

HOUSE No. 2866

The Commonwealth of Massachusetts

PRESENTED BY:

James J. O'Day

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 provide equal access to evaluations for children with disabilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>

<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>

HOUSE No. 2866

By Mr. O'Day of West Boylston, a petition (accompanied by bill, House, No. 2866) of James J. O'Day and others relative to development of special education services for children. Education.

The Commonwealth of Massachusetts

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

An Act to provide equal access to evaluations for children with disabilities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Preamble: Whereas parents’ full participation in the planning and development of special
2 education services for their child is required under state and federal special education law;

3 Whereas appropriate educational evaluations are vital to a child’s special education
4 development, and independent educational evaluations provide the only way for parents to
5 participate effectively in special education planning in the unusual situation where they disagree
6 with a school district evaluation;

7 Whereas parents have the right to an independent educational evaluation under state and
8 federal special education law, but this right is meaningless if the rates established by the state are
9 so low that evaluators will not perform these evaluations;

10 Therefore, it is imperative to establish a reasonable rate structure that is fair to school
11 districts and, at the same time, allows low- and moderate-income parents access to independent
12 education evaluations.

13 SECTION 1. Section 13C of chapter 118E of the General Laws, as appearing in the
14 2012 Official Edition, is hereby amended by inserting after the first paragraph the following new
15 paragraph:--

16 Notwithstanding any general or special law to the contrary, the secretary of health and
17 human services shall establish rates specific to independent evaluations in accordance with the
18 rate standards established in this paragraph. To ensure that parents can participate fully and
19 effectively with school personnel in the planning and development of appropriate educational
20 programs for their child, rates shall be at levels that provide parents with a choice of evaluators
21 who can complete the evaluation in a timely manner and who have sufficient experience and
22 expertise to determine the nature and extent of the child's disability and to determine the nature
23 and extent of the child's educational needs and how they should be met. Rates shall allow
24 payment for all of the following, as needed by the evaluator to make such determinations: formal
25 and informal testing; interviews of child and parents; review of the child's educational records
26 and schoolwork; obtaining and reviewing relevant information from the child's teachers,
27 therapists and persons who have evaluated the child; observation of the child at school, at home,
28 at a workplace and in the community; observation of any program proposed for the child,
29 including both academic and non-academic components; testing and other formal and informal
30 assessments sufficient to conduct transition evaluations pursuant to section 2 of chapter 71B and
31 20 U.S.C. et seq.; a comprehensive written report; attendance at the required team meeting that
32 considers the evaluation and report; and travel time and expenses. A parent may file a request
33 with the bureau of special education appeals and a hearing officer may order a higher rate for a
34 particular independent evaluation if necessary to meet the rate standards in this paragraph. At
35 least every three years, the secretary of health and human services shall review the rates for

36 independent evaluations and adjust the rates as necessary in order to comply with this section.
37 For purposes of this paragraph, the term “child” shall mean any person aged three through
38 twenty-one who has not attained a high school diploma or its equivalent and the term “parent”
39 shall mean any person who has special education decision-making responsibility for a child.

40 SECTION 2. The tenth paragraph of section 3 of chapter 71B of the General Laws, as
41 appearing in the 2012 Official Edition, is hereby amended by deleting the words “educational
42 assessments” and inserting in place thereof the following words:-- independent evaluations.

43 SECTION 3. The tenth paragraph of section 3 of chapter 71B of the General Laws, as
44 appearing in the 2012 Official Edition, is hereby further amended by inserting immediately after
45 the words “conducted or performed by” the following word:-- licensed.

46 SECTION 4. The tenth paragraph of section 3 of chapter 71B of the General Laws, as
47 appearing in the 2012 Official Edition, is hereby further amended by inserting immediately after
48 the words “other trained certified” the following words:-- or licensed.

49 SECTION 5. Section 3 of chapter 71B of the General Laws, as appearing in the 2012
50 Official Edition, is hereby amended by inserting after the twelfth paragraph the following new
51 paragraph:--

52 Parents, guardians, or persons with custody who either have requested a hearing before
53 the bureau of special education appeals or are parties to a proceeding initiated by a school
54 committee at the bureau shall be entitled to reasonable expert fees and costs as a prevailing party.