

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Alice Hanlon Peisch

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 passage of the accompanying bill:

An Act to promote greater fairness, accountability and public confidence in the MCAS.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Alice Hanlon Peisch	14th Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 516 OF.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT TO PROMOTE GREATER FAIRNESS, ACCOUNTABILITY AND PUBLIC CONFIDENCE IN THE MCAS.

*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. Section 1 of Chapter 69 of the General Laws, as appearing in the 2006 Official Edition, is hereby
2 amended by inserting at the beginning the following new paragraphs:—
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4 Except as otherwise provided or used in this chapter, the following words shall, unless the context otherwise
5 requires, have the following meaning:
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7 'Children with disabilities' shall be defined as it is used in Chapter 71B of the General Laws and section 504 of the
8 Rehabilitation Act of 1973, 29 USC 794, and regulations promulgated thereunder.
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10 'MCAS' means the 'Massachusetts Comprehensive Assessment System' tests.
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12 'Supported languages' means any of those language groups other than English for which an English learners program
13 established under chapter 71A is offered somewhere in the state at some grade level, and where the language in
14 question is used as one of the primary languages of instruction for English learners in such programs.
15
16 'Students whose performance is difficult to assess using conventional methods' means any student whose academic
17 competency, as determined by the competency determination in Section 1D of this chapter, cannot be accurately
18 determined by a standardized assessment instrument created pursuant to Section 1D or 1I of this Chapter. This
19 definition shall include, but shall not be limited to the following:
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21 a) all 'English learners' (as defined in Chapter 71A, Section 2);
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23 b) all children with disabilities; and
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25 c) any child who, in the informed opinion of either the principal of that child's school or the Commissioner of
26 Education, is difficult to assess using conventional methods.
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SECTION 2. Section 1D of Chapter 69, as so appearing, is hereby amended in line 72, subsection "(i)" by adding at the end thereof the following:—

No competency determination shall be withheld from any student whose performance is difficult to assess using conventional methods based on his performance on assessments utilizing such conventional methods if that student has passed all his local graduation requirements and was not offered such accommodations during the administration of his assessments as are required under federal law or are otherwise available to the student under this Chapter. Further, no competency determination shall be withheld from any English learner based on his performance on assessments utilizing conventional methods in any subject other than English language arts if that student has passed all his local graduation requirements and was not offered those assessments in the language which best allows him to demonstrate educational achievement and mastery of academic standards and curriculum frameworks established under Sections 1D and 1E of this Chapter.

SECTION 3. Section 1I of Chapter 69, as so appearing, is hereby amended by striking the fourth paragraph and inserting in place thereof the following new paragraph:—

The assessment instruments shall be designed to avoid gender, cultural, ethnic or racial stereotypes and shall recognize sensitivity to different learning styles and impediments to learning. The system shall take into account on a nondiscriminatory basis the cultural and language diversity of students in the commonwealth and the particular circumstances of students with special needs. Said system shall comply with federal requirements for accommodating children with special needs. In order to guarantee the content validity of the assessments provided by the assessment instruments and to comply with the accommodations required for English learners under the federal 'No Child Left Behind' Act, except for assessments of competency or mastery of English language arts, those English learners (as defined in Chapter 71, Section 2) that are from a supported language group shall be allowed opportunities for assessment of their performance in the language which best allows them to demonstrate educational achievement and mastery of academic standards and curriculum frameworks established under Sections 1D and 1E of this Chapter, provided that no student shall be tested with the assessment instruments in a language other than English for longer than 3 consecutive years. Such opportunities shall not be limited merely to assessing students for the competency determination described in Section 1D of this Chapter, but shall be made available to English learners periodically throughout their school career to allow the Department of Education to assess these students and their English learners programs. Other than for assessments of English language arts, a student's assessment in his competency and mastery of the academic standards and curriculum frameworks shall be based upon his best results to date, regardless of the language used for such assessment. Regardless of how long a student has been in the Massachusetts public schools, if he is an English learner or was formerly classified as an English learner then he shall be entitled to use, except for exams in English language arts, a translation dictionary, provided that said dictionary may not actually define any word, but merely lists a word-for-word translation of each term from English to the child's native language and vice versa. In subjects other than English language arts, for those English learners who do not speak a supported language, the Department shall provide for other reasonable accommodations as are practicable to allow for the accurate assessment of these children.

SECTION 4. Section 1I of said chapter is hereby further amended in line 246 by deleting the word "and" at the end of subsection "(i)", in line 251 by deleting the final period in item "(j)", and inserting, after item "(j)" the following:—

"; and

(k) a list of supported languages, as defined by Chapter 69, Section 1.

