

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey Sánchez

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 Relative to Enhancing English Opportunities For All Students in the Commonwealth .

PETITION OF:

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 542 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO ENHANCING ENGLISH OPPORTUNITIES FOR ALL STUDENTS IN THE COMMONWEALTH .

*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 1I of chapter 69 of the General Laws, is hereby amended by striking out the
2 thirteenth paragraph and inserting in place thereof the following paragraph:

3 Each school district required to provide an English language learners program under chapter 71A
4 shall file the following information with the department annually:

5 (a) the type of English language learners programs provided;

6 (b) with regard to limited English proficient students (i) the number enrolled in each type of English
7 language learners program; (ii) the number enrolled in English as a second language who are not
8 enrolled in another English language learners program; (iii) the results of basic skills, curriculum
9 assessment, achievement and language proficiency testing, whether administered in English or in the
10 native language; (iv) the absentee, suspension, expulsion, dropout and promotion rates; and (v) the
11 number of years each limited English proficient student has been enrolled in an English language
12 learners program;

13 (c) the number of students each year who have enrolled in institutions of higher education and
14 were formerly enrolled in an English language learners program;

15 (d) the academic progress in regular education of students who have completed an English
16 language learners program;

17 (e) for each limited English proficient student receiving special education, the number of years in
18 the school district prior to special education evaluation and the movement in special education
19 programs by program placement;

20 (f) the number of limited English proficient students enrolled in programs of occupational or
21 vocational education;

22 (g) the name, national origin, native language, certificates held, language proficiency, grade levels
23 and subjects taught by each teacher of an English language learners program, bilingual aides or
24 paraprofessionals, bilingual guidance or adjustment counselors and bilingual school psychologists;

25 (h) the per pupil expenditures for each full time equivalent student enrolled in an English language
26 learners program;

27 (i) the sources and amounts of all funds expended on students enrolled in English language learners
28 programs, broken down by local, state and federal sources, and whether any such funds expended
29 supplanted, rather than supplemented, the local school district obligation; the participation of parents
30 through parent advisory councils; and

31 (j) whether there were any complaints filed with any federal or state court or administrative
32 agency, since the program's inception, concerning the compliance with federal or state minimum legal
33 requirements; the disposition of such complaint and the monitoring and evaluation of any such
34 agreement or court order relative to such complaint.

35 SECTION 2. Said section 1I of said chapter 69, as so appearing, is hereby further amended by adding
36 the following paragraph:

37 The commissioner annually shall analyze and publish data reported by school districts under this
38 section regarding English language learners programs and limited English proficient students.
39 Publication shall include, but need not be limited to, availability on the department's worldwide web
40 site. The commissioner shall submit annually a report to the joint committee on education, arts and
41 humanities on such data on a statewide and school district basis, including, but not limited to, by
42 language group and type of English language learners program.

43 SECTION 3. The fifth paragraph of said section 59C of said chapter 71, as so appearing, is hereby
44 amended by inserting after the fourth sentence the following sentence: In school districts with language
45 minority student populations, the plan to improve student performance shall include a description of
46 the opportunities to be provided by the school to ensure the progress of limited English proficient
47 students in developing oral comprehension, speaking, reading and writing of English, and also in
48 meeting academic standards and curriculum frameworks established under sections 1D and 1E of
49 chapter 69.

50 SECTION 4. Chapter 71A, as appearing in the 2006 Official Edition, is hereby amended by striking out
51 section 1, and inserting in place thereof the following section:

52 Section 1. As used in this chapter, the following words shall, unless the context requires otherwise,
53 have the following meanings:

54 "Academic standards", academic standards established under section 1D of chapter 69 of the
55 General Laws.

56 "Commissioner", the commissioner of education.

57 "Curriculum frameworks", curriculum frameworks established under section 1E of chapter 69 of the
58 General Laws.

59 "Department", the department of education.

60 "English as a second language", a part-time program supporting the development of English language
61 and skills for limited English proficient students transitioning or assigned to regular education classes.

