

Chapter 126 of the Acts of 2022
Outside Sections

**Creating Higher Education Opportunities for Students with
Intellectual Disabilities, Autism, and other Developmental Disabilities**

Section 12: Inclusive Concurrent Enrollment 4

Said chapter 15A is hereby further amended by inserting after section 30 the following section:--

Section 30A. (a) In order to ensure that individuals with severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities participate as non-matriculated students in undergraduate academic courses, internships, work-based trainings, extracurricular activities and all other aspects of campus life that include other students not participating under this section, such individuals shall not be required to: (i) take any standardized college entrance aptitude test; (ii) have a high school diploma or its equivalent; (iii) meet high school course requirements; (iv) meet minimum grade point average requirements; or (v) obtain a passing score on the statewide assessment tests utilized as a basis for competency determination under [section 1D of chapter 69](#); provided, however, that such individuals shall be eligible to participate in noncredit and credit-bearing courses in audit status in situations where such individuals do not meet course prerequisites and requirements.

(b) Public institutions of higher education, in consultation with the department of higher education, and consistent with the purposes of this section, shall establish guidelines to select students to participate in higher education pursuant to this section, including, but not limited to, guidelines addressing campus capacity regarding the number of students that may participate; provided further, that public institutions of higher education may establish guidelines that limit selection of students to individuals receiving support to participate pursuant to this section from the department of developmental services, the Massachusetts rehabilitation commission, other state agencies, or the individual's school district. An individual shall not be denied an opportunity to participate in higher education solely due to the individual's disability status. Public institutions of higher education, in consultation with the department of higher education and consistent with the purposes of this section, shall also establish course selection guidelines to ensure that participating individuals select courses that are appropriate to their individual strengths, needs, preferences and interests. Participating individuals shall be permitted to: (i) take a credit-bearing undergraduate academic course for credit if they have met the course prerequisites and requirements; or (ii) audit a credit-bearing undergraduate academic course, consistent with campus policies governing selection of students for audit participation, if they have not met the course prerequisites and requirements. Individuals participating in a public institution of higher education pursuant to this section shall have the opportunity to participate for the same number of semesters as the average number of semesters required of matriculating students to earn a degree at the institution; provided, however, that any public institution of higher education may allow an individual to participate for a longer duration to address the circumstances and needs of the individual. Nothing in this section shall require a public institution of higher education to provide course enrollment or audit preference for individuals with severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities relative to other individuals seeking to enroll in or audit a course. Nothing in this section shall require a public institution of higher education to include individuals

with severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities in graduate programs and courses, programs and courses with selective admission or continuing education courses.

(c) In order to support inclusion of participating students in academic courses, extracurricular activities and other aspects of campus life, individual supports and services shall be provided to individuals participating in higher education pursuant to this section, subject to availability of sufficient public or private funds, including, but not limited to, the Massachusetts Inclusive Concurrent Enrollment Initiative Trust Fund established pursuant to [section 2VVVVV of chapter 29](#); provided, however, that a public institution of higher education shall not be required to bear the costs of individual supports and services that exceed the kind of supports and services generally provided by the public institution of higher education; provided further, that public institutions of higher education may limit selection and participation to individuals receiving supports and services from the department of developmental services, the Massachusetts rehabilitation commission, other state agencies, or the individual's school district pursuant to this section. Costs associated with supporting participation in public institutions of higher education under this section shall be: (i) an approved expense as a special education service pursuant to [section 5 of chapter 71B](#) and shall be considered secondary school education; provided, however, that a student's participation in higher education is addressed in the student's Individualized Education Program under [section 3 of said chapter 71B](#) for students ages 18 to 21 years old, inclusive; provided further, that such student is considered to have a severe intellectual disability, a severe autism spectrum disorder or other severe developmental disability; provided further, that in the case of students who are age 18 or 19, participation shall be limited to students who have been unable to obtain a passing score on the statewide assessment tests utilized as a basis for competency determination under [section 1D of chapter 69](#); provided further, that in the case of students ages 20 or 21, participation shall be limited to students who have been unable to obtain a passing score on the statewide assessment tests utilized as a basis for competency determinations under said [section 1D of said chapter 69](#) or who have already been determined eligible for special education and have also been determined by the Individualized Education Program team to have severe functional delays impacting independent living, communication or behavioral skills resulting in skills that are significantly below chronological age; and provided further, that nothing in this section shall impose an additional cost on a school committee beyond the cost of what is required under said [chapter 71B](#) or [20 U.S.C. 1400 et seq.](#); (ii) subject to the availability of federal funding and appropriation provided under [section 74 of chapter 6](#) for individuals who are determined eligible for vocational rehabilitation services; provided, however, that access to higher education assists in the attainment of an identified employment goal, as determined by the Massachusetts rehabilitation commission, consistent with all applicable regulations and subject to the development of an individualized plan for employment; or (iii) subject to appropriation, for individuals 22 years of age or older who are determined eligible for services under [chapter 19B](#); provided, however, that the individual supports and services are determined to be an appropriate support, of the type, frequency and duration identified in an assessment conducted by the department of developmental services, and subject to the development of an annual individual support plan; provided further, that services and supports shall be provided in consultation with a school district, department of developmental services, Massachusetts rehabilitation commission, or other public agencies if such agencies are supporting the individual participating in the

