

**MASSACHUSETTS DEPARTMENT OF EDUCATION**  
**QUESTIONS AND ANSWERS**  
**REGARDING**  
**Chapter 71A: ENGLISH LANGUAGE EDUCATION IN PUBLIC SCHOOLS**  
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**Link to 603 CMR 14.00: Education of English Learners Regulations**  
[www.doe.mass.edu/lawsregs/603cmr14.html](http://www.doe.mass.edu/lawsregs/603cmr14.html)

## **General Questions**

### ***1. What is Question 2?***

Chapter 386 of the Acts of 2002 (known as "Question 2") was an initiative petition on the November 5, 2002 ballot that the voters approved. Question 2 amended in its entirety the Transitional Bilingual Education statute, G.L. c. 71A, and is the new Massachusetts law governing the education of students who are English learners. In July of 2003, the Legislature passed further amendments to G. L. c. 71A as part of the FY 2004 budget. For purposes of this document, references to G.L. c. 71A will mean c. 71A as amended by both Question 2 and the Legislature.

### ***2. Who is considered an English learner under G.L. c. 71A?***

G.L. c. 71A defines an English learner as "a child who does not speak English or whose native language is not English, and who is not currently able to perform ordinary classroom work in English." The term "English learner" as used in G.L. c. 71A, the term "English language learner" as used in Title VI of the federal law, and the term "limited English proficient ("LEP") student," as used in the previous version of c. 71A (the Transitional Bilingual Education statute), are interchangeable.

### ***3. When does the amended G.L. c. 71A go into effect?***

Initiative petitions take effect 30 days after voter approval and do not require legislative approval to become effective or to be implemented. This means that the Question 2 amendments to G.L. c 71A went into effect on December 5, 2002. However, with one exception, the substantive provisions of the amended c. 71A do not take effect until the start of the 2003-2004 school year.

Section 7 is the only section of the amended c. 71A that was required to be implemented during the 2002-2003 school year. Section 7 requires the following tests to be administered annually to students who are English learners: (a) a standardized, nationally-normed written test of academic subject matter in English (only for students in grades 2-12); and (b) a nationally-normed test of English proficiency (for students in grades K-12). The Board of Education must select both tests.

### ***4. What are the primary components of c. 71A, as amended?***

Briefly summarized, the new law does the following:

- Requires districts annually to determine, not earlier than April 1, the number of English learners in the district, and to classify them according to grade level, primary language, and the English learners program in which they are enrolled.
- Unless a waiver is granted or the student is placed in a two-way bilingual program, requires students in grades 1-12 who are English learners to learn English through a sheltered English immersion program for a period of time not normally intended to exceed one school year.
- Allows for kindergarten students to be placed in: a) sheltered English immersion classrooms; b) English language mainstream classrooms with assistance in English language acquisition; or, c) two-way bilingual classrooms.

- Provides for waivers based on parent request under certain circumstances, assuming that the parent annually applies by visiting the student’s school and providing written informed consent.
- For students under age 10, with parental consent, allows waivers under the following conditions: (a) the student has been placed in an English language classroom for at least 30 calendar days prior to the parent’s application for a waiver; (b) documentation by school officials in no less than 250 words that the student has special and individual physical or psychological needs, separate from lack of English proficiency, that require an alternative course of educational study and inclusion of such documentation in the student’s permanent school record; and (c) authorizing signatures on the waiver application of both the school superintendent and the school principal.
- For students age 10 and older, with parental consent, allows waivers when it is the informed belief of the school principal and educational staff that an alternate course of educational study would be better for the student’s overall educational progress and rapid acquisition of English.
- Allows students receiving waivers to be transferred to bilingual programs or “other generally recognized educational methodologies permitted by law.”
- Requires individual schools in which 20 students or more of a given grade level receive a waiver to offer a bilingual or other type of language support program; in all other cases students with waivers must be permitted to transfer to a public school *within the district* in which such a program is offered.
- Requires the following tests to be administered annually to students who are English learners: (a) a standardized, nationally-normed written test of academic subject matter in English (only for grades 2-12); and (b) a nationally-normed test of English proficiency (grades K-12). The Board of Education must select both tests.
- Requires districts to send report cards and other school information to parents and guardians of English learners in the same manner and frequency as such information is sent to other parents and guardians, and, to the maximum extent possible, in an understandable language.
- Requires districts regularly to assess English learners’ mastery of academic standards and curriculum frameworks.
- Gives parents legal standing to sue for enforcement of the provisions of the law and allows school district employees and officials to be personally liable if they willfully and repeatedly refuse to implement the terms of the law, or induce a parent to apply for a waiver by fraud or intentional misrepresentation.
- Requires the Office of Educational Quality and Accountability to conduct onsite visits to school districts at least once every 5 years to evaluate the effectiveness of programs serving English learners.

**5. *What effect do the amendments to G.L. c. 71A have on Chapter 218 of the Acts of 2002?***

On August 6, 2002, the Legislature passed Chapter 218 of the Acts of 2002 (“Chapter 218”), entitled “An Act Relative to Enhancing English Opportunities for All Students in the Commonwealth.” Chapter 218 amended G.L. c. 71A, as well as portions of G.L. c. 69, 70, and 71. Question 2, which was approved by the voters after the passage of Chapter 218, supersedes Chapter 218’s amendment of G.L. c. 71A. However, since Question 2 amended

only G.L. c. 71A, it did not affect the Chapter 218 amendments to G.L. c. 69, 70, and 71. The following is a summary of the Chapter 218 amendments that remain in effect:

***Amendment to c. 69:***

- Requires the Department to establish an Office of Language Acquisition to oversee and monitor the development of English Language Learners programs by districts.
- Requires additional data reporting requirements for districts relative to limited English proficient students (referred to as English learners under G.L. c. 71A, as amended).
- Requires the Commissioner annually to analyze and publish district data and provide a report to the Joint Committee on Education, Arts, & Humanities.

