

**HOUSE . . . . . No. 1946**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Alice Hanlon Peisch*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to promote greater fairness, accountability and public confidence in the MCAS.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>1/21/2011</i>

**HOUSE . . . . . No. 1946**

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By Ms. Peisch of Wellesley, a petition (accompanied by bill, House, No. 1946) of Alice Hanlon Peisch relative to regulating MCAS testing of children with disabilities. Education.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 469 OF 2009-2010.]

**The Commonwealth of Massachusetts**

—————  
**In the Year Two Thousand Eleven**  
—————

An Act to promote greater fairness, accountability and public confidence in the MCAS.

*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. Section 1 of Chapter 69 of the General Laws, as appearing in the 2008  
2 Official Edition, is hereby amended by inserting at the beginning the following new  
3 paragraphs:—

4           Except as otherwise provided or used in this chapter, the following words shall, unless  
5 the context otherwise requires, have the following meaning:

6           'Children with disabilities' shall be defined as it is used in Chapter 71B of the General  
7 Laws and section 504 of the Rehabilitation Act of 1973, 29 USC 794, and regulations  
8 promulgated thereunder.

9           'MCAS' means the 'Massachusetts Comprehensive Assessment System' tests.

10 Supported languages' means any of those language groups other than English for which  
11 an English learners program established under chapter 71A is offered somewhere in the state at  
12 some grade level, and where the language in question is used as one of the primary languages of  
13 instruction for English learners in such programs.

14 'Students whose performance is difficult to assess using conventional methods' means any  
15 student whose academic competency, as determined by the competency determination in Section  
16 1D of this chapter, cannot be accurately determined by a standardized assessment instrument  
17 created pursuant to Section 1D or 1I of this Chapter. This definition shall include, but shall not  
18 be limited to the following:

- 19 a) all 'English learners' (as defined in Chapter 71A, Section 2);
- 20 b) all children with disabilities; and
- 21 c) any child who, in the informed opinion of either the principal of that child's  
22 school or the Commissioner of Education, is difficult to assess using conventional methods.

23 SECTION 2. Section 1D of Chapter 69, as so appearing, is hereby amended in line 72,  
24 subsection "(i)" by adding at the end thereof the following:—

25 No competency determination shall be withheld from any student whose performance is  
26 difficult to assess using conventional methods based on his performance on assessments utilizing  
27 such conventional methods if that student has passed all his local graduation requirements and  
28 was not offered such accommodations during the administration of his assessments as are  
29 required under federal law or are otherwise available to the student under this Chapter. Further,  
30 no competency determination shall be withheld from any English learner based on his

31 performance on assessments utilizing conventional methods in any subject other than English  
32 language arts if that student has passed all his local graduation requirements and was not offered  
33 those assessments in the language which best allows him to demonstrate educational  
34 achievement and mastery of academic standards and curriculum frameworks established under  
35 Sections 1D and 1E of this Chapter.

36 SECTION 3. Section 1I of Chapter 69, as so appearing, is hereby amended by striking  
37 the fourth paragraph and inserting in place thereof the following new paragraph:—

38 The assessment instruments shall be designed to avoid gender, cultural, ethnic or racial  
39 stereotypes and shall recognize sensitivity to different learning styles and impediments to  
40 learning. The system shall take into account on a nondiscriminatory basis the cultural and  
41 language diversity of students in the commonwealth and the particular circumstances of students  
42 with special needs. Said system shall comply with federal requirements for accommodating  
43 children with special needs. In order to guarantee the content validity of the assessments  
44 provided by the assessment instruments and to comply with the accommodations required for  
45 English learners under the federal 'No Child Left Behind' Act, except for assessments of  
46 competency or mastery of English language arts, those English learners (as defined in Chapter  
47 71, Section 2) that are from a supported language group shall be allowed opportunities for  
48 assessment of their performance in the language which best allows them to demonstrate  
49 educational achievement and mastery of academic standards and curriculum frameworks  
50 established under Sections 1D and 1E of this Chapter, provided that no student shall be tested  
51 with the assessment instruments in a language other than English for longer than 3 consecutive  
52 years. Such opportunities shall not be limited merely to assessing students for the competency  
53 determination described in Section 1D of this Chapter, but shall be made available to English

