

February 23, 2009

Re: HB09-1285

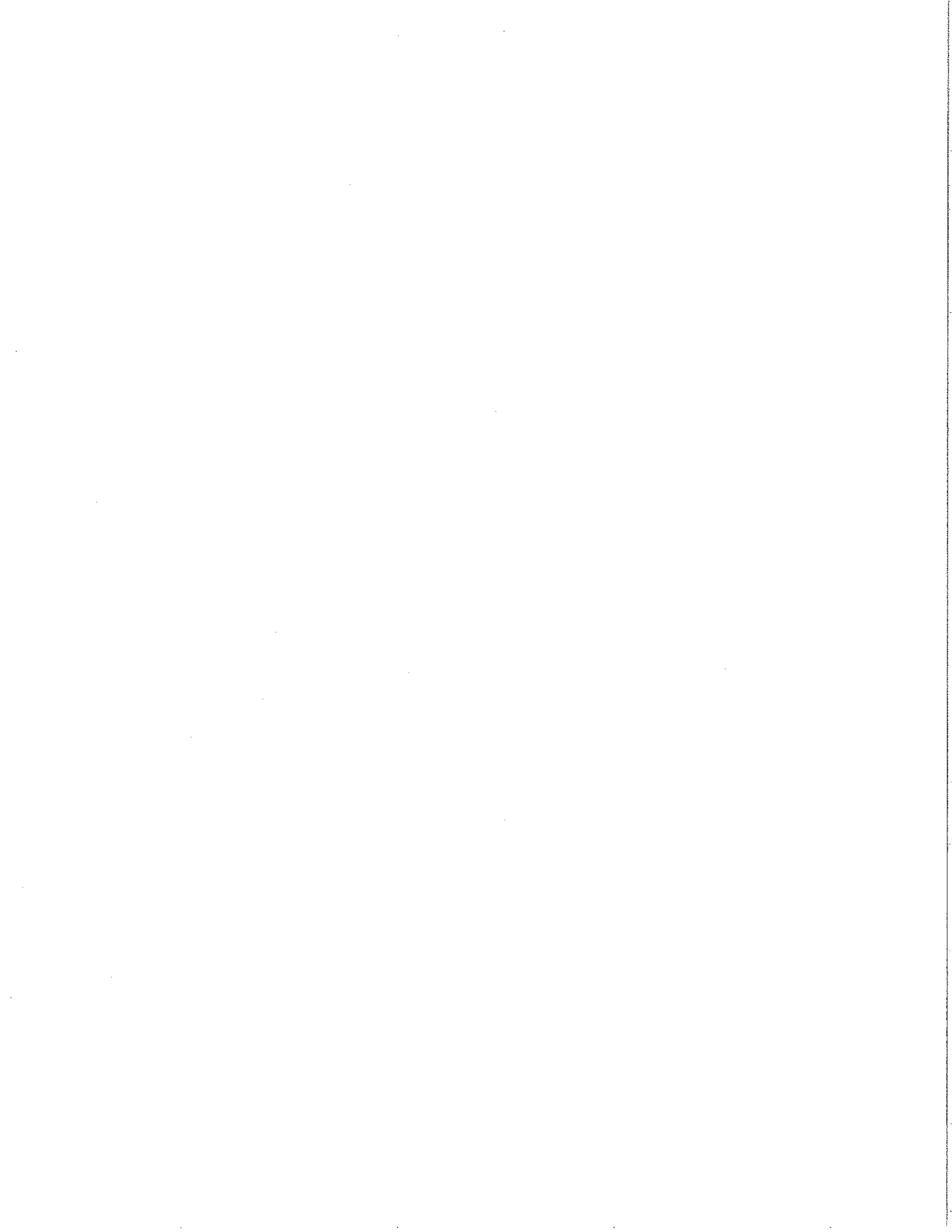
Members of the House Education Committee:

As Chair of the Data and Accountability Subcommittee of the Governor's P-20 Education Advisory Council, I want to convey the support of all the members of the Subcommittee for this bill. This legislation creates the "institutional infrastructure" required for the implementation of a P-20 integrated data system for the state of Colorado. Such a system will enable us to track the progress of students from early childhood, across their educational careers and into the workforce. It will make data available to state agencies, school districts, and external research entities that will allow them to investigate critical issues in educational reform and determine the effectiveness of local and state programs and practices in promoting student achievement and other important outcomes for students. And, while creating the links across state agencies needed to develop a P-20 system, this bill also provides the appropriate safeguards to ensure the privacy of individual information.