62 "English language learners program", any of the following, or any combination hereof: transitional
63 bilingual education, two-way bilingual education, structured English immersion, English as a second
64 language, or other full time innovative program designed to accelerate English language proficiency and
65 academic achievement approved by the department under section 2A.

66 "Limited English proficient student", (1) a student who was not born in the United States whose
67 native language is other than English and who is not able to perform ordinary class work in English; or
68 (2) a student who was born in the United States of non-English speaking parents and who is not able to
69 perform ordinary class work in English.

70 "Office of language acquisition", the office of language acquisition established in section 1A of
71 chapter 69.

72 "Modified bilingual-world language bilingual education", a fulltime program of whole school
73 instruction for limited English proficient students and fully English proficient students that incorporates
74 both the language and the culture of the language minority group to include it in all aspects of the
75 school curricula in an English speaking classroom where teachers are trained in English as a second
76 language techniques.

77 "Structured English immersion", a fulltime program of academic instruction and English language
78 learning for limited English proficient students in which primarily English is the medium of classroom
79 instruction and the native language of such student is used for support and clarification.

80 "Transitional bilingual education", a fulltime program of instruction (1) in all those courses or
81 subjects which are required by the student's school district which shall be given in the native language
82 of the limited English proficient students who are enrolled in the program and also in English, (2) in the
83 reading and writing of the native language of the limited English proficient students who are enrolled in
84 the program and in the oral comprehension, speaking, reading and writing of English, and (3) in the
85 history and culture of the country, territory or geographic area which is the native land of the parents of
86 the limited English proficient students who are enrolled in the program and in the history and culture of
87 the United States.

88 "Two-way bilingual education", a fulltime program in which the curriculum is structured so that
89 limited English proficient students of the same language group and fully English proficient students
90 develop full literacy in 2 languages by being taught in the same classroom in which the medium of
91 instruction is both English and the language of the limited English proficient students.

92 SECTION 5. Said chapter 71A, as so appearing, is hereby further amended by striking out section 2
93 and inserting in place thereof the following section:

94 Section 2. Each school district shall determine annually, not later than the first day of March, under
95 regulations promulgated by the department, the number of limited English proficient students within
96 their school system in grades kindergarten through 12. At the beginning of any school year, the school
97 committee shall establish a policy requiring that the district offer at least 1 English language learners
98 program for all limited English proficient students. Every school district shall assess, using uniform
99 assessment instruments prescribed by the department, the language dominance, level of English
100 proficiency, and ability to perform regular education classroom work in English of a newly enrolled
101 student who may be of limited English proficiency and the academic level of such student, for the
102 purpose of placing the student in an English language learners program. Every limited English proficient
103 student enrolled in a public school system shall participate in an English language learners program
104 established by the school district in which the student resides, unless the parents or legal guardian of
105 the student decide otherwise in accordance with section 3. An English language learners program shall
106 consist of any of the following, or any combination thereof: transitional bilingual education, two-way
107 bilingual education, structured English immersion, English as a second language, or other innovative
108 program designed to accelerate English language proficiency approved by the department under section
109 2A. No school district with 20 or more limited English proficient students in any 1 language group may
110 offer only English as a second language.

111 In any school district with 50 or more limited English proficient students in any 1 language group
112 at the elementary school level, the school committee shall establish a policy requiring that the district
113 offer at least 2 full time English language learners programs for those students. In any school district
114 with 50 or more limited English proficient students in any 1 language group at the middle school level,
115 the school committee shall establish a policy requiring that the district offer at least 2 fulltime English
116 language learners programs for those students. In any school district with 50 or more limited English
117 proficient students in any 1 language group at the high school level, the school committee shall establish
118 a policy requiring that the district offer at least 2 fulltime English language learners programs for those
119 students. The policy shall be consistent with the school district's course enrollment standards. In
120 determining the types of English language learners programs to be offered, the policy determination of
121 the school committee shall reflect that strong consideration was given to the programs requested by the
122 parents or legal guardians of limited English proficient students.

