HOUSE DOCKET, NO. 2355 FILED ON: 1/17/2019

HOUSE . . . . . No. 540

The Commonwealth of Massachusetts

PRESENTED BY:

Harold P. Naughton, Jr. and James M. Kelcourse

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 providing for the education of gifted and beyond grade-level children in the public schools of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Harold P. Naughton, Jr.	*12th Worcester*	*1/17/2019*
James M. Kelcourse	*1st Essex*	*1/18/2019*
Jason M. Lewis	*Fifth Middlesex*	*1/30/2019*
Jack Patrick Lewis	*7th Middlesex*	*1/30/2019*
Maria Duaime Robinson	*6th Middlesex*	*1/30/2019*
Gerard J. Cassidy	*9th Plymouth*	*1/30/2019*
Rady Mom	*18th Middlesex*	*1/30/2019*
James B. Eldridge	*Middlesex and Worcester*	*2/1/2019*
Patricia A. Haddad	*5th Bristol*	*2/1/2019*
Carmine Lawrence Gentile	*13th Middlesex*	*2/1/2019*
Susannah M. Whipps	*2nd Franklin*	*2/1/2019*
Paul K. Frost	*7th Worcester*	*2/1/2019*
Diana DiZoglio	*First Essex*	*2/1/2019*
David M. Rogers	*24th Middlesex*	*2/1/2019*

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HOUSE . . . . . No. 540

By Messrs. Naughton of Clinton and Kelcourse of Amesbury, a petition (accompanied by bill, House, No. 540) of Harold P. Naughton, Jr., James M. Kelcourse and others relative to providing for the education of gifted and beyond grade-level children in public schools. Education.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act providing for the education of gifted and beyond grade-level children in the public schools of the Commonwealth.

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

SECTION 1. Within Title XII, after Chapter 71B, insert Chapter 71C, titled, "Education of Gifted and Talented and Beyond Grade-level Students" together with the following Sections:

Section 1. Purposes

The purposes of this chapter are--

(a) (1) to ensure that all gifted and beyond grade level children have available to them a free appropriate public education that emphasizes gifted education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(2) to ensure that the rights of gifted children and parents of such children are protected;

(3) to assist the Department and school districts of the Commonwealth to provide the opportunity for gifted children to experience an education so they can develop to their potential as specified for all children in Section 1 of Chapter 69;

(b) to assist districts in the implementation of a comprehensive, coordinated, multidisciplinary, interagency system of intervention services for gifted children and their families;

(c) to ensure that educators and parents have the necessary tools to improve developmental, as well as educational results for gifted children by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(d) to assess, and ensure the effectiveness of, efforts to educate and develop gifted children.

Section 2. Definitions

The following words as used in this chapter shall have the following meanings, unless the context clearly requires otherwise:

“Beyond grade-level”, students achieving or capable of achieving beyond the curriculum level appropriate for the majority of students of similar chronological age.

“Board”, the board of elementary and secondary education

"Department", the department of elementary and secondary education.

"Free appropriate public education", gifted education and related services as gifted and beyond-grade level children may require so they may attain, through a public school education, the personal developmental goals, qualities, characteristics and skills, which other children generally acquire through challenge, appropriate for them, in the public schools using the education standards established by statute or established by regulations promulgated by the board of education. Such education and related services provided to beyond grade-level or gifted children must be reasonably calculated to enable the child to make progress appropriate in light of their circumstances.

“Gifted and talented”, children, or youth who give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who need services or activities not ordinarily provided by the school in order to fully develop those capabilities (the same as defined by the Every Student Succeeds Act (ESSA), P.L. 114-95 (Title VIII, Part A, Definition 27); (20 USC 7801(27)). The term gifted and talented, as used in this section, shall include highly or profoundly gifted, and twice-exceptional children, unless otherwise specified.

“Gifted education”, educational programs and assignments including special classes and programs or services designed to develop the educational and developmental potential of gifted children including, but not limited to, educational placements of children by school committees, the departments of public health, mental health, developmental services, youth services and children and families in accordance with the provisions of this chapter and the regulations set forth by the board. Such programs and assignments are to be reasonably calculated to enable the child to make progress appropriate in light of their circumstances.

"Gifted school age child", a school age child in a public or non-public school setting who, because of advanced learning abilities, is unable to progress effectively, in light of the child's circumstances, in the regular education program and thereby requires special education services; including a school age child who requires only a related service or related services to ensure access of the gifted child to a free appropriate public education.

No child shall be denied gifted services solely because such child shall have failed the statewide assessment tests authorized pursuant to section 1I of chapter 69 or other academic assessment. The use of the word gifted in this section shall not be used to provide a basis for labeling or stigmatizing the child or defining the needs of the child and shall in no way limit the services, programs, and opportunities provided to such child.

"Highly or profoundly gifted", certain gifted and talented children who present in low incidence in the population of children requiring gifted and talented education.

"Most productive environment", the educational placement that assures that, to the maximum extent appropriate, gifted and beyond grade-level children, including children in public or private institutions or other care facilities, are educated together with other children who are their academic and developmental peers in the regular public school classroom or in special classes, or separate schooling when their appropriate education cannot be achieved satisfactorily within the regular public school classroom.