program. Costs of participation may be covered by any other public or private sources available to the student; provided, however, that selection of individuals participating in higher education pursuant to this section shall not be based solely on whether payment sources are public or private. The planning, implementation, coordination, staffing, administrative and other related costs to support participation shall be covered by the Massachusetts Inclusive Concurrent Enrollment Initiative Trust Fund established pursuant to [section 2VVVVV of chapter 29](#) or the grant program established pursuant to [section 17 of chapter 71B](#) or other public or private funding sources.

(d) Individuals participating under this section shall be required to follow the public institution of higher education's student behavioral policies, including the student code of conduct and anti-discrimination and sexual violence policies; provided, however, that the public institution of higher education shall provide such policies in accessible formats and shall provide reasonable accommodations for participating individuals in any process instituted thereunder.

(e) Nothing in this section shall impose any liability against any school district or any public institution of higher education, including trustees, officers, administrators or employees of the school district or public institution of higher education.

(f) Nothing in this section shall create or impose a specific duty of care nor shall this section create or impose a private right of action against any school district or any public institution of higher education, including trustees, officers, administrators or employees of a school district or public institution of higher education.

(g) Annually, not later than September 1, each institution of higher education shall file a report with the department of higher education, the joint committee on higher education, the joint committee on education, the senate and house committees on ways and means and the clerks of the senate and the house of representatives regarding participation of individuals with severe intellectual disabilities, severe autism spectrum disorder, and other severe developmental disabilities pursuant to this section. The report shall include, but not be limited to: (i) data detailing the number of students participating pursuant to this section each semester, including, but not limited to gender, race and ethnicity of the students; (ii) a list of all courses taken by participating students during the academic year, indicating whether the students audited the course or participated in the course for credit; (iii) a list of extracurricular activities, internships, clubs and other activities in which such students participate during the academic year; (iv) a summary of innovative strategies and practices implemented at each institution of higher education that foster relationships with school districts, the department of developmental services, the Massachusetts rehabilitation commission and other public agencies; (v) employment data for students participating pursuant to this section obtained to the best of the ability of institutions of higher education; and (vi) any relevant information regarding successful outcomes or challenges the institution experienced in the academic year. The department shall review the reports and shall take steps necessary to ensure the institution is including individuals pursuant to this section. The reports may be used to enhance constructive conversations between the department and institutions of higher education that contribute to developing a full understanding of best practices in implementing this section. The department may also choose to

refer any report to the secretary of education for further analysis in order to further improve implementation of this section.

Section 22: Commonwealth Taxpayer Relief Fund

Said [chapter 29](#) is hereby further amended by inserting after section 2SSSSS the following 7 sections:-

. . . Section 2VVVVV. (a) There shall be a Massachusetts Inclusive Concurrent Enrollment Initiative Trust Fund that shall be administered by the commissioner of higher education, in consultation with the executive office of education. The fund shall consist of: (i) amounts credited to the fund from any appropriations, grants, gifts or other money authorized by the general court or another party and specifically designated to be credited to the fund; and (ii) any income derived from the investment of amounts credited to the fund. Any unexpended balance in the fund at the end of a fiscal year shall not revert to the General Fund and shall be available for expenditure in the subsequent fiscal year.

(b) All amounts credited to the fund shall be used without further appropriation to make grants to support public institutions of higher education providing access to inclusive higher education opportunities to students with severe intellectual disabilities, severe autism spectrum disorder or other severe developmental disabilities pursuant to [section 30A of chapter 15A](#).

(c) Annually, not later than October 1, the commissioner shall report to the clerks of the senate and house of representatives, the joint committee on higher education and the senate and house committees on ways and means on the activities of the fund.

Section 35: Inclusive Concurrent Enrollment 6

[Section 2 of chapter 71B](#) of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

Students who are 18 to 21 years old, inclusive, have severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities and are receiving special education services may also have program options offered by an institution of higher education including, but not limited to, participation in credit and noncredit courses that include students who are not participating under [section 30A of chapter 15A](#), development of independent living skills, development of skills necessary for employment and development of skills to access community services. Participation of such students in institutions of higher education under this section shall be considered an approved expense as a special education service pursuant to section 5 and shall be considered secondary school education; provided, however, that this service is addressed in the student's Individualized Education Program under section 3 of this chapter.