54 learners periodically throughout their school career to allow the Department of Education to  
55 assess these students and their English learners programs. Other than for assessments of English  
56 language arts, a student's assessment in his competency and mastery of the academic standards  
57 and curriculum frameworks shall be based upon his best results to date, regardless of the  
58 language used for such assessment. Regardless of how long a student has been in the  
59 Massachusetts public schools, if he is an English learner or was formerly classified as an English  
60 learner then he shall be entitled to use, except for exams in English language arts, a translation  
61 dictionary, provided that said dictionary may not actually define any word, but merely lists a  
62 word-for-word translation of each term from English to the child's native language and vice  
63 versa. In subjects other than English language arts, for those English learners who do not speak  
64 a supported language, the Department shall provide for other reasonable accommodations as are  
65 practicable to allow for the accurate assessment of these children.

66 SECTION 4. Section 1I of said chapter is hereby further amended in line 246 by deleting  
67 the word "and" at the end of subsection "(i)", in line 251 by deleting the final period in item "(j)",  
68 and inserting, after item "(j)" the following:—

69 "; and

70 (k) a list of supported languages, as defined by Chapter 69, Section 1.

71 SECTION 5. Section 1I of said chapter is hereby further amended by adding at the end  
72 thereof the following new paragraphs:—

73

74 The report shall also include, but not be limited to the following:

75 a) the costs the Department incurred during the previous fiscal year for the development  
76 and administration of assessments in supported languages;

77 b) estimates of costs the Department will likely incur during the then current fiscal year  
78 regarding the development and administration of assessments in supported languages;

79 c) statewide data and district data, subcategorized by type of English learners program,  
80 showing competency determinations granted to students who are either currently English  
81 learners or who were formerly English learners;

82 d) statewide data and district data, subcategorized by students' native languages, showing  
83 competency determinations granted to students who are either currently English learners or who  
84 were formerly English learners;

85 e) statewide data and district data, subcategorized by type of English learners program,  
86 showing MCAS performance of students who are either currently English learners or who were  
87 formerly English learners;

88 f) statewide data and district data, subcategorized by students' native languages, showing  
89 MCAS performance of students who are either currently English learners or who were formerly  
90 English learners;

91 g) statewide data and district data, showing the total number of MCAS performance  
92 appeals requested, the number of MCAS performance appeals accepted into the appeals process,  
93 and the number of competency determinations that were granted as the result of the MCAS  
94 performance appeals process, all data subcategorized by the race and gender of students, by

95 English learner status, by former English learner status, and by children with disabilities status;  
96 and

97 h) statewide data and district data, showing the total number of applications for entry into  
98 the MCAS performance appeals process that were rejected, summarized by reason for rejection,  
99 and further subcategorized by the race and gender of students, by English learner status, by  
100 former English learner status, and by children with disabilities status.

101 Notwithstanding any general or special law to the contrary, the board of education shall  
102 take such action to modify the process governing the MCAS performance appeals established by  
103 603 CMR 30.05 for students whose performance is difficult to assess using conventional  
104 methods, as defined in Section 1 of this Chapter.

