

Successor Settlement Agreement

Between

The United States of America

and

The Boston Public Schools

SETTLEMENT AGREEMENT

DEFINITIONS

1. "The School District" and "the District" refer to the Boston School Committee and the public schools it operates.
2. "ELLs" refers to students who have been determined to be English Language Learners, Limited English Proficient, or Non-English Proficient and thus require assistance to overcome language barriers that impede their equal and meaningful participation in the District's instructional programs. For purposes of this Agreement, ELLs includes "newly identified ELLs" and SIFE students.
3. "Newly identified ELLs" refers to students who were previously assessed only for speaking and listening, and were reassessed in the Spring of 2010 in all four language domains (including reading and writing) and determined to meet the criteria stated in Paragraph 2.
4. "ELL Services" refers to assistance afforded to ELLs for the purpose of teaching the English language or to render substantive educational content accessible, whether in the context of an ELL program specifically designed for ELLs or in a classroom where ELLs and non-ELLs are educated. Services may include English as a Second Language (ESL), English Language Development (ELD), Sheltered English Immersion (SEI), transitional bilingual education, and/or two-way bilingual instruction.
5. "FLEP" refers to Formerly Limited English Proficient, which is a student who at one time was an ELL but subsequently met the District's criteria for exiting ELL services.
6. "Non-LEP" or "Non-ELL" refers to a student who is not an English Language Learner, Limited English Proficient, or Non-English Proficient and who does not require

assistance from the District to overcome language barriers in order to have equal and meaningful participation in the District's instructional programs.

7. "Opt Outs" or "students previously deemed to have opted out of ELL programs or services" are ELLs who, prior to December 23, 2009, were treated as non-ELLs and not provided with ELL programs or services.
8. "ELL Program" refers to the District's methods or systems for delivering ELL services, such as (i) assigning ELLs to or grouping them in particular classes designated for ELLs, or (ii) assigning ELLs who speak a particular foreign language to a given school. For example, some schools offer a language-specific SEI program consisting of a multi-grade strand of classes enrolling only ELLs (now generally those with ELD levels 1, 2, and 3) who receive ESL and SEI core content together with teachers who also can provide native language support in a particular language. Other ELL-only SEI classes for ELD levels 1, 2, and 3 are multilingual because they contain ELLs from more than one language background. Other examples of "programs" are High Intensity Language Training for Students with Interrupted Formal Education ("HILT for SIFE" or "HILT"); transitional bilingual education, and two-way bilingual instruction. Placement in a formally designated program for ELLs, a transitional program, or a "program seat" is not a prerequisite to receiving appropriate ELL services.
9. "ESL" refers to English as a Second Language, which is direct, explicit instruction about the English language that provides a systematic and developmentally appropriate approach to teaching language. The Massachusetts Department of Elementary and Secondary Education (MADESE) and the District also refer to ESL as ELD instruction.

ESL and ELD instruction address the listening, speaking, reading, and writing standards as contained in MADESE guidelines.¹

10. “SEI” refers to the Sheltered English Immersion program required by Massachusetts law. See MGL Ch. 71A. SEI is an instructional model for teaching grade-level content to ELLs by integrating language and literacy development into content area instruction. SEI instruction systematically incorporates an array of teaching strategies that make the content (e.g., math, science, and social studies) more comprehensible to ELLs while promoting their English language development.
11. “Core Content” refers to language arts, math, science, and social studies.
12. “Category Training” refers to the following four categories of training that MADESE deems, under current policy, to qualify a certified teacher to teach an SEI class of one or more ELLs:

“Category 1” refers to the “Second Language Learning and Teaching” curriculum. This training emphasizes key factors affecting second language acquisition. This is a 10- to 15-hour training wherein teachers learn skills and knowledge regarding factors affecting second language acquisition and how such factors affect classroom organization and instruction.

“Category 2” refers to the “Sheltering Content Instruction” curriculum. This is usually a 30- to 40-hour training session wherein teachers learn to make necessary adaptations in curriculum, learning outcomes and assessments to shelter content instruction for ELLs. The District also offers a 24-hour face-to-face training that MADESE has approved.

“Category 3” refers to the “Assessment of Speaking and Listening” curriculum, involving Massachusetts English Language Assessment-Oral (MELA-O) training with more in-depth discussion and practice in providing opportunities for oral interaction in the classroom. The District offers a 9-hour face-to-face training with an additional 1 to 2 hours for administering the test. This course is designed as an introduction to the field of testing, assessment, and evaluation in second language education, providing teachers with

¹ To the extent the District relies on state laws or guidance for its commitments in this Agreement, they are referenced herein where appropriate. Current curricular guidelines are set forth in the *Massachusetts English Language Proficiency Benchmarks and Outcomes* (ELPBO). MADESE recently adopted WIDA (Worldclass Instructional Design and Assessment) guidelines.

an understanding about the MELA-O and the qualifications for administering this assessment.

“Category 4” refers to the “Teaching Reading and Writing to Limited English Proficient Students” curriculum, which is offered separately for elementary and secondary SEI teachers. This is a 15- to 20-hour training wherein teachers focus on the approaches and practices for ELLs to develop reading, reading comprehension, and writing skills using the writing process and formal elements in writing in content area classes. The District offers a 15-hour face-to-face training and a hybrid 15-hour training in which 50% of the training is face-to-face and 50% of the training is completed online.

Currently under MADESE guidelines, a “qualified” SEI teacher refers to (a) a teacher certified in the content area and ESL, or (b) a teacher certified in the content area who has completed training in Categories 1, 2, and 4.²

13. “Alternative English language education program” refers to OELL-approved turnaround/redesign plans in the District’s “turnaround” schools that are in addition to or in place of the SEI program, as well as to classes in which English is not necessarily used exclusively as the teaching language.
14. “Compensatory Services” refers to language support services provided during the summer, vacation academies, Saturdays, and after school to newly identified ELLs and to those students deemed to have “opted-out” of programs or services for ELLs prior to December 23, 2009.
15. “LAT” refers to a language assessment team consisting of designated employees at each school who are responsible for ensuring the identification, adequacy of instruction, and monitoring of ELLs.
16. “IEP” refers to an Individualized Education Program under the Individuals with Disabilities Education Act (IDEA), and “Section 504 plan” refers to a plan designed to

² The parties are aware that SEI training requirements set by the MADESE are likely to be altered in the near future; in which case they agree that the Category training mandates set forth in this Agreement shall be replaced with any new MADESE training requirements or timelines that directly supersede them, provided the United States has determined that those new requirements and timelines adequately prepare educators to provide SEI instruction.

meet the individual educational needs of a student with a disability under Section 504 of the Rehabilitation Act of 1973 (Section 504). “IEP Team” and “Section 504 Team” refer to the teams constituted under these laws to: identify the student’s individual needs; propose placements, programming or services; and/or develop an IEP or Section 504 plan for the student.

17. “SPED” refers to special education and related aids and services, and “SPED student” refers to a student with a disability under Section 504 or a student who is eligible for special education under the IDEA. “SPED ELL” refers to a SPED student who is also an ELL.
18. “Major Languages” refers to the most commonly spoken languages other than English for ELLs in the District, including Spanish, Cape Verdean Creole, Haitian Creole, Portuguese, Chinese, Vietnamese, Somali, and any other language that the District shall add whenever the number of students with that language background reaches 100.
19. “OELL” refers to the Office of English Language Learners in the District.
20. A “high incidence program school” refers to a school with a high incidence of ELLs in any particular language group.
21. A “low incidence non-program school” refers to a school with a low incidence of ELLs in any particular language group.
22. “Essential information” includes, but is not limited to: (a) information about special education matters arising under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act (*e.g.*, IEP or 504 meetings); (b) report cards and other academic progress reports; (c) information about the disciplinary process; (d) requests for parent permission for student participation in District/school sponsored programs and

activities; (e) promotional materials and announcements distributed to students that contain information about school and District activities for which notice is needed to participate in such activities (*e.g.*, testing, co-curriculars, activities requiring an application, parent-teacher conferences, open houses); (f) parent handbooks; (g) documents concerning enrollment or registration; (h) documents concerning academic options and planning; (i) documents concerning screening procedures requesting a student's language background, a parent's preferred language of communication, and the process for refusing all or only specific ELL services; (j) information related to public health and safety; and (k) any other written information describing the rights and responsibilities of parents or students and the benefits and services available to parents and students.

PURPOSE

23. The District, by and through its undersigned representative,³ agrees to the terms of this successor Settlement Agreement in order to address and resolve the noncompliance findings raised as of the date of this Agreement by the Civil Rights Division of the United States Department of Justice and the Office for Civil Rights of the United States Department of Education (hereafter, collectively, "the United States") regarding the adequacy of the District's provision of services to ELLs, implicating the District's obligations under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703(f) (EEOA) and Title VI of the 1964 Civil Rights Act, 20 U.S.C. § 2000d et seq., and its implementing regulations at 34 C.F.R. part 100 (Title VI). This successor Agreement

³ The District representative, by signing this document, gives assurances that she has the authority to bind the District, including successor administrators and members of the Boston School Committee, for the Agreement's duration.

replaces and supersedes the Settlement Agreement entered into by the United States and the District on October 1, 2010.

