

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.”
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 the paragraph immediately above.
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 two-way bilingual instruction.
5. “FLEP” refers to Formerly Limited English Proficient, which is a student who 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 K2-5 strand of classes enrolling only ELLs who receive ESL and SEI core content together with teachers who also can provide native language support in a particular language. Other examples of "programs" are High Intensity Language Training for Students with Interrupted Formal Education, or HILT for SIFE; transitional bilingual education, and two-way bilingual instruction. Placement in a formally designated program for ELLs, a transitional program, or in 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 the *Massachusetts English Language Proficiency Benchmarks and Outcomes* (ELPBO).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 determined 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 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

¹ To the extent the District relies on state laws or guidance for its commitments in this Agreement, they are referenced herein where appropriate.

teachers. This is a 15- to 20-hour training wherein teachers will 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.

A “qualified” SEI teacher refers to a (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.

13. “Alternative English language education program” refers to turnaround/redesign plans in the District’s “turnaround” schools that are in addition to or in place of the SEI program and 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 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.

PURPOSE

22. The District, by and through its undersigned representative², agrees to the terms of this 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) (hereafter “EEOA”) and Title VI of the 1964 Civil Rights Act, 20 U.S.C. § 2000d et seq., and its

² 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.

implementing regulations at 34 C.F.R. part 100 (hereafter collectively “Title VI”).

Toward this end, during the pendency of the United States’ investigation and ongoing discussions between the parties, the District has already taken the following steps:

- a) Trained staff reassessed approximately 7,000 students who were previously assessed for English language proficiency in only two language domains (speaking and listening). The reassessment covered all four domains, including reading and writing, utilizing the Language Assessment System (LAS Links) placement test, which was administered to any student who: (i) entered the District between January 2003 and December 2009; (ii) was enrolled in grades K1 to 12; (iii) received a score of 1.25 or higher on the HLS or did not have a HLS score; (iv) had a designated LEP status of “Non-LEP”; and (v) did not have a recent score of Proficient or Advanced on the English Language Arts Massachusetts Comprehensive Assessment System (ELA MCAS) and Math MCAS;
- b) Notified all principals/headmasters that they must adjust their projected ESL and SEI teacher staffing needs as necessary and schedule classes to ensure that all ELLs, including newly identified ELLs and students deemed to have “opted out” of ELL programs or services, receive the ELL services required by paragraphs 37 through 43 below at the start of the 2010-11 school year;
- c) Requested the production of two planning documents for all 135 schools in the District stating how the needs of ELLs assigned to the schools would be met;
- d) Provided compensatory services through summer programs at 22 schools in the summer of 2010;

- e) Provided notice to parents/guardians of all newly identified ELLs of: (i) the re-assessment process that was undertaken by the District; (ii) whether their child's LAS Links level was "approaching proficiency" or "non-proficient;" (iii) the ELL programs and services available in the District; and (iv) the availability of compensatory services;
- f) Provided notice to parents/guardians of formerly "opted-out" students of the ELL programs and services available in the District; and the availability of compensatory services;
- g) Created 29 new language-specific or multi-lingual SEI and four new HILT for SIFE classrooms, serving approximately 640 ELLs; and
- h) Agreed to spend \$10 million on improving services to ELLs, beginning in the 2009-10 school year and continuing through the 2010-11 school year. This allotted money includes approximately \$8.2 million in federal stimulus dollars.

The parties agree that the efforts described in subsections (a)-(h) of this paragraph are part of the District's remedial obligations set forth in this Agreement, and that if any such efforts are revealed to be inadequate or incomplete in any regard during the course of the implementation of this Agreement, the United States may move to enforce these obligations. 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 thirty 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 paragraph.

23. 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.
24. 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.³ This commitment does not relieve the District from fulfilling its other obligations under the EEOA and Title VI, which will be the subject of the United States' forthcoming comprehensive review of the District's ELL programs, nor of its other obligations to comply with any existing court order pertaining to the rights of ELLs.
25. This interim 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 or such time as the Agreement is either supplemented or superseded by the subsequent agreement that the United States and the District anticipate finalizing by January 2011, after the United States completes its comprehensive review of the District's ELL programs, 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

³ 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.

Agreement until it determines that the District has fulfilled the terms of this Agreement and is in compliance with the EEOA and Title VI.

