

OFFICE OF THE ATTORNEY GENERAL  
INITIATIVE PETITION INFORMATION SHEET

TITLE OF PETITION: **An Act relative to the teaching of English**  
**in Public Schools**  
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PETITION NUMBER (to be filled in by AG staff): **01-11**

PROPOSERS' CONTACT **Lincoln Jesus Tamayo**

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Will the proponents propose a summary by August 6, 2001? Yes  No

Will the proponents submit a memo of law by August 10, 2001? Yes  No

Please note that the above information will be made available to the public and particularly to possible opponents of certification. You and your attorney (if any) will receive copies of any materials submitted by the public regarding certification.

AG STAFF PERSON RECEIVING PETITION: **Peter Sacks** DATE: **July 31, 2001**

## **AN INITIATIVE PETITION FOR A LAW: An Act relative to the teaching of English in Public Schools**

*Be it enacted by the People, and by their authority, as follows:*

**SECTION 1.** Chapter Seventy-one A of the General Laws as appearing in the 2000 Official Edition is hereby amended by striking sections 1 through 9 and substituting the following:

### Section 1. Findings and Declarations

The People of Massachusetts find and declare that:

- (a) The English language is the common public language of the United States of America and of the Commonwealth of Massachusetts. It is spoken by the vast majority of Massachusetts residents, and is also the leading world language for science, technology, and international business, thereby being the language of economic opportunity; and
- (b) Immigrant parents are eager to have their children become fluent and literate in English, thereby allowing them to fully participate in the American Dream of economic and social advancement; and
- (c) The government and the public schools of Massachusetts have a moral obligation and a constitutional duty to provide all of Massachusetts's children, regardless of their ethnicity or national origins, with the skills necessary to become productive members of our society. Of these skills, literacy in the English language is among the most important.
- (d) The public schools of Massachusetts have done an inadequate job of educating many immigrant children, requiring that they be placed in native language programs whose failure over past decades is demonstrated by the low English literacy levels of those children.
- (e) Immigrant children can easily acquire full fluency and literacy in a new language, such as English, if they are taught that language in the classroom as soon as they enter school.
- (f) Therefore it is resolved that: all children in Massachusetts public schools shall be taught English as rapidly and effectively as possible.

### Section. 2. Definitions

In this chapter,

- (a) "Bilingual education" means a language acquisition process for students in which all or substantial portions of the instruction, textbooks, or teaching materials are in the child's native language other than English.
- (b) "English language classroom" means a classroom in which the language of instruction used by the teaching personnel is overwhelmingly the English language, and in which such teaching personnel are fluent and literate in English. English language classrooms encompass both English language mainstream classrooms and sheltered English immersion classrooms.
- (c) "English language mainstream classroom" means a standard classroom, one in which the students either are native English language speakers or already have acquired reasonable fluency in

English.

- (d)“English learner” means a child who does not speak English or whose native language is not English, and who is not currently able to perform ordinary classroom work in English.
- (e)“Sheltered English immersion” means an English language acquisition process for young children in which nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language. Books and instructional materials are in English and all reading, writing, and subject matter are taught in English. Although teachers may use a minimal amount of the child’s native language when necessary, no subject matter shall be taught in any language other than English, and children in this program learn to read and write solely in English. This educational methodology represents the standard definition of “sheltered English” or “structured English” found in educational literature.

### Section 3. Census.

Local school committees shall annually ascertain, not earlier than the first day of April, under regulations prescribed by the Department of Education, the number of English learners within their school system in grades Kindergarten through twelve, and shall classify them according to grade level, the language of which they possess a primary speaking ability, and the English learner program type in which they are enrolled, with all such information being made publicly available by school and school district on a website.

### Section 4. English language education

Subject to the exceptions provided in Section 5 of this chapter, all children in Massachusetts public schools shall be taught English by being taught in English and all children shall be placed in English language classrooms. Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally intended to exceed one school year. 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. Foreign language classes for children who already know English shall be completely unaffected, as shall be special educational programs for physically- or mentally-impaired students.

### Section 5. Parental waivers

(a). The requirements of Section 4 of this chapter may be waived with the prior written informed consent, to be provided annually, of the child’s parents or legal guardian under the circumstances specified in this section. Such informed consent shall require that said parents or legal guardian personally visit the school to apply for the waiver and that they there be provided 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 child. If a parental waiver has been granted, the affected child may be transferred to classes teaching English and other subjects through bilingual education techniques, such as two-way bilingual programs, or other generally recognized educational methodologies permitted by law. Individual schools in which 20

students or more of a given grade level receive a waiver shall be required to offer such a class; in all other cases, such students must be permitted to transfer to a public school in which such a class is offered.