24. By entering this Agreement, the District does not concede that its prior conduct could give rise to a finding of liability, or that the specific terms contained herein are mandated by the Federal law cited above or by any pertinent statute or provision of the Federal or state Constitutions.
25. In consideration for the commitments made herein by the District, the United States agrees not to initiate judicial proceedings to enforce those requirements of the EEOA and Title VI that are addressed by this Agreement.⁴ This commitment does not relieve the District from fulfilling any other obligations under the EEOA and Title VI nor of any other obligations to comply with any existing court order pertaining to the rights of ELLs.
26. This successor Settlement Agreement shall become effective on the date of its execution by both parties and shall remain in effect until such time as the United States determines the District has complied with its obligations under the EEOA and Title VI, provided that, the parties may, upon mutual written agreement, amend this Agreement to address changed circumstances and/or to improve the delivery of services to ELLs. The District understands that the United States will not close the monitoring of this Agreement until it determines that the District has fulfilled the terms of this Agreement and is in compliance with the EEOA and the regulation implementing Title VI at 34 C.F.R. § 100.3(a), which was at issue in this case.

⁴ The parties understand that Title VI and the EEOA do not mandate any particular methodology for providing instruction to ELLs. To the extent specific methodologies are set forth in this Agreement, they reflect methodologies that have been voluntarily selected by the District, and in some cases the State, to satisfy the District's obligation to provide educational services, programs, and benefits to ELLs.

27. As required by Title VI and the EEOA, the School District shall not discriminate on the basis of national origin with respect to its educational programs and benefits and shall take appropriate action to overcome language barriers that impede equal and meaningful participation by ELLs in its instructional programs. *See* 20 U.S.C. § 2000d *et seq.*; 20 U.S.C. § 1703(f).

SPECIFIC REQUIREMENTS

IDENTIFICATION AND PLACEMENT OF ELLs

28. The District shall ensure that all registration and intake staff at the Family Resource Centers (FRCs), Newcomer Assessment Center (NAC), and the schools have parents/guardians complete a Home Language Survey (HLS) and assess the English language proficiency (ELP) of, or refer for an ELP assessment, any enrolling student (a) whose HLS indicates that a language other than English is (i) the primary language used in the home, regardless of the language spoken by the student; (ii) the language most often spoken by the student; or (iii) the language that the student first acquired, or (b) for whom there is any other reason to believe the student is not proficient in English. The District shall change its HLS to include these three questions in accordance with the implementation plan approved by the United States. The District shall not revise any of these three questions without prior confirmation by the United States that the proposed revision is consistent with Title VI, the EEOA, the compliance obligations arising from this Agreement and the notice letters that preceded it. The ELP Assessments shall be accomplished as soon as possible but no later than 20 days from the student's enrollment during the school year, or within 20 days or by the first day of the new school year, whichever comes later, if the student enrolls during the summer. During peak season,

January 1 through March 15 and August 1 through October 31, ELP Assessments shall be accomplished as soon as possible but no later than 25 days. Parents shall be informed, orally or otherwise, of assessment results and student assignment options as soon as possible but no later than 2 school days after the completion of the assessments. Notice of the assessment scores shall be delivered or mailed to parents no later than 5 days following the notice of student assignment.

29. The District shall ensure that all students in grades K2-12 who are referred for language testing are assessed with a valid and reliable English language proficiency test to determine the students' English proficiency in all four language domains of listening, speaking, reading, and writing. The District shall follow the assessment's process for generating an overall English language proficiency level for each ELL and shall properly align these overall levels with the overall proficiency levels of 1 through 5 generated by the Massachusetts English Proficiency Assessment (MEPA) and the MELA-O or any other English language proficiency test that replaces them to ensure that ELLs receive ELL services that are appropriate for their level of proficiency, as set forth in this Agreement.
30. By September 1 of each school year the District shall ensure that all intake personnel at the FRC, NAC, and the schools who are involved in student registration and assessment receive training on the following tasks:
 - a. Completing the intake/registration forms of students, including the HLS;
 - b. Ensuring that students' English proficiency is properly assessed in all four language domains of listening, speaking, reading, and writing and that the determination of each ELL's overall proficiency level reflects an accurate interpretation of those results;

- c. Referring appropriate students to the BPS SPED department for potential evaluation or provision of SPED services if they have a current IEP, or there is some other indication that the student may have a disability or may require special education or related services; and
 - d. Informing parents/guardians of the District's ELL services and programs, and responding to parental questions regarding assessment and placement procedures.
31. Students designated as FLEPs shall be listed on the ELD tab on the District's intranet portal and flagged as FLEPs on teachers' class rosters. Consistent with the District's exiting protocols, the LATs at the individual schools and the OELL shall monitor the academic progress of such students after every marking period for two years to determine if they require any ELL services. Consistent with the District's reentry protocols, any newly identified FLEP student who fails to make adequate academic progress, as measured by valid and reliable indicators, including, but not limited to, grades, assessments, and standardized tests, during their monitoring period shall be provided appropriate ELL services that adequately address the student's academic needs. As of the start of the 2012-2013 school year, the OELL shall track and monitor school-level reports to ensure that FLEP students are appropriately monitored by school staff and that appropriate interventions and services are put in place for FLEP students who are not making adequate academic progress. The District shall provide to the United States by January 15 and August 1 of each year a list of FLEP students, disaggregated by school, who were identified as requiring additional academic or ELL services.
32. The District shall provide all ELLs with appropriate ELL services consisting of ESL and SEI core content instruction in their current or preferred school and shall ensure that ELLs do not need to change schools in order to receive these services.

- a. If the District adds, removes, or modifies any school-level ELL program, it shall ensure that ELLs are permitted to continue attending their current school through the final grade offered by such school and further ensure that ELLs have access to the same range of core content classes as non-ELLs in an SEI format that enables them to access the content as required by the state-mandated SEI program.
- b. If any ELL seeks and is denied enrollment in a school due to lack of space or some other reason (*e.g.*, the ELL program is not offered at the parent's school of choice), the District shall (i) make a record of each instance, including the school(s) sought by the ELL, the reason(s) the sought school(s) were denied, and the school in which the ELL enrolled; and (ii) ensure the ELL still receives appropriate ELL services consisting of ESL and SEI core content instruction, as required by Paragraphs 36-39 and 41-42.
- c. The District shall effectuate the requirements of this Paragraph through a Strategic Plan that will ensure: (i) sufficient capacity to serve all ELLs, including those ELLs who enroll during the school year, with ESL and SEI instruction through a combination of language-specific SEI classes, multilingual ELL-only SEI classes, mixed ELL/non-ELL SEI classes, HILT for SIFE classes, bilingual classes and dual language classes; (ii) sufficient numbers of mixed ELL/non-ELL classes to serve any unexpected ELL enrollees and ELL students who do not wish to participate in ELL-only programs; (iii) an equitable distribution of ELL-only and mixed ELL/non-ELL SEI classes throughout the District, including in schools frequently chosen by parents and students where seats are in high demand; and (iv) that the location of ELL-only language-specific classes or ELL-only multi-lingual classes accurately reflects annual

data on immigration, ELL demographic patterns in BPS, and ELL school preferences in BPS. The District shall further ensure that the nature and location of ELL-only programs does not discriminate against any particular group of students on the basis of national origin or race. The District understands that, notwithstanding its intention to use this Strategic Plan as a means of organizing ELL services, it remains obligated at all times to comply with the first sentence of this Paragraph and Paragraph 36.

33. If any parent/guardian of an ELL communicates a refusal to have his/her child enrolled in an ELL program, and/or refuses all or only specific ELL services (*e.g.*, ELL-only SEI classes, language-specific SEI classes, or HILT classes) at the FRC, NAC, or the schools, the District shall have the student's principal/headmaster and another representative of the school's LAT meet with the parent to:
 - a. Describe the range of programs and services that the child could receive if the parent does not refuse, including the methodology the District plans to employ to address the student's educational needs and the training and qualifications of teachers and any others who would be employed in teaching the student;
 - b. Discuss the benefits their child is likely to gain by being enrolled in an ELL program and receiving ELL services;
 - c. Explain that, notwithstanding any past practice, the District shall not require students to be assigned to programs specifically designated for ELLs, or schools containing such programs, in order to receive ELL services; and
 - d. Encourage the parent to allow the child to receive ELL services for at least 30 days before making a decision to refuse.
34. If, notwithstanding efforts taken by the District in conformance with Paragraph 33, the parent continues to refuse certain or all ELL services, the principal shall (on a form created by OELL for this purpose) document:
 - a. That s/he met with the parent;

- b. That it was explained to the parent that, notwithstanding any past practice, the District shall not require students to be assigned to programs specifically designated for ELLs, or schools containing such programs, in order to receive ELL services;
- c. The specific educational program offered the child, including the specific services planned, the methodology the District would have employed to address the student's educational needs, and the training and qualifications of teachers and any other staff the District would have employed in teaching the student if the parent did not refuse services; and
- d. The parent's reason(s) for refusing services.

