

HOUSE No. 4330

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 25, 2016.

The committee on Education to whom were referred the petition (accompanied by bill, House, No. 327) of Antonio F. D. Cabral relative to the achievement gap for English Language learners, the petition (accompanied by bill, House, No. 498) of Jeffrey Sánchez and others for legislation to provide the highest quality education through access of innovative and research-based language education instructional programs and the petition (accompanied by bill, House, No. 3225) of John V. Fernandes and others for legislation to provide additional funding for school districts experiencing increases in English language learners, reports recommending that the accompanying bill (House, No. 4330).

For the committee,

ALICE HANLON PEISCH.

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to language opportunity for our kids.

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, as appearing in the 2014
2 official edition, is hereby amended by striking out, in line 283, the word “and.”

3 SECTION 2. Said section 1I of said chapter 69, as so appearing, is hereby amended by
4 striking out, in line 283, the “.” and replacing it with “,”.

5 SECTION 3. Said section 1I of said chapter 69, as so appearing, is hereby amended by
6 inserting, after line 289, the following:-

7 (k) any opportunities that the district makes available to English learners for
8 instruction in maintaining or developing proficiency in their native language;

9 (l) a description of how the school district will evaluate the effectiveness of its
10 English language learner programs in terms of helping such students attain English language
11 proficiency and master academic standards, as well as measure students’ readiness to join
12 mainstream classrooms, should they not already be placed in such classes, if the evaluations and

13 measures are in addition to what the department requires, and a description of the steps that the
14 school district will take to overcome any deficiencies encountered;

15 (m) a record of any instances in which parents decided to withdraw their child from,
16 or refuse their child's participation in, an English learner program and meetings with parents
17 regarding a student who is not progressing;

18 (n) a description of the training that the district provided for all staff in working with
19 culturally and linguistically diverse student populations; and

20 (o) documentation detailing English learners' participation in the district's regular
21 and advanced educational programs and extracurricular activities.

22 SECTION 4. The fifth paragraph of section 59C of chapter 71 of the General Laws, as
23 appearing in the 2014 official edition, is hereby amended by inserting after the word
24 "performance," in line 50, the following:-

25 In school districts with English learners, the plan to improve student performance shall
26 include a description of the educational program models and approaches to be provided by the
27 school to ensure the progress of English learners in developing oral comprehension, speaking,
28 reading and writing of English, and in meeting the academic standards of the curriculum
29 frameworks established under sections 1D and 1E of chapter 69.

30 SECTION 5. Chapter 71A of the General Laws, as appearing in the 2014 Official
31 Edition, is hereby amended by striking sections 1 through 8 and inserting in place thereof the
32 following: -

33 Section 1. Definitions

- 34 In this chapter;
- 35 a) “Commissioner”, the commissioner of elementary and secondary education
- 36 b) “Department”, the department of elementary and secondary education
- 37 c) "Dual language education", (also called two-way bilingual) any program that
- 38 integrates language learning and academic instruction for native speakers of English and native
- 39 speakers of another language, with the goals of high academic achievement, first and second
- 40 academic language proficiency, and cross-cultural understanding.
- 41 d) “English Language Development” (ELD) or “English as a second language”
- 42 (ESL), a specially designed course of study that focuses on the acquisition of the English
- 43 language consistent with a student's English proficiency, performance and developmental level.
- 44 It is a component of all comprehensive language acquisition programs, and explicit, systematic,
- 45 developmental, proficiency-driven English language and literacy are the primary content.
- 46 e) “English learner”, a student who does not speak English or whose native language
- 47 is not English, and who is not currently able to perform ordinary classroom work in English.
- 48 f) “Foreign language”, a language other than English, and includes American Sign
- 49 Language.
- 50 g) “Language acquisition program”, an instructional program that includes English
- 51 language acquisition for English learners as a component. Language acquisition programs are
- 52 not limited to any single program design or pedagogical style.
- 53 h) “Sheltered English immersion”, a program composed of two instructional
- 54 components: sheltered content instruction that focuses on teaching academic content with

55 language support, using English as the primary language of instruction, and English language
56 development instruction.

57 i) "Transitional bilingual education," an English learner program that follows a
58 bilingual approach to learning in which the native language of the English learner is initially
59 used to support and scaffold the student's development of English and content learning and then
60 is gradually phased out of instruction as the student's English proficiency increases. The
61 language goal of transitional bilingual programs is English proficiency and not bilingualism.