My colleague from the subcommittee, Mark Fermanich - the Research Director for the Colorado Children's Campaign - will provide more detailed testimony at your hearing today, but I want to assure you that this bill incorporates the recommendations of the subcommittee to the P-20 Council that were unanimously approved by the Council last December. The members of the subcommittee wish to express their appreciation to the members of the legislature for listening and responding to our feedback as this bill was drafted. We especially want to thank Rep. Benefield for her work with the subcommittee and her tireless support of this concept in the legislature. The creation of a comprehensive P-20 data system will mark Colorado as a national leader in efforts to understand the impact of public policy initiatives on the lives of our children and to maximize the benefits to students, their families, and our state as a whole. This bill is a major step toward that end and I urge you to vote in favor of it.

Sincerely,

Elliott Asp, Ph.D.
Assistant Superintendent for Performance Improvement
Cherry Creek Schools
4700 S. Yosemite St.
Greenwood Village, CO 80111
720-554-4241



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1 **TITLE XIV—STATE FISCAL**
2 **STABILIZATION FUND**

3 DEPARTMENT OF EDUCATION

4 STATE FISCAL STABILIZATION FUND

5 For necessary expenses for a State Fiscal Stabiliza-
6 tion Fund, \$53,600,000,000, which shall be administered
7 by the Department of Education.

8 **GENERAL PROVISIONS—THIS TITLE**

9 **SEC. 14001. ALLOCATIONS.**

10 (a) **OUTLYING AREAS.**—From the amount appro-
11 priated to carry out this title, the Secretary of Education
12 shall first allocate up to one-half of 1 percent to the out-
13 lying areas on the basis of their respective needs, as deter-
14 mined by the Secretary, in consultation with the Secretary
15 of the Interior, for activities consistent with this title
16 under such terms and conditions as the Secretary may de-
17 termine.

18 (b) **ADMINISTRATION AND OVERSIGHT.**—The Sec-
19 retary may, in addition, reserve up to \$14,000,000 for ad-
20 ministration and oversight of this title, including for pro-
21 gram evaluation.

22 (c) **RESERVATION FOR ADDITIONAL PROGRAMS.**—
23 After reserving funds under subsections (a) and (b), the
24 Secretary shall reserve \$5,000,000,000 for grants under
25 sections 14006 and 14007.

1 (d) **STATE ALLOCATIONS.**—After carrying out sub-
2 sections (a), (b), and (c), the Secretary shall allocate the
3 remaining funds made available to carry out this title to
4 the States as follows:

5 (1) 61 percent on the basis of their relative
6 population of individuals aged 5 through 24.

7 (2) 39 percent on the basis of their relative
8 total population.

9 (c) **STATE GRANTS.**—From funds allocated under
10 subsection (d), the Secretary shall make grants to the
11 Governor of each State.

12 (f) **REALLOCATION.**—The Governor shall return to
13 the Secretary any funds received under subsection (e) that
14 the Governor does not award as subgrants or otherwise
15 commit within two years of receiving such funds, and the
16 Secretary shall reallocate such funds to the remaining
17 States in accordance with subsection (d).

18 **SEC. 14002. STATE USES OF FUNDS.**

19 (a) **EDUCATION FUND.**—

20 (1) **IN GENERAL.**—For each fiscal year, the
21 Governor shall use ~~at least~~ 81.8 percent of the
22 State's allocation under section 14001(d) for the
23 support of elementary, secondary, and postsecondary
24 education and, as applicable, early childhood edu-
25 cation programs and services.

