

Settlement Agreement

Between

the United States of America

and

Cherry Creek School District No. 5

PURPOSE

The United States Department of Justice (“United States”) has received multiple complaints over the past three years alleging that the Cherry Creek School District No. 5 (“the District”) failed to take appropriate action to address language barriers of families with limited English proficiency (“LEP”) in its enrollment process and student disciplinary proceedings, denying students equal access to the District’s instructional programs. The United States investigated these complaints under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 *et seq.* (“EEOA”). The United States and the District (collectively, “the Parties”) now enter into this agreement (“Agreement”) to resolve the United States’ investigation into these complaints.

After reviewing the District’s policies, practices, and procedures for providing translation and interpretation services to LEP parents, the United States notified the District that it had compliance concerns pertaining to the District’s obligations to provide sufficient translation and interpretation for LEP parents. Specifically, the United States concluded that the District: (1) does not have a reliable and accurate process for identifying parents¹ who have limited English proficiency (“LEP parents”); (2) does not adequately provide information to LEP parents about the District’s process and requirements for enrolling students in the District; and (3) does not provide essential information to LEP parents in a language they can understand.

The Parties undertake this Agreement as a means of alternative dispute resolution to avoid litigation and for the purposes of judicial and governmental economy. The District agrees to implement the remedial measures enumerated in this Agreement but admits to no violations of

¹ For the purposes of this Agreement, the term “parent” includes legal guardians and all other people who are legally responsible for the student’s welfare.

the EEOA by entering into this Agreement. The Effective Date of this Agreement is the latest date of the Parties' signatures below.

District representatives, by signing this document, assure that they have the authority to bind the District, including successor administrations and members of the District's School Board, for the Agreement's duration.

DEFINITIONS

- **Essential Information** includes: (a) report cards and other academic progress reports; (b) documents concerning academic options and planning; (c) enrollment information; (d) documents with screening procedures requesting a student's language background and parents' preferred language of communication; (e) all parental consent forms, including requests for parent permission for student participation in District/school-sponsored programs and activities; (f) 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-curricular activities requiring an application, parent-teacher conferences, open houses); (g) special education documents, including Individualized Educational Plans (IEPs), Prior Written Notices, Notice of Procedural Safeguards, Behavior Intervention Plans, and Functional Behavioral Assessments; (h) information about student discipline, including all codes of conduct; (i) student or parent handbooks; (j) information related to public health and safety (*e.g.*, vaccination requirements, health and safety protocols and announcements); and (k) any other written information describing rights/responsibilities of parents or students and benefits/services available to parents and students, including a notice of the right to request translation and interpretation

services, how to make such requests, and how to file a complaint about language assistance services.

- **Exclusionary Discipline** is any type of school disciplinary action that isolates, removes, or excludes a student from their usual educational setting, including in or out of school suspensions, referrals to alternative schools, and expulsions.
- **Interpretation** means the act of listening to a communication in one (source) language and orally converting it to another (target) language while retaining the same meaning. There are two modes of interpreting: consecutive and simultaneous.
- **Interpreter** is an individual who performs interpretation and who has been assessed using a highly rigorous, standardized, and professionally validated instrument and who has also been trained in specialized terminology, the ethical canons of interpretation, and other standard requirements.
- **Language Assistance Services** means the facilitation of effective communication with a person who has limited English proficiency using one of the following five methods: in-person interpretation, remote video or telephonic interpretation, translation, direct “in-language” or monolingual communication, or sight translation.
- **Limited-English Proficient or LEP** means a person for whom English is not the language in which a person is most effectively able to communicate because the person has a limited ability to read, write, speak, or understand English. An LEP person may be competent in certain types of communications in the English language (*e.g.*, speaking or understanding) but still may be LEP for other purposes (*e.g.*, reading or writing) and require language assistance services (*e.g.*, interpreters or translated materials).