62 Section 2. Census

63 Local school districts shall annually ascertain, not earlier than the first day of April, the
64 number of English learners within their school system in grades pre-Kindergarten through twelve
65 for districts that have pre-Kindergarten programs and in grades Kindergarten through twelve for
66 districts that do not have pre-Kindergarten programs, and shall classify them according to grade
67 level, the language of which they possess a primary speaking ability, and the English learner
68 program type in which they are enrolled, with all such information being made publicly available
69 by school and school district on a website. Districts shall also monitor students who have exited
70 English learner programs when assessing the academic achievement of English learners and the
71 effectiveness of language acquisition programs.

72 Section 3. English Language Education

73 English learners enrolled in a Massachusetts public school shall be educated through a
74 comprehensive, research-based instructional program that includes subject matter content and an
75 English language acquisition component. The programs for English learners may include
76 sheltered English immersion, dual language education or transitional bilingual education but

77 shall not be limited to any specific program or instructional design provided that any such
78 programs shall include the acquisition of the English language. Districts may choose one or more
79 programs that meet the requirements of this section based on best practices in the field, the
80 linguistic and educational needs, and the demographic characteristics of their students. Districts
81 may incorporate opportunities for students to develop and maintain native language proficiency
82 as part of a formal or extracurricular academic program.

83 English learners shall receive English language development instruction at a level and
84 frequency that is appropriate for their level of English language proficiency and educational
85 needs and instructed by teachers properly qualified under state law. Each school district shall
86 employ sufficient ESL teachers for identified English language learners, provided, however, that
87 each school district shall employ at least one teacher licensed in English as a Second Language.

88 Any student who has exited an English learner program and attained English proficiency
89 shall have access to English language support and/or development instruction, as needed, in
90 order to perform ordinary grade level classwork.

91 Schools shall be permitted but not required to place in the same classroom English
92 learners of different ages but whose degree of English proficiency is similar. Schools shall be
93 encouraged to mix together in the same classroom English learners from different native-
94 language groups but with the same degree of English fluency. Once English learners acquire a
95 good working knowledge of English, and are able to do regular school work in English and
96 achieve a score of proficient or higher on the statewide test of English language proficiency
97 pursuant to section 7, they shall no longer be classified as English learners.

98 Foreign language programs and special education programs shall be unaffected.

99 Section 4. Parental Choice

100 Parents or legal guardians of students who are deemed eligible to enroll in an English
101 learner program may select any available English language learner program offered within the
102 district.

103 Parents or legal guardians may refuse to enroll a student or may remove their student
104 from any English learner program provided that written confirmation of any such request is
105 retained in the student’s cumulative folder. The student shall continue to be designated as an
106 English learner, receive supports necessary to overcome language barriers within the general
107 academic program setting, and retain the right to an English learner program at any time.

108 Any school district may join with any other school district or districts to provide English
109 learner programs required or permitted by this chapter.

110 The parents or legal guardians of 20 pupils or more in any grade may request a specific
111 program within a single district or charter school that is designed to provide language instruction.
112 Within 90 days the school district must respond and either provide the plan for implementation
113 or provide written informed reason for denial.

114 Any district operating a language acquisition program or programs for English learners
115 that serve more than 100 English learners or in which English learners are more than 5% of the
116 district’s student population, whichever is less, shall establish an English learner parent advisory
117 council. The parent advisory council shall be composed of parents or legal guardians of students
118 who are enrolled in language acquisition programs within the district, or of alumni of said
119 programs. The duties of the parent advisory council shall include, but not be limited to, advising
120 the district on matters that pertain to the education of students in language acquisition programs,

121 meeting regularly with school officials to participate in the planning and development or
122 programs designed to improve educational opportunities for English learners, and to participate
123 in the review of school or district improvement plans established under section 59C of chapter 71
124 as they pertain to English learners. Any parent advisory council may, at its request, meet at least
125 once annually with each school council within its district. The parent advisory council shall
126 establish by-laws regarding officers and operational procedures. In the course of its duties under
127 this section, the parent advisory council shall receive assistance from the director of language
128 acquisition programs for the district or other appropriate school personnel as designated by the
129 superintendent.