1 (2) RESTORING STATE SUPPORT FOR EDU-
 2 CATION.—
 3 (A) IN GENERAL.—The Governor shall
 4 first use the funds described in paragraph (1)—
 5 (i) to provide the amount of funds,
 6 through the State's primary elementary
 7 and secondary funding formulae, that is
 8 needed—
 9 (1) to restore, in each of fiscal
 10 years 2009, 2010, and 2011, the level
 11 of State support provided through
 12 such formulae to the greater of the
 13 fiscal year 2008 or fiscal year 2009
 14 level; and
 15 (II) where applicable, to allow ex-
 16 isting State formulae increases to sup-
 17 port elementary and secondary edu-
 18 cation for fiscal years 2010 and 2011
 19 to be implemented and allow funding
 20 for phasing in State equity and ade-
 21 quacy adjustments, if such increases
 22 were enacted pursuant to State law
 23 prior to October 1, 2008.
 24 (ii) to provide, in each of fiscal years
 25 2009, 2010, and 2011, the amount of

1 funds to public institutions of higher edu-
 2 cation in the State that is needed to re-
 3 store State support for such institutions
 4 (excluding tuition and fees paid by stu-
 5 dents) to the greater of the fiscal year
 6 2008 or fiscal year 2009 level.
 7 (B) SHORTFALL.—If the Governor deter-
 8 mines that the amount of funds available under
 9 paragraph (1) is insufficient to support, in each
 10 of fiscal years 2009, 2010, and 2011, public el-
 11 ementary, secondary, and higher education at
 12 the levels described in clauses (i) and (ii) of
 13 subparagraph (A), the Governor shall allocate
 14 those funds between those clauses in proportion
 15 to the relative shortfall in State support for the
 16 education sectors described in those clauses.
 17 (C) FISCAL YEAR.—For purposes of this
 18 paragraph, the term "fiscal year" shall have the
 19 meaning given such term under State law.
 20 (3) SUBGRANTS TO IMPROVE BASIC PROGRAMS
 21 OPERATED BY LOCAL EDUCATIONAL AGENCIES.—
 22 After carrying out paragraph (2), the Governor shall
 23 use any funds remaining under paragraph (1) to
 24 provide local educational agencies in the State with
 25 subgrants based on their relative shares of funding

1 under part A of title I of the Elementary and Sec-
2 ondary Education Act of 1965 (20 U.S.C. 6311 et
3 seq.) for the most recent year for which data are
4 available.

5 (b) OTHER GOVERNMENT SERVICES.—

6 (1) IN GENERAL.—The Governor ~~may~~ use ^{up to}
7 18.2 percent of the State's allocation under section
8 14001 for public safety and other government ser-
9 vices, which may include assistance for elementary
10 and secondary education and public institutions of
11 higher education and for modernization, renovation,
12 or repair of public school facilities and public institu-
13 tions of higher education facilities, including mod-
14 ernization, renovation, and repairs that are con-
15 sistent with a recognized green building rating sys-
16 tem.

17 (2) AVAILABILITY TO ALL INSTITUTIONS OF
18 HIGHER EDUCATION.—A Governor shall not consider
19 the type or mission of an institution of higher edu-
20 cation, and shall consider any institution for funding
21 for modernization, renovation, and repairs within the
22 State that—

23 (A) qualifies as an institution of higher
24 education, as defined in subsection 14013(3);
25 and

1 (B) continues to be eligible to participate
2 in the programs under title IV of the Higher
3 Education Act of 1965.

4 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
5 tion shall allow a local educational agency to engage in
6 school modernization, renovation, or repair that is incon-
7 sistent with State law.

8 SEC. 14003. USES OF FUNDS BY LOCAL EDUCATIONAL

9 AGENCIES.

10 (a) IN GENERAL.—A local educational agency that
11 receives funds under this title may use the funds for any
12 activity authorized by the Elementary and Secondary Edu-
13 cation Act of 1965 (20 U.S.C. 6301 et seq.) ("ESEA"),
14 the Individuals with Disabilities Education Act (20 U.S.C.
15 1400 et seq.) ("IDEA"), the Adult and Family Literacy
16 Act (20 U.S.C. 1400 et seq.), or the Carl D. Perkins Edu-

17 cation Act of 2006 (20 U.S.C. ~~2301 et seq.~~ ^{for}
18 2301 et seq.) ("the Perkins Act") or modernization, ren-
19 ovation, or repair of public school facilities ~~and public in-~~
20 ~~stitutions of higher education facilities,~~ including mod-
21 ernization, renovation, and repairs that are consistent with
22 a recognized green building rating system.

