HOUSE . . . . . No. 3925

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to expand access to the MCAS appeals process.

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

SECTION 1. Notwithstanding any general or special law to the contrary, the board of elementary and secondary education shall take such action as necessary including, as appropriate, promulgating emergency regulations to modify the process governing the Massachusetts Comprehensive Assessment System, hereinafter referred to as "MCAS", performance appeals. To be eligible for a performance appeal, a student shall meet all of the following requirements: (1) for a performance appeal in mathematics or English language arts, a student shall have taken the grade 10 MCAS test in the subject area of the appeal at least two times; (2) for a performance appeal in Science and Technology/Engineering, a student shall have taken the grade 10 MCAS test in the subject area of the appeal at least once, and be currently enrolled in a Science or Technology/Engineering class or have completed the 12th grade; (3) a student shall have maintained at least a 95 per cent attendance level in the school year prior to the appeal, and in the school year of the appeal, provided that excused absences shall not count against a student's attendance level; (4) a student shall have satisfactorily participated in the tutoring and other academic support services made available by or approved by the school, provided that the superintendent may present evidence of extenuating circumstances, such as a student's disability, illness, or child care or other family responsibilities, that would justify an exemption from this requirement; and (5) a student who has submitted a portfolio assessment through the MCAS-alt without being granted a competency determination shall have taken the MCAS-alt in the subject area of appeal at least once. For both the MCAS and MCAS-alt, a separate application shall be submitted for each subject area. The commissioner may waive one or more of the aforementioned eligibility requirements, and shall provide an annual report to the board of elementary and secondary education on any such waivers, provided that the student's identity remains confidential.

The regulations shall require that all students who fail the grade 10 MCAS in one or more subject area and their parents and guardians shall be notified of the right to appeal and the right

26 to have an advocate to assist in the appeal. Said notice shall be in the most prevalent languages
27 of the district. At the request of the student's parent or guardian or the student who has reached
28 the age of sixteen, the superintendent of schools or his designee for the school district in which
29 the student is enrolled shall file an appeal. The superintendent may initiate an appeal for any
30 student with the consent of the parent, guardian or student who has reached the age of sixteen, if
31 the student meets the eligibility criteria set forth in said first paragraph. The superintendent may
32 submit any written comments or evidence relevant to the appeal. Denial of an earlier appeal shall
33 not prevent a new appeal from being filed.

34 The regulations shall require that the superintendent include in the performance appeal
35 evidence of the student's knowledge and skills in the subject at issue, including: (1) a
36 recommendation from at least one of the student's teachers in the area of appeal, assessing the
37 level of the student's knowledge and skills in the subject area at issue; (2) where possible, a
38 meaningful comparison of the student with a group of other students who passed the MCAS in
39 the subject area of the student's appeal; provided, that in the event of an inability within a
40 reasonable time, but in no event later than the calendar year in which the MCAS test was taken,
41 to identify an appropriate set of students to enable a meaningful comparison with other students,
42 this clause shall be waived and the superintendent shall submit a portfolio of the student's work
43 in the area of the appeal, as specified by the commissioner, sufficient to demonstrate whether the
44 student's knowledge and skills meet or exceed the performance level established by the board for
45 the competency determination; (3) documentation that the student's individual education plan
46 team, if any, with the approval of a parent or guardian of the student, supports the graduation of
47 the student; (4) for a student with a disability, a statement that the student has completed or is on
48 track to complete local graduation requirements during grade 12 or after; (5) any additional
49 information that the student's individual education plan team, if any, with the approval of the
50 student's parent or guardian, requests the superintendent to submit indicating that the student's
51 knowledge and skill in the subject area of the appeal meets or exceeds the performance level
52 established by the board of elementary and secondary education for the competency
53 determination and that the student's MCAS scores do not accurately measure the student's
54 abilities; and (6) other supporting information relevant to the determination as to whether the
55 student's knowledge and skills in the subject area of the appeal meet or exceed the performance
56 level established by the board of elementary and secondary education for the competency
57 determination, which may include work samples, scores of the student on other standardized
58 tests in the subject area of the appeal, evidence of acceptance to college courses, or other
59 evidence of academic achievement which demonstrates that the student meets the competency
60 determination standard.

61 The superintendent shall send the performance appeal to the commissioner of elementary
62 and secondary education, who shall review the submission to ensure that it meets requirements.
63 The commissioner of elementary and secondary education shall grant the appeal for any student
64 if there is a preponderance of evidence in the documentation provided in clause (1) to (6),

65 inclusive, the first paragraph and any other evidence submitted by the superintendent that the
66 student's knowledge and skills in the subject area of the appeal meet or exceed the performance
67 level established by the board of elementary and secondary education for the competency
68 determination. The commissioner shall provide notice of the results of the appeal to the student,
69 parents or guardian and superintendent. In the case of a denial, the commissioner shall, upon
70 request of the student or parent or guardian, provide written findings for the denial. The
71 commissioner's decision on this appeal shall be final and shall not be subject to further review or
72 appeal to any other entity; except that the regulations shall permit the superintendent, parent,
73 guardian or student to seek reconsideration from the commissioner.

74 SECTION 2. Every school district shall collect data concerning the appeals process and
75 submit this information to the department of elementary and secondary education on an annual
76 basis. The data shall include, but shall not be limited to, the total number of students who failed
77 the MCAS mathematics or English language arts subject area twice and the science and
78 technology/engineering exam once, the total number of appeals submitted in each MCAS subject
79 area, and who, if anyone, is responsible in the school district for assisting students with and filing
80 appeals.

81 The commissioner of elementary and secondary education shall compile an annual report
82 on the appeals process for the board of elementary and secondary education, which report shall
83 include, at a minimum, the total number of students who failed the MCAS mathematics or
84 English language arts subject area exam twice and the science and technology/engineering exam
85 once in each school district, the total number of appeals filed by school district by MCAS subject
86 area each school year and the disposition of each appeal submitted by school district in each
87 school year, the total number of waivers granted by school district for each eligibility
88 requirement, and an aggregate state-wide calculation of all of the aforementioned data categories.
89 Said report shall be submitted annually to the Joint Committee on Education.

90 SECTION 3. The commissioner of elementary and secondary education shall develop a
91 standard comprehensive template for superintendents to use when compiling an appeals package,
92 and shall make this template publicly available. The commissioner shall also compile a report,
93 every three years, on the best practices of the two school districts in the state with the highest
94 percentages of eligible students filing appeals and of the two school districts in the state with the
95 highest percentages of appeals granted. Said report shall be made publicly available. Said report
96 shall consider whether certain techniques or strategies employed by the district have likely
97 contributed to its high percentage of eligible students filing for appeals or its high percentage of
98 appeals granted. Multiple factors, such as methods of student outreach, dedicated staff to
99 manage and file appeals, methods of compiling portfolios, and extra assistance provided to
100 students during the appeals process, may be considered.