Section 36: Inclusive Concurrent Enrollment 7

Said [chapter 71B](#) is hereby amended by adding the following section:-

Section 17. (a) Subject to appropriation, the department of higher education shall develop and administer a discretionary grant program, which shall include planning and implementation grants, to provide money to school committees and public institutions of higher education partnering to offer inclusive concurrent enrollment options for school aged individuals who are 18 to 21 years old, inclusive, and have severe intellectual disabilities, severe autism spectrum

disorders or other severe developmental disabilities. The program shall be limited to individuals who: (i) are 18 or 19 years old and have: (A) a severe intellectual disability, severe autism spectrum disorder or other severe developmental disability; and (B) been unable to achieve the competency determination necessary to pass the statewide assessment test pursuant to [section 1D of chapter 69](#) or have been determined by the Individualized Education Program team to have severe functional delays impacting independent living, communication or behavioral skills resulting in skills that are significantly below chronological age; or (ii) are 20 or 21 years old and have: (A) a severe intellectual disability, severe autism spectrum disorder or other severe developmental disability; and (B) been unable to obtain a passing score on the statewide assessment tests utilized as a basis for competency determination under said [section 1D of said chapter 69](#) or have been determined by the Individualized Education Program team to have severe functional delays impacting independent living, communication or behavioral skills resulting in skills that are significantly below chronological age; and (C) public institutions of higher education may also include students with severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities over the age of 21 who have been unable to obtain a passing score on the statewide assessment tests utilized as a basis for competency determination under said [section 1D of said chapter 69](#); provided however, for individuals over the age of 21 public institutions of higher education may limit participation to students receiving support from the department of developmental services, the Massachusetts rehabilitation commission, or other state agencies pursuant to this section.

(b) The grant program shall enable school districts to partner with public institutions of higher education to assist in meeting the transitional needs of eligible students pursuant to subsection (a), which shall include facilitating transition from school to post-school activities and competitive employment. Operation of the grant program shall be focused on improving academic and functional achievement for students in accordance with the federal Individuals with Disabilities Education Act.

(c) The grant program shall allow participation of any relevant state agency or other entity serving students with severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities, including, but not limited to, the department of developmental services, the Massachusetts rehabilitation commission or any other vocational rehabilitation agency or organization supporting student academic success, in partnership to support participation in student life of the college community and competitive employment.

(d) The grant program shall support partnerships that offer: (i) access to inclusive higher education opportunities pursuant to [section 30A of chapter 15A](#); (ii) participation in credit-bearing or non-credit courses that include students without disabilities, including participation in credit-bearing courses in audit status for students who do not meet course prerequisites; (iii) participation in on-campus student life activities; (iv) preparation for competitive employment; (v) a waiver of tuition for courses by the public institution of higher education; (vi) the provision of supports and services necessary to facilitate a student's participation in higher education pursuant to said [section 30A of said chapter 15A](#) and support inclusion in academic courses, extracurricular activities, internships, work experiences and other aspects of the institution's postsecondary program; (vii) education, training and technical assistance for teachers, faculty and other personnel regarding strategy and teaching methodology to achieve successful inclusion

of individuals with severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities; (viii) full inclusion of students with severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities with other students not participating under said [section 30A of said chapter 15A](#) in all aspects of higher education including, but not limited to, academic and social activities; and (ix) person-centered planning in the development of the course of study for each participating student. Partnerships with institutions of higher education that offer dormitory living may also include opportunities for students with severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities to live in residential housing offered to other students not participating under said [section 30A of said chapter 15A](#); provided further, that public institutions of higher education may limit participation in residential housing to individuals receiving supports and services from the department of developmental services, the Massachusetts rehabilitation commission, other state agencies, or the individual's school district pursuant to this section.

