

# **Forum on Educational Accountability**

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George Miller  
Chairman  
House Committee on Education

Howard P. "Buck" McKeon  
Senior Republican Member  
House Committee on Education

Dale E. Kildee  
Chairman  
Subcommittee on Early Childhood,  
Elementary and Secondary Education

Michael Castle  
Senior Republican Member  
Subcommittee on Early Childhood,  
Elementary and Secondary Education

Dear Sirs:

Per your request, the Forum on Educational Accountability submits the following recommendations for changes to the discussion draft for the reauthorization of ESEA. We thank you for this opportunity.

We recognize a number of key improvements in the discussion draft, but believe much more needs to be done to best ensure a helpful federal role in improving our nations schools and enhancing student learning.

Per your instructions, we refer to specific pages and lines. At a few points, we add brief comments to explain why we seek the changes we suggest.

FEA members are available to discuss our recommendations, and we look forward to working with you and the Committee to further improve the law.

Monty Neill, Ed.  
Chair, Forum on Educational Accountability  
Co-Executive Director, FairTest

## **P 21 - Section 1111**

P 23, line 24            add after "skills" the text: "and their application in real world contexts"

P 24, line 15            add "at least" after "describe"  
[Comment: to evaluate students along a real continuum of academic achievement, more than 3 levels of achievement are needed. Most states have four or five. This is critical for crediting gains for special education students and ELLs especially.]

- P 30, line 22 replace “during any of the previous three years” with “at any time”
- P 31, line 6 in (dd): delete after “was” and replace with: “was previously an English language learner in the same school or local education agency (for calculation of adequate yearly progress in, respectively, the school or local education agency.”
- P 34, line 1, Strike (I) and replace with “(I) Growth on state-wide assessments of science, history, civics and government, or writing, that meet the assessment requirements of subsection (c) or Section 1125.”
- p. 34, line 4 revise to read “increases in scale scores on a scaled test or increases in the percentage of students who move from levels below basic to a higher performance level.”  
[Comment: Multiple performance levels will allow more measurement and growth credit for students who are lower – achieving, including ELLs and special education students.]
- p. 34, line 24 delete “if such courses are available to all schools in the state”  
[Comment: This seems to suggest that each specific course has to be offered in all state schools, which is not realistic. Also some schools may use AP, others IB, others may offer college courses, etc. These choices will not be standardized across the state. A flexible requirement for comparable offerings to ensure that it is not only wealthy districts offering many options with only a few available in low-income districts may make sense, but this language is far too restrictive.”
- P 35, after line 10 Insert “(VI) Decreases in grade retention rates or increases in grade progression rates.”  
Insert “(VII) Other indicators submitted by the state and approved by the Secretary.”  
[Including grade promotion rates is essential and should be explicit; districts and whole states are making themselves look good on AYP by retaining children in grade, despite extensive evidence of the harm of this practice; and they should not be using grade retention to have high schoolers be over age.]
- p. 35, line 11 revise (ii) to read “have had its assessment and accountability systems approved or conditionally approved/pending approval by the Secretary.”
- P 36, line 2 replace “15” with “50”  
line 7 replace “25” with “50”
- P 37, line 1 replace “5” with “10”  
line 2 after “objectives” insert “for each indicator approved under clause (i)(I), (V) or (VI).”

P 39, line 14            Replace “10” with “30”  
line 18                Replace “10” with “30”

P 40, line 8            Replace “20” with “40”

Comment on paragraphs (D) and (E) that begin on page 32 at line 3: a major reason to include multiple indicators is to counter the unfortunate tendency to reduce curriculum and instruction to test preparation in two subjects. The weights allowed other indicators in this discussion draft are too limited to have any real impact on this problem. Allowing 50 percent for reading and math combined (25% each) should ensure they are given substantial attention in schools, as is appropriate.

P 43, line 5,            insert: “or make progress comparable to the rate of improvement established in (b)(2)(I).”

P 44, line 21            Insert “and (vii)”

P 45, line 22            delete “proficient level of achievement” and insert “progress requirements”

P 47, line 1            Delete from line 1 through Page 51, line 6 (all of (I), (J) and (L) and replace with new (I) through (M) renumbering subsequent clauses and making other changes as needed beyond those noted in these recommendations to bring other sections into accord with the language in the new (I) through (M):

“(I) Each state shall establish a required rate of increase in the proportion of students who reach the proficient level, defined as a positive trend in learning outcomes and to be used in evaluating school and LEA improvement as established in Sec. 1116.

(i) That rate shall be based on the average rate of improvement on state assessments over the previous three years among schools receiving Title I funding.