23 (b) PROHIBITION.—A local educational agency may
24 not use funds received under this title for—

25 (1) payment of maintenance costs;

1 (2) stadiums or other facilities primarily used
 2 for athletic contests or exhibitions or other events
 3 for which admission is charged to the general public;
 4 (3) purchase or upgrade of vehicles; or
 5 (4) improvement of stand-alone facilities whose
 6 purpose is not the education of children, including
 7 central office administration or operations or
 8 logistical support facilities.

9 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-
 10 tion shall allow a local educational agency to engage in
 11 school modernization, renovation, or repair that is incon-
 12 sistent with State law.

13 **SEC. 14004. USES OF FUNDS BY INSTITUTIONS OF HIGHER
 14 EDUCATION.**

15 (a) **IN GENERAL.**—A public institution of higher edu-
 16 cation that receives funds under this title shall use the
 17 funds for education and general expenditures, and in such
 18 a way as to mitigate the need to raise tuition and fees
 19 for in-State students, or modernization, renovation, or re-
 20 pair of institution of higher education facilities that are
 21 primarily used for instruction, research, or student hous-
 22 ing, including modernization, renovation, and repairs that
 23 are consistent with a recognized green building rating sys-
 24 tem.

1 (b) **PROHIBITION.**—An institution of higher edu-
 2 cation may not use funds received under this title to in-
 3 crease its endowment.

4 (c) **ADDITIONAL PROHIBITION.**—No funds awarded
 5 under this title may be used for—
 6 (1) the maintenance of systems, equipment, or
 7 facilities;

8 (2) modernization, renovation, or repair of sta-
 9 diums or other facilities primarily used for athletic
 10 contests or exhibitions or other events for which ad-
 11 mission is charged to the general public; or

12 (3) modernization, renovation, or repair of fa-
 13 cilities—

14 (A) used for sectarian instruction or reli-
 15 gious worship; or

16 (B) in which a substantial portion of the
 17 functions of the facilities are subsumed in a re-
 18 ligious mission.

19 **SEC. 14005. STATE APPLICATIONS.**

20 (a) **IN GENERAL.**—The Governor of a State desiring
 21 to receive an allocation under section 14001 shall submit
 22 an application at such time, in such manner, and con-
 23 taining such information as the Secretary may reasonably
 24 require.

1 (b) APPLICATION.—In such application, the Governor
2 shall—

3 (1) include the assurances described in sub-
4 section (d);

5 (2) provide baseline data that demonstrates the
6 State's current status in each of the areas described
7 in such assurances; and

8 (3) describe how the State intends to use its al-
9 location, including whether the State will use such
10 allocation to meet maintenance of effort require-
11 ments under the ESEA and IDEA and, in such
12 cases, what amount will be used to meet such re-
13 quirements.

14 (c) INCENTIVE GRANT APPLICATION.—The Governor
15 of a State seeking a grant under section 14006 shall—

16 (1) submit an application for consideration;

17 (2) describe the status of the State's progress
18 in each of the areas described in subsection (d), and
19 the strategies the State is employing to help ensure
20 that students in the subgroups described in section
21 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C.
22 6311(b)(2)(C)(v)(II)) who have not met the State's
23 proficiency targets continue making progress toward
24 meeting the State's student academic achievement
25 standards;

1 (3) describe the achievement and graduation
2 rates (as described in section 1111(b)(2)(C)(vi) of

3 the ESEA (20 U.S.C. 6311(b)(2)(C)(vi)) and as
4 clarified in section 200.19(b)(1) of title 34, Code of

5 Federal Regulations) of public elementary and sec-
6 ondary school students in the State, and the strate-

7 gies the State is employing to help ensure that all
8 subgroups of students identified in section

9 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2)) in
10 the State continue making progress toward meeting

11 the State's student academic achievement standards;
12 (4) describe how the State would use its grant

13 funding to improve student academic achievement in
14 the State, including how it will allocate the funds to

15 give priority to high-need local educational agencies;
16 and

17 (5) include a plan for evaluating the State's
18 progress in closing achievement gaps.