"Regular education", the school program and pupil assignment which normally leads the majority of the student population to achieve the necessary knowledge and skills required to successfully advance to college preparatory or technical education or to a career.

“School age child”, any person of ages five through twenty-one who has not attained a high school diploma or its equivalent.

“School age child requiring gifted education”, a gifted child who requires special gifted education as determined in accordance with the provisions of this chapter and the regulations set forth by the board.

“Twice-exceptional”, students who may be gifted and talented or beyond grade-level who may also have one or more learning disabilities.

Section 3. Board to Create Regulations

The board shall promulgate regulations regarding educational programs and learning opportunities for gifted and talented children, beyond grade-level children, twice-exceptional children, and highly or profoundly gifted children, including, but not limited to:

(a) A comprehensive definition of each above term, along with other related terms, which definition shall emphasize a thorough, narrative description of each child's development potential so as to minimize the possibility of stigmatization and to assure a free and appropriate public education in the most productive environment for the child.

(b) Defining state-, district-, and school-level responsibility, oversight, and associated accountability standards to ensure the education of each such child is met according to the requirements of Chapter 69, Section 1 and of Title XII, generally.

(c) Provisions for the education of low-incidence populations of gifted children such that their needs are met through programming provided within-district, within the programs of

the special education collaboratives of the Commonwealth, within state-level schools, or within private placements.

Section 4: Agreements between school committees or with public or private schools

The school committee of any city, town or school district may, to meet its obligations under section three, with the approval of the department enter into an agreement with any other school committee to jointly provide gifted and talented education or, subject to the consent of the parent or guardian affected thereby and subject to constitutional limitations, may enter into an agreement with any public or private school, agency, or institution to provide the necessary gifted and talented education within the city, town or school district; provided, however, that every school committee, where feasible, shall be associated with an educational collaborative providing services to certain gifted and talented children who are highly or profoundly gifted, and/or are low incidence in the population of children requiring gifted and talented education.

In the case of an agreement between school committees to jointly provide gifted and talented education, said agreement shall designate one city, town or school district as the operating agent. Funds received by such operating agent from other cities, towns or school districts or appropriated by such operating agent for the purposes of such agreement, in addition to gifts and grants shall be deposited with and held as a separate account by its treasurer. The school committee may apply said funds to the costs of programs operated pursuant to the agreement without further appropriation.

Section 5: Costs or obligations; payment; budget

Any school committee which provides or arranges for the provision of gifted education for highly or profoundly gifted or twice-exceptional children and/or other low-incidence gifted

children pursuant to the provisions of section four shall pay for such special education personnel, materials and equipment, tuition, room and board, transportation, rent and consultant services as are necessary for the provision of gifted and talented education; provided, however, that the school committee shall not be obligated to pay for health care goods or services to the extent that such goods or services constitute medically necessary treatment for disease, illness, injury, or bodily dysfunction which would be covered by a third party payor but for a school-aged child's eligibility for such goods and services under this chapter; provided, further, that the determination of medical necessity shall be made by the third party payor under its standard program of utilization review, that the school-aged gifted and talented child with a disability or his parent or guardian if he is a minor shall have the right to freedom of choice in the election of the provider of health care goods and services, and that the provider of health care goods and services does not have a direct or indirect financial relationship to the school committee; and provided, further, that school committees may accept payment for health care goods and services provided by certified school committee employees from third party payors other than the program of medical care and assistance established under chapter one hundred and eighteen E except as provided under section seventy-two of chapter forty-four. Where no such third party payor is available, school committees are not relieved of their responsibilities under this chapter.

Section 6. Annual Reporting by Districts on Gifted Education

(a) Each school district shall report to the department, on an annual basis, the following elements as they are described in the federal Every Student Succeeds Act (Public Law 114-95):

(1) a description of the manner in which its application of federal funds, as per 20 U.S.C. s 6312, will assist schools in identifying and serving gifted and talented students.

(2) a description of the manner in which its application of federal funds will provide programs and activities, as per 20 U.S.C s. 6613, which will address the learning needs of gifted and talented students

(3) a description of the manner in which its application of federal funds will provide training, as per 20 U.S.C s. 6613, to support the identification of students, of every grade level, who are gifted and talented, including high-ability students who have not been formally identified for gifted education services, and implementing instructional practices that support the education of such students, such as

i. early entrance to kindergarten

ii. enrichment, acceleration and curriculum compacting activities

iii. dual or concurrent enrollment programs in secondary school and post-secondary education.

(4) The manner in which each homeless child or youth shall be provided services in programs for gifted and talented students comparable to services offered to other students in the school selected.

(b) Each school district shall report to the department, on an annual basis, the total number of children enrolled and served in gifted and talented programs; and the number by each of race/ethnicity, gender, disability under IDEA, disability under Section 504, limited English proficiency, and eligibility for free and reduced lunch.

Section 7. Annual Reporting by the Department

The department, each year, shall publish in a prominent location on its website the following:

(a) a description as required by 20 U.S.C. s. 6611 of how the department will improve the skills of teachers, principals or other school leaders in order to enable them to identify students who are gifted and talented and provide instruction based on the needs of such students.