The principal also shall ask the parent to sign the form in order to verify that the reasons stated accurately reflect the parent's motivation for refusing services. The principal shall provide parents with a copy of the form, submit a copy to OELL, and maintain the form in the ELD folder of the student's permanent record. If a form is submitted for an ELL with an ELD-level of 1-3 whose parent refuses ELL-only SEI classes or for a SIFE student whose parent refuses HILT services, a representative of the OELL may contact the parent to describe and answer questions about the ELL program(s) in which the child could be placed. If, after any such discussion, the parent continues to refuse ELL-only SEI classes or HILT services, the ELL shall nevertheless receive services in an SEI classroom taught by a teacher who has completed Categories 1, 2, and 4 or is ESL certified, and is otherwise qualified under state guidelines, in accordance with Paragraphs 12 (including Footnote 2), 41, 49 and 52. If the parent refusal of services does not include a refusal of ESL services, the ELL shall receive ESL services required for the student's ELD level, in accordance with Paragraphs 38-39 and 44-45. If more than 5% of the ELLs at a given school refuse ELL services in any given school year, OELL shall

meet with the principal, analyze the reasons for the refusals, and take appropriate steps to reduce this rate.

35. Consistent with the parent refusal procedures provided to the United States on July 7, 2010, the District also shall do the following if any parent/guardian of an ELL refuses in writing to have his/her child receive ELL services:

- a. Provide the student core content instruction, including language arts, from teachers who are certified to teach appropriate elementary grade level or secondary subject matter and have completed at least Categories 1, 2, and 4 training;
- b. Provide the student's core content teachers with a class roster identifying the student's English proficiency level and his/her refusal status;
- c. Provide the student's academic teachers with training to support the student's English language and subject matter learning needs;
- d. Routinely monitor the academic progress of the student, which shall include at least two reviews of the student's academic performance by the OELL each semester; and
- e. Meet with the student's parent/guardian if the student is not progressing to recommend ELL services.

INSTRUCTION OF ELLS

36. The District shall provide ELL services consisting of ESL and SEI core content instruction at all schools enrolling ELLs without regard to whether the school was historically a high incidence program school or a low incidence non-program school, except at those schools where all of the ELLs satisfy the District and State criteria for a two-way, bilingual, or alternative English language education program. Toward that end, the District shall not, due to a student's ELL status or national origin, or because an ELL's school of choice lacks space in an ELL program or programs, deny any ELL (a) access to the full range of school placement options available to non-ELLs, or (b) the

ELL services required by Paragraphs 36-39 and 41-42. The District shall ensure that ELLs and their parents/guardians are not forced to choose between schools they desire and the receipt of the services required by Paragraphs 36-39 and 41-42.

37. The District shall ensure that all ELLs at all schools are integrated with non-ELLs for recess, art, music, gym, lunch, and library and are not unnecessarily segregated from non-ELLs in other classes given their ELD levels and the nature of their ELL services. The District shall ensure that ELLs are integrated, to the extent practicable, with general education students in school functions, co-curricular activities, and extracurricular activities.

ESL Instruction

38. The District shall provide all ELLs, including SPED ELLs (subject to the rare and narrow exceptions set forth in Paragraph 67) with at least one class period of ESL instruction unless the ELL's parent/guardian formally refuses such ELL services in writing as set forth in Paragraph 33.
39. Except as set forth below, ELLs shall be grouped for ESL instruction by their English proficiency level (*e.g.*, ELLs at ELD level 1) either within a single grade or vertically across grades (limited to two consecutive grades at the elementary level). Within a single grade, ELLs may also be grouped horizontally across comparable, consecutive levels of English proficiency (*e.g.*, ELLs at ELD level 1 with ELLs at ELD Level 2). At the elementary level (K2-5), students at ELD level 3 may be grouped within ESL classes with students at ELD levels 1 and 2 only
 - a. If there are inadequate numbers of students to serve students at ELD level 3 separately;

- b. If students in the class are at the same grade level;
- c. If OELL has approved a curriculum that accounts for the different amounts of ESL instructional time required by Paragraph 40 for students at ELD level 3 versus ELD levels 1 and 2, and the different language needs of students with ELD level 1, 2, and 3;
- d. Subject to the requirement that no level 3 student be grouped with students at ELD levels 1 and 2 in ESL for longer than one academic year; and
- e. Subject to the requirement that teachers assigned to teach ESL to students at ELD levels 1, 2 and 3 must have received appropriate and sufficient training in the following:
 - i. differentiating ESL instruction for students at ELD levels 1, 2 and 3; and
 - ii. lesson planning and structuring instructional time to ensure that the unique needs of students at ELD levels 1, 2, and 3 are met.

This training shall be developed by OELL and presented to the United States for its approval by May 2012. After the 2011-12 academic year, all teachers shall receive this training before being assigned to a class in which students are grouped across ELD levels 1-3.

40. ESL instruction may be provided in: (a) a self-contained class of ELLs; (b) a pull-out setting; or (c) a push-in or co-teaching setting in English language arts (ELA) class, with, at a minimum, weekly common planning time for the ESL and classroom teachers, or an alternative OELL-approved regimen that ensures effective coordination between ESL and classroom teachers.

41. Consistent with MADESE's and the District's guidance, the District shall provide, to the extent practicable, ESL instruction:
- a. For 2.5 hours per day to all ELLs who are at ELD levels 1 and 2 and whose parent/guardian has not refused ESL services. One hour per day of the 2.5 hours of ESL may consist of content-based ESL from an ESL certified teacher who is also certified in a content area or from a team-taught content class by an ESL certified teacher and content certified teacher, if OELL approves the specific delivery model;
 - b. For 1 hour per day to all ELLs who are at ELD level 3 and whose parent/guardian has not refused ESL services; and
 - c. For 2.5 hours per week to all ELLs who are at ELD levels 4 and 5 and whose parent/guardian has not refused ESL services. The 2.5 hours of ESL may be embedded into the ELA/literacy or writing block if the OELL approves this or another school-proposed alternative delivery model (*e.g.*, a high school creative writing class taught by an ESL certified teacher).
42. Secondary schools shall offer: (i) an ESL 1 class for ELD level 1 ELLs; (ii) an ESL 2 class for ELD level 2 ELLs; (iii) an ESL 3 class for ELD level 3 ELLs; and (iv) an ESL 4 or grade-appropriate ELA class enrolling only ELLs or a mix of non-ELLs and ELLs taught by an ESL certified teacher for ELD level 4 and 5 ELLs. ELLs shall not be required to repeat an ESL 1, 2, 3, or 4 class if they were enrolled in such class the prior year and their proficiency level improved by one or more levels during the year.
43. By April 30, 2012, the OELL shall develop instructional models and classroom observation tools for utilized modes of ESL instruction, including push-in, co-teaching,

and embedded ESL instruction. The District shall disseminate information on these models and require professional development training on these instructional models for all teachers providing instruction through these models, as well as any employees (e.g., LAT facilitators and principals) who evaluate teachers who use these models.

Sheltered English Immersion (SEI) Core Content Instruction

44. The District shall ensure that all ELLs are enrolled in SEI classes for all core content classes where instruction is primarily in English, and that teachers use best practices for teaching ELLs and making lessons understandable (such as, for example, cooperative learning, group work, visual displays, primary language support, and clarification). The District shall ensure that ELLs in each school, educational program, grade-level, and English proficiency level receive core content instruction designed to enable them to perform at grade-level, be on track to graduate from high school, and be prepared to enroll in college. Toward these ends, the District shall ensure that SEI teachers: (a) blend academic language instruction with relevant content instruction; (b) use authentic materials and appropriate supplemental materials to support the content objectives and contextualize learning; (c) explicitly teach academic language relevant to the subject matter; (d) deconstruct complex sentences in order to emphasize how words, phrases, and expressions relate to meaning; (e) afford ELLs regular opportunities to practice and apply new academic language and content knowledge in English; (f) explain academic tasks clearly to ELLs; (g) incorporate effective reading strategies for ELLs, (e.g., partner reading, reading aloud, and teacher think-alouds); (h) teach reading comprehension skills (e.g., prediction, summarizing, making inferences, and identifying important

information); and (i) teach ELLs at different proficiency and grade levels how to write in the content area.

45. In each school enrolling ELLs, the District shall ensure that all ELLs receive SEI content instruction with ESL certified teachers or certified teachers with training in Categories 1, 2, and 4. Toward that end, in schools with language-specific SEI strands, if any SEI content class in the language-specific strand has an ESL certified teacher or a certified teacher trained in Categories 1, 2, and 4, and has fewer than 20 students, the District shall ensure that:

- a. The principal shall assign to said language-specific SEI class any ELLs with ELD levels 1-3 whose native language is the language of the language-specific strand and who would otherwise be assigned to an SEI content class with (i) a class size higher than 20 students, provided the class size difference between the SEI content class and said language-specific SEI class is three or more students, or (ii) a teacher who is not ESL certified or not yet trained in Categories 1, 2, and 4.
- b. For ELLs with ELD levels 1-3 whose native language is not the language of the language-specific strand and who would otherwise be assigned to an SEI content class with: (i) a class size higher than 20 students, provided the class size difference between the SEI content class and said language-specific SEI class is three or more students; or (ii) a teacher who is not ESL certified or not yet trained in Categories 1, 2, and 4; the principal shall assign those students to said language-specific SEI class only if, within a reasonable period of time, all of the feasible alternatives set forth in this Agreement for providing the SEI content instruction have been exhausted. The alternatives, which shall be attempted as expeditiously as possible and, where appropriate, concurrently, may include: (i) reassigning, consistent with Paragraphs 46, 49, and 52(g), ESL or Category trained school staff who are not currently engaged in teaching ELLs to SEI content and/or ESL classes; (ii) consistent with Paragraph 52, soliciting voluntary teacher transfers from other schools, reviewing school preference forms, and addressing class size issues through the annual September adjustment process; (iii) hiring additional ESL certified or SEI trained staff; or (iv) making other staffing adjustments. No transfer of an ELL into a language-specific SEI class that is not the ELL's language shall occur without the approval of the OELL, which shall approve the transfer if the OELL determines that the alternatives enumerated above have been exhausted within a reasonable period of time.

