

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*None*

*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 relative to transparency and accountability for out of district special education placements.

PETITION OF:

NAME:

*Ben Tobin*

DISTRICT/ADDRESS:

**SENATE . . . . . No.**

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A petition (accompanied by bill, Senate, No. ) of Ben Tobin for legislation relative to transparency and accountability for out of district special education placements.

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**The Commonwealth of Massachusetts**

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

An Act relative to transparency and accountability for out of district special education placements.

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

1 Purpose:

2 To ensure taxpayer funds spent on out of district schools are being monitored and that  
3 proper oversight is in place to ensure that students are safe and making meaningful, measurable  
4 progress.

5 Preamble:

6 The approved private special education schools, established under chapter 71B, serve a  
7 highly vulnerable population of students with complex needs. Students who are placed in these  
8 programs have usually struggled in the public school system for many years, and families  
9 typically have to reach a settlement with a school district to gain a placement in one of these  
10 taxpayer funded private programs. The private schools, for their part, argue that the services they  
11 provide are more robust than a public school’s and that they will be able to remediate the key  
12 foundational skills students are lacking. Students are meant to gain the skills they need to be able

13 to thrive in the general education setting. Currently, there is no empirical source of data or data  
14 profile kept on the approved programs despite receiving substantial state funding. Without data,  
15 it is very difficult to establish the efficacy of these programs and very difficult for families and  
16 districts to make an informed decision about the best placement for a student. The current system  
17 is really a two-tiered system of accountability that favors the private interest that is, in fact, not  
18 truly private, given the state funding being used for these programs and that they primarily serve  
19 public school students for whom the sending district is still responsible. It is critical that it is  
20 possible for there to be publicly available oversight of these programs, and that empirical data is  
21 being collected to ensure that students are not simply being warehoused so as to remove them  
22 from the standard documentation in the public system. Furthermore, that there be established a  
23 higher expectation for these placements and the staff who work with the specific student  
24 populations.

## 25 Placement

26 Each child residing within the sending school district will be placed in an appropriate  
27 educational program in accordance with standards as adopted by state and federal special  
28 education statutes and regulations including 71B section 3. Special classes, separate schooling or  
29 other removal of students with disabilities from the regular educational environment will occur  
30 only when the nature and severity of the disability is such that education in regular classes with  
31 the use of supplementary aids and services cannot be achieved. When a placement is to be made  
32 in another school system, another educational agency, or in an agency administrated by the  
33 Department of Mental Health, the superintendent or their designated representative along with  
34 the parent or legal custodian will evaluate the placement options and make a determination based

35 on progress data using a standardized progress monitoring system (e.g AIMSweb, FASTbridge,  
36 STAR) and upon all required assessments.

#### 37 Out of District Staff

38 In the event that an out of district placement is made, and the district is responsible for  
39 the cost of tuition, staff in the approved private special education school, residential school,  
40 collaborative, or separate classroom must agree to the district's code of ethics, and disclose any  
41 potential sources of conflict of interest, multiple relationships, or other ethical considerations as  
42 listed in GBEBA policy.

43 Staff must not only acquire professional licensure, but must also be trained in evidence-  
44 based programming specific to the population served by the approved school.

45 Private out of district placements may not have more than one waived employee at a  
46 time, and must demonstrate that waived staff are not only working toward professional special  
47 education licensure but also are undergoing training in an evidence-based methodology (ex.  
48 Lindamood bell, OG, Corrective Reading).

#### 49 Progress Monitoring

50 Staff and administrators in the out of district placement must also provide weekly,  
51 charted, empirically based data using a state approved progress monitoring system (e.g.  
52 AIMSweb, FASTbridge). All related skills identified in the IEP must be tracked, measured, and  
53 assessed based on empirical data and not upon anecdotal or qualitative evidence.

54 For students with language-based disabilities, such as dyslexia (sometimes referred to as  
55 SLD in reading), the out of district placement must be able to provide data demonstrating that

56 they are following the established state and federal dyslexia and literacy guidelines (including  
57 chapter 71 section 57A dyslexia guidelines).