26. 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

27. Within 45 days of the execution date of this Agreement, the District shall submit to the United States for review a written report that describes in detail the procedures for registering ELLs at the Family Resource Centers (FRC), Newcomer Assessment Centers (NAC), and individual schools. These procedures shall: (a) identify the forms used for registration of ELLs at each location and ensure that such forms are available in the Major Languages; (b) require a valid and reliable English proficiency assessment if the Home Language Survey (HLS) indicates that a language other than English is spoken at home or by the student, or there is any other reason to believe the student is not proficient in English; (c) identify a valid and reliable English proficiency assessment to be used by the District; and (d) explain how to calculate the composite score on the assessment and to use this score for placements of ELLs.
28. The District shall ensure that all students in grades K2-12 who are referred for language testing are assessed 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 to ensure that ELLs receive ELL services that are appropriate for their level of proficiency, as set forth in this Agreement.

29. The District shall ensure that all registration and intake staff at the FRC, NAC, and the schools 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 spoken at home or by the student, or (b) for whom there is any other reason to believe the student is not proficient in English. 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. Parents shall be informed, orally or otherwise, of assessment results and student assignment options as soon as possible but no later than two 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.
30. By October 1, 2010, 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 the proper assessment of students' English proficiency in all four language domains of listening, speaking, reading, and writing;

- c. Referring appropriate students for SPED 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. The District shall consider any newly identified student who scored "not proficient" on the Spring 2010 LAS Links Placement test as an ELL who is entitled to ELL services. The District shall treat these students as having an English proficiency level of 1 or 2 for purposes of: (a) staffing sufficient numbers of ESL and SEI trained teachers; and (b) providing the requisite level of ELL services required by paragraphs 37 through 43 below at the start of the 2010-11 school year. Within 14 days of the posting of scores from the October 2010 MEPA, the LATs at the individual schools shall determine these students' specific proficiency levels (*e.g.*, 1 or 2) based on these scores and adjust students' initially designated proficiency levels as needed.
32. Except as indicated in paragraph 33 below, the District shall consider any newly identified student whose LAS Links score indicates s/he is "Approaching Proficient" as an ELL who is entitled to ELL services. The District shall treat these students as having an English proficiency level of 3 for purposes of: (a) staffing sufficient numbers of ESL and SEI trained teachers; and (b) providing the requisite level of ELL services required by paragraphs 37 through 43 below at the start of the 2010-11 school year. Within 14 days of the posting of scores from the October 2010 MEPA, the LATs at the individual

schools shall determine these students' specific proficiency levels (*e.g.*, 3, 4, or 5) based on these scores, and adjust their initially designated proficiency levels as needed.

33. The District's OELL may reclassify any newly identified student whose LAS Links score indicates s/he is "Approaching Proficient" as a FLEP student only if the student received:
(a) a score of Proficient or Advanced on the 2010 ELA MCAS; (b) a component score of "8" on the Speaking Skills portion of the LAS Links; and (c) a component score of "5" on the Listening Skills portion of the LAS Links. If, by September 15, 2010, a principal produces evidence to OELL that, in the view of the OELL, strongly suggests that a student who does not meet these criteria is nonetheless a non-ELL, OELL shall have one of its qualified and experienced staff members administer the full LAS Links English proficiency examination within 20 days so that the student's ELL status may be reconsidered in light of the result of that assessment.
34. Students designated as FLEPs in accordance with the prior paragraph shall be 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 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 during their monitoring period shall be provided appropriate ELL services that adequately address the student's academic needs.
35. The District shall provide services to all ELLs in their current or preferred school and shall ensure that ELLs do not need to change schools in order to receive services. If any ELL is unable to enroll in an ELL program 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

ensure the ELL still receives appropriate ELL services, as required by paragraphs 37 through 43 below. In addition, the District shall ensure that all ELLs are assigned to ESL and SEI content classes with a student-teacher ratio of 20 to 1 wherever practicable, and where not practicable, a ratio that is comparable to the ratio for classes of non-ELLs in the school.

36. If any parent/guardian of a newly identified ELL or a student previously deemed to have “opted-out” of programs or services for ELLs communicates a refusal to have his/her child enrolled in an ELL program and/or refuses ELL services 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;
 - d. Encourage the parent to allow the child to receive ELL services for at least thirty (30) days before making a decision to refuse.

If the parent continues to refuse ELL services, the ELL shall nevertheless receive services in an SEI classroom in accordance with paragraph 37. In this circumstance, 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 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 shall take appropriate steps to reduce this rate.

