

**HOUSE . . . . . No. 523**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Meghan Kilcoyne*

*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 educational equity for gifted and beyond grade-level children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Meghan Kilcoyne</i>	<i>12th Worcester</i>	<i>1/18/2023</i>
<i>Gerard J. Cassidy</i>	<i>9th Plymouth</i>	<i>3/7/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>3/13/2023</i>
<i>Kelly W. Pease</i>	<i>4th Hampden</i>	<i>3/21/2023</i>

**HOUSE . . . . . No. 523**

By Representative Kilcoyne of Clinton, a petition (accompanied by bill, House, No. 523) of Meghan Kilcoyne, Gerard J. Cassidy and James C. Arena-DeRosa relative to gifted and beyond grade-level children. Education.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Third General Court  
(2023-2024)**

An Act relative to educational equity for gifted and beyond grade-level 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 Beyond Grade-level Students” together with the following Sections:

3 Section 1. Purposes

4 The purposes of this chapter are--

5 (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;

9 (2) to ensure that the rights of gifted and/or beyond grade-level children and parents of  
10 such children are protected;

11 (3) to assist the Department and school districts of the Commonwealth to support and  
12 uncover emerging talent and to provide the opportunity for gifted and/or beyond grade-level  
13 children to experience an education so they, too, can develop to their potential as specified for all  
14 children in Section 1 of Chapter 69;

15 (b) to assist districts in the implementation of a comprehensive, coordinated,  
16 multidisciplinary, interagency system of intervention services for gifted and beyond grade-level  
17 children and their families;

18 (c) to ensure that educators and parents have the necessary tools to improve  
19 developmental, social, and emotional, as well as academic results for gifted and/or beyond grade-  
20 level children by supporting system improvement activities; coordinated research and personnel  
21 preparation; coordinated technical assistance, dissemination, and support; and technology  
22 development and media services; and

23 (d) to assess and ensure the effectiveness of efforts to recognize, educate and develop  
24 gifted and beyond grade-level children.

## 25 Section 2. Definitions

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

28 “Beyond grade-level”, students achieving or capable of achieving beyond the curriculum  
29 level appropriate for the majority of students of the same chronological age. Beyond grade-level  
30 students exist in every race, ethnicity, gender, religion, geographical and income groups; these  
31 children may also be English Learners and/or have one or more disabilities. Their learning needs,

32 growth trajectories and domains of strengths vary from individual to individual and, over time,  
33 and are impacted by their environment.

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

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

36 "Free appropriate public education", gifted education and related services as gifted and  
37 beyond-grade level children may require so they may attain, through their public school  
38 education, the personal developmental goals, qualities, characteristics and skills, which other  
39 children generally acquire through being challenged appropriately to their needs, in public  
40 schools using the education standards established by statute or established by regulations  
41 promulgated by the board of education. Such gifted education and related services provided to  
42 beyond grade-level or gifted children shall be reasonably calculated to enable them to make  
43 progress appropriate in light of the child’s circumstances.

44 “Gifted and talented”, children, or youth who give evidence of high achievement  
45 capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific  
46 academic fields, and who need services or activities not ordinarily provided by the school in  
47 order to fully develop those capabilities (the same as defined by the Every Student Succeeds Act  
48 (ESSA), P.L. 114-95 (Title VIII, Part A, Definition 27); (20 USC 7801(27))). The term includes  
49 children who are defined as beyond grade level, performing or capable of performing beyond the  
50 curriculum level appropriate for the majority of students of the same chronological age. The term  
51 gifted and talented, as used in this section, shall include highly or profoundly gifted, and twice-  
52 exceptional children, unless otherwise specified. Gifted and talented children exist in every race,  
53 ethnicity, gender, religion, geographical and income groups; these children may also be English

54 Learners and/or have one or more disabilities. Their learning needs, growth trajectories and  
55 domains of strengths vary from individual to individual and, over time, and are impacted by their  
56 environment.

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

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

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

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

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

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

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

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

90 “Talent Development”, Finding, recognizing and cultivating strengths of a student’s  
91 emergent potential.

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

94 Section 3. Board to Create Regulations

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

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

102           Defining state-, district-, and school-level responsibility, oversight, and associated  
103 accountability standards to ensure that each such child is recognized and educated according to  
104 the requirements of Chapter 69, Section 1 and of Title XII, generally, and that these measures  
105 extend to gifted and beyond grade-level children of every race, ethnicity, gender, age, religion,  
106 geographical and income groups, English Learner or disability status. This shall include a talent  
107 development framework to find and cultivate strengths of a student's latent and emergent  
108 potential as well as providing a learning environment that acknowledges and supports the  
109 academic and social-emotional needs of students already achieving at advanced levels, and  
110 encourages growth beyond proficiency.

111           Provisions for the education of all gifted children such that their needs are met through  
112 programming provided within-district and, for highly and profoundly gifted children, within  
113 programs of the special education collaboratives of the Commonwealth, within state-operated or  
114 -contracted day or residential schools, or within private placements.