- **Low-Incidence Language** means any language that is not a Major Language, as defined below.
- **Major Language** means any languages other than English spoken by more than 100 of the District’s LEP parents based on the identified preferred language of communication in the District’s Parent Form, which the District asks all parents to complete each year.
- **Qualified Bilingual Staff** means a District employee or contractor who has demonstrated, through a formal procedure established by the District, a competency to communicate orally in English and at least one other language.
- **Sight Translation** is on-the-spot, complete, oral rendition of written text from the source language into the target language by an interpreter without a change in meaning based on a visual review of the original text or document. However, Qualified Bilingual Staff may explain the contents of a form or document to an LEP person without purporting to sight translate the document.
- **Translation** means the replacement of written text from one language (source language) into an equivalent written text in another language (target language) using a human translator (*i.e.*, not automated translation software such as Google Translate or Pocketalk).

GENERAL REQUIREMENTS

1. The District will take “appropriate action to overcome language barriers that impede equal participation” by LEP students (“English Learners”) in the District’s instructional programs. 20 U.S.C. § 1703(f).
2. The District will identify all parents who have limited English proficiency and need language assistance services, and provide all LEP parents such services in their preferred language of communication. Whenever the District becomes aware that a parent has limited English

proficiency, but English is listed as the parent's preferred language in the District's student information system (currently PowerSchool), the District will notify the LEP parent in the language in which they are most effectively able to communicate that changing their preferred language of communication in the District's student information system will enable them to receive language assistance services. If the LEP parent knowingly declines to change their preferred language, the District will document the declination in the student information system narrative and enter the parent's language needs in the Notes field under the student profile for each of the parent's children.

3. The District will ensure all notices, correspondences, automated telephonic messages, and voice recordings containing Essential Information that are disseminated at the district level (*i.e.*, information intended for all district students or parents) are translated/interpreted into each of the major languages. The District will ensure that all notices, correspondences, automated telephonic messages, voice recordings, and communication containing Essential Information disseminated at the school or classroom level, are translated into any language that is spoken by ten or more LEP parents at that school. For Low-Incidence Languages, the District will offer LEP parents appropriate language assistance services to ensure they understand the information being conveyed, and record accurately the parents' decision to accept or decline the offer. In any meeting in which Essential Information is discussed, the District will provide LEP parents with interpreter assistance in their preferred language, including all meetings related to enrollment and discipline procedures. Except in an emergency involving life, immediate health, or safety of individual(s), the District will not use students, family, friends, or unverified automated services (*i.e.*, Google Translate, Pocketalk, or similar services or applications) to provide language assistance services.

4. The District will include a statement, accurately translated into all preferred languages of current LEP parents in the District, about the availability of language assistance services and how to request such services, and prominently post this statement on the District's homepage, all school websites, and the District's online enrollment landing page. The District will make a copy of this translated statement accessible at school entryways and also ensure the statements are visible to parents who enter the main office of each of its schools and the District enrollment offices.

SPECIFIC REQUIREMENTS

Enrollment in the District

5. The District will translate all electronic enrollment documents and forms, including all documents that contain instructions or explanatory information, into any major languages where translation is available through the District's software vendor. This translated enrollment information and these forms will be available online. For any major languages for which translation is not available through the District's software vendor, the District will make translated versions of the documents available in a paper form. The District may also use interpreters to assist parents in responding to the enrollment questions using the enrollment software.
6. Any time a parent seeks to enroll their child in a District school, the District will identify parents' preferred language of communication at the beginning of the enrollment process. *See, e.g.,* Paragraphs 2 and 4 above.
7. The District will provide appropriate language assistance services to all LEP parents who seek to enroll a child in a District school at no cost to the parents, including LEP parents who speak Low-Incidence Languages and may need oral interpretation. The District will contract

with a telephonic interpretation service to expand access to interpreters and different languages. The District also will provide real-time sight translation or interpretation services no later than three business days after the District knows that the parent requires such language assistance services. If the District is unable to meet the three-day timeline for a particular LEP parent, it will provide the services at the earliest possible date and document each such instance in Attachment A.