37. Consistent with its parent refusal procedures provided 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 or will complete at least Categories 1, 2, and 4 training by December 2010;
 - 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

38. By the start of the 2010-11 school year, the District shall provide ELL services consisting of ESL and SEI core content instruction at all schools enrolling ELLs regardless of whether this 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 37 through 43. The District shall ensure that ELLs and their parents/guardians are not forced to choose between a school they desire and the receipt of the services required by paragraphs 37 through 43.

39. The District shall ensure that all ELLs at all schools are integrated with non-ELL students for recess, art, music, gym, lunch, and library. 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

40. As of the start of the 2010-11 school year, the District shall provide all ELLs 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 36 above. ELLs shall be grouped for ESL instruction by their English proficiency level or comparable, consecutive levels of English proficiency, as set forth in the District's guidelines. These guidelines provide for a horizontal grouping model that clusters ELLs by their proficiency levels across grades or a vertical grouping model that clusters ELLs by grade level across two comparable, consecutive proficiency levels. The ESL instruction may be provided in: (a) a self-contained class of ELLs; (b) a pull-out setting; or (c) a push-in setting in an English language arts (ELA) class.
41. During the 2010-11 school year, 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 English proficiency levels 1 and 2 and whose parent/guardian has not refused ESL services;
- b. For 1 hour per day to all ELLs who are at English proficiency level 3 and whose parent/guardian has not refused ESL services, except that ELLs at level 3 who received a grade of B or higher (or its grade equivalent) in their 2009-10 and 2008-09 mainstream ELA classes shall be enrolled in a grade appropriate ELA class taught by a certified language arts teacher who is also ESL certified. If the school in which an ELL is enrolled does not use an “A through F” grading system, OELL, in its discretion, shall determine the grade that signifies an equivalent level of accomplishment; that is, better than average but short of excellent.
- c. For 2.5 hours per week to all ELLs who are at English proficiency 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).
- d. Secondary schools shall offer: (i) an ESL 1 class for level 1 ELLs; (ii) an ESL 2 class for level 2 ELLs; (iii) an ESL 3 class for 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 level 4 and 5 ELLs, except that level 4 and 5 ELLs who received a grade of B or higher (or its grade equivalent) in their 2009-10 and 2008-09 mainstream ELA classes may be enrolled in a grade appropriate ELA class with a certified language arts teacher who has completed

training in Categories 1, 2 and 4 if it is not practicable to assign the student with an ESL certified ELA teacher. 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 over the year. If the school in which an ELL is enrolled does not use an “A through F” grading system, OELL, in its discretion, shall determine the grade that signifies an equivalent level of accomplishment; that is, better than average but short of excellent.

Sheltered English Immersion (SEI) Core Content Instruction

42. The District shall ensure that all ELLs are enrolled in SEI classes for all core content classes where instruction is primarily in English, and teachers use sheltered content instructional techniques (such as, for example, grouping students by language proficiency level, adapted materials and texts, visual displays, cooperative learning and group work, primary language support, and clarification) to make lessons understandable. The District shall ensure that in SEI core content classes: (a) speech is appropriate for the ELLs’ English proficiency level(s); (b) supplementary materials support the content objectives and contextualize learning; (c) the instructors teach vocabulary that is relevant to the subject matter; (d) adapted content, including texts, assignments, assessments, and presentation of content in all modalities, is within the ELL’s English proficiency level; (e) ELLs are afforded regular opportunities to practice and apply new language and content knowledge in English; and (f) academic tasks are clearly explained to ELLs.
43. 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 monolingual SEI strands, if any SEI content

class in the monolingual 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 monolingual SEI class any ELLs whose native language is the language of the monolingual strand and who would otherwise be assigned to a SEI content class with (i) a class size higher than 20 provided the class size difference between the SEI content class and said monolingual 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 whose native language is not the language of the monolingual strand and who would otherwise be assigned to a SEI content class with (i) a class size higher than 20, provided the class size difference between the SEI content class and said monolingual 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 monolingual 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 48, 51(f), and 52, 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

(vi) by making other staffing adjustments. No transfer of an ELL into a monolingual SEI class that is not the ELL's language shall occur without the approval of the OELL, which shall approve the transfer if OELL determines that the above alternatives have been exhausted within a reasonable period of time.

