

**HOUSE . . . . . No. 461**

---

The Commonwealth of Massachusetts

\_\_\_\_\_  
**In the Year Two Thousand Nine**  
\_\_\_\_\_

An Act to expand access to the MCAS appeals process..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Notwithstanding any general or special law to the contrary, the board of  
2 elementary and secondary education shall take such action as necessary including, as  
3 appropriate, promulgating emergency regulations, to modify the process governing the  
4 Massachusetts Comprehensive Assessment System, hereinafter referred to as "MCAS",  
5 performance appeals. The performance appeals process shall provide that any student shall be  
6 eligible to file an appeal who has taken the grade 10 MCAS at least one time and did not achieve  
7 a passing score or submitted a portfolio assessment through the MCAS Alternative Assessment  
8 at least one time without being granted a competency determination. No minimum attendance  
9 levels shall be required to file an appeal.

10           The regulations shall require that all students who fail the grade 10 MCAS and their  
11 parents and guardians shall be notified of the right to appeal and the right to have an advocate to  
12 assist in the appeal. Said notice shall be in the native language of the student and his parent or  
13 guardian. At the request of the student's parent or guardian or the student who has reached the  
14 age of sixteen, the superintendent of schools or his designee for the school district in which the

15 student is enrolled shall file an appeal. The superintendent may initiate an appeal for any student  
16 with the consent of the parent, guardian or student who has reached the age of sixteen, if the  
17 student meets the eligibility criteria set forth in said first paragraph. The superintendent may  
18 submit any written comments or evidence relevant to the appeal. Denial of an earlier appeal shall  
19 not prevent a new appeal from being filed.

20         The regulations shall require that the superintendent include in the performance appeal  
21 evidence of the child's knowledge and skills in the subject at issue, including: (1) a  
22 recommendation from at least one of the student's teachers in the area of appeal, assessing the  
23 level of the student's knowledge and skills in the subject area at issue; (2) where possible, a  
24 meaningful comparison of the student with a group of other students who passed the MCAS in  
25 the subject area of the student's appeal. In the event of an inability within a reasonable time, but  
26 in no event later than the calendar year in which the MCAS test was taken, to identify an  
27 appropriate set of students to enable a meaningful comparison with other students, this clause  
28 shall be waived and the superintendent shall submit a portfolio of the student's work in the area  
29 of the appeal, as specified by the commissioner, sufficient to demonstrate whether the student's  
30 knowledge and skills meet or exceed the performance level established by the board for the  
31 competency determination; to ensure that such portfolio evidence will be available, the school  
32 district is required to begin compiling a portfolio for any student upon the student's first failure  
33 to pass the MCAS; (3) documentation that the student's individual education plan team, if any,  
34 with the approval of a parent or guardian of the student, supports the graduation of the student;  
35 (4) any additional information that the student's individual education plan team, if any, with the  
36 approval of the student's parent or guardian, requests the superintendent to submit indicating that  
37 the student's knowledge and skill in the subject area of the appeal meets or exceeds the

38 performance level established by the board of education for the competency determination and  
39 that the student's MCAS scores do not accurately measure the student's abilities; (5) other  
40 supporting information relevant to the determination as to whether the student's knowledge and  
41 skills in the subject area of the appeal meet or exceed the performance level established by the  
42 board of education for the competency determination, which may include work samples, scores  
43 of the student on other standardized tests in the subject area of the appeal, evidence of  
44 acceptance to college courses, or other evidence of academic achievement which demonstrates  
45 that the student meets the competency determination standard.

46         The commissioner of elementary and secondary education shall grant the appeal for any  
47 student if there is a preponderance of evidence in the documentation provided in clause (1) to  
48 (5), inclusive, the first paragraph and any other evidence submitted by the superintendent that the  
49 student's knowledge and skills in the subject area of the appeal meet or exceed the performance  
50 level established by the board of education for the competency determination. The commissioner  
51 shall provide notice of the results of the appeal and, in the case of a denial, written findings, to  
52 the student, parents or guardian and superintendent. The commissioner's decision on this appeal  
53 shall be final and shall not be subject to further review or appeal to any other entity; except that  
54 the regulations shall permit the superintendent, parent, guardian or student to seek  
55 reconsideration from the commissioner.

56         Every school district shall be required to appoint at least one school employee to be  
57 responsible for the notice of appeals and for assisting in the appeals process.

58         Every school district shall be required to provide advocates to help assist students in the  
59 appeals process, if so requested by the student or the student's parent or guardian.

60           SECTION 2. Every school district shall collect data concerning all appeals filed and  
61 submit this information to the department of elementary and secondary education on an annual  
62 basis. The commissioner of elementary and secondary education shall compile an annual report  
63 on the appeals process for the board of elementary and secondary education, which report shall  
64 include, at a minimum, the total number of appeals filed by school district in each school year  
65 and the disposition of each appeal by school district in each school year. Said report shall be  
66 submitted annually to the Joint Committee on Education.