for the denial.

“(III) APPLICABILITY.—If a local educational agency receives a waiver under this clause, then the agency shall receive funds and be subject to the provisions of Federal law governing each Federal program included in the State educational agency's performance agreement.

“(V) INAPPLICABILITY.—The following provisions shall not apply to a local educational agency with respect to a performance agreement under this part:

“(I) The provisions of section 7303(a)(2)(A)(iii) relating to State educational agency information.

“(II) The provisions of section 7304(a)(3)(B) limiting the use of funds other than those funds provided under part A of title I.

“(III) The provisions of section 7305(b), to the extent that those provisions permit the consolidation of funds that are awarded by a State on a competitive basis.

“(IV) The provisions relating to distribution of funds under section 7306.

“(V) The provisions limiting State use of funds for administrative purposes under section 7308(a).

“(VI) The provisions of section 7309(e)(1) regarding State sanctions.

“(b) ED-FLEX PROHIBITION.—Each State or local educational agency that enters into a performance agreement under this part shall be ineligible to receive a waiver under the Education Flexibility Partnership Act of 1999 for the term of the performance agreement.

“SEC. 7304. PERFORMANCE AGREEMENT.

“(a) TERMS OF PERFORMANCE AGREEMENT.—

“(1) REQUIRED PROVISIONS.—Each performance agreement entered into by the Secretary and a State educational agency or a local educational agency under this part shall—

“(A) be for a term of 5 years, except as provided in section 7309(a);

“(B) provide that no requirements of any program described in section 7305(b) and included in the scope of the agreement shall apply, except as otherwise provided in this part;

“(C) list which of the programs described in section 7305(b) are included in the scope of the performance agreement;

“(D) contain a 5-year plan describing how the State educational agency will—

“(i) ensure compliance with sections 1003, 1111 (other than subsections (c)(3) and (c)(10)), 1112 (other than subsections (b)(3), (c)(1)(E), and (c)(1)(H)), 1114, 1115, 1116, 1117, 1118(c), 1118(d), 1118(e)(1), 1118(e)(3), and 1118(e)(7), except that section 1114(b)(1) shall be applied substituting ‘35 percent’ for ‘40 percent’;

“(ii) address professional development under the performance agreement;

“(iii) combine and use the funds from programs included in the scope of the performance agreement to exceed, by a statistically significant amount, the State’s definition of adequate yearly progress; and

“(iv) if title II is included in the performance agreement, ensure compliance with section 1119(a)(2) as applicable;

“(E) contain an assurance that the State educational agency has provided parents, teachers, schools, and local educational agencies in the State, with notice and an opportunity to comment on the proposed terms of the performance agreement, including the distribution and use of funds to be consolidated, in accordance with State law;

“(F) provide that the State educational agency will use fiscal control and fund-accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the performance agreement;

“(G) contain an assurance that the State educational agency will meet the requirements of all applicable Federal civil rights laws in carrying out the performance agreement and in consolidating and using the funds under the performance agreement;

“(H) require that, in consolidating and using funds under the performance agreement, the State educational agency will comply with the equitable participation requirements described in section 7305(c);

“(I) provide that the State educational agency will, for the duration of the performance agreement, use funds consolidated and used under section 7305 only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds and used under section 7305, and not to supplant those funds;

“(J) contain an assurance that the State educational agency will comply with the maintenance of effort requirements of paragraph (2);

“(K) provide that, not later than 1 year after the date on which the Secretary and the State educational agency enter into the performance agreement, and annually thereafter during the term of the agreement, the State educational agency will disseminate widely to parents (in a format and, to the extent practicable, in a language the

parents can understand) and the general public, transmit to the Secretary, distribute to print and broadcast media, and post on the Internet, a report that includes—

“(i) the data as described in section 1111(h);

“(ii) a detailed description of how the State educational agency used the funds consolidated under the performance agreement to exceed, by a statistically significant amount, its definition of adequate yearly progress; and

“(iii) whether the State educational agency has met the teacher quality goals established under section 1119(a)(2); and

“(L) in the case of an agency that includes part A of title V in its performance agreement, contain an assurance that—

“(i) the agency will not diminish its ability to provide a drug and violence free learning environment as a result of entering into the performance agreement, except that nothing in this clause shall be construed to limit the ability of the agency to participate in a program under part A title V due to an unforeseen event involving drugs or violence;

“(ii) the agency will prepare the needs assessment described in section 5115(a)(1)(A) and the report described in section 5116 (b) and (c), as appropriate, for each school year; and

“(iii) the agency will use the information in the assessment and report described in clause (ii) to ensure compliance with clause (i).