(b) a description of how the department's application of federal Title I funds through programs and activities shall address the learning needs of gifted and talented students.

(c) a description for each district as to the elements reported pursuant to Section 6 of Chapter 71C.

(d) a description of the information related to gifted and talented and beyond grade-level professional development reported to the department pursuant to Chapter 71 Section 38Q.

(e) a listing of specific school districts claiming to have gifted and talented programs and their contact information

SECTION 2. Section 1 of Chapter 69 of the General laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the phrase, "including a limited English proficient student as defined in section 1 of chapter 71A," the following words:

" including beyond grade-level and gifted and talented students as defined by regulations established pursuant to Section 3 of Chapter 71C"

SECTION 3. Chapter 69 Section 1A of the General Laws, as appearing in the Official Edition, is hereby amended by inserting the following text at the end of the second paragraph.

“ There shall be within the department an office of beyond grade-level and gifted and talented education to assist the commissioner in overseeing and monitoring the development and implementation of appropriate beyond-grade-level and gifted and talented education and assist the Board of Elementary and Secondary Education in meeting its obligations to gifted and talented students under chapter 69 section 1B. The office shall compile best practices relative to effective programs and techniques to assist beyond-grade-level and gifted and talented students in receiving an education meaningful for them and shall disseminate such information to school districts on, at least, an annual basis. The department shall allocate its resources to employ a full-time director of said office responsible for education of beyond-grade-level and gifted and talented students throughout the commonwealth. Said director position shall be filled by a person with qualifications, experience and demonstrated expertise in the field of gifted education policy.”

SECTION 4. Chapter 69 Section 1B of the General Laws, as appearing in the Official Edition, is hereby amended by inserting “ gifted and talented programs and the number of students served within,” following “special programs, ” in the third line of the seventh paragraph.

SECTION 5. Chapter 70 of the General Laws, as appearing in the Official Edition, is hereby amended by inserting the following new section:

“Section 16. The Department of Elementary and Secondary Education shall establish a professional development program in gifted and talented education which will provide access to certain educators across the Commonwealth, fifteen hours of professional development in the

specific field of the education of gifted and talented students. Fifteen hours of such professional development shall be completed in any five year period for the renewal of licensure for any educators, including administrators, whose classrooms, schools, or districts contain one or more students identified, or who could be identified as gifted and talented as defined in Section 2 of Chapter 71C, or as determined by a school district professional or any other professional working in the field of psychology, gifted education or who regularly provides services of educational assessments."

SECTION 6. Chapter 71 Section 38G of the General Laws, as appearing in the 2016 Official Edition, shall be amended by inserting after the sentence, "In addition to any other requirements in this section, in order to receive a provisional or standard educator certificate, persons applying for such certification shall have completed such courses or training sessions as the board shall require in second language acquisition" the following words:

"In addition to any other requirements of this section, in order to receive a provisional or standard educator certificate, persons applying for such certification shall have completed such courses or training sessions as the board shall require in gifted and talented education. The board shall establish such requirements as recommended by generally-accepted standards in the field of gifted and talented education.

In addition to any other requirements of this section, the board shall require, as a provision of an administrator's or an educator's initial certification, that all educators and administrators shall have training in strategies for effective education of beyond-grade-level and gifted and talented students as defined in Section 2 of Chapter 71C."

SECTION 7. Chapter 71 Section 38Q of the General Laws, as appearing in the 2016 Official Edition, shall be amended by inserting in the first paragraph the following text:

" In any school district with gifted and talented students as defined in Section 2 of Chapter 71C, the plan shall provide training for administrators and teachers in gifted education, and shall state how such training will support the needs of gifted and talented students. Each school district shall report to the department, on an annual basis, the gifted education training provided by the district, the number of educators in the district receiving such training and the total number of hours received. Each school district shall report to the department, on an annual basis, the specific ways in which its Title II Part A programs and activities shall address the learning needs of gifted and talented students.is improving the education of gifted and talented students."

after the sentence, "In any school district with limited English proficient students, the plan shall provide training for teachers in second language acquisition techniques for the re-certification of teachers and administrators."

SECTION 8. Chapter 71 Section 38Q of the General Laws, as appearing in the 2016 Official Edition, shall be amended by inserting the following sentence after the second sentence of the second paragraph, which sentence ends with the words "limited English proficient students." the following text:

" The plan shall include data that demonstrates, statewide and by school district, the types of professional development provided for educators who work with beyond-grade-level, gifted and talented, highly or profoundly gifted, and twice-exceptional students, all as defined in Section 2 of Chapter 71C."

SECTION 9. Chapter 71 Section 38Q1/2 of the General Laws, as appearing in the 2016 Official Edition, shall be amended by inserting after the sentence ending in “under Chapter 71B” the following words:

“The plan shall provide pathways of accommodations and interventions for beyond-grade-level, gifted and talented, highly or profoundly gifted, and twice-exceptional students, as they are defined in Section 2 of Chapter 71C, including, among such provisions, the specification of curriculum compacting and acceleration protocols for individual subjects or whole grade, as appropriate for the student.”