123 SECTION 6. Said chapter 71A is hereby further amended by inserting after section 2 the following two
124 sections:

125 Section 2A. At least once every 3 years, each school district with any limited English proficient
126 students shall submit a district plan to the commissioner for approval in accordance with regulations
127 promulgated by the department. The office of language acquisition shall make recommendations to the
128 commissioner on whether any such plan shall be approved. The district shall provide any limited English
129 proficient student with an appropriate English language learners program to assist such student in
130 becoming proficient in using the English language and to enable the student to participate effectively in
131 the district's regular or advanced educational programs and extracurricular activities. To the extent
132 practical, districts shall make available reasonable enrichment opportunities for interested limited
133 English proficient students, either during or outside the regular school day, including, but not limited to,
134 as part of an English language learners program or through foreign language courses or after school
135 programs, to help them maintain their native language skills. The district plan shall define and address
136 all elements and goals of the program or programs to be chosen by the district. Prior to developing a
137 district plan, the district shall notify parents or legal guardians of limited English proficient students
138 within the district that such a plan is being developed, and shall involve such parents or legal guardians
139 in the development and review of such plan.

140 In a school district with 20 or more limited English proficient students in any 1 language group, the
141 district plan shall include, but not be limited to, the following:

142 (1) A description of programs and services currently being provided by the district to limited English
143 proficient students.

144 (2) A description of the range of English language learners programs and services the district will
145 make available to all limited English proficient students with a rationale for each option proposed, and a
146 justification for any proposed changes in existing programs and services.

147 (3) A description of the opportunities the district will make available to limited English proficient
148 students for instruction in maintaining or developing proficiency in their native language, including, but
149 not limited to, as part of an English language learners program or through foreign language classes or
150 after school programs.

151 (4) A description of how English language learners programs or services will be provided to ensure
152 that a student has the opportunity to: (a) become proficient in using the English language for oral
153 communication and literacy in English; (b) master curriculum content according to the district's
154 curriculum guidelines, state academic standards and curriculum frameworks; and (c) be able to
155 participate in the district's regular or advanced educational programs and extracurricular activities.

156 (5) A description of the qualifications and certification status of all staff who will provide English
157 language learners programs and services to limited English proficient students.

158 (6) A description of the uniform assessment instruments, prescribed by the department, to be
159 utilized by the district to determine the language dominance, level of English proficiency and ability to
160 perform regular education classroom work in English of a newly enrolled student who may be of limited
161 English proficiency and the academic level of such student, for the purpose of placing such student in a
162 program established under this chapter. Such description shall include the qualifications of staff
163 administering such assessments.

164 (7) A description of how the student's oral comprehension, speaking, reading and writing of English
165 will be assessed annually by qualified personnel, using uniform assessment instruments prescribed by
166 the department, and how these assessments will be used in conjunction with other evaluation
167 information to determine when the student has achieved a level of English language proficiency that will
168 enable the student to perform regular education class work.

169 (8) A description of how the school district will evaluate the effectiveness of English language
170 learners programs and services provided to limited English proficient students in terms of helping such
171 students attain English language proficiency and master academic standards and curriculum
172 frameworks.

173 (9) A description of the measures that will be used to ensure that former limited English proficient
174 students in regular education classrooms have the opportunity to continue their progress in all areas of
175 the curriculum, including compliance with the academic standards and curriculum frameworks.

176 (10) A description of the measures that will be used to ensure that limited English proficient
177 students whose parents or legal guardians have chosen to enroll them in a regular education classroom
178 and not in an English language learners program will be provided the opportunity to continue to

179 progress in all areas of the curriculum, including compliance with the academic standards and
180 curriculum frameworks.

181 (11) A description of the training to be provided for all staff in working with culturally and
182 linguistically diverse student populations. Such description shall also include a staff development plan
183 that describes how the district will build capacity among all staff in the school district to serve limited
184 English proficient students.

185 (12) A description and documentation of how principals, teachers, parents or legal guardians of
186 limited English proficient students, parent advisory councils and the general public were included in the
187 development and review of the district plan.

188 (13) A description of how parents or legal guardians of limited English proficient students will be
189 informed when it is determined through assessments prescribed by the department that their child can
190 participate fully in the English language curriculum without native language or other language support
191 services.