***Amendment to c. 70:***

- Revises the foundation aid formula to allow districts to count the number of limited English proficient students enrolled in language support programs established under G.L. c. 71A.

***Amendment to c. 71:***

- Section 38G: Requires applicants for Preliminary or Initial teaching licenses to have completed such courses or training sessions as the Board shall require in second language acquisition.

***Additional Sections of Chapter 218:***

- Section 24: By July 2008, requires each school district to have at least one (1) teacher who is licensed in English as a Second Language, Bilingual Education, or another English language learners program.
- Section 25: By July 2003, in districts with 200 or more LEP students, any person appointed as director of an English language learners program must be licensed in English as a Second Language, Bilingual Education, or another English language learners program.
- Section 26: By July 2003, to the extent possible, requires mandatory access to adult basic education in English language and literacy skill instruction for certain LEP students who were unable to achieve English proficiency during their previous enrollment in a Massachusetts public secondary school.
- Section 27: If the Department implements a foreign language requirement on school districts by July 2008, such requirement shall be mandatory for elementary schools.

***6. Must districts that are under federal consent decrees regarding their language support programs comply with the amended G.L. c. 71A?***

It depends on the requirements of the consent decree. School districts should consult with their legal counsel regarding this matter. The federal court that retains jurisdiction over the consent decree has the authority to resolve any conflict between the requirements of the consent decree and G.L. c. 71A, as amended.

## **Waivers**

### **7. *Can any of the provisions of G.L. c. 71A be waived?***

Section 5 of G.L. c. 71A provides for waivers for individual students under certain conditions if the parent annually applies for the waiver by visiting the student's school and providing written informed consent.

For students under age 10, G.L. c. 71A allows waivers under the following conditions: (a) the student has been placed in an English language classroom for at least 30 days before the parent applies for the waiver; (b) documentation by school officials in no less than 250 words that the student's special and individual physical or psychological needs, separate from lack of English proficiency, makes an alternative course of educational study better suited to the student's overall educational development and rapid acquisition of English; (c) inclusion of such documentation in the student's permanent school record; and (d) authorizing signatures on the waiver application of both the school superintendent and the school principal.

For students age 10 and older, G.L. c. 71A allows waivers when it is the informed belief of the school principal and educational staff that an alternate course of educational study would be better suited to the student's overall educational progress and rapid acquisition of English.

Please note that since two-way bilingual programs are unaffected by the requirements of G.L. c. 71A, students in grades kindergarten through 12 do not need to apply for or receive waivers in order to participate in such programs. (See # 9).

### **8. *Who has authority to issue waivers?***

The decision to issue a waiver is made by school district officials, after the student's parent or legal guardian has filed a waiver application by personally visiting the school in which the student is enrolled. For students age 10 and older, the decision to grant a waiver is made by the school principal and other educational staff of the student's school. For students under age 10, both the school principal and the superintendent must authorize the waiver, and the decision to issue the waiver must be made under guidelines established by, and subject to the review of, the local school committee. The district's guidelines may, but are not required to, contain an appeals process for parents whose waiver requests are denied by school officials. However, the final decision on waiver requests remains with the district.

## **Two-way Bilingual Programs**

### **9. *Are two-way bilingual programs affected by G.L. c. 71A?***

No. Section 4 of G.L. c. 71A expressly states that "two-way bilingual programs for students in kindergarten through grade 12 . . . shall be unaffected." This means that if a district offers a two-way bilingual program a parent of an English learner may choose to have his or her child participate in such a program without applying for or receiving a waiver.

## **10. *What is a two-way bilingual program?***

G.L. c. 71A does not define the term “two-way bilingual program.” However, in guidance issued by the federal Office for Civil Rights, a two-way bilingual program is described as “a bilingual program in which students develop language proficiency in two languages by receiving instruction in English and another language in a classroom that is usually comprised of half native English speakers and half native speakers of the other language.” The Department will use this definition when reviewing district programs characterized as “two-way bilingual.”

### **Kindergarten Students**

## **11. *Does G.L. c. 71A apply to kindergarten students who are English learners?***

Yes, although G.L. c. 71A provides districts with more flexibility in regard to kindergarten students than it does for students in grades 1-12. Section 4 of G.L. c. 71A provides that kindergarten students “shall be educated either in sheltered English immersion or English language mainstream classrooms with assistance in English language acquisition, including, but not limited to, English as a second language, so-called.” Section 4 further states that “two-way bilingual programs for students in kindergarten through grade 12 . . . shall be unaffected.” Under Section 4, districts may choose **not** to offer sheltered English immersion to kindergarten English learners and, instead, place such students in a regular mainstream kindergarten classroom in which they are provided ESL or other assistance in acquiring English language skills. Alternatively, if the district offers a two-way bilingual program and the parent or guardian wishes his or her child to participate in it, the student may be placed in a two-way bilingual kindergarten classroom.

### **Students with Disabilities**

## **12. *Does G.L. c. 71A apply to students receiving special education services or accommodations for disabilities?***

Under Section 4 of G.L. c. 71A, special educational programs for students with disabilities “shall be completely unaffected.” Therefore, services delivered according to an Individualized Education Program (IEP) or 504 Plan for students with disabilities are unaffected by the requirements of G.L. c. 71A. If a student with disabilities has an IEP or a 504 Plan that requires instruction to be provided to the student in a language other than English, then the district must comply with the IEP or 504 plan in this regard, and no waiver is required. In addition, districts should be aware that under the federal Individuals with Disabilities Education Act (“IDEA”), a student is not eligible for special education services if “the determinant factor for the eligibility determination is limited English proficiency.” 34 CFR 300.534.

