

SENATE No. 329

The Commonwealth of Massachusetts

PRESENTED BY:

Diana DiZoglio, (BY REQUEST)

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 ensure that public schools appropriately educate advanced students and gifted and talented children.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Julie Eidukonis

SENATE No. 329

By Ms. DiZoglio (by request), a petition (accompanied by bill, Senate, No. 329) of Julie Eidukonis for legislation to ensure that public schools appropriately educate advanced students and gifted and talented children. Education.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 280 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to ensure that public schools appropriately educate advanced students and gifted and talented children.

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 them a
6 free appropriate public education that emphasizes gifted education and related services designed
7 to meet their unique needs and prepare them for further education, employment, and independent
8 living; (2) to ensure that the rights of gifted children and parents of such children are protected;

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

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

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

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

21 Section 2. Definitions

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

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

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

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

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

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

43 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 “Gifted school age child”, a school age child in a public or non-public school setting
52 who, because of advanced learning abilities, is unable to progress effectively, in light of the
53 child’s circumstances, in the regular education program and thereby requires special education
54 services; including a school age child who requires only a related service or related services to
55 ensure access of the gifted child to a free appropriate public education. No child shall be denied
56 gifted services solely because such child shall have failed the statewide assessment tests
57 authorized pursuant to section 11 of chapter 69 or other academic assessment. The use of the
58 word gifted in this section shall not be used to provide a basis for labeling or stigmatizing the
59 child or defining the needs of the child and shall in no way limit the services, programs, and
60 opportunities provided to such child.

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

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

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

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

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

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

79 Section 3. Board to Create Regulations

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

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

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

90 (c) Provisions for the education of low-incidence populations of gifted children such that
91 their needs are met through programming provided within-district, within the programs of the
92 special education collaboratives of the Commonwealth, within state-level schools, or within
93 private placements.

94 Section 4:

95 Agreements between school committees or with public or private schools The school
96 committee of any city, town or school district may, to meet its obligations under section three,
97 with the approval of the department enter into an agreement with any other school committee to
98 jointly provide gifted and talented education or, subject to the consent of the parent or guardian
99 affected thereby and subject to constitutional limitations, may enter into an agreement with any
100 public or private school, agency, or institution to provide the necessary gifted and talented
101 education within the city, town or school district; provided, however, that every school
102 committee, where feasible, shall be associated with an educational collaborative providing
103 services to certain gifted and talented children who are highly or profoundly gifted, and/or are
104 low incidence in the population of children requiring gifted and talented education. In the case of
105 an agreement between school committees to jointly provide gifted and talented education, said
106 agreement shall designate one city, town or school district as the operating agent. Funds received
107 by such operating agent from other cities, towns or school districts or appropriated by such
108 operating agent for the purposes of such agreement, in addition to gifts and grants shall be
109 deposited with and held as a separate account by its treasurer. The school committee may apply
110 said funds to the costs of programs operated pursuant to the agreement without further
111 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 following
134 elements as they are described in the federal Every Student Succeeds Act (Public Law 114-95):

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

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

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

145 i. early entrance to kindergarten

146 ii. enrichment, acceleration and curriculum compacting activities

147 iii. dual or concurrent enrollment programs in secondary school and postsecondary
148 education.

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

152 (b) Each school district shall report to the department, on an annual basis, the total
153 number of children enrolled and served in gifted and talented programs; and the number by each

154 of race/ethnicity, gender, disability under IDEA, disability under Section 504, limited English
155 proficiency, and eligibility for free and reduced lunch.

156 Section 7. Annual Reporting by the Department

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

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

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

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

166 (d) a description of the information related to gifted and talented and beyond gradelevel
167 professional development reported to the department pursuant to Chapter 71

168 Section 38Q.

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

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

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

176 SECTION 3. Chapter 69 Section 1A of the General Laws, as appearing in the Official
177 Edition, is hereby amended by inserting the following text at the end of the second paragraph.“
178 There shall be within the department an office of beyond grade-level and gifted and talented
179 education to assist the commissioner in overseeing and monitoring the development and
180 implementation of appropriate beyond-grade-level and gifted and talented education and assist
181 the Board of Elementary and Secondary Education in meeting its obligations to gifted and
182 talented students under chapter 69 section 1B. The office shall compile best practices relative to
183 effective programs and techniques to assist

184 beyond-grade-level and gifted and talented students in receiving an education meaningful
185 for them and shall disseminate such information to school districts on, at least, an annual basis.
186 The department shall allocate its resources to employ a full-time director of said office
187 responsible for education of beyond-grade-level and gifted and talented students throughout the
188 commonwealth. Said director position shall be filled by a person with qualifications, experience
189 and demonstrated expertise in the field of gifted education policy.”