192 (14) A description of how parents or legal guardians of limited English proficient students will be
193 provided the opportunity to continue to remain involved in English language learners programs.

194 In a school district with fewer than 20 limited English proficient students in any 1 language group, the
195 district plan shall include, but not be limited to, the following:

196 (1) A description of the programs and services currently being provided by the district to limited
197 English proficient students.

198 (2) A description of the range of English language learners programs and services the district will
199 make available to all limited English proficient students with a rationale for each option proposed, and a
200 justification for any proposed changes in existing programs and services.

201 (3) A description of the qualifications and certification status of all staff who will provide English
202 language learners programs and services to limited English proficient students.

203 (4) A description of the uniform assessment instruments, prescribed by the department, to be
204 utilized by the district to determine the language dominance, level of English proficiency, and ability to
205 perform regular education classroom work in English of a newly enrolled student who may be of limited
206 English proficiency and the academic level of such student, for the purpose of placing such student in an
207 English language learners program. Such description shall include the qualifications of staff
208 administering such assessments.

209 (5) A description of how the student's oral comprehension, speaking, reading and writing of English
210 will be assessed annually by qualified personnel, using uniform assessment instruments prescribed by
211 the department, and how these assessments will be used in conjunction with other evaluation
212 information to determine when the student has achieved a level of English language proficiency that will
213 enable the student to perform regular education class work.

214 A district plan shall be valid for 3 years. In the third year, a school district shall submit an updated
215 district plan to the commissioner for approval in the manner provided herein for submission of a district
216 plan. In addition to the requirements of this section for a district plan, the updated district plan shall also
217 include documentation evidencing the academic outcomes for limited English proficient students served
218 under the prior district plan.

219 In a school district with 20 or more limited English proficient students in any 1 language group, no
220 district plan or updated district plan shall be submitted to the commissioner until after a public hearing,
221 with due notice to interested parties, has been held on such plan. The district shall make any such plan
222 available for public inspection at least 10 days prior to any public hearing. Due notice shall include
223 notification published in a newspaper of general circulation in the district, and other reasonable steps to
224 notify parents of limited English proficient students within the district and other interested parties of
225 such hearing, not less than 15 days prior to any such hearing. Any such notification shall include a brief
226 description of the plan, the date, time and place of the hearing, and shall indicate the place where the
227 plan is available for public inspection. Notices to parents or legal guardians of limited English proficient
228 students required by this section shall, to the maximum extent possible, be in a language
229 understandable by the parents or legal guardians.

230 If the commissioner determines that a district is not in compliance with this section, or that a district
231 plan cannot be approved as submitted, the office of language acquisition shall provide advice and
232 technical assistance to the district and shall set a date certain for the submission of a revised district
233 plan. Regulations promulgated by the department to implement this chapter shall include, but not be
234 limited to, measures to deal with districts that fail to submit district plans, or that submit district plans
235 that the commissioner does not approve.

236 The district shall send report cards and progress reports, including, but not limited to, progress in
237 becoming proficient in using the English language, and other school communications to the parents or
238 legal guardians of students enrolled in English language learners programs in the same manner and
239 frequency as report cards and progress reports of other students enrolled in the district. The reports
240 shall, to the maximum extent possible, be written in a language understandable to the parents and legal
241 guardians of such students.

242 Limited English proficient students in any English language learners program shall be taught to the
243 same academic standards and curriculum frameworks as all students, and shall be provided the same
244 opportunities to master such standards and frameworks as other students. Districts shall regularly
245 assess mastery of academic standards and curriculum frameworks; provided, that such assessments may
246 be conducted in a language other than English so long as the student remains in an English language
247 learners program.

248 In order to encourage innovation and best practices, school districts may develop innovative
249 programs designed to accelerate English language proficiency. Any such program shall provide limited
250 English proficient students with the opportunity to develop oral comprehension, speaking, reading, and
251 writing of English and to meet academic standards and curriculum frameworks.

252 Such programs may include, but not be limited to, modified bilingual world language bilingual
253 education. All such programs shall be submitted to the department for review and approval. The office
254 of language acquisition shall review and make recommendations on all such programs.