## **Program Types and Services**

### ***13. How are “sheltered English immersion” and “structured English immersion” defined under G.L. c. 71A?***

Under G.L. c. 71A, the terms “sheltered English immersion” and “structured English immersion” are used interchangeably. They are defined as “an English language acquisition process for young children in which nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language. Books and instructional materials are in English, and all reading, writing, and subject matter are taught in English.” For purposes of this document, we will use the term “sheltered English immersion.”

### ***14. What are the elements of an effective sheltered English immersion classroom? (See also OCR.7)***

In effective sheltered English immersion classrooms, instruction and curriculum are designed to permit active engagement by LEP students throughout the school day. Such classrooms are characterized by:<sup>1</sup>

- a. Lesson plans that include:
  - Language objectives based on the Massachusetts English language arts standards and the Massachusetts English language proficiency benchmarks and outcomes.
  - Content objectives based on standards from the Massachusetts curriculum frameworks in English language arts, history and social science, mathematics, and science and technology/engineering.
- b. Frequent opportunities for interaction and discussion between teacher/student and among students, which encourage elaborated responses by students about lesson concepts.
- c. Availability of supplementary materials that support the content objectives and contextualize learning. Examples include:
  - hands-on manipulatives;
  - pictures, visuals;
  - multimedia;
  - demonstrations;
  - adapted text; and
  - graphic organizers.
- d. Instruction that links academic concepts to students’ prior knowledge and experience. English learners bring personal and educational backgrounds and experiences to their classrooms that are different from those students born and educated in the United States.
- e. Instruction that emphasizes English vocabulary by combining the teaching of vocabulary and the teaching of content.
- f. Instruction that is designed to increase comprehensibility of spoken English by the use of speech appropriate for students’ proficiency level, a clear explanation of academic tasks, and by the use of supplementary materials (see “c.” above).

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<sup>1</sup> Based on the *Sheltered Instruction Observation Protocol* developed by the Center for Applied Linguistics. This model is elaborated in *Making Content Comprehensible for English Language Learners. The SIOP Model.* J. Echevarria, M Vogt and D. Short. Allyn and Bacon. 2000.  
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- g. Adaptation of content, including texts, assignments, and assessments. Presentation of content in all modalities, including written text, must be within the student's English proficiency level. Testing and informal classroom assessments should be appropriate for the students' English proficiency levels.
- h. Regular classroom activities that provide opportunities for students to practice and apply new language and content knowledge in English.
- i. Frequent opportunities for students to demonstrate their mastery of English and content in English.

**15. *How should districts with low-incidence populations of English learners comply with G.L. c. 71A?***

Low-incidence districts (districts in which most students are English proficient) must provide sheltered English instruction for their English learners unless they are enrolled in a two-way bilingual program or have received a waiver. Districts may provide sheltered English instruction by:

- establishing separate sheltered English immersion classrooms; and/or
- modifying general classrooms so that the activities and instruction in those classrooms provide sheltered instruction (see #14). This may involve some or all of the following: ongoing professional development for the general classroom teachers; the presence of an ESL/ELL/TBE teacher working with the classroom teacher for all or part of each day; and/or tutors or paraprofessionals who are proficient in the English learners' primary language(s) working in the classroom for all or part of each day.

Districts may provide pull-out instruction. However, pull-out instruction alone does not meet the requirements of the new law. An English learner must be able to participate effectively in the general classroom during those times when the student is not engaged in pull-out instruction.

**16. *Does G.L. c. 71A allow teachers to use the native language of the students in a sheltered English immersion classroom?***

Under G.L. c. 71A, all textbooks and other instructional materials are to be in English, no subject matter shall be taught in any language other than English, and students learn to read and write solely in English. However, teachers may use an English learner's native language when necessary for clarification purposes. If the student's teacher does not speak the student's primary language, the Department recommends that another teacher or instructional paraprofessional who does speak the student's primary language be available at some point during the school day for clarification as needed.

**17. *Does G.L. c. 71A allow districts to provide language support programs other than sheltered English immersion?***

Yes. Districts may choose to offer English learners the opportunity to participate in a two-way bilingual program instead of a sheltered English immersion program. In addition, districts may offer other types of bilingual programs, such as Transitional Bilingual Education, to students who receive waivers. Individual schools in which 20 students or more of a given grade level receive a waiver shall be required to offer "classes teaching English and other subjects through bilingual education techniques or other generally recognized

educational methodologies permitted by law.” For individual schools in which fewer than 20 students of a given grade receive a waiver, the schools may offer such a class or they must permit students to transfer to a public school within the district in which such a class is offered.

**18. Does G.L. c. 71A address the integration of English learners with their native English-speaking peers in the context of a sheltered English immersion program?**

G.L. c. 71A does not specifically address this issue. However, it does not restrict the placement of English learners in the same classroom as native English-speaking students as long as the English learners receive “sheltered English immersion instruction,” as that term is defined in G.L. c. 71A. Title VI of the federal Civil Rights Act requires that districts not segregate English learners from their English-speaking peers except when necessary to implement a language support program. This means that even if it is not feasible for districts to place English learners in mainstream classrooms for instruction in core academic subjects, such as English language arts, mathematics, or science, districts should place English learners together with native English-speaking students in classes that are not focused on language acquisition or application. Such classes would include art, music, and physical education. In addition, districts should ensure that English learners and native English-speaking students participate in extra-curricular and after-school activities together.

