

HOUSE No. 486

The Commonwealth of Massachusetts

In the Year Two Thousand 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
2 striking out the thirteenth paragraph and inserting in place thereof the following paragraph:

3 Each school district required to provide an English language learners program under
4 chapter 71A 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
7 type of English language learners program; (ii) the number enrolled in English as a second
8 language who are not enrolled in another English language learners program; (iii) the results of
9 basic skills, curriculum assessment, achievement and language proficiency testing, whether
10 administered in English or in the native language; (iv) the absentee, suspension, expulsion,
11 dropout and promotion rates; and (v) the number of years each limited English proficient student
12 has been enrolled in an English language learners program;

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

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

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

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

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

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

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

32 (j) whether there were any complaints filed with any federal or state court or
33 administrative agency, since the program's inception, concerning the compliance with federal or

34 state minimum legal requirements; the disposition of such complaint and the monitoring and
35 evaluation of any such agreement or court order relative to such complaint.

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

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

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

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

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

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

57 "Commissioner", the commissioner of education.

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

60 "Department", the department of education.

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

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

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

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

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

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

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

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

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

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

117 In any school district with 50 or more limited English proficient students in any 1
118 language group at the elementary school level, the school committee shall establish a policy
119 requiring that the district offer at least 2 full time English language learners programs for those

120 students. In any school district with 50 or more limited English proficient students in any 1
121 language group at the middle school level, the school committee shall establish a policy
122 requiring that the district offer at least 2 fulltime English language learners programs for those
123 students. In any school district with 50 or more limited English proficient students in any 1
124 language group at the high school level, the school committee shall establish a policy requiring
125 that the district offer at least 2 fulltime English language learners programs for those students.
126 The policy shall be consistent with the school district's course enrollment standards. In
127 determining the types of English language learners programs to be offered, the policy
128 determination of the school committee shall reflect that strong consideration was given to the
129 programs requested by the parents or legal guardians of limited English proficient students.

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

132 Section 2A. At least once every 3 years, each school district with any limited English
133 proficient students shall submit a district plan to the commissioner for approval in accordance
134 with regulations promulgated by the department. The office of language acquisition shall make
135 recommendations to the commissioner on whether any such plan shall be approved. The district
136 shall provide any limited English proficient student with an appropriate English language
137 learners program to assist such student in becoming proficient in using the English language and
138 to enable the student to participate effectively in the district's regular or advanced educational
139 programs and extracurricular activities. To the extent practical, districts shall make available
140 reasonable enrichment opportunities for interested limited English proficient students, either
141 during or outside the regular school day, including, but not limited to, as part of an English
142 language learners program or through foreign language courses or after school programs, to help

143 them maintain their native language skills. The district plan shall define and address all elements
144 and goals of the program or programs to be chosen by the district. Prior to developing a district
145 plan, the district shall notify parents or legal guardians of limited English proficient students
146 within the district that such a plan is being developed, and shall involve such parents or legal
147 guardians in the development and review of such plan.

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

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

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

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

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

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

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

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

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

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

186 (10) A description of the measures that will be used to ensure that limited English
187 proficient students whose parents or legal guardians have chosen to enroll them in a regular
188 education classroom and not in an English language learners program will be provided the
189 opportunity to continue to progress in all areas of the curriculum, including compliance with the
190 academic standards and curriculum frameworks.

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

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

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

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

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

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

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

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

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

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

225 A district plan shall be valid for 3 years. In the third year, a school district shall
226 submit an updated district plan to the commissioner for approval in the manner provided herein
227 for submission of a district plan. In addition to the requirements of this section for a district plan,

228 the updated district plan shall also include documentation evidencing the academic outcomes for
229 limited English proficient students served under the prior district plan.

230 In a school district with 20 or more limited English proficient students in any 1
231 language group, no district plan or updated district plan shall be submitted to the commissioner
232 until after a public hearing, with due notice to interested parties, has been held on such plan. The
233 district shall make any such plan available for public inspection at least 10 days prior to any
234 public hearing. Due notice shall include notification published in a newspaper of general
235 circulation in the district, and other reasonable steps to notify parents of limited English
236 proficient students within the district and other interested parties of such hearing, not less than 15
237 days prior to any such hearing. Any such notification shall include a brief description of the plan,
238 the date, time and place of the hearing, and shall indicate the place where the plan is available for
239 public inspection. Notices to parents or legal guardians of limited English proficient students
240 required by this section shall, to the maximum extent possible, be in a language understandable
241 by the parents or legal guardians.