“(2) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

“(A) IN GENERAL.—Each State entering into a performance agreement under this part shall not reduce the amount of State financial support for education for a fiscal year below the amount of such support for the preceding fiscal year.

“(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN EFFORT.—The Secretary shall reduce the allotment of funds to a State pursuant to the terms of the performance agreement for any fiscal year following a fiscal year in which the State fails to comply with subparagraph (A) by the same amount by which the State fails to meet the requirements of subparagraph (A).

“(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for one fiscal year at a time, if the Secretary determines that granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

“(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), then the financial support required of the State in future years under subparagraph (A) shall be

the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

“(3) MAINTENANCE OF LOCAL FINANCIAL SUPPORT.—

“(A) IN GENERAL.—Each local educational agency entering into a performance agreement under this part shall not reduce the amount of local educational agency financial support for education for a fiscal year below 90 percent of the amount of that support for the preceding fiscal year.

“(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the amount made available to a local educational agency under a performance agreement under this part for any fiscal year following the fiscal year in which the local educational agency fails to comply with subparagraph (A) by the same amount by which the local educational agency fails to meet the requirements of subparagraph (A).

“(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a local educational agency if the Secretary determines that granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency, or to permit the local educational agency to adjust for changes in student population within the schools served by the local educational agency.

“(D) SUBSEQUENT YEARS.—If, for any year, a local educational agency fails to meet the requirement of subparagraph (A), including any year for which the local educational agency is granted a waiver under subparagraph (C), then the financial support required of the local educational agency in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the local educational agency's support.

“(4) PROGRAM-SPECIFIC PROVISIONS.—

“(A) PART A OF TITLE I FUNDS.—If part A of title I is included in the scope of the performance agreement, the performance agreement shall provide that sections 1113, and 1124 through 1127, shall apply to the allocation of funds under such part, unless the State educational agency demonstrates, to the satisfaction of the Secretary and prior to approval of the performance agreement, that the State educational agency will use an alternative allocation method that will better target poverty or educational need. Any alternative method shall result in the percentage of such funds allocated to each local educational agency served by the State educational agency that meets the eligibility criteria for a concentration grant according to section 1124A exceeding the percentage of such funds allocated to such local educational agency under part A of title I. Such alternative allocation methods may include implementation of a State's weighted formula, use of a State's most current census data to better target poor children, or a State set-

ting higher thresholds for poverty so that funding is more targeted to schools with higher concentrations of poverty.

“(B) NONTITLE I FUNDS.—The performance agreement shall provide that, for funds other than those under part A of title I that are consolidated and used under section 7305(b), the State educational agency will demonstrate, to the satisfaction of the Secretary and prior to approval of the performance agreement, that the State educational agency will allocate the funds in a manner that ensures that the proportion of funds that are allocated to local educational agencies in the State based on poverty are equal to or greater than the proportion of funds allocated on such basis without such consolidation or use.

“(b) APPROVAL OF PERFORMANCE AGREEMENT.—

“(1) IN GENERAL.—Subject to section 7303(a), not later than 90 days after the deadline established by the Secretary for receipt of a complete proposed performance agreement, the Secretary shall approve the performance agreement, or provide the State educational agency with a written explanation for not approving the performance agreement.

“(2) PEER REVIEW.—The Secretary shall—

“(A) establish a peer review process to assist in the review of proposed performance agreements under this part; and

“(B) appoint individuals to the peer review process who are representative of parents, teachers, State educational agencies, and local educational agencies, and who are familiar with educational standards, assessments, accountability, curriculum, instruction and staff development, and other diverse educational needs of students.

“(c) AMENDMENT TO PERFORMANCE AGREEMENT.—

“(1) IN GENERAL.—Not later than 1 year after entering into a performance agreement under this part, a State educational agency may amend its agreement to—

“(A) remove from the scope of the agreement any program described in section 7305(b); or

“(B) include in the scope of the agreement any additional program described in section 7305(b), or any additional achievement indicators for which the State educational agency will be held accountable.