(b). The circumstances in which a parental exception waiver may be applied for under this section are as follows:

- (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 5<sup>th</sup> 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.

#### Section 6. Legal standing and parental enforcement

- (a) As set forth in Section 4 of this chapter, all school children are to be provided at their assigned school with an English language public education. The parent or legal guardian of any school child shall have legal standing to sue for enforcement of the provisions of this chapter, and if successful shall be awarded reasonable attorney's fees, costs and compensatory damages.
- (b) Any school district employee, school committee member or other elected official or administrator who willfully and repeatedly refuses to implement the terms of this chapter may be held personally liable for reasonable attorney's fees, costs and compensatory damages by the child's parents or legal guardian, and shall not be subsequently indemnified for such monetary judgment by any public or private third party. Any individual found so liable shall be barred from election or reelection to any school committee and from employment in any public school district for a period of five years following the entry of final judgment.
- (c) Parents and legal guardians who apply for and are granted exception waivers under Section

5(b)(3) of this chapter retain full and permanent legal right to sue the individuals who granted such waivers if they subsequently discover before the child reaches the age of eighteen that the application for waivers was induced by fraud or intentional misrepresentation and injured the education of their child.

#### Section 7. Standardized testing for monitoring education progress

To ensure that the educational progress of all students in learning English together with other academic subjects is properly monitored, a standardized, nationally-normed written test of academic subject matter given in English shall be administered at least once each year to all public schoolchildren in grades 2 and higher who are English learners. This requirement shall not be construed as barring the administration of this same exam to other students. A nationally-normed test of English proficiency shall similarly be administered at least once each year to all Massachusetts schoolchildren in grades Kindergarten and higher who are English learners. Only English learners classified as severely learning disabled may be exempted from these tests. The particular tests to be used shall be selected by the Board of Education, and it is intended that the tests shall usually remain the same from year to year. The national percentile scores of students shall be confidentially provided to individual parents, and the aggregated percentile scores and distributional data for individual schools and school districts shall be made publicly available on an internet web site; the scores for students classified as English learners shall be separately sub-aggregated and made publicly available there as well, with further sub-aggregation based on the English learner program type in which they are enrolled. School enrollment by race, ethnicity, and English learner program type shall also be made publicly available. Although administration of these tests are required solely for monitoring educational progress, public officials and administrators may utilize these test scores for other purposes as well if they so choose.

#### Section 8. Community-Based English Tutoring.

In furtherance of its constitutional and legal obligation to provide all children with an adequate education, the state shall encourage family members and others to provide personal English language tutoring to such children as are English learners, and support these efforts by raising the general level of English language knowledge in the community. Subject to appropriation by the General Court, commencing with the fiscal year in which this initiative is enacted and for each of the nine fiscal years following thereafter, a sum of five million dollars (\$5,000,000) per year shall be spent for the purpose of providing funding for free or subsidized programs of adult English language instruction to parents or other members of the community who pledge to provide personal English language tutoring to Massachusetts school children who are English learners. Programs funded pursuant to this section shall be provided through schools or community organizations. Funding for these programs shall be administered by the Department of Education, and shall be disbursed at the discretion of the local school committees in each district, under reasonable guidelines established by, and subject to the review of, the Board of Education.

#### **SECTION 2. Severability**

If a provision of this act or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**SECTION 3. Interpretation**

Under circumstances in which portions of this act are subject to conflicting interpretations, the Findings and Declarations of subsection 1 of section 1 of this act shall be assumed to contain the governing intent of this act.

#### **SECTION 4. Effective Date**

Except for the testing requirements of subsection 7 of section 1 of this act, which shall be implemented immediately, all other sections of this act shall become effective for all school years that begin following the effective date of this act.

We the undersigned state under the pains and penalties of perjury that we have personally read the final text of this proposed statute titled An Act relative to the teaching of English in Public Schools, fully subscribe to its contents, are qualified voters of the commonwealth at the addresses printed below our names, and freely and voluntarily agree to be one of its original signers as required by Amendment Article 48 of the Constitution of the Commonwealth of Massachusetts.

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