

**SENATE . . . . . No. 228**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Cynthia S. Creem*

*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 establish food allergy plans.

PETITION OF:

NAME:

*Cynthia S. Creem*

DISTRICT/ADDRESS:

*First Middlesex and Norfolk*

**SENATE . . . . . No. 228**

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 228) of Cynthia S. Creem for legislation to establish food allergy plans. Education.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

An Act to establish food allergy plans.

*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: Chapter 71 of the General Laws, as appearing in the 2014 Official Edition,  
2 is hereby amended by inserting the following new section:-

3           Section 37S:

4           (a) For the purposes of this section the following terms shall, unless the context clearly  
5 requires otherwise, have the following meaning:-

6           "Approved private day or residential school", a school that accepts, through agreement  
7 with a school committee, a child requiring special education pursuant to section 10 of chapter  
8 71B.

9           "Charter school", commonwealth charter schools and Horace Mann charter schools  
10 established pursuant to section 89 of chapter 71.

11 "Collaborative school", a school operated by an educational collaborative established  
12 pursuant to section 4E of chapter 40.

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

14 "Food Allergy", adverse health effect arising from a specific immune response that  
15 occurs reproducibly on exposure to a given food

16 "Food Allergy Management and Prevention Plan", a comprehensive plan to manage and  
17 prevent food allergies in schools

18 "Individualized Health Care Plan", A plan based on information provided by the primary  
19 care provider or allergist, as well as the nurse's assessment, which includes: the student's name,  
20 method of identifying the student, specific offending allergens, warning signs of reactions and  
21 emergency treatment.

22 "School district", the school department of a city or town, a regional school district or a  
23 county agricultural school.

24 (b) (1) Each school district, charter school, approved private day or residential school  
25 and collaborative school shall develop, adhere to and update a Food Allergy Management and  
26 Prevention Plan ("Plan") to address food allergy safety and training. The plan shall apply to  
27 members of school staff, including, but not limited to, educators, administrators, school nurses,  
28 cafeteria workers, custodians, bus drivers, athletic coaches, advisors to an extracurricular  
29 activity, paraprofessionals, and substitute personnel. The plan shall be updated at least  
30 biennially.

31 (b)(2) Each plan shall include, but not be limited to: (i) protocols for identification of  
32 students with known food allergies, including medical documentation; (ii) policies for the daily  
33 management of food allergies for individual students; (iii) strategies and policies to reduce  
34 exposure to allergens for students with food allergies; (iv) clear procedures for treating allergic  
35 reactions for students with both known and unknown allergies; (v) policies for treating allergic  
36 reactions when a school nurse is available onsite and when no school nurse is available; (vi)  
37 strategies for treating allergic reactions during extracurricular activities or non-school hour  
38 events (vii) policies for school nurses to develop Individualized Health Care Plans (IHCP) for  
39 students with food allergies; (viii) professional development for school personnel and staff  
40 members on food allergies; and (ix) notification to parents and students of food allergy policies  
41 and practices.

42 (b)(3) The plan for a school district, charter school, approved private day or residential  
43 school and collaborative school shall include a provision for annual professional development to  
44 build the skills of all staff members, including, but not limited to, educators, administrators,  
45 school nurses, cafeteria workers, custodians, bus drivers, athletic coaches, advisors to  
46 extracurricular activities and paraprofessionals. The content of such professional development  
47 shall include but not be limited to: (i) training on reducing exposure to food allergens for  
48 students with allergies; (ii) techniques for food allergy management of students with food  
49 allergies; (iii) recognizing the symptoms of a severe allergic reaction; and, (iv) for appropriate  
50 staff, training and testing for competency in epinephrine administration. The department shall  
51 identify and offer information on alternative methods for fulfilling the professional development  
52 requirements of this section, at least 1 of these alternative methods shall be available at no cost to

53 school districts, charter schools, approved private day or residential schools and collaborative  
54 schools.

55 (b)(4) The plan shall be posted on the website of each school district, charter school,  
56 non-public school, approved private day or residential school and collaborative school.

57 (b)(5) Each school principal, or the person who holds a comparable position, in  
58 consultation with the school nurse, shall be responsible for the implementation and oversight of  
59 the plan at his school.

60 (c) The department, in consultation with the department of public health and experts in  
61 the field of food allergies shall: (i) periodically update and share with school districts Managing  
62 Life-Threatening Allergies in Schools guidelines on food allergies; (ii) publish model plans for  
63 school districts to consider when creating their plans; and (iii) compile a list of food allergy  
64 resources, best practices and research that shall be made available to schools. The resources may  
65 include, but shall not be limited to, print, audio, video or digital media; subscription based online  
66 services; and on-site or technology-enabled professional development and training sessions. The  
67 department shall biennially update the model plan and the list of the resources, curricula, best  
68 practices and research and shall post them on its website.