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

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

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

132           Section 5: Costs or obligations; payment; budget

133           Any school committee which provides or arranges for the provision of gifted education  
134 for highly or profoundly gifted or twice-exceptional children and/or other low-incidence gifted  
135 children pursuant to the provisions of section four shall pay for such special education personnel,  
136 materials and equipment, tuition, room and board, transportation, rent and consultant services as  
137 are necessary for the provision of gifted and talented education; provided, however, that the



138 school committee shall not be obligated to pay for health care goods or services to the extent that  
139 such goods or services constitute medically necessary treatment for disease, illness, injury, or  
140 bodily dysfunction which would be covered by a third party payor but for a school-aged child's  
141 eligibility for such goods and services under this chapter; provided, further, that the  
142 determination of medical necessity shall be made by the third party payor under its standard  
143 program of utilization review, that the school-aged gifted and talented child with a disability or  
144 his parent or guardian if he is a minor shall have the right to freedom of choice in the election of  
145 the provider of health care goods and services, and that the provider of health care goods and  
146 services does not have a direct or indirect financial relationship to the school committee; and  
147 provided, further, that school committees may accept payment for health care goods and services  
148 provided by certified school committee employees from third party payors other than the  
149 program of medical care and assistance established under chapter one hundred and eighteen E  
150 except as provided under section seventy-two of chapter forty-four. Where no such third party  
151 payor is available, school committees are not relieved of their responsibilities under this chapter.

## 152 Section 6. Annual Reporting by Districts on Gifted Education

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

155 a description of the manner in which its application of federal funds, as per 20 U.S.C. s  
156 6312, will assist schools in identifying and serving gifted and talented students.

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

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

165 early entrance to kindergarten

166 enrichment, acceleration and curriculum compacting activities

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

169 The manner in which each homeless child or youth shall be provided services for gifted  
170 and talented and beyond grade-level students comparable to services offered to other students in  
171 the school selected.

172 Each school district shall report to the department, on an annual basis, the total number  
173 of gifted and/or beyond grade level children served; and the number by each of race/ethnicity,  
174 gender, disability under IDEA, disability under Section 504, limited English proficiency, and  
175 eligibility for free and reduced lunch.

176 Section 7. Annual Reporting by the Department

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

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

182 a description of how the department’s application of federal Title I funds through  
183 services, programs, and activities shall address the learning needs of gifted and talented students.

184 a description for each district as to the elements reported pursuant to Section 6 of Chapter  
185 71C.

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

188 a listing of specific school districts claiming to have gifted and talented programs and  
189 their contact information

190 SECTION 2. Section 1 of Chapter 69 of the General laws, as appearing in the 2020  
191 Official Edition, is hereby amended by inserting after the phrase, “including a limited English  
192 proficient student as defined in section 1 of chapter 71A,” the following words:

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

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

197 “ There shall be within the department an office of beyond grade-level and gifted and  
198 talented education to assist the commissioner in overseeing and monitoring the development and  
199 implementation of appropriate beyond grade-level and gifted and talented education and assist

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

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

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

214 “Section 16. The Department of Elementary and Secondary Education shall establish a  
215 professional development program in gifted and talented education which will provide access to  
216 certain educators across the Commonwealth, fifteen hours of professional development in the  
217 specific field of the education of gifted and talented and beyond grade-level students. Fifteen  
218 hours of such professional development shall be completed in any five year period for the  
219 renewal of licensure for any educators, including administrators, whose classrooms, schools, or  
220 districts contain one or more beyond-grade level student or students identified, or who could be  
221 identified as gifted and talented as defined in Section 2 of Chapter 71C, or as determined by a

222 school district professional or any other professional working in the field of psychology, gifted  
223 education or who regularly provides services of educational assessments.”

224 SECTION 6. Chapter 71 Section 38G of the General Laws, as appearing in the 2020  
225 Official Edition, shall be amended by inserting after the sentence, “In addition to any other  
226 requirements in this section, in order to receive a provisional or standard educator certificate,  
227 persons applying for such certification shall have completed such courses or training sessions as  
228 the board shall require in second language acquisition” the following words:

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

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

238 SECTION 7. Chapter 71 Section 38Q of the General Laws, as appearing in the 2020  
239 Official Edition, shall be amended by inserting in the first paragraph the following text:

240 “ In any school district with gifted and talented students as defined in Section 2 of  
241 Chapter 71C, the plan shall provide training for administrators and teachers in gifted education,  
242 and shall state how such training will support the needs of gifted and talented students. Each  
243 school district shall report to the department, on an annual basis, the gifted education training

244 provided by the district, the number of educators in the district receiving such training and the  
245 total number of hours received. Each school district shall report to the department, on an annual  
246 basis, the specific ways in which its Title II Part A programs and activities address the learning  
247 needs of beyond grade-level and gifted and talented students and is improving the education of  
248 beyond grade-level and gifted and talented students.”

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

252 SECTION 8. Chapter 71 Section 38Q of the General Laws, as appearing in the 2020  
253 Official Edition, shall be amended by inserting the following sentence after the second sentence  
254 of the second paragraph, which ends with the words “limited English proficient students.” the  
255 following text:

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

260 SECTION 9. Chapter 71 Section 38Q1/2 of the General Laws, as appearing in the 2020  
261 Official Edition, shall be amended by inserting after the sentence ending in “under Chapter 71B”  
262 the following words:

263 “The plan shall provide pathways of accommodations and interventions for beyond  
264 grade-level, gifted and talented, highly or profoundly gifted, and twice-exceptional students, as  
265 they are defined in Section 2 of Chapter 71C, including, among such provisions, the specification

266 of curriculum compacting and acceleration protocols for individual subjects or whole grade, as  
267 appropriate for the student.”