**19. Are there class size requirements for sheltered English immersion classrooms?**

G.L. c. 71A allows districts to group across grade spans students who have the same level of English language proficiency. G.L. c. 71A does not limit or stipulate class size. In making decisions as to how many grade spans and how many students to place in a sheltered English immersion classroom, districts should take into consideration that frequent student interaction in English around academic content promotes English language acquisition and content learning. In order to maximize opportunities for student interaction, class size should be as small as possible.

Federal law (Title VI) requires that any language support program run by a district be designed and implemented to assure that English learners receive effective content instruction at appropriate academic levels. Content and curriculum of sheltered English immersion classrooms should be appropriate to the age(s) and grade(s) of the students in the class. Under federal law, districts may use their discretion in designing their English Learner programs (including class size and teacher/student ratio) as long as they meet this standard.

Under the former regulations that implemented Chapter 71A, the maximum student-teacher ratio for Transitional Bilingual Education classes in grades K-12 was an average of 20:1, except that the student-teacher ratio could be an average of 25:1 where a teacher's aide was assigned to the class. No individual class enrollment was to be larger than the largest regular education class at the same grade level(s). The Department recommends that districts use these ratios as guidelines for sheltered English immersion classrooms, while keeping in mind the federal requirement that students must receive effective content instruction at appropriate academic levels.

**20. Does G.L. c. 71A limit the amount of time in which an English learner may be enrolled in a sheltered English immersion or bilingual program?**

No. Section 4 of G.L. c. 71A states that students placed in sheltered English immersion classrooms shall receive sheltered instruction “during a temporary transition period not normally intended to exceed one school year.” This language may not be interpreted to mean that there is a cap or limitation on the amount of time that an English learner may participate in a sheltered English immersion or any other type of language support program.

Title VI of the federal Civil Rights Act does not permit such a limitation. Title VI requires that English learners be provided language support services until they are proficient enough in English to participate meaningfully in the district's education program. Some English learners will reach this level of English proficiency within one year, but some will not. Since students acquire proficiency in English at different rates, districts cannot limit to one year the provision of language support services to English learners who are not yet able to participate meaningfully in the district's programs.

**21. For how long must a district provide a sheltered English immersion program or other language support programs to limited English proficient students (referred to as English learners in the amended G.L. c. 71A)?**

As long as a student is considered to be limited English proficient, the district must provide language support services. A student is considered to be limited English proficient until the student can participate meaningfully in the district's mainstream educational program.

When deciding if student can participate meaningfully, districts should consider such factors as the student's ability to keep up with their non-LEP peers in the regular education program, and the student's ability to participate successfully in essentially all aspects of the district's curriculum without the use of adapted English materials.

**22. After enrollment in a sheltered English immersion classroom for a year, may a student who remains limited English proficient be enrolled in a transitional bilingual program?**  
Only if the student applies for and receives a waiver.

**23. What materials need to be translated by districts for English learners and their parents?**

G.L. c. 71A addresses translation requirements in Section 5, regarding parental waivers, and in Section 7, regarding report cards and progress reports. Section 5 of G.L. c. 71A requires that a parent or legal guardian desiring a waiver personally visit the school to apply for the waiver. Once there, they must be provided with “a full description in a language they can understand” of the educational materials to be used in the different educational program choices and all the educational opportunities available to the student.

Section 7 of G.L. c. 71A requires districts to provide English learners with report cards, progress reports and other school communications that are “to the maximum extent possible written in a language understandable to the parents and legal guardians of such students.”

The federal law imposes similar requirements. Under Title VI, school notices that are provided to all students must be provided to English learners in a language that they understand. In addition, districts must notify parents of English learners of school activities that are called to the attention of other parents. Such notices, in order to be adequate, may have to be provided in a language other than English.

The Massachusetts Access to Equal Educational Opportunity Regulations also contain requirements in this regard. Pursuant to 603 CMR 26.08(2), principals shall ensure that, when requested, school handbooks and district codes of conduct are available in the primary language of a parent or student whose primary language is not English.

**24. *Must districts provide English learners with guidance services in their native language?***

Yes, although this issue is not addressed by G.L. c. 71A. Pursuant to the Massachusetts Access to Equal Educational Opportunity Regulations, 603 CMR 26.07(8), the opportunity to receive guidance and counseling in a student's primary language should be made available to students from homes where English is not the primary language spoken.

**25. *May the parent or guardian of an English learner "opt out" of a sheltered English immersion program or any other type of English language learner program?***

Yes. A parent or guardian of an English learner may "opt out" of sheltered English immersion instruction and/or any other type of English language learner program. The district must then place the student in an English language mainstream classroom. A parent may "opt out" a child under 10 even if the child has not yet been enrolled in a sheltered English immersion classroom for 30 days. However, districts should encourage parents who wish to opt out to allow their children to participate in sheltered English immersion for a limited amount of time before they make a final determination to opt out of the program. For students who opt out, federal law (Title VI) requires the district to continue to ensure that the students have an equal opportunity to have their English language and academic needs met. Please see OCR-6 at page 17 for more information on this issue.

Districts may wish to have parents or guardians who opt out sign a consent form that documents this decision, although neither G.L. c. 71A nor federal law requires such a consent form.

**26. *Should districts establish the same academic standards for English learners as for other students?***

Yes. Both the federal No Child Left Behind Act and G.L. c. 71A require districts to provide English learners with the same high-quality, standards-based curriculum they provide to all other students and the opportunity to meet the same long-term educational goals as other students. Section 7 of G.L. c. 71A provides that:

English learners in any program shall be taught to the same academic standards and curriculum frameworks as all students, and shall be provided the same opportunities to master such standards

and frameworks as other students. Districts shall regularly assess mastery of academic standards and curriculum frameworks.