19 (d) ASSURANCES.—An application under subsection
20 (b) shall include the following assurances:

21 (1) MAINTENANCE OF EFFORT.—

22 (A) ELEMENTARY AND SECONDARY EDU-
23 CATION.—The State will, in each of fiscal years

24 2009, 2010, and 2011, maintain State support

1 for elementary and secondary education at least
2 at the level of such support in fiscal year 2006.

1 (4) STANDARDS AND ASSESSMENTS.—The
2 State—

3 (B) HIGHER EDUCATION.—The State will,
4 in each of fiscal years 2009, 2010, and 2011,
5 maintain State support for public institutions of
6 higher education (not including support for cap-
7 ital projects or for research and development or
8 tuition and fees paid by students) at least at
9 the level of such support in fiscal year 2006.

3 (A) will enhance the quality of the aca-
4 demic assessments it administers pursuant to
5 section 1111(b)(3) of the ESEA (20 U.S.C.
6 6311(b)(3)) through activities such as those de-
7 scribed in section 6112(a) of such Act (20
8 U.S.C. 7301a(a));

10 (2) ACHIEVING EQUITY IN TEACHER DISTRIBUTION.—The State will take actions to improve teach-
11 er effectiveness and comply with section
12 1111(b)(8)(C) of the ESEA (20 U.S.C.

9 (B) will comply with the requirements of
10 paragraphs (3)(C)(x) and (6) of section
11 1111(b) of the ESEA (20 U.S.C. 6311(b)) and
12 section 612(a)(16) of the IDEA (20 U.S.C.
13 1412(a)(16)) related to the inclusion of children
14 with disabilities and limited English proficient
15 students in State assessments, the development
16 of valid and reliable assessments for those stu-
17 dents, and the provision of accommodations
18 that enable their participation in State assess-
19 ments; and

14 6311(b)(8)(C)) in order to address inequities in the
15 distribution of highly qualified teachers between
16 high- and low-poverty schools, and to ensure that
17 low-income and minority children are not taught at
18 higher rates than other children by inexperienced,
19 unqualified, or out-of-field teachers.

20 (3) IMPROVING COLLECTION AND USE OF

20 (C) will take steps to improve State aca-

21 DATA.—The State will establish a longitudinal data
22 system that includes the elements described in sec-
23 tion 6401(e)(2)(D) of the America COMPETES Act
24 (20 U.S.C. 9871).

21 demic content standards and student academic
22 achievement standards consistent with section
23 6401(e)(1)(9)(A)(ii) of the America COM-
24 PETES Act.

1 (5) SUPPORTING STRUGGLING SCHOOLS.—The
 2 State will ensure compliance with the requirements
 3 of section 1116(a)(7)(C)(iv) and section
 4 1116(a)(8)(B) of the ESEA with respect to schools
 5 identified under such sections.

6 **SEC. 14006. STATE INCENTIVE GRANTS.**

7 (a) IN GENERAL.—

8 (1) RESERVATION.—From the total amount re-
 9 served under section 14001(c) that is not used for
 10 section 14007, the Secretary may reserve up to 1
 11 percent for technical assistance to States to assist
 12 them in meeting the objectives of paragraphs (2),
 13 (3), (4), and (5) of section 14005(d).

14 (2) REMAINDER.—Of the remaining funds, the
 15 Secretary shall, in fiscal year 2010, make grants to
 16 States that have made significant progress in meet-
 17 ing the objectives of paragraphs (2), (3), (4), and
 18 (5) of section 14005(d).

19 (b) BASIS FOR GRANTS.—The Secretary shall deter-
 20 mine which States receive grants under this section, and
 21 the amount of those grants, on the basis of information
 22 provided in State applications under section 14005 and
 23 such other criteria as the Secretary determines appro-
 24 priate, which may include a State's need for assistance

1 to help meet the objective of paragraphs (2), (3), (4), and
 2 (5) of section 14005(d).