58 Progress reports must be based on measurable, charted, weekly data, and only reference  
59 what skills the student is able to undertake independently without teacher assistance to provide  
60 the most accurate measurement as to what progress the student is making under the care of the  
61 staff and administration of the approved private school. A progress monitoring form will be  
62 generated by the District and distributed to all out of district placements to be incorporated into  
63 the IEP.

64 Staff must be appropriately licensed, and be certified in at least one evidence-based  
65 program related to the disability (e.g Orton Gillingham certified for dyslexia, and ABA for  
66 Autism) per 603 CMR 28.09.

67 IEP goals established on an IEP written by the out of district placement must be robust,  
68 measurable, and measured based on progress data and not upon teacher observation or other  
69 anecdotal information.

70 The department of education shall also establish a database of every student in the  
71 Commonwealth who are out of district for internal use. This database shall include, but not be  
72 limited to, student progress data, MCAS scores, IEP, and disciplinary record. Furthermore, the  
73 department shall ensure that staff who review these records, and who oversee special education  
74 programming out of district are themselves certified and properly trained in topics that include,  
75 but are not limited to, ethics in special education, learning disabilities, the IDEA law,  
76 interventionary practices, and best practices in special education. Furthermore, staff may not  
77 have any ties to the programs they are reviewing. The department shall make training available

78 to the relevant staff overseeing approved private special education schools, residential schools,  
79 and collaboratives to ensure that oversight is informed and data driven.

## 80 Curriculum

81 The curriculum, including evidence-based programming, and the source of that evidence,  
82 must be provided to the director of special education and to the superintendent of the sending  
83 school district. Furthermore, professional development provided to the staff must also be  
84 provided to ensure that staff working with district students are being instructed in the latest  
85 approaches, tools, and methods related to that specific learning disability and that those  
86 approaches, tools, and methods are evidence-based based on peer reviewed research.

87 If a language-based learning difference is the source of the placement, the out of district  
88 placement must also be able to provide data and evidence that the programming aligns with the  
89 IDEA, including 20 U.S.C. § 6368(3)(4)(5)(6)(7) which requires rigorous scientific evidence  
90 behind programming. (e.g structured literacy should be used rather than a linguistic/whole  
91 language approach). The program provided must be based upon progress data collected by staff.  
92 Furthermore, progress data must be shared with parents or guardians and with the director of  
93 special education and the superintendent of the sending district.

94 The out of district program must provide services related to the specific learning  
95 disability, and have the infrastructure as well as staff to provide those services with fidelity to  
96 ensure that students with disabilities are being provided with FAPE (free appropriate public  
97 education) and that all aspects of the IDEA and Massachusetts state law are being followed with  
98 fidelity. An out of district placement cannot accept students for whom they do not have trained  
99 staff and appropriate facilities.

100            Additionally, the full curriculum (programs used, methodology, classroom structure (ex.  
101   Structured vs constructivist)) must be listed prominently on the approved school’s website along  
102   with staff credentials and training.

103            The approved private special education school shall provide a report to the special  
104   education director, superintendent, and school committee of the sending district containing  
105   empirical progress monitoring data, MCAS scores, and the programming being provided to the  
106   student on a quarterly basis. Any relevant information to oversight and accountability must also  
107   be provided, including assurances that there are no multiple relationships, conflicts of interest,  
108   etc.

109            Consequences:

110            Any infraction on the part of an out of district placement, including but not limited to  
111   inappropriate staff credentials, multiple relationships, and accepting students for whom they are  
112   unable to provide appropriate services, will result in immediate removal of accreditation status.  
113   Furthermore, all tuition dollars must be returned to the sending district.

114            Any misconduct involving out of district staff will result in the permanent removal of  
115   licensure.

116            LEGAL REF:

117            The Individuals with Disabilities Education Act (2004)

118            Section 504 of the Rehabilitation Act of 1973

119            Title II of the American with Disabilities Act of 1990

- 120 MGL 71B
- 121 603 CMR 28
- 122 603 CMR 28.00
- 123 603 CMR 28.10
- 124 603 CMR 28.09