130 Section 5. Parental Notice

131 The Department shall issue regulations regarding additional communication to parents of
132 English learners in compliance with all state and federal requirements. Any such communication
133 shall annually inform such parents or legal guardians of their rights to choose any language
134 acquisition program among those that are offered at the school district, including, but not limited
135 to, sheltered English immersion, transitional bilingual education and two-way or dual language
136 education to request a new language acquisition program under Section 4, or to withdraw their
137 child from a particular language acquisition program. Such notice shall be sent by mail not later
138 than 10 days after the enrollment of the student in the school district. The notice shall, to the
139 extent possible, be in a language that is understandable to such parents or legal guardians, shall
140 contain a simple, non-technical description of the purposes, method and content of the various
141 programs, and shall inform the parents or legal guardian that they have the right to visit English
142 language learner programs in the school district. They shall also be notified that they may come
143 to the school for a conference to learn about the various English language learner programs.

144 Furthermore, should the school district issue a recommendation to place an English language
145 learner in an English language learner program, the parents or legal guardian of such student shall
146 have the right, either at the time of the original notification under this section, or at the close of
147 any marking period thereafter, to withdraw the student from such program by sending written
148 notice of such decision by both mail and electronic communication to the school authorities of
149 the school district in which the student is enrolled.

150 Section 6. Monitoring Language Acquisition Programs

151 To ensure that the educational progress of English language learners is monitored in
152 learning English and in mastering the standards for other academic subjects, each publicly
153 funded English language learner must participate as in the statewide assessment system adopted
154 pursuant to section 1I of chapter 69.

155 A statewide standardized criterion-referenced test of English language proficiency shall
156 be administered once each year to all Massachusetts students whose educations are publicly
157 funded and who are English language learners in kindergarten through grade 12, assessing their
158 English language achievement of oral and literacy skills.

159 The assessment scores of individual students shall be confidentially provided to their
160 individual parents and legal guardians, and the aggregated assessment data for individual schools
161 and school districts shall be made publicly available online in machine readable format; the
162 scores for students classified as English learners shall be separately sub- aggregated and made
163 publicly available there as well, with further sub- aggregation based on the English learner
164 program type in which they are enrolled.

165 The results of any such assessments shall be used as evidence of the efficacy of the
166 English language learner programs offered by the school district. The results of any single annual
167 assessment of English proficiency under this section shall not be the sole basis for evaluations of
168 districts, schools, English learner programs, or individual educators.

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

175 Section 7. Evaluation of Programs

176 The department shall conduct on-site visits to school districts at least once every 6 years
177 for the purposes of evaluating the effectiveness of programs serving English learners. The
178 evaluation shall include, but not be limited to, a review of individual student records of all
179 English learners, a review of the programs and services provided to English learners, and a
180 review of the dropout, graduation, discipline, and special education incidence rates of the English
181 learner population in the district. Using the best available data, the department shall include in its
182 monitoring report dropout, graduation, discipline, and special education rates of English learners
183 who exited the English language learner education program within the three school years
184 preceding the on-site visit, for such three year period. Said report shall also describe the
185 processes by which school-based teams, consisting of educators, administrators and support staff
186 monitor the progress of English learners and former English learners and a review of the amount,

187 frequency and effectiveness of ESL instruction. The ELL/Bilingual Advisory Council
188 established under MGL Ch. 15, Section 1G shall annually review the results of the department's
189 monitoring of English language learner programs in the school districts.

190 If a significant number of students in a district fail to make progress in English language
191 proficiency, the language acquisition programs must be evaluated by a qualified external
192 evaluator, approved by the department, to determine how to improve instructional programs for
193 the district's English learner population. Nothing in this section shall prevent the department
194 from conducting an evaluation of the program if it so chooses.

195 Section 7A. Supplemental Programs

196 School districts shall develop an intensive English learning success plan for any English
197 learners whom the district determines fails to achieve scores on English proficiency assessments
198 that, per benchmarks established by the department, reflect sufficient progress towards achieving
199 English language proficiency following the student's first year in any English learner program.
200 Any such plan shall be developed with the participation and approval of the student's parents or
201 legal guardian. The plan shall include a description of the services necessary to progress the
202 student to English language proficiency in a timely manner. Such services may include, but are
203 not limited to, intensive English classes, intensive tutoring, after or before school programs,
204 summer programs, literacy mentoring, and other academic supports that will assist the student in
205 achieving the rapid and effective acquisition of English necessary to access academic standards
206 at grade level. This plan shall remain in place and be updated annually as long as the student
207 requires intervention and support to achieve English proficiency, allowing the student to reach
208 grade level achievement. Any student who fails, following the student's second year in such

209 program, to achieve scores on English proficiency assessments that, per benchmarks established
210 by the department, reflect sufficient proficiency that will enable the student to perform
211 successfully in classes in which instruction is given only in English, may remain or be placed in
212 such intensive plan, or be placed in a revised intensive plan for an additional time period to be
213 specified by the district, with the approval of the student's parents or legal guardian.