SECTION 5. Section 1I of said chapter is hereby further amended by adding at the end thereof the following new paragraphs:—

The report shall also include, but not be limited to the following:

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85 a) the costs the Department incurred during the previous fiscal year for the development and administration of
86 assessments in supported languages;
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88 b) estimates of costs the Department will likely incur during the then current fiscal year regarding the development
89 and administration of assessments in supported languages;
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91 c) statewide data and district data, subcategorized by type of English learners program, showing competency
92 determinations granted to students who are either currently English learners or who were formerly English learners;
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94 d) statewide data and district data, subcategorized by students' native languages, showing competency
95 determinations granted to students who are either currently English learners or who were formerly English learners;
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97 e) statewide data and district data, subcategorized by type of English learners program, showing MCAS performance
98 of students who are either currently English learners or who were formerly English learners;
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100 f) statewide data and district data, subcategorized by students' native languages, showing MCAS performance of
101 students who are either currently English learners or who were formerly English learners;
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103 g) statewide data and district data, showing the total number of MCAS performance appeals requested, the number
104 of MCAS performance appeals accepted into the appeals process, and the number of competency determinations
105 that were granted as the result of the MCAS performance appeals process, all data subcategorized by the race and
106 gender of students, by English learner status, by former English learner status, and by children with disabilities
107 status; and
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109 h) statewide data and district data, showing the total number of applications for entry into the MCAS performance
110 appeals process that were rejected, summarized by reason for rejection, and further subcategorized by the race and
111 gender of students, by English learner status, by former English learner status, and by children with disabilities
112 status.

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115 Notwithstanding any general or special law to the contrary, the board of education shall take such action to modify
116 the process governing the MCAS performance appeals established by 603 CMR 30.05 for students whose
117 performance is difficult to assess using conventional methods, as defined in Section 1 of this Chapter.

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119 The performance appeals process shall provide that any student whose performance is difficult to assess using
120 conventional methods shall be eligible for an MCAS performance appeal if the following criteria are met:

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122 (a) in each subject area required by the board of education for the competency determination the child has done one
123 of the following:

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125 (i) the child submitted a portfolio assessment through the MCAS Alternative Assessment at least 2 times without
126 being granted a competency determination;

127 (ii) the child took the grade 10 MCAS and passed the test; or,

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129 (iii) the child took the grade 10 MCAS test 3 times without achieving a passing score;

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131 (b) the child has maintained an adequate attendance level as established by the Department of Education, provided
132 that such attendance level shall be no higher than that required for students in the child's district who are not seeking
133 an MCAS performance appeal, or else the child's days of absences from school in excess of the number allowed by
134 the Department are excused; and

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136 (c) the child has demonstrated participation in academic support services made available and accessible by or
137 approved by the school district under an individual student success plan or under any other plan designed to
138 strengthen the student's knowledge and skills in the subjects at issue, or the child's lack of participation in available

139 academic support services has been related to the child's disability, for children with disabilities, or to his limited
140 English proficiency, for English learners as defined in Chapter 71A, Section 2.

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142 As provided in said regulations, the Commissioner of Education may, for good cause, waive any of the eligibility
143 criteria upon the written request of the superintendent of the school district of the child for whom a performance
144 appeal has been or is being filed.

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146 The regulations shall require that, at the request of the child's parent or guardian or the student who has reached the
147 age of majority, the superintendent of schools or his designee for the school district in which the student is enrolled
148 shall file an appeal on behalf of that student whose performance is difficult to assess using conventional methods
149 provided that the student meets the eligibility criteria set forth above. The superintendent may initiate an appeal for a
150 student whose performance is difficult to assess using conventional methods with the consent of the parent, guardian
151 or student who has reached the age of majority, if the student meets the eligibility criteria set forth above. The
152 superintendent may submit any written comments or evidence relevant to the appeal. Denial of an earlier appeal
153 shall not prevent a new appeal under this section.

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155 The regulations shall require that the superintendent include in the performance appeal evidence of the child's
156 knowledge and skills in the subject at issue, including:

157 (1) documentation that the child has met the local graduation criteria established by the local school committee;

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159 (2) a recommendation from at least 1 of the student's teachers in the area of appeal, assessing the level of the
160 student's knowledge and skills in the subject area at issue;

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162 (3) where possible, a meaningful comparison of the student with a group of other students who passed the MCAS in
163 the subject area of the student's appeal. In the event of an inability to identify an appropriate set of students to
164 enable a meaningful comparison with other students, this clause shall be waived and the superintendent may submit
165 a portfolio of the student's work in the area of the appeal, as specified by the commissioner, sufficient to
166 demonstrate whether the student's knowledge and skills meet or exceed the performance level established by the
167 board of education for the competency determination if the portfolio has been maintained by the school district;

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169 (4) for children with disabilities, documentation that the child's individual education plan team, if any, with the
170 approval of a parent or guardian of the child, supports the graduation of the student;

171
172 (5) for children with disabilities, any additional information that the student's individual education plan team, if any,
173 with the approval of the student's parent or guardian, requests the superintendent to submit indicating that the child's
174 knowledge and skill in the subject area of the appeal meets or exceeds the performance level established by the
175 board of education for the competency determination and that the child's MCAS scores do not accurately measure
176 the student's abilities; and

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178 (6) other supporting information relevant to the determination as to whether the student's knowledge and skills in the
179 subject area of the appeal meet or exceed the performance level established by the board of education for the
180 competency determination, which may include work samples, scores of the child on other standardized tests in the
181 subject area of the appeal, evidence of acceptance to college courses, or other evidence of academic achievement
182 which demonstrates that the child meets the competency determination standard.

