

**HOUSE . . . . . No. 516**

By Ms. Peisch of Wellesley, petition of Alice Hanlon Peisch and others relative to regulating MCAS testing of children with disabilities. Education.

**The Commonwealth of Massachusetts**

PETITION OF:

Alice Hanlon Peisch Kay Khan  
Ruth B. Balsler Frank I. Smizik  
Barbara A. L'Italien J. James Marzilli, Jr.  
Carl M. Sciortino, Jr. David Paul Linsky  
Michael E. Festa

In the Year Two Thousand and Seven.

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  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 inserting at the beginning the following new paragraphs:—

4 Except as otherwise provided or used in this chapter, the  
5 following words shall, unless the context otherwise requires, have  
6 the following meaning:

7 “Children with disabilities” shall be defined as it is used in  
8 Chapter 71B of the General Laws and section 504 of the Rehabilita-  
9 tion Act of 1973, 29 USC 794, and regulations promulgated there-  
10 under.

11 “MCAS” means the “Massachusetts Comprehensive Assessment  
12 System” tests. “Supported languages” means any of those language  
13 groups other than English for which an English learners program  
14 established under Chapter 71A is offered somewhere in the state at  
15 some grade level, and where the language in question is used as one  
16 of the primary languages of instruction for English learners in such  
17 programs.

18 “Students whose performance is difficult to assess using conven-  
19 tional methods” means any student whose academic competency, as  
20 determined by the competency determination in Section 1D of this  
21 chapter, cannot be accurately determined by a standardized assess-  
22 ment instrument created pursuant to Section 1D or 1I of this  
23 Chapter. This definition shall include, but shall not be limited to the  
24 following:—

- 25 a) all “English learners” (as defined in Chapter 71A, Section 2);
- 26 b) all children with disabilities; and
- 27 c) any child who, in the informed opinion of either the principal  
28 of that child’s school or the Commissioner of Education, is difficult  
29 to assess using conventional methods.

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

4 No competency determination shall be withheld from any student  
5 whose performance is difficult to assess using conventional methods  
6 based on his performance on assessments utilizing such conven-  
7 tional methods if that student has passed all his local graduation  
8 requirements and was not offered such accommodations during the  
9 administration of his assessments as are required under federal law  
10 or are otherwise available to the student under this Chapter. Further,  
11 no competency determination shall be withheld from any English  
12 learner based on his performance on assessments utilizing conven-  
13 tional methods in any subject other than English language arts if that  
14 student has passed all his local graduation requirements and was not  
15 offered those assessments in the language which best allows him to  
16 demonstrate educational achievement and mastery of academic stan-  
17 dards and curriculum frameworks established under Sections 1D and  
18 1E of this Chapter.

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

4 The assessment instruments shall be designed to avoid gender,  
5 cultural, ethnic or racial stereotypes and shall recognize sensitivity to  
6 different learning styles and impediments to learning. The system  
7 shall take into account on a nondiscriminatory basis the cultural and

8 language diversity of students in the commonwealth and the partic-  
9 ular circumstances of students with special needs. Said system shall  
10 comply with federal requirements for accommodating children with  
11 special needs. In order to guarantee the content validity of the  
12 assessments provided by the assessment instruments and to comply  
13 with the accommodations required for English learners under the  
14 federal ‘No Child Left Behind’ Act, except for assessments of com-  
15 petency or mastery of English language arts, those English learners  
16 (as defined in Chapter 71, Section 2) that are from a supported lan-  
17 guage group shall be allowed opportunities for assessment of their  
18 performance in the language which best allows them to demonstrate  
19 educational achievement and mastery of academic standards and  
20 curriculum frameworks established under Sections 1D and 1E of this  
21 Chapter, provided that no student shall be tested with the assessment  
22 instruments in a language other than English for longer than 3 con-  
23 secutive years. Such opportunities shall not be limited merely to  
24 assessing students for the competency determination described in  
25 Section 1D of this Chapter, but shall be made available to English  
26 learners periodically throughout their school career to allow the  
27 Department of Education to assess these students and their English  
28 learners programs. Other than for assessments of English language  
29 arts, a student’s assessment in his competency and mastery of the  
30 academic standards and curriculum frameworks shall be based upon  
31 his best results to date, regardless of the language used for such  
32 assessment. Regardless of how long a student has been in the Massa-  
33 chusetts public schools, if he is an English learner or was formerly  
34 classified as an English learner then he shall be entitled to use,  
35 except for exams in English language arts, a translation dictionary,  
36 provided that said dictionary may not actually define any word, but  
37 merely lists a word-for-word translation of each term from English  
38 to the child’s native language and vice versa. In subjects other than  
39 English language arts, for those English learners who do not speak a  
40 supported language, the Department shall provide for other reason-  
41 able accommodations as are practicable to allow for the accurate  
42 assessment of these children.

