

HOUSE No. 523

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>

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

26 Section 2. Definitions

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

29 “Beyond grade-level”, students achieving or capable of achieving beyond the curriculum
30 level appropriate for the majority of students of the same chronological age. Beyond grade-level
31 students exist in every race, ethnicity, gender, religion, geographical and income groups; these

32 children may also be English Learners and/or have one or more disabilities. Their learning needs,
33 growth trajectories and domains of strengths vary from individual to individual and, over time,
34 and are impacted by their environment.

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

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

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

45

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

54 exceptional children, unless otherwise specified. Gifted and talented children exist in every race,
55 ethnicity, gender, religion, geographical and income groups; these children may also be English
56 Learners and/or have one or more disabilities. Their learning needs, growth trajectories and
57 domains of strengths vary from individual to individual and, over time, and are impacted by their
58 environment.

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

66

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

72

73 No child shall be denied gifted services solely because such child shall have failed the
74 statewide assessment tests authorized pursuant to section 1I of chapter 69 or other academic
75 assessment. The use of the word gifted in this section shall not be used to provide a basis for

76 labeling or stigmatizing the child or defining the needs of the child and shall in no way limit the
77 services, programs, and opportunities provided to such child.

78

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

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

87

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

91

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

94

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

98

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

101

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

104

105 Section 3. Board to Create Regulations

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

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

113 Defining state-, district-, and school-level responsibility, oversight, and associated
114 accountability standards to ensure that each such child is recognized and educated according to

115 the requirements of Chapter 69, Section 1 and of Title XII, generally, and that these measures
116 extend to gifted and beyond grade-level children of every race, ethnicity, gender, age, religion,
117 geographical and income groups, English Learner or disability status. This shall include a talent
118 development framework to find and cultivate strengths of a student's latent and emergent
119 potential as well as providing a learning environment that acknowledges and supports the
120 academic and social-emotional needs of students already achieving at advanced levels, and
121 encourages growth beyond proficiency.

122

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

127

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

129 The school committee of any city, town or school district may, to meet its obligations
130 under section three, with the approval of the department enter into an agreement with any other
131 school committee to jointly provide gifted and talented education or, subject to the consent of the
132 parent or guardian affected thereby and subject to constitutional limitations, may enter into an
133 agreement with any public or private school, agency, or institution to provide the necessary
134 gifted and talented education within the city, town or school district; provided, however, that
135 every school committee, where feasible, shall be associated with an educational collaborative

136 providing services to certain gifted and talented children who are highly or profoundly gifted,
137 and/or are low incidence in the population of children requiring gifted and talented education.

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

145

146 Section 5: Costs or obligations; payment; budget

147 Any school committee which provides or arranges for the provision of gifted education
148 for highly or profoundly gifted or twice-exceptional children and/or other low-incidence gifted
149 children pursuant to the provisions of section four shall pay for such special education personnel,
150 materials and equipment, tuition, room and board, transportation, rent and consultant services as
151 are necessary for the provision of gifted and talented education; provided, however, that the
152 school committee shall not be obligated to pay for health care goods or services to the extent that
153 such goods or services constitute medically necessary treatment for disease, illness, injury, or
154 bodily dysfunction which would be covered by a third party payor but for a school-aged child's
155 eligibility for such goods and services under this chapter; provided, further, that the
156 determination of medical necessity shall be made by the third party payor under its standard
157 program of utilization review, that the school-aged gifted and talented child with a disability or

158 his parent or guardian if he is a minor shall have the right to freedom of choice in the election of
159 the provider of health care goods and services, and that the provider of health care goods and
160 services does not have a direct or indirect financial relationship to the school committee; and
161 provided, further, that school committees may accept payment for health care goods and services
162 provided by certified school committee employees from third party payors other than the
163 program of medical care and assistance established under chapter one hundred and eighteen E
164 except as provided under section seventy-two of chapter forty-four. Where no such third party
165 payor is available, school committees are not relieved of their responsibilities under this chapter.

166

167 Section 6. Annual Reporting by Districts on Gifted Education

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

170 a description of the manner in which its application of federal funds, as per 20 U.S.C. s
171 6312, will assist schools in identifying and serving gifted and talented students.

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

175 a description of the manner in which its application of federal funds will provide training,
176 as per 20 U.S.C s. 6613, to support the identification of students, of every grade level, who are
177 gifted and talented, including high-ability students who have not been formally identified for

178 gifted education services, and implementing instructional practices that support the education of
179 such students, such as
180 early entrance to kindergarten
181 enrichment, acceleration and curriculum compacting activities
182 dual or concurrent enrollment programs in secondary school and post-secondary
183 education.

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

187

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

192

193 Section 7. Annual Reporting by the Department

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

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

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

201 a description for each district as to the elements reported pursuant to Section 6 of Chapter
202 71C.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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