This requirement of G.L. c. 71A is consistent with the federal law (Title VI) which permits districts to provide English learners with a sequential approach to instruction that **temporarily** emphasizes English acquisition over mastery of academic content. (See OCR-7, p. 17). If a district chooses to use such an approach it must ensure that it subsequently provides English learners with supplemental instruction that compensates for grade-appropriate content curriculum not previously provided due to the initial emphasis on English acquisition.

Districts should meet G.L. c. 71A's requirement to assess English learners' mastery of academic standards and curriculum frameworks using the same methods employed to assess all other students' academic progress. Such methods would include district-level testing and other local monitoring and evaluation procedures that are based upon the Massachusetts academic standards and curriculum frameworks.

### **Teacher Qualifications**

#### ***27. Does G.L. c. 71A establish English language proficiency, licensing, and/or training requirements for educators?***

##### ***a. English Language Proficiency Requirements***

Section 2 of G.L. c. 71A requires those who teach in English language classrooms to be "fluent and literate in English." Under G.L. c. 71A, English language classrooms encompass both sheltered English immersion classrooms and English language mainstream classrooms. Teachers in classrooms other than English language classrooms (e.g., two-way and other bilingual education classrooms and foreign language classrooms) must meet the licensing standards required by their position, but do not need to meet the additional literacy and fluency requirements of G.L. c. 71A.

District superintendents and charter school leaders are required to sign an assurance that **all teachers in English language classrooms** are literate and fluent in English, beginning with the 2003-2004 school year.

1. **Literacy in English.** A teacher is literate in English if the teacher:
  - (a) possesses a teaching license issued pursuant to G.L. c. 71, § 38G; or,
  - (b) possesses a vocational teacher approval or a vocational technical educator license; or
  - (c) earns a passing score on the Communication and Literacy Skills portion of the Massachusetts Tests for Educator Licensure; or
  - (d) possesses a Bachelor's degree from a college or university where the language of instruction was English.
  
2. **Fluency in English.** Fluency is defined as having oral proficiency in English that consists of comprehension and production. Production is defined as accurate and

efficient oral communication using appropriate pronunciation, intonation, grammar, and vocabulary in an interactive professional context.

Determining teaching staff's fluency in English should be made through one or more of the following methods:

- classroom observation and assessment by the teacher's supervisor, principal, and/or superintendent or charter school leader; or
- an interview and assessment by the teacher's supervisor, principal, and/or superintendent or charter school leader; or
- the teacher's demonstration of fluency in English through a test accepted by the Commissioner of Education; or
- another method determined by the superintendent or charter school leader and accepted by the Commissioner.

***b. Licensing and Training Requirements***

G.L. c. 71A does not specifically address the licensing or training requirements for teachers of sheltered English immersion classrooms. However, Title VI of the federal Civil Rights Act requires teachers and other educational staff who implement a sheltered English immersion or other language support program to be qualified to do so. Individuals with the following licenses and training may be assigned to teach in sheltered English immersion classrooms in 2003-2004:

Early Childhood and Elementary Levels

1. ESL license at the preK-8 or preK-9 level for sheltered English immersion classrooms, where the instructional focus for the year is primarily on learning English rather than on subject matter content. For instruction in a particular content area, a specialist in that subject area, (e.g., mathematics) should be used in conjunction with the ESL teacher; or the ESL teacher should provide documentation, maintained at the local level, that s/he has taken or is taking professional development coursework in the subject area to be taught; or
2. TBE license in any language and an Early Childhood or Elementary license, as appropriate for grade served, and documentation maintained at the local level that the individual has taken or is taking professional development courses in strategies for teaching sheltered subject matter. The language of the TBE license need not be the primary language of students; or
3. Early Childhood or Elementary license, as appropriate for the grade served, and documentation maintained at the local level that the individual has taken or is taking professional development courses in strategies for teaching sheltered subject matter, first and second language acquisition, and linguistics.

Middle and Secondary Levels

1. ESL license at the preK-8, preK-9, or 5-12 level, for sheltered English immersion classrooms where the instructional focus for the year is primarily on learning English rather than on subject matter content. For instruction in a particular content area, a specialist in that content area, (e.g., mathematics), should be used in conjunction with the

ESL teacher; or the ESL teacher should provide documentation, maintained at the local level, that s/he has taken or is taking professional development coursework in the subject area to be taught; or

2. TBE license in any language and subject matter license, and documentation maintained at the local level that the individual has taken or is taking professional development courses in strategies for teaching sheltered subject matter. The language of the TBE license need not be the primary language of students; or
3. Subject matter license and documentation maintained at the local level that the individual has taken or is taking professional development coursework in strategies for teaching sheltered subject matter, first and second language acquisition, and linguistics.

The Department will review these qualifications for school years subsequent to 2003-2004 and may establish additional training requirements.

Please also note that under Chapter 218 of the Acts of 2002, in districts with 200 or more LEP students, any person appointed as director of an English language learners program must be licensed in English as a second language, Bilingual Education, or another English language learners program. See # 5.

### **Assessment**

#### ***28. How will districts administer the assessments required by G.L. c. 71A?***

Both the federal *No Child Left Behind Act of 2002* (“NCLB”) and G.L. c. 71A require districts annually to assess the English proficiency of all LEP students beginning in the 2002-2003 school year.

During the spring of 2003, as an interim response to the new assessment requirements of the NCLB and G.L. c. 71A, districts were required to assess the reading and writing of all LEP students using the LAS-R and W (Language Assessment Scale – Reading and Writing). The LAS is published by CTB/McGraw-Hill. Districts were also required to assess speaking and listening of LEP students using the MELA-O (Massachusetts English Language Assessment – Oral).