“(2) APPROVAL OF AMENDMENT.—

“(A) IN GENERAL.—Not later than 90 days after the receipt of a complete proposed amendment described in paragraph (1), the Secretary shall approve the amendment unless the Secretary, by that deadline, provides the State educational agency with a written determination that the plan, as amended, would no longer have substantial promise of meeting the requirements of this part and meeting the State educational agency’s objective to exceed adequate yearly progress.

“(B) TREATMENT AS APPROVED.—Each amendment for which the Secretary fails to take the action required under subparagraph (A) in the time period described in that subparagraph shall be considered to be approved.

“(3) ADDITIONAL AMENDMENTS.—In addition to the amendments described in paragraph (1), the State educational agency, at any time, may amend its performance agreement if the State educational agency demonstrates, to the satisfaction of the Secretary, that—

“(A) the plan, as amended, will continue to have substantial promise of meeting the requirements of this part; and

“(B) the amendment sought by the State will not substantially alter the original agreement.

“(4) TREATMENT OF PROGRAM FUNDS WITHDRAWN FROM AGREEMENT.—The addition, or removal, of a program to or from the scope of a performance agreement under paragraph (1) shall take effect with respect to the participating agency’s use of funds made available under that program beginning on the first day of the first full academic year following the approval of the amendment.

“SEC. 7305. CONSOLIDATION AND USE OF FUNDS.

“(a) IN GENERAL.—

“(1) AUTHORITY.—Under a performance agreement entered into under this part, a State educational agency may consolidate, subject to subsection (c), Federal funds made available to the State educational agency under the provisions listed in subsection (b) and use those funds for any purpose or use permitted under any of the eligible programs listed in section 7305(b), subject to paragraph (3).

“(2) PROGRAM REQUIREMENTS.—Except as otherwise provided in this part, a State educational agency may use funds under paragraph (1) notwithstanding the requirements of the program under which the funds were made available to the State educational agency.

“(3) CONTINUATION AWARDS.—A State educational agency shall make continuation awards for the duration of the grants to recipients of multiyear competitive grants under any of the programs described in subsection (b) that were initially awarded prior to entering into the performance agreement, and shall not consolidate any funds under subsection (b) for any year until after those continuation awards are made.

“(b) ELIGIBLE PROGRAMS.—Only funds made available for fiscal year 2002 or any succeeding fiscal year to State educational agencies under programs under any of the following provisions of law may be consolidated and used under subsection (a):

“(1) Part A (other than section 1003), subpart 3 of part B, or part F of title I.

“(2) Subpart 1 or 3 of part A of title II.

“(3) Part A of title III.

“(4) Subpart 1 of part A of title IV.

“(5) Part A or B of title V.

“(6) Any other program under this Act that is enacted after the date of enactment of the No Child Left Behind Act of 2001 under which the Secretary provides grants to State educational agencies to assist elementary and secondary education on the basis of a formula.

“(c) EQUITABLE PARTICIPATION REQUIREMENTS.—If a State educational agency or local educational agency includes in the scope of

its performance agreement programs described in subsection (b) that have requirements relating to the equitable participation of private schools, then—

“(1) each local educational agency in the State, or the local educational agency, as appropriate, shall determine the amount of consolidated funds to be used for services and benefits for private school students and teachers by—

“(A) calculating separately the amount of funds for services and benefits for private school students and teachers under each program that is consolidated and to which those requirements apply; and

“(B) totaling the amounts calculated under subparagraph (A);

“(2) except as described in paragraph (3), all equitable participation requirements, including any bypass requirements, applicable to the program that is consolidated shall continue to apply to the funds consolidated under the agreement from that program; and

“(3) the agency may use the amount of funds determined under paragraph (1) only for those services and benefits for private school students and teachers in accordance with any of the consolidated programs to which the equitable participation requirements apply, but may not provide any additional benefits or services beyond those allowable under the applicable equitable participation requirements under this Act.

“SEC. 7306. STATE RESERVATION FOR STATE-LEVEL ACTIVITIES.

“(a) STATE-LEVEL ACTIVITIES.—In order to carry out State-level activities under the purposes described in section 7305(a)(1) to exceed, by a statistically significant amount, the State’s definition of adequate yearly progress, a State educational agency that—

“(1) includes part A of title I in the scope of its performance agreement, may reserve not more than 5 percent of the funds under that part to carry out such activities; and

“(2) includes programs other than part A of title I in the scope of its performance agreement, may reserve not more than 10 percent of the funds under those other programs to carry out such activities.