255 The office of educational quality and accountability shall conduct onsite visits to school districts with
256 approved district plans, established under this section, at least once every 5 years for the purpose of
257 evaluating the effectiveness of such plan and to validate evidence of educational outcomes.

258 The evaluation shall include, but not be limited to, a review of individual student records of all
259 limited English proficient students, a review of the programs and services provided to limited English
260 students to determine if they are in accordance with the district plan, and a review of the drop out rate

261 of limited English proficient students formerly enrolled in the district's English language learners
262 program or programs within the prior 3 years.

263 In the event a review and evaluation undertaken under this section demonstrates that a district is
264 substantially out of compliance with the district plan, or is failing to adequately improve educational
265 outcomes for limited English proficient students enrolled in English language learners programs, the
266 commissioner may recommend to the board of education that any school within the district be declared
267 underperforming under sections 1J and 1K of chapter 69.

268 Section 2B. School districts shall assess annually all limited English proficient students in the oral
269 comprehension, speaking, reading, and writing of English by means of English proficiency uniform
270 assessment instruments intended for limited English proficient students, which have been prescribed by
271 the department. Except as provided in this section, any limited English proficient student may remain in
272 an English language learners program for a period of 2 years, or until such time as the student achieves a
273 level of English language proficiency that will enable the student to perform successfully in classes in
274 which instruction is given only in English as determined by scores on English proficiency assessments as
275 set forth in this section, whichever occurs first. Only full-day kindergarten shall be counted toward the
276 time limitations set forth in this section. School districts shall develop an intensive English learning
277 success plan for any limited English proficient student whom the district determines fails to achieve
278 scores on English proficiency assessments that, in the determination of the department, reflect
279 sufficient progress toward achieving English language proficiency following the student's first year in any
280 English language learners program. Any such plan shall be developed with the participation and
281 approval of the student's parents or legal guardian. The plan shall concentrate on the needs of the
282 student to master English language literacy skills and shall specify such instruction or services as
283 intensive English classes, intensive tutoring, after or before school programs, summer programs, literacy
284 mentoring, and other academic supports that will assist the student in the rapid acquisition of English
285 necessary to access academic standards and curriculum frameworks at grade level. Any student who
286 fails to achieve scores on English proficiency assessments that, in the determination of the department,
287 reflect sufficient proficiency that will enable the student to perform successfully in classes in which
288 instruction is given only in English, may remain in such intensive plan for up to 1 additional year, with
289 the approval of the student's parents or legal guardian.

290 Any limited English proficient student enrolled in a two-way bilingual education program who has
291 achieved sufficient scores on English proficiency assessments that, in the determination of the
292 department, reflect a level of English proficiency appropriate to the student's grade level, may remain
293 enrolled in such programs for longer than 3 years.

294 If later evidence suggests, as determined by the school district, that a limited English proficient
295 student transferred from an English language learners program to a regular education program prior to
296 his third year in such English language learners program is still disadvantaged by a lack of English
297 proficiency and may benefit from being reenrolled, under an intensive English learning success plan, in
298 an English language learners program offered by the district, such student, with the approval of the
299 student's parents or legal guardian, may be so reenrolled for a length of time equal to that which
300 remained at the time he was transferred.

301 Nothing in this chapter shall be construed to prohibit, limit, restrict or prevent, an educational
302 agency, as defined in 20 U.S.C. 1720 from complying with the provisions of 20 U.S.C. 1703 (f).

303 In the event of any conflict between this chapter and an individual educational plan developed for a
304 school age child with a disability under chapter 71B, the provisions of such plan shall prevail.