The Department has selected a contractor to develop a new English Proficiency Assessment for use by districts in 2005. Rather than requiring districts to purchase the new tests directly from the testing contractor, the Department will administer the new English Proficiency Assessment Program, similar to the way in which it administers MCAS.

G.L. c. 71A also requires English learners in grades 2-12 to be assessed annually in academic subject matter, and requires that the assessment be administered in English. The Department will inform districts regarding the implementation of the academic assessment provisions of G.L. c. 71A at a later date.

## **Liability**

### ***29. What does G.L. c. 71A say about parents' standing to sue school district employees and officials?***

G.L. c. 71A states that “the parent or legal guardian of any school child shall have legal standing to sue for enforcement of [G.L. c. 71A], and if successful shall be awarded reasonable attorney’s fees, costs and compensatory services.” In order to prevail on a claim against a school district employee or official for failure to comply with G.L. c. 71A, the parent is required to prove that the school district employee or official “willfully and repeatedly refuse[d] to implement” the law.

Regulations promulgated under G.L. c. 71A further address this issue. Under 603 CMR 14.06, entitled “Parental Right of Enforcement,” parents of English learners must exhaust an administrative process on the local and state level before they may sue teachers and other school officials for enforcement under G.L. c. 71A.

Districts should direct specific questions regarding the potential liability of school officials under G.L. c. 71A to their legal counsel.

**Office for Civil Rights (OCR) of the United States Department of Education**

June 10, 1998

The following questions and answers are excerpted from a June 10, 1998 document prepared by the Office for Civil Rights (OCR) of the United States Department of Education entitled "Questions that may be raised by Proposition 227." Proposition 227 is a law passed in California that is similar to Massachusetts' Question 2. In the questions and answers below, we have replaced "Proposition 227" with "Question 2" and changed the references to California and San Francisco to Massachusetts and Boston. References to "the Department" in this section are to the United States Department of Education. The original document may be seen at [www.ed.gov/offices/OCR/docs/prop227q.html](http://www.ed.gov/offices/OCR/docs/prop227q.html).

**OCR-1. *Under federal law, can a district place limited English proficient students in mainstream classes without providing any other assistance?***

No. In 1974, in Lau v. Nichols, the Supreme Court ruled that placing LEP students in a regular program taught in English, when they were unable to participate meaningfully in that program because of their limited English proficiency, constituted discrimination on the basis of national origin in violation of Title VI of the Civil Rights Act. The U. S. Department of Education's May 25, 1970 Memorandum directs school districts to take "affirmative steps to rectify language deficiencies in order to open its instructional program to these students." The May 1970 Memorandum was adopted by the Supreme Court in Lau v. Nichols. Similarly, the Equal Educational Opportunity Act, which is administered by the Department of Justice, requires public educational agencies to take appropriate action to overcome language barriers that impede student participation in the instructional program.

**OCR-2. *Does Massachusetts Question 2 relieve districts of their civil rights obligations?***

No. Question 2 does not relieve school districts of any of their obligation to comply with federal civil rights requirements. These requirements afford recipients of federal funds considerable latitude in selecting an instructional approach, so long as it effectively addresses the educational needs of limited English proficient children.

**OCR-3. *If a school district is implementing an OCR-approved plan, is it exempt from the requirements of Question 2?***

No. School districts in Massachusetts and in other states must comply with applicable state laws in a way that does not contradict federal legal requirements.

**OCR-4. *What is the status of district resolution plans with OCR?***

OCR will continue to work closely with Massachusetts educators at the state and local levels to assist them in maintaining educational programs for LEP students that comply with federal Title VI. If school districts that are operating under OCR-approved plans determine that those plans need to be modified to comply with Question 2, they should contact the Boston OCR Enforcement Office. OCR

is prepared to provide technical assistance to school districts to help them draft plan modifications that are consistent with federal Title VI.

**OCR-5. *Would a one year limit on services to limited English proficient students be permissible under federal law?***

Lau requires that LEP students who need alternative language instruction in order to receive meaningful access to the district's mainstream educational program, be provided those services until an individualized determination is made that a student no longer needs the services in order to participate meaningfully in the district's educational program. Some children may reach this level of English proficiency within one year. However, children learn at different speeds, and districts cannot limit to one year alternative services for LEP students who are not yet able to participate meaningfully in the district's programs.

**OCR-6. *If the parent of a LEP student opts that student out of alternative language instruction, what is the district's responsibility to that student?***

Lau establishes a district's obligation to provide LEP students with meaningful access to the educational program. When a parent declines participation in a particular formal language instruction program, the district must continue to ensure that the student has an equal opportunity to have his or her English language and academic needs met. Districts can meet this obligation in a variety of ways, for example, by providing adequate training to classroom teachers on second language acquisition and English language development and by monitoring the educational progress of the student.

**OCR-7. *Can a district focus its instruction for LEP students on English acquisition for a year, and limit its instruction in academic content areas during that time?***

Under the 5th Circuit's decision in Castañeda v. Pickard districts are not precluded from adopting programs which temporarily emphasize English over other subjects, as long as the programs are recognized as sound by some educational experts. The Castañeda court stated that districts can make the determination as to whether they want to address the dual tasks of language and academic instruction simultaneously, by implementing a program designed to keep LEP students at grade level by providing language services to make the academic content areas accessible, or to address the tasks in sequence, by focusing first on the development of English language skills and then later providing students with compensatory and supplemental education to remedy deficiencies in other content areas that they may develop during this period. (from U.S. Department of Education, Office for Civil Rights)

**OCR-8. *How should a district determine when a LEP student is ready to exit an alternative language program?***

LEP students must be provided with alternative services until they are proficient enough to participate meaningfully in the regular program. Under OCR's long-standing Lau guidance, when deciding whether a student can participate meaningfully, recipients should consider such factors as the students' ability to

keep up with their non-LEP peers in the regular education program and their ability to participate successfully in essentially all aspects of the district's curriculum without the use of adapted or simplified English materials.