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

248 The district shall send report cards and progress reports, including, but not limited to,
249 progress in becoming proficient in using the English language, and other school communications

250 to the parents or legal guardians of students enrolled in English language learners programs in
251 the same manner and frequency as report cards and progress reports of other students enrolled in
252 the district. The reports shall, to the maximum extent possible, be written in a language
253 understandable to the parents and legal guardians of such students.

254 Limited English proficient students in any English language learners program shall be
255 taught to the same academic standards and curriculum frameworks as all students, and shall be
256 provided the same opportunities to master such standards and frameworks as other students.
257 Districts shall regularly assess mastery of academic standards and curriculum frameworks;
258 provided, that such assessments may be conducted in a language other than English so long as
259 the student remains in an English language learners program.

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

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

269 The office of educational quality and accountability shall conduct onsite visits to
270 school districts with approved district plans, established under this section, at least once every 5

271 years for the purpose of evaluating the effectiveness of such plan and to validate evidence of
272 educational outcomes.

273 The evaluation shall include, but not be limited to, a review of individual student
274 records of all limited English proficient students, a review of the programs and services provided
275 to limited English students to determine if they are in accordance with the district plan, and a
276 review of the drop out rate of limited English proficient students formerly enrolled in the
277 district's English language learners program or programs within the prior 3 years.

278 In the event a review and evaluation undertaken under this section demonstrates that a
279 district is substantially out of compliance with the district plan, or is failing to adequately
280 improve educational outcomes for limited English proficient students enrolled in English
281 language learners programs, the commissioner may recommend to the board of education that
282 any school within the district be declared underperforming under sections 1J and 1K of chapter
283 69.

284 Section 2B. School districts shall assess annually all limited English proficient
285 students in the oral comprehension, speaking, reading, and writing of English by means of
286 English proficiency uniform assessment instruments intended for limited English proficient
287 students, which have been prescribed by the department. Except as provided in this section, any
288 limited English proficient student may remain in an English language learners program for a
289 period of 2 years, or until such time as the student achieves a level of English language
290 proficiency that will enable the student to perform successfully in classes in which instruction is
291 given only in English as determined by scores on English proficiency assessments as set forth in
292 this section, whichever occurs first. Only full-day kindergarten shall be counted toward the time

293 limitations set forth in this section. School districts shall develop an intensive English learning
294 success plan for any limited English proficient student whom the district determines fails to
295 achieve scores on English proficiency assessments that, in the determination of the department,
296 reflect sufficient progress toward achieving English language proficiency following the student's
297 first year in any English language learners program. Any such plan shall be developed with the
298 participation and approval of the student's parents or legal guardian. The plan shall concentrate
299 on the needs of the student to master English language literacy skills and shall specify such
300 instruction or services as intensive English classes, intensive tutoring, after or before school
301 programs, summer programs, literacy mentoring, and other academic supports that will assist the
302 student in the rapid acquisition of English necessary to access academic standards and
303 curriculum frameworks at grade level. Any student who fails to achieve scores on English
304 proficiency assessments that, in the determination of the department, reflect sufficient
305 proficiency that will enable the student to perform successfully in classes in which instruction is
306 given only in English, may remain in such intensive plan for up to 1 additional year, with the
307 approval of the student's parents or legal guardian.

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

312 If later evidence suggests, as determined by the school district, that a limited English
313 proficient student transferred from an English language learners program to a regular education
314 program prior to his third year in such English language learners program is still disadvantaged
315 by a lack of English proficiency and may benefit from being reenrolled, under an intensive

316 English learning success plan, in an English language learners program offered by the district,
317 such student, with the approval of the student's parents or legal guardian, may be so reenrolled
318 for a length of time equal to that which remained at the time he was transferred.

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

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

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

327 Section 3. School districts shall notify, in writing, the parents or legal guardian of a
328 limited English proficient student of the English language learners program that are available
329 within the district, and shall recommend a specific program for the student. Such notice shall be
330 sent by mail not later than 10 days after the enrollment of the student in the school district. The
331 notice shall contain a simple, non technical description of the purposes, method and content of
332 the various programs, reasons for the school district's recommendation of a specific program, and
333 shall inform the parents or legal guardian that they have the right to visit English language
334 learners program classes in the school district, and to come to the school for a conference to
335 explain the nature of the various English language learners programs. The notice shall further
336 inform such parents or legal guardian that they have the absolute right, if they so desire, to
337 choose any English language learners program for the student from among those provided by the

338 school district, to prevent the student from being placed in an English language learners program,
339 or to withdraw the student from a program, in the manner as hereinafter provided in this section.
340 The notice shall also inform such parents or legal guardian of the existence of any parent
341 advisory council established within the district under this section. Any such notice shall be
342 written in English and in the language of which the parents or legal guardians so notified
343 possesses a primary speaking ability.