“(b) DISTRIBUTION OF REMAINDER.—A State educational agency shall distribute the consolidated funds not used under subsection (a) to local educational agencies in the State in a manner determined by the State educational agency in accordance with section 7307.

“SEC. 7307. DISTRIBUTION OF FUNDS UNDER AGREEMENT.

“The distribution of funds consolidated under a performance agreement shall be determined by the State educational agency in consultation with the Governor of the State, subject to the requirements of this part.

“SEC. 7308. LIMITATIONS ON ADMINISTRATIVE EXPENDITURES.

“(a) STATE EDUCATIONAL AGENCY.—Subject to section 7309(e)(1), each State educational agency that has entered into a performance agreement under this part may reserve for administrative purposes not more than 1 percent of the total amount of funds made available to the State educational agency under the programs included in the scope of the performance agreement.

“(b) LOCAL EDUCATIONAL AGENCY.—Subject to section 7309(e)(2), each local educational agency that has entered into a performance agreement with the Secretary under this part may use for administrative purposes not more than 4 percent of the total amount of funds made available to the local educational agency under the programs included in the scope of the performance agreement.

“SEC. 7309. PERFORMANCE REVIEW AND PENALTIES.

“(a) EARLY TERMINATION OF AGREEMENT.—

“(1) PERFORMANCE GOAL FAILURE.—Beginning with the first full academic year after a State educational agency enters into a performance agreement under this part, and after providing the State educational agency with notice and an opportunity for a hearing (including the opportunity to provide information as provided in paragraph (3)), if the State educational agency fails to meet its definition of adequate yearly progress for 2 consecutive years, or fails to exceed, by a statistically significant amount, its definition of adequate yearly progress for 3 consecutive years, then the Secretary shall terminate promptly the performance agreement.

“(2) NONCOMPLIANCE.—The Secretary may, after providing notice and an opportunity for a hearing (including the opportunity to provide information as provided in paragraph (3)), terminate a performance agreement if there is evidence that the State educational agency has failed to comply with the terms of the performance agreement.

“(3) INFORMATION.—If a State educational agency believes that the Secretary’s determination under this subsection is in error for statistical or other substantive reasons, the State educational agency may provide supporting evidence to the Secretary, and the Secretary shall consider that evidence before making a final early termination determination.

“(b) NO RENEWAL IF PERFORMANCE UNSATISFACTORY.—If, at the end of the 5-year term of a performance agreement entered into under this part, a State educational agency has not substantially met the State’s definition of adequate yearly progress, then the Secretary shall not renew the agreement under section 7310.

“(c) TWO-YEAR WAIT-OUT PERIOD.—A State educational agency whose performance agreement was terminated under subsection (a), or was not renewed in accordance with subsection (b), may not enter into another performance agreement under this part until after the State educational agency meets its definition of adequate yearly progress for 2 consecutive years following the termination or nonrenewal.

“(d) PROGRAM REQUIREMENTS IN EFFECT AFTER TERMINATION OR NONRENEWAL OF THE AGREEMENT.—Beginning on the first day of the first full academic year following the end of a performance agreement under this part (including through termination under subsection (a)) the State educational agency shall comply with each of the program requirements in effect on that date for each program included in the performance agreement.

“(e) SANCTIONS.—

“(1) STATE SANCTIONS.—If, beginning with the first full academic year after a State educational agency enters into a performance agreement under this part—

“(A) the Secretary determines, on the basis of data from the State assessment system described in section 1111 and data from State assessments under the National Assessment of Educational Progress of 4th and 8th grade reading and mathematics skills, or an assessment described in section 7101(b)(1)(B)(ii), for 2 consecutive years, that—

“(i) the State educational agency has failed to exceed, by a statistically significant amount, the State’s definition of adequate yearly progress; and

“(ii) students who are racial and ethnic minorities, and economically disadvantaged students, in the State failed to make statistically significant progress in the academic subjects for which the State has developed State content and student performance standards,

then the amount that the State educational agency may use for administrative expenses in accordance with section 7308 shall be reduced by 30 percent; and

“(B) the Secretary determines that a State educational agency fails to make adequate yearly progress as described in subsection (b) of section 7102, the Secretary shall reduce State funds in accordance with such subsection.