(ii) Each school will be ranked from greatest to least rate of improvement.

(iii) A school at the 65<sup>th</sup> percentile in its rate of increase shall be identified to establish the required rate of increase for all schools and specified groups within the school to meet in the coming five years.

(iv) the state may adjust the rate based on three-year rolling averages in the required rate of improvement if new three year rolling averages diverge significantly from the initially established rate.

“(J) The rates of improvement shall be set separately for reading/language arts and for math, as well as for any other subject area the state chooses.

“(K) States will report status and improvement or growth.

(i) The state will annually report the trends in learning outcomes for each school and district and for each identified group [named in (b)(2)(C)(v)(II) within the school and LEA.

(ii) The state will annually report the percentage of students at least at each level of basic, proficient and advanced, and changes in those percentages over the previous three years, for each assessed grade level.

(iii) States may report improvement by students (students' growth) as they progress through the grades, as established in (b)(2)(F).

“(L) Students shall be allowed accommodations and alternative or out-of-level assessments needed to accurately determine student achievement.

(i) Require multiple forms of evidence in the assessment of all groups, particularly for English Language Learners (ELLs) and Students with Disabilities (SWDs). These shall include, to the extent practicable, assessments in the language or formats in which a student is best able to evidence his/her level of learning, and results of classroom-based assessments, and performance of ELLs in the native language and/or in English, consistent with the language(s) in which they receive instruction or the language in which they can best evidence their learning.

(ii) A student with disabilities whose instructional levels in the core academic subjects is at least three years below the grade level in which the student is enrolled, may be assessed using the state exam or assessment that measures the academic content and achievement standards for the grade level that is at his or her instructional level.

(iii) The Department shall engage in research and within three years of the passage of this Act shall issue guidelines on the allowable numbers of students, or criteria for their identification, for students who may participate in out-of-level or other alternative assessments.

(iv) ELLs must be assessed with English language proficiency tests aligned to state academic content standards. Data from those tests are to contribute to a body of evidence that indicates when ELLs are sufficiently proficient in English to be validly assessed with tests of academic achievement (English language arts/reading, math, & science) in English.

(v) A student identified as ELL/LEP shall be included in that group for accountability purposes as long as that student remains in the same school or district in which they were identified; if s/he remains identified as ELL/LEP when moving to a new school or district, the inclusion pertains to the new school or district.

(vi) Department of Education guidelines shall be written to provide specific guidance for selection of assessments and/or accommodations for students with dual classifications (e.g., English language learners with learning disabilities).

(vii) Assessment exams used with ELLs or SWDs shall be validated for use with those students for the purposes for which the results shall be used.

“(M) Schools may summarize data across grades in a school to establish their rate of improvement.”

P 47, line 2                      Create subclause (i) to start with “(i) The timeline...”

line 10                              Insert new subclause (ii): “(ii) Any state that participates in the college and work ready standards and assessments described in section 1111A may establish a new date of 2020 by which time all students as required in this section to attain proficiency shall attain proficiency on the new

assessments, with adequate yearly progress, annual measurable objectives and related requirements of this sections modified as appropriate to make the process of attaining the new goals comparable to the process of attaining the goals otherwise established in this section.”

[comment: if the proposed changes to clause (I) and subsequent clauses proposed above are accepted, then this clause should be modified as improvement, which may be slower due to the more difficult requirements.]

P 49 line 19

replace “10” with “5”

[comment: this change only necessary if the proposed changes to clause (I) and subsequent clauses are not accepted]

P. 65, line 22

insert the following text:

“(A) Multiple measures are defined as incorporating different sources and kinds of evidence of student learning in a subject or across subject areas.”

“(B) They may include state-level assessments; classroom, school and district tests; extended writing samples administered on demand or as part of classroom work; tasks, projects, performances, and exhibitions; and collected samples of student classroom work, portfolios or learning records.

“(C) Multiple measures must allow multiple opportunities to demonstrate achievement, be accessible to students at varying levels of proficiency, and utilize different methods for demonstrating achievement.

“(D) While any one assessment may incorporate different methods (e.g., an exam with multiple-choice and extended response questions), multiple measures does not mean one assessment with several different components, nor only multiple opportunities to take the same assessment, nor two or more measures that are largely similar such as a state exam using mostly multiple-choice items and a state-mandated use of a norm-referenced test using using similar item types or a district final or “benchmark” exam also using similar item types.

“(E) If a state does not use local assessments as a means of providing multiple measures and gathering evidence pertaining to higher order thinking skills, then it must ensure that its state assessment does assess all such significant skills identified in its state standards, using multiple forms of assessment.”