The requirements set forth in this paragraph shall operate until the monolingual 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

44. The District shall actively recruit properly endorsed ESL and SEI staff for relevant teaching positions. In addition, the District shall actively recruit bilingual staff, 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, in particular for positions as SPED teachers and aides.
45. 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.
46. As of the start of the 2010-11 school year, the District shall ensure that all ESL instruction is provided by a teacher who is certified in ESL or ELL or a teacher who is certified in a core content area and who is making consistent progress toward obtaining ESL certification by September 2011. To meet this requirement, the District shall utilize the following methods or resources to recruit, hire, assign, 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 centrally deployed ESL staff;
 - d. ESL professional development for High Intensive Literacy Training for Students with Interrupted Formal Education (SIFE) teachers;
 - e. 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 to obtain 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) approximately half of the ESL certification requirements and is committed to complete 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 he/she 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.
47. The District has committed to hire and/or assign up to 60 centrally deployed ESL teachers to ensure that all ELLs receive ESL instruction in their schools of enrollment by September 2010. If the number of centrally deployed ESL teachers needed to comply

with paragraphs 40 and 41 above is higher than 60, the District shall hire and cause to be trained at least half of the remaining necessary number by January 2011, and the District shall hire and caused to be trained all of the necessary number by September 2011.

48. 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 37 through 43 above. In assigning such teachers, the District shall require principals to prioritize provisional teachers and permanent teachers whose primary program area is ESL. Beginning in the 2010-11 school year, 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 35 above. If, prior to September 2011, the District needs to assign ELLs to ESL classes with teachers who have yet to obtain an ESL certification, the District shall prioritize assignments to the teachers who have completed the most training from among Categories 1, 2, and 4.
49. Prior to and during the 2010-11 school year, the District shall provide training on the District's ESL Curriculum Frameworks (BPSECF) and the ELPBO to all principals/headmasters, LAT facilitators, and teachers assigned to teach ESL during the 2010-11 school year who have yet to receive training on the BPSECF and ELPBO. During the 2010-11 school year, the United States will review the District's ESL

Curriculum and determine whether revisions are needed to satisfy the District's requirements under the EEOA and Title VI.

50. Prior to and during the 2010-11 school year, the District shall ensure that the District's adopted ESL materials are available and in use in all ESL classrooms, and the District shall provide grade-appropriate training on using the District's adopted ESL materials to all ESL teachers who have yet to receive this training.
51. The District shall ensure that all SEI core content instruction is provided by teachers who are certified in the content area and adequately trained to shelter content instruction by December 2010. Toward that end, the District agrees to train adequate numbers of teachers in at least Categories 1, 2, and 4 at each school enrolling ELLs by December 2010. Specifically:
 - a. The District shall offer training events sufficient to train by December 31, 2010: 1,818 core content teachers in Category 1; 2,157 core content teachers in Category 2; and 2,505 core content teachers in Category 4;
 - b. The District shall offer all four Categories of training during the summer and the school year with adequate spaces to train sufficient numbers of teachers to accommodate the SEI instructional needs of all ELLs in the District;
 - c. 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;
 - d. 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;

- e. The District shall plan to have all teachers at the twelve turn-around schools complete Categories 1, 2 and 4 by June 2011;
- f. 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 37 through 43;
- g. 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
- h. 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 to obtain 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 complete 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.

52. By September 27, 2010, OELL shall review each school's September 2010 staffing plans as required by paragraph 76 below to determine if they reflect the capacity to provide the ESL and SEI instruction required by paragraphs 37 through 43 of this Agreement to all ELLs in the school. The OELL, on behalf of the District, shall disapprove plans for any school in which it appears that ELLs will be placed in ESL classes that are not taught by ESL certified teachers or will be placed in core content area classes that are not taught by ESL certified teachers or by SEI teachers trained in Categories 1, 2, and 4 or who will be so trained by December 31, 2010. Principals in such schools shall be required, by no later than October 4, 2010, to demonstrate how staffing adjustments can be accomplished: (a) through the annual BPS end-of-September adjustment process; (b) by reassigning provisional ESL certified teachers and permanent ESL certified teachers with a primary program area of ESL, Bilingual Education, or SEI to teach ESL; (c) by documenting whether all permanent ESL certified teachers with a primary program area other than ESL, Bilingual Education, or SEI consent to teach one or more classes of ESL per day and assigning any willing teachers to teach ESL; (d) by 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; (e) by reviewing application forms and transfer requests of ELLs who are not placed with ESL certified or SEI teachers who will be trained in Categories 1, 2 and 4 by December 31, 2010, to determine whether those students expressed a preference for another school at which there is an available seat in a monolingual SEI program in their native language or sufficient classroom seats in other SEI classes; (f) by accelerating and facilitating Category and

