

MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
G.L. c. 71A School District Program Waivers for English Language Learners
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 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 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 physically or mentally impaired 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.

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. In all other cases, such students must be permitted to transfer to a public school in which such a class is offered.

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

(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.

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
Name of school district
School year

**G.L. c.71A School District Program Waiver Application Form for English Learners
Older child**

A. Student information

Name of student:
Date of birth:
Date parent(s) or legal guardian(s) visited school:

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 that 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)

We believe that an alternate course of educational study would be better suited to this child's overall educational progress and rapid acquisition of basic English language skills. This child will be placed in (*describe educational setting to be provided*) on (*date*).

School principal (signature and date) Educational staff (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 this child's overall educational progress and rapid acquisition of basic English language skills.

School principal (signature and date) Educational staff (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
Name of school district
School year

**G.L. c.71A School District Program Waiver Application Form for English Learners
Child with special needs**

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.

A. Student Information

Name of student:	Date of birth:
Date student was placed in an English language classroom:	Date parent(s) or legal guardian(s) visited school:
Date waiver applied for:	

This waiver process must be renewed each and every school year.

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 that 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 staff must sign and complete Attachment B)

This child has been placed in an English language classroom for not less than 30 calendar days. It is our informed belief that this child has special and individual physical or psychological needs above and beyond the child's lack of English proficiency and that an alternate course of educational study would be better suited to the child's overall education development and rapid acquisition of English. This child will be placed in (*describe educational setting to be provided*) on (*date*).

School principal (signature and date)

Educational staff (signature and date)

2. Waiver request denied

This child has been placed in an English language classroom for not less than 30 calendar days. It is our informed belief that this child has special and individual physical or psychological needs above and beyond the child's lack of English proficiency and that an alternate course of educational study would **not** be better suited to the child's overall education development and rapid acquisition of English.

School principal (signature and date)

Educational staff (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?

Attachment A
Sample form
School District
School Year

G.L. c.71A Program Waiver

Parent or Legal Guardian Informed Consent Form*

I am knowingly and voluntarily requesting that my child receive a waiver from the requirements of G.L. c.71A. 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.

For a child with special needs: I understand that the existence of special individual needs shall not compel issuance of a waiver, and I have been fully informed of my right to refuse to agree to a waiver.

Based on this information, which I have read and understood, I am requesting a program waiver for my child for the XXXX-XXXX 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

Parent or Guardian signature

Date

Date

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