“(2) LOCAL EDUCATIONAL AGENCIES.—If, beginning with the first full academic year after a local educational agency enters into a performance agreement under this part, the Secretary determines, on the basis of data from the State assessment system described in section 1111 that a local educational agency failed to exceed, by a statistically significant amount, the State’s definition of adequate yearly progress for 2 consecutive years, then the amount that the local educational agency may use for administrative expenses in accordance with section 7308 shall be reduced by 30 percent.

“SEC. 7310. RENEWAL OF PERFORMANCE AGREEMENT.

“(a) IN GENERAL.—Except as provided in section 7309 (a) and (b), and in accordance with this section, the Secretary shall renew for 1 additional 5-year term a performance agreement under this part if the Secretary determines, on the basis of the information reported under section 7304(a)(1)(K), that the adequate yearly progress described in the performance agreement has been exceeded by a statistically significant amount.

“(b) NOTIFICATION.—The Secretary shall not renew a performance agreement under this part unless the State educational agency seeking the renewal notifies the Secretary of the agency’s intention to renew the performance agreement not less than 6 months prior to the end of the original term of the performance agreement.

“(c) EFFECTIVE DATE.—A renewal under this section shall be effective at the end of the original term of the performance agreement or on the date on which the State educational agency provides to the Secretary all data and information required under the performance agreement, whichever is later, except that in no case may there be a renewal under this section unless that data and information is provided to the Secretary not later than 60 days after the end of the original term of the performance agreement.

“SEC. 7311. EVALUATION.

“(a) STUDY.—The Secretary is authorized to award a grant to the Comptroller General to conduct a study examining the effectiveness of the demonstration program under this part. The study shall examine—

“(1) the performance of the disaggregated groups of students described in section 1111(b)(2)(C)(iii)(III) prior to entering into the performance agreement as compared to the performance of such groups after completion of the performance agreement on State assessments and the National Assessment of Educational Progress, or an assessment described in section 7101(b)(1)(B)(ii);

“(2) the graduation rates (as required by section 1111(h)(1)(D)(iii)) prior to entering into the performance agreement as compared to the dropout data after completion of the performance agreement;

“(3) the ways in which the State educational agencies and local educational agencies entering into performance agreements distributed and used Federal education resources as compared to the ways in which such agencies distributed and used Federal education resources prior to entering the performance agreement;

“(4) a comparison of the data described in paragraphs (1), (2), and (3) between State educational agencies and local educational agencies entering into performance agreements compared to other State educational agencies and local educational agencies to determine the effectiveness of the program; and

“(5) any other factors that are relevant to evaluating the effectiveness of the program.

“(b) REPORT.—The Secretary shall make public the results of the evaluation carried out under subsection (a) and shall report the results of the study to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives.

“SEC. 7312. TRANSMITTAL OF REPORTS TO CONGRESS.

“Not later than 60 days after the Secretary receives an annual report described in section 7304(a)(1)(K), the Secretary shall make the report available to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.”.

24. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HILLEARY OF TENNESSEE, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

After part A of title IX of the bill, insert the following (and redesignate provisions accordingly):

PART B—EQUAL ACCESS TO PUBLIC SCHOOL FACILITIES

SEC. 921. SHORT TITLE.

This part may be cited as the “Boy Scouts of America Equal Access Act”.

SEC. 922. EQUAL ACCESS.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, no funds made available through the Department of Education shall be provided to any public elementary school, public secondary school, local educational agency, or State educational agency, if the school or a school served by the agency—

(1) has a designated open forum; and

(2) denies equal access or a fair opportunity to meet to, or discriminates against, any group affiliated with the Boy Scouts of America or any other youth group that wishes to conduct a meeting within that designated open forum, on the basis of the membership or leadership criteria of the Boy Scouts of America or of the youth group that prohibit the acceptance of homosexuals, or individuals who reject the Boy Scouts' or the youth group's oath of allegiance to God and country, as members or leaders.

(b) **TERMINATION OF ASSISTANCE AND OTHER ACTION.**—

(1) **DEPARTMENTAL ACTION.**—The Secretary is authorized and directed to effectuate subsection (a) by issuing, and securing compliance with, rules or orders with respect to a public school or agency that receives funds made available through the Department of Education and that denies equal access, or a fair opportunity to meet, or discriminates, as described in subsection (a).