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

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

195 “Section 16. The Department of Elementary and Secondary Education shall establish a
196 professional development program in gifted and talented education which will provide access to
197 certain educators across the Commonwealth, fifteen hours of professional development in the
198 specific field of the education of gifted and talented students. Fifteen hours of such professional
199 development shall be completed in any five year period for the renewal of licensure for any
200 educators, including administrators, whose classrooms, schools, or districts contain one or
201 more students identified, or who could be identified as gifted and talented as defined in Section 2
202 of Chapter 71C, or as determined by a school district professional or any other professional
203 working in the field of psychology, gifted education or who regularly provides services of
204 educational assessments.”

205 SECTION 6. Chapter 71 Section 38G of the General Laws, as appearing in the 2016
206 Official Edition, shall be amended by inserting after the sentence, “In addition to any other
207 requirements in this section, in order to receive a provisional or standard educator certificate,
208 persons applying for such certification shall have completed such courses or training sessions as
209 the board shall require in second language acquisition” the following words: “In addition to any
210 other requirements of this section, in order to receive a provisional or standard educator
211 certificate, persons applying for such certification shall have completed such courses or training
212 sessions as the board shall require in gifted and talented education. The board shall establish such
213 requirements as recommended by generally-accepted standards in the field of gifted and talented
214 education. In addition to any other requirements of this section, the board shall require, as a
215 provision of an administrator's or an educator's initial certification, that all educators and
216 administrators shall have training in strategies for effective education of beyondgrade-
217 level and gifted and talented students as defined in Section 2 of Chapter 71C.”

218 SECTION 7. Chapter 71 Section 38Q of the General Laws, as appearing in the 2016
219 Official Edition, shall be amended by inserting in the first paragraph the following text: “ In any
220 school district with gifted and talented students as defined in Section 2 of Chapter 71C, the plan
221 shall provide training for administrators and teachers in gifted education, and shall state how
222 such training will support the needs of gifted and

223 talented students. Each school district shall report to the department, on an annual basis,
224 the gifted education training provided by the district, the number of educators in the district
225 receiving such training and the total number of hours received. Each school district shall report
226 to the department, on an annual basis, the specific ways in which its Title II Part A programs and
227 activities shall address the learning needs of gifted and talented students.is improving the
228 education of gifted and talented students.” after the sentence, “In any school district with limited
229 English proficient students, the plan shall provide training for teachers in second language
230 acquisition techniques for the re-certification
231 of teachers and administrators.”

232 SECTION 8. Chapter 71 Section 38Q of the General Laws, as appearing in the 2016
233 Official Edition, shall be amended by inserting the following sentence after the second sentence
234 of the second paragraph, which sentence ends with the words “limited English proficient
235 students.” the following text: “ The plan shall include data that demonstrates, statewide and by
236 school district, the types of professional development provided for educators who work with
237 beyondgrade- level, gifted and talented, highly or profoundly gifted, and twice-exceptional
238 students, all as defined in Section 2 of Chapter 71C.”

239 SECTION 9. Chapter 71 Section 38Q1/2 of the General Laws, as appearing in the 2016
240 Official Edition, shall be amended by inserting after the sentence ending in “under Chapter 71B”
241 the following words: “The plan shall provide pathways of accommodations and interventions for
242 beyondgrade- level, gifted and talented, highly or profoundly gifted, and twice-exceptional
243 students, as they are defined in Section 2 of Chapter 71C, including, among such provisions, the
244 specification of curriculum compacting and acceleration protocols for individual subjects or
245 whole grade, as appropriate for the student.”