The requirements set forth in this Paragraph shall operate until the language-specific SEI class has 20 students. The District shall not assign ELLs to any ESL or SEI content class in a manner that privileges any particular national origin(s) over others with respect to class size or teacher ratio.

INSTRUCTIONAL STAFF

46. The District shall actively recruit qualified, properly endorsed ESL and SEI staff for relevant teaching positions. In addition, the District shall actively recruit bilingual staff trained in working with ELLs, and staff with fluency in one or more of the languages of the District's ELLs for relevant teaching and administrative positions, and in particular for positions as SPED teachers and aides.
47. Toward that end, the District's notices regarding employee vacancies shall express an interest in candidates with ESL, ELL, SEI, or bilingual credentials and language fluency in a language other than English.
48. The District shall ensure that all ESL instruction is provided by a teacher who is certified in ESL and qualified to teach ESL. To meet this requirement, the District shall utilize the following methods or resources to recruit, hire, assign, retain, and/or train adequate numbers of ESL certified teachers for its ELLs, among others:
 - a. The Boston Teacher Residency Program for individuals new to teaching;
 - b. Boston Pathways for teachers with experience teaching but new to ESL;
 - c. ESL professional development for ESL staff;
 - d. ESL professional development for HILT teachers, as required by Paragraph 64;
 - e. The District shall not offer "reasonable assurance" to any newly hired core content course instructor, following the first year of their employment, that they will be rehired in the forthcoming year, nor shall the District rehire any such

teacher, unless they have made substantial progress toward completing training in Categories 1, 2, 3, and 4, or toward obtaining an ESL certification.⁵ A teacher shall be deemed to have made substantial progress toward completing training if s/he has completed in the first year of employment (i) at least Categories 2 and 4 or (ii) approximately half of the ESL certification requirements, and is committed to completing Category training or the ESL certification requirements prior to the end of the last month of his/her second year of employment. The District shall not rehire any such teacher for a third year of employment if s/he has not completed training in Categories 1 through 4 or obtained an ESL certification.

- f. The District shall require all non-tenured year one and year two core content teachers of ELLs to obtain an ESL certification or to complete the Category 1, 2, 3, and 4 training as a condition of tenure.⁶

49. The District shall require that principals/headmasters assign ESL certified teachers' instructional time to teaching ESL classes as needed to provide all ELLs in their respective schools with the ESL instruction required by Paragraphs 32 and 38-42. In assigning such teachers, the District shall require principals to prioritize provisional teachers and permanent teachers whose primary program area is ESL. The District shall ensure that each school maximizes the number of ELLs receiving ESL instruction with an ESL certified teacher and maximizes its utilization of existing staff with training in Categories 1, 2, and 4 or ESL certification. To meet this requirement, the District, when assigning ELLs to ESL classes, shall assign ELLs first to ESL certified teachers prior to assigning them to teachers who have yet to obtain an ESL certification, subject to the class size and teacher ratio limitations set forth in Paragraph 45.
50. The District shall update its ESL Curriculum Frameworks (BPSECF) and ESL curricula, and provide training on the updated curriculum frameworks and curricula to all principals/headmasters who evaluate ESL teachers, LAT facilitators, and teachers

⁵ MADESE recently instructed districts to cease instruction in Category 3. Until an analogous replacement for this Category is determined, the parties agree that no teacher should be denied reasonable assurance of continued employment or tenure solely because s/he did not complete Category 3.

⁶ See note 5.

assigned to teach ESL. The District shall provide the United States documentation of such training and a list of attendees by October 15 of each year beginning with the 2012-2013 school year.

51. The District shall ensure that the District's adopted ESL materials are available and in use in all ESL classrooms and that grade-appropriate training on using the District's adopted ESL materials is provided to all ESL teachers who have yet to receive this training.
52. The District shall ensure that all core content instruction for ELLs is provided by teachers who are certified in the content area and adequately trained to shelter content instruction based on current SEI instructional techniques. Toward that end, subject to any changes in MADESE mandates approved by the United States:
 - a. The District shall ensure that adequate numbers of teachers are trained in at least Categories 1, 2, and 4 at each school enrolling ELLs;
 - b. The District shall ensure that trainings for Categories 1, 2, and 4, or other MADESE-mandated training, are offered during the summer and the school year to all teachers who deliver content to ELLs; and that the capacity of each training is sufficient to accommodate the number of teachers who seek to attend;
 - c. The District shall ensure that supplemental SEI training is provided to its SEI teachers to address deficiencies in the current Category training curriculum and the inadequate transfer of the Category training to BPS' SEI classrooms. The training shall, at a minimum, ground teachers in current methods of making content delivered in English accessible to ELLs in order to promote the use of these methods in classrooms;
 - d. At the District's request, the Boston Teacher Residents Program has added Category training to the pre-service programs for incoming teachers to the District;
 - e. The District shall require all non-tenured year one and year two core content teachers of ELLs to complete the Category 1, 2, 3, and 4 training or to obtain an ESL certification as a condition of tenure;⁷

⁷ See note 5.

- f. The District shall have all teachers at the twelve turn-around schools complete the Category 1, 2, and 4 training;
 - g. The District shall require that principals/headmasters assign ESL certified teachers to teach SEI content classes within their “primary program area,” as this term is defined in the current CBA with the Boston Teachers Union (BTU) and by District practice, as needed to provide all ELLs in their respective schools with the SEI instruction required by Paragraphs 44 and 45;
 - h. The District shall provide one in-service credit to each teacher who completes 15 hours of Category training, which presently results in one credit for Categories 1 and 4 and two credits for Category 2; and
 - i. The District shall not offer “reasonable assurance” to any newly hired core content course instructor, following their first year of their employment, that they will be rehired in the forthcoming year, nor shall the District rehire any such teacher, unless they have made substantial progress toward completing training in Categories 1, 2, 3, and 4, or toward obtaining an ESL certification. A teacher shall be deemed to have made substantial progress toward completing training if s/he has completed in the first year of employment (i) at least Categories 2 and 4 or (ii) half of the ESL certification requirements and is committed to completing Category training or the ESL certification requirements prior to the end of the last month of his/her second year of employment. The District shall not rehire any such teacher for a third year of employment if s/he has not completed training in Categories 1 through 4 or obtained an ESL certification.⁸
53. By April 30, 2012, and by October 15 and March 31 each year thereafter, the District shall provide the United States an updated OELL/HR ELL Category Training Report that includes for each school: (a) the name of each teacher; (b) whether s/he has completed each of the Category trainings (Categories 1, 2, 3, and 4) and any supplemental SEI training; (c) whether s/he has an ESL license; (d) his/her primary program area; (e) the teacher’s time and/or daily hours assigned to SEI core content instruction; and (f) the teacher’s time or daily hours assigned to ESL instruction.

⁸ See note 5.

54. By June 30, 2012, and thereafter by October 1, December 1, and March 1 of each school year⁹, the District shall obtain from each school and, within 10 days thereafter, shall forward to the United States for its review an electronic list of all enrolled ELLs that includes for each student:

- a. Student name;
- b. Grade level;
- c. ELD level;
- d. SPED status;
- e. Weekly hours of ESL instruction;
- f. ESL class type (*e.g.*, language-specific or multilingual SEI program strand class; HILT; ELL-only ESL class or pull-out instruction outside of strand; push-in or co-taught ESL; or embedded general education ELA class);
- g. Whether the student is receiving ESL instruction (0= yes, 1 = no);
- h. Whether the student is receiving the appropriate amount of ESL instruction for his/her ELD level required by Paragraph 41 (0= yes, 1 = no);
- i. Whether the student is grouped for ESL in accordance with the requirements of Paragraph 39 (0= yes, 1 = no);
- j. Whether, for any student identified as an ELD level 3, the student is enrolled in an ESL class with students at ELD levels 1 and 2;
- k. Name of ESL teacher;
- l. Whether the student is receiving ESL instruction from an ESL-certified teacher (including students with ELD levels 4 and 5 who are receiving ESL instruction embedded in an ELA class) (0= yes, 1 = no); and

⁹ The information required by subsections (e), (f), (h), (i) and (j) shall be provided in whatever format they are available in the 2012-13 school year, and in the form required by this Paragraph for the 2013-14 school year and thereafter. In addition, for June 30, 2012 and October 1, 2012 only, the District is obligated to produce all information enumerated in Paragraph 54(a-m) that is reported electronically by schools to OELL.