ESL training of staff; (g) by more fully utilizing existing staff with training in Categories 1, 2, and 4 or ESL certification; (h) by using the ten 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, below; and/or (i) by any other available means, so that all ELLs are provided with the ELL services required by paragraphs 37 through 43 of this Agreement. The District shall ensure that schools whose October 4, 2010 plans do not reflect the capacity to comply with the terms of this Agreement devote no less than 15 of the 18 mandatory hours of professional development set forth in the current CBA toward Category or ESL training, applying those 15 hours first toward Category 4 for teachers who have yet to complete Category 4, then toward Categories 1 and 2 as needed thereafter, and finally toward 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. OELL shall review staffing plans that are revised by schools in accordance with this section no later than October 18, 2010, and may approve resubmitted plans only if they demonstrate capacity to meet the terms of this Agreement no later than December 31, 2010. Until the school submits a plan that OELL approves, any disapproved plan shall be resubmitted by the school for reconsideration by OELL within 7 calendar days after receiving notice of disapproval. OELL shall respond within 7 calendar days of receipt of resubmitted school plans, and may release the 15 hours of professional development referenced herein for other professional development purposes only if the school plan demonstrates that full compliance with this Agreement can be achieved at the time of plan approval and does

not require the use of these 15 hours for Category training. The parties shall prioritize schools that do not submit compliant plans in monitoring activities set forth in paragraphs 71 and 80.

53. If the District fails to train or hire an adequate number of qualified SEI teachers for all of its ELLs by December 2010, or if it becomes apparent earlier that the District will be unable to train an adequate number of teachers by that time, the United States reserves the right to pursue training of sufficient numbers of qualified SEI teachers through litigation against the District under the EEOA and Title VI; 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 thirty days, or until the parties reach an impasse, whichever comes sooner, over adequate measures to correct alleged shortcomings in actions taken by the District to provide ELLs with adequately trained teachers.
54. The District shall monitor the progress that SEI and ESL teachers are making towards obtaining the four categories of training and ESL certification. Upon completion of each set of Category training, or at intervals of no less than two months during the first two years of this Agreement (beginning with November 1, 2010 and January 1, 2011) and subsequently to the extent the parties agree, the District shall report such information to the person or entity designated by the United States in the manner set forth in paragraph 77.
55. The District shall ensure that all employees who evaluate teachers of ESL and SEI core content classes are adequately trained regarding ESL instruction and sheltering techniques to perform a meaningful evaluation of the ESL and SEI instruction. Formal

evaluations of ESL and SEI core content teachers, whether they are teaching core content to both ELL and non-ELL students 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 42. Toward that end, by September, 2011, all employees who evaluate SEI and ESL teachers shall 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, the OELL office shall provide to such employees engaged in evaluation at least two hours of annual in-person, in-building follow-up focused on how to conduct ESL and SEI classroom observations. In addition, by November 1, 2010, the District shall develop one or more classroom observation tools for ESL and SEI classrooms and shall train evaluators of ESL and SEI core content classes on how to use this tool within thirty days of the tool's completion.

56. The District shall provide training and a forum for discussion through the Principal Institute and other mandated principal training, including, but not limited to, monthly Academic Superintendent conferences in at least September, October, and November 2010, 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 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 42, above;
 - e. Strategies for ensuring that SEI teachers complete at least Categories 1, 2, and 4 by December 2010 and that ESL teachers obtain ESL certification by September 2011;
 - f. The compensatory services available for newly identified ELLs and students previously deemed to have “opted-out” of programs or services for ELLs; and
 - g. How to communicate with parents/guardians of newly identified ELLs and students previously deemed to have “opted-out” of programs or services for ELLs about the benefits of ELL services and the availability of compensatory services.
57. 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, the District shall seek grant funding to employ at least four support specialists to work with academic supervisors to promote capacity building toward these ends at the school level during the 2010-2011 school year

58. By October 22, 2010, the District shall report to the United States a detailed accounting of the estimated costs and funding sources, including federal and state funds, that the District has spent and expects to spend on fulfilling its Title VI and EEOA obligations to ELLs for the 2010-11 and 2011-12 school years, including its implementation of this Agreement. This detailed accounting shall include at least: (a) the allocations of the \$10 million mentioned in paragraph 22(h) of this Agreement; (b) the funds spent on and to be spent on voluntary category training; (c) the funds spent on and to be spent on mandatory category training; (d) the funds spent on hiring new ESL teachers for January 2011 and September 2011; and (e) the funds spent on and to be spent on training new ESL teachers.

