

HOUSE No. 01946

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:

Alice Hanlon Peisch

DISTRICT/ADDRESS:

14th Norfolk

HOUSE No. 01946

By Ms. Peisch of Wellesley, a petition (accompanied by bill, House, No. 1946) of Peisch relative to regulating MCAS testing of children with disabilities Joint Committee on Education.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 469 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 2008 Official
2 Edition, is hereby amended by inserting at the beginning the following new paragraphs:—
3 Except as otherwise provided or used in this chapter, the following words shall, unless the
4 context otherwise requires, have the following meaning:

5 'Children with disabilities' shall be defined as it is used in Chapter 71B of the General Laws and
6 section 504 of the Rehabilitation Act of 1973, 29 USC 794, and regulations promulgated
7 thereunder.

8 'MCAS' means the 'Massachusetts Comprehensive Assessment System' tests.

9 Supported languages' means any of those language groups other than English for which an
10 English learners program established under chapter 71A is offered somewhere in the state at
11 some grade level, and where the language in question is used as one of the primary languages of
12 instruction for English learners in such programs.

13 'Students whose performance is difficult to assess using conventional methods' means any
14 student whose academic competency, as determined by the competency determination in Section
15 1D of this chapter, cannot be accurately determined by a standardized assessment instrument
16 created pursuant to Section 1D or 1I of this Chapter. This definition shall include, but shall not
17 be limited to the following:

18 a) all 'English learners' (as defined in Chapter 71A, Section 2);

19 b) all children with disabilities; and

20 c) any child who, in the informed opinion of either the principal of that child's school or
21 the Commissioner of Education, is difficult to assess using conventional methods.

22 SECTION 2. Section 1D of Chapter 69, as so appearing, is hereby amended in line 72,
23 subsection "(i)" by adding at the end thereof the following:—

24 No competency determination shall be withheld from any student whose performance is difficult
25 to assess using conventional methods based on his performance on assessments utilizing such
26 conventional methods if that student has passed all his local graduation requirements and was not
27 offered such accommodations during the administration of his assessments as are required under
28 federal law or are otherwise available to the student under this Chapter. Further, no competency
29 determination shall be withheld from any English learner based on his performance on

30 assessments utilizing conventional methods in any subject other than English language arts if
31 that student has passed all his local graduation requirements and was not offered those
32 assessments in the language which best allows him to demonstrate educational achievement and
33 mastery of academic standards and curriculum frameworks established under Sections 1D and
34 1E of this Chapter.

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

37 The assessment instruments shall be designed to avoid gender, cultural, ethnic or racial
38 stereotypes and shall recognize sensitivity to different learning styles and impediments to
39 learning. The system shall take into account on a nondiscriminatory basis the cultural and
40 language diversity of students in the commonwealth and the particular circumstances of students
41 with special needs. Said system shall comply with federal requirements for accommodating
42 children with special needs. In order to guarantee the content validity of the assessments
43 provided by the assessment instruments and to comply with the accommodations required for
44 English learners under the federal 'No Child Left Behind' Act, except for assessments of
45 competency or mastery of English language arts, those English learners (as defined in Chapter
46 71, Section 2) that are from a supported language group shall be allowed opportunities for
47 assessment of their performance in the language which best allows them to demonstrate
48 educational achievement and mastery of academic standards and curriculum frameworks
49 established under Sections 1D and 1E of this Chapter, provided that no student shall be tested
50 with the assessment instruments in a language other than English for longer than 3 consecutive
51 years. Such opportunities shall not be limited merely to assessing students for the competency
52 determination described in Section 1D of this Chapter, but shall be made available to English

53 learners periodically throughout their school career to allow the Department of Education to
54 assess these students and their English learners programs. Other than for assessments of English
55 language arts, a student's assessment in his competency and mastery of the academic standards
56 and curriculum frameworks shall be based upon his best results to date, regardless of the
57 language used for such assessment. Regardless of how long a student has been in the
58 Massachusetts public schools, if he is an English learner or was formerly classified as an English
59 learner then he shall be entitled to use, except for exams in English language arts, a translation
60 dictionary, provided that said dictionary may not actually define any word, but merely lists a
61 word-for-word translation of each term from English to the child's native language and vice
62 versa. In subjects other than English language arts, for those English learners who do not speak
63 a supported language, the Department shall provide for other reasonable accommodations as are
64 practicable to allow for the accurate assessment of these children.

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

68 "; and

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

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

72

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

74 a) the costs the Department incurred during the previous fiscal year for the development and
75 administration of assessments in supported languages;

76 b) estimates of costs the Department will likely incur during the then current fiscal year
77 regarding the development and administration of assessments in supported languages;

78 c) statewide data and district data, subcategorized by type of English learners program, showing
79 competency determinations granted to students who are either currently English learners or who
80 were formerly English learners;

81 d) statewide data and district data, subcategorized by students' native languages, showing
82 competency determinations granted to students who are either currently English learners or who
83 were formerly English learners;

84 e) statewide data and district data, subcategorized by type of English learners program, showing
85 MCAS performance of students who are either currently English learners or who were formerly
86 English learners;

87 f) statewide data and district data, subcategorized by students' native languages, showing MCAS
88 performance of students who are either currently English learners or who were formerly English
89 learners;

90 g) statewide data and district data, showing the total number of MCAS performance appeals
91 requested, the number of MCAS performance appeals accepted into the appeals process, and the
92 number of competency determinations that were granted as the result of the MCAS performance
93 appeals process, all data subcategorized by the race and gender of students, by English learner
94 status, by former English learner status, and by children with disabilities status; and

95 h) statewide data and district data, showing the total number of applications for entry into the
96 MCAS performance appeals process that were rejected, summarized by reason for rejection, and
97 further subcategorized by the race and gender of students, by English learner status, by former
98 English learner status, and by children with disabilities status.

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

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

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

108 (i) the child submitted a portfolio assessment through the MCAS Alternative Assessment at least
109 2 times without being granted a competency determination;

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

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

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

116 (c) the child has demonstrated participation in academic support services made available and
117 accessible by or approved by the school district under an individual student success plan or under
118 any other plan designed to strengthen the student's knowledge and skills in the subjects at issue,
119 or the child's lack of participation in available academic support services has been related to the
120 child's disability, for children with disabilities, or to his limited English proficiency, for English
121 learners as defined in Chapter 71A, Section 2.

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

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

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

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

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

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

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

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

157 (6) other supporting information relevant to the determination as to whether the student's
158 knowledge and skills in the subject area of the appeal meet or exceed the performance level

159 established by the board of education for the competency determination, which may include
160 work samples, scores of the child on other standardized tests in the subject area of the appeal,
161 evidence of acceptance to college courses, or other evidence of academic achievement which
162 demonstrates that the child meets the competency determination standard.

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

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

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

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

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

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

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

199 Before raising the minimum passing score on a specific MCAS subject matter test, normally
200 designed to be administered at a specific grade level, the Department must make statistically

201 sound projections on the impact of any such minimum passing score increase, and the
202 Department may not implement such a score increase if it is projected that the increase will result
203 in a drop in the pass rates on that test during its next administration of 1% or more statewide or
204 of 1% or more in any school district in the state.

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

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

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

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

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

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

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