305 SECTION 7. Said chapter 71A, as so appearing, is hereby further amended by striking out section 3,
306 and inserting in place thereof the following section: -

307 Section 3. School districts shall notify, in writing, the parents or legal guardian of a limited English
308 proficient student of the English language learners program that are available within the district, and
309 shall recommend a specific program for the student. Such notice shall be sent by mail not later than 10
310 days after the enrollment of the student in the school district. The notice shall contain a simple, non
311 technical description of the purposes, method and content of the various programs, reasons for the
312 school district's recommendation of a specific program, and shall inform the parents or legal guardian
313 that they have the right to visit English language learners program classes in the school district, and to
314 come to the school for a conference to explain the nature of the various English language learners
315 programs. The notice shall further inform such parents or legal guardian that they have the absolute
316 right, if they so desire, to choose any English language learners program for the student from among
317 those provided by the school district, to prevent the student from being placed in an English language
318 learners program, or to withdraw the student from a program, in the manner as hereinafter provided in
319 this section. The notice shall also inform such parents or legal guardian of the existence of any parent
320 advisory council established within the district under this section. Any such notice shall be written in
321 English and in the language of which the parents or legal guardians so notified possesses a primary
322 speaking ability.

323 In any case where a district recommends that a student be placed in an English language learners
324 program, the parents or legal guardian of such student shall have the right, either at the time of the
325 original notification under this section, or at the close of any marking period thereafter, to choose an
326 English language learners program for the student from among those provided by the school district, to
327 prevent the student from being placed in an English language learners program, or to withdraw the
328 student from such program by sending written notice of such decision by mail to the school authorities
329 of the school district in which the student is enrolled. Such written notice shall be sent not later than 10
330 school days after receipt of the notice sent by the school district, under this section. In the case of a
331 student who is to be withdrawn from an English language learners program, the written notice shall be
332 sent not later than 10 school days after the close of any marking period.

333 Each school district operating an English language learners program or programs for 20 or more
334 limited English proficient students in any 1 language group shall establish a parent advisory council. The
335 parent advisory council shall be comprised of parents or legal guardians of students who are enrolled in
336 English language learners programs within the district. Each parent advisory council shall have at least 1
337 representative from every language group in which a program is conducted in a given district.
338 Membership shall be restricted to parents or legal guardians of students enrolled in English language
339 learners programs within the district. The duties of the parent advisory council shall include, but not be
340 limited to, advising the school district on matters that pertain to the education of students in English
341 language learners programs, meeting regularly with school officials to participate in the planning,
342 development, implementation, and evaluation of the district plan required by this chapter, and to
343 participate in the review of school improvement plans established under section 59C of chapter 71 as
344 they pertain to limited English proficient students. Any parent advisory council may, at its request, meet
345 at least once annually with the school council. The parent advisory council shall establish by-laws
346 regarding officers and operational procedures. In the course of its duties under this section, the parent

347 advisory council shall receive assistance from the director of English language learners programs for the
348 district or other appropriate school personnel as designated by the superintendent.

349 SECTION 8. Said chapter 71A, as so appearing, is hereby further amended by striking out section 4, and
350 inserting in place thereof the following section: -

351 Section 4. A school district may allow a nonresident limited English proficient student to enroll in or attend its
352 English language learners programs, and the tuition for such student shall be paid by the school district in which
353 the student resides.

354 Any school district may join with any other school district or districts to provide English language learners
355 programs required or permitted by this chapter.

356 SECTION 9. Said chapter 71A, as so appearing, is hereby further amended by striking out section 5, and
357 inserting in place thereof the following section:-

358 Section 5. In order to ensure daily opportunities for speaking English and for contact with English speaking
359 peers, limited English proficient students shall participate fully with their English-speaking peers in those regular
360 education classrooms, subjects or activities in which verbalization in English is not essential to understanding,
361 including, but not necessarily limited to, homeroom, art, music, physical education, recess and lunch. Each
362 school district shall ensure that limited English proficient students have practical and meaningful opportunity to
363 participate fully in the extra-curricular activities of the regular education programs in the district.

364 English language learners programs shall be located, whenever feasible, in the regular public schools of the
365 district rather than separate facilities.

366 Students enrolled in an English language learners program, whenever possible, shall be placed in classes with
367 students of approximately the same age and level of educational attainment. If students of different age groups
368 or educational levels are combined, the school district so combining shall ensure that the instruction given each
369 student is appropriate to the student's level of educational attainment and the school district shall keep
370 adequate records of the educational level and progress of each student enrolled in a program. The maximum
371 student-teacher ratio and age span shall be set by the department and shall reflect the unique educational
372 needs of children enrolled in English language learners programs.