8. The District will ensure that all students are able to access its educational programs, regardless of national origin or immigration status; will ensure that its student enrollment practices do not discourage the participation, or lead to the exclusion, of students based on their or their parents' actual or perceived citizenship and/or immigration status. The District will not request of parents or students proof of immigration status, or any other information with the purpose or result of denying or limiting access to public schools on the basis of race, color, or national origin.
9. The District will not require birth certificates as the sole means of demonstrating that a student meets age requirements to enroll in any District schools, including Early Childhood Education (ECE). The District will develop a non-exclusive list of alternative documents it will accept in lieu of birth certificates and include this list in its enrollment materials.
10. Within 30 days of the Effective Date of this Agreement, the District will notify all school administrators and all schools' front office staff of the procedures described in Paragraphs 4 through 9 above, through a standalone e-mail communication.
11. The District will train all School Registrars and building front-office staff on the procedures described in Paragraphs 4 through 9 above by developing and disseminating a 15-minute instructional video and ensuring the relevant staff members view and understand the video.

The District also will develop and disseminate a one-page document explaining Paragraphs 5 through 9 to these staff members and to all building administrators. The District will submit the script and materials to be used in the proposed video and one-page document to the United States for its review and approval within 120 days of the Effective Date of this Agreement. The District also will ensure all of the relevant staff view and understand the video, and the District will verify in writing that the staff viewed the video and reviewed the accompanying one-page document within 60 days after the United States approves them.

Identifying Parents’ Preferred Languages

12. Prior to disseminating its annual Parent Update for SY 2024-25 but no later than June 15, 2024, the District will send an e-mail and text notice to all parents notifying them of the questions on the Parent Form relating to language and communication preferences. The District also will translate the e-mail/text into all major languages, and include in this communication a copy of the statement described in Paragraph 4 above, to inform all parents that language assistance services are available upon request. A draft of this communication will be sent to the United States by May 17, 2024 for its review. The District will repeat this process each subsequent school year during the time frame when this Agreement is in effect.
13. By November 15, 2024, the District will report to the United States the names of all parents who changed their preferred language of communication preference on the Parent Form for SY 2024-25 from what was previously entered in the District’s student information system, the schools their children attend, and the languages involved in the change.
14. The District will administer a valid, reliable, and grade-appropriate English Language Proficiency assessment in all four language domains to all 1-12 students for whom a change was made in SY 23-24 or SY 24-25 to Parent Forms indicating that a language other than

English is spoken at home or by the student if that student has not previously been assessed for English language acquisition services. The District will designate all students who are not fully English-proficient based on the assessment as English Learners and offer them English language acquisition services.

15. The District will require staff to check each parent's preferred language of communication before disseminating any Essential Information or scheduling meetings with parents, and ensure they are communicating with LEP parents in their preferred language.

Disciplinary Proceedings Involving English Learners and LEP Parents

16. The District will continue to translate Essential Information into all major languages, including documents and forms related to student discipline, such as the District's code of conduct.
17. When District staff communicate with parents concerning disciplinary proceedings, including potential Exclusionary Discipline, the District will confirm the parents' choice of preferred language listed in the District's student information system, and ensure all LEP parents, including those who speak Low-Incidence Languages or need oral interpretation, receive appropriate language assistance services, unless the parents knowingly waive language assistance services in a document translated into the parents' preferred language of communication.
18. All written communication regarding the potential Exclusionary Discipline of an LEP parent's child will be translated in a timely manner or sight translated into the LEP parent's preferred language of communication, including Suspension Notice Letters, Suspension Extension Letters, Expulsion Notice Letters, and Expulsion Decision Letters. If one of these

letters is sight translated, a translated copy of the letter should be provided to the family as soon as possible.