(e) The department of higher education shall establish an inclusive concurrent enrollment advisory board to advise the department on efforts to implement inclusive concurrent enrollment and to participate in educational outreach efforts related to inclusive concurrent enrollment. The advisory board shall include the following members or their designees, who shall serve without compensation: the commissioner of higher education, who shall serve as co-chair; the commissioner of developmental services, who shall serve as co-chair; the secretary of education; the inclusive concurrent enrollment coordinator; the commissioner of elementary and secondary education; the commissioner of the Massachusetts rehabilitation commission; a representative from the University of Massachusetts as appointed by the president of the university; a representative of the state universities as appointed by the Council of Presidents of the Massachusetts State University System; a representative of the community colleges as appointed by the Massachusetts Association of Community Colleges; a member appointed by the Massachusetts Administrators for Special Education; a member appointed by the Massachusetts Association of School Committees, Inc.; a member appointed by the Massachusetts Association of School Superintendents, Inc.; a member appointed by the Massachusetts Advocates for Children, Inc.; a member appointed by the Federation for Children with Special Needs, Inc.; a member appointed by the Institute for Community Inclusion; a member appointed by the Massachusetts Down Syndrome Congress, Inc.; a member appointed by the Advocates for Autism of Massachusetts; 2 representatives of school districts and public institutions of higher education that have successfully implemented inclusive concurrent enrollment initiatives, to be appointed by the co-chairs; and 2 students who are participating or have participated in an inclusive concurrent enrollment program, to be appointed by the co-chairs. The advisory board shall meet not less than quarterly. If an inclusive concurrent enrollment coordinator is not designated pursuant to subsection (f), the commissioner of higher education shall select an alternative appointee.

(f) Subject to appropriation, the commissioner of higher education shall designate an inclusive concurrent enrollment coordinator to manage grant administration and coordinate reporting.

(g) Annually, not later than December 1, the department of higher education shall file a report on the status of the inclusive concurrent enrollment grant program established pursuant to

subsection (a) with the joint committee on education, the joint committee on higher education and the senate and house committees on ways and means. The report shall include, but not be limited to: (i) enrollment data detailing the number of students enrolled in the inclusive concurrent enrollment program each semester, including the count of total students served by the inclusive concurrent enrollment program at each institution of higher education; (ii) a list of all full-time and part-time employment positions supported by the grant program that are dedicated to supporting students participating in the inclusive concurrent enrollment program and the average salary for those positions including, but not limited to: (A) educational coaches; (B) educational specialists; (C) job coaches and vocational specialists; (D) program specialists; (E) program directors; (F) peer mentors, note-takers and tutors; (G) contracted employees; and (H) parent and school committee liaisons; (iii) a list of all courses taken by students participating in the inclusive concurrent enrollment program during the academic year indicating whether the student audited the course or participated in the course for credit and whether the student completed the course; (iv) a summary of innovative strategies and practices implemented at each institution of higher education that helped foster relationships with school committees; (v) employment data for students participating in the inclusive concurrent enrollment program, obtained to the best of the ability of participating school committees and institutions of higher education; and (vi) the total funding received for the program, including amounts allocated to each grantee and any executive agency or participating state board, department or institute of higher education.

Section 165: Inclusive Enrollment 8

(a) The inclusive concurrent enrollment advisory board established in subsection (e) of [section 17 of chapter 71B](#) of the General Laws shall convene a task force to evaluate, develop and pilot mechanisms to support institutions of higher education offering opportunities, pursuant to [section 30A of chapter 15A](#) of the General Laws, to include individuals with severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities over the age of 21. The evaluation shall include, but not be limited to, an assessment of the: (i) needs relating to housing, employment, health care, mental health care, transportation and social and leisure opportunities of participating individuals over the age of 21; (ii) type, frequency and duration of support that will be required to support public higher education opportunities for participating individuals over the age of 21; (iii) costs associated with supporting higher education opportunities at public higher education institutions for participating individuals over the age of 21; and (iv) the programs, services, and support available through public institutions of higher education, the department of higher education, the department of developmental disabilities, the Massachusetts Rehabilitation Commission and other public agencies to provide supports identified as necessary and appropriate to support participants over the age of 21 in accordance with said [section 30A of said chapter 15A](#); (v) opportunities available to maximize federal financial participation through Medicaid and federal financial aid to include individuals with severe intellectual disabilities, severe autism spectrum disorders or other severe developmental disabilities who are over the age of 21; (vi) proposals for any additional legislation and regulation that may be necessary to further define terms, facilitate and advance the offering of inclusive opportunities at institutions of public higher education. The task force shall convene not later than November 30, 2022.

(b) The task force shall file a report containing the results of its study and shall make

recommendations to the inclusive concurrent enrollment advisory board, the clerks of the senate and house of representatives, the joint committee on higher education and the senate and house committees on ways and means not later than April 15, 2023.

Section 168: Inclusive Enrollment 9

The department of higher education and the department of elementary and secondary education, in consultation with the inclusive concurrent enrollment advisory board, the executive officer of the Council of Presidents of the Massachusetts State University System, the president of the University of Massachusetts and the executive director of the Massachusetts Association of Community Colleges, shall issue regulations to implement [section 17 of chapter 71B](#) of the General Laws not later than March 31, 2023.