3 (c) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
 4 CIES.—Each State receiving a grant under this section
 5 shall use at least 50 percent of the grant to provide local
 6 educational agencies in the State with subgrants based on
 7 their relative shares of funding under part A of title I of
 8 the ESEA (20 U.S.C. 6311 et seq.) for the most recent
 9 year.

10 **SEC. 14007. INNOVATION FUND.**

11 (a) IN GENERAL.—

12 (1) ELIGIBLE ENTITIES.—For the purposes of
 13 this section, the term “eligible entity” means—

14 (A) a local educational agency; or
 15 (B) a partnership between a nonprofit or-
 16 ganization and—
 17 (i) one or more local educational agen-
 18 cies; or
 19 (ii) a consortium of schools.

20 (2) PROGRAM ESTABLISHED.—From the total
 21 amount reserved under section 14001(c), the Sec-
 22 retary may reserve up to \$650,000,000 to establish
 23 an Innovation Fund, which shall consist of academic
 24 achievement awards that recognize eligible entities

1 that meet the requirements described in subsection
 2 (b).
 3 (3) BASIS FOR AWARDS.—The Secretary shall
 4 make awards to eligible entities that have made sig-
 5 nificant gains in closing the achievement gap as de-
 6 scribed in subsection (b)(1)—
 7 (A) to allow such eligible entities to expand
 8 their work and serve as models for best prac-
 9 tices;
 10 (B) to allow such eligible entities to work
 11 in partnership with the private sector and the
 12 philanthropic community; and
 13 (C) to identify and document best practices
 14 that can be shared, and taken to scale based on
 15 demonstrated success.
 16 (b) ELIGIBILITY.—To be eligible for such an award,
 17 an eligible entity shall—
 18 (1) have significantly closed the achievement
 19 gaps between groups of students described in section
 20 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2));
 21 (2) have exceeded the State's annual measur-
 22 able objectives consistent with such section
 23 1111(b)(2) for 2 or more consecutive years or have
 24 demonstrated success in significantly increasing stu-
 25 dent academic achievement for all groups of stu-

1 dents described in such section through another
 2 measure, such as measures described in section
 3 1111(e)(2) of the ESEA;
 4 (3) have made significant improvement in other
 5 areas, such as graduation rates or increased recruit-
 6 ment and placement of high-quality teachers and
 7 school leaders, as demonstrated with meaningful
 8 data; and
 9 (4) demonstrate that they have established
 10 partnerships with the private sector, which may in-
 11 clude philanthropic organizations, and that the pri-
 12 vate sector will provide matching funds in order to
 13 help bring results to scale.
 14 (c) SPECIAL RULE.—In the case of an eligible entity
 15 that includes a nonprofit organization, the eligible entity
 16 shall be considered to have met the eligibility requirements
 17 of paragraphs (1), (2), (3) of subsection (b) if such non-
 18 profit organization has a record of meeting such require-
 19 ments.
 20 SEC. 14008. STATE REPORTS.
 21 For each year of the program under this title, a State
 22 receiving funds under this title shall submit a report to
 23 the Secretary, at such time and in such manner as the
 24 Secretary may require, that describes—

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1 (1) the uses of funds provided under this title
 2 within the State;
 3 (2) how the State distributed the funds it re-
 4 ceived under this title;
 5 (3) the number of jobs that the Governor esti-
 6 mates were saved or created with funds the State re-
 7 ceived under this title;
 8 (4) tax increases that the Governor estimates
 9 were averted because of the availability of funds
 10 from this title;
 11 (5) the State's progress in reducing inequities
 12 in the distribution of highly qualified teachers, in
 13 implementing a State longitudinal data system, and
 14 in developing and implementing valid and reliable
 15 assessments for limited English proficient students
 16 and children with disabilities;
 17 (6) the tuition and fee increases for in-State
 18 students imposed by public institutions of higher
 19 education in the State during the period of avail-
 20 ability of funds under this title, and a description of
 21 any actions taken by the State to limit those in-
 22 creases;
 23 (7) the extent to which public institutions of
 24 higher education maintained, increased, or decreased
 25 enrollment of in-State students, including students