**OCR-9.** *If districts modify their programs for serving LEP students in light of Question 2, must they evaluate the programs they implement?*

Under the 5<sup>th</sup> Circuit's decision in Castañeda v. Pickard, districts are required to evaluate their programs. If, after a legitimate trial period, the program is not successful in helping students overcome language barriers, the district may need to modify its program.

**OCR-10.** *Question 2 expressly permits districts to place in the same classroom English learners of different ages whose degree of English proficiency is similar. Does this violate federal law?*

While this is not a violation of federal law, it does raise concerns about its implementation because school districts generally place students in classrooms with others who are similar in age, in order to address their common age-related developmental and social needs. If a district places LEP students of different ages in the same classroom for a limited time and for the purpose of English language instruction, Castañeda makes clear that districts are responsible for ensuring that LEP students receive effective and appropriate content instruction at appropriate academic levels.

QUESTION 2 (as amended by the Massachusetts Legislature July 2003)

**English Language Education in Public Schools**

SECTION 1. Chapter Seventy-one A of the General Laws as appearing in the 2000 Official Edition is hereby amended by striking sections 1 through 9 and substituting the following:

**Section 1. Findings and Declarations**

The People of Massachusetts find and declare that:

- (a) The English language is the common public language of the United States of America and of the Commonwealth of Massachusetts. It is spoken by the vast majority of Massachusetts residents, and is also the leading world language for science, technology, and international business, thereby being the language of economic opportunity; and
- (b) Immigrant parents are eager to have their children become fluent and literate in English, thereby allowing them to fully participate in the American Dream of economic and social advancement; and
- (c) The government and the public schools of Massachusetts have a moral obligation and a constitutional duty to provide all of Massachusetts's children, regardless of their ethnicity or national origins, with the skills necessary to become productive members of our society. Of these skills, literacy in the English language is among the most important.
- (d) The public schools of Massachusetts have done an inadequate job of educating many immigrant children, requiring that they be placed in native language programs whose failure over past decades is demonstrated by the low English literacy levels of those children.
- (e) Immigrant children can easily acquire full fluency and literacy in a new language, such as English, if they are taught that language in the classroom as soon as they enter school.
- (f) Therefore it is resolved that: all children in Massachusetts public schools shall be taught English as rapidly and effectively as possible.

**Section 2. Definitions**

In this chapter,

- (a) "Bilingual education" means a language acquisition process for students in which all or substantial portions of the instruction, textbooks, or teaching materials are in the child's native language other than English.
- (b) "English language classroom" means a classroom in which the language of instruction used by the teaching personnel is overwhelmingly the English language, and in which such teaching personnel are fluent and literate in English. English language classrooms encompass both English language mainstream classrooms and sheltered English immersion classrooms.
- (c) "English language mainstream classroom" means a standard classroom, one in which the students either are native English language speakers or already have acquired reasonable fluency in English.
- (d) "English learner" means a child who does not speak English or whose native language is not English, and who is not currently able to perform ordinary classroom work in English.
- (e) "Sheltered English immersion" means an English language acquisition process for young children in which nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language. Books and instructional materials are in English and all reading, writing, and subject matter are taught in English. Although teachers may use a minimal amount of the child's native language when necessary, no subject matter shall be taught in any language other than English, and children in this program

learn to read and write solely in English. This educational methodology represents the standard definition of “sheltered English” or “structured English” found in educational literature.

### **Section 3. Census**

Local school committees shall annually ascertain, not earlier than the first day of April, under regulations prescribed by the Department of Education, the number of English learners within their school system in grades Kindergarten through twelve, and shall classify them according to grade level, the language of which they possess a primary speaking ability, and the English learner program type in which they are enrolled, with all such information being made publicly available by school and school district on a website.

### **Section 4. English language education**

Subject to the exceptions provided in Section 5 of this chapter, all children in Massachusetts public schools shall be taught English by being taught in English and all children shall be placed in English language classrooms. Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally intended to exceed one school year, provided, however, that kindergarten English learners shall be educated either in sheltered English immersion or English language mainstream classrooms with assistance in English language acquisition, including, but not limited to, English as a second language, so-called. Local schools shall be permitted but not required to place in the same classroom English learners of different ages but whose degree of English proficiency is similar. Local schools shall be encouraged to mix together in the same classroom English learners from different native-language groups but with the same degree of English fluency. Once English learners acquire a good working knowledge of English and are able to do regular schoolwork in English, they shall no longer be classified as English learners and shall be transferred to English language mainstream classrooms. Foreign language classes for children who already know English, 2-way bilingual programs for students in kindergarten through grade 12, and special educational programs for physically- or mentally-impaired students shall be unaffected.

### **Section 5. Parental waivers**

(a). The requirements of Section 4 of this chapter may be waived with the prior written informed consent, to be provided annually, of the child’s parents or legal guardian under the circumstances specified in this section. Such informed consent shall require that said parents or legal guardian personally visit the school to apply for the waiver and that they there be provided a full description in a language they can understand of the educational materials to be used in the different educational program choices and all the educational opportunities available to the child. If a parental waiver has been granted, the affected child may be transferred to classes teaching English and other subjects through bilingual education techniques or other generally-recognized educational methodologies permitted by law. Individual schools in which 20 students or more of a given grade level receive a waiver shall be required to offer such a class; in all other cases, such students must be permitted to transfer to a public school in which such a class is offered.

