

HOUSE No. 523

The Commonwealth of Massachusetts

PRESENTED BY:

Meghan K. 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 K. 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.”