SPECIAL EDUCATION (SPED)

59. For all SPED ELLs, including those at the Carter and Horace Mann schools, any modifications to the assessment procedures or the delivery of ELL services shall be decided upon through the IEP Team or Section 504 Team process, prior to the implementation of any such modifications.
60. 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. The District shall ensure that principals/headmasters factor the needs of SPED ELLs, including those in substantially separate placements, in each school's staffing plans and provide these students with ELL services by the start of the 2010-11 school year. For all such students, ELL services shall be delivered by appropriately qualified personnel.

61. The District shall ensure that the IEP Team or Section 504 Team of each SPED ELL includes an individual who is ESL certified or has completed Categories 1,2, and 4, and who is knowledgeable about ELL needs and services. The District shall also employ appropriate measures to increase staff knowledge in best practices governing the provision of services to ELLs who have disabilities, particularly 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 Evaluation Team Facilitators and LATs regarding appropriate strategies for educating ELLs with disabilities. The District shall sponsor training events for Evaluation Team Facilitators and LATs throughout the year, and shall assign those who have completed training to serve SPED ELLs whenever possible, beginning in the 2010-11 school year. By the beginning of the 2011-12 school year, the District shall ensure that all Evaluation Team Facilitators and LATs are trained on the intersection between ELL and SPED service provision, and that the IEP Team or Section 504 Team of each SPED ELL includes an individual who is trained on the intersection between ELL and SPED service provision.
62. The District shall maintain in each SPED ELL's special education files a record of that student's language proficiency testing results. Further, the District shall 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 modifications to standard language proficiency assessment procedures required by the student's disability or special needs, as well an explanation for why modifications are necessary;
 - b. The IEP Team 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.
63. The District has elected to provide ESL/ELD services to students at the McKinley School through ELA teachers who are also certified in SPED and ELL. In order to implement this instructional model as expeditiously as possible, the District shall ensure that 50% of McKinley ELA teachers are certified in ESL by the start of the 2011-12 school year, and shall ensure that 95% of McKinley ELA teachers are certified in ESL by the start of the 2012-13 school year. The District shall develop an instructional monitoring tool that effectively measures the quality of ESL services provided through this instructional model at this school. In addition, the District shall, on a semi-annual basis starting 18 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.

64. During the course of the 2010-11 school year, as SPED ELL IEPs come up for annual review, but, in any case, no later than November 30, 2010, and within 25 school days of placement for any SPED ELL placed at McKinley between October 22, 2010 and June 30, 2011, the District shall convene or re-convene an IEP Team meeting for each such student at which it shall assess and discuss whether the student could be provided push-in or pull-out ESL services, or be otherwise served or grouped in a manner that would maximize his or her access to ESL instruction, in light of his or her individual service and placement needs. To the extent practicable, the District shall place SPED ELLs at McKinley with ESL certified teachers as they become certified. Until all SPED ELLs are placed with ESL certified teachers at McKinley, the District shall employ strategies to ensure that these 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 weekly 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

65. For each newly identified ELL or student previously deemed to have "opted-out" of programs or services for ELLs, the District shall offer compensatory services in the amount necessary to compensate that student, by the time s/he graduates from high school, 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 District shall ensure that compensatory services are provided by qualified instructional staff, and that such services address both language development and core content-area needs of the newly identified ELLs. The District shall inform newly identified ELLs, students previously deemed to have “opted-out” of programs or services for ELLs, and their parents/guardians of the availability of compensatory services and shall offer these services at a variety of times, in accessible locations, within a reasonable distance of each student’s home.

66. In addition to continuing summer programming to ELLs begun in the summer of 2010, the District agrees to provide compensatory services, starting with the 2010-11 school year, through some combination of after-school academic programs, vacation academies during February and April vacation weeks, and Saturday School programs. The District shall offer these services to all newly identified ELLs and students previously deemed to have “opted-out” of programs or services for ELLs. If, during the period of this Agreement, the District is unable to provide sufficient services to fully compensate all newly identified ELLs and newly identified FLEPs who need such services pursuant to paragraphs 33 and 34 above, it shall prioritize students’ access to compensatory services as follows: (a) first priority to students who have been in the District for more than 5 years (these students shall have opportunities to participate in all compensatory programs); (b) second priority to students who have been in the District for 3-4 years (these students shall have access to afterschool programs, vacation academies, and Saturday school); (c) third priority to students who have been in the District for 1-2 years (these students shall have access to vacation academies and Saturday school); and (d)

fourth priority to any newly identified FLEPs who need such services pursuant to paragraphs 33 and 34 above, (these student shall have access to whatever spaces remain in the compensatory services).