(2) **PROCEDURE.**—The Secretary shall issue and secure compliance with the rules or orders, under paragraph (1), in a manner consistent with the procedure used by a Federal department or agency under section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1).

(3) **JUDICIAL REVIEW.**—Any action taken by the Secretary under paragraph (1) shall be subject to the judicial review described in section 603 of that Act (42 U.S.C. 2000d-2). Any person aggrieved by the action may obtain that judicial review in the manner, and to the extent, provided in section 603 of that Act.

(c) **DEFINITIONS AND RULE.**—

(1) **DEFINITIONS.**—In this section:

(A) **ELEMENTARY SCHOOL; LOCAL EDUCATIONAL AGENCY; SECONDARY SCHOOL; STATE EDUCATIONAL AGENCY.**—The terms “elementary school”, “local educational agency”, “secondary school”, and “State educational agency” have the meanings given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 (as in effect after the effective date of this Act).

(B) **SECRETARY.**—The term “Secretary” means the Secretary of Education, acting through the Assistant Secretary for Civil Rights of the Department of Education.

(C) **YOUTH GROUP.**—The term “youth group” means any group or organization intended to serve young people under the age of 21.

(2) **RULE.**—For purposes of this section, an elementary school or secondary school has a designated open forum whenever the school involved grants an offering to or opportunity for 1 or more youth or community groups to meet on school premises

or in school facilities before or after the hours during which attendance at the school is compulsory.

SEC. 923. EFFECTIVE DATE.

Notwithstanding section 5, this part takes effect 1 day after the date of the enactment of this Act.

25. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE VELÁZQUEZ OF NEW YORK, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 501 of the bill, in section 5123(h) of the Elementary and Secondary Education Act of 1965 (as proposed to be amended by such section 501), insert after paragraph (2) the following:

“(3) IN-KIND CONTRIBUTIONS.—Each State that requires an eligible entity to match funds under this subsection shall permit such entity to provide all or any portion of such match in the form of in-kind contributions.

26. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KIRK OF ILLINOIS, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

The amendment as modified is as follows:

At the end of title VI of the bill, add the following:

SEC. 607. SENSE OF CONGRESS RELATING TO FULL FUNDING OF THE IMPACT AID PROGRAM.

(a) FINDINGS.—Congress finds the following:

(1) More than 90 percent of resources for school districts in the United States are raised from State and local property taxes.

(2) School districts that are affected by the presence of the Federal government, such as Federal property that is not subject to taxation, must still provide educational services to children who are federally connected by such activities of the Federal government.

(3) To mitigate this loss of funding, Congress has made “impact aid” payments to local educational agencies to reimburse the agencies for the costs of educating federally connected children.

(4) From 1950 to 1969, Congress provided full funding for the impact aid program to help defray the costs of educating federally connected children.

(5) For fiscal year 2000, Congress provided only 46 percent of the costs of educating federally connected children.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the House of Representatives, Senate, and Administration should work together to provide full funding for the impact aid program in future fiscal years in order to meet the needs of school districts affected by a Federal presence; and

(2) the full funding of the impact aid program will ensure that federally connected children will continue to receive a quality education.

27. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HOFFEL
OF PENNSYLVANIA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 5214(b)(1) of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 501 of the bill, add at the end the following: “Such a description may include how the applicant will provide release time for teachers (which may include the provision of a substitute teacher).”.

28. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE COX OF
CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

In part E of title VIII of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 801 of the bill—

- (1) redesignate section 8520 as section 8521 (and correct any cross-references accordingly); and
- (2) insert after section 8519 the following:

“SEC. 8520. AGGREGATE INCREASE IN AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 2002 EQUAL TO 11.5 PERCENT.

“Notwithstanding any other provision of this Act—

“(1) for fiscal year 2002, the aggregate amount of funds authorized to be appropriated under this Act shall be \$20,528,782,360 (representing an increase of 11.5 percent over the aggregate amount appropriated for programs under this Act for fiscal year 2001); and

“(2) for each subsequent fiscal year covered by this Act, the aggregate amount of funds authorized to be appropriated under this Act shall be the amount appropriated for the preceding fiscal year, increased by 3.5 percent.