214 If later evidence suggests, as determined by the school district, that a limited English
215 proficient student transferred from an English language learner program to a regular education
216 program is still disadvantaged by a lack of English proficiency, such student, with the approval
217 of the student's parents or legal guardian, may be so reenrolled subject to specific learning goals
218 to be articulated by the district.

219 Section 8. Educator Certification and Endorsement

220 All teachers and administrators assigned to language acquisition programs shall be
221 properly qualified under state law for the program type. Core academic teachers of English
222 language learners, include core academic teachers in vocational-technical education programs
223 under chapter 74, shall meet the requirements of section 38G of chapter 71, and the regulations
224 promulgated thereunder, for certification in their respective subject areas and endorsement or
225 certification in content instruction of English language learners.

226 The Department shall create an endorsement for educators who have completed
227 coursework and field-based experiences in providing instruction within dual-language programs.

228 The Department shall create a language acquisition program administrator license.

229 SECTION 3. Chapter 71A of the General Laws, as so appearing, is hereby further
230 amended by adding the following new sections:-

231 Section 9. Language Acquisition Program Administrator

232 (a) A school district with 200 or more students who are designated as English learners or
233 where English learners comprise 10% or more of the total student population shall appoint a
234 person to be its administrator of language acquisition programs. Such administrator shall devote
235 full time to the duties involved in supervising the provision of all language acquisition programs
236 in the school system.

237 (b) A school district with fewer than 200 students designated as English learners or with
238 English learners who comprise less than 10% of the total student population shall appoint a
239 person to be its administrator of language acquisition programs. Such administrator shall have
240 the duties involved in supervising the provision of all language acquisition programs in the
241 school system for not less than 25 percent of the duties assigned to such a positions.

242 (c) Notwithstanding the provisions of paragraphs (a) and (b), the school committee of any
243 city, town, or school district may, to meet its obligations under this section, with the approval of
244 the department, enter into an agreement with any other school committee to jointly appoint an
245 administrator of English language learners.

246 Section 10. State Seal of Biliteracy

247 (a) Chapter 69 of the General Laws as appearing in the 2014 Official Edition is
248 hereby amended by adding after Section 1P a new section:

249 Section 1Q. The commissioner shall develop criteria and guidelines for a State Seal of
250 Bilingual to be awarded by school districts to recognize high school graduates who have met
251 academic benchmarks, to be determined by the department, in one or more languages in addition
252 to English.

253 The purposes of the State Seal of Bilingual are as follows: (1) To encourage students to
254 study languages; (2) To certify attainment of bilingual; (3) To provide employers with a method
255 of identifying people with language and bilingual skills; (4) To provide universities with a
256 method to recognize and give academic credit to applicants seeking admission; (5) To prepare
257 pupils with 21st century skills; (6) To recognize and promote foreign language instruction and
258 native and heritage language instruction in public schools; (7) To strengthen intergroup
259 relationships, affirm the value in diversity, and honor the multiple cultures and languages of the
260 Commonwealth.

261 The department shall be responsible for developing an appropriate insignia to be affixed
262 to the diploma or transcript of the student indicating that the student has been awarded a State
263 Seal of Bilingual, and making said insignia available to school districts for the preparation of
264 diplomas. In developing the guidelines for the State Seal of Bilingual, the department shall
265 consider the recommendations of the Massachusetts Foreign Language Association.

266 A school district that participates in the program under this section shall: maintain
267 appropriate records in order to identify pupils who have earned a State Seal of Bilingual and
268 affix the appropriate insignia to the diploma or transcript of each pupil who earns a State Seal of
269 Bilingual. State Seals of Bilingual shall be available electronically.

270 Section 11. Regulations

271 The department shall issue regulations or guidelines as necessary to implement the
272 provisions of this act.