373 SECTION 10. Said chapter 71A, as so appearing, is hereby further amended by striking out section 6 and
374 inserting in place thereof the following section:

375 Section 6. The commissioner shall grant certificates to teachers of bilingual education or English as a second
376 language under section 38G of chapter 71; provided, that teachers of structured English immersion, or
377 innovative programs approved by the department under section 2A shall be certified in bilingual education or
378 English as a second language. No person shall be eligible for employment by a school district as a teacher of
379 bilingual education, or English as a second language, except as provided in this section, unless he has been
380 granted a certificate by the commissioner under said section 38G with respect to the type of position for which
381 he seeks employment. Nothing in this section shall be construed to prevent a school committee from prescribing
382 additional qualifications.

383 In cases of shortages of certified teachers of bilingual education or English as a second language, as
384 determined by the commissioner, the commissioner may grant a waiver to a teacher of bilingual education or
385 English as a second language who is not certified with respect to the type of position for which he seeks
386 employment, if he presents the commissioner with satisfactory evidence indicating he: (1) possesses a speaking

387 and reading ability in a language, other than English, in which English language learners programs are offered
388 and is proficient in written and oral English; (2) is of sound moral character; (3) possesses a bachelor's degree or
389 earned a higher academic degree; (4) meets such requirements as to courses of study, semester hours therein,
390 experience and training as may be required by the board of education that will enable him to become a certified
391 teacher of bilingual education, or English as a second language in the state; and (5) is legally present in the
392 United States and possess legal authorization for employment. Any waiver shall be subject to annual renewal by
393 the commissioner; provided, that the waiver may be renewed not more than 4 times. In granting a waiver under
394 this section, the commissioner shall give preference to persons who have been certified as teachers in their
395 country or place of national origin.

396 SECTION 11. Said chapter 71A, as so appearing, is hereby further amended by striking out section 7 and
397 inserting in place thereof the following section:

398 Section 7. A school district may establish, on a full or part-time basis, preschool or summer school English
399 language learners programs for limited English proficient students or join with the other school districts in
400 establishing such preschool or summer programs. Preschool or summer programs shall not substitute for English
401 language learners programs required to be provided during the regular school year. A school district may
402 establish after school programs to assist limited English proficient students in developing and maintaining native
403 language proficiency.

404 SECTION 12. Notwithstanding any general or special law to the contrary, each school district shall, within 5
405 years of the effective date of this act, have at least 1 teacher who is certified in English as a second language,
406 bilingual education or other English language learners program under section 38G of chapter 71 or regulations
407 promulgated thereto.

408 SECTION 13. Notwithstanding any general or special law to the contrary, any school district with 200 or more
409 limited English proficient students enrolled in the school system that appoints a person to be its director of
410 English language learners programs shall appoint a person who is certified in English as a second language,
411 bilingual education or other English language learners program under section 38G of chapter 71 or regulations
412 promulgate thereto.

413 SECTION 14. Notwithstanding any general or special law to the contrary, any limited English proficient
414 student, as defined in section 1 of chapter 71A of the General Laws, who was enrolled in a public secondary
415 school in the commonwealth directly from a country other than the United States of America, and who was
416 unable to achieve proficiency in the English language, as determined by English proficiency assessments
417 established under section 2B of said chapter 71A, prior to leaving such public secondary school, to the extent
418 possible shall be given access to English language and literacy skill instruction courses offered through the adult
419 basic education program established under section 1H of chapter 69 of the General Laws.

420 SECTION 15. Notwithstanding any general or special law to the contrary, within 5 years of the effective date
421 of this act, if the department of education implements any foreign language requirement on school districts,
422 such requirement shall be mandatory for elementary schools.

423 SECTION 16. Sections 1 and 17 shall take effect on January 1, 2010.

424 SECTION 17. Sections 2 through 16, inclusive, and 18 through 27, inclusive, shall take effect on July 1, 2010.