69 (d) Each school district, charter school, approved private day or residential school and  
70 collaborative school shall annually report food allergy data to the Department of Public Health  
71 School Health Services department. The data shall include, but not be limited to: (i) the number  
72 of students with food allergies in schools, broken down by type of allergy; (ii) the number and  
73 nature of food allergy incidents; and (iii) any other information required by School Health  
74 Services department. Said data shall be reported in the form and manner established by the

75 School Health Services department; provided, that the School Health Services shall minimize the  
76 costs and resources needed to comply with said reporting requirements; and provided further,  
77 that the School Health Services department may use existing data collection and reporting  
78 mechanisms to collect the information from school districts. The School Health Services  
79 department shall analyze the food allergy data and shall publish an annual report containing  
80 aggregate statewide information on the frequency and nature of food allergy incidents in schools.  
81 The annual report may be analyzed and published in consultation with any foundation or  
82 scientific organization, hospital or medical school, with an agency of the federal government, or  
83 nationally recognized nonprofit or educational organization or entity recognized for research or  
84 education in the field of food allergies. The School Health Services department shall file the  
85 annual report with the department and with the clerks of the senate and the house of  
86 representatives, who shall forward the same to the chairs of the joint committee on education, the  
87 joint committee on the public health and the house and senate committees on ways and means.

88 (e) The department shall waive the requirements of this section upon a showing by a  
89 school district that they have an existing food allergy management plan which substantially  
90 meets the requirements of this section. School districts seeking such a waiver must provide a  
91 detailed description of existing food allergy management plans.

92 SECTION 2. Chapter 111 of the General Laws, as appearing in the 2014 official Edition,  
93 is hereby amended by inserting the following new section:-

94 Section 236. The department of public health is hereby authorized and directed to  
95 establish a program to combat food allergies and raise awareness of the prevalence and danger of  
96 food allergies. Said program may be conducted in conjunction with any foundation or scientific

97 organization, hospital or medical school, with an agency of the federal government, or nationally  
98 recognized nonprofit or educational organization or entity recognized for research or education  
99 in the field of food allergies.

100 SECTION 3. Section 54B of chapter 71 of the General Laws, as appearing in the 2014  
101 Official Edition, is hereby amended by striking the third paragraph and inserting in place thereof  
102 the following:—

103 (a) Notwithstanding any general or special law or regulation to the contrary, subject to  
104 appropriation, each school shall maintain a stock supply of non-patient specific epinephrine to be  
105 administered in the event of an anaphylactic emergency, provided however, that no prescribing  
106 physicians shall be subject to liability in a civil or criminal action for issuance of such  
107 prescriptions. The department, in consultation with the department of public health, shall  
108 promulgate regulations requiring school districts to adopt and implement policies pursuant to this  
109 section. Such regulations shall require that stock epinephrine be stored in an easily accessible  
110 unlocked location; the number and type of epinephrine auto-injectors required based on school  
111 population; identification, training, and supervision requirements of at least two individuals per  
112 school who have been trained to recognize anaphylaxis, at least one of whom shall always be  
113 onsite, and in the appropriate use of an epinephrine auto-injector; that individuals authorized to  
114 administer epinephrine meet certain training requirements; and that the stock inventory be  
115 checked at regular intervals for expiration and replacement. A school nurse or other authorized  
116 individual who provides, administers, or assists in the administration of epinephrine to a student  
117 believed in good faith to be having an anaphylactic reaction shall not be liable for any civil  
118 damages for negligence in acts or omissions resulting from the rendering of such treatment.  
119 Whenever any employee of a school district is covered by the immunity granted herein, the

120 school district employing the individual shall not be liable for any civil damages for negligence  
121 in acts or omissions resulting from the rendering of such treatment.

122 (b) Notwithstanding any general or special law to the contrary, the department, in  
123 consultation with the with the department of public health, shall make all reasonable efforts to  
124 obtain federal funding or reimbursement for the implementation of this act. A school may  
125 develop a funding plan that is cost-neutral to the school budget through the use of grants,  
126 donations, fundraising and any other source. The department of elementary and secondary  
127 education, in consultation with the department of public health, shall prepare a list of grants and  
128 other funding sources that a school may access in order to purchase non-patient specific  
129 epinephrine and shall publish and maintain the list on the department's website.