P. 65, line 23

insert after “understanding”: “, including analysis, synthesis, evaluation, application, problem-solving and creativity, in and across subject areas”

P 66, line 14

delete “in science” and insert “reading or language arts, math, and science, and be administered”

- P 66, line 20 delete through p 67 line 10 (all of (ix) and replace with: “The Secretary shall encourage any state that assesses students in accord with the requirements of subsection (b) less frequently than in every grade 3 through 8 to participate in Section 1125.”
- P 81, line 14: Make subparagraph (B) a new paragraph (6) and renumber subsequent paragraphs, deleting the words “For a state covered by subparagraph (A), nothing in this paragraph” and insert the words “Nothing in this section” and change the last word "subsection" to "section"
- P 89, line 23 Insert:  
" (14) Research on assessments  
(A) In addition to research required in other paragraphs of this Section or in other Sections, there shall be a research program on assessment that shall include, but not be limited to, research on known problems in quality of assessments in the following areas:  
(i) Identification, classification and placement of ELLs and SWDs;  
(ii) Psychometric properties of English language proficiency assessments;  
(iii) Psychometric properties of both native language and English language achievement assessment instruments as used with ELLs;  
(iv) Psychometric properties of assessments for the diverse types and severity levels of disabilities;  
(v) ELLs with disabilities;  
(vi) Accommodations and modifications for specific groups, including assessment of students' English language proficiency levels;  
(vii) Correlation (alignment) of assessments with students' Individualized Education Plans under IDEA;  
(viii) Criteria used to exclude students from testing and the effects of arbitrary criteria applied to groups (e.g., percentage of students who can be exempted, limits on the number of times students can take native language achievement tests, specification of when students have to be tested in English);  
(ix) Integration of results of alternative, authentic, or performance-based measures, and assessments administered with accommodations and modifications, with results of traditional testing programs  
(x) Formulation of comprehensive accountability systems inclusive and representative of all subgroups.

(B) States shall be encouraged to collaborate on research and development on assessments, and may use funds allocated for the improvement of state assessments for this purpose. Alternative assessments of academic achievement for ELLs, ELLs with disabilities, and non-

(C) There shall be authorized \$100 million each year for this research on assessment."

P 93, line 15      Add after "low levels of literacy," "and require any school designated as a High Priority School or Priority School under section 1116(b)(4) to offer family literacy services (using funds under this part) whenever the same conditions in this subsection are met;"

**P 115 - Section 1111A**

P 116 line 4 –      comment: there is no definition of "aligned" or "fully aligned" – a definition should include that the assessment includes content and skills described in the standards and represents and measures in a balanced and comprehensive way that content and skills so that no key areas of the standards, including higher order skills and thinking, are not assessed.

P. 116, line 22,      strike "and"  
line 23              insert: "(B) may be met through assessments developed in accord with section 1125; and"  
line 23              renumber (B) as (C)

**P 118 - Section 1112,** In general, make changes to render consistent with changes in 1111.

P 121, line 18      Insert after "local educational agency level staff," ", and offer family literacy and parenting skills to parents, as well as adult mentors or similar programs for children with parents unavailable"

**P. 140 - Section 1113,** In general make changes to render consistent with changes in 1111.

**P. 149 - Section 1114**

Generally, make changes to render consistent with changes in previous sections.

P. 153 line 19      delete "that are based on scientifically valid research"  
[comment: no such 'scientific' evidence exists on a meaningful scale – do not require schools to use that which does not exist]

## **P 162 - Section 1115**

Generally, make changes to render consistent with changes in previous sections.

- P. 165 line 24, delete “that are based on scientifically research” and then on page 166 at line 1, delele the “s” to make “strengthen”  
[comment: no such ‘scientific’ evidence exists on a meaningful scale – do not require schools to use that which does not exist]

## **P 170 - Section 1116**

[comment to section: in general, the consequences associated with this version of section 1116 are well superior to those included in NCLB section 1116. The use of same group/same subject is an important step forward, as is allowing schools 3 years to implement the plan rather than do something new every year (however, as noted below, schools should have 4 years with an option of a 5<sup>th</sup> year, rather than 3 with the option of a 4<sup>th</sup>, for reasons explained there). The redesign process makes more sense than the restructuring provisions of NCLB, with one important proviso: there remains no adequate evidence that school governance is necessarily the cause of continued problems or that changing governance will be the solution. Therefore, a "something else" clause remains necessary. Finally, the success of plan implementation will depend enormously on the availability of resources, in two ways: Title I (or other ESEA) funds must be sufficient – not only authorized but appropriated. We ask the Committee to consider changes to the requirements in the event that appropriations are insufficient. Second, local and state resources may be inadequate to ensure all children can attain proficiency; schools should not be subject to actions which cannot succeed if the underlying resources are not available. At a minimum, such lack of resources should be identified and publicized, and we insert provisions to do so.]