- m. The number of SEI core content classes with teachers who are not fully trained.¹⁰
55. The report required by Paragraph 54 for each school shall also include the number of students, in total, and separately by ELD level, who: (1) are not receiving ESL instruction by tallying column g; (2) are not receiving the appropriate amount of ESL instruction for their ELD level by tallying column h; (3) are not grouped in accordance with the requirements of Paragraph 39 by tallying column i; (4) are L3 students enrolled in an ESL class with students at ELD levels 1 and 2 by tallying column j; (5) are not receiving ESL instruction from an ESL-certified teacher (including students with ELD levels 4 and 5 who are receiving ESL instruction embedded in an ELA class) by tallying column l; and (6) the number of SEI core content classes in which students are placed with teachers who are not fully trained by tallying column m.
56. Within 10 days of receiving the October 1 school-level reports described in Paragraphs 54 and 55, within 30 days of receiving the March 1 reports and the June 30, 2012 report, and at each school's probable organization meeting for the following school year, the District shall notify each school of shortfalls in ELL services it is able to identify in accordance with items (1)-(6) of Paragraph 55, and, within 10 days of providing such notice, shall provide the United States a copy of those notices for its review. Within 15 days of receiving such notice, each school shall submit a report to OELL verifying that it has taken reasonable steps to address those shortfalls and to ensure that each ELL (including SPED ELLs and ELLs arriving after the start of the school year) receives adequate ESL and SEI core content instruction consistent with Paragraphs 36-39 and 41-

¹⁰ For SIFE students, the list should include information regarding whether the student's HILT content teachers have the qualifications described in Paragraph 65.

42 at his/her assigned school. The steps to be taken shall include the following, as appropriate:

- a. Reorganizing instructional groupings to ensure ELLs are placed with qualified teachers for ESL and SEI core content instruction; and/or reorganizing school populations to ensure ELLs are placed in cohorts and/or strands that maximize ELL teaching resources, consistent with Paragraph 46;
- b. Addressing class size issues through the annual BPS end-of-September adjustment process;
- c. Reassigning provisional ESL teachers and permanent ESL certified teachers with a primary program area of ESL, Bilingual Education, or SEI to teach ESL;
- d. Documenting that the principal asked all permanent ESL certified teachers with a primary program area other than ESL, Bilingual Education, or SEI to consent to teach one or more classes of ESL per day, documenting each teacher's response, and assigning any willing teachers to ESL;
- e. Soliciting, with the consent of the sending school's principal, voluntary teacher transfers from other schools where there are more ESL certified or Category trained teachers than are needed to provide the ELL services mandated by this Agreement;
- f. Reviewing application forms and transfer requests of ELLs who are not placed with ESL certified or SEI teachers who are trained in Categories 1, 2, and 4, to determine whether those students expressed a preference for another school at which there are sufficient classroom seats in classes with appropriately qualified teachers;
- g. Accelerating and facilitating Category, HILT, and ESL training of staff;
- h. Using the 10 hours of mandatory professional development time available to principals under the current CBA, Article V(E)(1)(a)(11) and prioritizing those 10 hours consistent with the priority set forth with regard to the 15 mandatory hours of professional development required by Paragraph 58;
- i. Hiring additional qualified (ESL-certified and SEI-trained) teachers;
- j. Designating additional funds for hiring qualified teachers; and/or
- k. Taking any other available steps, so that all ELLs are provided with the ELL services required by Paragraphs 36-39 and 41-42 of this Agreement.

57. If, for any ESL, HILT, or SEI core content class, no teacher is available who meets the requirements of Paragraph 48 (for ESL classes), Paragraph 52 (for SEI core content classes), or Paragraph 65 (for HILT classes), the District shall, to the extent practicable, assign substitute teachers who are ESL certified (for ESL or SEI core content classes) or who have completed Categories 1, 2 and 4 (for SEI core content classes only) and, if applicable, the HILT training set forth in Paragraph 65.
58. By December 15 of each year, the District shall provide written notice to schools whose reports do not reflect the capacity to comply with the terms of this Agreement that the schools must devote no less than 15 of the 18 mandatory hours of professional development set forth in the current CBA toward training designed to meet the school's specific shortfall(s) in staff qualifications, given DESE requirements and the terms of this Agreement, including Category, supplemental SEI, or ESL training (*e.g.*, a preparation workshop for the Massachusetts Tests for Educator Licensure ("MTEL") examination for ESL certification that is taught by an ESL certified teacher and approved by OELL for this purpose). Such schools shall submit a plan to OELL by January 15 of each year that explains how they will use at least 15 of the 18 mandatory hours of professional development. By January 30 of each year, OELL shall review these plans, and if any do not comply with the terms of this Agreement, OELL shall report such schools and provide a copy of all of their responses and plans to the United States by February 15 of each year.
59. The District shall monitor the progress that SEI and ESL teachers are making toward obtaining the four categories of training (or whatever state training replaces it subject to Footnote 2) and ESL certification. The District shall report this information to the United

States initially by April 30, 2012, and thereafter by October 15 and March 31 of each year.

60. The District shall ensure that all employees who evaluate teachers of ESL and SEI core content classes are adequately trained regarding cultural awareness and best practices in ESL instruction and sheltering techniques to deliver content to ELLs, so that they may be able to perform a meaningful evaluation of ESL and SEI instruction. Formal evaluations of ESL and SEI core content teachers, whether they are teaching core content to both ELL and non-ELLs or teaching in classrooms exclusive to ELLs, shall address the degree to which such teachers use ESL and/or sheltering strategies appropriately and effectively in their classes, consistent with the requirements for SEI classes in Paragraph 44. By April 30, 2012, the District shall, consistent with the requirements of Paragraph 43, revise its classroom observation tools for ESL and SEI classrooms to include items that assess whether the teacher is explicitly teaching reading comprehension and writing strategies for ELLs and otherwise aligning content instruction for ELLs with the Massachusetts Curriculum Frameworks. Toward that end, by December 30 of each year, beginning with the 2012-2013 school year, the District shall ensure that all employees who evaluate SEI and ESL teachers complete an abridged version of the Categories 1, 2, and 4, to be delivered in no less than 12 hours of in-class time and augmented with on-line and in-home assignments. Such training shall cover the topics of SEI and ESL instructional techniques, Second Language Acquisition, and Cultural Awareness, and shall be designed to provide evaluators with sufficient knowledge to carry out effective evaluations of SEI and ESL classrooms. Additionally, for employees engaged in evaluation who request assistance from OELL, OELL shall provide in-person, in-building

assistance focused on how to conduct ESL and SEI classroom observations, including using the ESL and SEI classroom observation tools required by this Paragraph and Paragraph 43. By January 15 of each year, OELL shall report to the United States the name of any principal/headmaster or other employee who evaluates ESL or SEI teachers and did not complete the training required by this Paragraph.

61. The District shall provide annual training and a forum for discussion through the Principal Institute and other mandated principal gatherings such as monthly Academic Superintendent conferences regarding the following topics:
- a. The requirements of this Settlement Agreement;
 - b. How to schedule ESL by proficiency level to maximize instructional time;
 - c. How to assign Category trained staff to SEI classes and schedule SEI classes to maximize instructional time;
 - d. How to evaluate ESL and SEI teachers, whether they are teaching core content to both general education students and ELLs in general education classrooms or teaching in classrooms exclusive to ELLs; including how evaluations may be completed with the assistance of other staff with expertise in ELL instruction, how to ensure the evaluations are rigorous, and how to maximize improvement in the delivery of services to ELLs consistent with the instructional practices required in Paragraph 44;
 - e. Strategies for ensuring that SEI teachers complete at least Categories 1, 2, and 4 and that ESL teachers obtain ESL certification;
 - f. The compensatory services available for newly identified ELLs and students previously deemed to have "opted-out" of programs or services for ELLs;
 - g. How to communicate with parents/guardians of newly identified ELLs and students previously deemed to have "opted out" of ELL services about the availability of compensatory services; and
 - h. How to communicate with parents/guardians who wish to opt their children out of programs or services for ELLs about the benefits of ELL services.

62. In order to promote high quality work by ESL teachers, particularly those who are new to the subject or have not taught it in the recent past, as well as compliance generally with the terms of this Agreement, OELL shall train any staff it employs, and other available District coaching staff, as instructional coaches in techniques for building school capacity to meet the educational needs of ELLs and in effective teaching strategies so they are equipped to assist teachers and administrators in delivering high quality services to ELLs.