105 The performance appeals process shall provide that any student whose performance is  
106 difficult to assess using conventional methods shall be eligible for an MCAS performance appeal  
107 if the following criteria are met:

108 (a) in each subject area required by the board of education for the competency  
109 determination the child has done one of the following:

110 (i) the child submitted a portfolio assessment through the MCAS Alternative Assessment  
111 at least 2 times without being granted a competency determination;

112 (ii) the child took the grade 10 MCAS and passed the test; or,

113 (iii) the child took the grade 10 MCAS test 3 times without achieving a passing score;

114 (b) the child has maintained an adequate attendance level as established by the  
115 Department of Education, provided that such attendance level shall be no higher than that

116 required for students in the child's district who are not seeking an MCAS performance appeal, or  
117 else the child's days of absences from school in excess of the number allowed by the Department  
118 are excused; and

119 (c) the child has demonstrated participation in academic support services made available  
120 and accessible by or approved by the school district under an individual student success plan or  
121 under any other plan designed to strengthen the student's knowledge and skills in the subjects at  
122 issue, or the child's lack of participation in available academic support services has been related  
123 to the child's disability, for children with disabilities, or to his limited English proficiency, for  
124 English learners as defined in Chapter 71A, Section 2.

125 As provided in said regulations, the Commissioner of Education may, for good cause,  
126 waive any of the eligibility criteria upon the written request of the superintendent of the school  
127 district of the child for whom a performance appeal has been or is being filed.

128 The regulations shall require that, at the request of the child's parent or guardian or the  
129 student who has reached the age of majority, the superintendent of schools or his designee for the  
130 school district in which the student is enrolled shall file an appeal on behalf of that student whose  
131 performance is difficult to assess using conventional methods provided that the student meets the  
132 eligibility criteria set forth above. The superintendent may initiate an appeal for a student whose  
133 performance is difficult to assess using conventional methods with the consent of the parent,  
134 guardian or student who has reached the age of majority, if the student meets the eligibility  
135 criteria set forth above. The superintendent may submit any written comments or evidence  
136 relevant to the appeal. Denial of an earlier appeal shall not prevent a new appeal under this  
137 section.



138           The regulations shall require that the superintendent include in the performance appeal  
139 evidence of the child's knowledge and skills in the subject at issue, including:

140           (1) documentation that the child has met the local graduation criteria established by the  
141 local school committee;

142           (2) a recommendation from at least 1 of the student's teachers in the area of appeal,  
143 assessing the level of the student's knowledge and skills in the subject area at issue;

144           (3) where possible, a meaningful comparison of the student with a group of other students  
145 who passed the MCAS in the subject area of the student's appeal. In the event of an inability to  
146 identify an appropriate set of students to enable a meaningful comparison with other students,  
147 this clause shall be waived and the superintendent may submit a portfolio of the student's work in  
148 the area of the appeal, as specified by the commissioner, sufficient to demonstrate whether the  
149 student's knowledge and skills meet or exceed the performance level established by the board of  
150 education for the competency determination if the portfolio has been maintained by the school  
151 district;

152           (4) for children with disabilities, documentation that the child's individual education plan  
153 team, if any, with the approval of a parent or guardian of the child, supports the graduation of the  
154 student;

155           (5) for children with disabilities, any additional information that the student's individual  
156 education plan team, if any, with the approval of the student's parent or guardian, requests the  
157 superintendent to submit indicating that the child's knowledge and skill in the subject area of the  
158 appeal meets or exceeds the performance level established by the board of education for the

159 competency determination and that the child's MCAS scores do not accurately measure the  
160 student's abilities; and

161 (6) other supporting information relevant to the determination as to whether the student's  
162 knowledge and skills in the subject area of the appeal meet or exceed the performance level  
163 established by the board of education for the competency determination, which may include  
164 work samples, scores of the child on other standardized tests in the subject area of the appeal,  
165 evidence of acceptance to college courses, or other evidence of academic achievement which  
166 demonstrates that the child meets the competency determination standard.

167 For children with disabilities, any documentation of an individual education plan team  
168 submitted in connection with an MCAS performance appeal shall not constitute a modification  
169 of the child's individual education plan under 34 C.F.R. 300.347 and is therefore not appealable  
170 to the Bureau of Special Education Appeals pursuant to 34 C.F.R. 300.507(a) or chapter 71B of  
171 the General Laws. Nothing herein shall limit or expand the rights of children with disabilities  
172 available under said chapter 71B, IDEA or Section 504 of the Rehabilitation Act of 1973.