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1 eligible for Pell Grants or other need-based financial
 2 assistance; and
 3 (8) a description of each modernization, renova-
 4 tion and repair project funded, which shall include
 5 the amounts awarded and project costs.
 6 **SEC. 14009. EVALUATION.**
 7 The Comptroller General of the United States shall
 8 conduct evaluations of the programs under sections 14006
 9 and 14007 which shall include, but not be limited to, the
 10 criteria used for the awards made, the States selected for
 11 awards, award amounts, how each State used the award
 12 received, and the impact of this funding on the progress
 13 made toward closing achievement gaps.
 14 **SEC. 14010. SECRETARY'S REPORT TO CONGRESS.**
 15 The Secretary shall submit a report to the Committee
 16 on Education and Labor of the House of Representatives,
 17 the Committee on Health, Education, Labor, and Pen-
 18 sions of the Senate, and the Committees on Appropria-
 19 tions of the House of Representatives and of the Senate,
 20 not less than 6 months following the submission of State
 21 reports, that evaluates the information provided in the
 22 State reports under section 14008 and the information re-
 23 quired by section 14005(b)(3) including State-by-State in-
 24 formation.

1 SEC. 14011. PROHIBITION ON PROVISION OF CERTAIN AS-
2 SISTANCE.

3 No recipient of funds under this title shall use such
4 funds to provide financial assistance to students to attend
5 private elementary or secondary schools.

6 SEC. 14012. FISCAL RELIEF.

7 (a) IN GENERAL.—For the purpose of relieving fiscal
8 burdens on States and local educational agencies that have
9 experienced a precipitous decline in financial resources,
10 the Secretary of Education may waive or modify any re-
11 quirement of this title relating to maintaining fiscal effort.

12 (b) DURATION.—A waiver or modification under this
13 section shall be for any of fiscal year 2009, fiscal year
14 2010, or fiscal year 2011, as determined by the Secretary.

15 (c) CRITERIA.—The Secretary shall not grant a waiver
16 or modification under this section unless the Secretary
17 determines that the State or local educational agency re-
18 ceiving such waiver or modification will not provide for
19 elementary and secondary education, for the fiscal year
20 under consideration, a smaller percentage of the total rev-
21 enues available to the State or local educational agency than
22 the amount provided for such purpose in the preceding
23 fiscal year.
24 (d) MAINTENANCE OF EFFORT.—Upon prior ap-
25 proval from the Secretary, a State or local educational
26 agency that receives funds under this title may treat any

1 portion of such funds that is used for elementary, sec-
2 ondary, or postsecondary education as non-Federal funds
3 for the purpose of any requirement to maintain fiscal ef-
4 fort under any other program, including part C of the In-
5 dividuals with Disabilities Education Act (20 U.S.C. 1431
6 et seq.), administered by the Secretary.

7 (e) SUBSEQUENT LEVEL OF EFFORT.—Notwith-
8 standing (d), the level of effort required by a State or local
9 educational agency for the following fiscal year shall not
10 be reduced.

11 SEC. 14013. DEFINITIONS.

12 Except as otherwise provided in this title, as used in
13 this title—

14 (1) the terms "elementary education" and "sec-
15 ondary education" have the meaning given such
16 terms under State law;

17 (2) the term "high-need local educational agen-
18 cy" means a local educational agency—

19 (A) that serves not fewer than 10,000 chil-
20 dren from families with incomes below the pov-
21 erty line; or

22 (B) for which not less than 20 percent of
23 the children served by the agency are from fam-
24 ilies with incomes below the poverty line.

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- 1 (3) the term "institution of higher education"
- 2 has the meaning given such term in section 101 of
- 3 the Higher Education Act of 1965 (20 U.S.C.
- 4 1001);
- 5 (4) the term "Secretary" means the Secretary
- 6 of Education;
- 7 (5) the term "State" means each of the 50
- 8 States, the District of Columbia, and the Common-
- 9 wealth of Puerto Rico; and
- 10 (6) any other term used that is defined in sec-
- 11 tion 9101 of the ESEA (20 U.S.C. 7801) shall have
- 12 the meaning given the term in such section.