STUDENTS WITH INTERRUPTED FORMAL EDUCATION (SIFE)

63. Every school that offers a HILT Program shall be staffed with at least one full-time nurse, so long as such school enrolls at least 700 students. The District may place full-time nurses in schools with HILT programs but less than 700 students. In determining how to exercise its discretion in nursing placement decisions, the District shall utilize the existence of a HILT program in such schools as a criterion, as well as the extent to which individual SIFE students have manifested intensive medical or mental health problems. By January 15, 2013, the District shall provide the United States a list of schools with HILT Programs, the number of HILT students enrolled at each such school, and a written description of the decision regarding nurse placement for each such school serving more than 125 HILT students.
64. As soon as possible, but no later than 120 days after the execution date of this Agreement, the District shall develop and submit to the United States for its review and approval a proposed plan for tracking the performance of SIFE students who participate in and exit the District's HILT Program. The District shall also develop a Professional Development Program for HILT Teachers, which it shall submit to the United States for its review and approval as soon as possible, but no later than 120 days after the execution

date of this Agreement. The proposed Program should provide training on the unique features of the District's SIFE curricula, as well as train HILT Teachers to collaborate with other service providers for SIFE students in order to maximize the instructional benefits that SIFE students receive from the District's HILT Program.

65. Every HILT ESL class shall be taught by a qualified teacher who has an ESL certification and the Professional Development Program for HILT Teachers. Every HILT content class shall be taught by a qualified teacher who has (a) an ESL certification or Categories 1, 2, and 4, and (b) the Professional Development Program for HILT teachers.

SPECIAL EDUCATION (SPED)

66. The District shall provide both SPED services and ELL services to each SPED ELL in a manner appropriate to the student's individual needs. No ELL shall be denied ELL services solely due to the nature or severity of the student's disability, and no ELL shall be denied SPED services due to his or her ELL status. The District shall ensure that principals/headmasters factor the needs of SPED ELLs, including those in substantially separate placements, in each school's organizational and staffing plans and provide these students with ELL services. For all such students, ELL services shall be delivered by appropriately qualified personnel, as required by Paragraph 48 (ESL licensed), Paragraph 52 (SEI trained), and Paragraph 65 (HILT trained).
67. For ELLs who are also SPED students, no accommodations for or modifications to standard language proficiency assessment procedures shall be implemented unless such accommodations or modifications are determined necessary by the student's IEP or Section 504 team, through a documented team process. Similarly, no modifications to the instructional model through which such a student shall be provided ELL services

(including modifications to the amount of ESL instruction or the method of providing ESL that deviate from the requirements set forth in Paragraphs 38-42) shall be implemented unless such modifications are determined necessary by the student's IEP or Section 504 team, through a documented team process. Under no circumstances shall the District deny ELL services entirely, unless, in rare cases, the IEP team, including an individual as set forth in Paragraph 68, determines and documents in a student's IEP that the student's disability is so severe that it would be unreasonable to expect that the student will ever be capable of using or understanding language.¹¹

68. Each school shall develop, maintain, and share with the OELL and SPED offices, and with the United States, by January 15, 2013, a list of school staff members who (a) are ESL certified or have completed Categories 1, 2, and 4; (b) are knowledgeable about ELL needs and services and relevant considerations related to ELLs' language and cultural background; (c) have received training on the intersection between ELL and SPED service provision; and (d) are available to participate in special education team meetings. The District shall inform all principals, SPED staff, and LAT facilitators that IEP or Section 504 team meetings for each SPED ELL must include one of the listed individuals and ensure through monitoring that this requirement is met. If, prior to any IEP or Section 504 team meeting, the included individual is not already knowledgeable about the student, the District shall inform the individual where the student's files are located and when/how they can be accessed for his/her review.
69. The District shall employ reasonable measures to increase staff knowledge of best practices governing the provision of services to ELLs who have disabilities, particularly

¹¹ BPS has represented that the students who fall into this category comprise a sub-set of the students enrolled at the Carter School.

disabilities affecting language acquisition and written and oral language processing and expression. With the assistance of the New England Equity Assistance Center, the District shall provide training to all Special Education and Student Services Coordinators regarding appropriate strategies for educating ELLs with disabilities. The District shall sponsor training events for Coordinators of Special Education Support and Services and LAT facilitators throughout the year, and shall ensure that all Coordinators of Special Education Support and Services and LAT facilitators are trained on the intersection between ELL and SPED service provision. Beginning with the 2012-2013 school year, the OELL shall ensure that special education and ELL staff at the school level hold at least one joint planning meeting annually to discuss ELL services and processes. OELL shall obtain documentation of such joint planning meetings from each school by June 30 of each school year and report any schools that did not meet this requirement to the United States by August 1.

70. The District shall hire an OELL and SPED shared consultant, who shall manage interdepartmental coordination efforts. Such shared consultant, or his/her designee, shall oversee the development of school-level joint planning resources and district-wide PD on relevant topics, including pre-referral, referral, and Response to Intervention processes; evaluation and screening methods; SPED ELL programs and services, including instructional models; documentation requirements; and interpretation and translation requirements and resources.
71. The District shall ensure that its Comprehensive Special Education Resource Manual includes procedures to ensure that all ELLs who are suspected of having a disability are promptly and appropriately assessed to determine whether they in fact have a disability.

The Manual shall also specifically note that ELLs cannot be denied access to SPED on the basis of their ELL status, and shall provide guidance on evaluation and placement considerations specific to SPED ELLs. The District shall provide a copy of its manual to the United States by August 1, 2012, and a copy of any changes to the manual in subsequent August 1 reports each year.

72. The District shall develop and maintain a list of names and contact information for qualified professional bilingual special education evaluators in each of the District's major languages and other languages to the extent available, along with additional resources for those languages in which a bilingual evaluator is not readily available. The District shall revise this list in September and March of each year to ensure that it is current and that the individuals listed are in fact available to conduct evaluations, and, beginning with the 2012-2013 school year, shall provide a copy of this list to the United States by October 15 and March 31 of each year.

73. The District shall ensure that the IEP team or Section 504 team of each SPED ELL shall document and consider, and maintain in each SPED ELL's special education files:

- a. A record of that student's language proficiency testing results;
- b. A record of that student's first language educational history, if any;
- c. Documentation of the special education assessments used to determine the student's disability or special needs, the language in which special education assessments were conducted, and the reasons for testing in that language;
- d. Documentation of the team's consideration of any effect language development issues might have on special education assessment results; and
- e. Documentation that specifically tracks the length of time from (i) the initiation of any pre-referral interventions to (ii) the date of referral, (iii) the date of evaluation, and (iv) the date on which an IEP or Section 504 Plan was proposed.

74. The District shall further ensure that the IEP Team or Section 504 team of each SPED ELL (in the course of annual or regular consideration or reconsideration of the student's educational needs in accordance with state and federal law governing the provision of special education and related aids and services) shall document, with specificity, in any new or revised IEP or Section 504 plan:
- a. Any accommodations for or modifications to standard language proficiency assessment procedures required by the student's disability or special needs, as well as an explanation for why accommodations and/or modifications are necessary;
 - b. The IEP team's or Section 504 team's consideration of the student's language needs and the extent to which they are affected, in any or all domains, by the student's disability or special needs;
 - c. The instructional model through which the student shall be provided ELL services, as well as any modifications to the student's educational program required by the student's disability or special needs, and an explanation for why any such modifications are necessary; and
 - d. Any other IEP team decision regarding the impact of disability upon the delivery of ELL services, or the impact of limited English proficiency on the delivery of SPED services, and the basis for any modifications determined necessary.
75. The District has elected to provide ESL/ELD services to SPED ELL students at the McKinley School through ELA teachers who are also certified in SPED and ELL. The District shall continue to use its instructional monitoring tool to effectively measure the quality of ESL services provided through this instructional model at this school. Within 30 days of revising the ESL observation tool, as required by Paragraphs 43 and 60, the District shall revise the McKinley instructional monitoring tool to ask whether the school used the ESL observation tool to ascertain the quality of instruction in each classroom, and to ask how ELLs' learning progressions in language, literacy, and content are measured. In addition, the District shall, on a semi-annual basis beginning 6 months after

the date of this Agreement, review the instructional model, assess its effectiveness for delivering ESL services, and adjust the model as necessary to ensure students at McKinley School are effectively served. The District shall submit a copy of each assessment including any adjustments made to the model based on those assessments to the United States by April 30, 2012, and by March 31 of each school year thereafter.

76. The District shall also employ strategies to ensure that McKinley students' ELL needs are addressed to the greatest extent practicable by: (a) assigning an individual knowledgeable about ELL needs and services to each SPED ELL's teaching team; (b) providing information and training on ESL/ELD instructional practices as part of the school's ELA professional development sessions; and (c) providing ELA teachers with ESL/ELD instructional materials and training by publishers on the content of those materials.

COMPENSATORY SERVICES

77. For each newly identified ELL or Opt Out the District shall offer enrichment services for as long as s/he remains an ELL, to compensate him/her for programming and services s/he did not receive because s/he was not identified previously as an ELL or because s/he was deemed to have "opted out" of the District's ELL programs and services. The OELL shall review and approve or disapprove all compensatory service program proposals from community-based organizations, and shall also review the programs administered by OELL, to ensure that services are provided by qualified ESL and/or SEI instructional staff, and that each approved program addresses either multi-modal language development or SEI core content-area needs of ELLs. The District shall inform newly identified ELLs, Opt Outs, and their parents/guardians of the availability of the approved

compensatory services and the grades and ELD levels they are designed to serve, if specified. The District shall ensure that these programs are offered at a variety of times, in accessible locations, within a reasonable distance of each student's home. Although the District may prioritize access to compensatory services and may offer programs tailored to specific grade and ELD levels, it shall ensure that all ELL students within the compensation group are provided access to one or more compensatory service programs.