173 The Commissioner of Education shall grant the appeal for a student whose performance  
174 is difficult to assess using conventional methods if there is a preponderance of evidence in the  
175 documentation provided in clause (1) to (6), inclusive, the first paragraph and any other evidence  
176 submitted by the superintendent that the child's knowledge and skills in the subject area of the  
177 appeal meet or exceed the performance level established by the Board of Education for the  
178 competency determination. The Commissioner shall provide notice of the results of the appeal  
179 and, in the case of a denial, written findings, to the student, parents or guardian and  
180 superintendent. The Commissioner's decision on this appeal shall be final and shall not be

181 subject to further review or appeal to any other entity; except that the regulations shall permit the  
182 superintendent to seek reconsideration from the Commissioner.

183 The following requirements shall apply to any proposed raise in the minimum passing  
184 score on a specific MCAS subject matter test, normally intended to be administered at a specific  
185 grade level:

186 No minimum passing score on a specific MCAS subject matter test, normally designed to  
187 be administered at a specific grade level, shall be raised unless 99% of all children in the state  
188 who took the test during the previous year have passed the test, and at least 90% of students who  
189 took the test have scored a ‘proficient’ rating or better; and

190 No minimum passing score on a specific MCAS subject matter test, normally designed to  
191 be administered at a specific grade level, shall be raised unless there is no district in the state that  
192 had fewer than 90% of the children in that district pass the test during the previous year, and  
193 unless there is no district that had fewer than 80% of the children who took the test and who  
194 scored a ‘proficient’ rating or better; and

195 The score on a specific subject matter test, normally designed to be administered at a  
196 specific grade level, may be raised by no more than the equivalent of 1 point on the then scaled  
197 scoring system for the MCAS during a given academic year; and

198 Once a student takes any version of the MCAS as part of his competency determination,  
199 as described in Section 1D of this Chapter, the minimum passing score for that student shall  
200 never be raised on subsequent retests and administrations of a test in that subject area for the  
201 remainder of that student’s time in the public schools even if the minimum passing score has  
202 been raised for other children; and

203           Before raising the minimum passing score on a specific MCAS subject matter test,  
204 normally designed to be administered at a specific grade level, the Department must make  
205 statistically sound projections on the impact of any such minimum passing score increase, and  
206 the Department may not implement such a score increase if it is projected that the increase will  
207 result in a drop in the pass rates on that test during its next administration of 1% or more  
208 statewide or of 1% or more in any school district in the state.

209           The Department of Education must publish annually, at a minimum on the Department's  
210 website, data regarding the number of students in 12th grade in each school, each school district  
211 and statewide who have received a competency determination. Said publication must also  
212 include the following additional data for each school and each school district and for the state as  
213 a whole:

214           the total number of students in each school, each school district, and statewide, who were  
215 enrolled in the Massachusetts public schools in the 8th grade, even if they subsequently  
216 transferred or dropped out; and

217           the number of those students who went on to graduate from the Massachusetts public  
218 schools within 4 years; and

219           the number of those students who subsequently transferred, to the best knowledge of the  
220 Department, to other schools, noting whether such a transfer was to another public school within  
221 the same district, another school within a different district in Massachusetts, a private school in  
222 Massachusetts, or to a school outside of Massachusetts;

223           the number of those students who dropped out of school at any time between the 8th  
224 grade and the 12th grade; and

225           the total number of students who were not enrolled in the Massachusetts public schools in  
226 the 8th grade but who have subsequently enrolled in the Massachusetts public schools.

227           No school in the Commonwealth shall solely consider MCAS scores for any decision  
228 regarding the retention of a student in a grade. The Department shall publish annually, at a  
229 minimum on the Department's website, data regarding student retention rates, measured in  
230 absolute numbers and as a percentage of students enrolled at a given grade level, for all grades,  
231 at each school, and aggregated further for each school district, and for the state as a whole.