- P. 174 line 10 strike “of three school years” and replace with “of four school years”  
[comment: school turnaround experts say it takes 4-5 years to turn around a school; we propose to provide 4 years and a possible 5<sup>th</sup> year if a school makes AYP in year 4.

- P 178 line 12 add “provided that formative assessments shall have the properties of assessments described in section 1125(d)(4).”

- P 179 line 17 after “including” insert “the sufficiency of the school’s resources”  
[comment: here and elsewhere, schools and LEAs are asked only to consider allocation of resources, not whether available resources are sufficient; this information is essential for determining whether schools have been provided sufficient resources to meet the law’s requirements]

- P 192 – line 5 insert “effective” before “methods” then delete “based on scientifically valid research”  
[comment: no such ‘scientific’ evidence exists on a meaningful scale – do not require schools to use that which does not exist]
- P 192, line 15 & 16 insert before “assistance” the clause “assistance in analyzing the adequacy of the school’s budget and in”... then at line 16 insert after “budget” the clause “so that any lack of resources is identified and so that”
- P 196, lines 20-22 Strike “that may include ” and after (aa) insert “shall include”
- P 197, line 4 after (bb)” insert “may include”
- P 199, line 24 Insert after “(v).” the text: “Formative assessments shall have the properties of assessments described in section 1125(d)(4).”
- P 206, line 1 insert as a (I) the following and renumber the subsequent clauses: “(I) has made adequate yearly progress for all groups that had not made AYP; or” and then insert the word “or” at the end of each clause currently numbered (I) and (II).
- P 210, line 13 Replace “10” with “20”
- Line 15 Replace “10” with “20”
- Line 17 Insert after “under section 1113,” “along with an equal amount provided by the state under section 1116(f)(4)(A)”
- Line 30 change “20 percent” to “10 percent”
- P 212, line 7 if the amount here refers to 10 percent of the 20 percent stated on p 210 at line 30, then change “10 percent” to “50 percent” if the change we suggest to page 210 line 30 is not included.  
[comment: the general point here is that transportation should in no way be required to exceed 10 percent of the available Title I funds.]
- P 212, line 23 Insert after “needs of identified schools.” a new subparagraph:  
“(4) STATE ALLOCATIONS AND EXPENDITURES  
(A) Each state receiving funds under this part shall match at least the amount of federal funds required to be spent for school improvement and assistance under section 1116(f)(1)(A);  
(B) Each such state shall be allocated one-tenth of the amount of funds to be expended for school improvement and assistance under section 1116(f)(1)(A) to enhance its own capacity under sections 1005 and 1117 to provide an effective system of technical

assistance to help local agencies and schools make educational improvements.”

- P 217, line 23 delete text in (ii) after "1111(b)" and insert "or on assessments developed and approved under section 1125;"  
[comment: a major problem with current SES is that the services provided may not produce improved outcomes, and SES providers may use assessments that are not *fully* aligned to the state standards.]
- P 227, line 24 delete "or"
- P 228, line 4 after "reform" insert "; or" and delete "." Then insert "(E) any other major redesign that makes fundamental reforms that has a similar level of evidence of success as do the options in subparagraphs (A) through (D)."  
[comment: the assumption that governance changes will produce improved education remains simply an assumption, not backed up in any instance with adequate evidence; thus, schools and districts should be allowed other redesign options that have some evidence they can be successful.]
- P 239, line 18 insert after "formative assessments": "consistent with the properties of assessments described in section 1125(d)(4)."
- P 241, line 11 insert after "capacity": ", including the adequacy of the agency's funding."

## **P 269 - Section 1118**

- P 272, line 20 Replace “1” with “5”
- P 278, line 16 Insert after “shall” “:(A)” and after “training”: “in adult literacy and parenting skills in each school designated as a High Priority or Priority School under section 1116(b)(4)(A);”
- Lines 18-19 Strike “such as literacy training and”
- Line 20 Add: “(B) offer, in each such High Priority or Priority School, adult mentoring or other programs that provide individualized support and motivation for children whose parents are unable to provide stability, structure and positive role models for pursuing academic achievement; and  
(C) expend at least two-fifths of the funds reserved under section 1118(a)(3)(A) to implement parental involvement under section 1116(b)-(d) and at least two-fifths of such funds to implement parental support under this subsection 1116(e)(2).”