78. In addition to continuing the summer programming to ELLs that began in the summer of 2010, the District agrees to offer, equally and to the same extent, compensatory services to all newly identified ELLs and Opt Outs, through some combination of after-school academic programs, vacation academies during February and April vacation weeks, and Saturday School programs. The District shall ensure that if space in an approved program provided for under this section is limited, that ELLs entitled to compensatory services in accordance with Paragraph 77, are given first priority for enrollment.

79. Through parent liaisons, the District shall specifically request parent preferences with regard to how, when, where, and with what content it should deliver compensatory services that are offered by OELL via the summer school and after school programs. The District shall compile and analyze parents' input, factor it into program designs, and encourage teachers to incorporate relevant input in service delivery. The District shall also consider parental input when deciding whether to approve future programs, with particular emphasis on addressing parent concerns regarding any barriers faced by newly identified ELLs and Opt Outs in attempting to access sufficient hours of high-quality services.

80. The District shall assess and report on the compensatory services provided to newly identified ELLs and Opt Outs on a semi-annual basis, including: (a) the number and percentages of ELL parents and students contacted and informed of the opportunities for compensatory services; (b) parent preferences compiled pursuant to Paragraph 79; (c) a copy of any notices disseminated to parents regarding compensatory services, consistent with Paragraphs 77 and 82, in all languages disseminated; (d) the number and percentages of ELL and non-ELL applicants, acceptances, rejections, and participants in these programs; and (e) the extent to which program sites proved accessible to parents and students; and (f) the ESL and/or SEI qualifications of program staff, and the quality of the ELL services provided to ELL students. The District shall provide a copy of this report to the United States by October 15 and March 31 of each school year, beginning with the 2012-2013 school year.
81. The District shall ensure that compensatory services are made available to SPED ELLs in a manner appropriate to their individual educational needs.

PARENT COMMUNICATIONS

82. The District shall inquire of all parents/guardians whether they would like notices from the school or the District provided in a language other than English and shall record this information in the student information system. The District shall provide notice to parents/guardians of new, incoming, and newly-identified ELLs and Opt Outs of the ELL programs and services available in the District and the availability of compensatory services. Such notice shall be sufficient to enable the parents/guardians to make meaningful, informed choices among the ELL programs and services. This information shall be deemed "essential information" and provided to parents/guardians in a language

they understand, in accordance with the translation protocol set forth in Paragraph 83.

The District shall provide the United States with copies of these notices, in all languages distributed, by October 15, 2012.

83. The District shall provide translation and interpretation services as follows:
- a. When notices or documents containing essential information are distributed at the District or school level:
 - i. such notices and documents shall be translated into the District's major languages and distributed to parents/guardians speaking those languages; and
 - ii. parents/guardians speaking languages other than the major languages shall be promptly provided written or oral translations of the documents in a language they understand either upon the parents'/guardians' request or if the need for such translation becomes apparent.
 - b. When a District employee(s) needs to communicate with Limited English Proficient (LEP) or Non-English Proficient (NEP) parent(s)/guardian(s) orally regarding essential information:
 - i. the communication shall be provided in a language the parent/guardian understands by means of an interpreter; and
 - ii. the interpreter must be provided without undue delay.
 - c. The District shall provide written or oral translations of information that is not deemed "essential information" upon receiving reasonable, specific requests for such information from LEP or NEP parents/guardians.
 - d. Phase-in of school-level translation and interpretation services: The District shall phase in its comprehensive school-level translation and interpretation services over a 3-year period.
 - i. Years 1 and 2 (through 2013-14 school year): The District shall develop, and submit for the United States' review and approval, a comprehensive plan for phasing in school-level translation and interpretation services. The District shall continue to offer all translation and interpretation services that it offered at the time it entered into this Agreement, including translations of IEP forms and notices and interpretation services at IEP team meetings. In accordance with the specific requirements of the phase-in plan, the District shall actively work to build capacity and develop

templates, systems and budgets for providing comprehensive school-level translation and interpretation services through trained and qualified individuals (consistent with Paragraphs 85 and 86) by Year 3. During this time, schools shall provide written or oral translations of essential information upon receiving reasonable, specific requests for such information from LEP or NEP parents/guardians.

- ii. Year 3 (2014-15 school year): The District shall fully implement all translation and interpretation requirements of this Agreement at both the District and school level.
 - iii. Reporting: The District shall report its phase-in progress and any updated plans to the United States twice a year by October 15 and March 31 of each year, beginning with the 2012-2013 school year.
84. The District must make available to all school and district personnel a list of the District-level and school-level general use documents that have been translated, and provide electronic access to such documents. The District shall update the list throughout the year by adding recently created district-level and school-specific notices that may be of use to other schools to meet their translation needs, and shall provide the United States with updated versions of these lists on January 15 of each year.
85. All interpreters used by the District and/or its schools shall be:
- a. Bilingual and demonstrably qualified and competent to interpret;
 - b. Trained in providing the interpretation they are asked to provide or sufficiently knowledgeable in both languages of any specialized terminology needed (*e.g.*, special education terminology) to provide the requested interpretation accurately; and
 - c. Trained in the ethics of interpretation (*e.g.*, the need for accuracy and confidentiality in interpretation).

With regard to school-level interpretation services, the requirements of this Paragraph shall be subject to the phase-in plan set forth in Paragraph 83.

86. Except in the event of an emergency, no student shall be used as an interpreter for any communications between the District or any of its schools and a LEP or NEP parent/guardian. If a LEP or NEP parent/guardian requests that an adult family member or adult friend provide interpretation for a communication with the District or one of its schools, the District must provide an interpretation through qualified District or outside resources for all essential information and any information that raises a potential conflict of interest. The District shall not use family or friends of LEP parents or children for written translations of District- or school-generated documents. With regard to school-level interpretation services, the requirements of this Paragraph shall be subject to the phase-in plan set forth in Paragraph 83.
87. By June 1, 2012, the District must compile information about how to obtain interpretation and translation services, and distribute that information to all District and school personnel. The District shall update this information and redistribute it by September 15 of each year by adding new interpretation or translation resources and by removing interpretation or translation resources that are no longer available. The District shall provide a copy of this information to the United States by October 15 of each year.

ACCESS TO GIFTED, TALENTED, AND OTHER ADVANCED PROGRAMS

88. The District shall ensure that written information regarding any higher level learning opportunities, including Advanced Work Class (AWC), Advancement Via Individual Determination (AVID), advanced placement (AP) coursework, exam schools, the ISEE exam, and any other similar opportunities is deemed "essential information" and provided to parents/guardians in a language they understand, in accordance with the translation protocol set forth in Paragraph 83. The District shall provide to the United States a copy

of this information in each language in which it has been translated by October 15 of each school year.

89. For each grade level of AWC, the District shall provide a meaningful opportunity for admission consideration that does not screen out ELLs because of their limited English proficiency, including, at each level, the SUPERA test, or an equivalent, for Spanish-speaking ELLs, and an equivalent assessment process for non-Spanish speaking ELLs (e.g., a native language assessment or an English-language assessment with appropriate accommodations). The District shall also consider additional criteria, beyond standardized test scores, for selection for the AWC. These criteria shall include other indicators of academic achievement, including, but not limited to, performance in mathematics and science classes, teacher recommendations, and other criteria that do not depend on English proficiency. The District shall implement these additional criteria for placements beginning in the 2012-2013 school year.
90. Beginning in 2012-2013, the District shall distribute information about the ISEE exam at the end of each academic year to provide additional time for all students, including ELLs, to prepare for the exam.
91. The District shall provide appropriate support services, including ESL and/or SEI instruction by qualified teachers, to ELLs participating in all higher level learning programs, including AWC, AVID, and AP, to ensure that ELLs have access to the full range of curricular offerings in the District.
92. The District shall annually assess the demographics of the student population in the AWC program, the AVID program, and the AP program (both in terms of participants and exam success rates), to ensure that ELLs have adequate opportunities for enrollment and

that adequate ELL services are provided for enrolled students; by October 15 of each year, the District shall provide a report to the United States detailing this annual assessment of the AWC, AVID and AP programs. The District shall expand AWC offerings in high incidence program schools to the extent warranted by any increase in the number or proportion of qualified ELLs in those programs.

