

**HOUSE . . . . . No. 540**

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

**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:*

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

3 Section 1. Purposes

4 The purposes of this chapter are--

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

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

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

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

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

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

## 22 Section 2. Definitions

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

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

27 “Board”, the board of elementary and secondary education

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

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

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

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

51

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

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

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

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

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

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

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

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

### 80 Section 3. Board to Create Regulations

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

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

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

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

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

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

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

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

112 Section 5: Costs or obligations; payment; budget

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

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

132           Section 6. Annual Reporting by Districts on Gifted Education

133           (a)     Each school district shall report to the department, on an annual basis, the  
134 following elements as they are described in the federal Every Student Succeeds Act (Public Law  
135 114-95):



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

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

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

146 i. early entrance to kindergarten

147 ii. enrichment, acceleration and curriculum compacting activities

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

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

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

157 Section 7. Annual Reporting by the Department

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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