**P. 318 – Section 1124**

- P 328, line 13 insert after “exam”: “or any alternative assessment or process”
- P 246, line 25 insert "." after "strategies" and then on page 247, line 1, delete "based on scientifically valid research."  
[comment: no such ‘scientific’ evidence exists on a meaningful scale – do not require schools or LEA’s to use that which does not exist]

**P. 333 – Section 1125**

- P 333, line 7 insert after "locally developed" the words: "or locally managed"
- P 333, line 21 it would be best to simply delete this unnecessary paragraph; however, if it not deleted, at line 22 add after "Secretary": ", or be determined to be close to approval, provided that if the latter, the state may not use the local assessments in determining adequate yearly progress until its existing plan has been approved by the Secretary."  
[Comment: while it is appropriate to ensure states have moved promptly to finalize approval of their state assessment systems, the value of the new assessments is such that participating in the pilot should be encouraged, not discouraged, and the message that the new assessments cannot be used until their existing system has been approved sends an appropriate and sufficient message to the states.]
- P 333, line 23 delete the words "are comparable"  
[comment: the term has no precise meaning and too easily could lead to confusion; the rest of the requirements in this and subsequent paragraphs should ensure that in each locality, the assessments are measuring to the standards at a similar level of difficulty, etc.]
- P 334, line 10 insert after "locally developed" the words: "or locally managed"
- P 334, line 13 insert after "developed": "or are adapted from existing assessments"  
[comment to this page: local teachers need not develop all local assessments; they should be encouraged to collaborate across district lines, where feasible; and they may prefer to adapt high-quality assessments already available – the issues are whether they assess higher order skills, are instructionally valuable, and their use is under control of the local educators.]
- line 20 insert after “classroom”: “and are instructionally useful”
- line 22 delete the words "short and"

[comment: in general, short response items are becoming common; the key is to ensure a substantial portion of extended constructed response items; focusing on them does not preclude use of shorter-response items. In addition, some assessments may be entirely one longer-response item, e.g. an essay or science experiment.]

P 335, line 3

revise to read: “(E) are each or in combination as a set of assessments scored independently and objectively using rubrics developed under the requirements of paragraphs (2) and (3)”

[comment: if rubrics are to measure precisely what students are taught in the classroom, per paragraph (D), the rubrics often must be specific to what has been taught, while also being based on state standards, etc. The requirements in paragraphs (2), (3) (6), (7), and (8) as well as elsewhere in (4) already include rubrics and ensure what is important about subparagraph (E), ensuring comparability. Mandating a state-developed rubric is not necessary to ensure comparability while it unnecessarily restricts the ability of assessments to measure adequately student learning. Thus, in general, sometimes state rubrics are used but often they are not (as in Nebraska, where rubrics are developed locally but must meet, along with the other components of the state systems, state requirements for the quality of the local assessments that are used in the state assessment system for purposes of this Act). Additionally, the locality may find it instructionally preferable and logistically easier to score a set of assessments from each student at one time, giving the set one score; thus, the language “each or in combination” ensures this may be done, eliminating the unnecessary requirement to score each assessment separately where that is unhelpful or infeasible.]

Page 335, line 14

delete "provide" and insert “ensure that professional development support is available to teachers”

P 335, line 19

delete "provide" and insert "ensure training is provided"

P 336, line 12

delete "the same level and range of" and insert "equally"  
[comment: "level and range" may imply having to have the same assessments, defeating the purpose of local assessments based on both standards and local curriculum]

Page 336, line 19

delete lines 19 and 20.  
[comment: this is so vague as to suggest all the local assessments will have to be the same, defeating the very purpose of the section. Needs for comparability, reliability and validity are assured through subsection (d).

P 226, line 19

replace "comparable" with "of comparable quality"

Page 336, line 23

Insert after "(B)": "continue,"

P 337, line 6

delete "and preserve the rigor and comparability of " and replace with: "based on state standards, and reliable and valid, and of similar rigor as the"

Page 337, line 12

Insert:

"(g) To carry out this section, there is authorized the sum of \$200 million per year for the duration of this Act.

(1) Any state participating in this project shall receive a minimum of \$7 million.

(2) Additional sums shall be distributed by the Secretary according to the size of the state and the extent of the pilot project.

(3) funds not expended in one year may be used in subsequent years."

(4) Funds allotted to states under Title VI, Part A, Subpart 1, Section 6113, for development of assessment may be used by states participating in this grant program for the development of the local assessments defined in this section.