67. The District shall conduct parent preference surveys and language-specific focus groups to determine how, when, where, and with what content it should deliver compensatory services. No later than January 15, 2011, the District shall develop a revised compensation plan, based on the results of such surveys and focus groups, that maximizes the access of newly identified ELLs and students previously deemed to have “opted-out” of ELL programs or services to sufficient quantities of high-quality, accessible compensatory services.
68. The District shall assess the compensatory services provided to newly identified ELLs and students previously deemed to have “opted-out” of ELL programs or services on a semi-annual basis, through additional parent surveys and focus groups or by some other method approved by the United States through an amendment to this Agreement, to ensure that these services are accessible and of high quality.
69. The District shall ensure that compensatory services are made available to SPED ELLs in a manner appropriate to their individual educational needs.

PARENT COMMUNICATIONS

70. The District shall ensure that the written notices required by paragraphs 22(e) and 22(f), which have been submitted to the United States for review and comment, are translated into each of the District’s Major Languages and distributed to relevant parents. For parents/guardians who speak a language that is not one of the District’s Major Languages, the District shall provide, to the extent feasible, a written translation of the

notice described in paragraphs 22(e) and 22(f). If a written translation is not feasible, the District shall employ any available means of providing an oral interpretation of the notice within a reasonable time after: (a) a parent requests an oral interpretation; or (b) the need for an oral translation becomes apparent. The District shall document these requests and its efforts to provide interpreter and/or translation services.

MONITORING

71. The District shall monitor all schools enrolling ELLs during the 2010-11 school year to ensure that the above requirements are being appropriately and adequately implemented. This monitoring shall include but is not limited to: determining, in mid-October 2010, mid-December 2010, and mid-February, 2011, the numbers of ELLs by proficiency level who (a) are receiving ESL instruction by ESL certified teachers; (b) are receiving ESL instruction by teachers who are on track to be certified by September 2011; (c) are receiving ESL instruction by teachers who are not on track to be certified by September 2011; (d) are receiving all SEI core content with teachers trained in at least Categories 1, 2 and 4; (e) are receiving all SEI core content with teachers who are on track to complete Categories 1, 2, and 4 by December 2010; and (f) are receiving some SEI core content with inadequately trained teachers who are not on track to complete Categories 1, 2, and 4 by December 2010.
72. If at any time the District learns that any ELL is not receiving ELL services, it shall take reasonable steps to ensure that appropriate ELL services are provided to the student at that student's assigned school within thirty (30) days of learning of the lack of ELL services.

73. As the United States has indicated since initiating this review, the United States will conduct a comprehensive review of the District's ELL programs and services under the EEOA and Title VI during the fall of 2010. This review will include: information requests beginning in late September and October 2010; attendance by consultants and/or representatives for the United States at Category and ESL training during the summer and fall of 2010; and on-site visits by consultants and representatives of the United States between late September and December 2010 at approximately twenty-five schools, the FRC, and the NAC. During these visits, the United States will monitor the implementation of this Agreement as well as other aspects of the District's ELL programs to assess their compliance with the EEOA and Title VI. District personnel may accompany the United States during on-site reviews and count these reviews as part, but not all, of its monitoring obligations required by paragraph 71. The parties understand that the United States' comprehensive review of the District's ELL program and monitoring of this interim Agreement's implementation is expected to result in a proposal by the United States of a supplemental or superseding agreement in early 2011.

REPORTING

74. Pursuant to paragraph 27 above, within 45 days of the entry date for this Agreement, the District shall submit to the United States a copy of its procedures for registering ELLs at the FRC, NAC, and individual schools.
75. On or before September 30, 2010, the District shall submit to the United States a written report containing: (a) the names of all students who were administered the LAS Links pursuant to paragraph 22(a) above; (b) the school to which the student will be assigned during the 2010-11 school year; (c) the students' LAS Links score; (d) the students'

designation (*e.g.*, LEP or FLEP) and corresponding proficiency level (*e.g.*, level 1, 2, 3, 4, or 5); (e) the ELA MCAS scores and LAS Links component scores of any student whose ELL status was altered pursuant to paragraph 33 above; (f) the name of any ELL student who was denied placement in a school of his/her choice or a school in which he/she could be placed and for which he/she is otherwise qualified for the 2010-11 school year; and (g) the names of any students who were tested with the full LAS pursuant to paragraph 33, their full LAS scores, and whether they remain ELLs, including their English proficiency levels.