19. In no event should an expulsion review hearing of an LEP parent's child take place before the District provides the LEP parent a translated copy of the Expulsion Notice Letter and/or all appropriate language assistance services (*e.g.*, sight translation).
20. The District will document all oral communications with LEP parents regarding Exclusionary Discipline of their child in the District's student information system. This documentation will include: the date and approximate time of the conversation, whether the conversation was over the phone or in person, whether Qualified Bilingual Staff or an interpreter was present on the phone or in person, the general subject matter discussed in the conversation, and, if possible, an estimate of the length of the conversation.
21. Prior to the start of an expulsion review hearing of an LEP parent's child, the District will ensure an interpreter is available to meet with the student's parent(s) for no less than one hour to sight translate the expulsion packet. A school employee knowledgeable about the District's disciplinary procedures also will be present at this meeting to answer questions the parents might have concerning the information contained in the packet.
22. Interpretation must be provided for all expulsion review hearings, expulsion appeal proceedings, and early readmission meetings involving an LEP parent's child if the LEP parent is present. If no interpreter is present, the hearing or meeting must be postponed to a later date. If an early readmission meeting is postponed because of a lack of an interpreter, the student must be conditionally permitted to attend school for the time period where the meeting is being rescheduled unless the school determines that the student poses a health or safety risk to themselves or others.

23. During the term of this Agreement, the District will track all Exclusionary Discipline involving an LEP parent's child with the information set forth in Attachment B. The District will send a copy of this information to the United States within 30 days after the close of each school semester.
24. The District, with the aid of an interpreter, will attempt to contact the LEP parents of certain students who were previously expelled, document these efforts in writing, and explain to the students' parents what options expelled students have for readmission into the District. The District will take these actions for all expulsion proceedings between SY 17-18 to the Effective Date of this Agreement that meet the following criteria:
- a. The student will be younger than 18 during SY 24-25;
 - b. The expulsion decision letter was not translated; and
 - c. The student is not currently enrolled in the District.

Within 150 days of the Effective Date of this Agreement, the District will provide to the United States the results of the remedial actions set forth in this Paragraph.

25. At the District's annual training on expulsions or another training in the fall of 2024, the District will train the Cultural Liaisons in the Language Supports and Services Department, and all District staff and administrators involved in Exclusionary Discipline, on the procedures described in Paragraphs 16 through 23 above. By July 1, 2024, the District will submit proposed training materials to the United States for review and approval. For all other staff involved in discipline, including classroom teachers, the District will send an e-mail describing the process they should follow when communicating Essential Information with parents (*i.e.*, determine whether parents are LEP and require an interpreter or translated documents before engaging).

26. In addition to providing language assistance services to LEP parents, the District will take appropriate steps to ensure that all English Learners are able to understand and participate fully in all disciplinary proceedings before being subject to Exclusionary Discipline and provide language assistance and support, if necessary.

Parent Engagement and Notification

27. Within 60 days of the Effective Date of this Agreement, the District will send to the United States, for its review and approval, a draft of a letter to all LEP parents in their preferred language describing the District's duty to provide language assistance services in its communications with families and its processes for doing so. The District will send this letter to all LEP parents via e-mail and text within 30 days after the United States approves the statement.

28. The District will translate each school-level student handbook as follows:

- a. All student handbooks will be translated into Spanish;
- b. For student handbooks published for an upcoming school year, student handbooks will be translated into any language other than Spanish that is spoken by ten or more LEP parents at that school as of March 15 of the preceding school year;
- c. Translated student handbooks will be available online; and
- d. All student handbooks will include a copy of the statement described in Paragraph 4 above, to inform all parents that language assistance services are available upon request.

29. During SY 24-25, the District will conduct a needs survey of LEP parents, soliciting their feedback on their experience with the District. Within 60 days of the Effective Date of this Agreement, the District will submit its proposed survey questions to the United States for its

review and approval. The survey will be translated into the major languages spoken in the District. All LEP parents should receive a copy of the needs survey by e-mail and text. The District also will hold at least two listening sessions at schools in the District, and one virtual listening session, to assist LEP parents in filling out the needs survey and to solicit feedback from LEP parents. The District will provide interpreters at each of these listening sessions for all major languages. The District also will provide interpreters for at least 10 additional Low-Incidence Languages spoken in the District at one or more of these meetings, and publicize the availability of these services. Within 45 days after completing its needs survey, the District will report the results of the survey to the United States, along with a summary of steps it plans to take in response to survey results.