1 SECTION 4. Section 1I of said chapter is hereby further amended  
2 in line 246 by deleting the word “and” at the end of subsection “(i)”.

3 in line 251 by deleting the final period in item “(j)”, and inserting,  
4 after item “(j)” the following:—  
5 “; and (k) a list of supported languages, as defined by Chapter 69,  
6 Section 1.

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

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

5 a) the costs the Department incurred during the previous fiscal  
6 year for the development and administration of assessments in sup-  
7 ported languages;

8 b) estimates of costs the Department will likely incur during the  
9 then current fiscal year regarding the development and administra-  
10 tion of assessments in supported languages;

11 c) statewide data and district data, subcategorized by type of Eng-  
12 lish learners program, showing competency determinations granted  
13 to students who are either currently English learners or who were  
14 formerly English learners;

15 d) statewide data and district data, subcategorized by students’  
16 native languages, showing competency determinations granted to  
17 students who are either currently English learners or who were for-  
18 merly English learners;

19 e) statewide data and district data, subcategorized by type of Eng-  
20 lish learners program, showing MCAS performance of students who  
21 are either currently English learners or who were formerly English  
22 learners;

23 f) statewide data and district data, subcategorized by students  
24 native languages, showing MCAS performance of students who are  
25 either currently English learners or who were formerly English  
26 learners;

27 g) statewide data and district data, showing the total number of  
28 MCAS performance appeals requested, the number of MCAS per-  
29 formance appeals accepted into the appeals process, and the number  
30 of competency determinations that were granted as the result of the  
31 MCAS performance appeals process, all data subcategorized by the  
32 race and gender of students, by English learner status, by former  
33 English learner status, and by children with disabilities status; and

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

40 Notwithstanding any general or special law to the contrary, the  
41 board of education shall take such action to modify the process gov-  
42 erning the MCAS performance appeals established by 603 CMR  
43 30.05 for students whose performance is difficult to assess using  
44 conventional methods, as defined in Section 1 of this Chapter.

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

49 (a) in each subject area required by the board of education for the  
50 competency determination the child has done one of the  
51 following:—

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

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

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

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

64 (c) the child has demonstrated participation in academic support  
65 services made available and accessible by or approved by the school  
66 district under an individual student success plan or under any other  
67 plan designed to strengthen the student's knowledge and skills in the  
68 subjects at issue, or the child's lack of participation in available aca-  
69 demic support services has been related to the child's disability, for  
70 children with disabilities, or to his limited English proficiency, for  
71 English learners as defined in Chapter 71A, Section 2.

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

76 The regulations shall require that, at the request of the child's  
77 parent or guardian or the student who has reached the age of  
78 majority, the superintendent of schools or his designee for the school  
79 district in which the student is enrolled shall file an appeal on behalf  
80 of that student whose performance is difficult to assess using con-  
81 ventional methods provided that the student meets the eligibility cri-  
82 teria set forth above. The superintendent may initiate an appeal for a  
83 student whose performance is difficult to assess using conventional  
84 methods with the consent of the parent, guardian or student who has  
85 reached the age of majority, if the student meets the eligibility cri-  
86 teria set forth above. The superintendent may submit any written  
87 comments or evidence relevant to the appeal. Denial of an earlier  
88 appeal shall not prevent a new appeal under this section.

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

92 (1) documentation that the child has met the local graduation cri-  
93 teria established by the local school committee;

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

97 (3) where possible, a meaningful comparison of the student with a  
98 group of other students who passed the MCAS in the subject area of  
99 the student's appeal. In the event of an inability to identify an appro-  
100 priate set of students to enable a meaningful comparison with other  
101 students, this clause shall be waived and the superintendent may  
102 submit a portfolio of the student's work in the area of the appeal, as  
103 specified by the commissioner, sufficient to demonstrate whether the  
104 student's knowledge and skills meet or exceed the performance level  
105 established by the board of education for the competency determina-  
106 tion if the portfolio has been maintained by the school district;

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

110 (5) for children with disabilities, any additional information that  
111 the student's individual education plan team, if any, with the  
112 approval of the student's parent or guardian, requests the superinten-  
113 dent to submit indicating that the child's knowledge and skill in the  
114 subject area of the appeal meets or exceeds the performance level  
115 established by the board of education for the competency determina-  
116 tion and that the child's MCAS scores do not accurately measure the  
117 student's abilities; and

118 (6) other supporting information relevant to the determination as  
119 to whether the student's knowledge and skills in the subject area of  
120 the appeal meet or exceed the performance level established by the  
121 board of education for the competency determination, which may  
122 include work samples, scores of the child on other standardized tests  
123 in the subject area of the appeal, evidence of acceptance to college  
124 courses, or other evidence of academic achievement which demon-  
125 strates that the child meets the competency determination standard.

