

MASSACHUSETTS DEPARTMENT OF EDUCATION
G.L. c. 71A School District Program Waivers for English Learners
Requirements and Procedures

General Laws Chapter 71A, as amended (known as “Question 2”), requires that publicly-funded students in Massachusetts who are English learners (i.e., limited English proficient) be instructed through the use of sheltered English immersion, 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. 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.

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 are not limited English proficient, two-way bilingual classes for students in grades kindergarten through grade 12, and services delivered according to an Individualized Education Program (IEP) or 504 Plan for students with disabilities are not subject to the requirements of G.L. c. 71A. Therefore, these students 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. Each school district must establish and implement its waiver guidelines by the commencement of the 2003-2004 school year.

Individual schools in which 20 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. Individual schools in which fewer than 20 students of a given grade receive a waiver may offer bilingual classes or some other type of language support to waived students, or they must permit such students to transfer to a public school within the district in which such a class is offered.

For students under age 10, G.L. c. 71A allows waivers with parental consent under the following conditions:

- (a) the student has been placed in an English language classroom for at least 30 calendar days before the parent or guardian 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, with parental consent, 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.

The Department is providing the attached Program Waiver Application Forms as samples that districts may adapt, based on locally-established school committee guidelines, for their use.

Sample Form

Insert Name of School District
2003-2004 School Year

G.L. c. 71A School District Program Waiver Application Form for English Learners
Students under 10 Years of Age

A. Background Information

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of student | |
| 2. Date of birth | |
| 3. Date student was placed in an English language classroom | |
| 4. Date parent(s) or legal guardian(s) visited school to apply for waiver (at least 30 calendar days after student was placed in an English language classroom) | |

B. Parent or Guardian Informed Consent

Parents or guardians must review and sign the Parent or Guardian Informed Consent Form (Attachment A). This form must be provided in a language the parent or guardian understands. The signed Informed Consent Form should be attached to this form.

C. Determination Regarding Waiver Request

- 1. Waiver request approved** (school officials must sign here and complete Attachment B):
It is our informed belief that an alternate course of educational study is better suited to the student's overall educational progress and rapid acquisition of English. The student will be placed in a transitional bilingual class or (describe other type of language support) on (insert date).

School Superintendent (signature and date)

School Principal (signature and date)

- 2. Waiver request denied** (school officials must sign here)
*It is our informed belief that an alternate course of educational study would **not** be better suited to the student's overall educational progress and rapid acquisition of English.*

School Superintendent (signature and date)

School Principal (signature and date)

D. Appeals Process (optional)

If the waiver is denied and if the district guidelines contain an appeals process, did the parent(s) or legal guardian(s) appeal the decision? If yes, what was the final determination of the school officials?

Sample Form

Insert Name of School District
2003-2004 School Year

G.L. c. 71A School District Program Waiver Application Form for English Learners
Students 10 Years of Age and Older

A. Background Information

| | |
|---------------------------------------------------------------------------|--|
| 1. Name of student | |
| 2. Date of birth | |
| 3. Date parent(s) or legal guardian(s) visited school to apply for waiver | |

B. Parent or Guardian Informed Consent

Parents or guardians must review and sign the Parent or Guardian Informed Consent Form (Attachment A). This form must be provided in a language the parent or guardian understands. The signed Informed Consent Form should be attached to this form and kept on file.

C. Determination Regarding Waiver Request

1. Waiver request approved (school officials must sign here)

It is our informed belief that an alternate course of educational study is better suited to the student's overall educational progress and rapid acquisition of English. The student will be placed in a transitional bilingual class or (describe other type of language support) on (insert date).

School Principal (signature and date)

Other educational staff who participated in the decision (signature, title, and date)

2. Waiver request denied (school officials must sign here)

*It is our informed belief that an alternate course of educational study would **not** be better suited to the student's overall educational progress and rapid acquisition of English.*

School Principal (signature and date)

Other educational staff who participated in the decision (signature, title, and date)

D. Appeals Process (optional)

If the waiver is denied and if the district guidelines contain an appeals process, did the parent(s) or legal guardian(s) appeal the decision? If yes, what was the final determination of the school officials?

Attachment A

Sample Form

Insert Name of School District
2003-2004 School Year

G.L. c. 71A Program Waiver

Parent or Guardian Informed Consent Form*

I am knowingly and voluntarily requesting that my child receive a waiver from the requirements of G.L. c.71A, as amended (“Question 2”). I understand that if school officials grant my waiver request my child will receive bilingual instruction or some other type of language support rather than sheltered English immersion instruction. Upon my personal visit to the school, school officials provided me with a full description, in a language that I understand, of the educational materials to be used in the different educational program choices and of all the educational opportunities available to my child.

Based on this information, which I have read and understood, I am requesting a program waiver for my child for the 2003-2004 school year. I have been fully informed of my right not to apply for or agree to a program waiver.

Child’s Name

Parent or Guardian Signature

Date

Parent or Guardian Signature

Date

*If the Parent and Guardian Informed Consent Form is provided in a language other than English, attach that form to the waiver application.

Attachment B

Sample Form

Insert Name of School District
2003-2004 School Year

Approved Waivers for Students under 10 Years of Age

Instructions: School officials must provide documentation in no less than 250 words of the student's special and individual physical or psychological needs, separate from lack of English proficiency, that makes an alternative course of educational study better suited to the student's overall educational development and rapid acquisition of English. The documentation must be attached to the signed Program Waiver Application Form and a copy placed in the student's permanent school record.

This statement was prepared by (typed name, title, and signature): _____

Date: _____