30. The District will solicit feedback from its Cultural Liaisons at a minimum, annually, on ways to further improve its communications with LEP parents.

Reporting

31. For the duration of this Agreement, the District will preserve and maintain all records and documents, including all electronically stored information, relevant to its compliance with the Agreement, and will provide such information to the United States upon request.
32. On November 15 of each year this Agreement is in effect, the District will provide to the United States:
 - a. A list of all LEP parents who enrolled students into District schools during the reporting period, including the: i) parent's names; ii) student's names and grade levels; iii) student's school; iv) parent's preferred language of communication; v) date of initial enrollment; vi) date the requested language assistance services were

- provided for the enrollment process; and vii) type(s) of language assistance service(s) provided during the enrollment process.
- b. A list of all parents in the District whose preferred language of communication is not English, including: i) each parent's preferred language of communication; and ii) all schools where they have a child enrolled.
 - c. A copy of all complaints relating to language assistance services received by the District or any of its schools, and a copy of all investigations, responses, or other documents generated in response to the complaint.

Enforcement

33. The United States, through its representatives and any consultant or expert it may retain, has the right, with at least 30 days advance notice, to conduct site visits, interview staff and students, and request such additional reports, information, or data necessary to evaluate the District's efforts to fulfill the terms of this Agreement and its compliance with the EEOA. The District will make all requested reports, information, or data available to the United States for its review within 30 days, unless otherwise agreed by the Parties. The United States also may speak directly, without District counsel, with District employees who are not administrators or central office staff. District employees may elect to have District counsel present upon request.
34. The District understands and acknowledges that, in the event of a material breach by the District of this Agreement, the United States may initiate judicial proceedings to enforce the EEOA and the specific commitments and obligations of the District under this Agreement. Once the United States notifies the District, in writing, that the District is in material breach of this Agreement and specifies the basis for such conclusion, this notification will trigger the

negotiation requirement in this Paragraph. The Parties agree to meet to discuss any alleged breaches identified by the United States within 30 days of notification, and then to negotiate in good faith to resolve any alleged breaches for a minimum of 30 days. Venue for any dispute or enforcement of this Agreement will be the United States District Court for the District of Colorado.

35. This Agreement constitutes the entire agreement between the United States and the District, and no prior or contemporaneous statement, promise, or agreement, either written or oral, made by any Party or agents of any Party, that is not contained in this Agreement, are enforceable. This Agreement can only be modified by mutual written agreement of the Parties.

36. 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 will not affect the validity of any other part of the Agreement. The District and United States will meet within 15 days after a court's decision to determine whether the Agreement should be revised or supplemented in response to the court's decision.

37. The persons signing on behalf of each Party represent that they are authorized to bind their respective Parties to this Agreement. This Agreement will be binding upon the District and all future successors. The District understands and acknowledges that this Agreement does not relieve the District from its other obligations under the EEOA or other federal laws. Consistent with its responsibility to enforce the EEOA, the United States retains the right to investigate and, where appropriate, initiate judicial proceedings concerning any future alleged violations of the EEOA by the District.

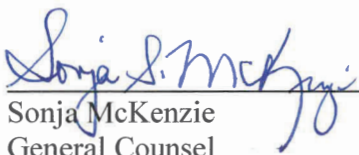
38. This Agreement is a public document. A copy of this Agreement or any information contained therein may be made available to any person.

39. This Agreement will remain in effect for at least three school years from the Effective Date of this Agreement, provided that the District complies fully with the terms of this Agreement. Prior to three school years from the Effective Date, the United States may, upon written notice to the District of its compliance concerns, extend the term of the Agreement to monitor outstanding compliance concerns. After the United States provides the requisite notice to the District, the District will be provided with an opportunity to respond.

For Cherry Creek School District No. 5:



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Cherry Creek School District No. 5



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For the United States:

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