

Appendix C: G.L. c. 71A School District Program Waivers for ELs

School District Program Waivers for ELs Requirements and Procedures

General Laws Chapter 71A requires that all children in Massachusetts public schools who are English learners be instructed through the use of sheltered English immersion during a temporary transition period not normally intended to exceed one school year, unless the student is placed in a two-way bilingual program or wishes to “opt out” and be placed in a general classroom not tailored for English learners. 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. English learners who wish to participate in a transitional bilingual program or receive some other type of language support may not do so unless they have received a waiver from the requirements of G.L. c. 71A.

Local schools are 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 are 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 school work in English, they shall no longer be classified as English learners and shall be transferred to English language mainstream classrooms.

Section 5 of G.L. c. 71A provides for waivers for individual students under certain conditions if the parent or guardian **annually** applies for the waiver by visiting the student’s school and providing written informed consent. At the time of the visit, parents are to 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. Foreign language classes for students who already know English, two-way bilingual programs for students in kindergarten through grade 12, and special education programs for students with disabilities do not need waivers to participate in such classes or services.

The decision to issue a waiver is made by school district officials, 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.

Individual schools in which 20 EL students or more of a given grade level receive a waiver shall be required to offer such students classes in bilingual education or other generally recognized educational methodologies permitted by law. In all other cases, such students must be permitted to transfer to a public school in which such a class is offered.

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The circumstances under which a waiver may be applied for are as follow:

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

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

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.