126 For children with disabilities, any documentation of an individual  
127 education plan team submitted in connection with an MCAS perfor-  
128 mance appeal shall not constitute a modification of the child's indi-  
129 vidual education plan under 34 C.F.R. 300.347 and is therefore not  
130 appealable to the Bureau of Special Education Appeals pursuant to  
131 34 C.F.R. 300.507(a) or Chapter 71B of the General Laws. Nothing  
132 herein shall limit or expand the rights of children with disabilities  
133 available under said Chapter 71B, IDEA or Section 504 of the Reha-  
134 bilitation Act of 1973.

135 The Commissioner of Education shall grant the appeal for a stu-  
136 dent whose performance is difficult to assess using conventional  
137 methods if there is a preponderance of evidence in the documenta-  
138 tion provided in clause (1) to (6), inclusive, the first paragraph and  
139 any other evidence submitted by the superintendent that the child's  
140 knowledge and skills in the subject area of the appeal meet or exceed  
141 the performance level established by the Board of Education for the  
142 competency determination. The Commissioner shall provide notice  
143 of the results of the appeal and, in the case of a denial, written find-  
144 ings, to the student, parents or guardian and superintendent. The  
145 Commissioner's decision on this appeal shall be final and shall not  
146 be subject to further review or appeal to any other entity; except that  
147 the regulations shall permit the superintendent to seek reconsidera-  
148 tion from the Commissioner.

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

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

158 No minimum passing score on a specific MCAS subject matter  
159 test, normally designed to be administered at a specific grade level,  
160 shall be raised unless there is no district in the state that had fewer  
161 than 90% of the children in that district pass the test during the pre-  
162 vious year, and unless there is no district that had fewer than 80% of  
163 the children who took the test and who scored a “proficient” rating  
164 or better; and

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

169 Once a student takes any version of the MCAS as part of his com-  
170 petency determination, as described in Section 1D of this Chapter,  
171 the minimum passing score for that student shall never be raised on  
172 subsequent retests and administrations of a test in that subject area  
173 for the remainder of that student’s time in the public schools even if  
174 the minimum passing score has been raised for other children; and

175 Before raising the minimum passing score on a specific MCAS  
176 subject matter test, normally designed to be administered at a spe-  
177 cific grade level, the Department must make statistically sound pro-  
178 jections on the impact of any such minimum passing score increase,  
179 and the Department may not implement such a score increase if it is  
180 projected that the increase will result in a drop in the pass rates on  
181 that test during its next administration of 1% or more statewide or of  
182 1% or more in any school district in the state.

183 The Department of Education must publish annually, at a min-  
184 imum on the Department’s website, data regarding the number of  
185 students in 12th grade in each school, each school district and  
186 statewide who have received a competency determination. Said pub-

187 lication must also include the following additional data for each  
188 school and each school district and for the state as a whole:—

189 the total number of students in each school, each school district,  
190 and statewide, who were enrolled in the Massachusetts public  
191 schools in the 8th grade, even if they subsequently transferred or  
192 dropped out; and the number of those students who went on to grad-  
193 uate from the Massachusetts public schools within 4 years; and the  
194 number of those students who subsequently transferred, to the best  
195 knowledge of the Department, to other schools, noting whether such  
196 a transfer was to another public school within the same district,  
197 another school within a different district in Massachusetts, a private  
198 school in Massachusetts, or to a school outside of Massachusetts; the  
199 number of those students who dropped out of school at any time  
200 between the 8th grade and the 12th grade; and the total number of  
201 students who were not enrolled in the Massachusetts public schools  
202 in the 8th grade but who have subsequently enrolled in the Massa-  
203 chusetts public schools.

204 No school in the Commonwealth shall solely consider MCAS  
205 scores for any decision regarding the retention of a student in a  
206 grade. The Department shall publish annually, at a minimum on the  
207 Department's website, data regarding student retention rates, mea-  
208 sured in absolute numbers and as a percentage of students enrolled at  
209 a given grade level, for all grades, at each school, and aggregated  
210 further for each school district, and for the state as a whole.