76. On or before September 20, 2010, the District shall submit to the United States a staffing plan for each school that will enroll ELLs during the 2010-11 school year. Each plan, which may take the form of a Memoranda of Agreement between the District and the individual schools, shall, to the maximum extent feasible given available information: (a) indicate ELLs assigned to the school for the 2010-11 school year by grade and proficiency level, separately identifying the number of SPED ELLs; (b) indicate all teachers who will provide ESL instruction to ELLs in that school and the ESL certified teachers in that school; (c) indicate the teachers required to provide all ELLs with SEI core content instruction within that school and the core content teachers who have training in at least Categories 1, 2, and 4; and (d) describe how the school will optimize the delivery of ELL services (*e.g.*, allocation of teaching time and coupling of ESL instruction vertically and/or horizontally). If the United States has any questions or concerns about a school's proposed staffing plan, the District shall respond to these questions or concerns within thirty (30) days.

77. Consistent with its monitoring obligations in paragraph 54, on or before November 1, 2010, January 1, 2011, March 1, 2011, and July 1, 2011, the District shall submit to the United States a written school-by-school report of: (a) the number of ESL teachers by provisional and permanent status who have obtained an ESL certification; (b) the number of ESL teachers by provisional and permanent status who have yet to obtain an ESL certification; (c) the number of teachers by provisional and permanent status who have obtained an ESL certification but are not assigned to an ESL class; (d) the total number of teachers assigned to SEI core content classes by provisional and permanent status who do not have an ESL certification and the Category training they have completed; and (f) the total number of teachers assigned to SEI core content classes by provisional and permanent status who have a ESL certification. The District also shall provide the United States with a list of all Category training sessions the District has scheduled by Category, date, time, and location, and shall also state the training capacity and the number of actual participants.
78. On or before September 30, 2010, and again on November 1, 2010, the District shall submit to the United States: (a) copies of any forms submitted by principals to OELL, in accordance with paragraph 36 above, documenting principals' discussions with parents who refuse ELL services; (b) documentation of the student instruction, teacher training and monitoring provided, consistent with paragraph 37, 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.

79. On or before October 15, 2010, the District shall submit to the United States a written report containing: (a) the names of all District employees who received training pursuant to paragraph 30 above; (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). In addition, the District shall provide the United States with a copy of its instructional monitoring tool for McKinley's ESL/ELA instructional model.
80. Within a week of producing the mid-October 2010, mid-December 2010, and mid-February, 2011 reports required by paragraph 71, the District shall produce a copy to the United States for its review.
81. No later than 30 days after the posting of MEPA scores by the Massachusetts Department of Elementary and Secondary Education, the District shall submit to the United States a written report containing: (a) the names of any students whose proficiency level was altered pursuant to paragraphs 30 and 31 above; and (b) the scores these students received on the October 2010 MEPA. On or before January 15, 2010, the District also shall provide the United States with a copy of its revised compensation plan, pursuant to paragraph 67.
82. By October 5 and again on October 26, the District shall submit a list of schools whose plans were not approved as of September 27 and October 18, respectively, and a copy of each resubmitted school plan received pursuant to paragraph 52 above; the names of each

school that OELL has required to use the 15 hours of mandatory professional development training toward Categories 1, 2, and 4; the names of each school that OELL required to use the additional ten hours of mandatory professional development training toward Categories 1, 2, and 4; and documentation of whether the permanent ESL certified teachers with a primary program area other than ESL, Bilingual Education, or SEI consented to their principals' requests to teach one or more classes of ESL per day.

ENFORCEMENT

83. The District shall maintain electronic and hard copy records of information and data pertinent to compliance with the terms of this Agreement and shall provide the subset of that information and data required by the reporting provisions of this Agreement in a timely manner. Further, the District understands that for purposes of monitoring this Agreement, the United States will conduct site visits, 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 Title VI. 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 a reasonable period of time.
84. 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.

85. 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 thirty 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.
86. 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.
87. 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:

THOMAS E. PEREZ
Assistant Attorney General

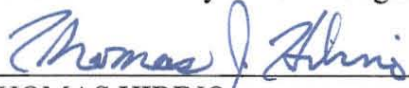


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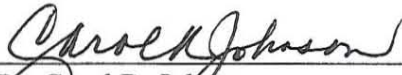


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