344 In any case where a district recommends that a student be placed in an English
345 language learners program, the parents or legal guardian of such student shall have the right,
346 either at the time of the original notification under this section, or at the close of any marking
347 period thereafter, to choose an English language learners program for the student from among
348 those provided by the school district, to prevent the student from being placed in an English
349 language learners program, or to withdraw the student from such program by sending written
350 notice of such decision by mail to the school authorities of the school district in which the
351 student is enrolled. Such written notice shall be sent not later than 10 school days after receipt of
352 the notice sent by the school district, under this section. In the case of a student who is to be
353 withdrawn from an English language learners program, the written notice shall be sent not later
354 than 10 school days after the close of any marking period.

355 Each school district operating an English language learners program or programs for
356 20 or more limited English proficient students in any 1 language group shall establish a parent
357 advisory council. The parent advisory council shall be comprised of parents or legal guardians of
358 students who are enrolled in English language learners programs within the district. Each parent
359 advisory council shall have at least 1 representative from every language group in which a
360 program is conducted in a given district. Membership shall be restricted to parents or legal

361 guardians of students enrolled in English language learners programs within the district. The
362 duties of the parent advisory council shall include, but not be limited to, advising the school
363 district on matters that pertain to the education of students in English language learners
364 programs, meeting regularly with school officials to participate in the planning, development,
365 implementation, and evaluation of the district plan required by this chapter, and to participate in
366 the review of school improvement plans established under section 59C of chapter 71 as they
367 pertain to limited English proficient students. Any parent advisory council may, at its request,
368 meet at least once annually with the school council. The parent advisory council shall establish
369 by-laws regarding officers and operational procedures. In the course of its duties under this
370 section, the parent advisory council shall receive assistance from the director of English language
371 learners programs for the district or other appropriate school personnel as designated by the
372 superintendent.

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

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

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

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

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

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

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

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

401 Section 6. The commissioner shall grant certificates to teachers of bilingual education
402 or English as a second language under section 38G of chapter 71; provided, that teachers of
403 structured English immersion, or innovative programs approved by the department under section

404 2A shall be certified in bilingual education or English as a second language. No person shall be
405 eligible for employment by a school district as a teacher of bilingual education, or English as a
406 second language, except as provided in this section, unless he has been granted a certificate by
407 the commissioner under said section 38G with respect to the type of position for which he seeks
408 employment. Nothing in this section shall be construed to prevent a school committee from
409 prescribing additional qualifications.

410 In cases of shortages of certified teachers of bilingual education or English as a
411 second language, as determined by the commissioner, the commissioner may grant a waiver to a
412 teacher of bilingual education or English as a second language who is not certified with respect
413 to the type of position for which he seeks employment, if he presents the commissioner with
414 satisfactory evidence indicating he: (1) possesses a speaking and reading ability in a language,
415 other than English, in which English language learners programs are offered and is proficient in
416 written and oral English; (2) is of sound moral character; (3) possesses a bachelor's degree or
417 earned a higher academic degree; (4) meets such requirements as to courses of study, semester
418 hours therein, experience and training as may be required by the board of education that will
419 enable him to become a certified teacher of bilingual education, or English as a second language
420 in the state; and (5) is legally present in the United States and possess legal authorization for
421 employment. Any waiver shall be subject to annual renewal by the commissioner; provided, that
422 the waiver may be renewed not more than 4 times. In granting a waiver under this section, the
423 commissioner shall give preference to persons who have been certified as teachers in their
424 country or place of national origin.

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

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

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

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

443 SECTION 14. Notwithstanding any general or special law to the contrary, any limited
444 English proficient student, as defined in section 1 of chapter 71A of the General Laws, who was
445 enrolled in a public secondary school in the commonwealth directly from a country other than
446 the United States of America, and who was unable to achieve proficiency in the English
447 language, as determined by English proficiency assessments established under section 2B of said
448 chapter 71A, prior to leaving such public secondary school, to the extent possible shall be given

449 access to English language and literacy skill instruction courses offered through the adult basic
450 education program established under section 1H of chapter 69 of the General Laws.

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

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

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