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184 For children with disabilities, any documentation of an individual education plan team submitted in connection with
185 an MCAS performance appeal shall not constitute a modification of the child's individual education plan under 34
186 C.F.R. 300.347 and is therefore not appealable to the Bureau of Special Education Appeals pursuant to 34 C.F.R.
187 300.507(a) or chapter 71B of the General Laws. Nothing herein shall limit or expand the rights of children with
188 disabilities available under said chapter 71B, IDEA or Section 504 of the Rehabilitation Act of 1973.

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190 The Commissioner of Education shall grant the appeal for a student whose performance is difficult to assess using
191 conventional methods if there is a preponderance of evidence in the documentation provided in clause (1) to (6),
192 inclusive, the first paragraph and any other evidence submitted by the superintendent that the child's knowledge and
193 skills in the subject area of the appeal meet or exceed the performance level established by the Board of Education
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195 for the competency determination. The Commissioner shall provide notice of the results of the appeal and, in the
196 case of a denial, written findings, to the student, parents or guardian and superintendent. The Commissioner's
197 decision on this appeal shall be final and shall not be subject to further review or appeal to any other entity; except
198 that the regulations shall permit the superintendent to seek reconsideration from the Commissioner.

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200 The following requirements shall apply to any proposed raise in the minimum passing score on a specific MCAS
201 subject matter test, normally intended to be administered at a specific grade level:

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203 No minimum passing score on a specific MCAS subject matter test, normally designed to be administered at a
204 specific grade level, shall be raised unless 99% of all children in the state who took the test during the previous year
205 have passed the test, and at least 90% of students who took the test have scored a 'proficient' rating or better; and

206 No minimum passing score on a specific MCAS subject matter test, normally designed to be administered at a
207 specific grade level, shall be raised unless there is no district in the state that had fewer than 90% of the children in
208 that district pass the test during the previous year, and unless there is no district that had fewer than 80% of the
209 children who took the test and who scored a 'proficient' rating or better; and

210 The score on a specific subject matter test, normally designed to be administered at a specific grade level, may be
211 raised by no more than the equivalent of 1 point on the then scaled scoring system for the MCAS during a given
212 academic year; and

213 Once a student takes any version of the MCAS as part of his competency determination, as described in Section 1D
214 of this Chapter, the minimum passing score for that student shall never be raised on subsequent retests and
215 administrations of a test in that subject area for the remainder of that student's time in the public schools even if the
216 minimum passing score has been raised for other children; and

217 Before raising the minimum passing score on a specific MCAS subject matter test, normally designed to be
218 administered at a specific grade level, the Department must make statistically sound projections on the impact of any
219 such minimum passing score increase, and the Department may not implement such a score increase if it is projected
220 that the increase will result in a drop in the pass rates on that test during its next administration of 1% or more
221 statewide or of 1% or more in any school district in the state.

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223 The Department of Education must publish annually, at a minimum on the Department's website, data regarding the
224 number of students in 12th grade in each school, each school district and statewide who have received a competency
225 determination. Said publication must also include the following additional data for each school and each school
226 district and for the state as a whole:

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228 the total number of students in each school, each school district, and statewide, who were enrolled in the
229 Massachusetts public schools in the 8th grade, even if they subsequently transferred or dropped out; and

230 the number of those students who went on to graduate from the Massachusetts public schools within 4 years; and

231 the number of those students who subsequently transferred, to the best knowledge of the Department, to other
232 schools, noting whether such a transfer was to another public school within the same district, another school within a
233 different district in Massachusetts, a private school in Massachusetts, or to a school outside of Massachusetts;

234 the number of those students who dropped out of school at any time between the 8th grade and the 12th grade; and

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236 the total number of students who were not enrolled in the Massachusetts public schools in the 8th grade but who
237 have subsequently enrolled in the Massachusetts public schools.

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239 No school in the Commonwealth shall solely consider MCAS scores for any decision regarding the retention of a
240 student in a grade. The Department shall publish annually, at a minimum on the Department's website, data
241 regarding student retention rates, measured in absolute numbers and as a percentage of students enrolled at a given
242 grade level, for all grades, at each school, and aggregated further for each school district, and for the state as a
243 whole.

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