(b). The circumstances in which a parental exception waiver may be applied for under this section are as follows:

(1). Children who already know English: the child already possesses good English language skills, as measured by oral evaluation or standardized tests of English vocabulary comprehension, reading, and writing, in which the child scores approximately at or above the

state average for his grade level or at or above the 5th grade average, whichever is lower; or

(2). Older children: the child is age 10 years or older, and it is the informed belief of the school principal and educational staff that an alternate course of educational study would be better suited to the child's overall educational progress and rapid acquisition of basic English language skills; or

(3). Children with special individual needs: the child already has been placed for a period of not less than thirty calendar days during that particular school year in an English language classroom and it is subsequently the informed belief of the school principal and educational staff that the child has such special and individual physical or psychological needs, above and beyond the child's lack of English proficiency, that an alternate course of educational study would be better suited to the child's overall educational development and rapid acquisition of English. A written description of no less than 250 words documenting these special individual needs for the specific child must be provided and permanently added to the child's official school records, and the waiver application must contain the original authorizing signatures of both the school principal and the local superintendent of schools. Waivers granted under this section cannot be applied for until after thirty calendar days of a given school year have passed, and this waiver process must be renewed each and every school year. Any such decision to issue such an individual waiver is to be made subject to the examination and approval of the local school superintendent, under guidelines established by and subject to the review of the local school committee and ultimately the state board of education. The existence of such special individual needs shall not compel issuance of a waiver, and the parents shall be fully informed of their right to refuse to agree to a waiver.

#### **Section 6. Legal standing and parental enforcement**

(a) As set forth in Section 4 of this chapter, all school children are to be provided at their assigned school with an English language public education. The parent or legal guardian of any school child shall have legal standing to sue for enforcement of the provisions of this chapter, and if successful shall be awarded reasonable attorney's fees, costs and compensatory damages.

(b) Any school district employee, school committee member or other elected official or administrator who willfully and repeatedly refuses to implement the terms of this chapter may be held personally liable for reasonable attorney's fees, costs and compensatory damages by the child's parents or legal guardian, and shall not be subsequently indemnified for such monetary judgment by any public or private third party. Any individual found so liable shall be barred from election or reelection to any school committee and from employment in any public school district for a period of five years following the entry of final judgment.

(c) Parents and legal guardians who apply for and are granted exception waivers under Section 5(b)(3) of this chapter retain full and permanent legal right to sue the individuals who granted such waivers if they subsequently discover before the child reaches the age of eighteen that the application for waivers was induced by fraud or intentional misrepresentation and injured the education of their child.

#### **Section 7. Standardized testing for monitoring education progress**

To ensure that the educational progress of all students in learning English together with other academic subjects is properly monitored, a standardized, nationally-normed written test of academic subject matter given in English shall be administered at least once each year to all public schoolchildren in grades 2 and higher who are English learners. This requirement shall not

be construed as barring the administration of this same exam to other students. A nationally-normed test of English proficiency shall similarly be administered at least once each year to all Massachusetts schoolchildren in grades Kindergarten and higher who are English learners. Only English learners classified as severely learning disabled may be exempted from these tests. The particular tests to be used shall be selected by the Board of Education, and it is intended that the tests shall usually remain the same from year to year. The national percentile scores of students shall be confidentially provided to individual parents, and the aggregated percentile scores and distributional data for individual schools and school districts shall be made publicly available on an internet web site; the scores for students classified as English learners shall be separately sub-aggregated and made publicly available there as well, with further sub-aggregation based on the English learner program type in which they are enrolled. School enrollment by race, ethnicity, and English learner program type shall also be made publicly available. Although administration of these tests are required solely for monitoring educational progress, public officials and administrators may utilize these test scores for other purposes as well if they so choose.

English learners in any program shall be taught to the same academic standards and curriculum frameworks as all students, and shall be provided the same opportunities to master such standards and frameworks as other students. Districts shall regularly assess mastery of academic standards and curriculum frameworks.

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

Section 7A. The office of educational quality and accountability shall conduct on-site visits to school districts at least once every 5 years for the purposes of evaluating the effectiveness of programs serving English learners and to validate evidence of educational outcomes. The evaluation shall include, but not be limited to, a review of individual student records of all English learners, a review of the programs and services provided to English learners and a review of the dropout rate of English learners formerly enrolled in the district within the prior 3 years.

In the event a review and evaluation undertaken under this section demonstrates that a district is failing to adequately improve educational outcomes for English learners, the commissioner may recommend to the board of education and any school within the district be declared underperforming under section 1J and 1K of chapter 69.

### **Section 8. Community-Based English Tutoring**

In furtherance of its constitutional and legal obligations to provide all children with an adequate education, the state shall encourage family members and others to provide personal English language tutoring to such children as are English learners, and support these efforts by raising the general level of English language knowledge in the community. Subject to appropriation by the General Court, commencing with the fiscal year in which this initiative is enacted and for each of

the nine fiscal years following thereafter, a sum of five million dollars (\$5,000,000) per year shall be spent for the purpose of providing funding for free or subsidized programs of adult English language instruction to parents or other members of the community who pledge to provide personal English language tutoring to Massachusetts school children who are English learners. Programs funded pursuant to this section shall be provided through schools or community organizations. Funding for these programs shall be administered by the Department of Education, and shall be disbursed at the discretion of the local school committees in each district, under reasonable guidelines established by, and subject to the review of, the Board of Education.

**SECTION 2. Severability**

If a provision of this act or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**SECTION 3. Interpretation**

Under circumstances in which portions of this act are subject to conflicting interpretations, the Findings and Declarations of subsection 1 of section 1 of this act shall be assumed to contain the governing intent of this act.

**SECTION 4. Effective Date**

Except for the testing requirements of subsection 7 of section 1 of this act, which shall be implemented immediately, all other sections of this act shall become effective for all school years that begin following the effective date of this act.