MONITORING

93. The District shall monitor all schools enrolling ELLs to ensure that the above requirements are being appropriately and adequately implemented.
94. Before the end of each school year, beginning with the 2012-2013 school year, the District shall conduct at least one on-site visit at each school whose revised plan was not approved by OELL by January 30 of each year pursuant to Paragraph 58. The District shall monitor each such school's implementation of this Agreement and shall provide a written report of each visit and any further actions taken by the school to the United States on March 31 and August 1 of each year.
95. If at any time the District learns that any ELL is not receiving ELL services as called for under this Agreement, it shall take reasonable steps to ensure that appropriate ELL services are provided to the student at that student's assigned school within 30 days of learning of the lack of ELL services.
96. BPS shall evaluate the effectiveness of its ELL program to determine whether its language services are overcoming language barriers within a reasonable period of time and enabling students to participate meaningfully and equally in educational programs.
 - a. To measure program effectiveness, at a minimum BPS shall disaggregate English proficiency assessments results, standardized test scores (including Title I content

assessments), retention-in-grade rates, graduation rates, and enrollment in special education, enrichment, gifted and talented, and other advanced learning programs (e.g., Advanced Placement, honors, AWC and AVID) by school and specific language program (e.g., language-specific, multi-lingual, mixed ELL and non-ELL, general education, dual language, bilingual, HILT for SIFE, etc.) to:

- i. evaluate the progress and achievement of ELLs overall and by specific language program over time (*i.e.*, as they progress through ELD levels to FLEP status) through the District Analysis and Review Tool (“DART”) for English Learners and other measuring tools, such as but not limited to ESL grades; MEPA, ACCESS, or equivalent assessment; and MCAS or equivalent assessment;
- ii. monitor the academic performance and participation of former ELLs in BPS’s educational programs relative to their native-English speaking/never-ELL peers over time from the point of exit from ELL services and at least three years thereafter, through use of the DART for English Learners and other appropriate measuring tools;
- iii. monitor the academic performance and progress in language acquisition of ELD level 3 students grouped for ESL with ELD level 1 and level 2 students; and
- iv. analyze longitudinally a cohort of students by school and Program to assess whether students enrolled in each Program model are overcoming language barriers within a reasonable period of time and participating

meaningfully and equally in educational programs relative to their native-English-speaking/never-ELL peers.¹²

- b. The District shall complete its longitudinal study by the end of the 2014-15 school year and provide the results of that study to the United States by August 1, 2015.
- c. BPS shall use the results of current and future longitudinal studies to inform ELL program decisions and improve the effectiveness of ELL programs. BPS shall notify the United States in writing annually by August 1 of all proposed substantive changes to its ELL programs, including those based on the results of the longitudinal study. If the United States objects to the proposed changes on the grounds that they do not meet the terms of this Agreement, the EEOA, or Title VI, it shall notify BPS in writing. If the parties are unable to resolve the objections within 60 days of the written notice, the United States and/or private plaintiffs may pursue relief under the enforcement provisions in Paragraph 107.

REPORTING

97. By October 15 and March 31 of each year, the District shall provide the United States with a list of all Category training sessions the District schedules by Category, date, time, and location, and shall also state the training capacity and the number of actual participants.
98. On or before October 15 and again on January 15 of each year, the District shall submit to the United States: (a) copies of any forms submitted by principals to OELL, in accordance with Paragraph 34 above, documenting principals' discussions with parents

¹² All students in the cohort should be evaluated for the entire longitudinal period. So long as a student remains in BPS, the student should not be removed from the cohort if s/he achieves English proficiency during the period of analysis, or for any other reason.

who refuse ELL services; (b) documentation of the student instruction, parent/teacher meetings, teacher training and monitoring provided, consistent with Paragraphs 34 and 35, with regard to any student whose parent refuses in writing to have his/her child receive ELL services; and (c) a memorandum documenting discussions and any strategies developed by OELL and principals in schools where the number of students whose parents refused services exceed 5% of total ELLs assigned to the school to reduce the number of service refusals.

99. On or before October 15 of each year, the District shall submit to the United States a written report containing the following information regarding training conducted pursuant to the provisions of this Agreement after the date of its execution: (a) the names of all District employees who received training pursuant to Paragraphs 30, 39(e), 50, 61 and 69; (b) the location where the employee works (*e.g.*, the FRC, NAC, or school); (c) the date, time period, and location of the training the employee attended; (d) the name of the person who provided the training; and (e) a description of the training. The District also shall provide the United States with copies of all documents that were handed out during the training and all records that confirm the employee's attendance at the training (*e.g.*, a sign-in sheet).
100. By October 15, 2012, the District shall provide the United States a copy of the OELL-approved curriculum for providing different amounts of required instruction and meeting students' different language needs, as required by Paragraph 39(c) and a description of the criteria used for determining when there are inadequate numbers of students at ELD level 3 to provide them ESL separate from students at ELD levels 1 and 2. On or before October 15 of each year, beginning with the 2013-2014 school year, the District shall

provide the United States a list of each class or grouping in which ELLs at ELD level 3 are grouped for ESL instruction with students at ELD levels 1 and 2, and the grade level for each such class.

101. By April 30, 2012, the District shall provide the United States with a copy of the instructional models and observation tools developed pursuant to Paragraph 43; its revised ESL and SEI observation tools, in accordance with Paragraph 60; and its revised instructional monitoring tool for McKinley's ESL/ELA instructional model, in accordance with Paragraph 75. As required by Paragraph 75, by October 15 and March 31 of each year, the District shall provide the United States with a report showing the results of its review of the McKinley monitoring tool and indicating any changes that it has made as a result of that review.
102. On or before October 15 of each year, the District shall submit to the United States: (a) any materials created for distribution to parents and students regarding higher level learning opportunities and the ISEE exam, pursuant to Paragraphs 88 and 90, in all languages disseminated; (b) a memorandum documenting steps taken to provide ELLs a meaningful opportunity for admission to AWC, as described in Paragraph 89, expansion of AWC offerings, as described in Paragraph 92, and ensuring ELL support services in higher level learning programs, pursuant to Paragraph 91; and (c) the enrollment list of all AWC, AVID and AP classes, with ELLs and their native languages indicated.
103. As required by Paragraph 32, by October 15 and March 31 of each year beginning with the 2012-2013 school year, the District shall provide a report identifying any ELL who was unable to enroll in an ELL program due to lack of space or some other reason, including the school(s) sought by the ELL, the reason(s) the sought school(s) were

denied, the school in which the ELL enrolled, and whether the student receives appropriate ESL and SEI services, as required by Paragraphs 35-39 and 41-42.

104. By March 31 and August 1 of each year, beginning with the 2012-2013 school year, the District shall, pursuant to Paragraphs 48 and 52, provide the United States with a list of newly hired core content instructors and non-tenured year one and year two core content instructors of ELLs, identifying those that have (i) been retained, (ii) received “reasonable assurance,” and (iii) been terminated. For each instructor, the District shall include his/her relevant level of SEI category training or ESL certification. By August 1 of each year, the District shall also provide the United States a report on its efforts to recruit ESL and SEI staff pursuant to Paragraphs 46 and 47.
105. The District shall facilitate the United States’ attendance, as observers, at a representative sample of probable organization meetings for schools to be determined by OELL. By December 1 of each year, the District shall provide the United States a timetable for upcoming probable organization meetings, and shall provide more specific information as necessary to enable the United States to attend such meetings for the schools, provided the United States gives the District reasonable notice of its intention to attend any such meeting.

ENFORCEMENT

106. The District shall maintain electronic and hard copy records of information and data pertinent to compliance with the terms of this Agreement and understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, the United States,

through its representatives and any consultant or expert it may retain, may visit the District, interview staff and students, and request such additional reports, information, or data as are necessary for the United States to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the EEOA and the regulation implementing Title VI at 34 C.F.R. § 100.3(a), which was at issue in this case. The District shall honor any such requests by making the requested reports, information, or data available to the United States for its review and duplication within 30 days.

107. If any part of this Agreement is for any reason held to be invalid, unlawful, or otherwise unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of any other part of the Agreement. Furthermore, the District and United States shall meet within 15 days of any such decision to determine whether the Agreement should be revised or supplemented in response to the court's decision.
108. The District understands and acknowledges that in the event of a breach by the District of this Settlement Agreement, the United States may initiate judicial proceedings to enforce the EEOA, Title VI, and the specific commitments and obligations of the District under this Settlement Agreement; provided that the United States agrees that it will not initiate or pursue any enforcement action without first attempting to resolve issues by negotiating in good faith for 30 days, or until the parties reach an impasse, whichever comes sooner, over adequate measures to correct any alleged shortcomings in the District's compliance with this Agreement.
109. The District understands and acknowledges that the United States, consistent with its responsibility to enforce the EEOA and Title VI, retains the right to investigate and, where appropriate, initiate judicial proceedings concerning any future alleged violations

of the EEOA and Title VI by the District. Representatives of the United States may speak directly, without District counsel, with District employees who are not administrators and have questions, concerns, or other information to raise with the United States regarding the District's ELL obligations under the EEOA and this Agreement, provided that: representatives will give reasonable notice to the District of their intention to visit a school; will not object to being accompanied by District representatives; and will cooperate in visit scheduling as necessary to accommodate the District..

110. The following signatures indicate the consent of the parties to the terms of this Settlement Agreement, which is effective upon its mutual execution.

For the United States:

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Assistant Attorney General



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Assistant Secretary for Civil Rights




THOMAS HIBINO
TRINA INGELFINGER
PHILIP CATANZANO
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Date: 4/19/12

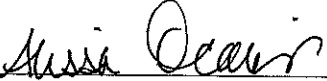
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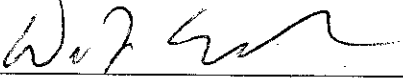

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Date: 4-19-12

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APPROVED AS TO FORM


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